

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY SERBIA

ARTICLE 7, PARAGRAPH 4 UNCAC

CONFLICT OF INTEREST

SERBIA (NINTH MEETING)

I Information related to preventing and managing conflicts of interest (art 7, para 4)

1. Measures which the Republic of Serbia has undertaken in order to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest

a) General legal framework

In the Republic of Serbia, prohibition of conflict of interest in execution of public office is a constitutional category. The importance of prohibiting the conflict of interest lies in the fact that it is ensuring respect for the constitutional *principles of the rule of law and separation of powers*. Public officials may not perform a state or public function in conflict with their other functions, occupation or private interests, as stated in the Article 6 of the Constitution of the Republic of Serbia¹. The Anti-Corruption Agency (hereinafter: the ACA) is authorized to decide on the conflict of interest of public officials in execution of a public office as stipulated by the Law on Anti-Corruption Agency² (hereinafter: the Law on ACA) Chapter III Conflict of Interest (Arts. 27-38). The Law on Civil Servants³ (Arts. 25-31) regulates the conflict of interest of civil servants in general, but some provisions refer to the Law on ACA in respect of the duties of the public officials.

b) Conflict of Interest: Relevant provisions of the Law on ACA

The Law on ACA was adopted in November 2008 and entered into force in January 2010. The ACA was established as an autonomous and independent state authority with numerous preventive, control and oversight competencies in several areas – resolves cases of conflict of interest of public officials in Serbia, controls the asset and income declarations of public officials, controls the funding of political activities, supervises the implementation of the National Anti-Corruption Strategy and related Action Plan, in collaboration with competent state bodies monitors international cooperation in the fight against corruption, monitors the adoption and implementation of integrity plans, introduces and implements education programs concerning corruption, cooperates with governmental and non-governmental organisations in Serbia. For conducting activities within its competences, the Agency is accountable to the National Assembly, to which it is required to file annual work report including a report on the implementation of the National Anti-Corruption Strategy and related Action plan.

According to the Law on ACA, public officials are obliged to discharge the duties of public office in a manner which shall not subordinate the public interest to private interest; to secure, foster and maintain the trust of citizens concerning their conscientious and responsible discharge of public office; to avoid creating of relations of dependency towards persons that may influence their impartiality in discharge of public office and if such relation cannot be avoided or already exists he/she shall undertake everything that is necessary to protect the public interest as well as not to use public office to acquire any benefit or advantage for himself/herself or any associated person (Art. 27).

¹ Published in the "Official Gazette of the RS", no. 98/2006

² Published in the "Official Gazette of the RS", no. 97/2008, 53/2010, 66/2011 – Constitutional Court Decision, 67/2013 – Constitutional Court Decision, 112/2013 – Authentic Interpretation and 8/2015 – Constitutional Court Decision

³ Published in the "Official Gazette of the RS", no. 79/2005, 81/2005 - correction, 83/2005 - correction, 64/2007, 67/2007 - correction, 116/2008, 104/2009, 99/2014 and 94/2017

The Law defines the meaning of certain terms for the purposes of the law, as follows:

- *Corruption* is a relationship based on abuse of office or social status or influence, in the public or private sector, with the aim of acquiring benefits for oneself or another;
- *Public official* is every person elected, appointed or nominated to the bodies of the Republic of Serbia, autonomous province, local self-government unit, bodies of public enterprises and companies, institutions and other organisations whose founder or member is the Republic of Serbia, autonomous province, local self-government unit, and any other person elected by the National Assembly (the definition of official has been brought in line with GRECO recommendation no. xvii)
- *Public office* is a function in the bodies of the Republic of Serbia, autonomous province, local self-government unit, bodies of public enterprises and companies, institutions and other organisations, whose founder or member is the Republic of Serbia, autonomous province, local self-government unit, as well as the functions of other persons elected by the National Assembly, and implies the managing, decision-making authority, and the authority to adopt general and individual acts;
- *Associated person* is a spouse or a common-law partner of the official, the lineal blood relative of the official, lateral blood relative to the second degree of kinship, adoptive parent or adoptee of the official, as well as any other legal or natural person who may, based on other grounds and circumstances, be justifiably deemed to have an interest-based relation with the official;
- *Private interest* is any kind of benefit or privilege for the official or the related person;
- *Conflict of interest* is a situation where an official has a private interest that affects, may affect or may be perceived to affect the official's actions in the discharge of office or official duty, in a manner that jeopardises the public interest;
- *Gift* is money, object, right and service performed without adequate compensation, and any other benefit given to the official or related person in connection with the performance of public function;
- *Protocol gift* is a gift to the official from a foreign state, its body or organisation, international organisation or foreign legal person, received during an official visit or on other similar occasion.

Public official may hold only one public office unless obligated by Law or other regulation to discharge several public functions. Exceptionally, public official may hold other public office with approval of the ACA. In addition, if public official is elected to public office directly by citizens he/she may, without seeking approval from the ACA, hold other public offices to which he/she is elected by citizens, except in cases of incompatibility determined by the Constitution (Art. 28).

Public official may perform a function in political party and participate in its activities if this shall not impede efficient discharge of the public office, provided that such engagement is not prohibited by Law.

He/she may not use the public resources and public meetings that he/she attends in capacity of official for promotion of any political parties, unless he/she is using public resources for personal security which is governed by relevant regulations or decision (Art. 29). On taking the office and during discharge of public office, the public official is obliged to notify in writing his superior and the ACA regarding any doubts concerning his conflict of interest or an associated person's conflict of interest. If the ACA establishes that a conflict of interest exists in this particular case, it shall accordingly notify the official and the body wherein such official holds public office and propose measures for eliminating conflict of interest (Art. 32).

Apart from the activities with research, educational, cultural, humanitarian and sports dimension, public official is prohibited to perform any other job or engagement during his/her tenure in public

office in public office that require full-time working hours or full-time employment. Mentioned activities have to be done in a manner which do not compromise efficient and impartial discharge and dignity of public office. If the ACA determines that such engagement or job compromises impartial discharge of public office or represents a conflict of interest it shall set a deadline wherein the official is required to cease such engagement or job. At the request of the public official, the ACA may give consent for performing also other engagements and/or activities (Art. 30).

Public official who was engaged in other job or activity at the moment of taking public office has to notify the ACA on the other job or activity. If the ACA finds out that such job and/or activity compromises impartial discharge of public office, i.e. represents conflict of interest, public official will be obliged to cease performing this job and/or activity. This rule does not refer to a member of managing or supervisory board of a public enterprise and public institutions from the ranks of employees (Art. 31).

During tenure of public office public official whose public office requires full time work or permanent engagement is prohibited to establish a commercial company or public service, nor commence engagement in private occupation, neither may hold management, supervisory or representation office in a private capital company, private institution or other private legal entity (Art. 33). Exceptionally, he/she may hold a post or be a member in bodies of professional or other associations, if the ACA does not determine conflict of interest. As a member of an association he/she may not receive reimbursement or gifts deriving from membership in the association, except travel and other costs (Art.34).

The public official is obliged (for duration of public office) to transfer his/her managing rights in any business company to a legal entity or natural person who is not an associated person and to submit to the ACA relevant information on the person to whom the managing rights have been transferred, as well as a proof of the transfer. An official may not give information, directives and orders to the person to whom the managing rights have been transferred, or otherwise influence exercising of rights and duties in the commercial company through such person. The official is entitled to receive information on business operations of the commercial company. Exceptionally, an official owning up to 3% share in a company is not required to transfer his/her managing rights to another legal entity or natural person (Art. 35).

If a legal entity in which an official owns more than 20% shares or stock participates in privatization, public procurement or other procedure and therefore concludes a contract with an organ of the Republic, territorial autonomy, local government, other budget spending unit and/or other legal entity founded by an organ of the Republic, territorial autonomy or local government or a legal entity wherein more than 20% of the capital is in public ownership, public official is obliged to accordingly notify the ACA within three days from the day of undertaking the first actions in the procedure, as well as on the final outcome of the procedure within three days of learning of its conclusion. The ACA keeps records of these legal entities. The records are public.

The Law on ACA also regulates the issue of movement of public officials to the private sector (so-called *pantouflage*), in order to avoid conflict of interest. Public officials are prohibited from taking up employment or establishing business cooperation with a legal person, entrepreneur or international organisation engaged in the activity relating to the office they held, during the period of two years after their office is terminated. This general prohibition may be removed with the consent of the ACA. The public official whose public office was terminated and who takes up such employment or establishes

such business cooperation without the consent of the ACA shall be fined for a misdemeanour. Misdemeanour accountability (fine) is also envisaged for the legal person, the responsible person within the legal person and the entrepreneur (Article 75). Officials elected directly by citizens (President of the Republic of Serbia, MPs, deputies and councillors in local self-government assemblies) are not covered by these obligations after the termination of their office.

The ACA decides on conflicts of interest, and in that sense, the following types of proceedings are conducted within the Sector for Resolving the Conflict of Interest:

- Procedures for providing an opinion on the implementation of the Law on ACA and other regulations governing conflict of interest;
- Procedures upon the applications of public officials for allowing them to perform another public function (accumulation of public functions), or to perform another job or activity along with the public function, in which procedures the ACA may give its approval or, if it determines the existence of conflict of interest, reject the application for giving its approval;
- Procedures for deciding on the existence of violations of the Law on ACA and other regulations governing conflict of interest, in which sanctions (measures) are imposed against public officials.

The proceedings for determining whether the Law on ACA has been violated are instituted and conducted *ex officio* or based on the filed complaint, and they may also be instituted at the request of an official or his immediate superior. *Ex officio* proceedings are instituted and conducted on the basis of data from the official records of the ACA and other competent authorities, based on the reports of other organisational units within the ACA, based on access to the decisions of the National Assembly, the President of the Republic of Serbia and the Government, based on inspection of the decisions published in the official gazettes of the Republic of Serbia, AP Vojvodina and local self-government units.

In the proceedings before the ACA, the following sanctions are imposed on officials:

- Caution (which is not made public and which obliges the official to bring his/her actions in line with the Law within a specified time limit);
- The measure of public announcement of the recommendation for dismissal;
- The measure of public announcement of the decision on the violation of the Law on ACA (which is pronounced against officials who are elected to public office directly by citizens and to officials whose office has terminated).

The provision of Article 28 para. 7 of the Law on ACA prescribes a specific sanction for officials who assume another public office without the consent of the ACA - termination of the latter office by force of law, on which, pursuant to the provision of paragraph 8 of the same Article, the decision shall be taken by the authority that had elected, appointed or nominated the official to the latter office.

Enforceable are the decisions of the ACA that have become final in the proceedings before the ACA, namely those that are not subject to appeal, against which the appeal was not filed or was denied.

After the ACA's decision imposing a measure against an official becomes final, the ACA shall communicate to the body that had elected, appointed or nominated the official to a public office an initiative for dismissal (in case the measure of public announcement of the recommendation for dismissal is pronounced), or (in case it is ascertained that the office was terminated by force of law) it shall request from the competent authority to act according to its legal obligation and adopt a decision

on termination of office by force of law for the official concerned.

The ACA is authorized to submit a request for the institution of misdemeanour proceedings against officials who have violated the Law on ACA to the competent misdemeanour court.

c) Training and Advisory Activities

With an aim to strengthen the public integrity regime as well as to raise awareness on the importance of avoiding conflict of interest, from its establishment the ACA has been organizing and implementing conflict of interest tailor made trainings for public officials. Each year the ACA organizes 10 – 25 trainings throughout Serbia for public officials in order to inform them about their legal obligations related to avoidance and reporting of conflict of interest as well as to asset and income declaration procedure. The trainings are carried out in different administrative districts in Serbia and are attended by public officials from different authority levels (republic, provincial, municipal) and different sectors (judiciary, education, local administration, public enterprises etc.). In cooperation with Human Resource Management Service of the Serbian Government the ACA has also been organizing trainings on preventing conflict of interest and control of asset and income declarations for public sector employees.

The ACA published several brochures such as the Manual for public officials⁴ (where rights and duties re asset declarations and conflict of interest are explained), Guidelines through the Case studies, Corruption dictionary, etc. All publications, analyses, manuals, etc. are published at the ACA's website. Opinions on the Law implementation are also posted at the website.

The ACA has created on-line training course on ethics and integrity in public sector by using the open-source platform for distance learning. Ethics and Integrity on-line training course consists of four successively related lessons dealing with the following topics: Values and Role of Public Sector Employees, Conflict of Interest in working environment, Importance of Code of Ethics in resolving Ethical Dilemmas and the Concept of Accountability in the Public Sector. Lessons consist of presentations, interactive exercises and video material. At the end of each lesson participant has to provide correct answers to 80% of questions so as to continue with the work and obtain a certificate at the end of the course.

With an aim to inform citizens on its competences and results as well as contribute to raising awareness on combating corruption in general, the ACA is continuously posting announcements informing general public and officials about the rights and obligations stemming from the Law on the ACA. Site visitors or followers on social networks are, inter alia, informed on seminars for officials on conflict of interest and asset and income declaration control, procedures initiated against officials due to receiving gifts and violations of the obligation to declare assets and income, proceedings conducted by the Misdemeanor Court, corruption risk analysis in draft legislation, analyses of normative framework,

⁴ The Manual contains precise and user-friendly information and recommendations related to legal obligations of public officials stemming from the Law on ACA and other regulations. It covers following topics: asset and income declaration with related deadlines; rules on holding of multiple public offices with related deadlines; rules on reporting about conflict of interest with related deadlines; rules on acceptable activities in political parties; rules on engagement in other job or activity; prohibition of establishing a business company or public service during tenure of public office; rules on membership in associations and bodies of associations; duty to transfer managing rights for duration of public office with related deadlines; prohibition to receive gifts; explanation of proceedings as a consequence of violation of Law on ACA; guidelines for filling in the asset and income declaration form, etc.

consultative meetings with CSO's, registers of gifts received by public officials, etc. In addition, representatives of the ACA are participating in numerous TV and radio shows.

At the international level, the ACA has been cooperating with the most important anti-corruption bodies such as the United Nations Office on Drugs and Crime, Council of Europe Group of States against Corruption, OECD Anti- Corruption Network, European Partners against Corruption, etc. The ACA is regularly participating in drafting of the different studies, questionnaires and other related initiatives conducted by international actors. On the occasion of the International Anti-Corruption Day, each year the ACA is organizing round table discussions on the specific topic.

2. The most important challenges in the field of prevention of conflict of interest

The most significant obstacles in obtaining information necessary for performance of everyday work consider imprecise, unclear and inconsistent provisions of the current Law on ACA and other relevant laws, which create problems in communication with other institutions.

Some of the competent bodies are failing to act upon the ACA' recommendation for dismissal of public official initiative decision, which leads to the devaluation of the legal order and the rule of law.

Other important problems are lack of possibility of direct access to databases and records kept by the other competent state bodies. As for the technical part, IT incompatibility of databases of different public institutions represent an additional impairment to effective exchange of information among them.

When it comes to ethical guidance, obvious problem is a lack of a unique Ethical Code applicable to all categories of public officials, although there are some sporadic ethical guidance which refer to particular categories of public officials (such as Ethical Code for officials in local self-governments). Besides, currently there is no legal obligation for the public officials of any category to attend training on Ethics and Integrity although the ACA has developed an advanced training program (including the e-learning program) which is currently being attended by interested civil servants from different public authority institutions.

Although the trainings on conflict of interest and asset declaration procedures are well-attended in general, it is noticeable, for example, that public officials at the local level are more willing to attend these kind of informative sessions than officials representing the institutions at the national level. In addition, the lower-ranking officials are more represented.

The significant step forward in the work of the ACA will be adoption of the new Law on ACA. New Law is expected to significantly reduce imprecision of provisions related to the ACA's competences and performance, as well as to put foundation for more efficient collaboration and exchange of data with other relevant institutions and legal entities. The new Law on ACA is also supposed to prescribe clearer rules on responsibility and accountability of public officials as well as to widen the scope of official's related persons who have obligation to declare their assets. It is expected that the new Law will envisage longer statute of limitations for misdemeanors stated in the Law on ACA, in accordance with the provisions of the UN Convention against Corruption. Improvement which it will also bring is a legal obligation for all employees in public sector (including public officials) to go through the training on ethics and integrity.