

Overall Score:

63 - Weak

Legal Framework Score:

80 - Moderate

Actual Implementation Score:

44 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁶Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

Finally, Serbia has a new law on civil society organizations. Though the law dating back to 1991 permitted the formation of civil society organizations, including anti-corruption and good governance focused CSOs, it had numerous shortfalls and has since been changed. Serbia was the last country in the region to reform its CSO legislation.

References:

Law on Citizen Associations
Official Gazette RS n°51/09, July 8, 2009.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corrupt protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terror (last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic source.

YES | NO

References:

In law there are no legal provisions prohibiting some sources of funding.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there are any formal legal or regulatory bans on foreign or domestic funding sources focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

There are no legal provisions that would mandate the disclosure of funding sources.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good govern

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption CSO Integras in Pozarevac, Serbia, waited for three months to be registered on Sept. 4 2009 b of Public Administration and Local Self Government. During the time of asking for registration, the 1991 Law on Cit Associations was in force.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras," Pozarevac, Serbia.
Sept. 10, 2009, Pozarevac.

Center for Development of Non-profit Sector, Belgrade (telephone interview, June 8, 2009). According to interview registration of a new CSO takes between 15 and 30 days.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interac government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requ interaction with the state such as licenses or registration. Formation is possible, though there is some burden on Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effec prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking proces

Comments:

Organizations such as the National Anti-Corruption Council, Transparency Serbia and recently some members of the Corruption Agency Board have been active in conveying their opinions and criticisms via the Serbian media. They influence over public opinion, but considerably less on political figures.

References:

Transparency Serbia

<http://www.transparentnost.org.yu/bilten/bilten.htm>

Branka Trivic, Besomucna otimacina drzavne imovine, August 13, 2009, Radio Slobodna Evropa

http://www.slobodnaevropa.org/content/srbija_vlada_stanovi/1799320.html

Omer Karabeg, Most Radija Slobodna Evropa, Regionalni program, Sept. 13, 2009.

<http://www.danas.org/schedule/20090913.html>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policy process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. They are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Transparency Serbia

http://www.transparentnost.org.yu/index_s.htm

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES

NO

Comments:

The media nor CSOs have not reported any civil society activists working on corruption issues having been imprisoned.

References:

Transparency Serbia

<http://www.transparentnost.org.yu/bilten/bilten.htm>

Omer Karabeg, Most Radija Slobodna Evropa, Regionalni program, Sept. 13, 2009.

<http://www.danas.org/schedule/20090913.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Srbija (anti-corruption/good governance) 2009.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption issues. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically har

YES | NO

References:

Transparency Serbia

http://www.transparentnost.org.yu/index_s.htm

Omer Karabeg, Most Radija Slobodna Evropa, Regionalni program, Sept. 13. 2009.

<http://www.danas.org/schedule/20090913.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Srbija (anti-corruption/good governanc
2009.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being ass; specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activis
YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist v
corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Transparency Serbia

http://www.transparentnost.org.yu/index_s.htm

Omer Karabeg, Most Radija Slobodna Evropa, Regionalni program, Sept. 13, 2009.

<http://www.danas.org/schedule/20090913.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Srbija (anti-corruption/good governanc
2009.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work on corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed because of a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history of corruption must be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, including the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

For details on trade union rights in law see:

International Trade Union Confederation CSI IGB, 2009 Annual Survey of Violation of Trade Union Rights”
<http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=SCE&Lang=EN>

References:

Constitution of the Republic of Serbia (Official Gazette RS n°83/2006), Article 55.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or ethnicity. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from operating.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

Comments:

Some citizens prefer to protest and demand their workers' rights without joining or asking for support from relevant organizations such as the Confederation of Autonomous Trade Unions of Serbia (Savez Samostalnih Sindikata Srbije) or UGS N both of which are privileged signatories of the General Collective Agreement. In general, trade unions are disunited. Some of them are lacking independence or representation.

References:

For some details on trade union rights in practice see:

International Trade Union Confederation CSI IGB, 2009 Annual Survey of Violation of Trade Union Rights”

<http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=SCE&Lang=EN>

Vruca sindikalna jesen? Danas, Oct. 8, 2009.

http://www.danas.rs/vesti/specijal/vruca_sindikalna_jesen.44.html?news_id=168866

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be widely known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES

NO

References:

Constitution of the Republic of Serbia (Official Gazette RS n°83/2006), Article 50.

http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_1.asp

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religious ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any genre prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if they lead to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-governmental media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES

NO

References:

Constitution of the Republic of Serbia (Official Gazette RS n°83/2006, Article

46. http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_1.asp

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibitions result in a NO score.

6. Are citizens able to form print media entities?

50

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Amendments to the Law on Public Information, adopted on Aug. 31, 2009, require registration of media outlets in a register, which didn't exist before. The media that do not register can be banned and subjected to high penalties.

References:

B.S. Stupio na snagu Zakon o informisanju : Uskoro pravilnik o upisu u registar, Blic, Sept. 9, 2009.

<http://www.blic.rs/drustvo.php?id=109960>

(ANEM/IFEX) ANEM Warns of Serious Threats to Media Freedom," Sept. 4, 2009.

http://www.ifex.org/serbia/2009/09/04/information_law_amendments_adopted/

OEBS: Ugrozavanje medijske reforme, Danas, Aug. 26, 2009.

<http://www.anem.org.yu/cms/item/medscena/sr/Vesti?articleId=10819&type=vest&view=view>

(ANEM/IFEX), "ANEM Protests Amendments to Media Laws," July 17, 2009.

http://www.ifex.org/serbia/2009/07/17/amendments_media_laws/

100: Print media entities can freely organize with little to no interaction with the government. This score may still groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including over complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or re

YES | NO

Comments:

There is no print media license, but there is now a requirement of registration of media outlets. If media is banned from registering, no appeal mechanism is stipulated in the Law Amending the Law on Public Information, adopted Aug.

the answer no” to the statement, “In law, where a print media license is necessary, there is an appeals mechanism denied or revoked,” seems to be appropriate to present conditions.

References:

Law amending the Law on Public Information (Official Gazette RS” n°71/2009).

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a den media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The bylaw concerning the registration of media outlets is not yet prepared, and the practice is not yet known.

References:

B.S. Stupio na snagu Zakon o informisanju : Uskoro pravilnik o upisu u registar, Blic, Sept. 9, 2009.

<http://www.blic.rs/drustvo.php?id=109960>

Uskoro pravilnik o upisu javnih glasila u registar,(Source:Beta), Sept. 8, 2009.

<http://www.emportal.rs/en/news/region/98233.html>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The bylaw concerning the registration of media outlets is not yet prepared, and the practice is not yet known.

References:

B.S. Stupio na snagu Zakon o informisanju : Uskoro pravilnik o upisu u registar, Blic, Sept. 9, 2009.

<http://www.blic.rs/drustvo.php?id=109960>

Uskoro pravilnik o upisu javnih glasila u registar,(Source: Beta), Sept. 8, 2009.

<http://www.emportal.rs/en/news/region/98233.html>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

According to the IREX Media Sustainability Index report for 2009, the Republic Broadcasting Agency (RBA) allocates and municipal frequencies pointed to strong political influence, and licensing transparency and accountability remain questionable". Also, the licensing fees paid to RBA are very high. According to RBA: "To date, tenders for the issuance of broadcasting licenses have been called and completed at the national, provincial, regional and local levels, as well as the city of Belgrade for analog broadcasting".

References:

IREX, Media Sustainability Index report 2009, Serbia.
http://www.irex.org/programs/MSI_EUR/2009/serbia.asp

Republic Broadcasting Agency, Public tenders.
<http://www.rra.org.yu/index.php?id=4&task=konkursi>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups of individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

Appeals against revocation or denial of broadcasting licenses are governed by the Administrative Disputes Act dated 1996.

References:

Law on Broadcasting (Official Gazette n° 42/2002, n°97/2004, n°76/2005, n°79/2005 and 62/2006), Article 37.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reason period.

100 | 75 | 50 | 25 | 0

Comments:

Licensing transparency and accountability remain questionable, as well as the municipal ownership of local media, continues to create uncertainties.

References:

IREX, Media Sustainability Index report 2009, Serbia.

http://www.irex.org/programs/MSI_EUR/2009/serbia.asp

(ANEM/IFIX) ANEM warns of serious threats to media freedom," Sept. 4, 2009.

http://www.ifex.org/serbia/2009/09/04/information_law_amendments_adopted/

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable

100 | 75 | 50 | 25 | 0

Comments:

Licensing transparency and accountability remain questionable, as well as the municipal ownership of local media, continues to create uncertainties.

References:

IREX, Media Sustainability Index report 2009, Serbia.

http://www.irex.org/programs/MSI_EUR/2009/serbia.asp

(ANEM/IFIX) ANEM warns of serious threats to media freedom, Sept. 4, 2009.
http://www.ifex.org/serbia/2009/09/04/information_law_amendments_adopted/

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a s office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibiti organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

IREX, Media Sustainability Index report 2009, Serbia.
http://www.irex.org/programs/MSI_EUR/2009/serbia.asp

Freedom House, Freedom in the World 2009 – Serbia, July 16, 2009.
<http://www.unhcr.org/refworld/docid/4a6452861e.html>

100: The government does not prevent Internet users from accessing online content. While some forms of conte illegal to download or own (such as child pornography), the government does not manipulate networks to prever this information. This indicator addresses direct government intervention in the transfer of information, not indire such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government te include firewalls preventing access to networks in other countries, or manipulating search engine results to excl sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at certain topics. Government tactics may include firewalls preventing access to networks in other countries, or search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the IREX Media Sustainability Index report 2009, Serbia, In July 2008, the state-owned Republic Agency for Telecommunications (RATEL) granted state access to all Internet communications without the need for a specific permit. This decision, aimed at combating cyber crime and terrorism, was later withdrawn by RATEL at the request of the commissioner for public information, Internet service providers, NGOs, and citizens.”

References:

IREX, Media Sustainability Index report 2009, Serbia.
http://www.irex.org/programs/MSI_EUR/2009/serbia.asp

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; child pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES

NO

Comments:

Although media and journalists were against it, the law amending the Law on Public Information was adopted by the Assembly on Aug. 31, 2009. This new law prohibits pointing someone out as a perpetrator of a criminal offense brought by the Court of Justice becomes effective.

References:

Law on Public Information (Official Gazette" n° 43/2003, 61/2005, 71/09), Article 45.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; and officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is present.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption stories.

100

75

50

25

0

Comments:

It seems that a considerable part of media outlets are owned by domestic businesses or the political elite, operating companies situated in fiscal paradises. If these businesses and politicians were the actors of corruption-related stories, censorship in these media outlets wouldn't be a surprise.

When RTV B92 had the courage to investigate Luka Beograd (and similar people), it was promptly warned via anonymous outlets about the intention of the Serbian tycoon Miskovic to become the owner of the RTV B92.

References:

Strogo poverljivo: Miskovic kupuje RTV B92?! (Top secret: Miskovic is buying RTV B92?!), PressOnline, April 30, 2007. <http://www.pressonline.rs/page/stories/sr.html?id=64103&ionId=37&view=story>

NUNS, Center for Investigative Journalism in Serbia, Ko su pravi vlasnici medija i ko kontrolise javnu rec u Srbiji (Who are the Real Owners of the Media and Who Controls the Public Speech in Serbia), April 13, 2007.

<http://www.cins.org.rs/press/?p=433>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other long-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting on corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a great deal of risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related information.

100 | 75 | 50 | 25 | 0

Comments:

Pre-publication censoring is formally absent, but if a political party in power is implicated in a corruption-related story, publishing of the story will be politically influenced in most cases. That influence is particularly strong on the local level.

References:

IREX, Media Sustainability Index report 2009, Serbia.
http://www.irex.org/programs/MSI_EUR/2009/serbia.asp

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

Law amending the Law on Public Information (Official Gazette n°71/2009), Article 14v.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the c

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicat
exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

Law on Broadcasting, (Official Gazette n° 42/02, 97/04, 76/05, 79/05, 62/06, 85/06, 86/06, 41/09), Article 103.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of
company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicat
exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

The International Research & Exchanges Board (IREX) 2009 Media Sustainability Index for Serbia notes that: Journalistic codes exist but are not practiced; attitudes toward ethics vary from outlet to outlet Journalist salaries are around \$447 per month (US\$447) – the average in Serbia, but absolutely inadequate to live a comfortable life or prevent corruption. The average wage did not change significantly in 2008. In most local media, wages and corruption are even worse. Surveys also caused a hemorrhaging of journalists to other professions, especially to public relations agencies during 2008

References:

IREX, Media Sustainability Index report 2009, Serbia.
http://www.irex.org/programs/MSI_EUR/2009/serbia.asp

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell favorable or unfavorable coverage in exchange for money, gifts or remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

NUNS, Predsednicki izbori u Srbiji 2008, Monitoring medija: Završni izveštaj.
http://www.nuns.org.yu/dokumenti/izbori_2008.jsp

Republic Broadcasting Agency, Report on the monitoring of broadcasters' operations in the course of the pre-election for the 2008 local, provincial and republic elections.

<http://www.rra.org.yu/files/1226063544IZVESTAJ%20-%20Parlamentarni%20izbori%202008..pdf>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally favor disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve a particular outcome. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

References:

NUNS, Predsednicki izbori u Srbiji 2008, Monitoring medija: Završni izveštaj.

http://www.nuns.org.yu/dokumenti/izbori_2008.jsp

Republic Broadcasting Agency, Report on the monitoring of broadcasters' operations in the course of the pre-election for the 2008 local, provincial and republic elections.

<http://www.rra.org.yu/files/1226063544|ZVESTAJ%20-%20Parlamentarni%20izbori%202008..pdf>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial content, and other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Access to air space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

International Freedom of Expression Exchange (IFEX), web page on Serbia.

http://www.ifex.org/serbia/2009/09/04/information_law_amendments_adopted/ [accessed on Sept. 15, 2009]

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

International Freedom of Expression Exchange (IFEX), web page on Serbia.

http://www.ifex.org/serbia/2009/09/04/information_law_amendments_adopted/ [accessed on Sept. 15, 2009]

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

International Freedom of Expression Exchange (IFEX), web page on Serbia.

http://www.ifex.org/serbia/2009/09/04/information_law_amendments_adopted/ [accessed Sept. 15, 2009]

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or covering corruption-related issues in the study period. The relationship between a mysterious death and an indiv may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to includ abuses of power, not just the passing of bribes.

81
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Law on Freedom of Information of Public Importance (Official Gazette" n°s 120/04 and 54/07), Article 5.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Law on Freedom of Information of Public Importance (Official Gazette" n°s 120/04 and 54/07), Article 16.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score is earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

References:

Law on Freedom of Information of Public Importance (Official Gazette" n°s 120/04 and 54/07), Articles 15 and 16.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The Commissioner for Information of Public Importance is doing his best in the given conditions.

The commissioner for free access to information of public interest has become more active. Following adoption of the Data Protection Law in November 2008, the

commissioner's powers were extended to cover [from the 1st of January 2009] data protection as well. Training of commissioner's staff in charge of data protection began in early 2009. However, insufficient staff, especially now that has taken on additional tasks and the lack of a mechanism for enforcing the commissioner's decisions are major works of this office." (EC Report, p.10)

Moreover, the Personal Data Protection Law is not fully in line with EU standards and "there is a potential conflict between the commissioner's two roles of securing public access to documents on the one hand and protecting personal data on the other." (EC Report, p.55)

Following extension of Commissioner's powers and duties, the National Assembly has approved, in January 2009, systematization, allowing thus the increase of the total number of employees in the commissioner's office, from 21 employees in the office of the commissioner was staffed with 7 and 12 persons, in December 2008 and July 2009, respectively.

To know more about the cases, where the Commissioner's decisions, concerning the public access to information, are not respected, see "Informator o radu Poverenika za informacije od javnog značaja i zaštitu podataka o licnosti" (pp. 41-42, document)

<http://www.poverenik.org.rs/index.php/yl/informator-o-radu>

References:

Statement of the Commissioner for Information of Public Importance, Public Announcement, July 1, 2009.

<http://www.poverenik.org.rs/index.php/en/public-announcement/773--01-07-2009>

Interview with the Head of the Freedom of Information Administration, December 2nd 2008

<http://www.kurir-info.rs/clanak/politika/kurir-04-12-2008/ocigledno-hoce-da-me-kazne>

Commission of the European Communities, Serbia 2009 Progress Report", accompanying the Communication from the Commission to the European Parliament and the Council, "Enlargement Strategy and Main Challenges 2008-2009" 14.10.2009.

http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available with no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there are persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

Although the law permitting access to information has existed since 2004, this doesn't mean that in practice it is not the case that the recommendations and the decisions of the Commissioner for Information of Public Importance are followed in the country where for decades, information served as a political instrument, and where it was filtered, censored, manipulated and reserved for the elected (in other words, where information meant trouble) if not treated in a way expected by authorities, it takes time and effort to change the perceptions and the acquired habits. If, in practice, the government for one reason or another, prefers to maintain non transparency, old habits will continue to change very slowly.

The Commissioner for Information of Public Importance is not supported by the government in an appropriate manner. A number of cases of non respect of the Law on Freedom of Information of Public Importance is measured in thousands. Many decisions of the Commissioner are not enforced, impeding the fight against corruption, abuse of power, criminal activities and wasting of taxpayers' money and blurring the accountability of the government.

Though the draft law amending the Law on Freedom of Information of Public Importance (pending adoption since 2009) introduces some positive changes, it maintains the penalties in dinars at the same levels as in 2004. These penalties from 5,000 to 50,000 dinars (US\$79 to \$793) due to high inflation, were symbolic in autumn 2009. In such conditions the cost of using the access to information mechanism remains non negligible.

References:

Statement of the Commissioner for Information of Public Importance, Public Announcement, July 1, 2009.
<http://www.poverenik.org.rs/index.php/en/public-announcement/773---01-07-2009>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to an office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | **50** | 25 | 0

Comments:

According to the European Commission: The government has not created the conditions necessary to enable the commissioner [for information of public importance] to function fully, including provision of adequate premises. Insufficient enforcement capacity and the failure of the Serbian authorities to ensure implementation of the commissioner's recommendations in several cases continued to hamper the work of the office of the commissioner [for information of public importance].

In August 2009, six independent state bodies (the Ombudsman, the State Audit Institution, the Commissioner for Information of Public Importance, the Anti-corruption Agency, the Public Procurement Office and the Commission for the Protection of the Constitution) reiterated concerns about the difficulties they face in carrying out their duties. In particular, they complained about conditions that undermine their independence and about insufficient follow-up to their recommendations, decisions and other acts.

References:

Statement of the Commissioner for Information of Public Importance, Public Announcement, July 1, 2009.
<http://www.poverenik.org.rs/index.php/en/public-announcement/773--01-07-2009>

Commission of the European Communities, "Serbia 2008 Progress Report," accompanying the Communication from the Commission to the European Parliament and the Council, "Enlargement Strategy and Main Challenges 2008-2009" 05.11.2008.

Saopštenje za javnost povodom sastanaka rukovodilaca nezavisnih drzavnih institucija, Aug. 12, 2009. (Public Announcement of the Heads of independent State institutions)
http://www.ombudsman.rs/index.php/lang-sr_YU/aktivnosti/saopstenja/569-2009-08-12-11-36-42

100: Responses to information requests typically address the requestor's questions in full and are not redacted or remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be too general or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The average time for citizens to resolve appeals to access to information requests is not calculated. One can only time is not negligible.

References:

Statement of the Commissioner for Information of Public Importance, Public Announcement, July 1, 2009.
<http://www.poverenik.org.rs/index.php/en/public-announcement/773--01-07-2009>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are act promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Not all state institutions' decisions are subject to appeal before the Commissioner for Information of Public Importance (costs to appeal are low). An administrative dispute before the Supreme Court of Serbia should be initiated by a citizen satisfied with the decision (or the silence) of : the National Assembly, the President of the Republic, the Government of the Republic of Serbia, the Serbian Supreme Court, the Constitutional Court and the Republic Public Prosecutor.

References:

Statement of the Commissioner for Information of Public Importance, Public Announcement, July 1, 2009.
<http://www.poverenik.org.rs/index.php/en/public-announcement/773--01-07-2009>

Commissioner's website-Kome se mozes zaliti? [Who Can You Complain To?] (answers to this question available at <http://www.poverenik.org.rs/index.php/yu/kome-se-mozes-zaliti>)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | **25** | 0

Comments:

The Draft Law on Confidentiality of Data was proposed by the Government, and since July 24, 2009 has been in procedure and adopted by the National Assembly. The law, which is expected to put an end to arbitrary decisions of the government regarding access to information, tends to introduce a qualitative change in the position of the Commissioner for Information of Public Importance. Thus, the latter would no longer have the legal right to access documents bearing the label of confidentiality. Instead, he would have the right to authorization. In some cases, he can be deprived from this right to authorization. The Commissioner for Information of Public Importance is opposed to introducing these restrictions, considering that they will hamper the work of the

References:

Commissioner for Information of Public Importance and Personal Data Protection, Letter to the Prime Minister Mirković, Aug. 5, 2009.

<http://www.poverenik.org.rs/index.php/en/public-announcement/789-05082009>

Draft Law on Confidentiality of Information (in procedure).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=978&t=P

100: The government always discloses to the requestor the specific, formal reasons for denying information request.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷³Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Constitution of the Republic of Serbia (Official Gazette n°83/2006), Article 52.

http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_ceo.asp (English translation)

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations & other conditions). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished citizens are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The term of office of the 250 members of the National Assembly is four years.

However, Article 102, section 2 of the Constitution stipulates that: Under the terms stipulated by the law, a deputy is irrevocably put his or her term of office at disposal to the political party upon which proposal he or she has been elected as deputy.”

These Constitutional provisions, which are allowing political party control over mandates of members of the National Assembly, are not in line with European standards. (See European Commission, Serbia 2009 Progress report: Enlargement Section 5.1. Main Challenges 2009-2010. http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf)

For further reading, see the opinion of the Venice Commission of the Council of Europe on the Constitutional provisions, precisely, concerning the cited section 2 of Article 102, Venice Commission states the following: “It seems that its is the deputy to the party position on all matters at all times. This is a serious violation of the freedom of a deputy to express her view on the merits of a proposal or action. It concentrates excessive power in the hands of the party leadership, the more worrying due to the excessive role of the National Assembly in judicial appointments in general, and in particular the reappointment process for all judges foreseen in the Constitutional Law on the Implementation of the Constitution. This is the risk of a judicial system within which all positions are divided among political parties.”

European Commission for Democracy Through Law (Venice Commission), Opinion on the Constitution of Serbia, adopted by the Commission at its 70th plenary session, Venice, 17-18 March 2007. [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)004-e.asp#_Toc161198091](http://www.venice.coe.int/docs/2007/CDL-AD(2007)004-e.asp#_Toc161198091)

References:

Constitution of the Republic of Serbia (Official Gazette” n°83/2006), Article 102.

Law on Elections of Members of Parliament (“Official Gazette” n°35/2000 and n°18/2004), Article 3. http://www.rik.parlament.sr.gov.yu/cirilica/propisi_frames.htm

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections to be held at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Reports by the OSCE’s Office for Democratic Institutions and Human Right (ODIHR) international election-observer

provide information about the organization and conduct of elections, including information about voting and voters.

References:

OSCE, Office for Democratic Institutions and Human Rights – Elections, Election observation mission. <http://www.osce.org/odihr-elections/eom.html> [accessed on 7th of September 2009]

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Reports by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) international election-observation missions provide needed information.

References:

OSCE, Office for Democratic Institutions and Human Rights Elections, election observation mission. <http://www.osce.org/odihr-elections/eom.html> [accessed on Sept. 7, 2009]

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling an election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Constitution of the Republic of Serbia (Official Gazette RS" n°83/2006), Article 55.
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=382&t=Z

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are barred from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Constitution of the Republic of Serbia (Official Gazette RS" n°83/2006), Article 52.
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=382&t=Z

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

The new Law on Political Parties, adopted by the National Assembly in May 2009, has considerably restricted the ability to form political parties. With 10,000 signatures required, and each of them validated by authorities (with fees for validating every single signature), it will be much more difficult to register a political party than it was during Milosevic's era.

References:

Interview with Vesna Pesic (Member of Parliament and President of the LDP Political Council) Vreme, n° 975, Sep 2009
<http://www.vreme.com/cms/view.php?id=885424> [accessed on September 12, 2009]

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. Some include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

Comments:

OSCE's Office for Democratic Institutions and Human Rights reports represent a useful source of information about the organization and conduct of elections, including the ability to run for political office.

In practice, few if any, citizens can run for political office without relying on the party system.

References:

OSCE, Office for Democratic Institutions and Human Rights Elections, Election observation mission.
<http://www.osce.org/odihr-elections/eom.html> [accessed on Sept. 7, 2009]

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable conditions. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial practices. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislative debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

55

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES

NO

References:

Law on the Elections of Members of Parliament (Official Gazette n°35/2000 and n°18/2004), Article 28.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but is staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies of the executive branch (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of

100

75

50

25

0

Comments:

The permanent composition of the Republic Electoral Commission (REC) comprises a president, 16 members and all appointed by the National Assembly on the proposal of parliamentary groups. The expanded composition includes a representative of each submitter of a registered electoral list.

The Supervisory Board (SB) is in charge of general supervision over the acts of political parties, candidates and members during the electoral campaign. The SB has 10 members, which are all appointed by the National Assembly. Five are appointed on the proposal of the Serbian government, and the other five are appointed on the proposal of the parliamentary groups of the National Assembly.

References:

OSCE, Office for Democratic Institutions and Human Rights Elections, Election observation mission. <http://www.osce.org/odihr-elections/eom.html> [accessed on Sept. 7, 2009]

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest, personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Staff of the National Assembly of the Republic of Serbia Administrative Service provides all the necessary professional technical assistance to the Republic Electoral Commission. It should be doing the same for the Supervisory Board

References:

Rules of Procedure of the Republic Electoral Commission, Article 25.

<http://www.rik.parlament.sr.gov.yu/cirilica/propisi/Poslovnik%20RIKa%20preciscen%20tekst.htm>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009).

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election

100 | 75 | 50 | 25 | 0

Comments:

Reports are available on the REC Web site:

http://www.rik.parlament.sr.gov.yu/cirilica/propisi_frames.htm (Serbian)

http://www.rik.parlament.sr.gov.yu/engleski/propisi_frames.htm (English)

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Supervisory Board had not been established for the May 11 elections. OSCE/ODIHR election-observation report information about the work of election commissions and the resolution of election-related disputes.

References:

OSCE/ODIHR Limited Elections Observation Mission, Interim Report 1 (3-15 April 2008)

Republic of Serbia, Parliamentary Elections, May, 11 2008.

http://www.osce.org/odihr-elections/item_12_30452.html

Mirjana Simic & Nemanja Cocic, CeSID-ov monitoring parlamentarnih izbora” [CeSID’s Monitoring of Parliamentary “Oko izbora: Parlamentarni izbori u Republici Srbiji, 11 maj 2008 godine” [Parliamentary Election in Republic of Serbia 2008], CeSID, 2008.

<http://www.cesid.bgdream.com/images/Oko%20izbora%2017.pdf>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

96

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The OSCE/ODIHR Limited Elections Observation Mission has received no complaints about voter registration.

References:

OSCE/ODIHR Limited Elections Observation Mission, Interim Report 1 (3-15 April 2008)

Republic of Serbia, Parliamentary Elections, May 11, 2008.

http://www.osce.org/odihr-elections/item_12_30452.html

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their registration, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their registration, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Some voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration information, limit access to the polls, and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES

NO

References:

Law on the Elections of Members of Parliament (Official Gazette n°35/2000 and n°18/2004), Article 97.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100

75

50

25

0

Comments:

The OSCE/ODIHR Limited Election Observation Mission notes that judicial hearings of election-related complaints conducted in a nontransparent manner. The Supreme Court continues to review complaints via camera, where the not present.

References:

International Election Observation Mission, Republic of Serbia-Early Parliamentary Elections, May 11, 2008: State Preliminary Findings and Conclusions.

http://www.osce.org/odihr-elections/item_12_30452.html

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens are not able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or parties, or commenting on elections. The military or security forces refrain from physically interfering with political campaigns or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose particular candidates or parties.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

The Law on the Elections of Members of Parliament still lacks provisions on accreditation of domestic and international election observers.

References:

Law on the Elections of Members of Parliament (Official Gazette n°35/2000 and n°18/2004).

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electora

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral proc domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The International Election Observation Mission, as a joint undertaking of the Parliamentary Assembly of the Council of Europe (PACE), the OSCE Parliamentary Assembly (OSCE PA) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), has reported no incidences of hindrance of its monitoring activities related to the May 11, 2008 early parliamentary elections in Serbia.

Domestic observers, such as CeSID, were also able to monitor these elections without any important obstacles.

References:

International Election Observation Mission, Republic of Serbia-Early Parliamentary Elections, May 11, 2008: State Preliminary Findings and Conclusions.

http://www.osce.org/odihr-elections/item_12_30452.html

Mirjana Simic & Nemanja Cocic, CeSID-ov monitoring parlamentarnih izbora [CeSID's Monitoring of Parliamentary Elections in the Republic of Serbia].
Oko izbora: Parlamentarni izbori u Republici Srbiji, 11 maj 2008 godine [Parliamentary Election in Republic of Serbia 2008], CeSID, 2008.

<http://www.cesid.bgdream.com/images/Oko%20izbora%2017.pdf>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers that discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on them that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES

NO

Comments:

Republic Electoral Commission (REC)
http://www.rik.parlament.sr.gov.yu/index_e.htm

Supervisory Board (SB)

References:

Law on the Elections of Members of Parliament (Official Gazette" n°35/2000 and n°18/2004), Articles 33 to 35 (for Electoral Commission, REC), and Articles 99 and 100 (for Supervisory Board, SB).

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors election score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the poll international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic simply facilitates the process of voting but is not empowered to report violations or abuses.

84
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

YES | NO

References:

Law on Financing of Political Parties (Official Gazette n°os 72/2003, 75/2003 and n°97/2008), Article 5.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

References:

Law on Financing of Political Parties (Official Gazette n°os 72/2003, 75/2003 and n°97/2008), Article 5.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is also earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES

NO

References:

Law on Financing of Political Parties (Official Gazette” n° 72/2003, 75/2003 and 97/2008), Articles 9 to 12.

http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=109&t=Z

http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=497&t=Z

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES

NO

References:

Law on Financing of Political Parties (Official Gazette n°os 72/2003, 75/2003 and n°97/2008), Article 16.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political part regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties if financial irregularities are uncovered.

YES

NO

References:

Law on Financing of Political Parties (Official Gazette” n° 72/2003, 75/2003 and 97/2008), Article 16.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party financial expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements do not allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

Entities monitoring the financing of political parties are the Republic Electoral Commission, which monitors the financing of electoral campaigns, and the Parliamentary Finance Committee, which monitors the regular financing of political parties.

The Law Amending the Law on Financing of Political parties, adopted in October 2008, (in force since Oct. 1, 2009) transferred the monitoring of the financing of political parties to the Anti-Corruption Agency (ACA). The law establishing the ACA (adopted in October 2008) shall apply as of Jan. 1, 2010.

References:

Law on Financing of Political Parties (Official Gazette” n° 72/2003, 75/2003 and 97/2008), Articles 14 and 16.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

YES | NO

References:

Law on Financing of Political Parties (Official Gazette” n° 72/2003, 75/2003 and 97/2008), Article 11.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Law on Financing of Political Parties (Official Gazette” n° 72/2003, 75/2003 and 97/2008), Article 11.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is also earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

The report on the disclosure of donations to individual political candidates should be published in the Official Gazette of the political party, the coalition of political parties or the group of citizens who proposed the candidate.

References:

Law on Financing of Political Parties (Official Gazette” n° 72/2003, 75/2003 and 97/2008), Article 14.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

References:

Law on Financing of Political Parties (Official Gazette” n° 72/2003, 75/2003 and 97/2008), Article 14.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate’s campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate’s campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates’ campaigns.

YES | NO

Comments:

The Republic Electoral Commission (REC) should monitor the financing of individual political candidates’ campaigns.

References:

Law on Financing of Political Parties (Official Gazette" n° 72/2003, 75/2003 and 97/2008) Article 14.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's financial support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Entities monitoring the financing of political parties (the Republic Electoral Commission and the Parliamentary Finance Committee) are under direct political influence, because they are composed of members of political parties. In practice means that the political parties are monitoring themselves.

The Finance Committee working group's report on control of financial reports of political parties for 2007 illustrates ineffectiveness of the existing monitoring system. According to this report (April 2009), the provisions of the Law on Political Parties are not precise, and therefore it was not possible to calculate limits on individual and corporate donations.

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse" [Financing of political parties: between the norm and practice] CeSID & Fund for an Open Society Serbia, Belgrade, April, 2008.

<http://www.cesid.bgdream.com/lt/articles/izdanja/posebna-izdanja/finansiranje-politickih-partija.html>

National Assembly, Finance Committee, Working group, "Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009.

<http://www.parlament.sr.gov.yu/content/cir/akta/izvestaji.asp>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups to advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Entities monitoring the financing of political parties (the Republic Electoral Commission and the Parliamentary Finance Committee) are under direct political influence, because they are composed of members of political parties. This may be a common practice, that the political parties are monitoring themselves.

The Finance Committee working group's report on control of financial reports of political parties for 2007, illustrates the ineffectiveness of the existing monitoring system. According to this report (April 2009), the provisions of the Law on Political Parties are not precise, and therefore it was not possible to calculate limits on individual and corporate donations.

References:

CeSID, *Finansiranje politickih partija: izmedju norme i prakse* [Financing of political parties: between the norm and practice], CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

<http://www.cesid.bgdream.com/lt/articles/izdanja/posebna-izdanja/finansiranje-politickih-partija.html>

National Assembly, Finance Committee, Working group, "Izvestaj o kontroli finansijskih izvestaja politickih stranaka" [Report on control of financial reports of political parties for 2007], April 29, 2009.

<http://www.parlament.sr.gov.yu/content/cir/akta/izvestaji.asp>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups to advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Entities monitoring the financing of political parties (the Republic Electoral Commission and the Parliamentary Finance Committee) are under direct political influence, because they are composed of members of political parties. This means, in practice, that the political parties are monitoring themselves. The system is completely ineffective.

References:

CeSID, "Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and practice], CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

<http://www.cesid.bgdream.com/lt/articles/izdanja/posebna-izdanja/finansiranje-politickih-partija.html>

National Assembly, Finance Committee, Working group, "Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], 29 April 2009.

<http://www.parlament.sr.gov.yu/content/cir/akta/izvestaji.asp>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, loopholes exist through which parties can generate revenue or finance their activities beyond the scope of regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations, accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently conducts investigations.

100 | 75 | 50 | 25 | 0

Comments:

Entities monitoring the financing of political parties (the Republic Electoral Commission and Parliamentary Finance are under direct political influence, because they are composed of members of political parties. In practice this means political parties are monitoring themselves. The system is ineffective.

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

<http://www.cesid.bgdream.com/lt/articles/izdanja/posebna-izdanja/finansiranje-politickih-partija.html>

National Assembly, Finance Committee, Working group, Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency is thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Entities monitoring the financing of political parties (the Republic Electoral Commission and the Parliamentary Finance Committee) are under direct political influence, because they are composed of members of political parties. In practice this means, that the political parties are monitoring themselves. The system is ineffective.

The Finance Committee working group's report on control of financial reports of political parties for 2007 illustrates ineffectiveness of the existing monitoring system. According to this report (April 2009), the provisions of the Law on Political Parties are not precise, and therefore it was not possible to calculate limits on individual and corporate donations, no sanctions.

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and practice], CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

<http://www.cesid.bgdream.com/lt/articles/izdanja/posebna-izdanja/finansiranje-politickih-partija.html>

National Assembly, Finance Committee, Working group, Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009.

<http://www.parlament.sr.gov.yu/content/cir/akta/izvestaji.asp>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperating with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, reluctant to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to make judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its use of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Audit Institution, which is supposed to audit the political parties' reports, is not yet fully operational.

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and practice], CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

<http://www.cesid.bgdream.com/lt/articles/izdanja/posebna-izdanja/finansiranje-politickih-partija.html>

National Assembly, Finance Committee, Working group, Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's financial support of a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The Law Amending the Law on Financing of Political Parties (Official Gazette" n°75/2003), by which an important function of monitoring of the financing of political parties was transferred from the Republic Electoral Commission to the Finance Committee of the National Assembly, has been strangely adopted only one week after the adoption of the Law on Financing of Political Parties, thus introducing chaos in the system. See Nemanja Nenadic's handbook.

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and practice], CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

Nemanja Nenadic, Prirucnik: Primena i kontrola postovanja odredaba Zakona o finansiranju politickih stranaka u Republici Srbiji [Handbook: Implementation and Monitoring of the Implementation of the Law on Financing of Political Parties by the Republic Electoral Commission], Transparency Serbia and OSCE Mission in Serbia and Montenegro, April 2008.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a particular candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support political candidates above and beyond those formal limitations. Such loopholes could include making donations to groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and practice], Transparency Serbia, Belgrade, April, 2008.

Vladimir Goati, Nemanja Nenadic, Predrag Jovanovic, Finansiranje predsednicke izborne kampanje 2004 u Srbiji: politickoj korupciji ili odrzavanje status-a quo? [Financing of Presidential Election Campaign 2004 in Serbia: A blow to corruption or maintaining status quo?], Transparency Serbia, 2004.

http://transparentnost.org.rs/publikacije/finansiranje_kampanje_2004.pdf

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support political candidates above and beyond those formal limitations. Such loopholes could include making donations to third parties that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and practice], CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

100: The agency or entity aggressively starts investigations into allegations of wrongdoing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power and is reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power and does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse [Financing of political parties: between the norm and practice], CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, may be reluctant to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its use of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

CeSID, *Finansiranje politickih partija: izmedju norme i prakse* [Financing of political parties: between the norm and practice] (Belgrade, April, 2008).

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. Auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable

100 | 75 | **50** | 25 | 0

Comments:

The parliamentary committee for finances has not ensured adequate control of the funding of political parties. Under deficient legislation, the committee lacks powers to investigate reports fully and to sanction parties which fail to abide by their obligation to submit reports. ” (EC Report, pp.7-8)

Although political parties should submit to the parliamentary committee for finances their financial reports, not all of them are respecting that obligation. In practice, most of them have not submitted their financial statements for the years 2007 and 2008 to the Finance Committee, as the reports of the latter are showing.

The Law on Financing of Political Parties, Article 16, par. 6, stipulates that political parties have an obligation to publish their annual financial statements in the “Official Gazette”, but it doesn’t set any deadline for publishing. Thus, some political parties do not publish their annual financial records in the “Official Gazette”, while others do not.

Political parties have also an obligation to submit, every year, their financial statements to the National Bank of Serbia. Not all political parties are respecting this obligation.

References:

National Assembly, Finance Committee, Working group, Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009

<http://www.parlament.gov.rs/files/cir/pdf/izvestaji/2009/izvestaj/Izvestaj%20o%20kontroli%20finansijskih%20izvestaja.pdf>

National Assembly, Finance Committee, Working group, “Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2008], September 30,

2009 <http://www.parlament.gov.rs/files/cir/pdf/izvestaji/2008/izvestaj/izvestaj.pdf>

Commission of the European Communities, “Serbia 2009 Progress Report”, accompanying the Communication from the Commission to the European Parliament and the Council, “Enlargement Strategy and Main Challenges 2008-2009” 14.10.2009.

http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf

Law on Financing of Political Parties (“Official Gazette” n° 72/2003, 75/2003 and 97/2008)

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely or more than a year in between publication. Politically sensitive information is regularly withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Two reports of the Finance Committee, made available to the public during the year 2009 (at the website of the Na Assembly), contain in their annexes some financial records related to the political parties, which have submitted th statements to this committee. In order to acquire other financial records of political parties, citizens should address the National Bank of Serbia, and that action wouldn't be relieved of costs in terms of time and money.

References:

National Assembly, Finance Committee, Working group, Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009.

<http://www.parlament.gov.rs/files/cir/pdf/izvestaji/2009/izvestaj/Izvestaj%20o%20kontroli%20finansijskih%20izvestaj.pdf>

National Assembly, Finance Committee, Working group, "Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2008], September 30, 2009.

<http://www.parlament.gov.rs/files/cir/pdf/izvestaji/2008/izvestaj/izvestaj.pdf>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive r

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Two reports of the Finance Committee, made available to the public during the year 2009 (at the website of the Na Assembly), contain in their annexes some financial records related to the political parties, which have submitted th statements to this committee. In order to obtain access to other financial records of political parties, citizens should themselves to the National Bank of Serbia, and that action wouldn't be relieved of costs in terms of time and mone

References:

National Assembly, Finance Committee, Working group, Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009.
<http://www.parlament.gov.rs/files/cir/pdf/izvestaji/2009/izvestaj/Izvestaj%20o%20kontroli%20finansijskih%20izvestaja.pdf>

National Assembly, Finance Committee, Working group, "zvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2008], September 30, 2009.
<http://www.parlament.gov.rs/files/cir/pdf/izvestaji/2008/izvestaj/izvestaj.pdf>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizen journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

National Assembly, Finance Committee, Working group, Izvestaj o kontroli finansijskih izvestaja politickih stranaka [Report on control of financial reports of political parties for 2007], April 29, 2009.
<http://www.parlament.sr.gov.yu/content/cir/akta/izvestaji.asp>

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' ca

6

25a. In practice, individual political candidates disclose data relating to financial support and expenditures with reasonable time period.

100 | 75 | 50 | **25** | 0

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse" [Financing of political parties: between the norm and CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Del occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only re more than a year in between publication. Politically sensitive information is regular withheld from public disclosu

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues ar expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse" [Financing of political parties: between the norm and CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive r

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

CeSID, Finansiranje politickih partija: izmedju norme i prakse" [Financing of political parties: between the norm and CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

References:

Vladimir Goati, Nemanja Nenadic, Predrag Jovanovic, Finansiranje predsednicke izborne kampanje 2004 u Srbiji: politickoj korupciji ili odrzavanje status-a quo?" [Financing of Presidential Election Campaign 2004 in Serbia: A blo corruption or maintaining status quo?], Transparency Serbia, 2004.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing a sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in im details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or ov as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

81

27a. In practice, the chief executive gives reasons for his/her policy decisions.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive takes critical questions from journalists or an opposition party, usually at least once a month. There is no censorship sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete manner. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances of the chief executive offer no exposure to critical questions. The government and government-run media routinely censor sessions.

27b. In law, the judiciary can review the actions of the executive.

YES

NO

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 167.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=382&t=Z

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legal constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The Constitution Court still functions with 10 judges, instead of 15 as required by the Constitution. This reduces eff court.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in review executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its appli power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It mus instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies government practices.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for of legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES

NO

Comments:

Article 119 of the Constitution provides immunity from criminal prosecution of Serbia's president while in office. This immunity can be lifted by a vote of the National Assembly.

References:

Constitution of Serbia (Official Gazette RS" n°83/2006), Article 119.

http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_5.asp (English translation)

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted for heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES

NO

Comments:

Article 134, paragraph 2 of the Constitution stipulates that: The Prime Minister and the members of the Government enjoy immunity as a deputy. The Government shall decide on the immunity of the Prime Minister and the member of the

These provisions are somewhat confusing, because it is not clear who exactly removes the cloak of immunity covering the Prime Minister and ministerial officials while in office, the National Assembly or the Serbian government. My interpretation is that the Serbian government decides on lifting immunity, so my score is “no.”

References:

Constitution of Serbia (Official Gazette RS” n° 83/2006), Article 134.

http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_5.asp (English translation)

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or held accountable for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or held accountable for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted for ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

41

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES

NO

Comments:

In October 2008, the Anti-Corruption Agency Act (Official Gazette”, n° 97/2008) was adopted by the National Assembly. It will be applied as of Jan. 1, 2010 when the Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette RS” n°43/2004) shall be revoked.

Article 2 of the Anti-corruption Agency Act defines “public office,” “official,” “corruption,” etc.

“Public office” denotes a function in the bodies of the Republic of Serbia, autonomous province, local self-government bodies of public enterprises, institutions and other organizations established by Serbia, autonomous provinces, local government units as well as functions of other persons elected by the National Assembly, and implies managing, decision-making and enactment of general and individual acts.

“Official ” is every person elected, appointed or nominated to the mentioned bodies. Officials are required to file a r disclosure forms.

Under both laws, heads of state and government are required to file asset disclosure forms while in office. The imp difference between these two laws is that the asset disclosures will no longer be secret.

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette RS” n°43/2004), Article 12.
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=129&t=Z

Anti-corruption Agency Act (“Official Gazette RS”, n° 97/2008), Articles 43 to 45.
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=496&t=Z

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly availabl YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

In October 2008, the Anti-Corruption Agency Act (Official Gazette”, n° 97/2008) was adopted by the National Asse will be applied as of Jan. 1, 2010 when the Law on Prevention of Conflict of Interest in Discharge of Public Office (‘ Gazette RS” n°43/2004) shall be revoked.

Article 2 of the Anti-corruption Agency Act defines “public office,” “official,” “corruption,” etc.

“Public office” denotes a function in the bodies of the Republic of Serbia, autonomous province, local self-governm bodies of public enterprises, institutions and other organizations established by Serbia, autonomous provinces, loc government units as well as functions of other persons elected by the National Assembly, and implies managing, d and enactment of general and individual acts.

“Official ” is every person elected, appointed or nominated to the mentioned bodies. Officials are required to file a r disclosure forms.

Under both laws, heads of state and government are required to file asset disclosure forms while in office. The imp difference between these two laws is that the asset disclosures will no longer be secret.

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette RS” n°43/2004), Article 12.
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=129&t=Z

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette of the Republic of Serbia” n Articles 15 to 17.

Anti-corruption Agency Act (“Official Gazette of the Republic of Serbia”, n° 97/2008), Articles 39 to 42.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (as ministers and heads of state and government).

YES | **NO**

Comments:

In the Law on Prevention of Conflict of Interest in Discharge of Public Office there are no clear requirements for the accuracy of information in the asset disclosure report.

Article 48 of the new Anti-corruption Agency Act (Official Gazette RS”, n° 97/2008), stipulates: “The Agency checks the accuracy of information in the Report [asset disclosure form] pursuant to the annual verification schedule for a

and category of officials. To carry out the checks ... the Agency may request from competent authorities to obtain c financial organizations, companies and other persons.”

Though there are no explicit requirements for independent auditing, one may assume that the latter occurs when fi irregularities are discovered or suspected. The new Anti-corruption Agency Act shall apply as of Jan. 1, 2010.

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette ” n°43/2004).

Anti-corruption Agency Act (“Official Gazette RS” n° 97/2008).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive bi disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without c authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of execut asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector a the government.

YES | **NO**

Comments:

There are no such restrictions in the Law on Prevention of Conflict of Interest in Discharge of Public Office regardir state and government and ministers entering the private sector after leaving the government.

The Anti-corruption Agency Act stipulates that: During the period of two years after termination of the public office, whose office has ceased may not take employment or establish business cooperation with a legal entity, entrepren international organization engaged in activity relating to the office the official held, except under approval of the Ag 38, paragraph 1). The Anti-corruption Agency Act shall apply as of Jan. 1, 2010.

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette” n°43/2004).

Anti-corruption Agency Act (“Official Gazette RS”, n° 97/2008).

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and mini positions in the private sector after leaving government that would present a conflict of interest, including positio directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras”, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

Republic Committee for Resolving Conflicts of Interest.

<http://www.sukobinteresa.sr.gov.yu/cms/item/aktuelnosti/sr.html?view=news&articleId=222>

100: The regulations restricting post-government private sector employment for heads of state/government and uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government ministers are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are

100 | 75 | 50 | 25 | 0

Comments:

Only President Tadic and former Prime Minister Kostunica have reported gifts to the Republic Committee for Resolving Conflicts of Interest since the latter exists. Where are the others?

References:

The Republic Committee for Resolving the Conflicts of Interest.

<http://www.sukobinteresa.sr.gov.yu/cms/item/registar/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. The executive branch never or rarely accepts gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied, but exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

There are no legal grounds for the assessment period.

References:

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

The new Anti-corruption Agency Act (Official Gazette RS" n° 97/2008) will make information on the official's proper to citizens, such as: ownership rights on real property in the country of residence or abroad without specifying the address of the property; ownership rights on vehicles without specifying the registration number; savings deposits without specifying the bank and account number; and the right to use a flat for official purposes (Article 47). This law will apply as of Jan. 1, 2009.

References:

There is no legal ground for the assessment period.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, available to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras," Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a re

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras,” Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little c by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizen journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The asset disclosure records of the heads of state and government are complete and detailed, providing an accurate and updated accounting of the individuals' sources of income, investments, and other financial interest.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may lack important details, including politically sensitive investment or other financial arrangements in which the individual has a financial interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES

NO

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 35.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, or failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such right exists.

31. In practice, official government functions are kept separate and distinct from those of the ruling political party.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling polit

100 | 75 | 50 | **25** | 0

Comments:

Politicians are using government resources for party purposes.

References:

CeSID, "Finansiranje politickih partija: izmedju norme i prakse" [Financing of political parties: between the norm and CeSID and Fund for an Open Society Serbia, Belgrade, April, 2008.

Vesna Pesic, "State Capture and Widespread Corruption in Serbia," CEPS, Working Document N°262, March 2007
<http://www.ceps.be/files/book/1478.pdf>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples include the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 167.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgment on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The European Commission's Progress Report Serbia 2008 states: "The Constitutional Court, which had not been operational since October 2006, resumed duties in December 2007, although only 10 of the 15 judges have been appointed. The Constitutional Court faces a heavy backlog of cases."

In autumn 2009, the Constitutional Court was still functioning with 10 instead of 15 judges.

References:

Commission of the European Communities, "Serbia 2008 Progress Report," accompanying the Communication from the Commission to the European Parliament and the Council, "Enlargement Strategy and Main Challenges 2008-2009" 05.11.2008.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in review and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of the law.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unv on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce thei fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

A member of Parliament can't be prosecuted for a crime unless his or her immunity is withdrawn by a vote of the N Assembly.

References:

Constitution of Serbia (Official Gazette RS" n° 83/2006), Article 103.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for crim allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for cr proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecut immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

32

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette" n° 43/2004), Articles 12.
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=129&t=Z

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government

YES | NO

References:

No such restrictions exist in the Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette 43/2004).

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the sector after leaving government that would present a conflict of interest, including positions that directly seek to their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette " n° 43/2004), Articles 15 to

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the legislature.

YES | **NO**

References:

No legal grounds for requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators

100 | 75 | 50 | 25 | **0**

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following gov employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in c

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | **25** | 0

Comments:

According to the register of the Republic Committee for Resolving Conflicts of Interest, only one legislator, former f speaker, Mr. Predrag Markovic, has reported two gifts that he received (an MP3 Player and Festina watch).

References:

Republic Committee for Resolving Conflicts of Interest.
<http://www.sukobinteresa.sr.gov.yu/cms/item/registar/sr.html>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators nev accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exception: Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside inte or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following gov employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | **0**

References:

Republic Committee for Resolving Conflicts of Interests, Report on the activities of the Republic Committee for Resolving Conflicts of Interest in 2008".

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are rarely or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES

NO

Comments:

The forms are filed, but they are not available to the public.

References:

There is no legal ground for citizens accessing the asset disclosure records of members of the national legislature.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if a form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Republic Committee for Resolving Conflicts of Interest, Report on the activities of the Republic Committee for Resolving Conflicts of Interest in 2008.”

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available with no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there are persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Republic Committee for Resolving Conflicts of Interests, Report on the activities of the Republic Committee for Resolving Conflicts of Interest in 2008.”

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizen journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

References:

Republic Committee for Resolving Conflicts of Interest

<http://www.sukobinteresa.sr.gov.yu>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The asset disclosure records of members of the national legislature are complete and detailed, providing th an accurate and updated accounting of the individuals' sources of income, investments, and other financial inter

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but lacking important details, including politically sensitive investment or other financial arrangements in which the ir an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningf do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Article 110 of the Constitution of the Republic of Serbia provides that the Law on the National Assembly shall be enacted. Although the Constitution has been adopted in 2006, Serbia still does not have this law. Thus, the positive score reflects the shade of the fact that the Law required by the Constitution has not yet been adopted.

References:

Constitution of the Republic of Serbia (Official Gazette RS" n° 83/2006)

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including secret sessions related to national security). A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time

100 | 75 | 50 | 25 | 0

Comments:

For the records that are not available online, a demand has to be filed, and obtaining the requested documents takes two days.

References:

National Assembly of Serbia.

<http://www.parlament.gov.rs/content/cir/index.asp>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available with no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there are persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In dealing with requests for free access to information so far, the National Assembly did not charge any fees.

References:

National Assembly of Serbia.

<http://www.parlament.sr.gov.yu/content/cir/index.asp>

Ljiljana Petrovic, Director of the Citizen Action Center Integras”, Pozarevac, Serbia (Sept. 10, 2009).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52
III-3. Judicial Accountability

36. Are judges appointed fairly?

36a. In law, there is a transparent procedure for selecting national-level judges.

YES

NO

Comments:

Important laws that were adopted in December 2008 set a stage for a comprehensive reform of the judiciary. However, the 2009 Venice Commission reiterated its opinion, given on the Constitution of Serbia adopted in 2006, concerning the High Judicial Council (HJC), a body which proposes to the National Assembly candidates for the election (including judges who are elected for the first time; the president of the Supreme Court of Cassation; the presidents of courts). The HJC also proposes to the National Assembly the candidates for the appointment of judges of the Constitutional Court. HJC also appoints per se judges.

The Venice Commission doesn't approve of the fact that the Constitution (and the Constitutional Law) stipulates that the High Judicial Council be elected, directly or indirectly, by the National Assembly. While the legislation adopted in 2008 creates some safeguards against undue political influence, these safeguards do not apply to the election of the composition of the High Judicial Council. Thus, among the eight members of the first HJC that are directly elected by the National Assembly, five judges were elected on March 30, 2009 and one judge on May 13, 2009. The professor at the faculty of law and the lawyer have not yet been elected. The other three members of HJC are the Minister of Justice, president of the Court and the president of the Parliamentary Committee for Justice and Administration.

Due to the fact that this first High Judicial Council has an extreme power in the appointment and reappointment of judges, the risk of politicization of these appointments and reappointments is enormous. The results of March 30, 2009 highlight the problems already raised by the Venice Commission, regarding the mentioned provisions of the 2006 Constitution. The Venice Commission also considers that the date fixed for completing the election/reelection of all judges (December 31, 2009) is not close for a fair selection. Mr. Slobodan Homen, the State Secretary in the Ministry of Justice, informed the public on March 30, 2009 that more than 5,200 candidates applied for 2,453 judges posts.

For more information see:

Council of Europe, Venice Commission, Documents by Opinion and Study: Serbia.
http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&CID=53

Council of Europe, Venice Commission, Documents by Country: Serbia.
http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=53&L=E

References:

Constitution of Serbia (Official Gazette RS" n° 83/2006), Article 167.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

Law on Judges ("Official Gazette RS", n° 116/2008), Articles 43-52.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=509&t=Z#

Law on High Judicial Council ("Official Gazette RS", n° 116/2008).

http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=510&t=Z#

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should include the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Though the professional criteria for selecting national-level judges are followed, political influence can be decisive.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 2009, Pozarevac).

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:
No legal ground.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the se that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of c of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

71

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

This obligation to give reasons for their decisions is not new for Serbian judges. Their judgments are written.

References:

Law on Civil Procedure, Articles 179, 293, 310, 342.

Law on Criminal Procedure (many articles).

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a ger exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

These requirements to give reasons for their decisions are not new for Serbian judges.

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may be special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES

NO

Comments:

The disciplinary bodies are: the disciplinary prosecutor and his deputies, and the disciplinary commission. They are supervised by the High Judicial Council. The provisions on disciplinary bodies shall apply as of Jan. 1, 2010.

References:

Law on Judges, Articles, Article 93.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=509&t=Z#

Law on High Judicial Council, Article 13.

http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=510&t=Z#

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. An agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism at the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The disciplinary bodies are: the disciplinary prosecutor and his deputies, and the disciplinary commission. They are controlled by the High Judicial Council. The provisions on disciplinary bodies shall apply as of Jan. 1, 2010.

References:

Law on Judges, Article 93.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=509&t=Z#

Law on High Judicial Council, Article 13.

http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=510&t=Z#

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism functions only out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | **0**

References:

Interview with a judge, who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009).

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates in cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often under external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties

100 | 75 | 50 | **25** | 0

Comments:

The existing mechanism for imposing penalties on offenders is not effective. However, better results are expected from the new mechanism, which should apply as of Jan. 1, 2010.

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

References:

No legal ground.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

Comments:

There is no legal ground for the regulations governing gifts and hospitality offered to members of the national-level judiciary. However, see ethics material of the Serbian Judges Association at http://www.sudije.org.yu/list_association_acts?filter=codex&set_language=en&cl=en

References:

No legal ground.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not allowed.

appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the level judiciary.

YES | **NO**

References:

No legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

No legal ground.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to employ their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges

100 | 75 | 50 | 25 | 0

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The regulations restricting post-government private sector employment for national-level judges are uniform. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are not or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary

100 | 75 | 50 | 25 | 0

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied, but exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are rarely or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are rarely or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

No legal ground.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizen journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

References:

Interview with a judge who wishes to remain anonymous (September 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with accurate and updated accounting of the individuals' sources of income, investments, and other financial interest

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking details, including politically sensitive investment or other financial arrangements in which the individual has an interest

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

67

40a. In law, the legislature can amend the budget.

YES

NO

Comments:

The National Assembly's powers to amend the budget are limited by the requirement that the deficit must not exceed the draft budget, which means that the legislature can amend the executive budget, and may add to it, as long as it does not increase the deficit.

References:

The Law on the Budget System (2009) Article 44.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=666&t=Z

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is also earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

Comments:

The National Investment Plan (NIP) is not fully integrated into the budget process. Only a single, aggregated line-item appropriation is presented to the National Assembly (not broken down by ministry or economic category) and projects determined later in the year.” (IMF)

For more information see:

The OECD Budget Practices and Procedures Survey Database provides an extensive survey on budget practices and procedures in Serbia, with the possibility to compare with other countries’ experiences.

The International Monetary Fund (IMF) reports on the state of fiscal transparency in Serbia (Report on Observance of Standards and Codes-Fiscal Transparency Module).

The International Budget Partnership provides assessment of the Serbia’s budget process.

References:

OECD Budget Practices and Procedures Survey Database.

<http://webnet4.oecd.org/budgeting/Budgeting.aspx>

IMF, Republic of Serbia: Report on Observance of Standards and Codes – Fiscal Transparency Module”, IMF Country Report No. 09/144, May 14, 2009.

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=22932.0>

IBP, Open Budget Initiative, Open Budget Index 2008: Serbia.

<http://www.openbudgetindex.org/cms/index.cfm?fa=view&id=2426&hd=1>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget) must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or change.

100 | 75 | 50 | 25 | 0

Comments:

There is not a specialized budget research unit attached to the legislature to conduct analysis of the budget.

References:

OECD Budget Practices and Procedures Survey Database.

<http://webnet4.oecd.org/budgeting/Budgeting.aspx>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight functions. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

50

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. approval).

100 | 75 | 50 | 25 | 0

Comments:

The National Investment Plan (NIP) is not fully integrated into the budget process.

The OECD Budget Practices and Procedures Survey Database provide an extensive survey on budget practices and procedures in Serbia, with the possibility to compare with other countries' experiences.

The International Monetary Fund (IMF) reports on the state of fiscal transparency in Serbia. The International Budget provides assessment of the Serbia's budget process.

References:

OECD Budget Practices and Procedures Survey Database.

<http://webnet4.oecd.org/budgeting/Budgeting.aspx>

IMF, Republic of Serbia: Report on Observance of Standards and Codes – Fiscal

Transparency Module, IMF Country Report N° 09/144, May 14, 2009.

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=22932.0>

IBP, Open Budget Initiative, Open Budget Index 2008: Serbia.

<http://www.openbudgetindex.org/cms/index.cfm?fa=view&id=2426&hd=1>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

There are no civil society budget experts or academics involved in the process, acting on behalf of the public. How public pressures by the CSOs (after the law amending the Income tax Law came into force in May 2009) resulted in reduction of the tax rate on the income of artists in June 2009.

IMF proposes publishing a simple guide to the budget, accessible to average citizens, at the time the budget is prepared. This citizen's guide should explain the economic outlook and present the budget proposals and their impacts.

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes – Fiscal Transparency Module, IMF Country Report N° 09/144, May 14, 2009.

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=22932.0>

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | **75** | 50 | 25 | 0

Comments:

The documents presented to the National Assembly are accessible to citizens, via the Internet site of the Ministry of Finance. However, the National Investment Plan (NIP) is not broken down by ministry or economic category, and its projects are determined later in the year. This practice should be changed, in order to make NIP transparent.

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes – Fiscal Transparency Module, IMF Country Report 09/144, May 14, 2009.

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=22932.0>

IBP, Open Budget Initiative, Open Budget Index 2008: Serbia.

<http://www.openbudgetindex.org/cms/index.cfm?fa=view&id=2426&hd=1>

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective

33

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Law on the Budget System does not call for submission of in-year reports on budgets to the National Assembly. Execution data are summarized in the Monthly Public Finances Bulletin, which the National Assembly obtains from the Ministry of Finance website. The Finance committee can ask for reports from ministries or agencies, but it is not ensured they will get them.

The Law on the Budget System adopted in July 2009 calls for submission of in-year reports (six and nine months) to the National Assembly.

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes – Fiscal Transparency Module, IMF Country Report No. 09/144, May 14, 2009.

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=22932.0>

IBP, Open Budget Initiative, Open Budget Index 2008: Serbia.

<http://www.openbudgetindex.org/cms/index.cfm?fa=view&id=2426&hd=1>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. They may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the oversight agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on it in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

National Assembly website; composition of the Finance Committee.

http://www.parlament.sr.gov.yu/content/lat/sastav/odbori_detalji.asp?id=42

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities

100 | 75 | 50 | 25 | 0

Comments:

Only short reports from Finance Committee sessions are made public, usually indicating the topic of the discussion or the subject of voting (no minutes from discussion are available). It seems that the Finance Committee did not initiate any investigations into financial irregularities. This committee couldn’t have collaborated with the State Audit Institution (SAI), because the SAI is not, and still is not, fully operational, although the law on SAI was adopted in 2005.

By the way, the National Assembly has been unable to approve the final accounts, pending establishment and full functioning of the SAI. In practice, no budget of Serbia has been audited by the State Audit Institution, severely limiting the National Assembly’s ability to exercise its oversight function.

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes – Fiscal Transparency Module, IMF Country Reports No. 05/104, October 2005.

09/144, May 14, 2009.

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=22932.0>

IBP, Open Budget Initiative, Open Budget Index 2008: Serbia.

<http://www.openbudgetindex.org/cms/index.cfm?fa=view&id=2426&hd=1>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, un take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of pu

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES

NO

Comments:

The Finance Committee provides oversight of public funds.

References:

Rules of Procedure of the Parliament, Article 52.

http://www.parlament.sr.gov.yu/content/eng/akta/poslovnik/poslovnik_1.asp (accessed Sept. 1, 2009).

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legi oversees the expenditure of public funds).

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body e function but it is not part of the legislature (such as a separate supreme audit institution).

IV-1. ⁴³Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the non-political and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

There are regulations requiring an impartial, independent and fairly managed civil service. However, SIGMA Public Assessment May 2008 notes: A number of professional groups in the state civil service are subject to separate laws and statutes: police and security forces, foreign affairs personnel, customs and tax officers, prison services, defense forces. One of the main problems with regard to some of these corps is that their regulations and management practices far from the accepted standards in democratic countries, especially security and information services seem problematic.

“Employees of public services such as education and health are not considered as civil servants. The employment and working conditions of these groups are governed by general labor law, including collective bargaining agreements negotiated with government and representative trade unions, which also apply to general service employees working for state authorities.”

References:

Constitution of Serbia (Official Gazette RS” n° 83/2006), Article 136.

Law on State Administration (“Official Gazette RS” n° 79/2005 and n°101/2007), Articles 7 and 8.

Law on Civil Servants (“Official Gazette RS” n° 79/2005, n° 64/2007 and 116/2008), Article 5.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES

NO

Comments:

There are regulations to prevent nepotism, cronyism, and patronage within the civil service. However, Support for Improvement in Governance and Management (SIGMA) has provided a Public Service Assessment for Serbia (May 2008), according to which the status of politically appointed civil servants (including General Secretary of the Government and political advisors) is still being regulated by the General Labor Law, an old and inadequate legislation dating back to 1991, and by many other pieces of legislation. The new law on functionaries (directly appointed and elected officials), was promised for 2007, and a draft has not yet been drafted.

References:

Law on Civil Servants (Official Gazette RS" n° 79/2005, n° 64/2007 and 116/2008), Article 25.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES

NO

Comments:

The Appeals Commission adjudicates complaints brought by civil servants. Support for Improvement in Governance and Management (SIGMA) provides assessments on public service and administrative framework in Serbia.

References:

Law on Civil Servants (Official Gazette RS" n° 79/2005, n° 64/2007 and 116/2008), Articles 142-153.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=276&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=407&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=505&t=Z

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can appeal grievances regarding civil service management actions. The mechanism should be independent of their supervisors and still be located within the government agency or entity (such as a special commission or board). Civil servants can appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

Comments:

There are no specific legal provisions for civil servants convicted of corruption being prohibited from future government employment.

References:

Law on Civil Servants (Official Gazette of Republic of Serbia n° 79/2005, n° 64/2007 and 116/2008).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=276&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=407&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=505&t=Z

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

58

45a. In practice, civil servants are protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

For decades In Serbia, access to positions and jobs in public administration (and the public sector in general), as well as promotion was largely based on political patronage, nepotism or cronyism. Political interference was omnipresent. Introduction of new rules laid down by the Law on Civil Servants is still strongly hampered by these habits and traditions.

... actual Serbian public service is only partly independent of political parties; the CSA [Law on Civil Servants] has a certain depoliticization, but the impartiality mechanism embedded in the system is not difficult to circumvent as it is new." (SIGMA Assessment)

Support for Improvement in Governance and Management (SIGMA) provide assessments on public service and a framework in Serbia.

References:

Support for Improvement in Governance and Management (SIGMA), Serbia: Public Service Assessment, May 2009.

Interview with a senior counselor (executorial position), who wishes to remain anonymous (Sept. 8, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise from government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other forms of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

... in spite of the undeniable positive aspects of the new regulations on recruitment and classification of the civil service system is still not fully guaranteed and remains fragile, as recruitment decisions are still based too heavily on managerial discretion and this discretion is the final criterion for recruitment. There is a persistent confusion between the idea of vacancies and the idea of merit-based recruitment. Publicity is necessary, but it is not sufficient to guarantee a merit-based recruitment system.” (SIGMA, Public Service Assessment).

Support for Improvement in Governance and Management (SIGMA) provides assessments on public service and a framework in Serbia.

References:

Support for Improvement in Governance and Management (SIGMA), Serbia: Public Service Assessment, May 200

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

Vesna Pesic, State Capture and Widespread Corruption in Serbia,” CEPS, Working Document N°262, March 2007 http://www.ceps.be/faceted/books/results/field_book_author_external%3A%22Vesna%20Pesic%22

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism or patronage.

100 | 75 | **50** | 25 | 0

Comments:

For decades in Serbia, access to positions and jobs in public administration (and the public sector in general), as well as promotion was largely based on political affiliation, nepotism or cronyism. The implementation of new rules, laid down in the Law on Civil Servants, is still strongly hampered by these habits and traditions.

References:

Support for Improvement in Governance and Management (SIGMA), Serbia: Public Service Assessment, May 2009

Interview with a senior counselor (executorial position), who wishes to remain anonymous (Sept. 8, 2009).

Vesna Pesic, State Capture and Widespread Corruption in Serbia,” CEPS, Working Document N°262, March 2007 http://www.ceps.be/faceted/books/results/field_book_author_external%3A%22Vesna%20Pesic%22

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hiring, firing, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials may appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Internal by-laws of every state authority contain the types of jobs, the number of jobs of each type, and the requirements for holding such jobs. These by-laws are prepared and finally adopted by the relevant authority, but in fact under the supervision of both the Ministry of Finance and the government's Human Resources Management Service (HRMS), which are usually not available online.

References:

Support for Improvement in Governance and Management (SIGMA), Serbia: Public Service Assessment, May 2009

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned function, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibilities, and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

The Law on Salaries of Civil Servants (Official Gazette RS n° 62/2006 and 101/2008) is very restrictive concerning overtime and other types of remuneration beyond standard salaries. However, there is still a bonus for seniority (0. year). It is scheduled to be abolished in 2011 (SIGMA, Assessment).

References:

Support for Improvement in Governance and Management (SIGMA), Serbia: Public Service Assessment, May 2009.

Interview with a senior counselor (executorial position), who wishes to remain anonymous (Sept. 8, 2009).

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of total pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The Human Resource Plan (HRP) is published in the Official Gazette RS within 30 days after the publishing of the Budget of Serbia. HRP shows only those positions for which there are budget funds provided.

References:

Human Resource Management Service, Informator o radu, Dec. 31, 2008.

<http://www.suk.sr.gov.yu/srpl/>

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in b successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

The Appeals Commission created in July 2006 improves the rights of civil servants. Complaints that were previous the immediate superior are now treated by an independent commission. According to the most recent Report of the Commission, available online, during the period of September 2006 to September 2007, more than 8,253 cases w of which more than 6,700 (or 80 percent) were claims on salaries. The number of cases for 2007-2008 and 2008-2 available online.

References:

Human Resource Management Service website, Appeals Commission's Report, for the period Sept. 1, 2006 to Se <http://www.suk.sr.gov.yu/srpl/>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigation any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is s subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politica issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to mc

on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Interview with a senior counselor (executorial position), who wishes to remain anonymous (Sept. 8, 2009).

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants are affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted servants.

46. Are there regulations addressing conflicts of interest for civil servants?

28

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | **NO**

References:

No legal ground.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law on Civil Servants (Official Gazette RS" n° 79/2005, n° 64/2007 and 116/2008), Articles 25 and 30.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

No legal ground.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law on Civil Servants (Official Gazette " n° 79/2005, n° 64/2007 and 116/2008), Article 25.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of public service.

YES

NO

References:

No legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100

75

50

25

0

References:

No legal ground.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are rarely or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to the Annual Report 2008, prepared by the Republic Committee for Resolving Conflicts of Interests, Petrovic was the only person who reported the gifts received in 2008.

References:

Republic Committee for Resolving Conflict of Interests, Report on the activities of the Republic Committee for Resolving Conflicts of Interest in 2008.

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups and private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are

100 | 75 | 50 | 25 | 0

Comments:

It seems that there is no data or research related to this indicator (In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.) One can only infer that the existence of legal provisions on civil service recusal are starting to have some effects.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

No legal ground.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate audit standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES

NO

References:

No legal ground.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time.

100

75

50

25

0

References:

No legal ground.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available with no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there are persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No legal ground.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

No legal ground.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences w reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are prot recrimination or other negative consequences.

YES

NO

Comments:

There is no legal ground for civil servants who report cases of corruption, graft, abuse of power, or abuse of resour protected from recrimination or other negative consequences. However, the Anti-corruption Agency Act (Official Gazet n°97/2008), under the title "Protection of the Person filling the Report and Other Persons in the Procedure," in Article 50 that "person whose report was used to initiate the proceeding or other person who gave a statement in the proceeding Article 50 hereof may not suffer consequences." The Anti-corruption Act shall apply as of Jan. 1, 2010.

OSCE Mission to Serbia, unofficial translation of the Anti-Corruption Agency Act, is available at:
http://www.osce.org/documents/srb/2008/11/35095_en.pdf

References:

No legal ground.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are from recrimination or other negative consequences.

References:

No legal ground.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is no legal ground for civil servants who report cases of corruption, graft, abuse of power, or abuse of resources protected from recrimination or other negative consequences. However, the Anti-corruption Agency Act (Official Gazette of the Republic of Serbia n°97/2008), under the title "Protection of the Person filing the Report and Other Persons in the Procedure," in Article 50 states that "person whose report was used to initiate the proceeding or other person who gave a statement in the proceeding under Article 50 hereof may not suffer consequences." The Anti-corruption Act shall apply as of Jan. 1, 2010.

OSCE Mission to Serbia, unofficial translation of the Anti-Corruption Agency Act, is available at: http://www.osce.org/documents/srb/2008/11/35095_en.pdf

References:

No legal ground.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers that include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of re protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras”, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in ot whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating t prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff

100 | 75 | 50 | 25 | 0

Comments:

The internal reporting mechanism for public-sector corruption is not developed in Serbia.

The Anti-corruption Council (ACC) is the only institution specifically dealing with corruption, but its role is only advisory powers and no staff.

The Republic Committee for Resolving Conflicts of Interest (RCRCI) is specifically dealing with public servants on conflicts of interest. Its sanctions are limited to recommendations. The RCRCI is running with a staff of 13 people for 13.000 civil servants who are under the obligation to file asset disclosure forms.

The state police and prosecutors should respond to allegations of public-sector corruption.

References:

The Anti-corruption Council of the Government of Serbia.

<http://www.antikorupcija-savet.sr.gov.yu/>

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobi 2008 godinu [Report on the activities of the Republic Committee for Resolving Conflicts of Interest in 2008].

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The internal reporting is not developed in Serbia. The Anti-corruption Council of Serbia and The Republic Committee for Resolving Conflicts of Interest receive regular funding.

References:

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobu 2008 godinu” [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008].

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center “Integras,” Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable period.

100 | 75 | 50 | 25 | 0

Comments:

The internal reporting is not developed in Serbia. The total number of corruption cases reported to The Anti-corruption Council (ACC) between 2003 and 2005 is relatively small (1,050). In 2008, 313 corruption cases were reported.

The Republic Committee for Resolving Conflicts of Interest has initiated 16 procedures based on the reporting of conflicts of interest.

References:

The Anti-Corruption Council of the Government of Serbia, Izvestaj o radu za 2008 godinu [Report on activities in 2008]. <http://www.antikorupcija-savet.sr.gov.yu/>

The Anti-Corruption Council of the Government of Serbia, Statisticka analiza predstavki 8.2003 – 12.2005. <http://www.sukobinteresa.sr.gov.yu>

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobu interesa u 2008 godinu [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008]. <http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras," Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with serious complaints can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged. Simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month. Simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The internal reporting is not developed in Serbia.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperation with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them. It may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be ineffective in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

The Tax Administration and Customs Administration has special numbers for reporting cases of professional misc employees. These numbers are open to all citizens, including civil servants.

References:

Ministry of Finance, Poreska Uprava [Tax Administration], Informator o radu Poreske uprave [Information on the V Administration], Feb. 13, 2009.

<http://www.poreskauprava.gov.rs/>

Ministry of Finance, Uprava Carina [Customs Administration], Informator o radu Uprave carina [Information on the Customs Administration], August 2009.

<http://www.serbiancustoms.rs/>

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government e through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

33
IV-3. Procurement

51. Is the public procurement process effective?

50

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Public Procurement Law (Official Gazette RS" n° 116/2008), Article 102.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=504&t=Z

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest b official public duty and private interests for public procurement officials. A YES score is earned if such regulation civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Public Procurement Law (Official Gazette RS" n° 116/2008), Article 97.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=504&t=Z

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure profess standards in supervising the tendering process. A YES score is earned if such training is mandated for portions broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sp inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | **0**

References:

Republic Committee for Resolving Conflicts of Interest.

<http://www.sukobinteresa.sr.gov.yu>

Commission of the European Communities, Serbia 2008 Progress Report", accompanying the Communication from Commission to the European Parliament and the Council, "Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procuremer

YES

NO

References:

No legal ground.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and sp habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES

NO

Comments:

There is no 0.5 percent of GDP” competitive bidding requirement in the Law on Public Procurement.

References:

Public Procurement Law (Official Gazette RS” n° 116/2008).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=504&t=Z

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

However, the prohibitions on sole sourcing are rather general and unspecific.

References:

Public Procurement Law (Official Gazette RS" n° 116/2008).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=504&t=Z

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

The Public Procurement Law permits administrative appeal of a procuring entity's procurement decisions to the Republic Commission for the Protection of Rights (RCPR) in public procurement procedures. The members of the RCPR, as of 2009, have not yet been elected by the National Assembly, though the new Public Procurement Law came into force in 2009.

References:

Public Procurement Law (Official Gazette RS" n° 116/2008), Articles 106 to 118.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=504&t=Z

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

Article 118 of the Public Procurement Law states that an administrative dispute may be initiated against the Comm decision. Administrative disputes may also be initiated in case the Commission failed to decide and submit its deci deadlines set out in Article 114 of the Public Procurement Law.

References:

Public Procurement Law (Official Gazette RS" n° 116/2008).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=504&t=Z

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from pa future procurement bids.

YES | NO

Comments:

There is no formal blacklisting of such companies. However, according to Article 19, paragraph 1, of the Public Procurement Law: "A procuring entity shall reject a bid if it has indisputable proof that a bidder has given, offered or alluded to, directly gift or some other benefit to a member of the Public Procurement Committee, a person who participated in the preparation of tender documents, a person participating in planning the public procurement or some other person in order to influence the procuring entity's action or decision making in any phase of the procurement procedure."

There are no precisions on what this "indisputable proof" could be.

References:

No formal blacklisting of such companies.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurement companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

96

52a. In law, citizens can access public procurement regulations.

YES

NO

Comments:

The Public Procurement Law and implementing regulations are published in the Official Gazette of the Republic of Serbia maintained by Serbian Public Procurement Office at its website at <http://www.ujn.sr.gov.yu/index.html>.

References:

Public Procurement Law (Official Gazette RS n° 116/2008).

<http://www.ujn.sr.gov.yu/english/indexeng.htm> (English translation)

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES

NO

Comments:

Article 74 of the Public Procurement Law stipulates: A procuring entity shall publish the notice on public procurement conclusion in the Official Gazette of the Republic of Serbia within three days from the contract conclusion, as well notice on the Public Procurement Portal within the same time limit.”

References:

Public Procurement Law (Official Gazette RS n° 116/2008), Article 74.

<http://www.ujn.sr.gov.yu/english/indexeng.htm> (English translation)

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement regulations are available at the website of the Serbian Public Procurement Office:
<http://www.ujn.sr.gov.yu/index.html>.

References:

Serbian Public Procurement Office .
<http://www.ujn.sr.gov.yu/index.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras”, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available no delays for politically sensitive information. These records are defined here as the rules governing the compet procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement regulations are available at the website of the Serbian Public Procurement Office:
<http://www.ujn.sr.gov.yu/index.html>.

References:

Serbian Public Procurement Office
<http://www.ujn.sr.gov.yu/index.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

According to the Article 69 of the Public Procurement Law, the Public procurement notices are published in the “Official Gazette of the Republic of Serbia” ... “If value of a contract for goods, services and works exceeds threshold for small-value determined by the Budget Law, the notices shall be also posted at the Public Procurement Portal”.

An example of an advertisement could be found at:

<http://portal.ujn.gov.rs/TenderPrikaz.aspx?tp=YMCvVxg/WdE=&tid=eTLRYWeLkfl=&tpl=cDon7es6zF0=&svt=tn6pt>

References:

Serbian Public Procurement Office, Public Procurement Portal.

<http://portal.ujn.gov.rs/>

Ljiljana Petrovic, Director of the Citizen Action Center “Integras”, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is given to bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow for participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Article 74 of the Public Procurement Law stipulates that: A procuring entity shall publish the notice on public procurement conclusion in the “Official Gazette of the Republic of Serbia” within three days from the contract conclusion, as well as notice on the Public Procurement Portal within the same time limit.” However, some records are incomplete.

References:

Public Procurement Portal

<http://portal.ujn.gov.rs/>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

Comments:

The privatization process is not yet complete in Serbia. The big, state-owned enterprises are to be privatized in the future. The four state-owned banks should be privatized in the near future. The financial sector privatizations (banks and insurance companies) are not carried out by the Privatization Agency.

References:

Law on Privatization (Official Gazette RS", n° 38/2001, 18/2003, 45/2005 and 123/2007), Article 12.

<http://www.priv.yu/>

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is in law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES

NO

References:

No legal ground.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

Comments:

Financial sector privatization remains obscure in Serbia. President of the Anti-corruption Council, Verica Barac, is reminding everyone of the Nacionalna stedionica” case, unfortunately without any tangible effects.

References:

Olivija Rusovac, Korupcija-hronicna boljka” [Corruption-the Chronic Ailment], Republika, Issue N° 438-439, October
English translation is available at:

http://www.republika.co.yu/438-439/09_eng.html

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

15

54a. In law, citizens can access privatization regulations.

YES | **NO**

Comments:

Rules governing the financial sector privatizations are obscure. Regulations related to the privatization of enterprises accessible via the website of the Privatization Agency.

References:

Deposit Insurance Agency

http://www.aod.rs/glavnimeni_eng/o_nama/ukratko_o_agenciji.html

(in English)

Privatization Agency

<http://www.priv.yu/>

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatizations) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The announcements related to the privatization of enterprises are available at the Privatization Agency website at <http://www.priv.yu/>.

References:

Privatization Agency website

<http://www.priv.yu/>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

References:

No legal ground.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Naftna Industrija Srbije (NIS) was privatized (51% sold to Gazprom) without any competitive procedure. There were no rules governing a competitive privatization process to access.

References:

Dinkic: Prodaja Nis-a bez tendera katastrofa [Dinkic: Selling of NIS without tender is a catastrophe], Emportal, Mar 2008. <http://www.emportal.rs/vesti/srbija/41701.html>

Potpisan ugovor o prodaji NIS-a [Contract on selling NIS signed], Radio-Televizija Srbije, December 24th, 2008. <http://www.rts.rs/page/stories/sr/story/13/Ekonomija/35070/Potpisivanje+gasnog+sporazuma.html>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009).

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, and can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there are persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Naftna Industrija Srbije (NIS) was privatized (51% sold to Gazprom) without any competitive procedure. There were no rules governing a competitive privatization process to access.

References:

Dinkic: Prodaja Nis-a bez tendera katastrofa [Dinkic: Selling of NIS without tender is a catastrophe], Emportal, Mar 2008. <http://www.emportal.rs/vesti/srbija/41701.html>

Potpisan ugovor o prodaji NIS-a [Contract on selling NIS signed], Radio-Televizija Srbije, December 24th, 2008. <http://www.rts.rs/page/stories/sr/story/13/Ekonomija/35070/Potpisivanje+gasnog+sporazuma.html>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009).

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to an office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

56. Is the national ombudsman effective?

48

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Law on Ombudsman (Official Gazette RS n° 79/2005 and 54/2007), Article 9.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=273&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=396&t=Z

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Ministry of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In August 2009, six independent state institutions, the Ombudsman, the State Audit Institution, the Commissioner for the Protection of Public Importance, the Anti-corruption Agency, the Public Procurement Office, and the Commission for the Protection of the Rights of the Child reiterated their concerns about the difficulties they face in carrying out their duties. In particular, they complained about conditions that undermine their independence and about insufficient follow-up to their recommendations, decisions and other acts.

References:

Saopštenje za javnost povodom sastanaka rukovodilaca nezavisnih drzavnih institucija, Aug. 12, 2009. [Public Ann

Zastitnik gradjana, Redovan godisnji izvestaj za 2008 godinu [Ombudsman, Regular annual report for 2008] Marc
http://www.ombudsman.rs/attachements/589_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20SRPSKI%20-%20ZA%20SAJT%20%283%29.pdf

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure for favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative political incentives. This may include public criticism or praise by the government. The ombudsman may not be able to obtain some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats of harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

As is the case with other independent state bodies, the head of the Ombudsman can be removed by the National Assembly through a combination of official or unofficial pressure.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be reappointed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

At the end of 2008, only 38 out of 64 “systematization” posts had been filled. Following a long delay, in October 2009, 20 deputies to the Ombudsman were appointed by the National Assembly.

“The Serbian authorities have not created the technical conditions necessary for proper functioning of the Office of the Ombudsman. Temporary premises are inadequate.” (European Commission Report)

References:

Zastitnik gradjana, Redovan godisnji izvestaj za 2008 godinu” [Ombudsman, regular annual report for 2008] March 2009. http://www.ombudsman.rs/attachments/589_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20SRPSKI%20-%20ZA%20SAJT%20%283%29.pdf

Commission of the European Communities, “Serbia 2008 Progress Report,” accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009, 05.11.2008.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

According to Article 38 of the Law on Ombudsman, the head of the institution decides the appointments.

References:

Law on Ombudsman (Official Gazette RS" n° 79/2005 and 54/2007).

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed do not have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman has used 56.21% of its budget for 2008, due to the fewer staff than planned.

References:

Zastitnik gradjana, Redovan godisnji izvestaj za 2008 godinu [Ombudsman, regular annual report for 2008] March
<http://www.ombudsman.rs/>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | **75** | 50 | 25 | 0

Comments:

The institution is not yet fully operational with staff or premises. The reports are published on the website of the Ombudsman at <http://www.ombudsman.rs/>.

References:

Zastitnik gradjana [Ombudsman] website.

<http://www.ombudsman.rs/>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The institution is not yet fully operational with staff offices.

References:

Protector of Citizens, Annual Report 2008, March 2009.

English translation is available at:

[http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLESKI%20-%20ZA%20SAJT%20\(4\).pdf](http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLESKI%20-%20ZA%20SAJT%20(4).pdf)

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations of judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is unfair in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

No penalties on offenders have been reported.

Article 20 of the Law on Ombudsman stipulates that: The Protector of citizens shall have the power to publicly recommend dismissal of an official who is responsible for violation of citizen's right, i.e. to initiate disciplinary proceedings against an employee of the administrative authorities who is immediately responsible for performed injury, when the recurring official or employee reveals the intent to refuse co-operation with the Protector of Citizens or when it is determined that activities of an official or employee of the administrative authorities contain elements of criminal or other punishable act, the Protector of Citizens has power to submit request, i.e. to file a motion to initiate misdemeanor, criminal or other appropriate proceeding.

References:

Protector of Citizens, Annual Report 2008, March 2009.

[http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLISKI%20-%20ZA%20SAJT%20\(4\).pdf](http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLISKI%20-%20ZA%20SAJT%20(4).pdf)

Law on Ombudsman (Official Gazette RS n°79/2005).

OSCE Mission to SaM, unofficial English translation, can be found at: <http://www.osce.org/documents/fry/2005/10/>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, may not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | **25** | 0

Comments:

The follow-up of the ombudsman's recommendations is insufficient.

References:

Saopštenje za javnost povodom sastanaka rukovodilaca nezavisnih drzavnih institucija, Aug. 12, 2009. [Public Announcement Meeting of the Heads of Independent State Institutions]

http://www.ombudsman.rs/index.php/lang-sr_YU/aktivnosti/saopstenja/569-2009-08-12-11-36-42

Protector of Citizens, Annual Report 2008, March 2009.

[http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLISKI%20-%20ZA%20SAJT%20\(4\).pdf](http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLISKI%20-%20ZA%20SAJT%20(4).pdf)

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time per

100 | 75 | 50 | **25** | 0

Comments:

In the absence of statistics on this issue, one can only infer that the agency can't resolve citizen complaints quickly

References:

Saopštenje za javnost povodom sastanaka rukovodilaca nezavisnih drzavnih institucija, Aug. 12, 2009. [Public Annual Meeting of the Heads of Independent State Institutions]

http://www.ombudsman.rs/index.php/lang-sr_YU/aktivnosti/saopstenja/569-2009-08-12-11-36-42

Protector of Citizens, Annual Report 2008, March 2009.

[http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLISKI%20-%20ZA%20SAJT%20\(4\).pdf](http://www.ombudsman.rs/attachments/588_Redovan%20godisnji%20izvestaj%20za%202008%20%20godinu%20%20ENGLISKI%20-%20ZA%20SAJT%20(4).pdf)

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than three months and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

67

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Article 33 of the Law on Ombudsman stipulates that: The Protector of Citizens shall submit a regular annual report to the Assembly that shall include information on activities in the preceding year, noted irregularities in the work of administrative authorities and recommendations to improve the status of citizens in relation to administrative authorities. The report shall be submitted not later than 15 March of the following year and shall be published in the Official Gazette of the Republic and on the Internet page of the Protector of Citizens and shall also be delivered to public media.”

The Protector of Citizens may submit special reports during the year, if necessary.

References:

Law on Ombudsman (Official Gazette RS n°79/2005), Article 33.

OSCE Mission to SaM, unofficial English translation, can be found at: <http://www.osce.org/documents/fry/2005/10/>

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made only available to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports, opinions and recommendations are available online. However, there are no translations of minority languages.

References:

Ombudsman website: <http://www.ombudsman.rs/>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 30, 2009, Pozarevac).

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Ombudsman website: <http://www.ombudsman.rs/>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

References:

Constitution of the Republic of Serbia (Official Gazette RS n°83/2006), Article 138.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

Law on Ombudsman (Official Gazette RS n° 79/2005 and 54/2007).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=273&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=396&t=Z

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate actions of government on the behalf of common citizens. This agency or set of agencies should be specifically created for seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a government body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

31

59a. In law, the supreme audit institution is protected from political interference.

YES

NO

References:

Law on State Audit Institution (Official Gazette RS N° 101/2005 and 54/2007), Article 3.

http://www.osce.org/documents/fry/2004/05/3091_en.pdf (English)

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Ministry of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100

75

50

25

0

Comments:

The head of the SAI is elected by the National Assembly for a term of five years with a simple majority vote (50 per cent of all members of Parliament). He can equally be removed by the National Assembly through a combination of formal and unofficial pressure.

In general, a two-thirds majority vote (of all members of Parliament) and a longer term in office could, and perhaps should, protect the head of the SAI from removal.

References:

Law on State Audit Institution, Articles 21-24.

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of formal and unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Law on SAI was adopted in 2005. The Council of the SAI was elected in September 2007, and two years later focused on finding accommodations and recruiting staff. In September 2009 its staff consisted of 22 members, inst indicated in the systematization of the SAI. The problems with finding premises did exist. It is true that the salaries auditors of about 60 dinars (US\$940) are not competitive. But, if there was good will, these problems could have b

References:

DRI za 2010 godinu iz budzeta trazi 155 miliona dinara [SAI asks for 155 millions of dinars from the budget 2010], 2009 (published on emportal).

<http://www.emportal.rs/vesti/srbija/98944.html>

Interview with the Head of the State Audit Institution, conducted by Vesna Jelacic, Politika, Jan. 13, 2009.

<http://www.politika.rs/rubrike/Ekonomija/Vlada-kriva-za-to-shto-drzavni-revizor-ne-radi.lt.html>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders it ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Elected members of the SAI reflect the repartition of power among the coalition parties. The head of the SAI was n

DSS (Kostunica's party), two members of the council by DS, one member by G-17 and one by New Serbia. The Law was amended on July 13, 2007 in order to soften the requirements for the election of members of the council. Other four of five members of the council wouldn't have been eligible. In March 2009, the G-17 representative was replaced by a candidate proposed by the same party, G-17.

The high politicization of the council could be a factor complicating the appointments of state auditors.

References:

Skupština o izboru članova Saveta DRI" [Parliament on the elections of members of SAI Council], Beta, Sept. 18, 2007 (Studio B).

<http://www.studio-b.co.yu/info/vest.php?id=10555>

"Za drzavnog revizora prepolovljen budzet", [The budget reduced by half for the state auditor], Glas javnosti, Dec. 2007.

<http://www.glas-javnosti.rs/clanak/glas-javnosti-12-12-2007/za-drzavnog-revizora-prepolovljen-budzet>

"Odlozen izbor clana Saveta Drzavne revizorske institucije" [Election of the member of the SAI Council postponed] Televizija Vojvodine, Dec. 16, 2008.

http://www.rtv.rs/sr/vesti/drustvo/drustvo/2008_12_16/vest_102290.jsp

Odluka o izboru clana Saveta Drzavne revizorske institucije, [Decision on the election of the member of SAI Council Assembly, March 18, 2009.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=407&t=0

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | **25** | 0

Comments:

The audit agency has a lack of financial resources.

References:

DRI za 2010 godinu iz budzeta trazi 155 miliona dinara [SAI asks for 155 millions of dinars from the budget 2010], 2009 (published on emportal).

<http://www.emportal.rs/vesti/srbija/98944.html>

Za drzavnog revizora prepolovljen budzet, [The budget reduced by half for the state auditor], Glas javnosti, Dec. 1
<http://www.glas-javnosti.rs/clanak/glas-javnosti-12-12-2007/za-drzavnog-revizora-prepolovljen-budzet>

Interview with the Head of the State Audit Institution, conducted by Vesna Jelacic, Politika, Jan. 13, 2009.

<http://www.politika.rs/rubrike/Ekonomija/Vlada-kriva-za-to-shto-drzavni-revizor-ne-radi.lt.html>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | **25** | 0

Comments:

In May 2009, the head of the SAI presented to the Parliamentary Financial Committee the report on the work of the institution in accordance with the Law on the State Audit Institution (Article 49), which stipulates that: The Institution [SAI] shall report on its work to the Assembly for its consideration at least once a year."

The problem is, that this agency had nothing substantial to present to the legislature.

References:

Law on State Audit Institution (Official Gazette RS" n° 101/2005 and 54/2007), Article 49.

http://www.osce.org/documents/fry/2004/05/3091_en.pdf (English)

"Do septembra završni račun budžeta za 2008" [Budget 2008 final statements, before September 2008], EMportal,
<http://www.emportal.rs/vesti/srbija/88178.html>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public detailing the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometime incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable t or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

No audit reports have been presented so far (September 2009).

For further reading see reports of the GRECO, IMF, EU:

Group of States against corruption (GRECO), Joint First and Second Evaluation Rounds, Compliance Report on the Serbia, 38th Plenary Meeting, Strasbourg, 9-13 June 2008.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2008\)1_Serbia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)1_Serbia_EN.pdf)

IMF, Republic of Serbia: Report on Observance of Standards and Codes – Fiscal Transparency Module, IMF Country Report 09/144, May 14, 2009.

<http://www.imf.org/external/pubs/cat/longres.cfm?sk=22932.0>

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

References:

DRI za 2010 godinu iz budzeta trazi 155 miliona dinara [SAI asks for 155 millions of dinars from the budget 2010], 2009 (published on emportal).

<http://www.emportal.rs/vesti/srbija/98944.html>

Interview with the Head of the State Audit Institution, conducted by Vesna Jelacic, Politika, Jan. 13, 2009.

<http://www.politika.rs/rubrike/Ekonomija/Vlada-kriva-za-to-shto-drzavni-revizor-ne-radi.lt.html>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to the head of the SAI, the rules of procedure of the SAI, submitted to Parliament in December 2007, were adopted, thus impeding any auditing.

References:

Interview with the Head of the State Audit Institution, conducted by Vesna Jelacic, Politika, Jan. 13, 2009.
<http://www.politika.rs/rubrike/Ekonomija/Vlada-kriva-za-to-shto-drzavni-revizor-ne-radi.lt.html>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

0

60a. In law, citizens can access reports of the audit agency.

YES

NO

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusive to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100

75

50

25

0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there are persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire sector?

YES

NO

Comments:

The national supreme audit institution, auditor general or equivalent agency covering the entire public sector is the Institution (Drzavna revizorska institucija).

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 96.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=382&t=Z

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the move money through the government. This agency should be specifically charged to investigate and document the mis- funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as an executive.

44 V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes-Fiscal Transparency Module, IMF Country Report No. 09/144, May 14, 2009.

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009, 05.11.2008.

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes-Fiscal Transparency Module, IMF Country Report 09/144, May 14, 2009.

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes-Fiscal Transparency Module, IMF Country Report 09/144, May 14, 2009.

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes-Fiscal Transparency Module, IMF Country Report 09/144, May 14, 2009.

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency's funding. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

Tax Administration (Poreska uprava)
<http://www.mfin.sr.gov.yu/eng/116/>

References:

Law on Tax Procedure and Tax Administration (Official Gazette RS n° 80/02, 70/03, 55/04, 61/05, 20/09).

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

75

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

IMF notes: The tax and customs administrations are not given legal protection from political interference.”

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes-Fiscal Transparency Module, IMF Country Report 09/144, May 14, 2009.

Ljiljana Petrovic, Director of the Citizen Action Center Integras”, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general citizen is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may often evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

Customs Administration (Uprava carina)
<http://www.fcs.yu/>

References:

Law on Customs (Official Gazette RS" n° n°73/2003).
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=113&t=Z

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The tax and custom administration should be legally protected from political direction, according to IMF.

References:

IMF, Republic of Serbia: Report on Observance of Standards and Codes-Fiscal Transparency Module, IMF Country Report 09/144, May 14, 2009.

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

45

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES

NO

Comments:

In practice, the mechanism of oversight” of public companies consists to nominate directly, by the government (executive), all members of the managing bodies of state-owned enterprises. The managing bodies are the board of directors, director, and supervising board. The practice of governing political parties is to include in the coalition agreement the repartition over state-owned enterprises. The change of the government is followed by the change of the composition of all the managing bodies in the state-owned enterprises. This practice is in harmony with the mentioned Law on Public Enterprises a General Interest, inherited from the Milosevic era.

References:

Law on Public Enterprises and Activities of General Interest (Official Gazette RS” n° 25/2000, 25/2002, 107/2005).

Dogovor o javnim preduzecima [Agreement on public enterprises], B92, Oct. 6, 2007.

<http://www.b92.net/info/vesti/index.php?dd=6&mm=10&yyyy=2007>

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal independence from the government. A YES score is earned even if the entity is legally separate but in practice is controlled by government partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of a government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has sufficient professional, full-time staff.

100

75

50

25

0

Comments:

In practice, the mechanism of oversight and control of public companies consists to nominate directly, by the government (executive), all members of the managing bodies of state-owned enterprises. The managing bodies are the board of directors, director, and supervising board. The practice of governing political parties is to include in the coalition agreement, the repartition of the control over state-owned enterprises. The change of the government is followed by the change of the composition of the three managing bodies in the state-owned enterprises.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be subject to budget cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Absence of systematic investigation over financial irregularities.

References:

Baraceva: Javna preduzeca kao feudi [Barac: Public Enterprises as fiefs, B92, Oct. 20, 2008.
<http://www.antikorupcija-savet.sr.gov.yu/view.jsp?articleId=581>

Prva kontrola u JP Aerodrom Nikola Tesla [First control in the Public enterprise Airport Nikola Tesla], Economy.rs
<http://www.economy.rs/vesti/6681/Prva-kontrola-u-JP-Aerodrom-Nikola-Tesla.html>

Transparency Serbia, Skandali u javnim preduzecima posledica odsustva systemske borbe protiv korupcije [Scand public enterprises consequence of the absence of a systemic fight against corruption], Press release in Bilten, Nov January 2009.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its applicati

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

Mechanism is partisan. Depoliticization of state-owned enterprises, through their privatization, would be a good sol

References:

Milojko Arsic & Dusko Vasiljevic, Restrukturiranje i privatizacija javnih preduzeca u Srbiji [Restructuring and Privatization of Enterprises], FREN, Kvartalni monitor br. 9 April-June 2007.

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressively penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, or take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to work with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

55

69a. In law, citizens can access the financial records of state-owned companies.

YES

NO

Comments:

All enterprises have the obligation to submit their financial reports to the National Bank of Serbia (NBS). Citizens can access these reports by addressing themselves to the NBS. Consolidated financial reports of medium and big enterprises, together with annual audit reports, should be available to citizens via the websites of these companies or via other media.

References:

Law on Accounting (Official Gazette RS" n° 46/2006) Article 33.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be published. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law on Accounting (Article 32), medium and big enterprises, which are submitting consolidated financial statements, have the obligation to audit their annual accounts and to publish them with the audit report in the press, journals, a website. Their financial data should be annually updated. In practice, some enterprises respect their obligations, others do not.

References:

Law on Accounting (Official Gazette RS" n° 46/2006).

Ljiljana Petrovic, Director of the Citizen Action Center "Integras," Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, provide information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Some enterprises publish their consolidated financial reports together with the audit report (auditing is done by international standards), while others do not.

References:

Law on Accounting (Official Gazette RS" n° 46/2006).

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies have flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

All enterprises have to submit their annual accounts to the National Bank of Serbia (NBS). Citizens can access the accounts by addressing the NBS.

Consolidated financial reports of medium and big enterprises, together with the audit report, should be available on the websites of these companies, or via other media. The time period necessary to access financial records of companies should be comparable to the data the citizens are looking for.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available with no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there are persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The costs to access companies' financial records will depend on the data the citizens are looking for (consolidated). Obtaining data from the NBS is not free.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizen journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

Government in general and the line ministries are in charge of overseeing the state-owned companies.

References:

Law on Public Enterprises and Activities of General Interest (Official Gazette RS" n° 25/2000, 25/2002, 107/2005).

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with oversight and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

67
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

YES | NO

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 83.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

YES

NO

Comments:

Article 27, paragraph 1 of the Law on the Registration of Business Entities stipulates that appeal can be addressed to the competent authority for economic issues.”

References:

Law on the Registration of Business Entities (Official Gazette RS n° 55/2004, 61/2005), Article 27.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It takes about 13 days for citizens to obtain any necessary business license.

References:

World Bank, Doing Business 2010 Serbia.

<http://www.doingbusiness.org/Documents/CountryProfiles/SRB.pdf>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The costs are about 7.1 percent of the country's GNI per capita, compared to an average of 4.7 percent in OECD countries.

References:

World Bank, Doing Business 2010, Serbia.

<http://www.doingbusiness.org/Documents/CountryProfiles/SRB.pdf>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a government office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive for the organization.

71. Are there transparent business regulatory requirements for basic health, environmental and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

The Law on Public Health (Official Gazette RS n° 72/2009).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=685&t=Z

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

The Law on Environmental Protection (Official Gazette RS n° 135/2004, 36/2009).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=181&t=Z#

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=555&t=Z

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

The Law on Consumer Protection (Official Gazette RS n° 79/2005).

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

No systematic data. However, the perception of citizens is that there is corruption in inspection services.

References:

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Business inspections by the government to ensure that public health standards are being met are designed out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in a uniform and even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There is no systematic data. However, the perception of citizens is that there is corruption in inspection services.

References:

Ljiljana Petrovic, Director of the Citizen Action Center 'Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Business inspections by the government to ensure that public environmental standards are being met are carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There is no systematic data. However, the perception of citizens is that there is corruption in inspection services.

References:

Ljiljana Petrovic, Director of the Citizen Action Center 'Integras,' Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Business inspections by the government to ensure that public safety standards are being met are designed out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited pr

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government c ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatme

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES

NO

Comments:

Article 367 and Article 368.

References:

Criminal Law (Official Gazette RS" n° 85/2005, 72/2009), Article 367 and 368.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=285&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=687&t=Z

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES

NO

Comments:

Article 214.

References:

Criminal Law (Official Gazette RS" n° 85/2005, 72/2009), Article 214.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=285&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=687&t=Z

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES

NO

Comments:

Article 368.

References:

Criminal Law (Official Gazette RS n° 85/2005, 72/2009), Article 368.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=285&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=687&t=Z

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Article 367.

References:

Criminal Law (Official Gazette RS n° 85/2005, 72/2009), Article 367.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=285&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=687&t=Z

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Article 368, paragraph 3.

References:

Criminal Law (Official Gazette RS n° 85/2005, 72/2009), Article 368, paragraph 3.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=285&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=687&t=Z

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Articles 364 and 365.

References:

Criminal Law (Official Gazette RS n° 85/2005, 72/2009), Articles 364 and 365.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=285&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=687&t=Z

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Article 369.

References:

Criminal Law (Official Gazette RS n° 85/2005, 72/2009), Article 369.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=285&t=Z

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?ld=687&t=Z

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

The Law on Prevention of Money Laundering (Official Gazette RS n° 20/2009, 72/2009).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=536&t=Z#

http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?id=678&t=Z

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

The Law on the Organization and Jurisdiction of State Institutions in the Prevention of Organized Crime (Official C 42/02, 27/03, 30/03, 67/03, 29/04, 58/04, 45/05, 61/05).

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

75. Is the anti-corruption agency effective?

56

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette of the Republic of Serbia" n Article 3.

<http://www.sukobinteresa.sr.gov.yu/cms/item/zakon/en.html>

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staff are partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There was insufficient follow-up on the recommendations of the Republic Committee for the Prevention of Conflict of Interest. On the other hand, the citizens didn't understand why the asset disclosure forms were not made public.

The Anti-corruption Agency (ACA) deserves special attention. In March 2009, the Parliament elected nine members of the ACA. At the beginning of July, its director was nominated, and at the end of July the systematization" of the ACA was approved by the parliamentary committee (Justice and Administration Committee). According to the Ministry of Justice, the Anti-corruption Agency will be fully operational on Jan. 1, 2010.

The ACA is very concerned about the Draft Law on Confidentiality of Data proposed by the government (and since it is in procedure to be adopted by the National Assembly). If this draft version is adopted, the ACA, as well as the State Institution or Public Procurement Office, would not have the right to access documents bearing the label of confidential.

Ombudsman and Commissioner for Information of Public Importance could access these documents, but only after getting a special authorization.

References:

Republic Committee for Resolving Conflict of Interests, Izvestaj o radu Republickog odbora za resavanje o sukobu 2008 godinu” [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008].

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjizvestaj/sr.html>

“Anti-corruption Agency calls for changes in the draft Law on Data Confidentiality,” Sept. 2, 2009, Centre for Civil-Relations website:

<http://www.ccmr->

[bg.org/News/3500/Anti+Corruption+Agency+calls+for+changes+in+the+draft+Law+on+Data+Confidentiality.shtml](http://www.ccmr-bg.org/News/3500/Anti+Corruption+Agency+calls+for+changes+in+the+draft+Law+on+Data+Confidentiality.shtml)

Slobodan Beljanski [member of the Board of the ACA] Tajnom protiv Agencije [Secret Against Agency], Blic (daily), 2009.

<http://www.blic.rs/temadana.php?id=106845>

Activities of the Justice and Administration Committee, July 31, 2009.

http://www.parlament.sr.gov.yu/content/cir/aktivnosti/skupstinske_detalji.asp?id=2019&t=A

“Izabrana direktorka Agencije za borbu protiv korupcije” [Director of the Anti-Corruption Agency nominated], RTS, .

<http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/71343/Izabrana-direktorka-Agencije-za-borbu-protiv->

Odluka o izboru clanova Odbora Agencije za borbu protiv korupcije [Decision on the election of members of the Bc corruption Agency, March 18, 2009.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=411&t=O

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or political incentives. This may include favorable or unfavorable public criticism by the government, political appointment other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include confidential relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant

Comments:

The Law on Prevention of Conflict of Interest in Discharge of Public Office, Article 19, stipulates that: "The members of the Republic Board (nine members) shall elect a chairman from their own ranks, for a period of one year."

Five members of the Republic Board are elected by the National Assembly, three are nominated by the Supreme Court and two by the Bar Association. Members of the board can be removed by the board itself or by the institution which elected them without justification. There is no director of the agency.

The Anti-corruption Act, Article 7, stipulates that: "The Board appoints and dismisses the Director of the Agency."

All nine members of the board are elected by the National Assembly on the proposal of: 1) the Administrative Commission; 2) the President of the Republic; 3) the government; 4) the Supreme Court of Cassation; 5) the Constitutional Court; 6) the Protector of Citizens and Commissioner for Information of Public Importance, through joint agreement; 7) the Social and Economic Council; 8) the Bar Association of Serbia; 9) the Association of Journalists of Serbia, in mutual agreement. The last two may be from the ranks of nominators. The majority of elected members can be politically influenced, so the agency doesn't seem to be quite fairly protected.

References:

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The director(s) cannot be removed without a significant justification through a formal process, such as impropriety or abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

Comments:

It is very difficult to assess the professionalism of the appointees, but all of them are political appointees." (Global Integrity Report on Serbia 2008)

No new appointments were made since last scoring. The Republic Committee for Resolving Conflicts of Interest w function until the end of 2009.

References:

Global Integrity Report, Serbia 2008, Indicator 75d. Boris Begovic, President of the Center for Liberal Democratic S (CLDS), and Dragor Hiber, Professor of Law, Belgrade Faculty of Law.

<http://report.wordpress-158395-729720.cloudwaysapps.com/Serbia/2008/scorecard/88>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appoi of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed u have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party lo however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interes from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The Republic Committee for Resolving Conflicts of Interest is running with a staff of 13 persons for about 13,000 ci who are under the obligation to file asset disclosure forms.

References:

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobi 2008 godinu [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008].

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | **75** | 50 | 25 | 0

References:

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobi 2008 godinu [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008].

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | **75** | 50 | 25 | 0

Comments:

The reports are published on the Republic Committee for Resolving Conflicts of Interest website at

References:

Republic Committee for Resolving Conflicts of Interest website.

<http://www.sukobinteresa.sr.gov.yu/cms/item/home/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public, directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | **25** | 0

Comments:

There was insufficient follow-up on the agency's recommendations. The agency lacks powers to enforce its recommendations.

References:

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobu 2008 godinu" [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008].

<http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009).

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations

100 | 75 | 50 | **25** | 0

Comments:

Though the Republic Committee for Resolving Conflict of Interests (RCRCI) is understaffed, it was responsive to the opinion pressure. Thus, in April 2009, RCRCI has pronounced the sanction public announcement of the recommen removal from office” to the State Secretary in the Ministry of Economy and Regional Development Mr. Nebojsa Ciri State Secretary in the Ministry of Justice Mr. Slobodan Homen. (Neither of them was removed from office).

References:

Republic Committee for Resolving Conflicts of Interest – Pronounced sanctions.

<http://www.sukobinteresa.sr.gov.yu/cms/item/izrecenemere/sr.html?pg=2>

Ljiljana Petrovic, Director of the Citizen Action Center Integras”, Pozarevac, Serbia (Sept. 10, 2009).

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate v investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offe occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agen agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agenc agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Out of 8,274 new cases in 2008, 7,685 were declarations of assets and revenue. The agency has initiated 489 proceedings, 27 information, six opinions and three cases concerned gifts received. Among the 489 cases where the presumed violation of the Law on Prevention of Conflicts of Interest was initiated, most cases involved non-declarations and revenue by civil servants. So, it seems that there were not many complaints. The data on how much time it takes the agency to act on complaints does not exist. One can only infer that the understaffed agency doesn't react quickly.

References:

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobi 2008 godinu [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008]. <http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjiizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with serious issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than two months and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of retribution.

100 | 75 | 50 | 25 | 0

Comments:

In 2008 there were 16 cases initiated on the basis of complaints. It seems that the fear to blow the whistle was not a major factor.

References:

Republic Committee for Resolving Conflicts of Interest, Izvestaj o radu Republickog odbora za resavanje o sukobi 2008 godinu [Report on activities of the Republic Committee for Resolving Conflicts of Interest in 2008]. <http://www.sukobinteresa.sr.gov.yu/cms/item/godisnjizvestaj/sr.html>

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to rot mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, wh are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less promi position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to addre corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES

NO

Comments:

In October 2008, the Anti-corruption Agency Act (Official Gazette", N° 97/2008) was adopted by the National Asse has been in force since Oct. 31, 2008 and shall apply as of Jan. 1, 2010.

The Anti-corruption Agency Act (OSCE Mission to Serbia, unofficial translation) is available at http://www.osce.org/documents/srb/2008/11/35095_en.pdf.

There is also the Anti-corruption Council (ACC), a government body specifically dealing with corruption, but its role advisory. The government decisions related to the establishment of the ACC are available at: http://www.antikorup savet.sr.gov.yu/o_savetu/dokumenta.jsp.

References:

Law on Prevention of Conflict of Interest in Discharge of Public Office (Official Gazette of the Republic of Serbia" n http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=129&t=Z
<http://www.sukobinteresa.sr.gov.yu/cms/item/zakon/en.html> (English translation)

Republic Committee for Resolving Conflict of Interests, which is specifically dealing with public servants, on the iss interest.

<http://www.sukobinteresa.sr.gov.yu/cms/item/home/en.html>

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or pro corruption.

64
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Constitution of Serbia (Official Gazette RS" n°83/2006), Article 36.
http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The significant backlog in civil, criminal and commercial cases remains a serious cause for concern, as are the del enforcement of court decisions. In the absence of efficient court management systems and of legislation streamlini the Serbian judiciary has been unable to reduce the number of pending cases or average length of proceedings. T the court system is, moreover, hampered by the uneven workload of courts and judges.” (EC Report 2008)

References:

Commission of the European Communities, Serbia 2008 Progress Report,” accompanying the Communication from Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center “Integras”, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Attorney fees are somewhat of a barrier to pursuing an appeal.

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009)/

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

Comments:

Judgments follow written law, although political (or other interference) in some cases is not excluded.

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Judgments in the criminal system are made according to established legal code and conduct. There are no cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exception political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

25

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | **25** | 0

Comments:

Judicial decisions are enforced with many difficulties.

The significant backlog in civil, criminal and commercial cases remains a serious cause for concern, as are the del enforcement of court decisions. In the absence of efficient court management systems and of legislation streamlini the Serbian judiciary has been unable to reduce the number of pending cases or average length of proceedings. T the court system is, moreover, hampered by the uneven workload of courts and judges.” (EC Report 2008).

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Commission of the European Communities, Serbia 2008 Progress Report, accompanying the Communication from Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009 05.11.2008.

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ig certain parties appearing before the courts may evade or delay enforcement.

25:

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 149.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and man budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The year 2009 was marked by great uncertainty for judges, due to fact that all Serbian judges (as well as prosecut subject to appointments/reappointments. The judges had good reasons to worry, concerning their reappointment. F criteria for reappointment, not being fully in line with the recommendations of the Council of Europe's Venice Comr difficult to assess in practice, permitting thus political influence over the procedure. In addition, the first compositor Judicial Council (in charge of implementing the reappointment procedure for all judges) was problematic, due to th was largely determined by the previous High Judicial Council (which was not bound by the proposal from the court the short deadline set (end of 2009) raised serious concerns as to the possibility to carry out an objective procedur hardly say that the judges were protected from political interference. Despite the risk of long-term politicization of th Serbian Constitutional Court confirmed in a judgment of July 2009 the constitutionality of the reappointment proces an appeal filed by the Serbian Judges Association." (EC Report 2009, p. 12)

For more details on this issue and the ongoing reform see:

Council of Europe, Venice Commission, Documents by Opinion and Study: Serbia.
http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&CID=53

Council of Europe, Venice Commission, Documents by Country: Serbia.
http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=53&L=E

Commission of the European Communities, "Serbia 2009 Progress Report", accompanying the Communication from the Commission to the European Parliament and the Council, "Enlargement Strategy and Main Challenges 2008-2009 14.10.2009.
http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf

References:

Council of Europe, Venice Commission, Documents by Opinion and Study: Serbia.
http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&CID=53

Council of Europe, Venice Commission, Documents by Country: Serbia.
http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=53&L=E

Commission of the European Communities, "Serbia 2009 Progress Report", accompanying the Communication from the Commission to the European Parliament and the Council, "Enlargement Strategy and Main Challenges 2008-2009 14.10.2009.
http://ec.europa.eu/enlargement/pdf/key_documents/2009/sr_rapport_2009_en.pdf

Telephone interview with a judge who wishes to remain anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009).

100: National-level judges operate independently of the political process, without incentive or pressure to render judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rare or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative political incentives. This may include favorable or unfavorable treatment by the government or public criticism. A judge may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotions, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

There are also rules or procedures regulating the objective distribution of cases.

References:

Law on Judges, (Official Gazette RS, n° 116/2008) Articles 24 to

27. http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=509&t=Z#

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or ranc assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themse influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this proc

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 148.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

Law on Judges, (Official Gazette RS, n° 116/2008) Articles 62 to

68. http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=509&t=Z#

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO s earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption ca

YES | NO

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his/her involvement on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

68

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may occasionally be discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The judicial system does not discriminate women. Sufficient proof is that seven out of 10 judges on the Constitutional Court are women.

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender biases. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES

NO

References:

Constitution of Serbia (Official Gazette RS n°83/2006), Article 67.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=382&t=Z

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high and discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | **25** | 0

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center Integras, Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high and discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

It is not yet clear how the new restructured judicial system will affect the citizens. In small municipalities, the municipalities will be replaced by judicial entities," from Jan. 1 2010. The future will show whether the access to justice for those situated geographically far from the courts of justice will become more difficult and/or more expensive, or not. See the Law on the Organization of Courts and Public Prosecutor's Offices ("Official Gazette" N° 116/08, Dec. 22, 2008).

References:

Telephone interview with a judge who wants to stay anonymous (Sept. 29, 2009).

Ljiljana Petrovic, Director of the Citizen Action Center "Integras", Pozarevac, Serbia (Sept. 10, 2009, Pozarevac).

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to distance.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

Most of the appointed are police officers, and according to the Law on Police (Official Gazette, n° 101/2005) for the appointment the public announcement is not necessary. The Minister of Interior personally appoints or dismisses police officers – chiefs of the regional police administration. The government (executive) appoints the director of the police on the proposal of the Minister of Interior. The Minister of Interior appoints or dismisses heads of other organizational units on the proposal of the director of the police. Political influence is strong.

Serbia does not yet have a strategy for the reform of the police nor the action plan based on it. Though some progress has been made in the regulatory area (adoption of the Law on Communal Police in 2009), there is still a long way to go in decision-making and raising confidence of citizens in the police, due to its known repressive role in the recent past. Police reform building remains an open issue.

For more information see the documents of the OSCE Mission to Serbia, Law Enforcement Department, available <http://www.osce.org/serbia/13164.html>.

According to the Law on police, for the director of the police, public announcement is obligatory (article 21) and 15 experience in the police are required.

References:

Minister of Interior website.

http://www.mup.sr.gov.yu/cms_eng/home.nsf/GPD-Competence.h

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed have no conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Law on the Budget of of Serbia for 2009.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=516&t=Z

Law Amending the Law on the Budget of the Republic of Serbia for 2009.

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=543&t=Z

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic m

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

Concerns remain over the level of transparency in police work and potential undue political influence.” (EC Report

For more information see the documents of the OSCE Mission to Serbia, Law Enforcement Department, available <http://www.osce.org/serbia/13164.html>.

References:

Commission of the European Communities, Serbia 2008 Progress Report”, accompanying the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2008-2009, 05.11.2008.

OSCE, Mission to Serbia, Law Enforcement Department website.

<http://www.osce.org/serbia/13164.html>

Interview with Ambassador, Hans Ola Urstad, Head of the OSCE Mission to Serbia in Police Today, May 2009.

http://www.osce.org/documents/srb/2009/05/38182_en.pdf

OSCE, Police Reform in Serbia: Towards the Creation of a Modern and Accountable Police Service, OSCE, Missic

100: The agency (or agencies) operates independently of the political process and has operational independence from government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

46

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | **NO**

Comments:

There are procedures on how to complain about police action, but the mechanism is not independent.

References:

Law on Police (Official Gazette “, n° 101/2005), Articles 180-181.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about po
A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or
corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen’s compl
reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Anonymous interview (Sept. 10, 2009).

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complai
acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with s
can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

Internal control has the right to investigate all cases of violation of the law by the police. However, The internal control has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources (see 2008).

References:

Commission of the European Communities, Serbia 2008 Progress Report”, accompanying the Communication from the Commission to the European Parliament and the Council, “Enlargement Strategy and Main Challenges 2008-2009” (2008.11.05).

Law on Police (“Official Gazette “, n° 101/2005), Articles 171-179.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related cases by law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | **0**

References:

Anonymous interview (Sept. 10, 2009).

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. They may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its use of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Criminal Law (Official Gazette RS n° 85/2005, 72/2009).

http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=285&t=Z

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | **75** | 50 | 25 | 0

References:

Anonymous interview, Serbia (Sept. 10, 2009).

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal or an informal understanding that the law enforcement community protects itself.

