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## **COMMISSION STAFF WORKING DOCUMENT**

### **2024 Rule of Law Report Country Chapter on the rule of law situation in Serbia**

*Accompanying the document*

#### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

### **2024 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## ABSTRACT

The Serbian justice system has been undergoing substantial reform in recent years. The implementation of the constitutional reform to strengthen judicial independence is ongoing with further implementing laws to be amended. A new appeal procedure to the Constitutional Court for judicial appointments is in place, whereas a considerable number of vacancies for judges and prosecutors remains to be filled. Political pressure on the judiciary and the prosecution service remains high. A number of steps have been taken to reduce the space for political influence on the judiciary and the prosecution services, although their effects in practice still need to be observed and there is little or no follow-up on cases of undue influence. Serbia still lacks a comprehensive court management system that interlinks cases across courts and prosecutor offices. While efficiency shows a positive trend for civil, commercial, and criminal cases, there are serious challenges in the handling of administrative cases and constitutional complaints.

The adoption of the National Anti-Corruption Strategy for the period of 2023-2028 and the accompanying Action Plan are still pending. The legal framework for the fight against corruption is broadly in place, however shortcomings exist in practice. Whilst most forms of corruption are criminalised, further improvement is needed to establish a robust track record on investigations, indictments and final convictions in high-level corruption cases. The Prosecutor's Office for Organised Crime remains understaffed and there is the risk of politically motivated interference into high-level corruption investigations and prosecutions. Shortcomings exist in the verification and enforcement of asset declarations, and on political party financing. Regulation on lobbying is limited in scope and the legislation on whistleblower protection is not yet aligned with the EU *acquis*. Public procurement is a high-risk corruption area, in particular, as regards several exemptions from the Law on public procurement.

Media legislation was amended in 2023 to align it with the EU *acquis* and European standards. However, further amendments are needed for full compliance. The Regulatory Authority for Electronic Media fails to fully exercise its mandate to safeguard media pluralism and professional standards, and there are also serious concerns about its independence. The Press Council, a self-regulatory body, monitors print media's compliance with the Serbian Journalists' Code of Ethics. The measures for addressing transparency in ownership structures and in advertising from state resources, proposed in the media strategy, have yet to be fully implemented. Against the background of complaints about biased reporting, issues of editorial autonomy and pluralism of public service media need to be addressed. Journalists continue to face either frequent refusals by public bodies to disclose information of public importance or no response at all. The safety of journalists is a source of concern as is the growing pressure by abusive lawsuits.

Parliament's ability to ensure the exercise of necessary checks and balances is constrained by issues of effectiveness, autonomy, and transparency, including in terms of the oversight of the executive and the law-making process. The process of public consultation needs further strengthening. There are four vacant positions at the Constitutional Court still to be filled. There are three independent bodies protecting fundamental rights, namely the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for the Protection of Equality, but follow-up given to the recommendations is not always clear. Although several elements of the legal framework are in place, civil society organisations lack an enabling environment for their establishment, operations and financing.

## **I. JUSTICE SYSTEM**

The court system in Serbia consists of courts of general jurisdiction, namely 66 basic and 25 higher courts, 61 courts of special jurisdiction<sup>1</sup>, six courts of appeal<sup>2</sup> and a Supreme Court. The latter is the highest instance in the judicial system for both the general and the special jurisdiction courts. The Constitutional Court has a broad jurisdiction and is competent for scrutinising the constitutionality of legislation. The High Judicial Council and the High Prosecutorial Council decide on appointing, promoting, evaluating, transferring, suspending, and dismissing judges and prosecutors<sup>3</sup>. The prosecution system consists of 58 basic Public Prosecutors' offices, 25 Higher Public Prosecutors' offices and four appellate public prosecutors' offices mirroring the jurisdiction of the respective courts. The Supreme Public Prosecution Office (SPPO) of Serbia is the highest public prosecution instance in the country, headed by the Supreme Public Prosecutor, who can issue mandatory instructions both of a general nature and in individual cases<sup>4</sup>. The independence of the judiciary and the autonomy of the prosecution service are enshrined in the Constitution<sup>5</sup>. Serbia is yet to conclude working arrangements for cooperation with the European Public Prosecutor's Office (EPPO)<sup>6</sup>. The Serbian Bar Association is the framework organisation of Serbian attorneys, and its independence is set out in the Constitution.

### **Independence**

**The level of perceived judicial independence in Serbia is low among both the general public and companies.** Overall, 36% of the general population and 34% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2024<sup>7</sup>.

**The implementation of a constitutional reform to strengthen judicial independence is ongoing with further implementing laws to be amended.** The Constitution was amended in 2022 to strengthen judicial independence, notably by transferring the competence to appoint judges and prosecutors from the National Assembly to the High Judicial Council and the High Prosecutorial Council. Five laws<sup>8</sup> were amended in February 2023 to implement the

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<sup>1</sup> These are 16 commercial courts, 44 misdemeanour courts, and the Administrative Court. As regard the latter, the next-highest instance is the Supreme Court.

<sup>2</sup> Four Appellate Courts of general jurisdiction, the Commercial Appellate Court and the Misdemeanour Appellate Court.

<sup>3</sup> Constitution of Serbia, Art. 150 (2) an Art. 162 92); Law on the High Judicial Council Art. 17; Law on the High Prosecutorial Council, Art. 17.

<sup>4</sup> The Supreme Public Prosecutor is elected by the National Assembly with three-fifths majority upon proposal of the High Prosecutorial Council. He/she can issue mandatory general instructions for the conduct of all chief public prosecutors and individual mandatory instructions for acting in a particular case. Constitution of Serbia, Art. 157 and Art. 158.

<sup>5</sup> Constitution of Serbia, Art. 4, Art. 142 and Art. 155.

<sup>6</sup> Serbia has expressed the intention to conclude a working agreement with EPPO and works currently on overcoming remaining technical and legal issues. Input from Serbia for the 2024 Rule of Law Report, p. 127 and written contribution from Serbia received in the context of the country visit to Serbia, p. 119.

<sup>7</sup> Eurobarometer survey FL540, conducted among the general public between 14 February and 27 February 2024, and Eurobarometer survey FL541, conducted among companies between 14 February and 5 March 2024. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>8</sup> Law on the High Judicial Council, Law on the High Prosecutorial Council, Law on the Public Prosecutor's Office, Law on Judges and Law on the Organisation of Courts.

constitutional changes. These were overall positively assessed by the Venice Commission, which also recognised the transparency and inclusiveness of the process<sup>9</sup>. As part of this reform process, the High Judicial Council<sup>10</sup> and the High Prosecutorial Council<sup>11</sup> were established in May 2023 in their new composition<sup>12</sup>. Both Councils have taken measures to improve the transparency of their work, including by publishing the agenda and minutes of their meetings on their websites and by live-streaming the meetings of the High Prosecutorial Council<sup>13</sup>. Two further implementing laws remain to be amended, namely the Law on Seats and Territorial Jurisdiction of Courts and the Law on the Judicial Academy<sup>14</sup>. The Government is currently reconsidering the need to amend the Law on Seats and Territorial Jurisdiction of Courts<sup>15</sup>, and intends to consult the European Commission and the Venice Commission on the draft Law on the Judicial Academy<sup>16</sup>. Furthermore, the details of the implementing laws are to be specified through the adoption of 37 by-laws by May 2024. To date, sixteen by-laws have been adopted by the High Judicial Council and nineteen by the High Prosecutorial Council<sup>17</sup>. However, no steps were taken on reforms concerning the Constitutional Court, in particular with regard to the introduction of a qualified majority with an anti-deadlock mechanism for the election of some of the judges by Parliament, as underlined by the Venice Commission<sup>18</sup>.

**A new appeal procedure to the Constitutional Court for judicial appointments is in place, whereas a considerable number of vacancies for judges and prosecutors remains to be filled.** The 2022 constitutional amendments introduced a new appeal procedure for

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<sup>9</sup> Venice Commission opinion (CDL-PI(2023)005), p. 3.

<sup>10</sup> There are 11 members of the High Judicial Council, namely six judges elected by their peers, four prominent lawyers elected by the National Assembly with qualified majority and the President of the Supreme Court as “*ex-officio*” member. If the National Assembly were not to appoint the four prominent lawyers within a legal deadline, a five-member Commission (composed of Parliament Speaker, President of the Constitutional Court, President of the Supreme Court, Supreme Public Prosecutor and the Ombudsman) elects these with a majority vote as anti-deadlock mechanism.

<sup>11</sup> There are 11 members of the High Prosecutorial Council, which include five public prosecutors elected by their peers, four prominent lawyers elected by the National Assembly with qualified majority, as well as the Supreme Public Prosecutor and the Minister of Justice as “*ex-officio*” members. If the National Assembly were not to appoint the four prominent lawyers within a legal deadline, a five-member Commission (composed of Parliament Speaker, President of the Constitutional Court, President of the Supreme Court, Supreme Public Prosecutor and the Ombudsman) elects these with a majority vote as anti-deadlock mechanism.

<sup>12</sup> The transitional provisions of the law on the High Judicial Council and the law on the Prosecutorial Council foresaw that the four lay members of each Council needed to be re-elected (Law on the High Judicial Council, Art. 63; Law on the High Prosecutorial Council, Art. 63). The election procedure started on 19 April 2023 and only one lay member received the required 2/3 majority Parliament. Therefore, the remaining seven lay members (three for the HJC and four for the HPC) were selected by the five-member anti-deadlock commission on 8 May 2023. Before the voting, the five-member commission held public interviews with the candidates. Candidates were shortlisted by the Parliamentary Committee on Judiciary following a public competition.

<sup>13</sup> Input from Serbia for the 2024 Rule of Law Report, pp. 101 ff. and written contribution from Serbia received in the context of the country visit to Serbia, pp. 103 ff.

<sup>14</sup> Revised action plan for Chapter 23 adopted in June 2020, action 1.1.3.

<sup>15</sup> Written contribution from Serbia received in the context of the country visit to Serbia, p. 63.

<sup>16</sup> The plan of the Ministry of Justice is to present the amendments to the law on the Judicial Academy at the October 2024 plenary of the Venice Commission. Input from Serbia for the 2024 Rule of Law Report, p. 97.

<sup>17</sup> The two outstanding by-laws are the Courts Rulebook on Procedure and the Rulebook on Administration in Public Prosecution Office. Written contribution received from Serbia. See for an original overview of all by-laws input from Serbia for the 2024 Rule of Law Report, pp. 97 ff.

<sup>18</sup> Venice Commission, CDL-AD (2021)032, para. 96.

judges and prosecutors to the Constitutional Court against decisions of the High Judicial Council and the High Prosecutorial Council, which was used for the first time in the context of the appointment procedures for judges and prosecutors in 2023<sup>19</sup>. The High Prosecutorial Council elected 46 prosecutors in June 2023 and 17 appeals were filed to the Constitutional Court disputing the correct application of the legal framework and lack of sufficient reasoning for the decision. The Constitutional Court dismissed all of those appeals in January 2024 through inadmissibility decisions. In January 2024, the High Prosecutorial Council elected 89 prosecutors, 78 of which have already taken office. For the remaining 11 elected prosecutors 14 appeals were submitted to the Constitutional Court, which are not yet decided. Currently, there are 210 vacancies out of 894 public prosecutors' positions<sup>20</sup>. The High Judicial Council appointed 276 judges between 10 May and 31 December 2023 and 25 appeals were submitted against the appointments to the Constitutional Court. The Constitutional Court rejected all these appeals through inadmissibility decisions.<sup>21</sup> In 2024 the High Judicial Council appointed so far 63 judges<sup>22</sup>. Currently, there are 384 vacancies out of 3 102 judges' positions<sup>23</sup>. Both the High Judicial Council and the High Prosecutorial Council have already opened new competitions in 2024<sup>24</sup>.

**Political pressure on the judiciary and the prosecution services remains high, with little or no follow-up by the High Judicial and Prosecutorial Councils, the Government or Parliament.** Government officials, including at the highest level, and members of Parliament, continue to make undue public comments on ongoing investigations and court proceedings, including as regards the work of individual prosecutors and judges. While such comments are in contradiction with the code of conduct of members of Government and Parliament, neither of those institutions have so far acted in response<sup>25</sup>. In addition, these incidents raise also questions of leaking of information by institutions involved in criminal proceedings, since some of these undue public comments contained information from ongoing cases which was not in the public domain. In particular, the unclear separation of competences for criminal investigations between the police and prosecution on the one hand, and the Security Intelligence Agency (BIA) on the other hand, poses additional confidentiality risks<sup>26</sup>. In terms of safeguards, the current rules of procedure of the High Judicial Council and the High Prosecutorial Council, in principle, lay the foundation for a

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<sup>19</sup> Constitution of Serbia, Articles 153 and 165. Stakeholders showed mixed reactions during the country visit with regard to this new appeal procedure. While the Supreme Public Prosecutor and the High Prosecutorial Council underlined that in their view the new appeal mechanism would lead to delays in the election process of prosecutors, there is also a difference of opinion between the Constitutional Court and stakeholders regarding the legality of inadmissibility decisions of the Small Council of the Constitutional Court in this subject matter. Written contributions from the Constitutional Court and the Association of Prosecutors in the context of the country visit to Serbia and Information in the context of the country visit from the High Prosecutorial Council and the Supreme Public Prosecutor.

<sup>20</sup> Written contribution from High Prosecutorial Council in the context of the country visit to Serbia.

<sup>21</sup> Written contribution received from Serbia.

<sup>22</sup> Written contribution from the High Judicial Council in the context of the country visit to Serbia.

<sup>23</sup> Written contribution from Serbia in the context of the country visit to Serbia, p. 89.

<sup>24</sup> The High Prosecutorial Council has currently ongoing competitions for 166 public prosecutors and 37 chief prosecutors. The High Judicial Council has opened four competitions for 199 judges in 2024. Written contribution from Serbia in the context of the country visit to Serbia, pp. 89 f. and webpage of the High Judicial Council.

<sup>25</sup> The competent Parliamentary Committee on Administrative, Budgetary, Mandate and Immunity explained that it developed no activities in this regard as it can only act upon complaints, which it has not received. Written contribution from Serbia in the context of the country visit to Serbia, p. 68.

<sup>26</sup> This concern was also stated by stakeholders in the context of the country visit to Serbia.

more effective reaction and protection mechanism for judges and prosecutors in cases of undue influence. However, despite these steps taken, it is not yet possible to observe in practice a significant reduction of undue influence on judges and prosecutors and a more proactive role needs to be exercised by both Councils. In 2023, seven new requests for protection from undue influence on the work of judges were submitted to the High Judicial Council. Proceedings were suspended in two cases, and so far, no undue influence has been established in the remaining five cases. In 2023, the High Prosecutorial Council received 33 requests on alleged undue influence and all 33 cases were deemed unfounded. In 2024, four requests of undue influence were submitted to the High Prosecutorial Council, all of which were considered unfounded<sup>27</sup>.

**The laws on the Public Prosecution Office and the High Prosecutorial Council were amended with the aim to strengthen safeguards for prosecutorial autonomy.** In line with the constitutional amendments, the revised laws on Public Prosecution Office and the High Prosecutorial Council contain new safeguards to strengthen prosecutorial autonomy. Prosecutors can file complaints against mandatory instructions to the High Prosecutorial Council in case they consider the instructions as “illegal” or “unfounded”<sup>28</sup>. In 2023, five objections to instructions were made and six in 2024, out of which four were confirmed and the related mandatory instructions annulled, and seven were rejected<sup>29</sup>.

## Quality

**Serbia still lacks a uniform and centralised court management system that interlinks cases across courts and prosecutor offices.** Currently not all prosecution offices and courts are covered by the same case management system and the different systems are not interoperable. The case management system for prison administration has been operational since December 2021 and the new case management system for the prosecution offices is expected to be finalised in by the end of 2024. The implementation of the new case management system for courts is currently stalled<sup>30</sup>. While the implementation of the ICT Strategy is ongoing, the concrete state of play is difficult to ascertain<sup>31</sup>. In terms of online accessibility of information for the general public, the Constitutional Court is taking steps to

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<sup>27</sup> Written contribution from Serbia in the context of country visit to Serbia pp. 66 and written contribution from High Prosecutorial Council in the context of the country visit to Serbia.

<sup>28</sup> According to Article 16 of the law on the Public Prosecutor’s Office an immediately higher chief public prosecutor may issue mandatory instructions to a lower chief public prosecutor for proceeding in a specific case if there is doubt about the effectiveness or legality of their actions, or that of the directly lower public prosecutor. Article 17 provides for the legal remedy to the High Prosecutorial Council.

<sup>29</sup> Written contribution from High Prosecutorial Council in the context of the country visit to Serbia.

<sup>30</sup> Input from Serbia for the 2024 Rule of Law Report, p. 112. The project is facing implementation difficulties due to a different interpretation on the scope of the contractual obligations for the development of the software between the contractor and the Ministry of Justice.

<sup>31</sup> Serbia has not yet shared an implementation report on the strategy with the Commission. The written input contained no reference to specific implementation measures or timelines and only general information on various processes, for example the delivery of computers and ongoing public procurements for the purchase of more computers and network protection services, or the adoption of instructions and procedures. See input from Serbia for the 2024 Rule of Law Report, pp. 110 ff. and written contribution from Serbia in the context of the country visit to Serbia, pp. 100 ff.

improve visibility and transparency of its work and to enable easier access to the court practice database of both domestic and European Court of Human Rights judgments<sup>32</sup>.

**While the implementation of the Strategy on Human Resources in the Judiciary 2022-2026 is ongoing, the low attractiveness of judicial careers poses a challenge.** The implementation of the Strategy on Human Resources in the Judiciary 2022-2026 is continuing. However, the activities undertaken so far have focused on problem analysis while concrete follow up activities still need to be taken<sup>33</sup>. Stakeholders underlined the need to make judicial careers more attractive including an increase of the current salaries<sup>34</sup>. Initial and continuous judicial training is delivered by the Judicial Training Academy, which applies appropriate quality assurance mechanisms to the whole training cycle. The Academy's capacity and internal expertise for delivering sufficient initial and continuous training presents potential for further strengthening, in particular for training on EU law<sup>35</sup>.

## Efficiency

**Efficiency shows a positive trend for civil, commercial, and criminal cases, while there are serious challenges in the handling of administrative cases and constitutional complaints.** The clearance rate for first and second instance civil and commercial cases between 2021 and 2022, has improved significantly from 74% to 178% for first instance cases, while the disposition time in both instances decreased<sup>36</sup>. For criminal cases the clearance rate and the disposition time improved for both first instance and second instance cases between 2021 and 2022<sup>37</sup>. A negative trend was however observed on administrative cases. Due to a stark increase in the number of incoming first instance administrative cases, their clearance rate fell from 56% in 2021 to 39% in 2022 and the disposition time increased

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<sup>32</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 28.

<sup>33</sup> An implementation report of the Strategy for Human resources in the judiciary 2022-2026 has been prepared.. According to the Ministry of Justice the next follow-up activity is the drafting of a separate law on position of court and prosecutorial staff after the establishment of the respective Working Group. Written contribution from Serbia in the context of the country visit to Serbia, p. 102.

<sup>34</sup> Information received in the context of the country visit to Serbia from the High Judicial Council, the High Prosecutorial Council and the Associations for Judges and Prosecutors. In the last years the salaries of judges and prosecutors were only raised once as part of a general increase of 10% for the whole public sector as of January 2024 with a view to balance the high inflation rate. Written contribution from Serbia in the context of the country visit to Serbia, p. 92.

<sup>35</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 26.

<sup>36</sup> For second instance cases the clearance rate increased from 74% in 2021 to 94% in 2022. The disposition time decreased for first instance civil and commercial cases from 403 days in 2021 to 299 days in 2022 and for second instance cases from 348 to 326 days. CEPEJ (2023), Dashboard Western Balkans – Data collection 2022.

<sup>37</sup> The clearance rate for first instance criminal cases improved from 99 % in 2021 to 108% in 2022 and for second instance cases by 0,6% to 100 % in 2022. The disposition time decreased for first instance cases from 145 days in 2021 to 105 days in 2022 and for second instance cases from 34 to 33 days. CEPEJ (2023), Dashboard Western Balkans – Data collection 2022.

from 1 089 days in 2021 to 1 528 in 2022<sup>38</sup>. Furthermore, a high number of cases (41 279) are pending before the Constitutional Court, 99.38% of which are constitutional complaints<sup>39</sup>.

## **II. ANTI-CORRUPTION FRAMEWORK**

The Agency for the Prevention of Corruption is a dedicated, autonomous corruption prevention body with competences in areas such as public officials' conflicts of interest, asset declarations, political party and campaign finance and oversight of the implementation of the National Anti-Corruption Strategy and the corresponding Action Plan<sup>40</sup>. Since 2020, the Agency can also initiate the adoption or amendment of legislation and provide opinions on the assessment of the risk of corruption in draft legislation. The Agency is accountable to the National Assembly, to which it reports annually on its operations. The Anti-Corruption Council acts as a policy advisory body to the Government with monitoring and policy proposal functions. The Government is subject to financial and economic control of the use of public funds by the autonomous State Audit Institution, which is accountable to the National Assembly. For the repression of corruption, Serbia has specialised entities in place, including the Public Prosecutor's Office for Organised Crime which is the main prosecutorial body in charge of high-level corruption cases. In addition, there are specialised police units<sup>41</sup>, regional prosecution offices<sup>42</sup> and specialised courts<sup>43</sup>.

**The perception among experts and business executives is that the level of corruption in the public sector is high.** In the 2023 Corruption Perception Index by Transparency International, Serbia scores 36/100 and ranks 104<sup>th</sup> globally<sup>44</sup>. This perception has remained relatively stable over the past five years<sup>45</sup>.

**The adoption of the National Anti-Corruption Strategy for the period of 2023-2028 and the accompanying Action Plan are still pending.** Serbia has consulted the Commission on

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<sup>38</sup> The incoming first instance administration cases increased by 64% in 2022 compared to 2021, and could not be offset by the 13% increase in resolved cases; as a result, the clearance rate and disposition time deteriorated. The pending first instance administration cases increased by 59 % from 2021 to 2022 and reached 1.52 cases per 100 000 inhabitants. CEPEJ (2023), Dashboard Western Balkans – Data collection 2022.

<sup>39</sup> Written contribution from the Constitutional Court in the context of the country visit to Serbia.

<sup>40</sup> Law on prevention of corruption.

<sup>41</sup> In the Criminal Police Directorate, the Anti-Corruption Department consists of nine sections: the Department of Coordination and Planning and the Anti- Corruption sections in Belgrade, Novi Sad, Niš, Kraljevo, Subotica, Zajecar, Jagodina and Uzice.

<sup>42</sup> Four Specialised Anti-Corruption Departments exist within the Higher Prosecution Offices in Belgrade, Novi Sad, Niš and Kraljevo.

<sup>43</sup> Specialised Anti-Corruption Departments exist in the Higher Courts in Belgrade, Novi Sad, Niš and Kraljevo, which oversee first-instance trials. Appeals are processed by the ordinary sections of the corresponding appellate courts. In Belgrade, the Special Department for Organised Crime of the Higher Court and the Special Department for Organised Crime of the Appellate Court have been established to investigate corruption with a link to organised crime.

<sup>44</sup> Transparency International (2024), Corruption Perceptions Index 2023. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>45</sup> In 2018, the score was 39, while in 2023 the score decreased to 36. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.



a new strategy 2023-2028<sup>46</sup>. Several long-standing recommendations of the European Commission on issues such as, improving the track record of confiscating assets in corruption cases, amending legislation to improve the capacity of the Agency for the Prevention of Corruption, protecting whistleblowers, and investigating high-level corruption cases, have been included in a new draft Strategy<sup>47</sup>. The Agency for the Prevention of Corruption is vested with the powers to oversee the implementation of the strategy and action plan<sup>48</sup>, submitting progress reports to the National Assembly, including recommendations<sup>49</sup>.

**Most forms of corruption are criminalised.** Serbia has a broad legal and regulatory framework in place covering most corruption crimes of the UN Convention against Corruption (UNCAC), to which Serbia is a party. Illicit enrichment is not criminalised. The Criminal Code was amended extensively in 2016 to increase alignment with relevant international conventions on corruption<sup>50</sup> and to include crimes against the economy and crimes against official duty<sup>51</sup>. Serbia is not a signatory party to the OECD Anti-Bribery Convention.

**Serbia has established specialised departments for suppressing corruption in the public prosecutor's offices, courts, and the police.** As regards the repression of corruption, the Law on the organisation and jurisdiction of state authorities in suppression of organised crime, terrorism and corruption<sup>52</sup> is in force. It notably introduced specialisation in the police, public prosecutor's offices and the courts for these types of crimes, as well as modern prosecution and investigation tools. This includes the establishment of task forces, liaison

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<sup>46</sup> The last strategy that Serbia had in place was the National Anti-Corruption Strategy for the period 2013-2018; Revised Action plan for the implementation of the National Anti-Corruption Strategy for the period 2013-2018. Anti-corruption benchmarks are included, and implementation is monitored by the Action Plan under Chapter 23 of the EU Accession process.

<sup>47</sup> Commission expert assessment of the National Anti-Corruption Strategy (2023-2028) and Action Plan (2023-2024).

<sup>48</sup> It is expected that the draft Action Plan will enter public consultations immediately after the adoption of the National Strategy. The deadline for the Action Plan's adoption is 90 days following the adoption of the National Strategy. Preparation of the second action plan covering the period 2024-2028 is expected to commence following the adoption of the National Strategy and the first Action Plan (2023-2024).

<sup>49</sup> According to the Law on Prevention of Corruption, the Agency can issue recommendations for actions as well as for improvements in the implementation and, when necessary, initiate changes and additions to the Strategy. For the purpose of coordination of monitoring the implementation of the National Strategy, a Working Body is established by Government decision, at the latest 30 days after the adoption of the Strategy, according to input from Serbia for the 2024 Rule of Law Report. The annual reports of the Agency for the Prevention of Corruption are published on its website.

<sup>50</sup> With these changes, the Criminal Code was aligned to a great extent with inter alia the Council of Europe Criminal Law Convention on Corruption, the UN Convention against corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

<sup>51</sup> The list of criminal offences against official duty includes: abuse of office (Article 359), public prosecutor or his deputy (Article 360), dereliction of duty (Article 361), unlawful collection and payment (Article 362), spending funds from the budget for a purpose other than designated (Article 362a), fraud in service (Article 363), embezzlement (Article 364), unauthorised use (Article 365), trading in influence (Article 366), soliciting and accepting bribes (Article 367) and bribery (Article 368), and revealing of official secret (Article 369). In addition to those listed here, several other criminal offences related to corruption are included in the criminal code, notably: abuse of position by a responsible person (Article 227), abuse concerning public procurement (Article 228) and abuse in privatisation procedure (Article 228a), which all belong to the group of criminal offences against economic interests.

<sup>52</sup> Law on the organisation and jurisdiction of state authorities in suppression of organised crime, terrorism and corruption.

officers and financial forensic specialists<sup>53</sup>. The lack of specific provisions in the law regulating the role and mandate of the Prosecutor's Office for Organised Crime as the overall coordinator for the special departments of the higher public prosecutors' offices hinders their effectiveness in practice<sup>54</sup>. The four specialised departments for combating corruption should each have one financial forensic expert, yet these positions remain vacant<sup>55</sup>.

**Further improvements are needed to establish a robust track record on investigations, indictments, and final convictions in high-level corruption cases, including the seizure and confiscation of criminal assets.** In 2023, the number of final convictions in high-level corruption cases increased to 30 from 21 in the previous year. The Prosecutor's Office for Organised Crime ordered investigations against 39 individuals (34 in 2022) and 59 indictments were issued. However, only ten indictments were confirmed by the courts. For the first time since 2019, one case before the Special Department for Organised Crime of the Higher Court resulted in the final confiscation of illegally acquired assets. Regarding the confiscation of property gain on the basis of the criminal code, there were nine such cases. Final convictions in high-profile<sup>56</sup> corruption cases remain rare<sup>57</sup>. Proactive criminal investigations, including pre-seizure planning and a systematic tracking of money flows, aimed not only at asset recovery, but also at gathering circumstantial evidence of inexplicable wealth, are still not common practice<sup>58</sup>.

**The Prosecutor's Office for Organised Crime, which has jurisdiction over high-level corruption cases, remains understaffed.** Since May 2021, two financial forensic experts<sup>59</sup> have been employed by the Prosecutor's Office for Organised Crime. However, it still needs to recruit six prosecutors to fill all 25 posts<sup>60</sup>. A key issue in this regard relates to the lack of adequate working premises to accommodate new staff. In relation to investigation capacities, the Ministry of Interior's Service for Combating Organised Crime and Anti-Corruption Section continued to investigate high-level corruption on the orders of the Prosecutor's Office

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<sup>53</sup> The Law on organisation and competence of state authorities in suppression of organised crime, terrorism and corruption establishes special departments for suppressing corruption in the public prosecutor's offices, courts and police. The special departments represent both a regional and a specialised approach for corruption criminal offenses. In addition, the law includes the use of specific task forces for investigating corruption related offences, comprised of police officers and representatives of other relevant government authorities; the appointment of liaison officers for contact with the prosecutor's office in different authorities and the police in every authority which comes across facts connected to financial crimes and introduced financial forensic specialists within Public Prosecutor's offices.

<sup>54</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 36.

<sup>55</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 36.

<sup>56</sup> In 2023, investigations were initiated against the president and judge of the Higher Court in Zajecar and a judge of the Misdemeanor Court in Loznica, and indictments were issued against Police Assistant Director, the Chief of Police administration in Novi Sad, the Head of Traffic in the police administration of Prijepolje, the Head of the Anti-corruption Section in Uzice, Criminal police administration and two police officers.

<sup>57</sup> Similarly, the Freedom House (2024), Freedom in the World Report is highlighting stakeholders' views on the common practice of political cronyism and close links between the Government and organised crime.

<sup>58</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 53.

<sup>59</sup> They are engaged in all phases of criminal proceedings, but also in proceedings for the extended confiscation of proceeds from crime.

<sup>60</sup> The total number of posts is insufficient considering that Serbia has a prosecution-led pre-investigation and investigation system. Moreover, the current premises of the Public Prosecutor's Office is not sufficient to accommodate new staff.

for Organised Crime<sup>61</sup>. Greater transparency of the prosecution service and courts, and enhanced oversight by the Public Prosecutor's Office over the reasoning provided for the dismissal of criminal corruption charges or lengthy corruption investigations would contribute to strengthening public trust and fostering accountability among law enforcement officials<sup>62</sup>.

**There is risk of politically motivated interference into high-level corruption investigations and prosecutions although new safeguards have been introduced.** In this context, civil society organisations highlighted in particular reluctance on the side of the prosecution and the police to pursue investigations against suspects of corruption who are close to political and economic power as a concern<sup>63</sup>. There has been a case, where investigating prosecutors of the Higher Public Prosecution Office were removed from a corruption and money-laundering case concerning a state-owned enterprise and transferred to the General Crime Department in Belgrade, with reportedly insufficient justification<sup>64</sup>. Their removal from the case led to widespread criticism<sup>65</sup>. The disciplinary charges filed by the two deputy prosecutors against their superiors' decision for transfer were dismissed by the disciplinary prosecutor of the High Prosecutorial Council, maintaining that the transfers were in accordance with the law. However, the Commissioner for the independence of prosecutors noted that the transfers should not have taken place while proceedings were ongoing<sup>66</sup>. New safeguards against such transfers and allocations of cases of prosecutors were introduced with the amendments of the law on the Public Prosecutor's Office, which now provides for a proper written justification and a right of appeal to the High Prosecutorial Council<sup>67</sup>.

**The verification and enforcement of asset declarations presents weaknesses.** Public officials including Members of Parliament are subject to asset disclosure rules<sup>68</sup>. Elected officials are obliged, within 30 days of taking up office, to file an asset declaration that should reflect their respective situation on election day<sup>69</sup>. The definition of public official set out in the Law on prevention of corruption, covers most officials with top executive

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<sup>61</sup> Serbia has committed to participate in the second phase of the multi-country programme aimed at "Supporting a More Effective Administration of Justice in Corruption and Organised Crime Cases in the Western Balkans through Trial Monitoring", which is implemented by the OSCE.

<sup>62</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 36.

<sup>63</sup> Information received in the context of the country visit to Serbia.

<sup>64</sup> According to media reporting, the deputy prosecutors were replaced by the anti-corruption department of the Higher Public Prosecutor's Office "without explanation". European Western Balkans (2023), The corruption case in Serbian state company EPS – What we know so far?. N1 (2023), EC: We follow developments in Serbian High Public Prosecutor's Office.

<sup>65</sup> Euronews Serbia (02.03.2023) Protests in support of the prosecutors. 2023 Communication on EU Enlargement policy, Serbia Report, p. 24.

<sup>66</sup> The deputy prosecutors had been working on a corruption case and a money laundering case related to the state-owned Electric Power Company of Serbia. The transfer was made in the middle of the investigation and after the arrest of suspects. Even if the Commissioner for Independence assessed that the transfer was conducted in accordance with the law, it noted that the transfer should not have taken place during the proceedings of such a high-profile case. The new judicial legislation implementing the 2022 constitutional amendments has now introduced safeguards in relation to mandatory instructions and the reallocation of work within the Public Prosecutor's Office.

<sup>67</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 24.

<sup>68</sup> The duty for public officials to file an asset declaration is prescribed in Article 68 of the Law on prevention of corruption.

<sup>69</sup> Article 68 Law on prevention of corruption.

functions<sup>70</sup>. However, certain individuals with potentially high influence, such as advisors to the president, prime-minister and ministers and heads of cabinets, are not considered public officials<sup>71</sup>. The Agency for the Prevention of Corruption is responsible for the monitoring and verification of public officials' asset declarations. Its role was strengthened by the amendments to the Law on prevention of corruption<sup>72</sup>, but sanctions for non-compliance are uncommon<sup>73</sup>. The human and technical resources of the Agency are too limited to carry out its corruption prevention tasks in a comprehensive manner<sup>74</sup>, considering that of the approximately 30 000 officials on the national register, as per the annual verification plan for 2023, the Agency verifies the asset declarations of around 270 public officials. This represents less than 1% of all asset declarations in the public sector and asset declarations of high-level public officials are not prioritised<sup>75</sup>.

**The Anti-Corruption Council, in its advisory role to the Government, remained active in exposing and analysing cases of systemic corruption, however there is very limited follow up on its findings.** The Government does not systematically consult the Council on draft legislation, and it does not systematically follow up on the reports and recommendations produced by the Council. The Council is not invited to attend Government sessions to present reports, conclusions and recommendations<sup>76</sup>. The Council lacks the financial and human resources to carry out its work<sup>77</sup>. No steps were taken in recent years to additionally strengthen the Anti-Corruption Council's budgetary resources, nor to address the significant number of vacant positions<sup>78</sup>. The Council's reliance on open-source data is a limiting factor to its work<sup>79</sup>.

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<sup>70</sup> Article 2 of the Law on prevention of corruption.

<sup>71</sup> GRECO (2022), Fifth Evaluation Round, Serbia Evaluation Report, p. 4.

<sup>72</sup> The law enhances the Agency's independence, financial and human resources, and competences. In particular, the Government cannot suspend, postpone or limit the funds intended for its operation without the consent of the director. It can, inter alia, provide opinions on the implementation of the Law on prevention of corruption of its own motion, file criminal charges, request the initiation of misdemeanour or disciplinary proceedings, to initiate proceedings based on anonymous complaints and ex officio, and assess draft laws for risks of corruption. See Law on prevention of corruption, art. 6.

<sup>73</sup> Freedom House (2024), Freedom in the World Report.

<sup>74</sup> Similarly, GRECO (2022), Fifth Evaluation Round, Serbia Evaluation Report, recommendation xiii, p. 26, para. 97, recommends that asset and income declarations of persons with top executive functions be subject to regular substantive control and that the Agency for the Prevention of Corruption be provided with adequate resources for that purpose.

<sup>75</sup> Selection of cases for asset declaration verification is in part done randomly and in part established by an annual verification plan. In the event a criminal offense is detected, Agency submits a report to the competent Public Prosecutor's Office.

<sup>76</sup> In 2023, the Council prepared three reports and did not receive any feedback that the reports have been considered, and in particular whether the suggestions for overcoming the problems have been accepted or rejected.

<sup>77</sup> Information received from the stakeholders in the framework of the country visit to Serbia.

<sup>78</sup> Presently the Council has six members out of 11. The Council proposed the appointment of new members to the Government in June 2023, in accordance with the Rules of Procedure, but they are yet to be appointed (Information provided by the Council during the Serbia country visit). In July 2017, the Government appointed two new members without consulting the Council as provided for in the Rules of Procedure (see 2018 Communication on EU Enlargement policy, Serbia Report, p. 21).

<sup>79</sup> GRECO (2022), Fifth Evaluation Round, Serbia Evaluation Report, point 46, p.14: "The preparation of the Anti-Corruption Council's reports has been slowed down by difficult and slow access to the necessary information and documents in the authorities' possession."

**Lobbying is regulated by law however shortcomings exist considering the limited scope of that law.** Lobbying is regulated in a dedicated Law on lobbying since 2019<sup>80</sup>. The Law regulates, among others, the conditions and manner of lobbying, lobbying rules, registry and records related to lobbying. It requires interested representatives to register respectively in the Register of Lobbyists and the Register of Legal Entities Conducting Lobbying<sup>81</sup> of which the Agency for the Prevention of Corruption plays a role in the process of registration and supervision of lobbyists and lobbying entities. While it is positive that lobbying is regulated by law, the scope of the law is limited in that only contacts made formally in writing to persons with top executive functions is considered lobbying<sup>82</sup>. Moreover, neither the records kept by the state authorities on lobbying contacts, nor the annual report of lobbyists<sup>83</sup> submitted to the Agency for the Prevention of Corruption are made public<sup>84</sup>.

**There are weaknesses in the enforcement and oversight of political party and campaign financing.** Campaign finance is primarily regulated by the Law on financing political activities<sup>85</sup> and the Law on prevention of corruption<sup>86</sup>. The 2022 amendments to the legal framework for political party and campaign finance addressed some previous ODIHR recommendations, including by lowering donation limits, introducing interim reporting on donations and expenditures, and setting ceilings on political party membership fees and loans<sup>87</sup>. However, other long-standing ODIHR recommendations remain unaddressed, including those concerning the absence of a campaign expenditure limit, lack of rules on campaigning by third parties, and the effectiveness of the oversight mechanism<sup>88</sup>. Moreover, whilst the Law prescribes a criminal offence related to the financing of political entities, the criminal code does not contain provisions necessary to implement its criminal provisions, which limits its effectiveness in practice<sup>89</sup>. During the 2023 parliamentary election campaign, the Agency for the Prevention of Corruption received 48 complaints for violations of the Law on financing political activities and issued ten reprimand measures<sup>90</sup>. Moreover, 28 reports

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<sup>80</sup> Law on lobbying.

<sup>81</sup> The law stipulates that lobbying starts with a written notice addressed by the lobbyist to the lobbied person. The lobbied person is to notify the Anti-Corruption Agency of such contacts within 15 days. Moreover, the state authority of the lobbied person must maintain a record of contacts with the lobbyist.

<sup>82</sup> GRECO (2022), Fifth Evaluation Round, Serbia Evaluation Report, point 64 ff. Any other form of contacts is excluded from the law.

<sup>83</sup> Registered lobbyists are required to submit an annual activity report to the Agency for the Prevention of Corruption, with information on lobbying clients, lobbied persons and the subject matters of the lobbying.

<sup>84</sup> GRECO (2022) Fifth Evaluation Round, Serbia Evaluation Report, recommendation ix, p. 19, para. 68 recommends that (i) the notion of lobbying encompassed in the Law on lobbying be expanded to cover contacts with persons with top executive functions (PTEFs) whether they have been formalised in a written request or not; (ii) contacts between PTEFs and lobbyists/third parties that seek to influence the public decision-making process be disclosed as well as the names of the participants and subject-matters discussed.

<sup>85</sup> Law on financing political activities.

<sup>86</sup> Law on prevention of corruption.

<sup>87</sup> Law on financing political activities.

<sup>88</sup> OSCE/ODIHR Election Observation Mission (2024), Final report; pp. 15 ff.; 2022 joint Venice Commission, OSCE/ODIHR report (December 2022), CDL-AD(2022)046, p. 22 ff.

<sup>89</sup> OSCE/ODIHR Election Observation Mission (2024), Final report; p. 17.

<sup>90</sup> Based on these complaints, 39 decisions were taken. Of the ten reprimand measures issued, in two cases the Agency issued a decision establishing violation of the Law, which was the basis for initiating misdemeanour proceedings. In addition, the Agency initiated nine proceedings against political entities ex officio. Furthermore, As regards the 2024 local elections campaign, the Agency received 38 complaints and issued ten reprimand measures. In addition, the Agency received 31 reports due to suspicion of violation of the Law on prevention of corruption as regards misuse of public resources for promoting political parties and issued reprimand measures in seven such cases. It initiated ex officio proceedings in ten cases that are still ongoing.

were submitted to the Agency due to suspicion of violation of the Law on prevention of corruption as regards misuse of public resources for promoting political parties. In ten cases, the Agency established that high-ranking public officials violated these requirements and consequently issued reprimand measures<sup>91</sup>. No decisions on violating the Law on the prevention of corruption were published before election day, which reduced its dissuasive effect<sup>92</sup>.

**The Law on prevention of corruption includes a definition of conflict of interest and prohibits public officials from obtaining any personal benefits or advantages for themselves or third parties through their public office functions<sup>93</sup>.** A system is in place for public officials to report *ad hoc* conflict of interests in the decision-making process, subject to administrative sanctions, such as a fine for failure to comply<sup>94</sup>. In 2023, the Agency for the Prevention of Corruption, which is the monitoring and oversight body over public officials' conflicts of interest<sup>95</sup>, detected issues and rendered decisions in 107 cases, out of which 19 related to conflicts of interest and nepotism of public officials<sup>96</sup>. Regarding *ad hoc* declarations of conflicts of interest notified by public officials, the Agency has also given a total of 32 opinions, including measures to manage the conflict-of-interest situation, where such a situation is established<sup>97</sup>. As of July 2024, 18 such opinions have been issued<sup>98</sup>. Shortcomings exist, in particular with regard to the law's personal scope, as the rules do not extend to all high-ranking public officials<sup>99</sup> who are particularly vulnerable to corruption.

**The Law on protection of whistleblowers is yet to be aligned with the EU *acquis*.** Since 2015, the legal framework provides protection through the court system for persons reporting suspicions of corruption or any other illegal actions in cases where they may suffer consequences, in particular regarding their employment status. Whilst the law provides a broad scope in terms of its application, there is room for improvement to ensure full alignment with EU *acquis* and to strengthen support mechanisms for whistleblowers

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<sup>91</sup> Information received from the Agency for the Prevention of Corruption in the context of the country visit to Serbia. The majority of measures required the removal of information published on political party media outlets to be removed in the case where public funding for an activity was presented erroneously as being paid for by the political party.

<sup>92</sup> OSCE/ODIHR Election Observation Mission (2024), Final report, 'The law should be amended to require the Agency for the Prevention of Corruption to promptly make public its decisions on violation of the Law on prevention of corruption during election campaigns, along with any related appeals.'

<sup>93</sup> Article 40 Law on prevention of corruption.

<sup>94</sup> Failure to notify a potential conflict of interest can lead to a fine between approximately EUR 850 and EUR 1 200.

<sup>95</sup> According to Art. 43 Law on Corruption Prevention, the Agency can initiate procedures upon report by a natural or legal person as well as *ex officio* to decide on the existence of a conflict of interest within two years from the day of learning of actions or inactions of a public official that raised suspicion of the existence of a conflict of interest, if five years have not elapsed since the action or inaction of a public official that raised suspicion of the existence of a conflict of interest.

<sup>96</sup> Information received from the Agency for the Prevention of Corruption in the context of the country visit to Serbia.

<sup>97</sup> Information received from the Agency for the Prevention of Corruption in the context of the country visit to Serbia.

<sup>98</sup> Written contribution received from Serbia.

<sup>99</sup> For example, the Chiefs of Cabinet of the Prime Minister or Deputy Prime Minister or special and government advisers are not obliged to declare *ad hoc* conflicts of interest, see GRECO (2022), Fifth Evaluation Round, Evaluation Report Serbia, p. 21, para. 74.

including the provision of legal aid<sup>100</sup>. In particular, the law does not expressly include all types of disclosures and persons, such as former employees, and it does not explicitly protect whistleblowers in the event that their disclosure is not grounded<sup>101</sup>.

**The practice of appointing acting top civil servants in public administration and in public enterprises in breach of the Law on civil servants remains to be addressed<sup>102</sup>.**

With respect to transparency and integrity within the public administration, there has been no sizeable reduction in the excessive number of acting senior manager posts but an increase, as of March 2024 to 57% of filled positions occupied by people in an acting capacity, compared with 55% in June 2023<sup>103</sup>. In addition, non-civil servants continued to be appointed on an acting basis after the legal deadline of July 2019, in breach of the Law on civil servants<sup>104</sup>. The similar issue of acting directors in state-owned enterprises – 22 out of 34 – has yet to be addressed<sup>105</sup>.

**Public procurement is a high-risk corruption area, in particular as regards several exemptions from the Law on public procurement.**

Public procurement is regulated by the Law on public procurement<sup>106</sup>. Whilst the Law provides for basic principles in the public procurement system, there are widely used ways to circumvent its application<sup>107</sup>. Auditing of public finances is carried out by the State Audit Institution (SAI), an independent body. The SAI found irregularities in 18.8% of the total value of public procurement contracts they inspected in 2023<sup>108</sup>. However, serious resource constraints limit the scope of its audits<sup>109</sup>. Safeguards stipulated in the Law on public procurement<sup>110</sup> have not been applied to a number of recent large-scale investment projects<sup>111</sup>, which are particularly vulnerable to corruption. Stakeholders also report on a government practice of tailor-made procurements, irregularities in tender procedures and fast-track tendering in government procurements, all presenting a risk to fair competition and transparency<sup>112</sup>. Corruption allegations have been raised in privatisation processes, where potential buyers are announced prior to the bidding process or single bids procedures are applied<sup>113</sup>. A positive step was made with the repeal of the Law on special procedures for linear infrastructure projects, which seriously undermined the effective implementation of the Law on public procurement. However, challenges exist in ensuring

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<sup>100</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 37.

<sup>101</sup> Regional Anti-Corruption Initiative (2021), Gap Analysis of Whistleblower Protection Laws in the Western Balkans and Moldova, pp. 89 ff.

<sup>102</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 37.

<sup>103</sup> Statistics provided by the Serbian authorities in the context of regular policy dialogue on Public Administration reform (Public Administration Reform Special Group of 19 April 2024).

<sup>104</sup> Transparency International (2023), National Integrity System Serbia.

<sup>105</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 37.

<sup>106</sup> Law on public procurement.

<sup>107</sup> Transparency International Serbia (2023), Civil Society Report on the implementation of Chapter II (Prevention) and Chapter V (Asset Recovery) of the UNCAC in Serbia.

<sup>108</sup> In 39 of the audited entities, it was determined that the procurement of goods, services and works was not carried out in accordance with the aforementioned law in 660 cases, corresponding to an amount of 8.73 billion dinars. Report on the State Audit Institution for the year 2023, p. 28.

<sup>109</sup> Bertelsmann Stiftung (2024), Serbia Country Report 2024.

<sup>110</sup> Articles 204-220 of the Law on Public Procurement.

<sup>111</sup> For example, this is reportedly the case for the state-funded Belgrade Waterfront project, the Moravski corridor highway constructed by Chinese companies, the South Stream gas pipeline and the ESCP 2027 exhibition area, see Freedom House (2024), Freedom in the World Report.

<sup>112</sup> Information received from civil society in the context of the country visit to Serbia.

<sup>113</sup> Bertelsmann Stiftung (2024), Serbia Country Report 2024.

that exemptions from the Law on public procurement are in line with the EU *acquis*, in particular in the context of intergovernmental agreements<sup>114</sup>. Other areas of particular risk to corruption include State-owned enterprises, concessions, bankruptcy proceedings and public-private partnerships<sup>115</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

In Serbia, freedom of expression and media freedom<sup>116</sup> as well as access to official documents are guaranteed by the Constitution and legislation, namely the Law on electronic media, the Law on public information and media, the Law on public service media and the Law on free access to information of public importance. The first two laws were amended in October 2023 to align them with the EU *acquis* and European standards, however further amendments are needed for full compliance<sup>117</sup>. The independence of the Regulatory Authority for Electronic Media (REM) is guaranteed by the Law on electronic media.

**The Regulatory Authority for Electronic Media fails to fully exercise its mandate to safeguard media pluralism and professional standards and there are also serious concerns about its independence.** REM is responsible for issuing television and radio broadcasting licences and for ensuring compliance of media service providers with the Law on electronic media. The Media Pluralism Monitor (MPM) 2024 considers the risk regarding the independence and effectiveness of the media authority to be medium (65%)<sup>118</sup>. All four television channels with national frequency had their licences renewed by REM in 2022 despite the fact that they had received warnings from REM due to violations of their legal obligations during the previous period. Several of these channels continued to violate applicable rules in 2023<sup>119</sup>. In August 2022, REM published a call for the allocation of a fifth media service licence with national frequency, which has still not been awarded within the deadline published in the call, without proper justification for the delay<sup>120</sup>. REM has not been effective either in countering foreign information manipulation or interference, most obviously in the context of Russia's war of aggression against Ukraine<sup>121</sup>. The new Law on

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<sup>114</sup> Communication on EU Enlargement policy, Serbia Report, p. 85.

<sup>115</sup> See the reports of the Anti-Corruption Council.

<sup>116</sup> Serbia ranks 98<sup>th</sup> in the 2024 Reporters without Borders World Press Freedom Index compared to 91<sup>st</sup> in the previous year.

<sup>117</sup> In their regular policy dialogue with the European Commission, the Serbian authorities have committed to amending the two laws, as well as adopting a new third law on public service media, by the end of 2024.

<sup>118</sup> 2024 Media Pluralism Monitor, country report Serbia, pp. 9, 16.

<sup>119</sup> For example, in May 2023, in the context of tragic mass shootings in Serbia, REM appeared before the Parliament's Committee for Culture and Information to present its report on media monitoring for the period October 2022 to March 2023, reflecting also on the topic of violence in media. Despite the fact that several TV channels broadcast content that encourages overt or covert hatred or violence, including by providing a platform for convicted war criminals, REM concluded that all of the media, except one, overall met the provisions set out in the Law on electronic media. During the reporting period, several TV channels with national frequencies, including TV Pink and Happy TV, fell short of their own commitments and obligations on programming for children, culture and education, based on which they had obtained a (renewed) national frequency. 2023 Communication on EU Enlargement policy, Serbia Report, p. 44.

<sup>120</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 44. As for the delay, REM refers to the ongoing appeal procedure for the renewal of the four other national frequencies. Written contribution from Serbia.

<sup>121</sup> Russia Today's (RT) international channel in the English language was not banned by REM and is still broadcast in Serbia on the cable TV. In addition, in November 2022, RT launched a local RT Balkan multimedia web platform in the Serbian language, also hosting government representatives in its video



electronic media reinforced the mandate and regulatory competences of REM, giving it a new possibility to impose financial penalties, which has not yet been used<sup>122</sup>. The Law on electronic media depoliticises the process of nominating REM Council members and requires that a new REM Council is appointed within one year of the entry into force of the law, by 4 November 2024. There are doubts, however, as to whether this modification is sufficient to ensure REM's independence vis-a-vis the state administration<sup>123</sup>. The law also introduced shorter deadlines for REM to act on complaints during electoral campaigns but in its final report on the parliamentary elections of December 2023, OSCE/ODIHR found that REM "maintained a passive approach"<sup>124</sup>.

**The Press Council, a self-regulatory body, monitors print media's compliance with the Serbian Journalists' Code of Ethics.** Prior to the adoption of the new law on public information and media in October 2023<sup>125</sup>, the print media with the most violations of the Code of Ethics recorded by the Press Council<sup>126</sup> were not precluded from receiving public co-funding, and in effect continued receiving it, especially at local level<sup>127</sup>. The effective enforcement of the new provisions will need to be monitored<sup>128</sup>.

**The measures for addressing transparency in ownership structures and in advertising from state resources proposed in the media strategy have yet to be fully implemented.** Political and economic influence on the media remains a source of concern<sup>129</sup>. From January 2025 a new management information system will provide systematic information on public

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format. On the other hand, REM rejected in December 2022 Sputnik's application in the public competition for the issuance of licences for the provision of radio media services for the Belgrade area. 2023 Communication on EU Enlargement policy, Serbia Report, p. 44.

<sup>122</sup> Article 39 of the Law on electronic media: "If the media service provider does not act in accordance with the imposed measure of temporary prohibition of publication of programme content or the measure of temporary prohibition of publication of advertising messages, the Regulatory Authority shall pass a decision imposing a fine on it by way of indirect coercion until it acts in accordance with the imposed measure. The amount of the fine shall be determined within the framework provided by the law regulating the general administrative procedure." Also, it is worth noting that REM held only four regular sessions in 2023, which are the only kind of sessions for which minutes are published (other sessions were held in an ad hoc manner); information received in the context of the country visit to Serbia.

<sup>123</sup> 2024 Media Pluralism Monitor, country report Serbia, pp. 16-17.

<sup>124</sup> OSCE/ODIHR Election Observation Mission (2024), Final Report, p. 20. REM has not adhered to the shorter deadlines and did not publish a comprehensive report on the electoral campaign in a timely manner. In its regular policy dialogue with the European Commission, REM justified the delays by referring to the Post of Serbia's strike during that period and, more generally, to the lack of time in preparing for the enforcement of the recently adopted new law. After the elections, on 26 December 2023, REM published a report that contained data on the two public broadcasters and four cable operators, but not yet on the four television channels with national frequency.

<sup>125</sup> The new law improved legal provisions on the transparency of calls for public co-funding of media content by laying down binding criteria for complying with the Code of Ethics.

<sup>126</sup> Press Council (savetzastampu.rs).

<sup>127</sup> This includes those outlets having been handed down court convictions.

<sup>128</sup> During the country visit to Serbia, journalists associations expressed concern about the effective enforcement of that new law and the fact that new calls were published in early 2024 with reduced public funding in several municipalities and that the remaining public funding might be awarded through less transparent processes such as the procurement of information services and advertising.

<sup>129</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 45. In addition, media outlets that report in a government-friendly manner receive much more financial support – for example via public co-funding of media content and public procurement - from the government than other media outlets; information received in the context of the country visit to Serbia.

co-funding of media content which will be fed into the media register<sup>130</sup>, as foreseen in the media strategy<sup>131</sup>. Due to improved rules regarding media ownership transparency, the 2024 Media Pluralism Monitor has reduced the medium risk score to 50%<sup>132</sup>. As regards other sources of public funding, including advertising, the strategy's objective to present them in the media register in a transparent, comprehensive and user-friendly manner has yet to be implemented<sup>133</sup>. Similarly, the media sector privatisation process planned by the media strategy has yet to be completed. Recent legislative changes overturned the ban on state-owned enterprises owning media outlets<sup>134</sup>, causing concern among stakeholders, such as journalists associations and civil society organisations, of increased state influence over the media<sup>135</sup>. The new legislation clarified the rules for assessing media pluralism in the sense of preventing concentration of media ownership<sup>136</sup>. The 2024 Media Pluralism Monitor considers there to be a medium risk regarding the plurality of media providers<sup>137</sup> (63%), but the risk regarding editorial independence from commercial and owners influence is high (83%) and so is the risk regarding editorial independence of the media (83%)<sup>138</sup>. The implementation of safeguards to protect media pluralism and editorial independence has yet to be improved and will need to be closely monitored. In its final report on the December 2023 elections, OSCE/ODIHR found a "bias in the media" during the campaign<sup>139</sup>. This disparity is more pronounced in non-electoral periods<sup>140</sup>.

**Against the background of complaints about biased reporting, issues of editorial autonomy and pluralism of public service media need to be addressed.** Stakeholders, such as civil society organisations monitoring democracy and rule of law matters, complain about biased reporting in favour of the government<sup>141</sup>, which is supported by aggregated data<sup>142</sup>. The appointment and dismissal procedures and criteria of public broadcasters - Radio Television Serbia (RTS) and Radio Television Vojvodina (RTV) - are defined in the Law on public service media<sup>143</sup>. As the members of the management boards of RTS and RTV are

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<sup>130</sup> Articles 31 *seq.* of the Law on public information and media.

<sup>131</sup> Adopted by the Government on 30 January 2020.

<sup>132</sup> 2024 Media Pluralism Monitor, country report Serbia, p. 19. In the 2023 edition of the Media Pluralism Monitor the medium risk score was at 58%; 2023 Media Pluralism Monitor, country report Serbia, p. 16.

<sup>133</sup> This concern was shared by journalists' associations during the country visit to Serbia.

<sup>134</sup> Article 39 Law on public information and media.

<sup>135</sup> OSCE/ODIHR, Election Observation Mission (2024), Final Report, p. 19. Information received in the context of the country visit to Serbia.

<sup>136</sup> Articles 53 *seq.* Law on public information and media.

<sup>137</sup> 2024 Media Pluralism Monitor, country report Serbia, p. 20; while the TV market is highly concentrated, the radio and print markets are only moderately concentrated.

<sup>138</sup> 2024 Media Pluralism Monitor, country report Serbia, pp. 22 and 26.

<sup>139</sup> OSCE/ODIHR found that the president and the ruling party combined were featured in 91 per cent of the non-election related newscasts on national channels and were generally portrayed in a positive tone, further tilting the playing field. OSCE/ODIHR Election Observation Mission (2024), Final report, p. 20.

<sup>140</sup> According to a local CSO monitoring democracy and rule of law matters, during the January 2023-April 2024 period the ruling party was covered in 91% of airtime in the central news shows of five television channels with national coverage, compared with 9% for opposition parties.

<sup>141</sup> Information received in the context of the country visit to Serbia.

<sup>142</sup> OSCE/ODIHR Election Observation Mission (2024), Final Report: "Some 64 per cent of the non-election-related news on RTS1 [...] and 52 per cent of the regional public RTV1 featured the president".

<sup>143</sup> Article 17. The changes introduced in October 2023 in the Law on electronic media regarding the appointment and dismissal of REM Council members have not yet impacted the appointment and dismissal of public broadcasters boards as a new REM Council will be appointed only within one year of the entry into force of the new Law on electronic media (see above).

appointed and dismissed by a two-third majority of the REM Council, issues concerning the latter's independence are relevant also for the independence of RTS and RTV<sup>144</sup>. The 2024 Media Pluralism Monitor provides a medium risk assessment (63%, albeit bordering on a high risk) regarding the independence of public service media<sup>145</sup>. Serbia's media strategy identified shortcomings in the public service media legislation, which the Serbian authorities have committed to revise by the end of 2024 to ensure a long-term and stable method of funding<sup>146</sup>, to strengthen procedures for the election of managing boards members, to lay down guarantees for editorial autonomy, particularly for the editorial boards of news programmes, and to provide for the election of a commissioner for professional standards and relations with the users of public broadcasting services<sup>147</sup>.

**Journalists continue to face either frequent refusals by public bodies to disclose information of public importance or no response at all.** The Law on free access to information of public importance provides for a subjective right of information against public authorities and the possibility to file a complaint with the Commissioner for Information of Public Importance and Personal Data Protection if access is denied or if the authority remains silent<sup>148</sup>. The Commissioner is an independent authority appointed by Parliament by an absolute majority. According to stakeholders the situation has deteriorated over the last ten years, with requests covering topics like corruption being systematically denied<sup>149</sup>. The Commissioner can execute its decisions through indirect coercion by imposing fines to the public authority for non-fulfilment of obligations deriving from its decisions. However, the impossibility to ensure administrative execution of the Commissioner's decisions by direct coercion remains one of the main concerns<sup>150</sup>. In 2023, the rate of execution of the Commissioner's decisions was 74.83% (72.9% in 2022)<sup>151</sup>. An additional constraint for journalists is the limitation imposed on reporting of ongoing criminal proceedings in the Law on public information and media<sup>152</sup>.

**The safety of journalists is a source of concern, as is the growing pressure by abusive lawsuits.** Cases of verbal attacks, smear campaigns, threats and violence against journalists continued both at national and local level, including verbal and physical violence against female journalists. Journalists' associations recorded an increase in the total number of registered attacks in 2023 (183, compared with 137 in 2022)<sup>153</sup>. Recurring statements by

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<sup>144</sup> This concern has also been raised in the 2024 Media Pluralism Monitor, country report Serbia, p. 29.

<sup>145</sup> 2024 Media Pluralism Monitor, country report Serbia, p. 29.

<sup>146</sup> The partial budget financing of RTV was extended to 2024, which is a temporary solution.

<sup>147</sup> The last two elements are mentioned in the second, draft, action plan accompanying the media strategy.

<sup>148</sup> Articles 22, 30 Law on free access to information of public importance. A complaint cannot be lodged, however, against decisions made by, *inter alia*, the government.

<sup>149</sup> Information received from civil society organisations in the context of the country visit to Serbia.

<sup>150</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 34.

<sup>151</sup> Commissioner for information of public importance and personal data protection (2024), Annual Report for 2023.

<sup>152</sup> Article 85: "Information from ongoing criminal procedure may be published only if presented on the main hearing or if received or may have been obtained from a public authority on the basis of the law governing access to information of public importance."

<sup>153</sup> Independent Association of Journalists of Serbia (NUNS), Annual report 2023; NUNS noted an increase in physical attacks, pressures and verbal threats and a decrease in attacks and pressures against property. Another journalist association, UNS, also found an increase in physical attacks (from 10 in 2022 to 16 in 2023) and pressures (from 21 to 52) but a small decline in threats (from 140 to 131). UNS news (03.01.2024), 'In 2023, twice as much pressure and almost twice as many physical attacks than in 2022, the number of threats reduced'. The Council of Europe Platform to promote the protection of journalism and

high-level officials on the daily and investigative work of journalists threaten media freedom<sup>154</sup>. Despite such statements having been made also in Parliament, the administrative committee in charge of the application of the Code of Conduct of the Parliament has not found any violation<sup>155</sup>. According to stakeholders, most pressure comes, by far, from politicians<sup>156</sup>. There was also an increase in strategic lawsuits against public participation (SLAPP), notably launched by members of national and local authorities<sup>157</sup>. This increasing trend puts pressure on the media's financial and human resources' capacity. A standing working group on the safety of journalists facilitates the swift reaction of the police and the prosecution service to cases of attacks and threats. However, according to journalists' associations, after an initial prompt reaction and recording of the cases, few resulted in final convictions<sup>158</sup>. Regarding the work of the commission tasked with looking into three cases involving the murders of journalists<sup>159</sup>, and after the much-delayed publication in February 2024 of an acquittal decision at second-court instance court, the murder of journalist Slavko Ćuruvija in 1999 remains unpunished after 25 years. In 2023, the public prosecution for organised crime declared itself again incompetent in the case of the murder of journalist Milan Pantić, perpetrated in 2021, and returned the file to the Higher Prosecution Office in Jagodina<sup>160</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Serbia is a parliamentary democracy with a unicameral Parliament (National Assembly) composed of 250 Members of Parliament that holds the constitutional and legislative power and elects the Government and other high-ranking officials, including judges of the Constitutional Court and the Ombudsman. Legislative proposals can originate from a Member of Parliament, the Government, the assembly of the autonomous province, at least 30 000 voters, or the Ombudsman and the National Bank of Serbia within their competences. The President of the Republic, who has limited executive powers under the Constitution, is directly elected for a five-year term, renewable once. The Constitutional Court decides on the compatibility of laws, other general acts and international treaties with the Constitution, as

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safety of journalists reports seven cases of attacks and (death) threats since June 2023, the Media Freedom Rapid Response project 31 of such cases during the same period, see European Centre for Press and Media Freedom, Mapping Media Freedom, Serbia country profile. Serbia's Supreme Public Prosecution Office provided the following official statistics: "During 2023, 75 cases were formed in the Public Prosecution Offices in connection with events against persons who perform tasks of public importance in the field of information. In these cases, until 31 December 2023 the following actions were undertaken: in 9 cases conviction was rendered; in 6 cases criminal complaints were rejected; in 8 cases an official note that there are no legal grounds for criminal prosecution was issued; in 5 cases court trial is ongoing based on the indictments of the public prosecutor; in 3 cases the evidentiary actions (investigation) are ongoing; in 38 cases request for gathering necessary information was submitted; in 6 cases potential perpetrator was not identified even after undertaking pre-investigative actions. The first-instance or final decision was rendered in 23 cases, which represents 30.67% of the total number of cases."

<sup>154</sup> 2023 Communication on EU Enlargement policy, Serbia Report, pp. 41-42.

<sup>155</sup> This parliamentary committee acts upon complaints. Based on the complaints received so far, it has not found any violations in the cases of statements against journalists.

<sup>156</sup> Information received in the context of the country visit to Serbia.

<sup>157</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 42.

<sup>158</sup> Information received in the context of the country visit to Serbia. Associations also find that prosecutors have a rather narrow interpretation of what constitutes a direct threat against a journalist.

<sup>159</sup> As referred to in Chapter 23 interim benchmark. European Union Common Position, Chapter 23: Judiciary and Fundamental Rights, AD 20/16, p. 28.

<sup>160</sup> Regular updates provided by the Serbian authorities in the framework of the enlargement process.

well as on constitutional complaints against individual acts and on a new appeal procedure for judges and prosecutors against decisions of the High Judicial Council and the High Prosecutorial Council<sup>161</sup>. Serbia has three independent bodies in the area of fundamental rights, the Ombudsman<sup>162</sup>, the Commissioner for Information of Public Importance and Personal Data Protection<sup>163</sup> and the Commissioner for the Protection of Equality<sup>164</sup>; their independence is regulated in the legislation<sup>165</sup>.

**Parliament's ability to ensure the exercise of necessary checks and balances is constrained by issues of effectiveness, autonomy, and transparency, including in terms of the oversight of the executive and the law-making process.** Public confidence in the functioning of democratic institutions, including Parliament has also been negatively affected due to the frequent recourse to early elections<sup>166</sup>. Over the last four years, there have been three parliamentary elections, namely in June 2020, April 2022, and December 2023<sup>167</sup>. This led to considerably shortened mandates of national Parliament and long periods of Government acting in a caretaker capacity.<sup>168</sup> Following its dissolution on 1 November 2023,

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<sup>161</sup> Moreover, the Constitutional Court is competent for deciding conflicts of jurisdiction between courts and other state bodies of different levels, election disputes outside of the jurisdiction of the courts and on prohibiting political parties, trade union organisations, citizen's associations and religious communities. The terminology "other general acts" includes also statutes and general acts of autonomous provinces and local self-government units. The competences of the Constitutional Court are regulated in Art. 45 ff. of the Law on the Constitutional Court.

<sup>162</sup> According to the Law on the Ombudsman (2021), the Ombudsman shall protect the rights of citizens, control the work of government agencies and ensure that human and minority rights and freedoms are protected and promoted. The Ombudsman shall also perform the duties of National Preventive Mechanism against Torture, National Independent Mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities and National Rapporteur on Trafficking in Human Beings.

<sup>163</sup> As per the Law on Free Access to Information of Public Importance (last amended in 2021), the Commissioner for Information of Public Importance shall monitor the enforcement of the law by public bodies, initiate or give opinions on draft legislation, and decide on complaints against the rulings of government agencies that have violated the rights regulated by the Law. The competence of the Commissioner was extended to the field of personal data protection by the adoption of the first Law on Personal data Protection in 2008 (new law adopted in 2018).

<sup>164</sup> According to the Law on Prohibition of Discrimination (last amended in 2021), the Commissioner for the Protection of Equality shall issue opinions and recommendations in specific cases of discrimination, submit requests to institute misdemeanour proceedings, monitor the implementation of legislation, and initiate or provide opinions on draft legislation.

<sup>165</sup> Article 3 of the Law on the Ombudsman; Article 32 of the Law on Free Access to Information of Public Importance and Article 1 of the Law on Prohibition of Discrimination.

<sup>166</sup> OSCE/ODIHR, Election Observation Mission (2024), Final Report, p. 1. See also Joint Opinion of the Venice Commission and the OSCE/ODIHR on the constitutional and legal framework governing the functioning of democratic institutions in Serbia - Electoral law and electoral administration (CDL-AD(2022)046, para 22: "To enable a more level playing field in the elections, the Venice Commission and ODIHR further recommend that Article 109 of the Constitution be interpreted in the sense that the President only dissolves parliament on the basis of a well elaborated proposal and preferably only when necessary due to the parliamentary situation, thus limiting recourse to early elections. [...]."

<sup>167</sup> According to preliminary conclusions of the International Observation Mission led by OSCE/ODIHR, "[t]he 17 December [2023] early parliamentary elections, though technically well-administered and offering voters a choice of political alternatives, were dominated by the decisive involvement of the President which together with the ruling party's systemic advantages created unjust conditions." OSCE/ODIHR Election Observation Mission (2023), Statement of Preliminary Findings and Conclusions.

<sup>168</sup> See also Joint Opinion of the Venice Commission and the OSCE/ODIHR on the constitutional and legal framework governing the functioning of democratic institutions in Serbia - Electoral law and electoral administration (CDL-AD(2022)046, para 152: "In its 2007 opinion on the Constitution, the Venice Commission found that the Constitution established a "clearly parliamentary system" with a "relatively

and parliamentary elections on 17 December 2023, there was no regular parliamentary activity until 22 April 2024, when the first plenary session of the new convocation was called, except for the constitutive session of 6 February 2024, the election of its leadership on 20 March 2024 and appointments of members of working bodies and parliamentary delegations that was completed by early April<sup>169</sup>. The Parliament's agenda is driven by the executive, as nearly all adopted laws and proposed bills in 2023<sup>170</sup> were tabled by the Government, and almost all plenary sessions were called within the minimum advance notice of 24 hours, despite rules stipulating that this should only be used in exceptional circumstances. The result is limited possibilities for Members of Parliament to propose changes to the agenda or table amendments<sup>171</sup>, as well as limited opportunities for public scrutiny and involvement in the legislative process. There is also a practice of amalgamating large numbers of, often unrelated, agenda and legislative items into a single item on the agenda, making detailed scrutiny and debate difficult<sup>172</sup>. Parliamentary oversight of the executive is also weak. No session with questions to the Prime Minister and the Government, which should take place monthly when Parliament is in session<sup>173</sup>, was held since June 2023. Moreover, debates in the Parliament are marked by tensions with reports of derogatory language and occasional incidents<sup>174</sup>. The rules of procedure are not systematically applied, and penalties and fines are only issued to opposition Members of Parliament<sup>175</sup>.

**The process of public consultations needs further strengthening.** While public consultations were conducted for all draft policy planning documents in 2023, this was the case for only 36% of the draft laws and by-laws for which public consultations were mandatory<sup>176</sup>. Despite the legal obligation to provide information on the results of public consultations<sup>177</sup>, reports are neither systematically published, nor are explanations regularly provided on the acceptance or otherwise of comments received<sup>178</sup>. There is no central body in charge of the quality control of public consultations, including on the e-consultations

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weak” President of the Republic and a “very strong Prime Minister”. The President, despite being directly elected, shall “express state unity” (Article 111 of the Constitution), and is called to perform a neutral function in government formation (Article 112.3). While it is not for the Venice Commission and ODIHR to define the political system in Serbia, the current lack of distinction between the President and parliamentary politics, in particular during the election campaign, indicates that the Venice Commission’s 2007 assessment of the political system no longer reflects its actual functioning.” See further Freedom House Report (2024) Nations in Transit: Country Report Serbia.

<sup>169</sup> Moreover, for the revised 2023 budget, the minimum deadline of 15 days between sending the proposal to Parliament and tabling it for plenary debate and adoption was not respected and no discussion on it took place prior to the vote. See also 2023 Communication on EU Enlargement policy, Serbia Report, p. 12 f.

<sup>170</sup> By end of May 2024, Parliament only debated and voted on legislative amendments to two laws related to elections.

<sup>171</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 12.

<sup>172</sup> In October 2023, for the first session of the regular autumn sitting, 60 agenda items (including items such as the 2024 budget, the set of two media laws, and ratification of the Free Trade Agreement with China) were tabled as one discussion point for a first reading general debate.

<sup>173</sup> Rules of Procedure of the National Assembly, Article 205.

<sup>174</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 12.

<sup>175</sup> Ibidem.

<sup>176</sup> Statistics provided by the Serbian authorities in the context of regular policy dialogue on Public Administration reform (Public Administration Reform Special Group of 19 April 2024). Regarding the draft laws only, a public hearing was conducted for 36 draft laws which is 42% of the total number of draft laws. Written contribution from Serbia.

<sup>177</sup> Article 36 of the Law on the planning system adopted on 19 April 2018.

<sup>178</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 17.

platform established in 2021. Civil society organisations reported that the time given for public consultations was not sufficient, and that their comments on draft laws of public interest were rarely taken into account<sup>179</sup>. Regarding public scrutiny of the Government's work, the Government adopted and published the 2022 report on its work as well as the annual Government work plan for 2023. Overall, in 2023, only 19 implementation reports (23%) out of the 81 policy planning documents were published<sup>180</sup>. Agendas, minutes, and conclusions of government sessions are still not publicly available.

**There are four vacant positions at the Constitutional Court of Serbia still to be filled.** The Constitutional Court has currently four vacant positions, of which two are to be appointed by the Supreme Court based on a proposal by the High Court Council and the High Prosecutorial Council and the other two judges shall be elected by the National Assembly based on a proposal from the President. The High Judicial Council, the High Prosecutorial Council and the President are yet to make their proposal and there is no time limit for this process<sup>181</sup>.

**On 1 January 2024, Serbia had 14 leading judgments of the European Court of Human Rights pending implementation<sup>182</sup>.** At that time, Serbia's rate of leading judgments from the past ten years that remained pending was at 27%, and the average time that the judgments had been pending implementation was almost 7 years<sup>183</sup>. The oldest leading judgment has been pending implementation for more than 16 years<sup>184</sup>. The relevant group of cases concerns instances where the applicants' rights to a fair trial were violated due to excessive length of different types of judicial proceedings – civil, family-related, and commercial. Additionally, some cases highlight the absence of an effective remedy within the domestic law to address complaints about procedural delays. As regards the respect of payment deadlines, on 31 December 2023 there were 52 cases in total awaiting confirmation of payments (compared to 51 in 2022)<sup>185</sup>. On 1 July 2024, the number of leading judgments pending implementation had remained 14<sup>186</sup>.

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<sup>179</sup> Ibidem, pp. 15 and 17.

<sup>180</sup> Statistics provided by the Serbian authorities in the context of regular policy dialogue on Public Administration reform (Public Administration Reform Special Group of 19 April 2024).

<sup>181</sup> According to the Serbian Constitution (Art. 172) five judges of the Constitutional Court shall be elected by the National Assembly from among ten candidates proposed by the President of the Republic, five are appointed by the President from among ten candidates proposed by the National Assembly, and five by the general session of the Supreme Court from among the ten candidates proposed by the High Court Council and the High Prosecutorial Council in a joint session.

<sup>182</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>183</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2024. See the Contribution from the European Implementation Network on Enlargement Countries for the 2024 Rule of Law Report, p. 2.

<sup>184</sup> Judgment of the European Court of Human Rights of 17 July 2007, *Jevremovic v. Serbia*, 3150/05, pending implementation since 2007.

<sup>185</sup> Council of Europe (2024), Supervision of the execution of judgments decisions of the European Court of Human Rights – 17<sup>th</sup> Annual Report of the Committee of Ministers – 2023, p. 138.

<sup>186</sup> Data according to the online database of the Council of Europe (HUDOC).

**There are three independent bodies working in the area of fundamental rights in Serbia, but follow-up given to the recommendations is not always clear.** The Ombudsman is the national human rights institution (NHRI) accredited with A-Status<sup>187</sup> and its tasks include ensuring that human rights, rights of persons belonging to minorities, and fundamental freedoms are promoted and protected<sup>188</sup>. In addition, there are two other independent bodies in the area of fundamental rights, namely the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for the Protection of Equality. These three independent bodies face common challenges with regard to their resources. For all three bodies, the planned increase in staff has not taken place and the number of filled posts is below staff systematisation plans<sup>189</sup>. Staff turnover in the Office of the Ombudsman continues to hamper its efficiency<sup>190</sup>. Furthermore, there is no systematic follow-up on the recommendations of the independent bodies<sup>191</sup>. According to the Ombudsman's 2023 report, the percentage of its recommendations that were followed up by the authorities under the control procedure increased to 78% (in 2022 this was 63%)<sup>192</sup>. Stakeholders considered that the independent bodies needed to address violations of fundamental rights more vocally<sup>193</sup>.

**Although several elements of the legal framework are in place, civil society organisations lack an enabling environment for their establishment, operations and financing.** The space for civil society is rated as 'obstructed'<sup>194</sup>. Civil society organisations and human rights defenders operate in a polarised environment. Smear campaigns are conducted against several civil society organisations and their financing, including by high-level officials<sup>195</sup>. Despite the fact that verbal attacks were also made in Parliament, the administrative committee in charge of the application of the code of conduct of Parliament did not find any violation<sup>196</sup>. Organisations and individuals that criticised the authorities have been put under pressure, in particular those participating in protests against the glorification of war criminals<sup>197</sup>, in support of environmental protection, in the 'Serbia against violence'

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<sup>187</sup> Accreditation by the Global Alliance of National Human Rights Institutions (GANHRI).

<sup>188</sup> The law requires only an absolute majority for the election, deviating from the Venice Principles which set out that the Ombudsman should preferably be elected by an appropriate qualified majority. Venice Commission, Principles on the protection and promotion of the Ombudsman institution, CDL AD(2019)005, para 6. 2023 Communication on EU Enlargement policy, Serbia Report, p. 39.

<sup>189</sup> Ibidem, pp. 37-40, 46.

<sup>190</sup> Ibidem, p. 39.

<sup>191</sup> Annual reports are submitted to the parliament by 15 March of each year, which then adopts conclusions on them. The 2022 and 2023 annual reports were not yet discussed in a plenary session of the parliament. Based on the parliament's review of previous annual reports prior to 2022 parliamentary discussions tend to remain general and do not focus on key recommendations.

<sup>192</sup> Annual report of the Ombudsman 2023 (available on its website ombudsman.rs). However, it is not clearly explained in the report how the Ombudsman verifies that a recommendation has been followed up appropriately.

<sup>193</sup> Information received in the context of the country visit to Serbia from civil society organisations.

<sup>194</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>195</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 15.

<sup>196</sup> Ibidem, p. 15.

<sup>197</sup> For example, in October 2023, a female activist was fined for disturbing public order and peace for throwing eggs at a graffiti image of a convicted war criminal. After she had refused to pay the fine of 100,000 dinars (approximately 850 EUR), the court ordered to replace part of her fine with a 60-day detention. N1 (2024), Human rights activist ordered to jail for throwing eggs at Mladic mural; Civil Rights Defenders (2023), Serbia: Charges against a convicted activist must be dropped.



protests, as well as domestic election observers<sup>198</sup>. There has been a significant increase in recent years in the number of strategic lawsuits against public participation (SLAPP), notably launched by members of national and local authorities, against human rights defenders<sup>199</sup>. The implementation of the 2022-2030 Strategy and Action Plan for creating a stimulating environment for the development of civil society has started, but measurable progress has yet to be demonstrated<sup>200</sup>. A Council for cooperation and development of civil society was established in September 2023. In terms of public funding of civil society, key challenges exist with regard to the transparency of awarding procedures. These challenges include the lack of consultations with CSOs when planning priority activities, the lack of transparent criteria for approving financial and non-financial support or for selecting independent experts in evaluation commissions, and insufficient transparency in the reporting on spent funds<sup>201</sup>.

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<sup>198</sup> OSCE/ODIHR, Election Observation Mission (2024), Final Report, p. 24: “Following the 26 December publication of a report by Centre for Research, Transparency and Accountability (CRTA) alleging organized voter migration related to the local elections, authorities and pro-government media publicly accused the organization of destabilizing the country’s constitutional order”. See also 2023 Communication on EU enlargement policy, Serbia Report, p. 15.

<sup>199</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 6.

<sup>200</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 15.

<sup>201</sup> 2023 Communication on EU Enlargement policy, Serbia Report, p. 15. The Serbian authorities informed that the Action Plan for the implementation of the Open Government Partnership 2023-2027 as well as the draft Action Plan for the implementation of the Strategy for Creating an Enabling Environment for Development of Civil Society 2024-2026 (planned adoption by September 2024) foresee the development of an ex-post analysis of the effects of the previous implementation of the Regulation on funds for encouraging programmes of public interest implemented by associations.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2024 Rule of Law report can be found at [https://commission.europa.eu/publications/2024-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2024-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Serbia**

The Commission services held hybrid meetings in March 2024 with:

- A11 Initiative
- Agency for the Prevention of Corruption
- Anti-Corruption Council
- Appellate Court
- Appellate Public Prosecution Office
- Association of independent electronic media (ANEM)
- Association of media
- Asylum Protection Center
- ATINA
- Autonomous Women's Center
- Basic Public Prosecution Office
- Belgrade Centre for Human Rights
- BIRN
- BIRODI
- Child Rights Centre
- Commissioner for Personal Data Protection and Access to Information of Public Importance
- Constitutional Court
- CRTA
- Government Secretariat for Legislation
- High Judicial Council
- High Prosecutorial Council
- Higher Court
- Higher Public Prosecution Office
- Independent Journalists' Association of Serbia
- Judges Association of Serbia
- Ministry of European Integration
- Ministry of Interior
- Ministry of Justice
- MODS
- Ombudsman
- Partners Serbia
- Police specialised department for corruption
- Prosecutor Association of Serbia
- Radio Television Serbia (RTS)
- Regulatory Authority for Electronic Media (REM)
- Slavko Curuvija Foundation
- Special Department for Suppression of the Corruption
- Special Public Prosecution Office for High-Tech Crime
- Special Public Prosecution Office for Organized Crime
- State Audit Institution
- Supreme Court
- Supreme Public Prosecution Office
- Transparency Serbia

- UNS
- YUCOM