



©
C
R
T
A
2
0
2
0
.
B
e
l
g
r
a
d
e
,

Corruption and Organised Crime in Serbia - What is the Price of Integrity?





ROYAL NORWEGIAN EMBASSY

Belgrade

This project is financially supported by The Royal Norwegian Embassy in Belgrade. www.norway.no/en/serbia

B | T | D The Balkan Trust
for Democracy

A PROJECT OF THE GERMAN MARSHALL FUND

CRTA ●●

Corruption and Organised Crime in Serbia – What is the Price of Integrity?

According to the latest annual report published by Transparency International, Serbia is down for four ranks in the Corruption Perception Index compared to the previous year. This report is one of the most relevant global surveys in the area of corruption perception rankings. The score demonstrating the entire corruption situation in Serbia for 2019 is 39/100, placing Serbia at 91st position out of 180 countries.¹ In only two years Serbia dropped for 13 ranks – in 2017 it was 77th and in 2018 it was 87th. Information from this report indicates the corruption situation in Serbia and the path it is taking, as every year Serbia's ranking is getting closer to the position "very corrupted" distancing it from the score of being "very clean"². Serbia's decline in rankings for such reports is not surprising since primary strategic documents are often "forgotten", the laws are adopted in order to meet the international community requirements while in practice the laws are neither applied nor observed. The whistle-blowers who are playing an important role in reporting corruption are not protected, and often have to endure the pressure from the institutions. Insufficient control of financing political parties is also affected by the corruption, and political pressure continues to be noticeable at all institutional levels, starting from independent authorities such as Anti-Corruption Agency work, all the way to the police and prosecution. These activities are a clear indicator that fight against corruption is declining at all levels, thus making the Corruption Perception Index plummeting. In the end, it is only important to see if something will fundamentally change in the area of fight against corruption and which will be the upper limit score of the Corruption Perception Index that could initiate the change.

Strategic framework – No changes in the Horizon

Adopting a new National Strategy for Fight against Corruption is still on hold. The work on it commenced in 2005, and not-so-detailed action plans followed it. The strategy received a second chance in 2013 when it was adopted for a five-year period, to expire in 2018.³ The year 2019 started without any indications that a new Strategy will be adopted. It is assumed that the Strategy is currently not on the list of the Republic of Serbia priorities, as in the National Security Strategy of the Republic of Serbia adopted in 2019, the corruption came last on the list of security threats.⁴ Since Serbia does not have a unique strategic document which would include corruption and organised crime, the destiny of the Strategy for Fight against Organised Crime is similar to the corruption as mentioned earlier. There have been no changes, and no document was adopted, although, unlike corruption, organised crime was recognised as *one of the most significant threats to the Republic of Serbia security*⁵. From 2009 to this day, the Strategy for Fight against Organised Crime became obsolete due to legal amendments in this area, the Action Plan was never adopted and reviewing this document has not been even mentioned among public professionals.

1 Transparency International, Corruption Perception Index 2019, 2020 <https://www.transparency.org/cpi2019>

2 The ranking is represented as a scale, the scores ranging between 0 (highly corrupt) to 100 (highly clean)

3 Anti-Corruption Agency, Strategy and Action Plan <http://www.acas.rs/zakoni-i-drugi-propisi/strategija-i-akcioni-plan/>

4 National Security Strategy of the Republic of Serbia, 2019, p. 10 <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/strategija/2019/94/2>

5 Ibid, p. 9

Legal framework – Law after Law

In March 2019, the Council of Europe Group of States against Corruption (GRECO) published a report on the status of recommendations it has addressed to Serbia. This report included recommendations from the Fourth Round of evaluations which started in 2015. As in 2018 none of the recommendations had been fulfilled, in the following year, Serbia only partially fulfilled some out of 13 recommendations. GRECO made the recommendations which referred to remedying the corruption situation among members of Parliament, prosecutors and judges. The MPs took the least action in implementing the mentioned recommendations, while judges and prosecutors took partial actions to implement the recommendations.⁶

Many laws regulating the area of corruption have been amended in 2019 and 2020. On 13 December 2019 the Law amending the Law on financing political activities was amended as a result of the years of negotiations between political parties and public professionals. The amendments incorporated in the Law refer to increasing the accountability of political entities who participate in the elections regarding the use and disposal of public resources, a separation between the role of the official and political role, and instituting fines for public officials who use the public resources in the election campaign against the law.⁷ An opportunity was missed to amend article defining the officials' campaigning through these amendments and thus prohibit the misuse of humanitarian actions for political purposes.

More legal amendments occurred, and one of them concerns the newly-adopted Law on the Origins of Assets and Special Tax. This law has been in the queue since 2016, and from that time, it was not only amended several times but also criticised by the public. As the 2019 Draft had to be amended in another few rounds, the most significant criticism was referred to the possibility of retroactive assets taxation. However, this legislative solution was kept in the law with minor amendments. The primary reason for adopting this law was to cross-check the citizens' assets in case of a doubt that such assets had been illegally obtained. The special organisational unit within Tax Administration would be in charge of special tax proceedings to establish the property and increase of natural persons' property value, as well as the special tax on the increase of property value which the natural person had not been able to prove to have acquired lawfully. The Law provides for a very high tax rate of 75 per cent for taxation of unlawfully acquired property.⁸ It can be deduced that under this Law the person who had unlawfully acquired the property, in fact, will be rewarded with 25 per cent of the entire property.

The Law on Whistle-blowers is in force since 2015. The whistle-blowers who had decided to alarm the public mostly had to go through numerous administrative impediments, and the law itself was not the problem but the system that worked against it. The freshest example in Serbia is Aleksandar Obradović, a whistle-blower from Holding Corporation Krušik, who had reported corruption in this company that some buyers had more privileged position

6 GRECO - Group of States against Corruption, Fourth Round of Evaluation Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report on Serbia, 2 April 2019 <https://rm.coe.int/grecorc4-2019-5-fourth-evaluation-round-corruption-prevention-in-respe/168093bc55>

7 Law amending the Law on financing political activities, "Official Gazette of RS", No. 43/2011, 123/2014 and 88/2019 https://www.paragraf.rs/propisi/zakon_o_finansiranju_politickih_aktivnosti.html

8 The Law on the Origins of Assets and Special Tax, "Official Gazette of RS", No. 18/2020 <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/1/reg>

compared to the others causing damage to the budget. After he had reported these corruptive actions, he was brought to custody and only after 20 days as he had approached NIN journalists, his story had reached the wider public. Afterwards, he had received the public support and had spent two months in house arrest as he was suspected of having disclosed a business secret. Despite all efforts to hush this story, the case of Krušik whistleblower has reached the international media and organisations.⁹

The Law on Lobbying entered into force on 14 August 2019. Since then, the Anti-Corruption Agency took all necessary measures to implement the lobbyists' training, and the Lobbyists' Register is available on the Agency website.¹⁰ As this is the first year the lobbying procedure became official in practice and moved from informal to the legal framework, the 2019 Agency Report mentioned only key changes which refer to lobbying. As mentioned in the Report, the adoption of the law, and these changes *have contributed to building trust of businessmen and politicians*. However, there are still no registered lobbyists in the Register.

Institutional Framework – Who Will Prevent Corruption?

Anti-Corruption Agency is among the leading state authorities fighting against corruption. It started its activities in 2010, which means it has been fighting against corruption for ten years now, or at least it should have been, as provided for in the strategic framework. As for the independent and autonomous state authorities, such authority shall mean an authority with organisational, technical and professional capacities to be able to carry out tasks stipulated in its competences independently. Moreover, independence shall mean that when carrying out its tasks, the authority is not under political influence or influence of any other authority.

The present Director of Agency has participated in donations to Serbian Progressive Party during the City of Belgrade elections in 2018. The Management Board, which should have nine members, currently works with eight members, who are elected on the proposal by the National Assembly of the Republic of Serbia, Government and President, and the ruling majority in these authorities comes from the ruling coalition. It is not possible to check if the members of the Management Board are members of the ruling party since such information does not represent information of public importance. Until recently, the Agency did not have a job classification, and as Government determines the budget, it could be inferred that there the executive government is potentially influencing the work of the Agency. In the end, it is important to mention that the National Assembly has not been scrutinising the reports of the Agency in the plenary sittings for years now, although it is obliged to do that by the law.

According to the Agency's Annual Report, for several years back, it has not been working in its full capacity, so in the 2019 Annual Report it was said that professional service of the Agency is working in the capacity of only 49,08 per cent of jobs being occupied.¹¹ One can say that the Agency has serious problems with the lack of employees as it is questionable that 80 employees can in fact process all cases of suspected corruption in Serbia which they received daily.

9 "Aleksandar Obradović released from custody", <https://www.krik.rs/aleksandar-obradovic-pusten-iz-pritvora/>

10 Anti-Corruption Agency, Lobbyists' Register http://www.acas.rs/pretraga_registra_lobista/#/acas/registarLobista

11 Anti-Corruption Agency, the 2019 Annual Report, 2020, p. 11 <http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf>

The Anti-Corruption Agency is not a lonely case of ruling parties' tendency to influence the independence of these authorities, so it is necessary to mention the process of electing the Commissioner for Information of Public Importance and Data Protection. The term of office of the Commissioner for Information of Public Importance expired in December 2018 and despite that the National Assembly Information and Culture Committee had not taken necessary measures to elect new Commissioner in time. More than 100 civil society organisations, media, representatives of professional and scientific community proposed Nevena Ružić as a candidate for the new Commissioner. Nevena Ružić has worked for the Commissioner's Institution for ten years.¹² Seven months after the term of office of the previous Commission had expired, Milan Marinović, a former judge of Misdemeanour Court, was elected a new Commissioner, on the proposal of the Serbian Progressive Party, although Nevena Ružić has met all the criteria.¹³

Prosecution and the Police – Autonomy and Independence?

According to the Constitution of the Republic of Serbia, the public prosecutor's office is an independent state authority which is in charge of the prosecution of perpetrators of criminal offences and other punishable acts and which undertakes measures for the protection of constitutionality and legality. The Government makes a proposal for public prosecutors, their deputies are proposed by the State Prosecutorial Council and both are elected by the National Assembly.

Speaking about the National Assembly and the quality of its present work, the group of the opposition party members are boycotting its work since December 2018, and only representatives of majority political parties are participating in the sittings.¹⁴ It is obvious that the outcome of the election of public prosecutors and their deputies is directed by the political interest of the majority party, evident in the voting process. In addition to political influence in the work of prosecution, GONGO¹⁵ associations increasingly started appearing in public. They are founded by the individuals close to the ruling coalition, with the aim to discredit the work of the Judges Association of Serbia and Association of Public Prosecutors, so, in their discourse, they try to diminish the criticism that these associations make on account of the government and its impact on the aforementioned authorities.¹⁶ Several NGOs had been warning about the importance of the rule of law and had also drawn the attention to the situation of the “captured state in the judiciary” on 16 September 2019 and appealed to the judges and prosecutors to prevent the further deterioration of this branch of government by the small group of people in power since they should have been working in the interest of citizens.¹⁷

12 ORTA, Civil society proposes Nevena Ružić to be in charge of the Commissioner's institution, 18 June 2019 <https://cрта.rs/civilno-drustvo-predlaze-da-nevena-ruzic-rukovodi-institucijom-poverenika/>

13 Insajder, Milan Marinović is a new Commissioner for Information of Public Importance, 26 July 2019 <https://insajder.net/sr/sajt/vazno/15177/>

14 A group of opposition MPs started boycotting the work of Parliament after the 2018 Budget had been adopted, and afterwards they were joined by the majority of opposition MPs after the Extraordinary Session in February 2019.

15 GONGO – government organised non-governmental organisation, also pro-government organisations with an aim to discredit the work of non-governmental organisation and implement the influence of the government in the space intended for their actions

16 Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, How GONGO organisations are degrading the judiciary, 28 October 2019 <https://www.uts.org.rs/aktivnosti/vesti/1655-kako-gongo-organizacije-urusavaju-pravosude>

17 Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, NGO for judges and prosecutors: Stop the capturing of the state, 16 September 2019 <https://www.uts.org.rs/aktivnosti/vesti/1651-nvo-tuziocima-i-sudijama-zaustavite-zarobljavanje-drzave-u-pravosudu>

According to the reviewed Action plan for Chapter 24 (Justice, Freedom and Security), the police reform has not been at the satisfactory level, and the National Convention on the EU¹⁸ criticised the steps which need to be taken to achieve the adequate level of the police work. This mostly refers to the manner of employing high-quality police staff and managerial positions, professional advancements, but also the burden of the police administration when it comes to crime. These conditions mostly influence the appropriate response to the challenges the police are regularly facing. Also, in addition to problems of poorly organised police staff, there is an issue of independence of the police investigations and the disturbances they experience by the criminal groups and politics. It does often happen that information “leak” and that either minister or the president decides which investigations will be launched and announce the arrests.¹⁹

The results of the work

Sanctioning the violations of the rules on financing political activities is especially present when there is an ongoing election process. Although the law regulates the regular activities of the political parties, the violation of the law usually occurs during the elections. National, provincial and local elections called on 4 March 2020 had to be postponed due to global pandemic outbreak caused by virus Covid-19. As the new Law amending the Law on financing political activities has been adopted, as in 2019 there were no elections, the application of this Law will be tested in the coming elections.

Regarding the inspection of income and property of public officials, in 2019 the Agency inspected the reports of 212 officials and according to that instigated 74 proceedings, imposing 63 measures against the officials carrying out tasks under the public law at both national and local level. Out of these measures, there were 61 warning measures and two measures of public disclosure of the violation of the law.²⁰

This same year there were 11 criminal complaints and reports on the existence of the reasonable doubt that the officials had not reported the property to the Agency, and/or provided false data. Based on criminal complaints submitted in earlier years and 2019 as well, three final suspended sentences were adopted, two judgements of acquittal, 17 evidence collecting proceedings are ongoing, one criminal complaint was rejected with an application of the principle of opportunity, five criminal complaints were rejected, and one order on postponing criminal prosecution was adopted with the obligation of the defendant to pay the specific pecuniary amount and one procedure was suspended as public prosecutor abandoned further criminal prosecution.

In total, ten requests for initiation of offence proceedings were submitted because the report on assets and income was unduly sent.

18 National Convention on the European Union is a civil society organisation monitoring the process and dynamics of EU accession negotiations.

19 Danas, Chapter 24: Civil society demands police investigations to be free from political influence, 24 May 2019 <https://www.danas.rs/politika/poglavlje-24-civilno-drustvo-trazi-policijske-istrage-nezavisne-od-politickog-uticaja/>

20 Anti-Corruption Agency, Annual Report for 2019, 2020, p. 22 <http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf?pismo=lat>

The clear indicator that conflict of interest in carrying out tasks under the public law was violated is the most visible from the fact that 1,427 cases reached the Agency in 2019. From this number, the Agency imposed 295 measures in total, 117 measures for accumulating office, and as for other measures, even 82 measures were imposed for conflict of interest and nepotism.²¹

The highlight of 2019 was the Law on Lobbying entry into force which shifted the procedure of lobbying from informal setting to legal framework. This means the relationships between decision-makers and people in business are now strengthened. In this period, the Agency adopted Code of Conduct for participants in lobbying, rulebooks on requests and programmes of lobbyists' trainings, and the Register of Lobbyists was introduced on the Agency website which yet has to come to use.

It happens not so rarely that the executive interferes in police investigations announcing arrests, although that is not their job at all. The workload of the Special units of the High Courts of Fighting Corruption, since their establishment in March 2018, is enormous as they had inherited a large number of cases concerning the corruptive criminal offences, and due to a large number of cases coming in they are not able to process all of them.

The Law on free access to information of public importance is still in the form of Draft, and it is not certain when will the law enter into the legislative procedure in the Parliament to be adopted. Despite all recommendations to adopt the law for the purpose of the necessary rule of law and practical application, the law is still on hold. Another quite frequent problem is the impossibility of enforcement since the authorities fail to act under the Commissioner's enforcement decision.

Judicial protection of the right to free access to information of public importance is guaranteed before the Administrative Court in administrative proceedings. The parties seeking information may instigate the administrative proceedings against the decision of the Commissioner but also against decisions of six other authorities which are exempted from complaints to the Commissioner (National Assembly, President of the Republic of Serbia, Government of the Republic of Serbia, Supreme Court of Cassation of Serbia, Constitutional Court and Republic Public Prosecutor). In 2019, 103 complaints against the Commissioner's decision were submitted to the Administrative Court, and 81 were accepted, so the proceedings came back before the Commissioner to be re-examined, and there were 22 complaints which the parties submitted since the Commissioner had not adopted the decision on their complaint in a statutory term.²² Against six highest authorities of the state which are exempted from the complaints to the Commissioner, there were 22 complaints in total, and only one was resolved. The complaints were submitted against the Government of Serbia, 17 due to "administrative silence", 3 against the Supreme Court of Cassation and one against the National Assembly.²³ According to the information of misdemeanour courts in Serbia which had delivered data to the Commissioner, in 2019 these courts had 4,906 requests for initiation of offence proceedings for violation of the right to access to information, and 4,903 requests were submitted by aggrieved parties requesting information and three requests were submitted by Administrative Inspectorate in 2018 and 2019. Based on the available information from the report, the misdemeanour courts mostly imposed sentences on the level of the legal minimum.

21 Anti-Corruption Agency, Annual Report for 2019, p. 23 <http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf?pismo=lat>

22 Commissioner for Information of Public Importance and Data Protection, *Annual Report for 2019*, in 2020, p. 44 <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2019/Izvestajza2019lat.pdf>

23 Ibid, p. 45

Sources

Anti-Corruption Agency, *Annual Report for 2019*, <http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf>

Anti-Corruption Agency, *Lobbyists' Register*, http://www.acas.rs/pretraga_registra_lobista/#/acas/registarLobista

Anti-Corruption Agency, *Strategy and Action Plan*, <http://www.acas.rs/zakoni-i-drugi-propisi/strategija-i-akcioni-plan/>

ORTA, Civil society proposes Nevena Ružić to be in charge of the Commissioner's institution, 18 June 2019 <https://cрта.rs/civilno-drustvo-predlaze-da-nevena-ruzic-rukovodi-institucijom-poverenika/>

Danas, *Chapter 24: Civil society demands police investigations to be free from political influence*, 24 May 2019 <https://www.danas.rs/politika/poglavlje-24-civilno-drustvo-trazi-policijske-istrage-nezavisne-od-politickog-uticaja/>

GRECO - Group of States against Corruption, Fourth Round of Evaluation Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report on Serbia, 2 April 2019 <https://rm.coe.int/grecorc4-2019-5-fourth-evaluation-round-corruption-prevention-in-respe/168093bc55>

Insajder, Milan Marinović is a new Commissioner for Information of Public Importance, 26 July 2019 <https://insajder.net/sr/sajt/vazno/15177/>

Commissioner for Information of Public Importance and Data Protection, Annual Report for 2019, in 2020, p. 44 <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2019/Izvestajza2019lat.pdf>

Radiojević, Jelena. "Aleksandar Obradović released from custody". KRIK. 18 December 2019 <https://www.krik.rs/aleksandar-obradovic-pusten-iz-pritvora/>

National Security Strategy of the Republic of Serbia, "Official Gazette of RS" No. 94/2019 <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/strategija/2019/94/2>

Transparency International, *Corruption Perception Index 2019*, 2020. <https://www.transparency.org/cpi2019>

Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, How GONGO organisations are degrading the judiciary, 28 October 2019 <https://www.uts.org.rs/aktivnosti/vesti/1655-kako-gongo-organizacije-urusavaju-pravosude>

Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, NGO for judges and prosecutors:

Stop the capturing of the state, 16 September 2019 <https://www.uts.org.rs/aktivnosti/vesti/1651-nvo-tuziocima-i-sudijama-zaustavite-zarobljavanje-drzave-u-pravosudu>

Law amending the Law on financing political activities, “Official Gazette of RS”, No. 43/2011, 123/2014 and 88/2019 https://www.paragraf.rs/propisi/zakon_o_finansiranju_politickih_aktivnosti.html

Law on the Origins of Assets and Special Tax, “Official Gazette of RS”, No. 18/2020 <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2020/18/1/reg>