

Report on the implementation of Article 11 and 13
of the UN Convention against Corruption within the statutory powers of the
Serbian Anti-Corruption Agency (ACA)

- Vienna, 26-28 August 2013 -

Article 11

Constitutional & Legal Framework aimed at Ensuring Independence & Integrity

In Serbia, judges, the Republic Public Prosecutor, public prosecutors and deputy public prosecutors are public officials. According to article 2 of the Law on ACA, "official" is every person elected, appointed or nominated to the bodies of the Republic of Serbia, autonomous province, local self-government unit, bodies of public enterprises and companies, institutions and other organizations whose founder, and/or member is the Republic of Serbia, autonomous province, local self-government unit and other person elected by the National Assembly.

Article 147 of the Constitution of the Republic of Serbia envisages that on proposal of the High Judicial Council, the National Assembly shall elect as a judge the person who is elected to the post of judge for the first time. Tenure of office of a judge who was elected to the post of judge shall last three years. In accordance with the Law, the High Judicial Council shall elect judges to the posts of permanent judges, in that or other court.

Article 158 of the Constitution stipulates that the Republic Public Prosecutor shall be elected by the National Assembly, on the Government proposal and upon obtaining the opinion of the authorized committee of the National Assembly. The Republic Public Prosecutor shall be elected for the period of six years and may be re-elected.

Article 159 of the Constitution envisages that a Public Prosecutor shall be elected by the National Assembly, on the Government proposal. Tenure of office of the Public Prosecutor shall last six years and he/she may be re-elected. On proposal of the State Prosecutors Council, the National Assembly shall elect as a Deputy Public Prosecutor the person who is elected to this function for the first time. Tenure of office of a Deputy Public Prosecutor elected to that function for the first time shall last three years. In accordance with the Law, the State Prosecutors Council shall elect Deputy Public Prosecutors to permanently perform that function, in that or other Public Prosecutor's Office.

Being public officials, judges and prosecutors are obliged to submit to the Agency within 30 days of election a disclosure report concerning her or his property and income, or entitlement to use a flat for official purposes, and on the property and income of spouse or common-law partner, as well as of under-age children if they live in the same household (hereinafter "the Report"), on the day of election, appointment or nomination. A Report is also filed within 30 days from the day of termination of office with the status as of the day of termination of office. (Article 43 of the Law on ACA)

Public officials are obliged to file the Report not later than 31 January of the current year with the status as of 31 December of the previous year if any significant change occurs in respect of data from the Report filed previously. This report is called "Extraordinary disclosure report". (Article 44 of the Law on ACA)

Under the Law on ACA, failure to report property or reporting false information is the criminal offence. An official who fails to report property to the Agency or gives false information about the property, with an intention of concealing facts about their property, shall be punished with imprisonment from six months to five years. (Article 72)

Under the same law, failure to report property in the manner and within deadlines provided under articles of the Law is the misdemeanor offence. An official shall be fined if he or she fails to report property in the manner and within deadlines provided under articles of the Law. (Article 74)

Articles 48 and 49 of ACA Law envisage that the Agency checks due filing of Report and accuracy and completeness of information. The Agency checks as mandatory the accuracy of information in the Report pursuant to the annual verification schedule for a certain number and category of officials. Should a discrepancy be revealed in the oversight procedure of an official's property between the data presented in the Report and actual situation or that there is a discrepancy between the increased value of an official's property and his/her lawful and reported income, the Agency shall establish the cause of such discrepancy and notify the body wherein the official holds office, and/or other competent bodies.¹

Being public officials, judges and prosecutors are not allowed to receive gifts except for protocol or other appropriate gifts, however, even in such cases the gift may not be in money or securities. (The Law on ACA, art. 39). According to the article 41 of the same Law, if a judge or a prosecutor receives a protocol or appropriate gift, she or he is obliged to report any gift to the state or other body, organization or public service wherein he holds public office. The state or other body, organization or public service are obliged to keep separate records on the gifts and submit a copy of the records for the previous to the Agency not later than 1 March of the current year. The Agency is obliged to publish a catalogue of the gifts for the previous year by 1 June of the current year.

Under the Law on the ACA acting contrary to provision of Articles 39 and failure to notify the receiving of a gift are misdemeanor offences. (Article 74)

According to the Constitution of the Republic of Serbia (articles 152 and 163), a judge and a public prosecutor shall be prohibited to engage in political actions. Other functions, actions or private interests which are incompatible with the judiciary and prosecutor's function shall be stipulated by the Law.

There for, the Law on Judges, particularly, the article 30, envisages that a judge may not hold

¹ In 2012 the Anti-Corruption Agency (ACA) checked asset declarations of 110 public prosecutors, following the annual asset declaration verification plan and determined that there were no legal grounds for issuing any of the measures, stipulated by the Law on ACA. As for 2013, the annual asset declaration verification plan pertains to 132 judges and most of their asset declarations are currently being checked.

office in bodies enacting or enforcing legislation, public offices, and autonomous province and local self-management units. A judge may not be a member of a political party or act politically in some other manner, engage in any paid public or private work, nor extend legal services or advice for compensation. Other functions, engagements and activities that are contrary to the dignity and independence of a judge, or damaging to the reputation of the court, are incompatible with judgeship. The High Judicial Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court, on the basis of the Code of Ethics.

Similarly, the Law on Public Prosecution, article 65, stipulates that a public prosecutor and deputy public prosecutor may not hold office authorities enacting or enforcing regulations, in bodies of executive power, public services, and bodies of autonomous provinces and local self-management units; may not be members of political parties, engage in public or private paid work, nor extend legal services or give legal advice for compensation. A public prosecutor's office is also incompatible with other offices, engagements or private interests that are contrary to the dignity and autonomy of public prosecutor's office or are damaging to its reputation. The State Prosecutorial Council shall determine the offices and engagements that are contrary to the dignity, violate the autonomy, or damage the reputation of a public prosecutor's office.

Being public officials, judges and prosecutors are also obliged to discharge the duties of public office in a manner that shall not subordinate the public interest to private interests, to maintain the trust of citizens concerning his conscientious and responsible discharge of public office, to avoid creating of relations of dependency towards persons that may influence her or his impartiality in discharge of public office and if such relation cannot be avoided or already exists he shall undertake everything that is necessary to protect the public interest. They must not use public office to acquire any benefit or advantage for herself or himself or any associated person. (The Law on ACA, art. 27)

Under the Law on ACA, measures that may be pronounced against an official due to a violation of this Law are caution and public announcement of recommendation for dismissal. If the public official fails to comply with the measure of caution within the time period that is specified in the decision, the measure of public announcement of recommendation for dismissal shall be pronounced against him. In case of pronouncing the measure of public announcement of recommendation for dismissal against the official, the Agency shall file an initiative for dismissal to the body that elected, appointed or nominated the official. The competent body shall notify the Agency of the measures that body has undertaken in view of the pronounced measure of public announcement of recommendation for dismissal or initiative, within 60 days of pronouncing the measure. (Article 51)

The same law envisages that when the Agency establishes that an official has violated provisions of this Act, it shall notify the competent body for the purpose of instituting a disciplinary, misdemeanour or criminal procedure, in accordance with law. Decisions of the Agency shall not prejudice criminal and material accountability of the official. Notified bodies are obliged to inform the Agency on the measures they have undertaken within 90 days from the date of notification. (Article 57)

Integrity self-evaluation of the judicial system

The Law on the ACA envisages obligation for approximately 4500 public authority bodies

in Serbia to develop and incorporate Integrity Plan (IP) in to their internal structure. In line with the Law, the ACA is charged with overseeing the process of adoption and assessing the quality of the adopted IPs.

IP emerges as the outcome of a self-assessment process in a public authority body by which it aims to uphold and enhance its overall integrity, visibility and transparency as well as to strengthen work ethics of its employees.

With the aim to support institutions to pass integrity plans, the ACA established working groups. Working groups involved representatives from different government authorities (a total o 109 members), categorised into 14 systems: 1) political system, 2) judiciary system, 3) police system, 4) public administration and local self-government system, 5) defence system, 6) finance system, 7) economy and agriculture system, 8) social policy system, 9) health care system, 10) education and science system, 11) culture and sports system, 12) environment and infrastructure system, 13) system of protection of data, human rights and public interest and 14) public enterprises system.

Members of working groups in collaboration with the Agency defined areas and procedures in institutions that are most exposed to occurrence and development of corruption. The results of this work that lasted from December 2010 until September 2011 are 69 models of integrity plans, classified by systems. The manual for the integrity plan development is available at the ACA's website.

http://www.acas.rs/images/stories/Manual_for_Integrity_plan_developmnet.pdf

Each model contains methodology for integrity self-evaluation, as well as the list of measures for elimination and prevention of noted risks. Model is divided in to areas recognized as most exposed to risk of corruption. The identified areas were divided as follows: shared areas, ethics and personal integrity area and specific areas. Shared areas are those that no institution can operate without properly. Ethics and personal integrity area refers to conduct of employees and officials in public sector in line with moral values and discharge of public authority for the purpose whereby established. Specific areas relate to the competencies of an institution, realising its social function and/or the function for which the institution has been established.

Models of integrity plan were made in form of electronic application found on the Agency's server and may be accessed by any institution with user name and password. Based on such model, each institution performs a self-evaluation, by having staff and a working group express their agreement or disagreement with identified risks in all processes and areas, in line with the offered methodology. Likewise, working groups can define processes, risks and measures for risk elimination that are institution specific. All institutions were obliged to draw up their integrity plans by the end of March 2013.

The judiciary system contains eight models of integrity plan for different type of courts and prosecutor's offices (higher courts, basic courts, higher misdemeanor courts, misdemeanor courts, commercial courts, appellate public prosecutor's offices, higher public prosecutor's offices and basic public prosecutor's offices), plus separate models were developed for The Constitutional Court, the High Judicial Council and the State Prosecutorial Council. By the end of March 2013, 86% of courts and prosecutor's offices has made integrity self assessment and developed integrity plans.

The views of court users as regards the integrity and effectiveness of the judiciary

Integrity Plan (IP) emerges as the outcome of a self-assessment process in a public authority body by which it aims to uphold and enhance its overall integrity, visibility and transparency as well as to strengthen work ethics of its employees. As such IP is a document prone to subjective estimations and attitudes of people who participate in its drafting, which made necessary development of mechanisms for cross-checking impartiality of this kind of assessments and quality of elements incorporated therein.

The ACA conducted a poll in order to verify IP in judiciary by surveying experience of citizens who had used services of Serbian courts. The courts were selected as type of institutions within judiciary with highest frequency of interaction with citizens (unlike prosecutor offices and penitentiary units that are hardly accessible for external communication) due to the fact that courts, apart from adjudicating disputes, perform wide range of administrative tasks.

The basic hypothesis of the survey is that higher integrity of a public authority body and its employees lead to better quality and wider range of services they provide to the community. In other words, if citizens who use services of a public authority body are prevented from enjoying their rights and satisfying their needs, this can be strong indicator that the respective institution suffers from integrity breach.

The IP verification in courts was conducted by surveying experience of 1,320 citizens and covering the total of 30 basic and high courts of general and special competence in Serbia. In line with surveying citizens in the courts from the sample, polling of courts' administrative staff and judges was also conducted (with ratio 56%: 44%). The questionnaire was the same for all respondents, which allowed cross-referencing of experience and attitudes of different groups of examinees.

Context

Inefficient and overburdened courts, as well as low level of competency of the existing and new staff have been identified as the crucial deficiency in the Serbia's court system. The backbone of Serbian judiciary is, in addition to the previous, exposed to inadequate constitutional and legal status of the courts and judges, procedural laws that braced for lengthy processes, archaic work methods and lack of adequate equipment. Citizens don't think they are equally treated before courts – this attitude can be attributed to the widespread opinion that the corruption is deeply rooted in this branch of government². In

² In May 2012, Anti-Corruption Agency published research, pertaining to the public interest perception in terms of fight against corruption. The respective survey was conducted on a sample of 1.210 respondents. When asked which area of society, in their opinion, had been most prone to corruption, 13% of respondents indicated the judiciary area, ranking this area in the second place, right after health care system, according to the citizens' perception of corruption. However, when it comes to the personal experience pertaining to corruption, findings tend to be completely different. When asked whether they or someone close to them (e. g. cousin, friend, colleague) had given bribe to someone in the course of last year, very few respondents, the fact not being statistically significant, responded that they had given bribe to the judge, prosecutor or someone else, e. g. member of administrative staff in some judicial institution.

short, in the eyes of the general public courts are far from being independent, efficient and impartial.

Executive and legislative power continue to play role (even though to a lesser extent than before) in the election of judges and court officials, thus leaving space for subtle influences in functioning of the courts. The High Judicial Council hasn't yet been enabled to regularly and continuously perform all of its functions including full control of the work of judges and courts. Hence, due to delay with adoption of criteria needed for evaluation of performance of judges, the statutory prescribed evaluation has been put to hold to indefinite period living Serbian citizens in dilemma whether all elected judges are worthy of judicial title, whose promotion has been based on merits, and what other problematic areas in the performance of judges have been left unidentified. Similar situation is with other mechanisms directed to strengthening integrity of the court system and individuals in it. Little is known about implementation of the Code of Judicial Ethics, while, on the other hand, it is hard to give objective assessment about the work of very recently (last year) established disciplinary bodies. Almost nothing has been done regarding strengthening of complaints mechanism. Likewise, impression is that availability of information still varies from court to court and depending on the type of the information requested.

Survey results (excerpt)

- Although one of the foremost prerequisites for proper realization of the rights before any public authority body, including courts, i. e. prevention of various types of manipulation is providing service users with information on procedures, according to the respective survey, one third of examinees (33%) said that they are mostly not informed about court procedures³, whilst 12 % of them have absolutely no information on this issue. This makes the total of 45% of people who are unsure how to act in their dealings in courts. Other survey findings also indicate lack of effective communication between courts and service users.
- Third of court service users (33%) don't (mainly/or at all) trust in courts, i. e. don't believe that the respective court could properly bring about the realization of their rights as well as protection of their interests.
- Every eleventh court service user (9%) deems court non-transparent, whilst 23% of them describe it as "mainly non-transparent" (32% in total), indicating that almost third of service users are being dissatisfied with the readiness of courts to communicate and cooperate with citizens, realizing their rights and obligations before them.
- Almost every fifth court service user (19% in total) tried to affect some procedure in court (notably to hasten it, slow it down, or change it, depending on what was needed) through informal channels, i. e. contacts with the court staff. The attempts pertaining to the content of court decision were less frequent than those pertaining to the proceedings – 10% of service users admitted trying to affect content of court decision.

³ In Serbia, party participating in litigation and administrative proceedings has *legitimatio ad processum*, This means that the respective party independently acts in the proceedings, resulting in legal consequences.

- The respondents were also asked about giving “small gifts” to members of the court staff and 22% of court service users said they had done it at least once, mainly after “the job had been done”, as a token of appreciation for the respective “service”. Courts are to intervene through e. g. internal rules adoption, with respect to imposing ban on gifts' receipt or procedure of dealing with the received gifts (whether they are reported to anyone and if yes, to whom, what is the value of the gift that is deemed allowed etc). Uncertainty in terms of the legal status of “small gifts” and the moral aspect of it being subject to the individual assessment, reinforces the attitude that the gift can help bypass the regular procedure (and that really happens).
- Although 35% of service users believe that they once had the reason to file a complaint pertaining to the work of court's administration, only 2% of them really did so. This finding points to the lack of procedures, indicating work irregularities, information on it as well as lack of trust in the ability of system to correct itself, in accordance with the complaints of citizens, i. e. service users, being the serious integrity deficiency of the each institution, especially that one, “dealing” with justice. The same applies to the all categories of court staff.
- Although 46% of examinees believe that they once had the reason to file a complaint pertaining to the judges' work or behavior, only 6% of them really did so. The reason for not having filed a complaint pertaining to the work, behavior and procedures relates to the lack of trust in the ability of the internal court system to act upon the complaint and change something in terms of judge's behavior (26% of examinees). in addition, the total of 14% of examinees didn't have enough knowledge, information or time so as to file a complaint.
- The citizens are mostly dissatisfied as regards the time needed for enforcement of court decisions (judgments). More than a half, i. e. 57% of them said they had been waiting for enforcement more that it was deemed reasonable time, confirming enforcement to be one of the biggest challenges of judiciary in Serbia.

Article 13

Education anti-corruption programmes

- According to the Law on ACA, the ACA is introducing and implementing education programs concerning corruption, co-operates with research organizations and civil society organizations in implementing corruption prevention activities. Cooperation pertains to joint activities in the implementation of the National Anti-Corruption Strategy (NACS), Action Plan, educational programs, analyzing the state of corruption, organizing media campaigns and other activities relevant for prevention of corruption. According to the recently adopted NACS, the ACA is to establish a system for continuous coordination and training for civil society organizations;

- In order to unify the process of cooperation with civil society, being of utmost significance for the Article 13 of the UNCAC, ACA drafted Guidelines for its cooperation with civil society, regulating principles, preconditions and types of the respective cooperation.
- With the technical assistance of the USAID Justice Reform and Government Accountability Project, ACA developed partnership with the civil society and some universities of social sciences and humanities aiming to increase the knowledge and awareness over anti-cooperation issues among students. Project pays special attention to prevention of corruption through organisation of *specialised training courses* to students and recent graduates in the field of anti-corruption, and by establishing network of interns from the ACA. Topics of the training modules pertain to corruption as a cultural, economic and political phenomenon, captured state theory, Serbia's anti-corruption legal framework, money laundering, public procurement, audit of public finances, free access to information, etc. The program, called "Anti-corruption skills" has lasted for two months and after the series of lectures and workshops students took an exam, assessing their knowledge. Based on the results of the exam, 7 students were selected to join sponsored internship at the ACA. The internship program will last 3 months and it will start in September 2013; This training course was intended to be the pilot program, with similar educational and tailor-made anti-corruption programmes being consequently developed and incorporated into regular universities as well as high schools' curricula;
- Within the project "**Support to the ACA in Fight against Corruption**" (implemented through technical assistance of the Norwegian Ministry of Foreign Affairs) the network of 42 interns was established, consisting of young professionals, students of final study year or graduated students, selected from several faculties of social sciences. Six cycles of 4-month internship program (each encompassing 7 interns) were organized, with the aim of contributing to general and professional awareness raising on fight against corruption through the education. They attended various lectures organized by the ACA on regular basis, pertaining to issues such as corruption prevention, political party funding, complaints and whistle-blower protection, control and prevention of conflict of interest, asset declaration control, registers, international anti-corruption legal framework, public relations, state administration, etc. They also participated in everyday ACA's activities and gained their first professional experience. This project component was focused on bringing closer the significance of fight against corruption to young people and encouraging them to take into account their possible future professional engagement in the respective area. Internship candidates not having passed the selection process were also offered a three day seminar program on corruption prevention mechanisms and an additional seminar was organized for other students who had expressed an interest in undertaking this kind of education in the meantime;
- As a follow up activity of this project, group of interns and internship candidates from 2011 and 2012 was offered a three day training program, in the form of training for instructors, based on which a group of peer educators on fight against corruption would be formed. After the training a team was formed consisting of 22 educators, whose primary activity was promoting a competition launched by the ACA on the occasion of the International Anti-Corruption Day. The educators promoted the competition in primary schools and high schools in Belgrade. Some team members, who were also members of non-government youth organizations,

took on the project idea, and applied for donations in partnership with the ACA.

Public awareness programmes for children

- **ACA children's page**, as a part of ACA's official website (http://www.acas.rs/sr_cir/deja-strana.html), pertains to engagement through public competitions, learning about corruption and its consequences through pictures and comic. On the occasion of 9 December, the International Anti-corruption Day, the ACA has issued three calls for application so far, notably in 2010, 2011 and 2012. The competition relates to primary, high school and university students in Serbia, inviting them to present their literary or journalist text, artwork, audio-visual work and slogans on the given topic. The best works were given awards. These activities are focused on raising awareness of citizens, primarily pupils and their teachers, on the necessity for active involvement in fighting corruption. Schools, which had motivated and encouraged their pupils to participate in the competition for the third consecutive year were awarded special prizes.

Internet as a successful platform

- The project **“Youth Sleuth: Engaging Serbia’s Youth to Fight Corruption through Investigative Journalism and Social Media”** (implemented through technical assistance of the UNDP) is to reduce corruption by raising public awareness and fuelling intolerance; In partnership with NGOs and the ACA, young journalists conduct independent, non-offensive and professional research based on which they write and disseminate stories, case studies and investigative articles on corruption through web sites, blogs, Facebook, Twitter, etc.;
- A group of nine students and at the same time highly motivated young journalists was competitively selected to intern in three highly renowned NGOs: Transparency Serbia, Eutopija, Serbia on the Move which deal with corruption issues; these students are to research corruption in Serbia in parallel with learning investigative journalism skills. Their publication through social media is to both uncover facts and mobilize outcry against corruption; The respective NGOs are capacitated to coach and counsel young journalists, to provide them with information and baseline for investigative stories and help them publishing stories through internet and social networks; The investigative stories are also available on ACA's website (via direct links); As a result of the research work of these students, 25 very important stories and articles were published in almost all printing media in Serbia as well as some web portals;
- Facebook page within this project, notably **“Mi-To ne damo”** (“We don't give bribe”), being administered by young journalists themselves;
- The Project **“Support to the establishment of the ACA”** (implemented through

technical assistance of EU), i. e. its component regarding Raising Public Awareness and launching the micro website “Report corruption!” (www.prijavikorupciju.rs) pertains to the significant visitors' increase on ACA's Facebook page; the respective campaign used, inter alia, the following communication channels: TV and radio stations with national coverage, daily newspapers, social media (primarily Facebook, Twitter, blogs), websites.

Impact of public campaigns

- After launching Public Awareness campaign within the Project “**Support to the establishment of the ACA**” and the micro website “Report corruption!”, visitors' number both on FB and Twitter page of ACA doubled in comparison to the period prior to the respective campaign and is still increasing; so far 3.465 FB page likes, out of which 20% and 33% of users being 18-24 and 25-34 years old, respectively; 1.769 followers on Twitter; FB and Twitter page are also accessible through the ACA's official website.

Challenges

- Many of media outlets, daily print and electronic, are oriented to sensational stories/journalism, without real professional investigative journalism principles;
- Given that the ACA attaches great importance to the cooperation with civil society, one of the main challenges in this regard relates to the fact that there are few very experienced NGOs dealing with fight against corruption. However, further development of fight against corruption NGO network is needed;
- Communication challenges in reaching young people are being solved through ACA's FB and Twitter page, as well as young journalists stories (in the aforementioned project) disseminated through various Internet channels.

Technical assistance

- Interactive case studies Workshops with students, journalists and different AC institutions;
- Educational Youth programmes/campuses;
- Developing an adequate curricula suitable to be used through social networks such as on-line courses, different videos, short movies, animations, games.