UNODC
United Nations Office on Drugs and Crime

PILOT REVIEW PROGRAMME: SERBIA

Review of the Implementation of Articles 5, 10, 12 (paragraphs 1 and 2), 16 (paragraphs 1, 3, 4, 5 and 10) and 18 (paragraphs 9 and 13) of the United Nations Convention against Transnational Organized Crime

Reviewing Countries:
Mexico & Romania

A. Introduction

Article 32 of the United Nations Convention against Transnational Organized Crime (UNTOC) establishes a Conference of the Parties with a mandate to, inter alia, promote and review the implementation of the Convention. In accordance with Article 32, paragraph 3 of the Convention, the Conference shall agree upon mechanisms for achieving its objectives, including reviewing periodically the implementation of the Convention.

In its decision 4/1, the Conference of the Parties decided that it was necessary to explore options regarding an appropriate and effective review mechanism, and requested the Secretariat to assist interested States parties in assessing their implementation of the provisions of the Convention and the Protocols thereto. The Conference further decided to convene an open-ended intergovernmental meeting of experts to make recommendations to the Conference on the appropriate mechanism, which should allow the Conference to discharge fully and efficiently its mandate. The experts agreed that it would be appropriate, in view of the tenth anniversary of the Convention, to reinforce the implementation of the Convention and its Protocols. They decided that interested States parties might work to explore, together with the Secretariat, ways and means of reviewing their implementation of the Convention and its Protocols.

The "Pilot Review Programme", of which this report forms a part, was established to assist interested States parties to undertake a detailed evaluation of their compliance with selected provisions of the UNTOC Convention. Such efforts are not only useful in addressing implementation gaps in those countries; they lead to a constructive exchange of expertise and best practices and provide the basis for testing the feasibility and modalities of a review mechanism. Through information on lessons learned and experience acquired under the project, the Conference will be in a better position to make informed decisions on the review mechanism it may wish to establish.

The Pilot Review Programme is organized in two complementary tracks: a peer review track and an expert review track. Both tracks share the same starting ground, the self-assessment of their implementation by the participating States. However, the peer review track has a country-level focus, while the expert review track aims at analysing general trends and making general recommendations. The present report is the result of the peer review process. Based on the self-assessment provided by the country under review, members of the review team engaged in an active dialogue with the country under review, discussing preliminary findings and requesting additional information. At the request of the country under review, a country visit was conducted by experts from the two reviewing States and two UNODC staff in order to engage in a detailed discussion with national experts and practitioners on the implementation of the Convention and to assist in the preparation of recommendations.

B. Process

The following review of Serbia's implementation of the United Nations Convention against Transnational Organized Crime is based on the self assessment report received from Serbia on 6 July 2010, with additional elements received on 6 August 2010. It includes the outcome of the active dialogue between Serbia and the experts from Mexico and Romania. During this active dialogue phase, a teleconference with 15 participants from the review team took place on 9 September 2010 and an on-site visit was held on 16 and 17 September 2010 in Belgrade. During the on-site visit, meetings took place with the Prosecutor's Office for Organized Crime, the Appellate Court of Belgrade, the Ministry of Justice (Legislation Department and Department for Mutual Legal Assistance in Criminal Matters), the Ministry of Interior (Financial Investigation Unit, Department for International Police Cooperation and Department for General and Organized Crime) and the Directorate for the Management of Seized Assets.

C. Executive summary

The review carried out by the participating experts allowed them to verify the existence of a recently developed legal framework, to assess its compatibility with the United Nations Convention against Transnational Organized Crime and to know about ongoing legal reforms that intent to make the system more efficient . The effective application of such legal framework was not assessed.

Serbia has fully adopted the measures required in accordance with Article 5, Article 16, paragraphs 1, 3 and 10 and Article 18, paragraphs 9 and 13 of the UNTOC Convention. Although it has recently adopted the measures required by Article 12, Serbian newly established legislative and institutional framework on confiscation seems to be yielding results. Serbia has adopted legislation required in accordance with Articles 10, paragraphs 1 and 2, but should pursue efforts to ensure that the legislation on liability of legal persons is used in practice. A list of jointly agreed recommendations is available at the end of the document.

D. Implementation of the United Nations Convention against Transnational Organized Crime

1. Ratification of the Convention

The Organized Crime Convention was signed by the Federal Republic of Yugoslavia on 12 December 2000.[1] It was subsequently ratified by the Federal Republic of Yugoslavia on 6 September 2001 without reservation or declaration.[2] Following the adoption of the Constitutional Charter of Serbia and Montenegro in 2003, the Federal Republic of Yugoslavia's name was changed to Serbia and Montenegro. After Montenegro's declaration of independence in 2006, Serbia was named the successor of Serbia and Montenegro, maintaining the union's United Nations membership and assuming title over any previously concluded international agreements.

2. The Serbian legal system

According to the Constitution of Serbia of 2006, the President of Serbia is the Head of State. The Prime Minister of Serbia is the Head of Government, elected by the National Assembly of Serbia (Народна скупштина Србије) on the President's proposal. Serbia's unicameral legislative power is vested in the National Assembly. The Supreme Court of Serbia (Врховни суд Србије) is the country's highest court of general jurisdiction. The Constitutional Court (Уставни суд Републике Србије) has jurisdiction to rule on issues of constitutionality, including on the compliance of international treaties with the Constitution. International treaties ratified by Serbia apply directly to the country's legal system, but they must conform to Serbia's Constitution (Article 16 of the Constitution). Any law enacted in Serbia subordinate to the Constitution may not be contrary to ratified international treaties.

The Serbian legal system belongs to the civil law tradition, where the primary source of law is codified, written legislation. Courts have a limited ability to interpret laws and decisions of courts are not strictly binding as precedent, resulting in a relatively weak authority of jurisprudence in comparison to laws and statutes. Serbia's Criminal Code and Criminal Procedure Code are the principal legal texts establishing the country's substantive criminal law and rules of criminal procedure. Legislation relating specifically to organized crime include the *Law No. 42/02 on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime* that, *inter alia*, establishes specialized bodies for detecting, prosecuting and detaining perpetrators of

[1] UN Doc. No. C.N.1314.2000.TREATIES-81 [Depositary Notification].

[2] UN Doc. No. C.N.856.2001.TREATIES-6 [Depositary Notification].

stipulated criminal offences. Serbia has also adopted legislation on seizure and confiscation (*Law No. 97/08 on Seizure and Confiscation of the Proceeds from Crime)* and on liability of legal persons (*Law No. 97/08 on the Liability of Legal Entities for Criminal Offences)*. *Law No19/09 on Mutual Assistance in Criminal Matters* sets the applicable framework for extradition and mutual legal assistance in criminal matters.

The collection of information and investigation of criminal activities is ensured by the criminal police, which include a specific Department for Organized Crime. The commanding officer of the Department for Organized Crime is appointed and dismissed by the Minister of the Interior following the opinion of the Prosecutor for Organized Crime. The criminal police work under the overall authority of the Ministry of Interior. The police need the approval of the investigative judge to carry out certain types of investigatory measures and in particular when using special investigative techniques. While investigations are usually initiated by the competent prosecutor, it is the investigative judge leads the investigation process. Serbian authorities are currently considering changing this system and transferring investigative powers to prosecutors in order to speed up criminal procedures. In Serbia, the police can detain a suspect for 48 hours in preventative detention. Pre-trial detention can last up to 6 months and is decided by the investigative judge.

The Prosecutor's Office for Organized Crime has been established pursuant to the *Law No. 42/02 on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime* (amended by *Law No. 72/09*). It replaces the institution of the Special Prosecutor's Office for Organized Crime that was established in 2003. The Prosecutor's Office for Organized Crime has jurisdiction over all areas of crime covered by Article 2 of the Law (amended), namely: organized crime, public order, abuse of office, international terrorism, financing of terrorism, money laundering and crimes against government authorities. The Office is managed by a Prosecutor for Organized Crime, who is appointed by the Republic Public Prosecutor from among Public Prosecutors and Deputy Public Prosecutors meeting the requirements for appointment as a District Public Prosecutor for a two-year term, which can be renewed. The Prosecutor for Organized Crime can be dismissed by the Republic Public Prosecutor at any time.

The competent prosecutor decides on whether there is sufficient evidence to press charges and is responsible for presenting the case to court. Prosecutors belong to the judiciary; while they have an autonomous status, they do not enjoy guarantees of independence like judges. They work under the authority of the Public Prosecutor. There are three Special Prosecutors: a Special Prosecutor for Organized Crime, a Special Prosecutor for War Crimes and a Special Prosecutor for High-tech Crimes.

The High Court of Belgrade has first instance jurisdiction for cases involving organized criminal groups on national territory. The Appellate Court in Belgrade has appeals jurisdiction for such cases.

The authority in charge of mutual legal assistance and extradition proceedings is the Department for Mutual Legal Assistance in Criminal Matters of the Ministry of Justice. The decision on extradition is taken by a panel of judges. The defendant has the possibility to appeal this decision to the Higher Court. The Minister of Justice may not order the surrender of a person if the Court has denied extradition; it may, however, exercise its discretion not to order the surrender of a person where the Court has approved of the extradition. The executive decision on surrender, which has in practice been a mere confirmation of the judicial decision on extradition, is taken by the Ministry of Justice.

A Financial Investigation Unit was established within the Ministry of Interior as part of the Organized Crime Department of the criminal police in June 2009. It is responsible for detecting proceeds of crime. A Directorate for Management of Seized and Confiscated Assets was established as a body with legal personality within the Ministry of Justice to manage seized proceeds of crime and perform related functions. The Directorate is managed by a Director, who is appointed and released from office by the Government at the motion of the Minister of Justice.

3. Review of implementation of selected articles

3.1. Article 5: Criminalization of participation in an organized criminal group

> "1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
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> *(a)* Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
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> (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
>
> (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
>
> a. Criminal activities of the organized criminal group;
>
> b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
>
> *(b)* Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.
>
> 2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
>
> 3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 *(a)* (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 *(a)* (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention."

a. Summary of the main requirements

Under Article 5, paragraph 1 (a), States must establish either or both of the offences set forth in its subparagraphs (i) and (ii) as crimes. The requirements of the first offence include the intentional agreement with one or more other persons to commit a serious crime for a purpose related directly or indirectly to obtaining a financial or other material benefit. This requirement criminalizes the mere agreement to commit serious crimes for the purpose of obtaining a financial or other material benefit. However, States parties may include as an element of the offence either: (a) an act committed by one of the participants furthering that agreement; or (b) the involvement of an organized criminal group, if these are a requirement of their domestic law. Under paragraph 3, States parties that do require one of these additional elements must so inform the Secretary-General and the States that require involvement of an organized criminal group for the offence must ensure that its domestic law covers all serious crimes involving organized criminal groups.

For the second type of offence under Article 5(1)(a)(ii), that is criminal association, the required mental element is general knowledge of the criminal nature of the group or of at least one of its criminal activities or objectives. In the case of taking part in non-criminal but supportive activities, an additional requirement is that of knowledge that such involvement will contribute to the achievement of a criminal aim of the group. States parties must ensure that the knowledge, intent and purpose elements of these crimes can be established through inference from objective factual circumstances.

Under Article 5, paragraph 1 (b), organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group must be established by States as a criminal offence.

b. Findings and observations of the review team concerning Article 5

Serbia has adopted an approach whereby the Criminal Code does not specifically provide for a list of crimes that would constitute organized crime. Participation in an organized criminal group is a separate offence, which may be charged in addition to any offence established by the Criminal Code. An organized criminal group is defined in Article 112, para. 35 of the Serbian Criminal Code as a group that exists for a certain amount of time, comprises a minimum of three persons acting in conspiracy to commit one or more criminal offences punished with imprisonment of four or more years, to acquire direct or indirect financial or other material benefit. The element of the offence that requires the organized criminal group to exist for a certain amount of time is assessed on a case-by-case basis. This definition is in accordance with the definition used in the UNTOC Convention (Article 2 (a)).

The offence of organizing and participating in an organized criminal group is set out in Article 346 of the Criminal Code. More precisely, knowledgeably engaging in an organized criminal group, as foreseen in Article 5, para. 1 (a) (ii) of the UNTOC Convention, is a crime under Article 346, paragraphs 3 to 5. In addition, the following general provisions on complicity apply to all offences in the Criminal Code, including organizing and participating in an organized criminal group: co-perpetration (Article 33), incitement (Article 34) and aiding and abetting (Article 35). This fulfills the requirements of Article 5, para. 1 (b).

More severe punishments for the persons leading or organizing such criminal group are established pursuant to paragraphs 1, 2 and 5 of Article 346. Article 36 of the Criminal Code of Serbia outlines the limits of liability and punishment for accomplices. Article 37 provides guidelines for punishment of inciters and abettors for attempts and lesser criminal offences. Article 33 of the Serbian Criminal Code further establishes a framework for the co-perpetration of any criminal offence, not limited to organized criminal groups. This provision may be relied upon to establish liability for jointly taking part in a criminal offence or for committing a premeditated act that significantly contributes to the commission of a criminal offence. This more general provision has a lower knowledge threshold than that suggested by the Organized Crime Convention as it does not require that an offender have knowledge of either the aim or the criminal activity of a group he or she is engaging with. It was indicated that this provision has been successfully used in trials involving organised criminal groups with more than 20 or 30 members.

The institution of plea bargaining was introduced in Serbia in 2009. It has successfully been applied since its introduction, but it is restricted to only those criminal offences that carry a maximum penalty of up to 10 years of imprisonment .The possibility of imposing a lesser punishment and of granting remission for members of organized criminal groups who expose the group or otherwise prevent the commission of the offence for which the group was formed are foreseen in Article 346, paragraph 5 of the Criminal Code. In addition, According to article 163 of the Criminal Procedure Code “at the proposal of the Public Prosecutor, the court, taking into account the importance of the evidence presented by the cooperating witness, behaviour of the cooperating witness before the court, his previous life and all other relevant circumstances, may exceptionally declare the cooperating witness guilty, but decide not to impose a sentence on him. This decision may not be appealed”. Those persons

who are organizers of the group are not eligible for this measure. Serbian specialists are currently debating whether it would be more appropriate to reduce sanctions for collaborating members, rather than suspending sanctions altogether.

Serbian authorities have demonstrated they prosecuted many organized crime cases, including complex cases. Statistics provided by the Prosecutor's Office for Organized Crime show that, between 2003 and 2009, criminal proceedings were initiated in 102 cases, involving 1068 persons and the commission of 2410 separate offences. Most cases involved offences against public order, which includes organized crime under the Serbian Criminal Code. For those cases, most common offences belonged to the group of criminal offences against property (221), offences against economic interests (182) and offences against human health, mostly drug trafficking related offences (180). In addition, 83 committed offences related to the illegal crossing of State borders and human trafficking, 67 were related to trafficking in organs, while 81 concerned the unauthorized possession of weapons and explosive materials.

Serbia is adequately implementing Article 5.

3.2 Article 10: Liability of legal persons

> "1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.
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> 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
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> 3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
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> 4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions."

a. Summary of the main requirements

Article 10, paragraph 1, requires the establishment of liability for legal entities, consistent with the State's legal principles, for participation in serious crimes involving an organized criminal group and for offences established by States as they implement Articles 5, 6, 8 and 23 of the Convention, and for offences established by any Protocol to which the State is or intends to become a party.

Liability for legal entities may be criminal, civil or administrative (Art. 10(2)). Under paragraph 3, the liability of legal entities must be established without prejudice to the criminal liability of the natural person(s) who committed the offence. The liability of natural persons who perpetrated the acts, therefore continues to exist in addition to any corporate liability and must not be affected at all by the latter. Sanctions imposed on legal persons must be effective, proportionate and dissuasive (Art. 10(4)).

b. Findings and observations of the review team concerning Article 10

The Republic of Serbia adopted the *Law on Liability of Legal Entities for Criminal Offences* in 2008 *(Law No. 97/08).* Article 2 of the Law establishes that legal entities may be liable for "criminal

offences constituted under a special part of the Criminal Code and under other laws if the conditions governing the liability of legal entities provided for by this Law are satisfied." The requirements for the liability of legal entities are articulated in Article 6 of the *Law on Liability of Legal Entities for Criminal Offences*: "a legal person shall be held accountable for criminal offences which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof. The liability [...] shall also exist where the lack of supervision or control by the responsible person allowed the commission of crime for the benefit of that legal person by a natural person operating under the supervision and control of the responsible person."

According to Serbian legislation in the area of liability of legal persons for criminal offences, the responsible person could be the manager, the owner or any officer responsible for conducting business in the company or institution. Article 4 provides that the Law is applicable to both national and foreign legal persons provided that adequate jurisdiction is established. Article 7, paragraph 2 of the Law confirms that the liability a legal entity is independent of the liability of the natural persons who committed the offence: "a legal person shall be held accountable for criminal offences committed by the responsible person even though criminal proceedings against the responsible person have been discontinued or the act of indictment refused." Article 34 foresees that certain provisions of the Criminal Code, such those on inciting, aiding and abetting are also applicable by analogy to legal entities.

Legal entities found guilty of a criminal offence in Serbia may be subject to penal sanctions. Sanctions set out under Article 12 of the Law consist of sentences such as fines or the dissolution of the legal entity, suspended sentences and security measures, including restrictions on practicing certain activities or operations, confiscation of instrumentalities or publication of criminal judgment. Articles 12 through 29 of the Law establish the framework relating to the punishment of legal entities for the commission of criminal offences. In imposing sentences, judges must exercise their discretion taking into account, *inter alia*, the severity of the crime committed, the degree of liability of the legal person in the commission of the offence and the size of the legal entity. Convictions may also entail legal consequences such as the prohibition to participate in public procurement or privatization procedures. Pursuant to Article 19, paragraph 2 of the Law, a legal entity may be exonerated from punishment if it "on a voluntary basis and without delay removes incurred detrimental consequences or returns the proceeds from crime unlawfully gained."

Serbian authorities have indicated that there has not yet been any case of conviction of a legal person. The novelty of the institution of criminal liability of legal persons in the Serbian legal system probably explains this situation. In this connection, it is worth noting that a similar institution that establishes the liability of legal persons for commercial offences, and thus allows for both the corporation and persons working for the corporation to be prosecuted, is being widely used.

Serbia has recently adopted legislation required in accordance with Article 10, and should pursue efforts to ensure this legislation is used in practice.

3.3 Article 12: Confiscation and seizure

"1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the

identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation."

a. Summary of the main requirements

States parties must, to the greatest extent possible under their domestic system, establish the necessary legal framework to permit the confiscation of (a) proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds, and (b) property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (Art.12(1)). States parties must also adopt measures to enable the identification, tracing and freezing and/or seizure of the proceeds and instrumentalities of crime covered by the Convention, for the purpose of eventual confiscation (Art. 12(2)).

b. Findings and observations of the review team concerning Article 12

The general principle underpinning confiscation is outlined in Article 91, paragraph 1, of the Serbian Criminal Code, according to which "no one may retain material gain obtained by committing a criminal offence." The entry into force of the *Law No.97/08 on Seizure and Confiscation of the Proceeds of Crime* in 2009 enabled Serbian authorities to effectively enforce this principle. With this new instrument, a presumption exists that assets stem from criminal activity if they are "manifestly disproportionate" to the lawful income of the suspect (Article 28 of the Law). The Law therefore allows shifting the burden of the proof for the purpose of seizure and confiscation.

Article 87, paragraph 1 of the Criminal Code, provides for the seizure of objects used, or intended to be used, for the commission of a criminal offence. It also covers proceeds from crime. In this connection, it is worth noting that objects that are resulting from the commission of a criminal offence may be seized even if they are not the property of the offender ."Assets" are defined under the Law to include, further to Article 3, paragraph 1: "goods of any kind, tangible or intangible, movable or immovable, estimable or of inestimably great value, and instruments in any form evidencing rights to or interest in such good. Assets shall also denote revenue or other gain generated, directly or indirectly, from a criminal offence as well as any good into which it is transformed or which it is mingled with."

The *Law No.97/08 on Seizure and Confiscation of the Proceeds of Crime* governs the authority, requirements and procedure relating to the tracing, seizure, confiscation and subsequent management of proceeds from crime. The Law is engaged by, *inter alia*, criminal offences of organized crime. Pursuant to Article 15 of the Law, "financial investigation shall be instituted against the owner when reasonable grounds exist to suspect that he/she possesses considerable assets deriving from a criminal offence. During financial investigation evidence shall be collected on assets, lawful income and costs of living of the defendant, cooperative witness or bequeather, evidence of assets inherited by the legal successor, that is, evidence on assets and compensation transferred to the third party." Such procedure is instigated at the order of the Public Prosecutor, or the Prosecutor for Organized Crime when the case falls under his competence. The process of seizure operates in parallel with the criminal proceedings against the accused. Criminal proceedings have to be initiated before a prosecutor can order a financial investigation and the confiscation of the proceeds of crime can only take place after a criminal conviction.

Articles 21 through 27 of the Law provide for the freezing or temporary seizure of assets. Assets can be temporarily seized at the request of the Public Prosecutor, or the Prosecutor for Organized Crime when the case falls under his competence. The Directorate for the Management of Seized and Confiscated Assets is then required to act upon those orders of seizure in a very diligent way. Seizures are usually effected within 3 to 5 days and will be done even more quickly for movable assets. The Court then has five days to decide on the case. The investigating judge may order the temporary seizure of assets and then the trial judge will order the seizure once the indictment has been filed. These decisions may be appealed. As soon as the indictment enters into force, and no later

than a year following the final conclusion of criminal proceedings, the Public Prosecutor, or the Prosecutor for Organized Crime when the case falls under his competence, is to file a motion for permanent seizure of the proceeds from crime (Article 28 of the Law).

There have been more than 73 cases of confiscation, with 26 temporary seizures since the Law entered into force in 2009. More than 200 million euros worth of assets have been seized. Only one case of permanent seizure has been ordered so far, due to the length of time involved in investigating and prosecuting organized crime cases which can take many years. The Directorate for the Management of Seized and Confiscated Assets currently collects a monthly rent of 12 000 euros from renting seized facilities and maintains 90 cars. The Directorate has also organized auctions for the sale of property, which brought 8 million dinars (about 72 000 euros). It manages eight hotels, one farm and several companies (which are insolvable). Temporary seizure does not prevent legal persons from continuing to function. For example, hotels have continued to function with share-holders, while private businesses are being rented. If the owner of the seized property is acquitted after trial, the Directorate is required to return the temporarily seized property and the profit that was generated during the period of seizure within three months of the acquittal. Some seized assets are currently being used for the benefit of the community. Some houses have, for example, been transformed into kindergartens or guesthouses for children undergoing daily medical treatment at hospitals. The scope of temporary seizures undertaken since the adoption of the Law has demonstrated the great potential of this new instrument in the Serbian legal arsenal to fight organized crime.

Serbia has recently adopted legislation required in accordance with Article 12, paragraphs 1 and 2. The early results may indicate the potential of this system once it is fully integrated into criminal practice.

3.4 Article 16: Extradition

"1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 *(a)* or *(b)*, involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

[…]

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition,

seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

[…]

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

a. Summary of the main requirements

Article 16 of the UNTOC Convention allows for extradition in relation to the following offences: *(a)* offences established in accordance with articles 5, 6, 8 and 23 of the Convention; and *(b)* serious crimes, and (c) offences established in accordance with the Protocols. In each of these cases, the offences must involve an organized criminal group. The requirement that the offence be transnational is satisfied by the fact that the person who is to be extradited is located in the territory of the requested party. The extradition obligation applies for all of these offences provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State party and the requested State party, which should automatically be the case for all offences that are criminalized in accordance with the Convention

Article 16, paragraph 3, requires States parties to consider the offences described in paragraph 1 as automatically included in all extradition treaties existing between them. In addition, the parties undertake to include them in all future extradition treaties between them. States parties that require a treaty basis as a prerequisite to extradition are invited to consider the Organized Crime Convention as a legal basis for extradition if they do not conclude other treaties (art. 16, para. 5).

The issue of extradition of nationals is addressed in Article 16, paragraph 10, which reflects the principle of *aut dedere, aut judicare* (extradite or prosecute). This provision requires that where a requested State party does not extradite a person found in its territory for an offence set forth in article 16, paragraph 1, on grounds that the person is its national, that State shall, at the request of the State party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities are to take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State party. The States parties concerned are to cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions.

b. Findings and observations of the review team concerning Article 16

Serbia does not make extradition conditional on the existence of a treaty. In cases where no applicable bilateral or multilateral agreement exists, extradition is regulated by *Law No. 19/09 on Mutual Assistance in Criminal Matters*[3]. Pursuant to Article 3 of the Law, mutual assistance, which is defined

[3] Note that in Serbia, the term mutual legal assistance includes mutual legal assistance in criminal matters, mutual legal assistance in civil matters and extradition.

as including extradition, is granted on the basis of reciprocity in criminal proceedings where Serbia has no jurisdiction to prosecute and provided that such assistance is reciprocal. The principal legal basis for most extradition cases in Serbia is the Council of Europe Convention on Extradition.[4] In addition, Serbia has concluded several bilateral extradition treaties.[5] It was indicated that Serbia considers the United Nations Convention against Transnational Organized Crime as a legal basis for extradition where no bilateral agreement is applicable. The norms set out in the Convention have priority over domestic legislation.

Although the Constitution of Serbia does not prohibit the extradition of nationals, such proceedings are forbidden by Article 16, paragraph 1 of the Law on Mutual Legal Assistance. As international agreements supersede domestic legislation in the Serbian legal system, it is thus possible for Serbia to conclude bilateral extradition agreements that allow for the extradition of nationals if necessary. The principle of *aut dedere, aut judicare* (extradite or prosecute) is addressed in Article 41 of the Law, further to which "the competent public prosecutor may assume criminal prosecution of a suspect or a defendant for the criminal offence falling under the jurisdiction of the requesting State." Serbian authorities have provided examples in which they have been able to assume prosecution of Serbian nationals for crimes committed abroad after it had refused to extradite them on the basis of nationality.

The Ministry of Justice is the Serbian central authority and receives requests for extradition. Extradition requests are sometimes submitted through diplomatic channels, depending on the existing agreements. The Serbian system does provide for expedited means of communication in extradition procedures through Interpol. More information on the central authority is discussed under the section "findings and observations under Article 18 on mutual legal assistance".

Serbia is adequately implementing Article 16, paragraphs 1, 3 and 10.

3.5 Article 18: Mutual Legal Assistance

" 9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

[…]

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated

[4] The Council of Europe Convention on Extradition has 49 States parties: the 47 member States of the Council of Europe, as well as Israel and South Africa.

[5] See Annex 1 for a list of all bilateral treaties on international cooperation.

by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible."

a. Summary of the main requirements

Pursuant to Article 18, all States parties must ensure the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the four offences covered by the Convention, as well as for serious crimes that fall within the scope of the Convention and offences established by the Protocols to the Convention. In this connection, it is worth noting that Article 18 provides for a lower threshold of requirements for the transnational nature and the involvement of an organized criminal group, as mutual legal assistance shall be extended when there are reasonable grounds to suspect that both of these conditions have been satisfied. Under Article 18, paragraph 9, States parties may deny assistance on the ground that the condition of dual criminality is not satisfied. A lack of dual criminality, however, does not preclude a requested State from providing assistance to the extent it deems appropriate. Pursuant to Article 18, paragraph 13, States parties are obliged to designate a central authority that shall have the mandate and power to receive requests for mutual legal assistance and execute or transmit them to the competent authorities for execution. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of this request by the competent authority. Requests for mutual legal assistance and any related communication shall be transmitted to the designated central authorities. Each State party is to notify the Secretary-General of the United Nations of their designated authority at the time of signature or deposit.

b. Findings and observations of the review team concerning Article 18

The *Law No19/09 on Mutual Assistance in Criminal Matters* sets the applicable framework for mutual legal assistance in criminal matters. It is foreseen that this piece of legislation will be amended to implement the *acquis communautaire*, in particular the European Arrest Warrant, in view of Serbia's candidacy to the European Union. Article 7, paragraph 1 of the Law requires dual criminality for any type of mutual legal assistance request to be granted: "preconditions to the execution of requests for mutual assistance include: 1. the criminal offence, in respect of which legal assistance is requested, constitutes the offence under the legislation of the Republic of Serbia [...]". It was indicated that mutual legal assistance has never been refused on the ground that the dual criminality requirement was not met.

The central authority in charge of mutual legal assistance proceedings is the Department for Mutual Legal Assistance in Criminal Matters of the Ministry of Justice. This Department is responsible for cases of mutual legal assistance in criminal matters, mutual legal assistance in civil matters and extradition. The work of the Department for Mutual Legal Assistance in Criminal Matters is regulated by the Law on Mutual Legal Assistance. The Department, *inter alia*, provides an opinion on whether legal requirements for granting mutual legal assistance are met. The final decision on such matters lies within competent national courts. Direct communications regarding mutual legal assistance and extradition are possible with the Serbian central authority. It was indicated that the Ministry of Justice deals with about 15 000 cases of mutual legal assistance per year – approximately one third of which involve criminal cases. A list of bilateral treaties on mutual legal assistance is contained in Annex 1.

Serbia is adequately implementing Article 18, paragraphs 9 and 13.

4. Recommendations on the basis of the findings of the review process in Serbia

The review was able to note the existence of important pieces of legislation in the Serbian legal system dealing with selected provisions of the United Nations Conventions against Transnational Organized Crime.

A full review of the effective and real practice application of the provisions could not be carried out, as Serbian laws covering these issues have been recently put into force. Nonetheless, national authorities have shown a good understanding of the Convention's requirements and have placed great efforts to draw and put into force new pieces of legislation in compliance with UNTOC. There is also indication that Serbian authorities continue in the process of harmonizing national legislation (article 16 of the Constitution) and of adapting and fine-tuning recently issued legal tools (transfer of powers between prosecutors and judges).

It is recommended that Serbia pursues training and awareness-raising activities on the Convention and on the newly adopted legislation on the liability of legal persons.

International experience has proven that confiscation is a very powerful tool to counter the influence of criminal groups. Reviewing countries acknowledge the newly established Serbian system of seizure and confiscation to be very promising. It is recommended that Serbia consider strengthening the human and material resources of the Financial Investigation Unit and the Directorate for Management of Seized Assets.

Annex 1: BILATERAL AGREEMENTS

A l b a n i a
Convention on extradition of offenders between the Kingdom of Serbs, Croats and Slovenians and Albanian Republic of June 22,1926, entered into force in 1929 ("Official journal", No. 117/1929).

A l g e r i a
Agreement on legal assistance in civil and criminal matters between the Socialist Federative Republic of Yugoslavia and Democratic National Republic of Algeria of March 31,1982, entered into force in 1984 ("Official Gazette SFRY" – International contracts, No. 2/1983).

A u s t r i a
Agreement on legal assistance in criminal matters between the Socialist Federative Republic of Yugoslavia and Republic of Austria of February 01,1982, entered into force in 1984 ("Official Gazette SFRY" – International contracts, No. 2/1983).

Agreement on extradition between the Socialist Federative Republic of Yugoslavia and Republic of Austria of February 01,1982, entered into force in 1984 ("Official Gazette SFRY" – International contracts, No. 2/1983).

Agreement on mutual execution of juridical decisions in criminal matters between the Socialist Federative Republic of Yugoslavia and Republic of Austria of February 01,1982, entered into force in 1984 ("Official Gazette SFRY" – International contracts, No. 6/1983).

B e l g i u m
Convention on extradition and legal assistance in criminal matters between the Socialist Federative Republic of Yugoslavia and Kingdom of Belgium of June 04,1971, entered into force in 1972 ("Official Gazette SFRY" – Supplement No. 9/1973).

B o s n i a a n d H e r z e g o v i n a
Agreement between Serbia and Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters of February 24, 2005 ("Official Gazette of Serbia and Montenegro" – International contracts No. 6/2005). The Agreement entered into force on February 09,2006.

Agreement between Serbia and Montenegro and Bosnia and Herzegovina on mutual execution of juridical decisions in criminal matters of February 24, 2005 ("Official Gazette of Serbia and Montenegro" – International contracts No. 6/2005). The Agreement entered into force on February 13,2006.

Agreement between the Republic of Serbia and Bosnia and Herzegovina on amendments of the Agreement between Serbia and Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters, signed on February 26, 2010 in Belgrade, and from that date it is applied.

Agreement between the Republic of Serbia and Bosnia and Herzegovina on amendments of the Agreement between Serbia and Montenegro and Bosnia and Herzegovina on mutual execution of juridical decisions in criminal matters, signed on February 26, 2010 in Belgrade, and applied from that date.

B u l g a r i a
Agreement between the Federative National Republic of Yugoslavia and National Republic of Bulgaria on mutual legal assistance of March 23,1956, entered into force in 1957 ("Official Gazette FNRY- Supplement No. 1/1957).

C r o a t i a
Agreement between the Federal Republic of Yugoslavia and Republic of Croatia on legal assistance in civil and criminal matters of September 15, 1997, entered into force in 1998 ("Official Gazette of FRY",- International contracts 1/1998).

Agreement between the Republic of Serbia and Republic of Croatia on extradition (Agreement signed on June 29, 2010, since when it is applied provisionally).

C y p r u s
Agreement between the Socialist Federative Republic of Yugoslavia and Republic of Cyprus on legal assistance in civil and criminal matters of September 19, 1984, entered into force in 1987 ("Official Gazette SFRY"-International contracts No. 2/1986).

C z e c h R e p u b l i c
Agreement between the Socialist Federative Republic of Yugoslavia and Czechoslovakian Socialist Republic on regulation of legal relationships in civil, family and criminal matters of January 20,1964, entered into force in 1964 ("Official Gazette SFRY" – Supplement No. 13/1964).

Agreement between the Socialist Federative Republic of Yugoslavia and Czechoslovakian Socialist Republic on mutual surrender of convicted persons because of serving custodial sentence of May 23, 1989, entered into force in 1990 ("Official Gazette SFRY" – International contracts No. 6/1990).

D e n m a r k
Agreement between the Socialist Federative Republic of Yugoslavia and Kingdom of Denmark on mutual surrender of convicted persons because of serving custodial sentence of October 28, 1988, entered into force in 1989 ("Official Gazette SFRY" – International contracts No. 5/1989).

F r a n c e
Convention between the Socialist Federative Republic of Yugoslavia and French Republic on mutual legal assistance in criminal matters of October 29, 1969, entered into force in 1970 – ("Official Gazette SFRY"- Supplement No. 16/1971).

Convention on extradition between the Government of the Socialist Federative Republic of Yugoslavia and Government of the French Republic of September 23, 1970, entered into force in 1971 ("Official Gazette SFRY"- Supplement 43/1971).

G e r m a n y
Agreement on extradition between the Socialist Federative Republic of Yugoslavia and Federal Republic of Germany of November 26, 1970, entered into force in 1975 ("Official Gazette SFRY"- Supplement No 17/1976).

Agreement on legal assistance in criminal matters between the Socialist Federative Republic of Yugoslavia and Federal Republic of Germany of October 01, 1971, entered into force in 1975 ("Official Gazette SFRY", No. 33/1972).

G r e a t B r i t a i n
Agreement on mutual extradition of offenders between Serbia and Great Britain of December 06, 1900, entered into force in 1901 ("Serbian newspaper", No. 35/1901).

G r e e c e
Convention between the Federative National Republic of Yugoslavia and Kingdom of Greece on mutual legal relationships of June 18, 1959, entered into force in 1960 ("Official Gazette FNRY"- Supplement No. 7/1960).

H u n g a r y
Agreement between the Socialist Federative Republic of Yugoslavia and National Republic of Hungary on mutual legal communication of March 07, 1968, entered into force in 1969 ("Official Gazette SFRY" – Supplement No. 3/1968).

Agreement on amendments of the Agreement between the Socialist Federative Republic of Yugoslavia and National Republic of Hungary on mutual legal communication of March 07, 1986, entered into force in 1987 ("Official Gazette SFRY" – International contracts No. 1/1987).

I r a q
Agreement between the Socialist Federative Republic of Yugoslavia and Republic of Iraq on legal and juridical cooperation of May 23, 1986, entered into force in 1987 ("Official Gazette SFRY"- International contracts, No. 1/1987).

I t a l y
Convention between the Kingdom of Serbs, Croats and Slovenians and Italy on extradition of offenders of April 06, 1922, entered into force in 1931 ("Official journal", No. 42/1931).

Convention between the Kingdom of Serbs, Croats and Slovenians and Italy on legal and juridical protection of concerned citizens of April 06, 1922 ("Official journal", No. 42/1931). Only Art. 13-16, pursuant to Article 26 of the Convention between the FNRY and Italy on mutual legal assistance in criminal and administrative matters of December 31, 1960, remained in force.

Convention between the FNRY and Italy on mutual legal assistance in criminal and administrative matters of December 31, 1960 ("Official Gazette of FNRY"- Supplement-5/1963).

M o n t e n e g r o
Agreement between the Republic of Serbia and Montenegro on legal assistance in civil and criminal matters of May 29, 2009 ("Official Herald RS-International contracts", No. 1/10).

Agreement between the Republic of Serbia and Montenegro on extradition of May 29, 2009 ("Official Herald RS-International contracts", No. 1/10).

Agreement between the Republic of Serbia and Montenegro on mutual execution of juridical decisions in criminal matters of May 29, 2009 ("Official Herald RS-International contracts", No. 1/10).

M a c e d o n i a
Agreement between Serbia and Montenegro and Republic of Macedonia on legal assistance in civil and criminal matters, entered into force on March 09, 2005 ("Official Gazette of Serbia and Montenegro – International contracts No. 22/2004).

M o n g o l i a
Agreement between the Socialist Federative Republic of Yugoslavia and Mongolian National Republic on legal assistance in civil, family and criminal matters of June 08, 1981, entered into force in 1983 ("Official Gazette SFRY"- International contracts No 7/1982).

N e t h e r l a n d s
Agreement on extradition of offenders between Serbia and Netherlands of February 28 (March 11), 1896, entered into force in 1896 ("Serbian newspaper", No. 275/1896).

P o l a n d
Agreement between the Federative National Republic of Yugoslavia and National Republic of Poland on legal communication in civil and criminal matters of February 06, 1960, entered into force in 1963 ("Official Gazette FNRY"- Supplement No. 5/1963).

Romania
Agreement between the Federative National Republic of Yugoslavia and Rumanian National Republic on legal assistance of October 18, 1960, entered into force in 1961 ("Official Gazette FNRY"- Supplement No. 8/1961).

Russian Federation
Agreement between the Federative National Republic of Yugoslavia and Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of February 24, 1962, entered into force in 1963 ("Official Gazette FNRY" – Supplement No. 5/1963).

Slovakia
Agreement between the Socialist Federative Republic of Yugoslavia and Czechoslovakian Socialist Republic on regulation of legal relationships in civil, family and criminal matters of January 20, 1964, entered into force in 1964 ("Official Gazette SFRY" – Supplement No. 13/1964).

Agreement between the Socialist Federative Republic of Yugoslavia and Czechoslovakian Socialist Republic on mutual surrender of convicted persons because of serving custodial sentence of May 23, 1989, entered into force in 1990 ("Official Gazette SFRY" – International contracts No. 6/1990).

Spain
Agreement between the Socialist Federative Republic of Yugoslavia and Spain on legal assistance in criminal matters and extradition of July 08, 1980, entered into force in 1982 ("Official Gazette SFRY" – International contracts No. 3/1981).

Switzerland
Convention on extradition of offenders between Serbia and Switzerland of November 16/28, 1887, entered into force in 1888 ("Official journal", No. 83/1888).

Turkey
Convention on juridical legal assistance in criminal matters between the Socialist Federative Republic of Yugoslavia and Republic of Turkey of October 08, 1973, entered into force in 1975 ("Official Gazette SFRY" – Supplement No. 1/1976).

Convention on extradition between the Socialist Federative Republic of Yugoslavia and Republic of Turkey of November 17, 1973, entered into force in 1975 ("Official Gazette SFRY"- Supplement No. 47/1975).

United States of America
Agreement on extradition of offenders, concluded between the Kingdom of Serbia and United States of America of October 12/25, 1901, entered into force in 1902 ("Serbian newspaper", No. 33/1902).

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