



ReSPA

Regional School
of Public Administration

Comparative Study
**Income
and Asset
Declarations
in Practice**

ReSPA – Network for Ethics and Integrity

ReSPA Activities are
Financed by the EU





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ReSPA is a joint Initiative of European Union and the Western Balkan countries working towards fostering and strengthening the regional cooperation in the field of public administration among its Member States. It seeks to offer excellent innovative and creative training events, networking activities, capacity building and consulting services to ensure that the shared values of respect, tolerance, collaboration and integration are reaffirmed and implemented throughout the public administrations in the region.

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Foreword

By Mr. Suad Music
ReSPA Director

ReSPA has been actively working in the area of ethics and integrity since 2012, under which a successful network has been established. This network is composed of heads of anti-corruption agencies and their deputies (or similar bodies) of the WB countries and Kosovo* who are meeting regularly in different places under the supervision and leadership of ReSPA.

Within the work of the network and in line with ReSPA's priorities for 2013, it was concluded that a comparative study on the topic 'Income and Asset Declarations in Practice' would be developed and published. Developing effective disclosure systems and integrating them into wider anti-corruption programmes are critical elements in that process, where income and asset declaration systems in particular play an important role. To this end, the concept of income and asset declaration is important for ReSPA's beneficiaries since it enables them to continuously find new ways to improve their public administration systems, by creating and using useful mechanisms to verify information declared by public officials, by applying new skills and techniques to reach civil servants and, last but not least, by conducting forceful communication campaigns to foster transparency and ethics as well as integrity in the work of public administration.

With this study we have offered a comparative overview, fostering the exchange of knowledge, experience and lessons learned within the region. We believe that the identification of good practices in the area of income and asset declarations, once published, will further disseminate the identification and recognition of the standards of transparency of public institutions in the region. We therefore intend to continue our work in this direction.

The success of the finalization of the study would have been difficult to achieve without the support of regional experts from the ReSPA member

countries and Kosovo*. Therefore, I would like to express my gratitude to all regional experts who have contributed with their inputs to this study as well as to express our special thanks to Mr. Tilman Hoppe for leading the work of the experts and providing valuable introductions to each chapter and a summary on European jurisprudence, and putting forward relevant conclusions and clear recommendations that ReSPA will follow very closely.

Table of Content

- Foreword 4**

- Acronyms10**

- Introduction11**

- 1. Verification methodology12**
 - A. Overview12**
 - B. Albania.....18**
 - C. Bosnia and Herzegovina31**
 - D. Croatia47**
 - E. Kosovo*.....86**
 - F. Macedonia.....96**
 - G. Montenegro108**
 - H. Serbia120**

- 2. Typology of Hiding Wealth.....132**
 - A. Overview.....132**
 - B. Albania.....135**
 - 2.1 Company dividends135**
 - 2.2 Borrowed money136**
 - 2.3 Transfer of money to family member.....136**

2.4	Down-payments on an apartment.....	137
2.5	Acquisition of apartment.....	138
2.6	Construction costs for apartment.....	139
C.	Bosnia and Herzegovina	140
2.1	Shares in companies	141
2.2	Real estate and business	141
2.3	Income discrepancy	141
D.	Croatia.....	142
2.1	Minister of Tourism, Veljko Ostojic.....	142
2.2	The case of Josip Jagušt.....	143
2.3	County Prefect, Ivan Jakovčić.....	143
E.	Kosovo*.....	145
2.1	House with swimming pool	145
2.2	Subsidised housing	146
2.3	Poor family members.....	147
2.4	Hidden business.....	148
2.5	Diverse income of deputies.....	149
2.6	Organized real estate crime	150
2.7	Volatile real estate value.....	153
2.8	Stone quarry business.....	154
F.	Macedonia.....	155
2.1	Inexplicable down-payments	155
2.2	Insufficient income for daily subsistence	157
2.3	Groundless suspicion on dean	160

G. Montenegro	163
2.1	Incompatibility of private sector activity163
2.2	Incompatibility of two public functions165
2.3	Real estate as a “surprise” for spouse166
2.4	Failing to evade submitting declarations168
H. Serbia	170
2.1	Company profit.....170
2.2	Unreported real estate172
2.3	Real estate purchase by attorney175
2.4	Royalties177
3. Transparency of Declarations Versus Privacy	181
A. Overview	181
B. Albania	183
3.1	Background183
3.2	Privacy185
C. Bosnia and Herzegovina	192
D. Croatia	194
E. Kosovo*	198
3.1	Background198
3.2	Privacy198
F. Macedonia	200
3.1	Background200
3.2	Privacy202

G. Montenegro	203
3.1 Background	203
3.2 Privacy	205
H. Serbia	207
3.1 Background	207
3.2 Privacy	208
I. European Jurisprudence	209
3.1 European Court of Human Rights	209
3.1.1 Applicability of privacy	210
3.1.2 Interference	210
3.1.3 Measures in accordance with the law	210
3.1.4 Conclusion	213
3.2 European Court of Justice	213
3.2.1 Facts	214
3.2.2 Decision	215
3.2.3 Conclusion	216
4. Summary and Policy Recommendations	217

Acronyms

AHC	Albanian Helsinki Committee
ALC	Arithmetic–Logic Checking
ALL	Albanian lek
BAM	Bosnia-Herzegovina convertible mark
BiH	Bosnia and Herzegovina
CEC	Central Election Commission
CIN	Centre for Investigative Reporting
CRT	Croatian Radio and Television
ECHR	European Convention on Human Rights
FIU	Financial Intelligence Unit
GRECO	Group of States Against Corruption
INSTAT	National Institute of Statistics
HIDAA	High Inspectorate of the Declaration and Audit of Assets
LPCI	Law on Preventing the Conflict of Interest
MoU	Memorandum of Understanding
MoIA	Ministry of Internal Affairs
MKD	Macedonian denar
MSL	Minimum subsistence level
NGO	Non-governmental organization
NPO	Not-for-profit organization
OECD	Organisation for Economic Co-operation and Development
PRO	Public Revenue Office
RAI	Regional Anti-Corruption Initiative
RSD	Serbian dinar
SIPA	State Investigation and Protection Agency
SCPC	State Commission for the Prevention of Corruption
TIM	Total Information Management System
UNCAC	United Nations Convention Against Corruption

Introduction

Income and asset declarations have received increased attention in anti-corruption literature over the last years. Among the most prominent recent publications are:

- OECD, Asset Declarations for Public Officials – A Tool to Prevent Corruption (2011)²
- World Bank Group/Alexandra Habershon, Stephanie Trapnell: “Public Office, Private Interests: Accountability Through Income and Asset Disclosure” (2012)³
- RAI, Rules and Experiences on Integrity Issues (2012)⁴

The publications are comprehensive, but still have some questions left unanswered, though. These concern the following three areas:

- Verification methodology: How is it really done in practice? What financial calculations are used? What investigative means are used in practice? Which red flags lead to the start of verification procedures?, The above publications provide only relatively short answers to these questions.
- Hiding wealth: How do public officials hide unexplained income? Are verification methods relevant to those patterns? So far, no publication has addressed this issue.
- Transparency and privacy: How do courts and other state bodies dealing with privacy solve the conflict between the state’s need for publishing declarations, and officials’ privacy? Do officials in fact challenge the publication of their declarations as is often claimed in practitioners’ discussions? Until now, there has been little, if in fact any, study on this issue with a national focus, let alone from a comparative perspective.

This Study intends to answer the above three questions based on accounts from practitioners from the Western Balkan countries.

2 www.oecd.org/dataoecd/40/6/47489446.pdf

3 http://www1.worldbank.org/finance/star_site/documents/PublicPrivateInterests/Public-Office-Private-Interests.pdf

4 http://www.rai-see.org/doc/Study-Rules_and_experiences_on_integrity_issues-February_2012.pdf

1. Verification methodology

A. Overview

From comparing the seven country chapters, the following points have been extrapolated because one or more countries have opted for mechanisms that might serve as a model for other countries, or for taking a different road:

Banking information

Practitioners confirm that banking data is essential for any meaningful verification of financial declarations. In many jurisdictions, bank secrecy poses an obstacle, so law enforcement agencies will only have access to banking data under special procedures, often involving a court order. In Croatia, for example, access to banking data is only possible within the framework of a criminal investigation. On the other hand, it has to be pointed out that in Kosovo* and Serbia, the oversight body is entitled by law to request information from banks for verification purposes. Albania and Macedonia opted for all officials waiving their bank secrecy to the oversight body, thus allowing the oversight body to obtain information on their bank accounts for verification purposes. In Montenegro, introducing a similar waiver is planned for the future.

International cooperation

Law enforcement agencies normally cooperate internationally via formal mutual legal assistance channels. Such procedures tend to go through the Ministry of Justice and can be rather time-consuming. Macedonia partly channels its need for information from foreign sources through the tax administration: based on double-tax treaties, the tax authority obtains information from the tax offices of other countries about whether a specific person pays taxes,

and if so, what kind. In Kosovo*, the oversight body has a memorandum of cooperation with Albania and is in preparation of a memorandum with Montenegro, allowing the exchange of data for verification (and other anti-corruption) purposes. Furthermore, the oversight body in Kosovo* uses the international network of its FIU to obtain data from abroad in a direct and less formal way. It is noteworthy, that in Croatia the Act on Preventing the Conflict of Interest empowers the legal oversight body to request information from international organizations or a foreign entity directly, without going through the channels of mutual legal assistance. However, this provision of the Act on Preventing the Conflict of Interest has never been tested in practice, so it is not yet certain to what extent this legal provision is effective in real life.

Requesting data from private entities

Data from private entities (natural persons or legal entities) is essential in many verification cases: Did the public official really receive money as a wedding gift from a private entity? Is the claimed lottery win real or just a cover for illegal income? Whenever such income is not subject to taxation, it is important to cross-check the data with information from private entities. In this context it is remarkable that the oversight body in Montenegro has no legal basis for asking private entities for voluntary information. This could be contrasted with the legal framework in Albania, where it is possible to request financial declarations even from third parties if they are connected to the declaration of a public official, for example as creditors of a loan.

Investigative power

The function of an oversight body can be limited to comparing the data in the declaration with the data from state and private sources. However, a verification procedure should not necessarily end there. Often, a simple visit to a real estate unit might prove that the data as registered with state agencies does not deliver a true picture. In Kosovo*, for example, the oversight body can perform a “lifestyle check” on the public official, by visiting (from outside) a unit of real estate declared or not declared by the official. There are also more complex cases where illegal income is hidden behind seemingly correct data from state agencies. For example, several officials might report large casino winnings as income. Data from state agencies (for example the FIU) might confirm the winnings at first glance. However, a certain casino might

appear to provide a “winning streak” just for public officials, thus raising the suspicion of whether the casino is in fact colluding with the officials to launder their illegal income as “winnings”.

It should be noted in this context that in Montenegro the function of the oversight body is limited to verifying the accuracy of the reported data by comparing it with data from third sources. Similarly, in Croatia, the function of financial declarations is limited to the purely preventive sphere and thus the function of the oversight body is limited to verifications but does not allow for investigations. Wherever verification is limited in such a way, close cooperation with law enforcement authorities for following up on any suspicion will be necessary.

Daily subsistence

It is a frequent misunderstanding that income and asset declarations are viewed as “balanced” if the declared income matches the declared expenses for assets:

Fiscal year 2012 (€ thousands)	
Total of declared income	20
Total of declared expenses	20
Unexplained income	0

The declaration is still implausible: one has to keep in mind that on the side of expenses, only the expenses above declaration thresholds are counted, but not expenses for daily subsistence. An oversight body should identify certain standard amounts (possibly from statistical or social agencies) to be added to the above calculation:

Fiscal year 2012 (€ thousands)	
Total of declared income	20
Total of declared expenses	20
<i>One year minimum subsistence*</i>	10
Unexplained income	10

* for the official and all financially dependent parties

The more assets an official has, the higher the daily subsistence is. For example, having to maintain a big house, expensive cars and a sailing boat might require means that go well beyond the average income.

Whereas Macedonia includes expenses for minimum subsistence in its calculation, this is not the case for example in Kosovo*, Montenegro or Serbia.

The inclusion of minimum subsistence becomes all the more urgent if one keeps in mind that no financial declaration will ever compare a person's total annual legal income with total expenses, because on the expense side, only partial information on the purchase of assets is available, and only for transactions above declaration thresholds. Thus, the balancing looks only at the relation between the person's total annual legal income and largest expense transactions, such as asset acquisitions. Thus, the whole declaration system can focus solely on detecting officials with "outstanding" levels of inexplicable wealth, but not those with a small percentage of illegal income. If, in addition, one leaves even the minimum subsistence out of the equation, the pool of detected officials will become even smaller.

The tax authority as an oversight body

On the income side, financial declarations mostly overlap with tax declarations. The only possible exception might be non-taxable cash flows, such as received loans. Therefore, Macedonia does not require public officials to declare their income in addition to the existing tax declaration, but simply takes into account the data from the tax declarations. At the same time, the tax authorities are in charge of auditing the financial declarations. This seems an efficient mechanism, as the tax authorities already have the capacity to deal with and assess financial information. It is questionable whether it is always necessary to build up full parallel financial capacity in separate oversight bodies for financial declarations.

Verification of submission

There is only one way of verifying compliance with submission requirements: establishing a roster with the names of all public officials obliged to submit declarations, and comparing this roster with the actual list of submissions. To establish the roster, data from civil service commissions or all human

resource departments can be used. In some countries, such a roster is not yet a standard part of verifying submission compliance (Bosnia and Herzegovina and Croatia). Using sources independent from the declarations themselves, such as appointment notifications in the official gazette, has in the past led to the detection of cases where officials violated their submission obligations (Montenegro).

As for household members, there is no verification mechanism using sources other than the declarations themselves in the ReSPA member states. However, there are two mechanisms for checks: first, information at least on the number of household members should be available on the internet. This will substantially increase the risk of detecting public officials who cheat. In addition, the option of verifying declarations with data from the civil registry on registered household members is worth exploring.

Electronic submission

The quota of declarations with formal mistakes is rather high in some countries. At the same time, even if the entered data is not wrong, different officials might use different terms for one and the same fact (as is for example the case in Croatia). Such a confusion and mixture of terms makes it difficult in practice to verify the declarations. Online or electronic submission of declarations is seen as a solution to this problem, as it would standardize the information declared through drop-down menus and through electronic plausibility checks of the keyed-in information.

Standard list of databases

The number of databases used for verifications varies: whereas Albania requests data from 45 entities (including financial institutions) as standard procedure in audits, the standard list contains only 5 entities in Montenegro. Memoranda of understanding make it easier for the oversight bodies to have online access to databases and thus facilitate verification.

Red flags

Oversight bodies in all countries will normally launch a full verification procedure in the following cases:

- A complaint by a citizen
- A media report
- Notifications from the Prosecutor, the Ministry of Internal Affairs, etc.

However, such complaints and notifications are not red flags; red flags are rather indications coming from the declaration or the situation of the public official itself. The use of red flags for launching an audit varies among the countries. Among the red flags in use are:

- A disparity between the income and assets (noted during the previous processing of the declaration) or between data as declared and as obtained from other sources
- An incident of conflict of interest
- Suspicions of corruption against a specific public official

The list is in fact probably much longer. It may contain factors such as:

- Incoming cash flow:
 - Unusual/excessive loans
 - Highly profitable businesses with little or no registration and/or auditing (farming, etc.)
 - Considerable profits made from the sale of assets (especially if the alienation of assets is considerably above the acquisition price)
 - Windfalls (any income without *quid pro quo*: casino or gambling wins, gifts, inheritances, etc.)
 - Considerable income of family members, especially if from business with little or no means of verification
 - Asset deals with family members
 - Considerable increase in income from one declaration to another (which is not due to a promotion in the official's position)
- Outgoing cash flow:
 - Family members owning considerable assets, especially if there are major fluctuations
 - Assets acquired below market conditions
 - Asset deals with family members
 - Major loans extended when the act of lending is hard to verify
 - A considerable increase in assets from one declaration to another
- Other:
 - A hard-to-explain high number of empty fields under the formal check

- Lack of plausibility under the plausibility check
- Major foreign transactions
- A divorce should be followed by an audit if there is any indication that the divorce is purely for formal reasons to avoid declaration obligations, for example when the spouse refused to declare or to provide further information in the past, etc.
- An implausible balance of income and expenditures: more or less all income is spent on declarable expenses, leaving no room for necessary daily expenses (minimum subsistence)

Any of the above circumstances should normally give cause for a full audit.

B. Albania

1.1 Background

Law No. 9049, dated 10 April 2003, entitled “On the declaration and audit of assets, financial obligations of elected persons and certain public officials”, as amended, is the law which defines the rules on the declaration and audit of assets in the Republic of Albania, the legitimacy of sources of their acquisition, the financial obligations of elected persons, public employees, their families and of those people related to them. The Law aims to create transparency of financial or other private interests for all the assets of the subjects with a duty to declare their assets and those of the people related to them. More precisely, it is paragraphs 1 and 2 of Article 3⁵ of Law No. 9094 “On the

5 The following have the obligation to make a periodic declaration in the High Inspectorate of the Declaration and Audit of Assets:

a) the President of the Republic, deputies of the Assembly, the Prime Minister, the Deputy Prime Minister, the ministers and deputy ministers; b) Judges of the Constitutional Court, Judges of the High Court, the Chair of the High State Audit, the General Prosecutor, the Ombudsman, the members of the Central Electoral Commission, the members of the High Council of Justice and the Inspector General of the High Inspectorate for the Declaration and Audit of Assets; c) Civil servants of the high and middle management level, according to the definition of article 11 of Law No. 8549 dated 11 November 1999 “Status of the Civil Servant”; ç) Prefects, deputy-prefects, chairs of the regional councils, mayors of municipalities, of municipal units and of communes; d) Directors of directorates and commanders of the Armed Forces in the Ministry of Defense and in the State Information Service; dh) Prosecutors, judges and enforcement officers [bailiffs] of all levels; e) Directors of independent public institutions and members of the regulatory entities/authorities ; ë) General directors, the directors of directorates and the chiefs of sectors/sections (commissariats) in the centre, districts and regions, of the General

declaration and audit of assets[...]" which defined all categories of officials who are obliged to declare private interests on a regular basis: *inter alia* the President of the Republic, the Prime Minister, MPs, judges, prosecutors, etc. The recent amendments of the Law extended the list of declaring subjects to several directors at district level in the fields of education, health, etc. However, the experts' opinions were divided, with some of them arguing that fewer categories of officials obliged to declare assets would allow for a deeper process of verification. Nonetheless, the path followed was to expand the categories of declaring subjects. This conclusion was taken after a thorough evaluation of the responsibilities held by this category of officials, of their number in total (approximately 220 officials) as well as of the capacities of the Albanian monitoring body for asset declarations – the High Inspectorate of the Declaration and Audit of Assets (hereinafter HIDAA).

These officials (as defined in Article 3 of the Law) are obliged to declare to the HIDAA by March 31 of each year, the situation of their private interests as of 31 December of the previous year, the sources of their creation, as well as financial obligations as foreseen in Article 4⁶ of the abovementioned Law.

Directorate of the Police, the General Directorate of Taxation and that of Customs and the management levels of the General Directorate for the Prevention of Money Laundering; f) Officials of the customs and taxation administration in charge of collection of custom or taxation revenues, including the taxation officials of local government units; g) Directors of all levels of structures for return of and compensation for property, of privatization and the registration of property; gj) Officials who are elected and appointed by the Assembly, the President of the Republic, the Prime Minister, the ministers or persons equivalent to them; h) The Governor of the Bank of Albania, the deputy-governor and the members of its Supervisory Council; i) Heads of public institutions under/depending from the central institutions at the regional level; j) Directors of joint stock companies with the participation of state capital of more than 50 per cent and on the average more than 50 workers.

2. The obligation to declare applies also to the legal and physical persons, that after verifications are found to be related/connected persons with the subjects specified in paragraph 1 of this Article.

6 a) immovable properties and real rights over them; b) movable properties that can be registered in public registers; c) things of special value over US\$5000; ç) the value of shares, securities and parts of capital owned; d) the value of liquidities, the condition in cash, in revolving accounts, in deposits, treasury bonds and loans, in Lek and in foreign currency; dh) financial obligations to natural and juridical persons, expressed in Lek or in foreign currency; e) personal income for the year, from salary or participation on boards, commissions or any other activity that brings personal income; ë) licenses and patents that bring income. f) Gifts and preferential treatment, including the identity of the natural or legal person, from which come gifts and which create a preferential treatment. There should not be declared gifts or preferential treatments when their value is less than 10 000 (ten thousand) Lek, and when two or more gifts or preferential treatments given by the same person, together, do not exceed this value during the same disclosure period; g) commitments to private profit activities or any other activities that generate income, including any kind of income generated by this activity or this

There are four types of declarations of assets in Albania: 1) *before starting employment*; 2) *annual/periodic declaration*; 3) *after leaving public office*; 4) *upon request*.

- According to Article 5/1 of the Law, once appointed to a public office, all subjects with responsibility to declare assets, not later than 30 days from the date of commencement of employment, have the obligation to fill out the declaration form titled “Before starting employment”. The declaring subject should declare all assets, financial obligations or other interests and declared expenses referred to in Article 4 of this Law, including the sources of their acquisition, private commitments for the purpose of profit or any other activities that generate income, which exist on the date of commencement of duty, including any type of income generated by these engagements or activities, from 1 January to the date of commencement of work in the year of declaration.
- The Periodic Declaration is also known as the Annual Declaration of public officials or elected persons or their related persons. As defined in Article 7 of the Law, in the Periodic/Annual Declaration, the official declares only the changes that occurred in the assets, financial obligations and private interests previously declared (1 year earlier), and those acquired during the year of declaration and any received income and declarable expenditure, conducted throughout the year for which the declaration is made. All officials and other related persons, who have the obligation to declare (husband/wife and adult children) are obliged to submit their declaration, sealed in an envelope, by 31 March each year.
- Furthermore, in Article 7/1 the obligation is also foreseen for the declaring subject to declare in case of leaving or being moved from the office. Under this legal provision, the official is required no later than 15 days from the date of leaving/moving from the office, to fill out the declaration form entitled “After leaving public office”. This declaration form is submitted only once for the period from the last declaration to the date of leaving the office, unless the official starts another public duty, for which, according to this law, he/she continues

commitment; gj) private interests of the official that overlap, contain, are based on or derive from family or cohabitation relationships; h) any discloses expenses, worth over 500 000 (five hundred thousand) Albanian Leks, made during the declaration period.

to bear the obligation to declare. In the declaration form “After leaving public office” only the changes that occurred in the assets, liabilities and private interests should be declared for the period from the last declaration to the date of leaving office.

- A particular form of declaration is entitled “Upon Request” and defined in Article 9 of Law No. 9049, dated 10 April 2003, as amended, which provides the obligation to declare for all natural persons or legal entities related to declaring officials. This article defines as a person related to an official, other than family members, a trusted person or his/her partner (co-habitant). This declaration form is requested by the Inspector General, based on possible problems arising during the verification process (the control of private interests) of the declaring official including the suspected cases of illegal acquisition of assets or revenues, gifts, movables, interest-free loans of the official (see Art. 4 of the Assets declaration law), etc.

The monitoring body of the declaration and control of assets in the Republic of Albania is the HIDAA, which is an independent institution represented by the General Inspector.⁷ The HIDAA conducts a verification process which is based on several steps. First of all, the HIDAA collects all asset declarations as they are submitted by individuals or institutions. Any means of submission

7 Article 11 — Inspector General 1. The organ responsible for the audit of the making of a declaration of assets is the Inspector General. 2. The Inspector General is elected by the Assembly, on the proposal of the President, between two candidacies, for a five-year mandate. 3. The Inspector General makes the first declaration of assets within 30 days of his election and every year according to Article 4 of this Law to the Assembly of the Republic of Albania. 4. After the end of the term, with his consent, he is entitled to be appointed to the same or equivalent function or public duty that he held before his election. He does not benefit from this right if he is dismissed for serious violations of the law or for actions and behavior that seriously discredit the position and the reputation of the Inspector General.

Article 15 — Competencies of the Inspector General.

The Inspector General has these competencies: a) he directs the High Inspectorate of the Declaration and Audit of Assets, to audit the making of the declaration and the legitimacy of the sources of the assets declared by the subjects contemplated by this Law in the whole territory of the Republic of Albania; b) case by case, he notifies the President, the Assembly, the High Council of Justice, the Council of Ministers, the Prime Minister, the ministers and the directors of central institutions of irregularities found in the declaration of assets by employees under their jurisdiction.

Article 16 — High Inspectorate of the Declaration and Audit of Assets, Structure and Budget 1. The High Inspectorate of the Declaration and Audit of Assets, called the “High Inspectorate” below, is a public juridical person that, under the responsibility of the Inspector General, administers the declaration of assets, financial obligations and the audit of this declaration, according to the specifications made in this law (...)

is allowed such as by mail or personal delivery to the HIDAA's premises, done by the declarer himself or by the responsible authority (i.e. line ministries, etc.) in a collective manner. However the refusal to submit an asset declaration is punishable pursuant to Law No. 9049 "On the Declaration of Assets[...]" as well as by Art. 257/a of the Criminal Code. The latter as a special subject of the criminal offence also includes persons related to that official.⁸

1.2 Registering

In Albania, the national register of all the subjects with an obligation to declare assets, private interests and their financial obligations exists. The HIDAA updates on a regular basis the register, which is entitled the Fundamental Registry of Declaring Subjects, in which all officials who have the legal obligation to declare their assets are recorded by their index number. The Registry is in the public domain and contains the following information: general information of the official (first name, father's name, surname), function, institution, dates of appointment to/leaving office and all the dates of the submission of all declarations forms over the years, for as long as they have held a public function with a duty to declare assets. This register is being constantly updated, after possible data changes of the officials and includes also a history of the names and data of the officials that have left office who have had the obligation to make asset declarations.

Besides this Fundamental Registry, the declaration forms submitted by officials are also registered in a register entitled "List of Submissions", which is also updated on a daily basis. This list, in addition to the data contained in the Fundamental Registry, contains information about the mode of submission of the declaration form (submission by the official him/herself, by the responsible authority, by mail).

8 Law 23/ 2012 - New Art. 257/a CC: Refusal for the declaration, non-declaration, hiding or false declaration of the elected persons and public employees or any other person with duty to declare assets.

Refusal for the declaration, non-declaration, hiding or false declaration of the elected persons and public employees or any other person with duty to declare assets in accordance with the law, when previously administrative measures have been taken, constitutes a penal contravention and is punished with fine or imprisonment up to 6 months.

Hiding or false declaration of assets of the elected persons and public employees constitutes a penal contravention and is punished with fine or imprisonment up to 3 years.

All data of the declaring officials is also registered in an internal database system, in which the data of the “persons related” to the official is also recorded. Finally, it should be emphasised that all declaration forms after undergoing the scanning process are also uploaded into the HIDAA’s database, the internal management system on asset declaration forms. Each declaration can only be published upon request after the process of the arithmetic-logical checking process is over (see Chapter 3).

Actually, in the context of reforming the digitization of public records in Albania, the HIDAA is also undertaking important steps to enable “on-line” declaration for declaring officials. This process is at the stage of evaluating the possibilities for the implementation of an “electronic system for the declaration of assets, financial obligations and private interests” and one can say it is one of the future challenges for this institution.

1.3 Submission compliance

Article 5 of the Albanian Law No. 9049 “On the Declaration of Assets” provides the case when a subject of this law with duty to declare assets refuses to make such a declaration. The later article stipulates that: “*the refusal to make a declaration entails the loss of function and punishment in conformity with the Criminal Code.*” Moreover, within 30 days’ time, the Inspector General sends to the responsible institution a reasoned notification with a request to remove the person who refuses to declare from public office and the institution should take all necessary measures in order to comply with this requirement.

The HIDAA has issued several orders, including one addressed to subjects with a duty to declare assets providing explanations about the legal obligation to declare private interests and about the sanctions if they fail to perform such a duty. (This is under revision because of the amendments to the Law on Asset Declaration). In addition to this, the order No. 622 dated 30 November 2012 of the High Inspector General “On the Establishment and the Functioning of the Authorities Responsible for the Prevention of Conflict of Interest” foresees the establishment of such structures within the local and central institutions of public administration. It also stipulates the duties/tasks

of the responsible authorities in the process of asset declaration. Thus, in paragraph 6 it is explicitly defined that the responsible authorities shall prepare a list of all officials who according to their functions have a duty to declare private interests, and submit a copy of this list to the HIDAA. The responsible authorities shall also provide advice on how to fill out asset declaration forms, inform the declaring subjects about the sanctions if they refuse to declare, do not submit on time or make false declarations. Therefore, the updated list of all subjects with a duty to declare assets is periodically submitted to the HIDAA by the responsible authorities (which are usually established within the human resources departments of public institutions). The HIDAA also acts in a proactive way, by requiring from all public institutions updated lists of officials with a duty to declare private interests/assets every 6 months or twice a year. In the case where the submission of an asset declaration is refused by an elected person or those with immunity, the Inspector General notifies the National Assembly and also, as the case may be, the superior organ of this person. In all cases of refusal to make a declaration, after 30 days from notification to the responsible organ, the Inspector General is obliged to make public this case of refusal.

This measure of publicity could also be considered a punishment for the concerned official as it questions the credibility of this person. Therefore, in Albania there is a process of verification of asset declaration forms as well as punishments being provided in the case of non-compliance with this legal requirement. Moreover, as stated in paragraph 2 of Article 40 entitled “Administrative Contraventions”, the legislator also sanctions a fine (of an amount ranging from 50,000 to 100,000 Albanian leks (ALL), approx. €350-700) if the official or person related to the official with a duty to declare assets fails to submit the periodic declaration or upon request in the required time without reasonable cause. However, this is not designed or considered a specific step in the asset declaration process. Article 25 of asset declaration law provides the verification steps to be undertaken by the HIDAA’s inspectors as well as defining the types of controls⁹ this entity conducts.

9 Article 25 - Types of controls/ audits 1. The audit of the declarations includes arithmetical and logical audits and the verification and approval of the data of the declaration (a full audit). The arithmetical and logical audits are done for every declaration in order to determine the accuracy of the valuation of the assets declared, the accuracy of the financial sources declared and the sufficiency of coverage of the assets with the declared sources. 3. The methodologies and manuals for conducting the audit are approved by the Inspector General.

1.4 Formal check

After the administration of the declaration of assets, a formal/preliminary check is conducted. The formal check consists of a simple verification of all the necessary data of a declaration form, focusing in particular on any missing information. In practical terms, the working group established by the Inspector General for the formal/preliminary check ensures that all the relevant sections of an asset declaration are filled in with the appropriate data, that all figures, signatures of the declarer or family members, etc., as well as the necessary supporting documents are properly attached. If any of the above mentioned information is missing, the declaring subject is called in order to submit or to correct the declaration. The supporting documents to be attached to the asset declaration are listed as such neither in the asset declaration law nor in the HIDAA's guidelines or commentaries.

However, in the guidance on completion of the official document 'The Declaration of Private Interests', (issued by the HIDAA on December 2012, page 44), it is stated that the declaring subject should attach all supporting documents reflecting the financial situation (including expenses) as described in the declaration of assets. In practical terms, and on a case-by-case basis, the declaring subject attaches documents such as: certification of immovable property, bank statements, loans contracts, income/salary attestation, etc. In addition, an internal order of the High Inspector General based on Art.3 and Art.26¹⁰ of the Law on the Declaration of Assets provides guidelines for all persons with duty to declare assets including the obligation to provide data. This requirement does not prevent the HIDAA from requiring data from all existing public and private registers. In Albania there does not yet exist a system of on-line declaration, therefore there is not yet any automatic system of formal checks. Nonetheless, all declarations submitted go through this step.

¹⁰ Article 26 Obligation for Data:

For performing the audit and the verification of the data in a declaration, the High Inspectorate has the right to use necessary data in the entire state and public apparatus and in public and private juridical persons. On the request of the Inspector General, banks of the second level and other subjects who exercise banking and financial activity in the Republic of Albania are obligated to give data about the deposits, accounts and transactions performed by the persons who have the obligation to make a declaration according to this law. The above subjects are obligated to put all data requested at the disposition of the Inspector General within 15 days of the submission of his written request.

1.5 Plausibility check

The next step taken by the HIDAA is the plausibility check, known under the term of Arithmetic–Logic Checking (ALC) which is conducted after the formal one. During this procedure, the HIDAA's inspectors verify the substance of the declaration form. In Albania, the HIDAA has a simple electronic system into which all the data of each declaration is fed. The electronic system balances all data in order to see whether the declaration is plausible or if there are any reasonable grounds to believe that income has been hidden. All data submitted is included in the system, such as incomes, loans, gifts, expenses, etc. The main aim of the ALC is the verification of the correctness of the declared assets/property of the declaring subject. For example, in the annual declaration the declaring subject submits only data on the changes of financial interests which need to be justified by the value of incomes generated during the same declaring year.

The minimum subsistence level per capita (MSL) is calculated and taken into account as additional expenditure during this checking (i.e. a family of 4 persons multiplied by x where x is the MSL). This indicator is calculated on an annual bases and it is provided each year from the National Institute of Statistics (INSTAT). However, for the verification process this data is more of an indicative nature than an absolute figure leading to compelling conclusions. All declarations submitted go through this step. Article 38 of the Asset Declaration Law provides that the act of Making a False Declaration or submitting false data constitutes a criminal act and is punished according to the legislation in force.

1.6 Audit

The declaration of assets, their sources and financial obligations are made according to the requirements specified in the Asset Declaration Law and in the form specified by the Inspector General. As previously mentioned, the declaration includes the assets of the declaring subject as well as those of his family (spouse and grown children), the sources of acquisition and the financial obligations of the subject. The declaration also indicates whether the declarer has related persons or not (see chapter 3). Article 22 of the Law defines the procedure of declaration for members of family of the declaring official. When property of members of the family is divided and registered

as such in the bodies of the state or judicial administration, the declaration is signed and submitted separately by each member of the family, with the property registered in his/her name, and joined to the declaration of the person who has the obligation to make the declaration. All this data and information is thoroughly checked or verified in a last phase from the HIDAA inspectors through the procedure of full audit/verification. The selection of declarations subject to full auditing/verification is based on three different methods, one related to the position or function of the declaring subject and the other one by random selection via the drawing of lots.

The first method¹¹ is stipulated by paragraph 1 of Article 25/1 and in its points (a, b, c) all categories of officials or elected persons which undergo a compulsory full auditing procedure are detailed. Taking into account the length of the mandates or the important functions of these categories of persons (high-level officials or elected persons) the latter are divided into 3 groups according to the time of undergoing the full auditing procedure. (For example, every 2 years for the President of the Republic who has a 5-year mandate, every 3 years for MPs who have a mandate of 4 years, or 4 years for Heads of State Institutions who have a mandate of 5 or 7 years.) Despite the fact that these categories of persons undergo the full auditing once every 2, 3 or 4 years, obviously they are still obliged to declare assets every year as with all the other categories.

11 Article 25/1- Full audit of the declaration of assets and private interests.

1. Full audit for the verification of the truthfulness and the accuracy of the data contained in the declaration of assets and private interests is performed:

a) every 2 (two) years for the President of the Republic, the Prime Minister, the Deputy Prime Minister, the Minister, the Deputy Minister, judges of the Constitutional Court, the High Court, the Chair of the High State Audit, the General Prosecutor, the Ombudsman, the members of the Central Electoral Commission, members of the High Council of Justice, members of the regulatory bodies/authorities or the Competition Authority, the Governor of the Bank of Albania, the Deputy Governor and members of his/her Supervisory Council;

b) every 3 (three) years for the deputies, the prefects, the mayors of municipalities and communes (only for municipalities and communes of over 10,000 people), the chairs of the regional council's county council; high-level civil servants, heads of public administration; senior management officials of the taxation and customs administration; appellate prosecutors and judges; and prosecutors of the General Prosecutor's Office;

c) every 4 years for the heads of state institutions, at central or local level and the members of the collegial bodies of these institutions that are not included in the above points of paragraph 1.

The second method of full auditing is stipulated in paragraph 2 of the same article¹² of the Law on Asset Declaration which précised all categories of officials or elected persons which undergo a full auditing procedure by random selection. This random selection is done by the drawing of lots every year for a total of at least 4 (four) percent of the total number of declarations. The procedure of drawing lots is an open procedure which takes place in the presence of the media, civil society and trade union representatives. The selection of an official/declaration in one year does not preclude the official's declaration from the lottery in the next coming year.

A third way of subjecting officials to a full audit is described in paragraph 4 of Article 25/1 of the Law, the ad-hoc method, based on the decision of the HIDAA's Inspector General. This paragraph stipulates that a procedure

"...of full audit or re-audit of the declaration could be conducted whenever the Inspector General considers it necessary, when he/she has information/data from legitimate sources that cast doubt on the veracity and accuracy of the data contained in the declaration of an official and when there is a discrepancy resulting from the arithmetic and logical audit, which indicates that the resources do not cover or justify the assets (and expenses) of the declarer."

This is an important tool given to the HIDAA as a monitoring body, because it opens up the possibility for its inspectors to investigate cases of hidden wealth stemming from corruption based on information provided by the media, different state institutions (for example the tax and customs service), citizens/whistle-blowers or by risk analysis. Based on the above mentioned circumstances, 27 subjects with an obligation to declare assets underwent a full auditing procedure in 2012.

12 2. For all other categories of officials subject to periodic declaration (including the categories in the above points of paragraph 1), the audit is carried out every year for a total of at least 4 (four) percent of the total number of declarations. The Inspector General, based on risk assessment and the number of officials in each group, determines the level of the percentage for each group of functions according to paragraph 1 of Article 3 of this Law. The selection of the declaration is made by lottery, in the presence of the media, civil society and trade union representatives. The selection of an official/declaration in one year does not preclude the official/declaration from the lottery in the following year.

3. For the cases specified in paragraph 1, points a), b) and c), and paragraph 2 of this article, a double audit of the same declaration of the official made in the same year, should be avoided, except for the cases specified in paragraph 4 of this article.

4. A full audit or re-audit of the declaration is conducted whenever the Inspector General considers it necessary, when he has information/data from legitimate sources, that cast doubt on the veracity and accuracy of the data contained in the declaration of an official and when there is discrepancy resulting from the arithmetic and logical audit, which indicates that the resources do not cover or justify the property rights of the declarer.

During the full auditing procedure an administrative investigation takes place as provided in Article 25/2 of the Asset Declaration Law. In the case of any of the above mentioned three triggers for an audit, the Inspector General launches an administrative investigation. The administrative investigation is conducted in accordance with the Code of Administrative Procedures. This means in practical terms that the HIDAA's inspectors use all the existing information in private and state institutions or entities such as data collected by following:

- Banks (bank accounts of the declaring subject), non-bank financial institutions;
- Telephone companies, (telephone bills of the declaring subject)
- Immovable property offices;
- Agencies for the legalization, urbanization and integration of formal constructions/areas;
- National Centre for Business Registration;
- National Centre for Licensing;
- Vehicle Register;
- Total Information Management System (TIMS);
- High State Audit, etc.

All this data can be accessed by the HIDAA because all declaring subjects authorize an administrative investigation when they sign the declaration form. The HIDAA keeps a core list of approximately 45 entities to which a request for information is sent automatically for every full audit/verification made (i.e. all relevant state institutions plus all secondary banks). There are also other private or public institutions to which a request for information is sent on a case-by-case basis (i.e. FIU, travel agencies, etc.). Therefore, the list has more of an indicative nature than an exhaustive one. During the last few years, the HIDAA has signed several Memoranda of Understanding (30 MoUs have been signed by the HIDAA with different state institutions, including one NGO¹³ from 2004 to 2012) with different state institutions aimed at increasing the effectiveness in detecting the hiding of wealth or corruption. There are two types of MoU: one concerning the granting of direct access to the on-line database or the register kept by those institutions, and the other aimed at improving mutual cooperation among institutions tasked with fighting against corruption, preventing money laundering or avoiding the abuse of power to hide wealth, thereby increasing

communication or the exchange of information for specific cases. It could be mentioned that during only the last year (2012) the HIDAA signed several MoUs, such as with the High State Audit, Immoveable Property Registry Office, Vehicle Registry, etc. Despite all the above mentioned MoUs, especially those aimed at granting direct access to the institutional databases without a prior request, access to bank account data/information and access to some other systems is still accomplished upon request on a case-by-case basis. This is due to the fact that banks as private institutions are regulated and governed by a strong system of personal data protection and confidentiality. However, upon request, and after being shown the personal authorization signed by the subject on the declaration form, the banks disclose the required information.

The same could also be said concerning other institutions which possess sensitive data or do not have on-line databases. In all those cases, an official (paper-based) request is submitted. One of the biggest challenges for the HIDAA in relation to the asset declaration verification system is to increase and intensify the cooperation with other foreign bodies monitoring assets aimed at obtaining data on specific auditing processes for Albanian citizens, where there are grounds to believe that part of their hidden wealth could be abroad and has not been declared. Only by increasing international or foreign cooperation could the HIDAA conduct a thorough and effective administrative investigation for subjects with a duty to declare assets. This challenge is not only a challenge in Albania, but in many countries, as these monitoring bodies such as the HIDAA in Albania do not have judicial powers, the legislation in this field is not internationally unified and therefore mutual legal assistance can not easily be obtained. However, the establishment of different asset declaration networks aimed at the exchange of knowledge and best practices is an important tool already in use by different bodies that monitor assets within the Balkan region or even outside of it (for example RAI, GRECO, OECD).

1.7 Evaluation

Overall and 10 years after the establishment of a system for the declaration of assets in the Republic of Albania it can be stated that the latter is well consolidated and capable of coping with the challenges of the modern modalities of financial and economic crime. The asset declaration system is

regulated by the specific Law on the Declaration and Control of Assets [...] adopted in 2003, as amended, and covers a large group of public officials, elected persons and of persons related to them. This system is also monitored by a specialized body established for the purpose of administration and verification of assets, financial obligations (including declarable expenses) as well as the private interests of the subjects with a duty to declare assets.

However, some challenges still need to be addressed by the HIDAA in the forthcoming years. These challenges concern the establishment of an on-line system of declaration of assets which will improve the transparency of the system as well as facilitate the work of the HIDAA's staff in the process of asset declaration administration. Moreover, the exchange of information among different institutions inside and especially outside the country should be further intensified so that data from and for specific cases can be exchanged, and thus, the detection of corruption or of hidden wealth can be more effective.

C. Bosnia and Herzegovina

1.1 Background

Legislation in Bosnia and Herzegovina distinguishes four types of asset declarations, which are partly overlapping in terms of the coverage of officials and of the data declared:

- a. The Asset Declaration Form which is prescribed by the BiH Election Law
- b. The asset declaration as a component of the Personal data form provided by the Law on conflict of interest in the governmental institutions of Bosnia and Herzegovina (with a focus on conflicts of interest)
- c. The asset declaration for civil servants under the Civil Servant Law (with a focus on monitoring wealth and conflicts of interest of civil servants)
- d. The asset declaration for Ministers under the Law on the Council of Ministers (with a focus on monitoring wealth and conflicts of interest)

Asset declaration for elected officials

In accordance with the Election Law of BiH, the obligation to submit those forms lies with all elected officials at all levels. On the other hand, provisions of the Law on the Conflict of Interest in the Governmental Institutions of BiH provide that elected officials, executive officeholders and their advisers are obliged to submit those forms. The asset declaration form was established in 2002 by the Election Law of BiH. Some of the technicalities of the form were altered in 2010 concerning the mandatory columns relating to the type of income, assets or liabilities. Failure to submit the asset declaration is punishable by a fine ranging from 200 to 3,000 Bosnian convertible marks (BAM) (approx. €100–1,500).

In accordance with the Election Law of BiH, all elected officials at all levels of government are obliged to submit Declaration of Assets forms. The mentioned form contains the information prescribed in Article 15.7 (1) and (2) of the BiH Election Law, and includes the data on the wealth of candidates, members of their immediate family, spouse, children and household members.

Article 15.7

“Every candidate standing for elected office at the level of BiH or the Entity level shall be obliged, no later than fifteen (15) days from the day of accepting candidacy for the elections, to submit to the Central Election Commission of BiH, on a special form, a signed statement on his or her total property situation, containing:

- 1. Current income and sources of income, including all incomes, wages, profits from property, contributions as defined in Article 15.1 of this Law, account receivables and other incomes realized in BiH and abroad for the period of the last calendar year*
- 2. Property, including money, bank accounts, business documentation, shares, securities, bonds, real property, personal property, occupancy rights and other property and possessions which exceed five thousand (5,000) convertible marks, in BiH and abroad*
- 3. Disbursements and other liabilities, including all debts, liabilities, promissory notes, loans and guarantees of such liabilities in Bosnia and Herzegovina and abroad*

The statement should include the property situation of the candidates and close members of his or her family: spouse, children and members of the family household whom it is the candidate's legal obligation to sustain."

The obligation to submit the forms (depending on the level of government) lies with the elected officials at: the announcement of their candidacy; at the beginning of the mandate of other levels of government; and at the end of the mandate for all levels of government. Following the previous obligation, this form can also be submitted at the request of the CEC. Extraordinary reports have to be delivered in situations when certain facts on the possible existence of conflicts of interests are determined.

The CEC has established Rules of Procedure regarding the implementation of the Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina (the CEC's 29th session of 16 July 2009). This procedure is set down in Articles 5 and 6 defining that regular and extraordinary reports on asset declaration are to be filed at the request of the CEC. The Rules of Procedure also define the deadlines for the elected officials, executive officeholders and advisers to submit the abovementioned reports as follows:

- a. Within 30 days from the beginning of the mandate
- b. Regular annual reports until 31 March for the previous year
- c. Within 30 days after the expiry of six months after the end of mandate of elected officials, executive officeholders and advisers

Election Law of BiH - Article 15.7

"Every candidate standing for elected office at the level of BiH or the Entity level shall be obliged, no later than fifteen (15) days from the day of accepting candidacy for the elections, to submit to the Central Election Commission of BiH, on a special form, a signed statement on his or her total property situation, etc."

Also, **Article 15.8 (3)** defines that

"the Central Election Commission of BiH shall issue instructions to regulate the format and the manner of filling out of necessary forms, etc."

Asset declarations under the conflict of interest law

The Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina stipulates the obligation to submit regular financial reports. In this regard, the CEC has prescribed the form of the statement of elected officials, which also contains information about personal involvement in public companies, private enterprises, in the agency for privatization, associations and foundations, as well as data on remunerations, financial and ownership interest in a company. The main purpose of the submitted data is the creation of a database of the files of all elected officials, executive officeholders and advisers, and to allow the public at large to check for violations of the Law on the Conflict of Interest. The Law on the Conflict of Interest does not prescribe any penalty if an official fails to submit his/her completed form. Instead of sanctions, the officials are obliged to fill in the asset declaration under material and criminal liability in order to confirm the authenticity of the information. If the CEC determines that the data is not correct, it can report on the subject to the competent prosecutor's office.

The Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina (Article 12) provides that all elected officials, executive officeholders and their advisers have to submit the regular financial reports required by law and the rules and regulations of the CEC. The same regulation is provided in Article 13 of the Law on the Conflict on Interest in the Government of the Federation of Bosnia and Herzegovina as is the case with the Law on the Conflict on Interest in the Institutions of the BiH Brcko District (Article 13).

Article 12 - Personal Financial Disclosure

"1. Elected officials, executive officeholders and advisers shall file regular financial reports as required by law and by the Rules and Regulations of the Election Commission."

Asset declaration by civil servants

The Law on the Civil Service of BiH in its Article 16 (2) sets forth the obligation of civil servants to submit an asset declaration, as well as their immediate family members when appointed to a specific position in the civil service. Paragraph 3 defines the obligation of maintaining the delivered data in the Registry of Civil Servants in accordance with the propositions on data protection in Bosnia and Herzegovina:

2. A civil servant shall disclose, in accordance with this Law, all information on properties at his disposal and at the disposal of the members of the close family as well as activities and functions performed by him/herself and the members of his/her close family, when appointed as a civil servant.

3. All data shall be kept recorded in the Civil Service Register in accordance with the regulations on data protection in force in Bosnia and Herzegovina.

Asset declaration by ministers

In addition, the Law on Amendments to the Law on the Council of Ministers in Article 10 defines the procedure for the appointment of officials. In this regard, before the Presidency of Bosnia and Herzegovina appoints the Chairman and the ministers in the Council of Ministers, they are requested to deliver a CEC statement, which, among other categories, also contains an asset declaration. These statements are forwarded to the State Investigation and Protection Agency (hereinafter: SIPA)¹⁴ in order to verify the accuracy of submitted data. After the verification procedure is completed, the SIPA reports to the competent authority on the final results.

The CEC will assess the delivered information and existing data from registry and determine whether the candidate meets the requirements for appointment on a certain position or not. The CEC subsequently reports on the subject to the competent authority for the appointment. In this process, the full cooperation between the CEC, SIPA and other relevant authorities has been established as an obligation prescribed by law. Obligatory cooperation is especially considered in the Paragraph 3 of the Article 18 of the Law on the Conflict of Interests in the Governmental Institutions of Bosnia and Herzegovina stating that:

“The Election Commission shall have the right to establish the facts by way of conducting a personal investigation or to obtain facts and evidence through an action of other executive authorities. All authorities, institutions and courts of Bosnia and

¹⁴ The SIPA is the first police agency with full police authorizations and competences across the entire territory of BiH.

Herzegovina at all levels are therefore obliged to provide the Election Commission with legal and other official assistance as requested.”

Oversight bodies

The Central Election Commission

The asset declaration system in Bosnia and Herzegovina is facilitated by the Central Election Commission of Bosnia and Herzegovina. The Commission initiated its role in August 2001, after the Parliamentary Assembly of Bosnia and Herzegovina adopted the Election Law of Bosnia and Herzegovina at the sessions of both houses. Namely, it initially functioned as the Election Commission of Bosnia and Herzegovina. In accordance with Article 2.6 of the BiH Election Law, the President of the BiH Election Commission is appointed from amongst its members. At the constituting session of the BiH Election Commission, held on 20 November 2001, a Decision on Establishing the Secretariat of the BiH Election Commission was reached. The Secretariat conducts professional and administrative–technical duties for the Commission, and is responsible for the Complaints and Appeals Council and the Appellative Council. The Secretariat consist of five organizational units: the Sector for Legal Affairs and Implementation of the Law on the Prevention of Conflicts of Interests, the Sector for Elections and IT Technologies, the Sector for Finance and General Matters, the Service for Auditing and the Cabinet of the Commission. In accordance with the Rulebook on Internal Organization, the Commission provides for 89 workplaces, where at the present moment around 80 work places are occupied. The BiH Election Commission changed its name to the BiH Central Election Commission in April 2006 (hereinafter: CEC). The CEC is located in Sarajevo. As an independent body, the CEC has competences in the field of implementation of declarations under: the BiH Election Law, the Law on the Conflict of Interest, and partly the Law on the BiH Council of Ministers.

The CEC is responsible for carrying out the monitoring of the procedure of submitting data on the property of elected officials, executive functionaries and advisers. In this regard, Articles 15.7, 15.8 and 15.9 of the Election Law of Bosnia and Herzegovina regulates the obligation of all candidates at all levels to submit to the CEC a signed statement and the total amount of their

ownership, with the previously described information. In addition to this, it is defined that the CEC will make available to the public the forms containing the statement of his/her total wealth (see Chapter 3: Current Situation), without taking any responsibility for the accuracy of the data contained. Personal data forms are kept in a database with the related records of all elected officials, executive functionaries and advisers. The records and data kept in the above mentioned database are subject to the monitoring of the CEC, thus ensuring that no potential violation of the provisions of the Law on the Conflict of Interest is performed. In cases where some information has not been given or where some information is inaccurate, Article 17 of the Law on the Conflict of Interest in the Governmental Institutions of BiH provides the CEC with the possibility to report it to the competent prosecutor's office. The CEC Election Unit is an organizational unit competent for keeping the database on elected officials' asset declarations. The CEC Unit for the Implementation of the Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina conducts verification of submitted forms and the contained information and assesses whether any violation of the above mentioned Law has been committed. Depending on the result of the verification, the Unit may propose to the CEC to initiate an administrative procedure.

The CEC's Rules of Procedure regarding the implementation of the Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina (the CEC's 29th session of 16 July 2009) address the verification of delivered records in Article 11. First of all, it is important to define the content of personal records of *elected officials, executive officeholders and advisers*, which cover: decisions on election or appointment; reports provided in accordance with Article 7 (CEC Rules of Procedure regarding the implementation of the Law on the Conflict of Interest, etc.); charges against an elected official, executive officeholder or adviser; his/her statements and other relevant documentation. Based on data from the personal record, the CEC Unit for the Implementation of the Law on the Conflict of Interest will conduct the verification of: personal data; a financial report and other relevant information in order to give an assessment of the existence of reasonable suspicion of violation of the provisions of the Law on the Conflict of Interest. An authorized official of the abovementioned Unit will conduct the actions provided by the provisions of the Law on the Conflict of Interests in

the Governmental Institutions of Bosnia and Herzegovina. To raise the level of efficiency and/or to reduce the costs of procedure, the CEC may also request the assistance of another relevant authority in conducting certain actions in the procedure.

Anti-corruption Agency

The Agency for the Prevention of Corruption and Coordination in the Fight Against Corruption is in charge of processing the asset declarations of civil servants.

1.2 Registering

The CEC Election Unit is an organizational unit competent for keeping the database on asset declarations of elected officials. The Declaration of Assets contains the information prescribed by Article 15.7 (1) of the BiH Election Law. In this regard, the Declaration of Assets consists of the data on the wealth of the candidates and the members of their immediate family, spouse, children and household members. Article 15.7 (2) of the BiH Election Law prescribes which candidate has a legal obligation to submit a Declaration of Assets. In general, the CEC receives the asset declarations of candidates for elective office at the state and entity level, and of elected members of authorities other than the state or entity level of BiH. All submitted asset declarations are recorded in the register which is kept by the CEC.

In accordance with the CEC's Rules of Procedure regarding the implementation of the Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina (the CEC's 29th session of 16 July 2009), the personal records of elected officials, executive officeholders and advisers (detailed description under Chapter 1.6: Audit) also include the data on the wealth of candidates and of their immediate family members at home and abroad. Personal records are kept during and for six months after the expiration of the mandate of the elected official, executive officeholder or adviser. After the expiry of this period and upon the filed proposal of the Unit for the Implementation of Law on the Conflict of Interest, the personal records are archived in accordance with the conclusion reached by the CEC.

Asset declarations and forms included in the statement on total wealth are available to the public in accordance with the provisions of the Law on the Freedom of Information and the Law on the Protection of Personal Data of BiH. In this regard, the data from the personal record is available to the person in question as well as the public at their request, in accordance with provisions of the abovementioned laws (see below under Chapter 3: Privacy).

1.3 Submission compliance

In accordance with Article 7 of the CEC Instruction regarding design and the manner of filling out of the form of the asset declaration (the CEC's 15th session of 29 April 2010), the CEC records in the database of candidates that the asset declaration is delivered.

Article 1 (Subject) of the Instruction on the Design and the Manner of Filling out the Asset Declaration Form defines the rights and obligations of elected members of the government whose mandate is terminated in accordance with the Election Law. This document in Article 2 (Definitions) further defines who are the household member(s), spouse, children and other persons who live in the same household as the elected members of the government. Article 3 (Design of Asset Declaration) lists all the categories of persons who are obliged to provide the asset declaration. In this sense, the CEC has a roster of all categories of officials and family members who are obliged to submit the declaration on the Personal Information Form of elected officials, executive officeholders and their advisers. However, as for the actual identities (names) of persons being obliged to submit declarations, the CEC relies only on the submitted declarations and does not receive data from a third source such as the state entities that appoint the officials.

The Instruction on the Design and the Manner of Filling out the Asset Declaration Form defines the procedure for submitting this form. In the first phase, the CEC receives and registers the declaration. Upon receipt of the asset declaration, the CEC records in its database that the candidate has submitted the declaration. The CEC Audit Unit ensures the compliance of electoral candidates with their reporting obligations. The Audit Unit currently

consists of only 5-7 employees, which is not sufficient for the effective functioning of this unit. Therefore, the checks conducted by the Audit Unit are only of a formal nature and look to verify the data with clear correspondence between incomes and expenditures and, on the other side, declarations submitted by the candidates. The audit of candidates is connected with the audit of political finances under the Law on Political Party Financing, which defines the abovementioned procedures.

1.4 Formal checks

The CEC conducts a formal verification, which includes checking if the statement is submitted in accordance with the prescribed deadlines and whether it contains all of the required information. In many cases, the persons in question would deliver their asset declarations filled in manually (instead of electronically), thus making them illegible. Also, there were situations in which the request for specifying the value of their property was partially filled in through providing only the figures without the applicable currency (whether it was convertible marks, Euros or some other currency).

In conducting the formal checks of this process, three organizational units under the CEC are competent to undertake related actions: the Sector for Elections and IT, the Sector for Legal Affairs and Enforcement of the Law on the Conflict of Interest in the Governmental Institutions of BiH, and the Audit Office of the CEC. As already mentioned, the database on asset declarations of elected officials is located in the CEC's organizational unit of the Sector for Elections and IT. Accordingly, Article 5 of Rules on the Procedure Relating to the Implementation of the Law on the Conflict of Interest clearly defines the obligation of elected officials, executive officeholders and advisers to regularly deliver their financial reports. In accordance with Article 11 (Rules on the Procedure Regarding the Implementation of the Law on the Conflict of Interest), the CEC Section for the Implementation of the Law on the Conflict of Interest will conduct the analysis of financial report (consisting of the Personal Data Form and the Asset Declaration) and the other relevant information from the personal record of each elected official, executive officeholder or adviser. This analysis is aimed at determining possible violations of the Law on the

Conflict of Interest. Depending on the results of the analysis, the Sector for the Implementation of Law on the Conflict of Interest will possibly propose to the CEC the instigation of proceedings.

It is expected that the Agency for the Prevention of Corruption and Co-ordination in the Fight Against Corruption will soon operate in its full capacity to deal with the asset declarations of public servants. The law on the establishment of this agency prescribed the setting up of a new concept of how to treat this matter. Article 10 (Competences of the Agency) introduces a new model regarding the asset declarations, particularly in paragraphs (e), (f) and (g) which state that it is necessary:

“to prescribe a uniform methodology for collection of the data about financial situation of public servants; to analyze, in coordination with the competent authorities, the delivered data in order to detect the instances of corrupt practices, and take necessary measures as provided by law; as well as to collect and analyze statistics and other data, and inform all relevant stakeholders in Bosnia and Herzegovina of the results of the inquiry;”.

This measure is prescribed in the BiH Anti-Corruption Strategy (2009–2014) as well as its accompanying Action Plan which is developed for the implementation of the strategy.

The Instruction on the Design and Manner of Filling out the Asset Declaration Form defines in Article 4.2 (Availability and Obligation of the Delivery of the Reports) the modality of delivering the report in the following way: “The completed Declaration of Assets form shall be submitted by mail, fax, e-mail or in person. If the Asset Declaration Form is sent via e-mail, it must be scanned with the signature of the person submitting it.” In practice, this means that there is no on-line system for the submission of forms.

In addition, the BiH Anti-Corruption Strategy (2009-2014) prescribes, as a short-term goal, the implementation of a system of e-declaration, i.e. an electronic database of issued decisions on the conflict of interest and property statements.

1.5 Plausibility check

Currently, the checking is only of a basic nature – whether the asset declaration is in accordance with the deadlines and whether it is complete. Bosnia and Herzegovina currently has no legally defined mechanism for checking the plausibility of asset declarations. Instead, the data is exposed to the public within the limits of data protection laws.

So there is no verification of the declared data and the only sanction available is judgement by the public at large and the consequences for candidates are in terms of a low number of votes. In this respect, the situation changed as of 2012. Initially, data was published on the CEC's official website. But this practice was changed after the decision of the Appellate Court that the data can only be obtained on request. The main objective of online publication was actually to subject the data to public scrutiny, especially that of the media and NGOs, and to make sure that the data is checked through a completely transparent process.

However, there is an indirect plausibility check to some extent under the conflict of interest regime. Indirectly, the Rules of Procedure in the implementation of the Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina also include field verification of information, which is applied in special circumstances. Article 10 deals with the filling in of the report (which consists of a personal data form and an asset declaration), and defines that the signature of person who files a report is a guarantee that the data entered into the report is complete and accurate. The personal data form and asset declaration of the person in question are kept during and for six months after his/her mandate. The file is then archived. This procedure provides an insight into the person's total wealth at the beginning and at the end of the mandate.

Accordingly, the abovementioned Unit of the CEC will conduct an analysis of the data contained in the report to determine any potential conflict of interest. In addition to this, Article 12 (The Request for an Opinion) gives the opportunity to any person with doubts about the conflict of interest to seek the opinion of the CEC. The written request must contain sufficient facts to be regarded

as information relevant to the process for its consideration by the CEC. The procedure is initiated *ex officio*, and is either based on the investigation of the CEC or as a result of a report by third parties. An authorized officer of the CEC Sector for Implementation of the Law on Conflict of Interest is engaged in the procedure. The abovementioned rules regulate the procedures of the system for data verification and transparency, including the plausibility check.

Article 20 of the Law on the Conflict of Interest in the Governmental Institutions of BiH stipulates the sanctions in connection with the statements: ineligibility to run for any position of elected official, executive officeholder or adviser for a period of four years following the committed offence (as an obligatory norm) and a financial fine (as a voluntary norm). The financial fine varies from BAM 1,000 to 10,000 (imperative norm). Also there are sanctions in accordance with the BiH Election Law. The above sanctions are of a financial nature and are directly related to the failure to submit the form.

As for the BiH Election Law, it provides inadequate mechanisms for the timely detection of illicit enrichment of elected officials, and it lacks specific mechanisms to control the accuracy of the asset declarations submitted to the CEC.¹⁵ In this regard, GRECO also made a recommendation on establishing an effective system of verification at every level of government.¹⁶

1.6 Audit

Currently, the checking is only basic in nature – whether the asset declaration is in accordance with the deadlines and whether it is complete. Asset declarations are not subject to a detailed audit of authenticity of data. As already noted, the applicable legislation on the protection of personal and confidential data provides that those declarations are transparent for the public eye, and in practice the audit is primarily done by the NGO sector and the media. As far as state agencies are concerned, the asset declaration system in BiH is only partially established. Despite the existence of the asset declaration as an integral part of the person's file, the system does not include any settings to be used as an early warning mechanism of

15 Monitoring of Implementation of Anti-Corruption Reforms in BiH – Report of Transparency International Bosnia and Herzegovina.

16 2nd Evaluation Round, Evaluation Report, 8 December 2005, para. 77, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2\(2005\)8_BiH_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2(2005)8_BiH_EN.pdf).

potential irregularities of the information contained herein. Also, there is no methodology that would allow the summarizing of data and mathematical verifications in the context of comparative analysis (i.e. whether expenditures are matched by revenues, etc).

Aware of the shortcomings of the existing solutions in the context of the audit, Transparency International BiH and the Open Society Fund proposed to the Parliamentary Assembly the adoption of amendments to the Law on the Conflict of Interest in Governmental Institutions, the Law on Political Party Financing and the Election Law.¹⁷

As a confirmation of the aforementioned, the second round of GRECO's evaluations resulted in a certain number of recommendations for Bosnia and Herzegovina, one of them referring to the introduction of an effective audit system of asset declarations.¹⁸

1.7 Evaluation

The existing system of asset declaration does not include a special methodology for verification of the observed irregularities and what to do when the data has not been presented. Although there is a sound base in terms of the registry files (which contain an asset declaration), an efficient system for monitoring and verification of the submitted data is needed.

On the other hand, there are good examples which indicate that the existing solutions can provide a certain level of monitoring and evaluation of the submitted data. The Rules of Procedure in the area of conflicts of interest define in Article 5 the submission of reports on the personal financial situation of elected officials, executive officeholders and advisers. The primary goal of these reports is to determine the possible existence of conflicts of interest. Even though the laws on the conflict of interest do not stipulate sanctions for not submitting a completed form, it is the fact that each official must fill out a

17 Press release TI BiH - Jači nadzor i oštrije sankcije za zvaničnike i političke stranke koji krše zakone (29/11/2011, No: 06-01/318): "To propose amendments to the Election Law and extend the powers of the Central Electoral Commission, and introduce the competence of the Central Electoral Commission to review and control the asset declarations of public officials, given the fact that so far no one has checked their accuracy. Thus, the officials were able to enter any data, without any consequences, etc."

18 Monitoring the Implementation of Anti-Corruption Reforms in BiH, Transparency International BiH.

statement under his/her full material and criminal liability and confirm with a signature that the provided information is true and accurate, which provides the CEC with an opportunity to file a report to the competent Prosecutor's Office. Pursuant to Article + 17 of the Law on the Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina, the CEC performs this action in cases when some information has not been given or some information proved to be inaccurate.

Asset declarations are designed to have a preventive impact, where the public has the opportunity to assess the suitability of candidates (whether she/he is morally acceptable or not) for performing a specific function. As a side effect, asset declarations might also be used as evidence in criminal investigations/proceedings.

In the context of the challenges, it is important to primarily categorize the three largest ones. The first challenge concerns the "unfinished" system of asset declaration in terms of the introduction of effective tools to ensure proper management of data. The second challenge is the elimination of the principle of voluntarism in compliance to the laws and obligations in the context of asset declaration. The last (but not least) concerns the matter on how to overcome the gap between the transparency and privacy of the information provided in the asset declaration system. When considering the first challenge, it is important to note that there is a relevant infrastructure for conducting the activities focused on managing the asset declaration system.

To manage this system effectively, we need to introduce efficient methodologies and mechanisms for: registration, verification, evaluation, auditing and electronic data management of the so-called "e-declaration". A respective vision is given within the Anti-Corruption Strategy of BiH 2009-2014. When dealing with the second challenge, it is important to point out that the BiH Election Law, in Section 15, deals with a variety of issues and, among other items, compliance is still voluntary. Therefore, prior to sentencing or taking administrative actions, the CEC is trying to achieve voluntary cooperation of candidates.¹⁹ Another weakness lies in the absence of an obligation to file an annual statement, which actually reduces the possibility of detecting violations at an early stage.

19 Article 15.6, Paragraph (3) Election Law of BiH.

Keeping in mind the certain specificity of the legislation in Bosnia and Herzegovina, it is evident that the Law on the Freedom of Access to Information and the Law on a Protection of Personal Data are mutually dependent. In this area, the greatest challenge is how to provide information to the public, and, on the other hand, how to ensure the privacy and protection of personal data. This is supported by the decision of the Appeals Commission of the BiH Court from April 2012, which prohibits the publication of asset declarations that were previously published by the CEC. Bearing in mind that the CEC has no jurisdiction to check the authenticity of the asset declaration of civil servants (which is now the jurisdiction of the newly established Agency for Prevention of Corruption and Anti-Corruption when it comes to public servants), and that there are no sanctions for improperly filled-out asset declarations, it is essential to have public monitoring of the declarations for public officials with illicit enrichment.²⁰

At the technical level, electronic databases and a system for the on-line filling in of data are needed. And, last but not least, it is necessary to establish periodic reviews of the asset declaration system and to develop adequate indicators for assessing the system's effectiveness.

Summarizing the abovementioned, and in order to provide a general assessment on the current situation on the subject, the following conclusion can cover the needs for further research:

“Overall, Bosnia and Herzegovina is still at an early stage in the fight against corruption. Corruption remains prevalent in many areas and it is a serious problem. The legal framework is defined, but the political will to solve the problems and to improve the institutional capacity remains weak. It is necessary to accelerate the implementation of the strategy and action plan. Continued efforts are required in order to achieve solid performance of proactive investigations, prosecutions and convictions of high-level corruption.”²¹

20 Monitoring ispunjenosti međunarodnih i evropskih obaveza Bosne i Hercegovine u oblasti borbe protiv korupcije.

21 Radni dokument osoblja komisije - Izvještaj o napretku Bosne i Hercegovine u 2012. Prilog uz saopštenje Komisije Evropskom Parlamentu i Vijeću (Strategija proširenja i ključni izazovi 2012.-2013.), Brisel, 10.10.2012.

D. Croatia

1.1 Background

Categories of officials and family members who are obliged to declare income and assets

The obligation of submitting declarations on income and assets of public officials was introduced into the legal system of the Republic of Croatia by the Act on Preventing the Conflict of Interest in the Exercise of Public Office, which was passed by the Parliament as the legislative authority of the Republic of Croatia at its session on 1 October 2003 and it entered into force on 24 October.²² It is worth noting that since its first adoption, in the period from 2003 up to 2011, this law was subsequently amended six times, inter alia, in the section which defines the circle of officials who are required to comply with the provisions of this law.²³ The new Act on Preventing the Conflict of Interest was passed by the Parliament at its session on 11 February 2011, and it entered into force on 11 March 2011, and this law was also subsequently amended in regard to the persons to whom the law applies.²⁴

According to the applicable provisions of the Act on Preventing the Conflict of Interest²⁵ the obligation of submitting declarations on income and asset of officials applies to the highest-ranking public officials whose public duties are expressly stated in Article 3 paragraph 1 of the Act²⁶ and further in Article 3

22 The Act on Preventing Conflict of Interest was published in the official gazette of the Republic of Croatia, Official Gazette, No. 163/03 of October 16, 2003, the Act can be found on the website of the Official Gazette as the official journal of the Republic of Croatia www.nn.hr.

23 The Act on Amendments to the Act on Preventing the Conflict of Interest, Official Gazette No. 94/04 of July 12, 2004, the Act on Amendments to the Act on Preventing the Conflict of Interest, Official Gazette No. 48/05 of April 13, 2005, the Act on Amendments to the Act on Preventing the Conflict of Interest, Official Gazette No. 141/06 of December 27, 2006, the Act on Amendments to the Act on Preventing the Conflict of Interest, Official Gazette No. 60/08 of May 28, 2008, the Act on Amendments to the Act on Preventing the Conflict of Interest, Official Gazette No. 38/09 of March 27, 2009, the Act on Amendments to the Act on Preventing the Conflict of Interest, Official Gazette No. 92/10 of July 24, 2010.

24 The Act on Preventing the Conflict of Interest, Official Gazette No. 26/11 of March 2, 2011, Act on Amendments to the Act on Preventing the Conflict of Interest, Official Gazette No. 12/12 of January 26, 2012.

25 The revised text of the Act on Preventing the Conflict of Interest was published in the Official Gazette No. 48/2013 of April 24, 2013.

26 Article 3 paragraph 1 of the Act on Preventing the Conflict of Interest: The President of the Republic, President and Vice-Presidents of the Parliament, Members of the Parliament, the President and Members of the Government (vice-presidents and ministers in the Government),

paragraph 2 of the Act it is prescribed that the Law should apply also to officials who are appointed or approved as officials by the Parliament, and further to the officials appointed by the Government or by the President, except those appointed in accordance with the provisions of the Law on Service in the Armed Forces. Pursuant to Article 3 paragraph 3 of the Act it is prescribed that certain provisions of the law, including the obligation of reporting income and asset of officials should also apply to senior civil servants appointed by the Government on the basis of a previously conducted application process.

In Article 3 paragraph 1 of the Act on Preventing the Conflict of Interest it is specified individually to whom the obligations arising from this law apply. In addition to the highest state officials for whom the submission of the declaration on assets and income is required by the Act on Preventing the Conflict of Interest the obligation to submit declarations on assets of judges is prescribed for certain judicial officials, specifically judges, state attorneys and deputy state attorneys.

President, Vice-President and Judges of the Constitutional Court, Deputy Ministers, Head of the Office of the President of the Government, Heads of Government Offices, the Director General of Police, Director of Tax Administration, Director of the Customs Administration, the Inspector General of the State Inspectorate, Auditor General and his Deputies, Governors, Deputy Governor and Vice Governor of the National Bank, the Auditor General and his Deputies, the Ombudsman and his Deputies, the Children's Ombudsman and his Deputies, the Ombudsman for Gender Equality and his Deputies, the Ombudsman for Persons with Disabilities and its Deputies, the Secretary of the Parliament, the Secretary-General of the Government, the Secretary-General of the Constitutional Court, the Secretary of the Supreme Court, Deputy Secretary of the Parliament, the Deputy Secretary-General of the Government, the Deputy Head of the Office of the President of the Government, Assistant Ministers, the Spokesman, Heads of State Administrative Organizations, Director and Deputy Directors of the Agency for State Property Management, Director and Assistant Directors of the Pension Insurance Institute, Director, Deputy Director and Assistant Director of the Institute for Health Insurance, Director and Assistant Director of the Employment Service, the Treasurer General, the Head of the Office of the President of the Parliament, Directors of Agencies and Authorities of the Government and Directors of the Institutes appointed by the Government, Officials in the Office of the President appointed by the President in accordance with the provisions of the special law and other legal acts, the Chief and Deputy Chief General of the General Staff of the Armed Forces, the Inspector General of Defence, Commanders and Deputy Commanders of branches of the Armed Forces and Support Command, the Director and Deputy Director of the Military Academy and Commander of the Coast Guard, the President, Vice President and Members of the Central Election Commission the Chairman and Board Members of Companies that are majority-owned by the state, County Governors and the Mayor of the City of Zagreb and their Deputies, Mayors, Municipal Mayors and their Deputies, President, Deputies and Members of the State Commission for Supervision of Public Procurement, the President and Members of the Commission for the Identification of Conflicts of Interest.

Types of income and assets and expenditures that need to be declared

The declaration on the financial situation of officials, judges, state attorneys and deputy state attorneys contains information on income and assets of officials, their spouse or common-law partners and minor children.

The Act on Preventing the Conflict of Interest prescribes that the assets and income declaration should include the information about the duties performed by officials professionally or unprofessionally, data on other duties performed by officials and the other activities they perform and data on the activity officials performed immediately before taking office. Furthermore, the declaration should include the data on income that on any basis is earned by the official, or other persons on whose income and assets the official is obliged to report and which is within the legal system categorized as income from employment (salary), income from self-employment, income from property and property rights, investment income, income from insurance, or any other income. As for receipts – specifically those receipts that are not considered to be income and receipts that are not subject to income tax should be indicated.

The salary of officials in terms of the provisions of the Act on Preventing the Conflict of Interest and the obligation of assets and income declaration and the sources and methods for acquiring the assets of officials is considered to be the only cash received for holding public office, except for reimbursement of travel and other expenses. The Act on Preventing the Conflict of Interest prohibits officials from receiving additional compensation for the performance of duties of public office.

Article 12 of the Act on Preventing the Conflict of Interest prescribes that officials who in the exercise of public duties receive a salary for the office they hold may not receive any other salary or other compensation for the performance of any other public office, unless otherwise provided by law. Article 13 of the same law stipulates that officials who professionally exercise public office during its performance cannot for a fee or for the purpose of generating revenue perform other jobs in terms of regular and permanent jobs, unless the Commission for the Identification of Conflicts of Interest, at

the previous request of the official, determines that the said jobs do not affect the lawful exercise of public duties.

In addition to the income they generate, in the data on the acquired assets the officials present ownership or co-ownership of real estate and movable property of greater value. Movable property of higher values implies vehicles, vessels, aircraft, operating machinery, hunting weapons, artwork, jewellery and other items of personal practical value, securities, animals and other acquired movable property if their individual value exceeds HRK 30,000 (approximately €4,000), except household items and clothing.

In the property data, the ownership of shares and stocks in a company, shares in the ownership of other businesses, as well as savings in money should be specifically presented if they exceed the annual net income of officials. Officials are required to present debts, assumed liabilities and other liabilities.

In relation to the inherited property, officials in their asset and income declarations state the information on the type of inherited property, information on the total amount of the inheritance and information regarding the person from whom they inherited the legacy.

The declaration must contain the information on the manner of acquisition of the assets and on the sources of funding by which the assets were acquired.

Existence of obligation to submit the asset and income declaration of officials

The Act on Preventing the Conflict of Interest prescribes that officials shall submit the declaration on the financial situation within 30 days of the day of taking office. The income declaration must be submitted by officials within 30 days of termination of the exercise of public duties. If during the performance of public duties there has been a fundamental change in the financial state of officials, officials are required to submit a declaration at the end of the year in which the change occurred.

Officials who were re-elected or appointed to the same office in the election, regardless of whether the duty is exercised professionally or unprofessionally, shall submit the income declaration within 30 days of the day of taking office at the beginning of their new term of office.

Senior civil servants, appointed by the Government on the basis of an application process, are obliged to submit their income declaration, as well as the sources and manner of acquisition of the property also within 30 days of the day of their appointment, and every four years during their office, and if during their office there has been a fundamental change in their financial situation, they are requested to submit the declaration to the Commission at the end of the year in which the change occurred. They are also required to submit a declaration within 30 days of the day of dismissal with the state of their property on the day of submission.

The Judicial Council Act²⁷ stipulates that judges are required within 30 days of the date of their first entry into duty to submit declarations of their assets, fixed income and the assets of their spouse and minor children with the state thereof on that day and if during the term of office there has been a significant change, at the end of the year in which the change occurred. Judges are required to indicate in the declaration the information on savings if they exceed the annual net income of judges.

The State Attorney's Office Act²⁸ stipulates that state attorneys and deputy state attorneys are required within 30 days of the day of taking office to submit the declaration on their assets, fixed income and the assets of their spouse and minor children with the state thereof on that day and if during the performance of duties there has been a fundamental change, at the end of the year in which the change occurred. State attorneys and deputy state attorneys are required to report in their declaration the information on savings if they exceed the annual net income of state attorneys and deputy state attorneys. State attorneys and deputy state attorneys are required to submit the income declaration also at the end of their office as state attorneys.

27 The Judicial Council Act is published in the Official Gazette Nos. 116/10, 57/11, 130/11, 13/13 and 28/13.

28 The State Attorney's Office Act is published in the Official Gazette Nos. 76/09, 153/09, 116/10, 145/10, 57/11 and 130/11.

Monitoring Body

The income declarations are submitted by officials to the Commission for the Identification of Conflicts of Interest, established as a permanent, independent and autonomous state authority which performs duties within its scope of competence and authority defined by the Act on Preventing the Conflict of Interest. Declarations shall be submitted in a formal form, the content of which is determined and prescribed by this Commission. In the prescribed form of the income declaration of officials the information is sorted by categories that officials are obliged to show in accordance with the provisions of the Act on Preventing the Conflict of Interest, and they include the income and assets of officials, as well as the income and assets of their spouse or common-law spouse and minor children, as well as information on the manner of the acquisition of assets and sources of funding by which the assets were acquired. The Commission may require the officials to add to the data shown on the acquired and inherited assets the appropriate evidences, and it is authorized and required to conduct formal and content verification of data.

By the Act on the State Judicial Council the jurisdiction of the State Judicial Council is prescribed for the keeping of personal files of judges and the keeping and controlling of property cards of judges. The same law states that the failure to submit declarations of assets or false representation of data in assets declaration is a disciplinary offence.

The State Attorney's Office Act stipulates that the State Attorneys Council is authorized to keep the records of state attorneys and deputy state attorneys, and to keep and control their property cards. The same law states that the failure to submit declarations of assets or false representation of data in assets is a disciplinary offence.

Overview of the verification procedure

Checking of the data from the income declaration of officials in accordance with the provisions of the Act on Preventing the Conflict of Interest is in the jurisdiction of the Commission for Identification of Conflicts of Interest. For each submitted declaration a preliminary (administrative) checking, and then a verification shall be performed. The process of data verification from

the submitted income declarations of officials is inaccessible to the public, but the final results after completion of the process of data verification are required to be published publicly by the Commission, and they publish them on the official website of the Commission.

Although the obligation to submit the income declaration by officials was introduced into the legal system by the first Act on Preventing the Conflict of Interest in the Exercise of Public Duty in 2003, public disclosure of information from the income declarations of officials in the registry of property cards on the Internet site of the Commission was conducted only until 2010. In this Act, including its six subsequent amendments, no procedure of systematic verification of data from the property cards of officials was prescribed. Verification of the data contained in the declarations is prescribed by the new Act on Preventing the Conflict of Interest of 2011. Since data verification is under the jurisdiction of the Commission for the Identification of Conflicts of Interest and since, pursuant to the provisions of the new law, the members of the Commission in its new composition were selected as late as 25 January 2013, and as they started working on 11 February 2013, it cannot be said that by May 2013 (the time of this analysis) the verification system of asset declarations was fully in place.

The preliminary (administrative) verification of the data from the income declaration of officials, which coincides with the formal verification of the status of the applicant, by verifying the timely submission of the declaration, by verifying if the declaration was signed by officials and by verifying the correct and complete filling out of the form, was carried out before the appointment of the Commission members as prescribed by the new Act on Preventing the Conflict of Interest. This verification was conducted by officials from the professional service of the Commission (the Office of the Commission), which performs professional, administrative and technical tasks for the Commission.

It is important to note that the Constitutional Court²⁹ in its session of 7 November 2012 repealed two articles: Article 10 paragraph 1 subparagraph 2 of the Act on Preventing the Conflict of Interest insofar as it stipulated that verification of the data from the income declaration shall be carried out in a manner prescribed by the Regulation governing the verification procedure of information contained in the income declaration of officials, and Article 53 which stipulated that the Commission shall adopt within 30 days from the day of the election a regulation regulating the procedure for verification of information contained in the income declaration of officials. Repealing these articles was justified by the Constitutional Court by reference to the constitutional principles of the hierarchy of legal regulations in the domestic legal order, and the interpretation that

“in a democratic society based on the rule of law, legal procedures that have an impact on the individual legal situation of third parties or are linked to deciding on their rights and obligations or their punishment, must be regulated by law”

and not by a regulation as a bylaw adopted by the Commission instead of the legislature. The Constitutional Court in its decision pronounced the transferring of legislative competence regarding the prescription of verification process of information from the income declaration from the Parliament as the legislative authority to the Commission, the *“usurpation of authority by excessive delegation”* which is not in conformity with the Constitution.

The Constitutional Court in its Decision of 7 November 2012 pointed out that the verification process of the data from the income declaration of officials must be regulated by the legislator and not by the Commission through a

29 The Constitution of the Republic of Croatia, in Article 5 paragraph 1 prescribes: *“In the Republic of Croatia laws must be in accordance with the Constitution, and other regulations both with the Constitution and law”*. Article 128 of the Constitution of the Republic of Croatia prescribes that the Constitutional Court among other things, decides on the constitutionality of the law with the Constitution, and on the constitutionality of other regulations with the system and the law. Against the Act on Preventing the Conflict of Interest passed by the Croatian Parliament at its session on 11 February 2011, and published in the Official Gazette No. 26 of 2 March 2012 and the Act on Amendments to the Act on Preventing the Conflict of Interest passed by the Croatian Parliament at its session on 25 January 2012, and published in the Official Gazette No. 12 of 26 January 2012, three proposals were submitted to review the constitutionality of this law with the Constitution of the Republic of Croatia, by Josip Leko, the current acting President of the Croatian Parliament in the 7th Term (term of office up to now) and the former President of the Commission for the Identification of Conflicts of Interest in the period up to now, and by Gordana Grbić and Daniel Majer. The decision of the Constitutional Court of the Republic of Croatia No. 2713 was published in the Official Gazette.

Regulation. Meanwhile, the Parliament as a legislative body did not make any further legal rules that elaborate and prescribe the verification procedure, although a working group was formed to review the need for amendments to the Act on Preventing the Conflict of Interest, in which, besides representatives of the legislative and executive authority, the representatives of the Commission for the Identification of Conflicts of Interest and representatives of interested non-governmental organizations participated as well. Within this working group, the Commission for the Identification of Conflicts of Interest had the possibility of submitting its own proposal for the elaboration of the verification process of the information from the submitted income declarations of officials. Since the beginning of the office of the Commission for the Identification of Conflicts of Interest, selected in accordance with the provisions of the new Act on Preventing the Conflict of Interest, a regular verification of data from property cards has been conducted pursuant to the non-repealed provisions of the Act on Preventing the Conflict of Interest that principally and generally prescribe the verification procedure without its further elaboration, and which will be more discussed later in this paper.

In 2012, the Commission received a total of 800 declarations.

1.2 Registering

In addition to prescribing the form in which income declarations of officials are to be submitted, the setting up of a register of property cards of officials is also pursuant to the Act on Preventing the Conflict of Interest defined as one of the responsibilities of the Commission.

The form of the income declarations of officials is available on the website of the Commission, and officials print it out, fill it in by hand, and they must personally sign it and submit it to the Commission. The completed form in writing is stored in the Commission in the registry of property cards in files that are separately kept for each official. Into the file of the property cards are deposited all the forms of income declarations of officials that the official delivered on the occasion of assuming office, on the occasion of occurrence of any material changes in the assets, or upon termination of the exercise of public duties, as well as evidence and documentation submitted by an official or obtained by the Commission in the verification process of data from the income declarations of the officials.

The Act on Preventing the Conflict of Interest stipulates that the information on the duties performed by officials professionally or unprofessionally, data on other duties performed by officials as well as information about other activities that they perform and that they performed just before taking office, and information on other income and assets of officials, his spouse or common-law partners and minor children are public, and may be published without the consent of officials.

Apart from the register of property cards of officials in which income declarations of officials in writing are stored, there is a database in electronic form that contains the aforementioned public information as defined by law relating to the official, his spouse or common-law partners and minor children. This database, which contains the statutory public data from the income declarations of officials, is published and available to the public on the official website of the Commission.³⁰

In the form of the income declarations of officials, which is to be submitted to the Commission in the described manner, certain personal information, such as information about the identity of the family members of officials, information on addresses, personal identification numbers and other protected personal data are entered in accordance with the provisions of the Law on the Protection of Personal Data. This data is not public and is not to be published in a publicly accessible database in electronic format on the website of the Commission.

Immediately upon receipt of the written submission of income declarations of officials the procedure of the preliminary (administrative) and formal data verification is conducted, and the public data from the submitted written income declarations of officials is entered into a database in electronic form and is published on the official website, if the preliminary (administrative) verification confirms that the form of income declarations has been correctly and completely filled in by a person who is required to comply with the provisions of the Act on Preventing the Conflict of Interest. A written form of income declarations is deposited in the file of property cards of each official in the registry of property cards kept by the Commission.

30 Address of the website of the Commission: www.sukobinteresa.hr.

It is worth noting that the Act on Preventing the Conflict of Interest and the State Attorney's Office Act provide that officials, before meeting the obligation to report their income declarations to the Commission, cannot receive a salary.

1.3 Submission compliance

At the time of making this study, there is no particularly organized registry that would contain a comprehensive list of (concrete) public offices whose holders are obliged to comply with the provisions of the Act on Preventing the Conflict of Interest, i.e. to submit their income declarations to the Commission for the Identification of Conflicts of Interest. The establishment of such a registry is one of the measures of the elaborated Action Plan in addition to the National Anti-Corruption Strategy, which the Commission proposed to the Government in accordance with the provisions of the new law, and its preparation is underway.

The special importance of establishing this registry stems from the stipulation of Article 3 paragraphs 1, 2 and 3 of the Act on Preventing the Conflict of Interest, because in these provisions not all public offices whose holders must submit to the Commission their income declarations are individually listed, thus without knowing the entire legal and actual structure and the numerous laws which regulate methods of election or appointment of certain public office holders, neither the Commission nor the public can know who are all those persons subject to the Act on Preventing the Conflict of Interest. For example, this law stipulates that officials in terms of the Act on Preventing the Conflict of Interest are also considered to be directors of governmental agencies, heads of agencies and authorities of the Government and the heads of institutes appointed by the Government. If data on the exact name of all state administrative agencies, and government agencies and authorities, as well as institutes whose directors are appointed by the Government are not gathered in one place, it is much harder to determine the circle of officials whose duties and procedures in the area of the conflict of interest are in the scope of responsibilities and work of the Commission.

Particular problems exist in determining who counts as the holder of an office and who is required to comply with the Act on Preventing the Conflict of Interest pursuant to Article 3 paragraph 2 and paragraph 3 of this law, and

according to the fact that such officials are appointed or approved by the Parliament, or are appointed by the Government, or are appointed by the President (except persons appointed by the President in accordance with the provisions of the Law on Service in the Armed Forces).³¹

It would be relatively easy to determine the list of officeholders that these authorities appoint or whose appointment is confirmed by the Parliament; however, it is difficult to determine whether these officeholders are obliged to act according to the provisions of the Act on Preventing the Conflict of Interest: the Act, or any other legislation in the legal system, does not contain criteria by which it could be determined whether the holder of certain duties in that public office serves as an official.

Such a question was brought to the Commission's attention in a recent case in which the Commission initiated a proceeding against the director of public television for violation of the provisions of the Act on Preventing the Conflict of Interest. The director of public television defended himself saying that his duty was not directly mentioned in the Act on Preventing the Conflict of Interest, and also that in his act of appointment, the Parliament did not stipulate him to be a public official. Therefore, he concluded that he was not obliged by the rules of the Act on Preventing the Conflict of Interest.

Since the currently applicable provisions of the Act on Preventing the Conflict of Interest do not clearly define the circle of public officials who are required to act in accordance with the provisions of this law, this law stipulates the obligation of the state authorities that appoint or confirm the appointment of public officials (the Parliament, the Government and the President of the Republic) to submit to the Commission a list of persons subject to the appointment, election or approval not later than six months from the date of entry into force of this law. Although the Act on Preventing the Conflict of Interest came into force on 11 March 2011, by the completion of this study the Commission received a list of persons subject to appointment by the Government and the President, but there is a further list missing of persons subject to appointment, election or approval that the Parliament is obliged to submit to the Commission.

31 The Decision of the Commission is included at the end of this text.

It is assumed that the main reason why the Parliament has not met this obligation yet is the difficulty of determining whether a particular appointment, election or appointment confirmation is considered to be an appointment of an official or whether the appointment does not have such a feature.

As one of the indicators by which it could be determined whether it is the appointment of a public office holder as an official, the provisions of the Obligations and Rights of State Officials Act could be used; however, limiting the determination of persons obliged to comply with the Act on Preventing the Conflict of Interest only to those persons to whom the Obligations and Rights of State Officials Act³² would apply, would be wrong in the opinion of the Commission: all those officials whose duties are specifically listed in Article 3 paragraph 1 are not subject to the Obligations and Rights of State Officials Act, but only to the Act on Preventing the Conflict of Interest because of their public position and powers without being a State Official.

The list of the holders of public offices is quite similar in the Obligations and Rights of State Officials Act, and in the Act on Preventing the Conflict of Interest; however, the list of public offices in the Act on Preventing the Conflict of Interest is much broader.³³

The previously mentioned case of the director of public television is also an example of a situation in which the determination of the status of the holder of public office could not be made just by referring to the Obligations and Rights of State Officials Act. As mentioned earlier, this duty is not specifically mentioned

32 The Obligations and Rights of State Officials Act is published in Official Gazette No.s 101/98, 135/98, 105/99, 25/00, 73/00, 30/01, 59/01, 114/01, 153/02, 163/03, 16/04, 30/04, 121/05, 151/05, 141/06, 17/07, 34/07, 107/07, 60/08, 38/09, 150/11 and 22/13.

33 The Governors, Deputy Governor and Vice Governor of the National Bank, Director and Deputy Directors of the Agency for State Property Management, Directors of Agencies and Authorities of the Government and Directors of the Institutes appointed by the Government, the Chief and Deputy Chief General of the General Staff of the Armed Forces, the Inspector General of Defence, Commanders and Deputy Commanders of branches of the Armed Forces and Support Command, the Director and Deputy Director of the Military Academy and Commander of the Coast Guard, the Chairman and Board Members of Companies that are majority-owned by the state, County Governors and the Mayor of the City of Zagreb and their Deputies, Mayors, Municipal Mayors and their Deputies, President, Deputies and Members of the State Commission for Supervision of Public Procurement, the President and Members of the Commission for the Identification of Conflicts of Interest – all of these public officials are obliged to act according to the rules of the Act on Preventing the Conflict of Interest, and do not have the rights deriving from the Obligations and Rights of State Officials Act.

in Article 3 paragraph 1 of the Act on Preventing the Conflict of Interest and also the director of public television does not have the rights of public officials stipulated in the Obligations and Rights of State Officials Act; nonetheless, without any doubt he has certain public power in a public-founded entity, so there are reasons for concluding that the holder of this office is obliged to act according to the Act on Preventing the Conflict of Interest.

If in the meantime the legislature, through amendments to this law specifically, does not determine a definitive list of persons obliged to comply with the provisions of the Act on Preventing the Conflict of Interest, the Commission considers that the determination of whether a holder of public office has been appointed to such a position as the official must be made according to the assessment of whether there is a public interest that a certain public officeholder is subject to legal rules which are supposed to prevent conflicts between public and private interests in public office, to strengthen the integrity, objectivity, impartiality and transparency in performing the public office, as well as to strengthen citizens' trust in the public authorities.

One of the interesting cases, in which the status of officials is discussed, is the procedure for determining the existence of a conflict of interest which was initiated by the Commission for the Identification of Conflicts of Interest, in the composition chosen in accordance with the provisions of the new law, against the Director General of Croatian Radio and Television. This office is not explicitly stated in Article 3 paragraph 1 of the Act on Preventing the Conflict of Interest, but the Commission believes that the Director General of Croatian Radio and Television is obliged to act in accordance with the provisions of the Act on Preventing the Conflict of Interest because, pursuant to the Act on Croatian Radio and Television, the organization of Croatian Radio and Television is defined as a public institution, which is partly financed from the state budget and whose Director General is appointed by the Parliament. The Statute of Croatian Radio and Television was passed with the approval of the Parliament, and the main director is obliged to submit annually a declaration to the Parliament on his work. The viewpoint of the Commission is that all this points to the existence of a public interest that a public officeholder such as the main director of Croatian Radio and Television should comply with the provisions of the Act on Preventing the Conflict of Interest.

In this specific case a conflict of interest arises from the fact that the main director privately owns a company that, among other things, deals with advertising, and whose customers are advertised on Croatian Radio and Television. In addition, he is a member of the supervisory board of another company which is a bank, which not only frequently advertises on Croatian Radio and Television, but this public institution has also opened all its business accounts only in this bank, in which it has debts, i.e. from which it acquires loan funds needed to finance current operations and business projects. The final decision in this case had not been made by the Commission at the time of writing this study.

Since there is a possibility to lodge an administrative appeal against a decision of the Commission to the competent administrative court, the question remains as to what kind of attitude the competent administrative court shall take, due to the fact that at the time of initiating and conducting proceedings for determining the existence of a conflict of interest in relation to the Director General of Croatian Radio and Television, this public duty was not specifically stated in Article 3 paragraph 1 of the Act on Preventing the Conflict of Interest, and the Parliament did not submit to the Commission a list of persons subject to the appointment, election or approval of the Parliament which would prove that the Director General of Croatian Radio and Television is an official in the sense of the Act on Preventing the Conflict of Interest pursuant to Article 3 paragraph 2 thereof, and consequently the fact that he is appointed to this public office by the Parliament.

Taking into consideration all the aforementioned facts, it is clear that at the time of this study there is still not yet established a full register of officials, i.e. persons obliged to file to the Commission income declarations of officials, according to which automatic verification could be made as to whether officials or holders of a public office have fulfilled their obligation of submitting income declarations of officials within the stipulated period of time. At the same time, there is no roster of officials yet (partly) online, from which the public at large could see who has submitted his/her declaration and who has not.

Income declarations of officials which are kept in a database in electronic form and are published on the official Internet site of the Commission, also

contain information on the date of receipt of income declarations in the Commission, so by comparing this date with the date of assuming office it can be determined whether the income declarations of officials have been filed within the stipulated period of time. But the official may be punished for the failure to submit income declarations in a timely manner only under certain conditions, which will be discussed later in this paper in greater detail.

1.4 Formal check

The formal check of income and assets corresponds in Croatian law with the procedure defined by the Act on Preventing the Conflict of Interest as the previously described (administrative) data verification upon registry of the declaration. It includes checking the status of the submitter of income declarations of officials, checking whether the official filed a statement within the statutory period of time, checking whether the income declarations are signed by the officials themselves, and checking of the proper and complete filling out of the form of assets by officials.

This preliminary (administrative) check is carried out for each declaration immediately after its receipt, and also at the beginning of the mandate, with any significant change of the financial situation of officials, and at the end of the mandate. The procedure of preliminary (administrative) data verification is performed before the data entry into the Register of the Property Cards of Officials and publishing of the income declarations of officials on the website of the Commission.

If the Commission determines that the officeholder did not file within the stipulated period (within 30 days of taking office, or within 30 days of the expiration of the term of public office, or of the year in which a significant change to property of the official occurred) a properly completed form, it shall request in writing that the official fulfil these legal obligations within a period no longer than 15 days after receipt of the written request. Only if the official does not fulfil the obligation within the time specified in the written request of the Commission will the Commission initiate proceedings against the official for violation of the law.

One of the projects the Commission for the Identification of Conflicts of Interest, elected in accordance with the provisions of the new Act on Preventing the Conflict of Interest, is currently working on is the development of a new form of income declaration of officials that could be filled in as an electronic form, supported by drop-down menus. The goal of the Commission is namely that for the whole range of data that officials are required to report in their income statements, in electronic form the mandatory list of codes should be prescribed, and the officeholder would fill in the form of property card by selecting the appropriate code, and without such a selection for each of the required sections the form could not be further filled in, or after completion it could not be saved. They log into the database of property cards that is kept in electronic form and print it, personally sign it and send it to the Commission in paper form. Even though they would still have to send a signed paper declaration, the previously submitted digital format would speed up the process and facilitate the officials from the Office of the Commission to process the data into an electronic database.

By an obligatory choice of one of the given answers in the previously prescribed list of codes, officials would be supported when filling out the declarations. For example, the list of codes would offer a choice of the public office he holds, for which performance he is submitting the declaration, for different ways of acquiring property, for specifying the property (such as house, apartment, office building, holidays house, building land, agricultural land, forest, vineyards, orchards, etc.). In addition to the selection of some of the prescribed codes, the official would have to fill in some data separately and without their entering or declaring that he has no income or assets in the section, he would be unable to continue and complete filling out the form of property card. This would mean that part of the preliminary (administrative), i.e. formal, verification of whether the form of the statement has been correctly and completely fulfilled, would be done automatically.

Another objective to be achieved by the introduction of such a form and manner of electronically completing and submitting the income declarations would be the possibility to search the database in different categories, and use the obtained results for research and statistics purposes. In fact, at the time of drafting this study, officials can only manually fill in declarations. Then,

after receiving the declaration and conducting preliminary (administrative) checks, officials from the Office of the Commission enter precisely the data from the submitted declarations into a database in electronic form. Therefore, certain information that could in principle be structured and standardized is entered into the forms in a different way. For example, for the same public office in practice there are several different names. Even greater problems arise because of the different ways in which state officials state and describe their income and property.

For example, the current form of the income declarations of officials requires for a description, the place where the property is located, the surface area of the property and its market value, but the obligation is not prescribed to state the information according to which such a property could be identified and found in the public registers such as the cadastre and land registry (the cadastre number of the plots, the number of the title deed, the cadastral municipality, the number of the land registry plot, the number of the land registry entry and the name of the cadastral municipalities in the land registry). In the Republic of Croatia, the land registry is still not fully in accordance with the registration situation and description of property in the cadastre, i.e. there is still in many cases a difference between the actual situation regarding some properties and conditions of entry and the description of the property in the land registry. In this regard, for example, in a situation where in reality on the particular property a building is being built, but in the land registers the property is listed as vacant land, an official shall describe the property in a manner that corresponds to reality, but another official will in such a situation declare the property in the way it is entered in the land registry. Both declarations shall in the procedure of the preliminary (administrative) and formal verification of information meet the requirements of proper and complete filling out of the form, although it is essentially the same situation but differently presented, and there is a very large and significant difference in the perception of ownership that the interested public can gain by inspecting the displayed data in this way.

In any case, declarations from both above examples hinder, i.e. prevent, in the same way the verification of the presented data with the data that can be obtained from the competent authorities. Therefore, the main objective in the new form of income declarations prescribes the mandatory stating of

certain data according to which assets can be identified in public records and registers (especially real estate and movable property such as vehicles, aircraft and vessels). Such a standardized entry of data in declarations will facilitate the connection of the Commission's database with the databases of authorities that keep public registers, so that data from declarations can be checked more easily and more efficiently.

Completion of the project of the new form of income declarations of officials and the development of appropriate supporting software programs necessary for its implementation is scheduled for the end of 2013.

By the State Attorney's Office Act it is stipulated that if the State Attorney or Deputy State Attorney does not meet the obligation to submit income statements, the State Attorney Council shall notify the State Attorney General, who shall invite them to submit or supplement the requested information within 15 days. If the State Attorney General or Deputy State Attorney General does not provide the requested information even within this period, the State Attorney General will start disciplinary proceedings against the State Attorney or Deputy State Attorney.

1.5 Audit of income and assets

The Act on Preventing the Conflict of Interest does not prescribe a plausibility check of the declarations.

After the preliminary (administrative) data verification, for each filed income statement of officials the procedure of data verification is conducted. Verification is carried out by collecting and exchanging data, and then by comparing data presented in the income and asset declarations of officials and their spouse or common-law spouse and minor children, with data obtained from the Tax Administration and other authorities, such as the Land Registry, Court Registry, Central Depository Clearing Company Inc., Ministry of Internal Affairs, and as a case may require, any other state authority which could have certain data about the assets of citizens or companies. In the Act on Preventing the Conflict of Interest it is prescribed that the competent authorities shall, at the request of the Commission, without delay, submit to the Commission requested information and evidence for the purpose

of verification of the data from the income declarations of officials. The Commission may also use the necessary information from international organizations or a foreign entity directly, without going through the channels of mutual legal assistance. Since this provision of the Act on Preventing the Conflict of Interest has never been tested in practice, it is not yet certain whether this legal solution will be fully implemented and successfully applied. If the data from state agencies does not match the declared data, the Commission is obliged to request in writing from the official to submit a written statement with the necessary and relevant evidence within 15 days of receipt of the written request. Only if the official does not fulfil the obligation of submitting this written statement shall the Commission initiate proceedings against the official for a violation of the law.

As explained above, until the adoption of the new Act on Preventing the Conflict of Interest of 2011, the procedure of checking the data from the income declarations of officials had not been prescribed in the legal system. Following the adoption of the law, the Constitutional Court decided to cancel the provisions of the law which prescribed that the Commission for the Conflict of Interest shall pass the Ordinance on the Checking Procedure of Data from the Income Declarations of Officials with the explanation that the rules of procedure shall be regulated by the law adopted by the legislative authority.

Such legal rules that elaborate the verification process of data from the income declarations of officials do not yet exist. In order to enable the newly selected Commission to effectively perform all the tasks that in the Act on Preventing the Conflict of Interest are placed within the jurisdiction of the Commission, the procedure for verification is carried out by comparing data from the submitted declarations with data from the publicly available official databases, especially those databases that are accessible via the Internet. The most commonly used ones are the database of land registry and cadastre, data from the court register to check the officials' membership of administrative bodies and supervisory boards of companies, and verification of shares in the property (capital) of companies, databases of the Agency for State Property Management, and the database of the registry of associations, institutions and the trade register.

According to the aforementioned facts it can be concluded that the Republic of Croatia at the time of making this study, is neither at the level of legislative solutions, nor at the level of implementation of the established system of checks of data from the income declarations of officials with the goal of finding evidence and determining the legality of the financial transactions of officials, or determining whether all property that the official has can be considered lawfully acquired.

In the legal system of the Republic of Croatia the obligation to submit income declarations of officials is prescribed for the purpose of declaration, as a guarantee of honourable, conscientious, responsible, impartial and transparent performance of public duties, and for strengthening the integrity of and public confidence in the holders of public office and public authorities, and not for the purpose of conducting criminal investigations to determine whether all the property of the official was lawfully acquired.

The Constitutional Court stressed that the United Nations Convention against Corruption clearly highlights the difference between the criminal sphere of fighting corruption and preventive (ethical and administrative) measures aimed at timely prevention of conflicts of interest and effective prevention of a current or new conflict of interest.³⁴

The check of income declarations in order to determine whether the property that the official owns has been legally acquired, would be contrary to the principle of the UN Convention against Corruption, according to which criminalization and law enforcement do not apply in the area of the prevention of the Conflict of Interest and corrupt enrichment.

In the eyes of the Constitutional Court, checking the legality of the income and assets of officials falls within the criminal rather than the prevention area of the fight against corruption, and is implemented through the provisions of the

³⁴ The United Nations Convention against Corruption was published in the Official Gazette No. 2/05. Article 140 of the Constitution of the Republic of Croatia provides that international agreements concluded and confirmed pursuant to the Constitution and published and which are in force, are part of the internal legal order of the Republic of Croatia, and have primacy over the law. Their provisions may be amended or repealed only under conditions and in the manner specified in them or in accordance with the general rules of international law.

Criminal Code, the Criminal Procedure Act, the Police Act and the Act on the Office for Combating Organized Crime and Corruption, by which a specialized body for combating corruption in its criminal sphere was established.³⁵ The Commission for the Identification of Conflicts of Interest, which is responsible for receiving the income declarations of officials, establishing a register of property cards and carrying out verification of data from the submitted declarations, is a specialized body in the sphere of preventing and combating corruption, but only for cases in which corruption has not occurred yet.

The system of rules arising from the Act on Preventing the Conflict of Interest, and which includes the obligation to submit the income declarations of officials, is actually a statutory code of conduct for public officials, in accordance with Article 8 paragraphs 5 and 6 of the United Nations Convention against Corruption.³⁶ Therefore, the verification of data from income declarations does not start and cannot start from the assumption that the property of officials has been acquired corruptly. In fact, the purpose of the declaration and publication of assets and income of officials is the involvement of the public in checking the proper management of public affairs and public property, as well as the involvement of the public in checking the integrity, accountability and transparency of the public office performed by officials. In case of reasonable doubt that with some officials there are certain circumstances that indicate the existence of an act within the criminal sphere of corruption, the Commission is authorized and obliged to forward all the information and documentation which it has obtained when performing activities within its jurisdiction, to the authorities of prosecution.

35 The Criminal Law, Official Gazette No. 125/11 and 144/12, the Criminal Procedure Act Official Gazette No. 152/08, 76/09, 80/11, 121/11, 91/12 and 143/12, Police Act Official Gazette No. 34/11 and 130/12, Law on the Office for the Suppression of Corruption and Organized Crime, Official Gazette No. 76/09, 116/10, 145/10, 57/11 and 136/12.

36 Article 8 paragraph 5 of the United Nations Convention against Corruption reads: "Each state is a party that shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to give to the relevant authorities their statements, inter alia, about their outside activities, employment, investments, assets and substantial gifts or benefits, according to which there may be a Conflict of Interest with respect to their functions as public officials." Article 8 paragraph 5 of the United Nations Convention against Corruption reads: "Each state is a party that shall consider, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this Article."

Taking into consideration all the aforementioned facts, the purpose of checking the data from the income declarations of officials is to determine whether the official has correctly, fully and accurately presented their income and assets, and the income and assets of their spouse or common-law spouse and minor children, and in particular, whether the income and assets have disproportionately increased during the exercise of public duties, i.e. for the purpose of determining whether the officials, while performing their public office, have complied with the statutory principles of performing their duty and other regulations arising from the Act on Preventing the Conflict of Interest and other regulations in the legal system, or whether officials, when exercising their public office, have committed any of the prohibited activities.³⁷

The verification process of the property cards of judges is set out in Article 88 of the Law on the State Judicial Council, which states that the property cards of judges are kept and controlled by the National Judicial Council, which, after initial receipt of property cards, shall request from the tax authorities and other bodies the data that these bodies have regarding their assets and shall compare them with the data in the declaration. If a judge stated

37 Article 5 of the Act on Preventing the Conflict of Interest prescribes the principles of action, as follows: "paragraph 1) Officials in public office must act honorably, honestly, conscientiously, responsibly and impartially, while preserving their own credibility and the dignity of the duties entrusted to them and citizens' trust; paragraph 2) Officials are personally responsible for their exercise of public office to which they were appointed or elected to the body or citizens who appointed or elected them; paragraph 3) Officials shall not use their public office for personal gain or the gain of a person who is related to them. Officials must not be in any relationship of dependence on persons that could affect their objectivity; paragraph 4) Citizens have the right to be familiar with the behaviour of officials as public figures, in relation to the performance of their duties."

Article 7 of the Act on Preventing the Conflict of Interest prescribes prohibited activities of officials, as follows: "paragraph 1) Officials are prohibited from receiving or demanding benefit or promising benefits for the performance of duties; paragraph 2) Officials are forbidden to make or get the right in cases where the principle of equality before the law is violated; paragraph 3) Officials are prohibited from abusing the special rights of officials arising out of or required to perform the duties; paragraph 4) Officials are forbidden to receive additional remuneration for performance of public duties; paragraph 5) Officials are forbidden to seek, accept or receive anything of value or service in order to vote on any matter, or influence the decision of any body or person for personal gain or benefit of related parties, paragraph 6) Officials are prohibited from promising employment or any other rights in exchange for a gift or promise of a gift; paragraph 7) Officials are prohibited from influencing the awarding of business or public procurement contracts; paragraph 8) Officials are prohibited from using insider information about the activities of state bodies for personal gain or benefit of associated persons; paragraph 9) Officials are prohibited in any other way from using their position as officials by influencing the decision of the legislative, executive or judicial authorities in order to achieve personal profit or the profit of a related person, a privilege or a right to conclude a legal transaction or otherwise favour themselves or another related person."

did not provide information about the acquisition of a declared property, the State Judicial Council will request from the judge a written statement. If the data received by the State Judicial Council from state sources differs from the information which the judge stated on the property card, and if in the statement of the judge there is found a discrepancy between the income and assets of the judge, the State Judicial Council shall notify the president of the court in which the judge performs his office and the president of the higher court in order to initiate disciplinary proceedings.

The verification process of the property cards of public prosecutors and deputy public prosecutors is analogously prescribed in Article 164a of the Act on the State Attorney's Office and is supervised by the State Attorney's Council.

1.6 Availability of data regarding bank accounts of officials

The Law on Preventing the Conflict of Interest of 2011 contained a provision whereby in order to verify the data from a declaration of an official or for other proceedings the banking institutions and businesses are obliged to respond without delay to the request of the Commission and submit the requested information and evidence. There was another vital provision in the Law, which required officials to sign off in their declarations that the Commission had access to information on all accounts in domestic and foreign banks and other financial institutions that are protected by banking secrecy. The statement is given solely for the purpose of verifying the data from the declaration and referred to the period of their official duties.

These legal provisions were found unconstitutional by the Constitutional Court in its decision dated 12 November 2012. The Court found that the principle of bank secrecy made these provisions unacceptable and they were subsequently annulled. The Constitutional Court deemed this power of the Commission over banking data as an excessive overstepping of the purposes of the Commission, and as a violation of the principles of the constitutional order and international legal obligations assumed by the Republic of Croatia. In the analysis of the reasons for this decision, the Constitutional Court stressed that access to data that is protected by banking secrecy is possible and

allowed only within the framework of criminal investigation and determination of criminal liability of officials and, therefore is not constitutionally acceptable for the Commission for the Conflict of Interest, which has been established as an administrative–supervisory body acting in the field of preventive anti-corruption and not in the realm of prosecution. The Constitutional Court pointed out that it understood the provisions of the UN Convention against Corruption such that government interference in the principle of protected banking secrecy would only be allowed in criminal investigations and the sphere of criminal law.

1.7 Evaluation

Politicians are inevitably subjected to rigorous inspection of both their words and deeds, by both the press and the public in general. This conclusion was made by the European Court in the case *Lewandowska-Malec vs. Poland* in the context of defamation and freedom of expression.³⁸ Although the system of analyzing and checking the data in the asset declaration has not yet received its full legislative and procedural framework and although the actual checking of data in practice began only after the election of the new members of the Commission for the Resolution of Conflicts of Interest, it can be generally concluded that it was the publication and public availability of data from the declaration of the assets of officials that became the most effective weapon and the most effective means of prevention of corruption. This conclusion is made in accordance with the provisions of the new Act, which means that at the time of this study we can speak only about the initial experience and the initial results of the verification of data.

It can be said that the publication of information from the asset declarations of officials increased the number of individuals who do the “checking” of the completeness, legality, truthfulness and credibility of the published declarations. The citizens are included in the process and they become interested parties who want legality and moral action from officials. If their own knowledge of the income and assets differs from the data in the declaration presented by individual officials, citizens are likely to alert the Commission. Practice has proved that citizens, the general public and

38 Ruling made on 18 September 2012, Application No. 39660/07, paragraph 66.

especially investigative journalists are quite familiar with the contents of the property cards of officials. Numerous applications of citizens about possible cases of violations of the Law on Preventing the Conflict of Interest are the result of several factors such as the efforts of investigative journalism, the insight of citizens, as well as insight into the public data and income cards of various institutions and other authorities.

Initial experiences and results of the investigative work of the Commission for the period after 11 February 2013 show that the largest gap between the legal rules of the Law on Preventing the Conflict of Interest and the results attained through the data analysis and checking of the data from the submitted asset declarations can be found in the official membership of the governing bodies and supervisory boards of trading companies. Officials' membership of the governing councils of institutions and extra-budgetary funds, or the simultaneous performance of a public duty and the performance of management in other businesses are also major issues. The third category of problem is non-compliance with legal obligations arising from share ownership (equity) of companies, as well as the failure to report all the income that is realized on the basis of officials performing other activities or income gained from capital.

It is important to note that this conclusion is conditioned by the brevity of the period in which the newly elected Committee for the Conflict of Interest has been acting prior to the completion of this study. It is also conditioned by the fact that the system of analyzing and checking the data of property cards of officials in the Republic of Croatia is still in its developmental stage, both at the level of legislative rules governing the procedure and checking process and in practice. It is important to note that these irregularities can already be very easily checked against data from other publicly available and Internet-published databases, such as data from the register of companies, the data from the register of institutions, data from the trades register, etc.

The administrative proceedings by the Commission for the Conflict of Interest will be the best tool for increasing the awareness of officials of their obligation for complete, correct and truthful presentation of income and assets in the asset statement. The proceedings will also increase awareness regarding the consequences of violation of the provisions stemming from the Law on

Preventing the Conflict of Interest. The system of dissuasive sanctions for breaching the obligation to submit a declaration on the financial situation and to inform about the sources and methods of acquisition of property is only in its initial stage of implementation. The Commission is currently conducting several proceedings regarding the failure of certain officials to meet their previously discussed legal obligations. The final decision regarding the responsibility and possible penalty is yet to be made in these cases.

The obligation to submit a complete, correct and truthful presentation of income and assets and the consequences of a breach of statutory duty boil down to the question of the credibility and integrity of the public officeholder. Determining these violations and the imposition of appropriate sanctions by the Commission can in any case lead to reputational accountability of officials. This carries full weight in relation to the holders of public office who are politicians or to those who carry duties and whose election or appointment is directly or indirectly impacted by politicians. This is precisely why such officials fall under the jurisdiction of the Commission pursuant to the provisions of Article 3 paragraphs 1, 2 and 3 of the Law on Preventing the Conflict of Interest.

1.8 Remaining challenges in handling asset declarations

In the process of checking the content of submitted asset declarations, the Commission has noticed that the uncovering of previously earned income or wages from employment, (work for a private employer), work performed by an official just before taking office, and the reporting of income or salary based on employment (work for an employer) achieved by the marital partner, often leads to officials referring to the confidentiality clause which is a part of work contracts. The officials frequently argue that the discovery and listing of such data in the asset declaration could result in termination of employment or proceedings for compensation of damages or payment of agreed penalties in case the former employer of the official or the employer of the marital or common-law spouse initiates legal proceedings.

It is a fact that very often the contracts that have been concluded between an employer who is not part of the public system of authority and the worker

include a confidentiality clause regarding salary and other benefits to which the worker is entitled on the basis of his employment. The unauthorized disclosure to third parties, even for the purpose of reporting on the financial situation of officials, could have unintended and unwanted consequences for the officials as former workers of a private employer or for the worker who is married to or is a common-law partner of the officials. Contracting confidentiality regarding salary and other remuneration to which the employee is entitled on the basis of the employment relationship with the employer is allowed in the legal order and, as such, enjoys legal protection and the protection of the Courts.

The above-listed circumstances pose a new challenge in the process of checking asset declarations. The matter of confidentiality of information regarding income gained by the official prior to his public duties and the question of income of the spouse or common-law partner of officials can be resolved only through proper amendment not only of the Law on Preventing the Conflict of Interest, but also of a number of others.

Annex to the above reference in footnote 30: Decision on Goran Radman, general director of public television

Republic Of Croatia, Commission for the Resolution of the Conflict of Interest, (No. SI-31/13)

Zagreb, 15 May 2013

The Commission for the Resolution of the Conflict of Interest (hereinafter referred to as the Commission), pursuant to Article 39 paragraph 1 of the Law on Preventing the Conflict of Interest ("Official Gazette" No. 26/11, 12/12, Constitutional Court Decision 126/12 and 48/13 - purified text of the Act), hereinafter referred to as the LPCI), in the case of official Goran Radman, General Manager of Croatian Radio and Television at its 14th meeting held on 15 May 2013, renders the following

DECISION

- I. *The simultaneous performance of duties of the General Manager of Croatian Radio and Television and duties of the Manager of the company Nautar d.o.o. for business consulting constitutes a violation of Article 14 paragraph 1 of the LPCI.*
- II. *The failure of transferring management rights on the basis of share in ownership (capital) of the company Nautar d.o.o. for business consulting to another person or special body or a commissioner while performing his office of the General Manager of Croatian Radio and Television constitutes a violation of Article 16 paragraph 1 of the LPCI.*
- III. *The simultaneous performance of duties of the General Manager of Croatian Radio and Television and duties of a member of the Supervisory Board of the company Hypo Alpe-Adria Bank d.d. constitutes a violation of Article 14 paragraph 1 of the LPCI.*
- IV. *The failure to submit the income declaration by officials within 30 days of taking office, i.e. within 15 days of the receipt of the written request of the Commission pursuant to Article 10 paragraph 2 of the LPCI constitutes a violation of Articles 8 and 9 of the LPCI.*
- V. *Goran Radman is requested that while performing his office as the General Manager of Croatian Radio and Television he should cease participating in the work of the Nomination and Remuneration Committee, which acts as a part of the Supervisory Board of the company Atlantic Grupa d.d.*
- VI. *The official Goran Radman is requested that he should within 15 days of the receipt of this Decision resolve the situation of the potential conflict of interest described under items I, II and III of this Decision, and that he should within the same period of time fulfil the obligation under Articles 8 and 9 of the LPCI, i.e. that*

he should submit to the Commission his income declaration in the form which can be found on the website of the Commission.

- VII. *For violations of the LPCI, described under items I, II, III and IV of this pronouncement, the official Goran Radman, the General Manager of Croatian Radio and Television is ordered the sanction of suspension of the payment of part of his net monthly salary to the amount of HRK 15,000, which shall last three months and shall be made in three equal monthly instalments and the sanction of publishing the Commission's Decision in one of the daily newspapers that is published in the Republic of Croatia, by choice of the official, who shall also bear the cost of the publication.*

Statement of grounds

The Commission made at its 5th session, held on 6 March 2013, the decision to initiate the procedure for resolving the conflict of interest in relation to the official Goran Radman, General Manager of Croatian Radio and Television, for violating Article 14 paragraph 1 and Article 16 paragraph 1 of the LPCI, according to his own knowledge arising from the access to the data of the court register of the Commercial Court in Zagreb. The Commission found that at the Commercial Court in Zagreb, under registration number 080409355, the company Nautar d.o.o. is registered for business consulting, with its registered office in Zagreb, Sortina 47, the only owner and member, as well as the manager of which is the official Goran Radman, who represents the company individually and independently. Under the objects of said company are entered the computer and related activities, consulting on business and management, promotion (advertising and commercials), the purchase and sale of goods, trade agency on the domestic and international markets, representation of foreign companies, rental of office machines, computers and computer-related equipment, rental of water transport means with or without crew, and provision of services in nautical, rural, health, congress, sports, hunting and other forms of tourism, and provision of other tourist services.

While working on the case, the Commission reached some other conclusions of its own regarding other circumstances that would indicate violations of the LPCI by the official, so at its 7th session, held on 20 March 2013, it decided to initiate the procedure for resolving the conflict of interest due to a violation of Article 14 paragraph 1 of the LPCI, and as such, after having inspected the data of the court register of the Commercial Court in Zagreb, the Commission found that the company Hypo Alpe-Adria Bank d.d., Zagreb, Slavonska avenija 6 is registered under company registration number 080072083, where the holder of the public office of the General Manager of Croatian Radio and Television, Goran Radman, performs the duty of a Supervisory Board member.

Regarding the said Decisions on initiating the procedure for resolving the conflict of interest, the official submitted within the stipulated period his response, in which he essentially challenges the application of the provisions of the LPCI in regard to the official of General Manager of Croatian Radio and Television, and stated that a conflict of interest in relation to him is resolved by the provisions of the Law on Croatian Radio and Television ("Official Gazette" No. 130/10 and 76/12 — hereinafter referred to as the Law on CRT), in particular by Article 25 paragraphs 5 and 6 of the said Act, which stipulate which functions and duties the General Manager of Croatian Radio and Television cannot simultaneously perform. He also noted that in the decision on his appointment, which was adopted by the Croatian Parliament, it is not stated that he is appointed as an official within the meaning of Article 3 paragraph 2 of the LPCI. Furthermore, in his response he explains that due to the autonomy that is granted to Croatian Radio and Television as a medium and as a public service, its General Manager cannot be considered to be an official, i.e. state official, due to the fact that Croatian Radio and Television is not a state television service, but a public one, no matter who the founder is. He also explains that one of the main goals of the LPCI is to strengthen the confidence of citizens in

the public authorities, and as Croatian Radio and Television is not a public authority, the General Manager cannot be included in the circle of people who are required to comply with the rules of this law.

Regarding the disputed circumstance, whether the acting General Manager of Croatian Radio and Television is to be considered an official within the meaning of the LPCI, the Commission adopted the attitude and interpretation of Article 3 paragraph 2 of LPCI, according to which the General Manager of Croatian Radio and Television is undoubtedly obliged to comply with the provisions of that law.

Article 3 paragraph 2 of the LPCI prescribes that the provisions of the law are applicable to the holders of the duties that as officials are appointed or confirmed by the Croatian Parliament. Article 19a, paragraph 3 of the Law on CRT prescribes that the General Manager of CRT is appointed and discharged by the Croatian Parliament. In the case file, there is a Decision of the Croatian Parliament on the appointment of the General Manager of Croatian Radio and Television, classification 021-13/12-07/57 of 26 October 2012.

The Commission has adopted the assessment that the appointment of the General Manager of CRT is undoubtedly to be considered an appointment in terms of an official who is obliged to act in accordance with the provisions of the LPCI, on the basis of the analysis of the provisions of the Law on CRT, among which it would like to elaborate briefly the following: CRT is a legal entity that has the status of a public institution, the founder of which is the Republic of Croatia and the founding rights of which are exercised by the Government of the Republic of Croatia. CRT engages in providing the public services of broadcasting, which is secured by the Republic of Croatia with autonomous and independent funding in accordance with the Law on CRT and the Rules on State Support for the

Public Broadcasting Service. But except for public services under Article 3 of the Law of CRT, CRT carries out commercial activities as well. In its activities CRT promotes public values and interests, respects the interests of the public and is accountable to the public for its activities. The activity of CRT is funded by public and commercial revenues. The Statute of CRT is adopted with the approval of the Croatian Parliament, and the General Manager is obliged to annually submit a report to the Croatian Parliament on the work of Croatian Radio and Television.

Consequently, the Commission considers that the Croatian Parliament appointed the General Manager of CRT as an official. The attitude of the Commission is that the public interest, which is protected by the provisions of the LPCI, requires that the holder of this important public office, due to the power that CRT has as a medium, must necessarily be subject to the rules of the LPCI.

The Commission considers it necessary to clarify the distinction between the term 'public official', in the sense of how this term is defined in the Law on the Obligations and Rights of State Officials ("Official Gazette" No.s 101/98, 135/98, 105/99, 20/00, 73/00, 30/01, 59/01, 114/01, 153/02, 163/03, 16/04, 30/04, 121/05, 151/05, 141/06, 17/07, 34/07, 107/07, 60/08, 38/09, 150/11, 22/13), and 'official' within the meaning of the provisions of the LPCI. In fact, the Law on the Obligations and Rights of State Officials in its content defines the rights that specifically listed holders of certain public duties, i.e. state officials, have. It is undisputed that the General Manager of CRT is not a public official within the meaning of that Act. It is also undisputed that the General Manager of CRT, in accordance with the provisions of the Law on CRT, could not be appointed by a person who is at the same time a state official, i.e. by a person that also holds a public office mentioned in Article 1 paragraph 2 of the Law on the Obligations and Rights of State Officials.

However, on the other hand, the LPCI defines who are all the persons considered to be holders of certain public duties, according to which they are obliged to act in accordance with legal rules, the main purpose of which is the prevention of conflicts of interest. From the provisions of Article 3 paragraphs 1, 2 and 3 of the LPCI, it clearly arises that it is not only state officials that are considered to be the officials within the meaning of this Act, but also other holders of public offices, as well as senior civil servants appointed by the Government of the Republic of Croatia on the basis of a previously conducted public competition.

Consequently, the group of persons who are required to comply with the legal rules of the LPCI is wider than the group of civil servants which is defined by provisions of the Act on the Obligations and Rights of State Officials. Thus Goran Radman, besides the fact that at the same time while performing the public duties of the General Manager of CRT he cannot hold any other public office that would define him as a state official in terms of the Act on the Obligations and Rights of State Officials, at the time of the appointment as the General Manager of CRT became an official who is, pursuant to Article 3 paragraph 2 of the LPCI, obliged to act in accordance with the legal rules prescribed by the law, and thus became an official within the meaning of the LPCI.

The Commission points out that, pursuant to Article 52 paragraph 3 of the LPCI, the obligation is prescribed of the authorities, which means the President of the Republic of Croatia, the Government of the Republic of Croatia and the Croatian Parliament, to submit to the Commission no later than six months from the entry of this Act into force, a list of persons subject to appointment, election or approval. Despite the fact that the LPCI came into force on 11 March 2011, and despite the written request of the Commission addressed to the Croatian Parliament, by the date of the meeting at which the Commission

made the decision on the violation of the provisions of the LPCI committed by Goran Radman acting as the holder of the office of General Manager of CRT, the Commission had not received from the Croatian Parliament the requested list.

Article 14 paragraph 1 of the LPCI stipulates that officials cannot be members of administrative bodies and supervisory boards of companies, and cannot perform management tasks in legal entities, so Goran Radman, as an official within the meaning of the LPCI cannot at the same time as performing the public office of General Manager of Croatian Radio and Television perform the office of the manager of the company Nautar d.o.o., or the duty of a Supervisory Board member of Hypo Alpe-Adria bank d.d.

Article 16 paragraph 1 of the LPCI stipulates the obligation of officials who have 0.5% or more shares in the property (the capital of the company) to transfer during the exercise of their public duties their management rights on the basis of the share in equity of the company to another person, other than the persons referred to in Article 4 paragraph 5 of the LPCI (related parties) or to a special body, or the commissioner who shall act regarding the exercise of membership rights and shares in the company on his own behalf and for the account of the official. Since Goran Radman, as the holder of the office of General Manager of Croatian Radio and Television, did not transfer his management rights in the company Nautar d.o.o. to a commissioner, he violated this provision of the LPCI.

In relation to the activities of the company Nautar d.o.o., the official said in his response that the company is not in a business relationship with CRT, or with any other authorities or bodies of local or administrative (regional) divisions.

In a letter dated 7 March 2013, kept in the books of the outgoing mail of the Commission under File No: 711-1-26-01-PD/13, the

Commission requested that Goran Radman fulfil the obligation of submitting the income declaration of an official, pursuant to Articles 8 and 9 of the LPCI. The official responded to this request in a letter kept in the books of incoming mail under number 711-U-192-PD/13 of 14 March 2013, in which he essentially states that he does not consider himself to be an official within the meaning of the LPCI, and therefore the obligations arising from this law do not apply to him as the General Manager of CRT. By failing to submit the income declaration of an official within 15 days from the receipt of the written request of the Commission, which the Commission sent in accordance with its obligation stipulated in Article 10 paragraph 1 of the LPCI, the official committed a violation of Articles 8 and 9 of the LPCI.

In respect to the circumstance that Goran Radman is a member of the Nomination and Remuneration Committee, which acts as a part of the Supervisory Board of the company Atlantic Grupa d.d., the Commission established after having inspected the data in the court register of the Commercial Court in Zagreb that the company Atlantic Grupa d.d. is entered under company registration number 080245039, and that Goran Radman is not registered as a member of the Supervisory Board, which is a company organ. Therefore, the Commission did not establish Goran Radman's membership of the Committee, which operates within the Supervisory Board, in this case as a special violation of Article 14 paragraph 1 of the LPCI, although it thinks that this kind of work in some of the organs that operate under the formal composition of the Supervisory Board in principle might be regarded as membership and as working in the Supervisory Board, and consequently action which is not in accordance with Article 14 paragraph 1 of the LPCI. Bearing in mind the wide range of products that fall within the scope of business of the company, as well as the fact that this company in the court register is among other things registered for the activity of promotion (advertising and commercials), market research and public opinion research and consulting in connection with

business and management, it is possible to associate the business of the company Atlantic Grupa d.d. within the scope of a potential conflict of interest, especially in the context of advertising or disguised advertising on Croatian Radio and Television, with the decisions which Goran Radman could make within his authority as the General Manager of CRT.

Taking into consideration all the said things, although formally Goran Radman is not a member of the Supervisory Board of this company, in order to prevent the occurrence of a conflict of interest in the public office of the General Manager of CRT, which could occur as a result of his personal business relationship with this company, the Commission under the authority of Article 30 paragraph 1 subparagraph 4 of the LPCI requests that Goran Radman, while performing the office of the General Manager of CRT, should resign his membership and duties in the Nomination and Remuneration Committee of the Supervisory Board of the company Atlantic Grupa d.d.

When taking the decision on the sanction for established violations of LPCI, the Commission took into account the severity of the official's conduct in this specific case, as well as the expressed level of awareness about the nature of the duty he performs. From the responses the official submitted to the Commission in this procedure, in which he keeps pointing out that the Commission has no authority to interpret the provisions of the Law on CRT and in which he points to Article 25 paragraph 5 and paragraph 6, it follows that the official is aware of neither his social and public obligation to act with the purpose of promoting the protection of the public interest, nor the fact that as the main and responsible person of an influential public medium, by his own example he has to send a message of zero tolerance to situations of potential conflict of interest especially at a time when public awareness and awareness of those who hold public offices regarding the obligations arising from the Law on Preventing the Conflict of Interest is not sufficiently developed.

In fact, in the provisions of Article 25 paragraphs 5 and 6 of the Law on CRT, which prescribe the conditions for the appointment of members of the CRT Programme Council, and are appropriately applied to the General Manager, it is prescribed that these persons cannot be state officials or persons performing duties in bodies of political parties or in bodies of units of local and administrative (regional) divisions, or persons who are employed or engaged in any other business in competitive legal entities, i.e. legal entities engaged in the production, provision and/or transmission of audio and audio-visual media services, multimedia content and services of electronic publications or members of their managements, management councils or supervisory boards, and cannot be owners, shareholders or owners of shares in these legal entities, or perform any other activities that may lead to a conflict of interest.

Regarding the activities that are in the court register of the Commercial Court in Zagreb entered as the objects of the company Nautar d.o.o., among which is the activity of promotion (advertising and commercials), in which Goran Radman has a 100% share of the ownership (capital) of the company, and in which he performs the duty of manager, the Commission considers that the official Goran Radman by simultaneous performance of the office of General Manager of CRT and the office of manager of the company Nautar d.o.o. is in the situation of performing other tasks for which he could be in conflict of interest, in terms of the provisions of Article 25 paragraphs 5 and 6 of the Law on CRT.

Similarly, with regard to the simultaneous performance of duties as General Manager of CRT and the performance of duties as a member of the Management Board of the company Hypo Alpe-Adria Bank d.d., and considering the fact that this company is undoubtedly advertised on CRT, and considering the fact that CRT is in a business relationship with this bank, whereby the bank provides to CRT services from the scope of the

company's objects, the official Goran Radman is, because of these circumstances, in the situation of performing other tasks for which he could be in conflict of interest, also in terms of the provisions of Article 25 paragraphs 5 and 6 of the Law on CRT.

The ban under Article 14 paragraph 1 of the LPCI (the ban on concurrent performing of public office and membership of the management bodies of companies and supervisory boards) is binding for officials regardless of the nature of the company, and regardless of what falls within the scope of the objects of the company.

But even if the provisions of the LPCI did not apply to the holder of the office of General Manager of CRT, the provisions of Article 25 paragraphs 5 and 6 of the Law on CRT and the specific circumstances relating to the objects of the company Nautar d.o.o., as well as the business relationship of the company Hypo Alpe-Adria Bank d.d. with CRT, and Goran Radman's membership of the Committee, which is part of the Supervisory Board of the company Atlantic Grupa d.d., suggest that while performing the public office of General Manager of CRT the official Goran Radman did recognize neither the existence of a potential conflict between his private and business interests with the public interest, nor the need to take any measures by which he, in the interest of the public and citizens whom Croatian Radio and Television as a public television service is supposed to serve, might distance himself from the influence of his private interests for the purpose of the conscientious, responsible and impartial performance of public duties.

The official Goran Radman was granted by the Commission a period of 15 days from receipt of this Decision to clarify the situation of the potential conflict of interest described under items I, II and III of the pronouncement, and he should accept this period of time as being appropriate and during which the official is able to arrange his private affairs in order to protect the public interest.

Taking into consideration all the said facts, it was decided as in the pronouncement of this Decision.

This Decision shall be submitted to the official Goran Radman, the General Manager of Croatian Radio and Television, in person and via e-mail and fax. Pursuant to Article 39 paragraph 7 of the LPCI, this Decision shall be published on the website of the Commission.

*President of the Commission
Dalija Orešković, LL.M*

Instruction on the legal remedy
Pursuant to Art. 48 of the LPCI against the Decision of the Commission an administrative dispute may be initiated.

E. Kosovo*

1.1 Background

The declaration and publication of assets in Kosovo* has been partly reformed since 2000. At that time, under the regulations of the Mission to the United Nations Administration in Kosovo*, UNMIK obliged all persons who were candidates for members of the Assembly to make a declaration of assets to the OSCE Mission in Kosovo* as the main responsible body organizing elections. In the meantime, with the establishment of the Central Election Commission, the candidates from the list of all political parties running in elections had to declare their finances. This declaration form is of a more superficial format without any verification mechanism such as the one used now by the Anti-Corruption Agency.

The scope of property declaration made its first step toward legal regulation in 2005 through the Law against Corruption, No. 2004/34. This Law defined the entire mission of the agency as fighting corruption and the declaration of property and prevention of the conflict of interest. However, at the time

this legal basis was provided, the declaration of property system had not been implemented because there was no corresponding structure. The Anti-Corruption Agency was established in 2006 and it became operational on 12 February 2007. A year later, from 2008, the provisions regulating the field of property declaration were in force, so since then the monitoring of the property of senior officials has been effective.

With the Law against Corruption, about 800 senior officials had to declare their property; however, as a particularity of this Law, the declared data was not published.

On 11 February 2010, the Assembly of Kosovo* promulgated the Law on the Declaration and Origin of Property and Gifts for Senior Public Officials. This Law specifically regulated areas of the property declaration. As a result of this Law, the number of officials under obligation to declare their assets was significantly increased and fines were determined for all those who do not declare their property and a special achievement was that the Agency was enabled for the first time to make public the data from the form.

To better regulate the field of Property Declaration, the Assembly has once again changed the law and from 31 August 2011 the Law on the Declaration, Origin and Control of Property of Senior Public Officials and on the Declaration, Origin and Control of Gifts for all public officials (hereafter "Law of 2011") is in force.

According to Article 3 of this Law, all public officials are subject to the obligation to declare their property, with their number being about 3,900 including:

- Presidency – the President of the Republic, members of the cabinet of the President, Secretary and Directors of the Professional Departments in the Office of the President of the Republic of Kosovo*
- Assembly – the Speaker of the Assembly and his/her cabinet, the leadership of the Assembly, Members, Secretary and all elected or appointed officials by the Assembly
- Government – the Prime Minister, Deputy Prime Ministers, Ministers, Deputy Ministers, Political Advisers, Heads of Cabinets and all the

nominees from them, Secretaries General of Government, Chief of the agencies established by law or by any other act, Director and Deputy Director, Regional Directors of Tax Administration, and the Director General and Directors of the Customs Departments, Auditors in the Office of the Auditor General and internal auditors of all institutions, Members of the Boards of Public Enterprises, Members of Regulatory Boards, Commissions and other agencies established by law or any other act, Members of the Board, Director and Deputy Director of the Central Bank

- Municipalities – mayors and deputy mayors, chairpersons, deputy chairpersons, councillors of municipal assemblies and all directors of municipal departments
- Judiciary – members of the Judicial Council, Prosecutorial Council, Director of the Secretariat of the Judicial Council, the Director of the Secretariat of the Prosecutorial Council, Judicial Auditor, Disciplinary Prosecutor, Judges and Prosecutors, Judges of the Constitutional Court and the Constitutional Court Secretary, Directors of all Departments, Heads of Finance and Public Procurement in all public institutions
- Diplomatic Missions – Ambassadors, Consuls, Deputy Consuls, Secretaries of Embassies or Consulates of the Republic of Kosovo*
- Academic Institutions – University Rector and Vice-Rectors of Public Universities, Deans and Deputy Deans and Secretary of Public Universities and academic units
- Security Institutions – the Commander and Deputy Commander of the Kosovo* Security Force, General Director, Deputy Directors and Regional Directors of the Kosovo* Police, Chief of Police Inspectorate of Kosovo*, Director, Deputy Director and Inspector General of the Kosovo* Intelligence Agency
- Ombudsperson – the Ombudsperson, his Deputy and Chief Inspectors of Inspectorates at the central and local levels

Property is declared by senior officials for themselves, their spouses, parents, adoptive parents, children and adopted children up to the age of 18. Where the property of members of the family is divided and recorded as such in the state or judicial administration, a declaration is submitted separately for each family member with registered property on his/her behalf

and is attached to the declaration of the person who has the obligation to declare. In the declaration of property of income and financial obligations, senior public officials state the amount, type and source of each income, the amount and type of financial obligations, including the name of the creditor (be it a natural person or legal entity), while the publication of the name of the creditor is done only for legal entities. In addition to the property declaration, senior officials are obliged to declare the acceptance of gifts; the types of gifts they are allowed to receive and the ways of handling them are regulated by Articles 11 and 12 of the Law of 2011.

The declaration of the status of the property of senior public officials and their family members contains information about the property and their income as follows:

Incoming flow

- Annual revenues (salaries and others);
- Financial liabilities to natural persons and legal entities.

Assets/outgoing flow

- Immovable property;
- Movable property of value above €5,000;
- Possession of shares by them in commercial companies;
- Securities;
- Money saved in banks and in other financial institutions;

Types of Declarations

The Law of 2011 specifies four types of property declaration:

- Regular annual declarations that are due between 1 and 31 March of each calendar year – officials declare the status of their property for the previous year
- Declaration when taking over the function, within 30 days of assuming office
- Declaration after termination or dismissal from office, within 30 days of the date of leaving
- Declaration at the request of the Agency, whenever such a need arises outside the regular declarations and whenever the Agency deems that it is needed

Verification of the Forms

The Agency is the competent body for the implementation of all activities relating to the declaration of property, drafting of forms, checking their completion, publishing of data, verifying the accuracy of the declared data with data from other institutions and initiating Criminal Proceedings for all cases of non-declaration or false declarations.

Verification Procedure

The Agency performs a first step of control to check if there exist errors in the completion of the form. When formal or other obvious errors are found, the Agency notifies the person who submitted the declarations; within fifteen (15) days of receipt of the notice the official is required to correct the errors. In addition, a full audit is performed to verify the authenticity and accuracy of the data stated in the form.

For the full audit, all data behind the acquisition and other transactions of property is examined. Data can be requested from all natural persons and legal entities in conformity to the Law on personal data protection; banks and businesses that operate in the banking and finance in Kosovo* are obliged to provide data for deposits, accounts and transactions done by persons who under the Law of 2011 are obliged to declare their property.

1.2 Registration

Senior public officials declare their property by filling out the form which is prepared by the Agency and contains all the elements that are determined by the Law of 2011 but also some other data rounding up the required information. The publication of the register is determined by law. Initially in 2010 (the first year of publishing declarations in Kosovo*), the Agency scanned the forms and posted them on its website. During the following years, taking into account its technical possibilities, the Agency prepared a special register. The Agency prepared the Register electronically with the declared data and made it public under the applicable law. Each official states his/her property once (which is published), and then declares only changes. The paper forms are (physically) stored in the Agency and may be used for other state purposes but are not published. The forms are designed in such a way, that officials can easily understand which parts are published and which are not:

for grey-shaded fields, the data is not published. Fields without grey shading are for data that is meant to be published.

1.3 Submission compliance

3,900 officials in Kosovo* are obliged to declare their property. The Law of 2011 stipulates that each state institution is obliged to designate points of contact (a liaison person between the institution and the Agency) from the human resource office, whose tasks are to:

- Forward a list of senior public officials and notify the Agency of changes to the list within fifteen (15) days
- Inform officials of the institution of its obligations relating to the declaration of property
- Register the gifts received by officials in the register of institutions and submit a copy of the registry to the Agency by 31 March of each calendar year

The agency also ensures capacity building through direct training of contact points. The Agency requires from contact points a list of officials, and along with them establishes a common list of all officials who are obliged to declare property. This list is published on the Agency website on the Internet and the public has access to it for additional verification by civil society. At the time of the publication of this list, the Agency issues a press release through which it informs officials to check these lists and to declare their property if their names are on the list.

To have a more successful process of declaration of property annually, the Agency also organizes awareness-raising campaigns to remind officials who have a legal obligation. Usually campaigns are organized in February, so officials are publicly made aware that the deadline for submitting the declaration is between 1 and 31 March.

With the goal of public transparency, citizens have access to the list of those who are obliged to declare their property, the list of names of those who have not declared their property, and measures for following up on the non-declaration. Any form which is not fully completed and signed is considered undeclared and is not published.

1.4 Formal Control

This type of control is performed for each form and aims to establish whether there are mistakes in its form or substance. In all cases where not all sections are completed in the form or where there are material errors, the Agency invites the official who has submitted the declarations to correct them within 15 days of receipt of the notice. Officials are considered to have fulfilled their obligation to declare their property only if they complete the form in its entirety.

Forms may be submitted through e-mail but must be signed (a scanned version of the signed document sent as an attachment).

As long as only a few declarations arrive at the Agency, possible errors can be avoided immediately; however, towards the deadline this takes more time with the submission of a huge number of declarations within a few days only. Receipt of each form is registered at the Agency and the submitters are furnished with a certificate of receipt.

1.5 Auditing of income and assets

A full check is performed to verify the authenticity and accuracy of the data stated in the declaration form.

The Law of 2011 does not determine what exact sample of forms should be examined. For this, one has to take into account the Agency's capacity (five officials). Thus, the Agency's Rules of Procedure request that about 25% of all submitted forms are fully checked. Thereby, the selection of forms subject to an audit is made on the basis of two criteria: the position of the official and information from citizens. Priority is given to heads of central, local and independent state entities. In addition, information received from the public or via the media about possible doubts is cause for subjecting a declaration to a full audit. Such doubts are usually based on the partial non-declaration of property or another false statement.

The Agency can request or use data from all natural persons and legal entities, according to the Law on Personal Data Protection. At the request of the Agency, banks and other entities that operate in banking and financial

activities in Kosovo* are obliged to provide data on deposits, accounts and transactions of persons who are obliged to submit a declaration. All entities have an obligation to provide the requested information within 15 days from the receipt of the written request by the Agency.

Should an institution refuse to provide the requested information, the Agency may enforce the request through the prosecution which in turn is assisted by the police. So far the Agency has used this legal provision once.

Officials of the Agency check whether the declaration forms are missing any property as is indicated by data provided from all relevant institutions. In addition, the declarations are compared for plausibility over the years. The Agency published an analytical report on declarations in 2012. According to the report, the Agency identified about 300 officials who are exercising duties in institutions and who have positions that are currently considered as senior public officials, comparing data from 2008 up to now. In 38 cases the Agency identified “problematic” discrepancies between the declared income and the acquired real estate. In addition, nine “millionaires” were identified, who seem to have increased their property in an unjustified manner over the years.

In 2012, about 800 or about 23% of all submitted declaration forms were subject to a full check/audit and, as a result, in 111 cases discrepancies were identified between the declared income and the declared real estate.

In the absence of a legal basis for further investigations, the Agency has forwarded certain cases to the Financial Investigation Unit for further analysis and action.

Under previous legislation, non-declaration of property was sanctioned only as an administrative offence by a fine of €500–2,500. On 1 January 2013 the new Criminal Code entered into force, which sanctions “Non-declaration and false declaration of property” as a criminal offence punishable by a fine and imprisonment of up to 5 years). This new legislation is a substantial progress towards the transparency and ethics and integrity, as it provides an effective deterrent for officials who do not submit declarations or intentionally make false declarations (as identified during audits).

As for the mathematical calculation of the plausibility of the declarations, the following calculation is used:

Step 1: Increase in assets/property

Declaration 1	Property at time of		Difference	
	K€	Declaration 2	K€	K€
Real estate	30	Real estate	90	+60
Movables	10	Movables	30	+20
Deposits	1	Deposits	10	+9
Shares	2	Shares	5	+3
	0	<i>Minimum subsistence</i>	13	+13
Total	43	Total	150	+105

It should be noted that the minimum subsistence (daily expenses on clothing, food, rent, transport, etc.) is added to the assets, as it is a necessary but invisible expenditure for which legal income needs to be accounted for.

Step 2: Declared income generated between declaration 1 and 2:

Declared income	K€
Salary	20
Other net income	10
Loans (received)	10
Total	40

Step 3: Unexplained income

Increase in assets	minus	“Declared accum. income”	equals	unexpl. income
105	-	40	=	€65K

Cooperation With Regional Institutions

Regarding international cooperation mechanisms, the Agency has a memorandum of cooperation with Albania, and is currently preparing a

memorandum with Montenegro. Both memoranda will facilitate the exchange of data for an effective audit of declarations (and for the other tasks of the Agency). There was a case where the High Inspectorate of Declaration and Audit of Assets of Albania had requested data on property related to suspicions about a senior Albanian official. Currently, the Kosovo* Agency is preparing some requests to the High Inspectorate of Declaration and Audit of Assets of Albania on providing the Agency with data related to Kosovo* officials, who are suspected of having undeclared property in Albania.

1.6 Evaluation

When the property declaration forms, the names of those who had not declared and imposed sanctions were made public in 2010, people's confidence in the Agency's work increased. In 2013, more than 99% of officials submitted their declarations; less than 30 officials out of the total number of about 3,900 officials did not declare their property.

Newly available criminal sanctions are a factor in this low percentage of non-compliance and more court cases are expected in this field in the near future. It can be said that the legal framework for asset declarations is now satisfactorily set up. The remaining challenge is to verify a large number of declarations. The coming into force of the new Law on the Confiscation of Property will contribute to the state's control of illegally acquired wealth and will complement the declaration regime. In addition, consequent removal of public officials with illegal enrichment from their office through disciplinary proceedings will be necessary to restore the trust of the public in state institutions.

1.7 Conclusions

Currently the Law on the Declaration and Control of Property and the Law on Preventing the Conflict of Interest are in the process of being revised.

The Agency is of the view that under future legislation a realty transaction should only be valid if the related payment is done through the regulated financial/banking institutions.

Natural persons who lend money to public officials should also be obliged to provide detailed information on their financial status and transactions: the Agency had a case where a senior official justified his acquisition of property with money that was allegedly borrowed from a natural person; however, he could not provide any concrete deadline by which the money had to be returned, raising the suspicion about the actual existence of this loan.

The burden of proof should also be shifted from the state to the individual, so that everyone who cannot prove acquisition of his/her property by legal means will be subject to forfeiture.

F. Macedonia

1.1 Background

The Asset Declaration System in the Republic of Macedonia is regulated by the Law on the Prevention of Corruption adopted in 2002, while the Interest Declaration System is regulated by the Law on the Prevention of the Conflict of Interest from 2007, and with the amendments made in 2009. Taking into account the aim of this comparative study, the focus will be put only on the system and practice related to the declaration of the assets of public officials.

In accordance with the Law on the Prevention of Corruption, there are two categories of public officials who have to declare their assets:

- One category is elected and appointed officials, responsible persons within the public enterprises, and other legal entities which are financed by state capital. These officials declare their assets and property along with information on the assets and property belonging to their immediate family members who are resident at the same address. Immediate family members are the spouse (husband, wife) children, parents, brothers and sisters.
- The asset declaration form provides a detailed inventory of real estate, high-value movable assets, securities, receivables and debts, along with any other property owned by the official or his/her immediate family, listing the grounds for the acquisition of the declared property.

At the same time, these officials must deposit a statement certified by a Notary for waiving bank secrecy in regard to all domestic and foreign bank accounts. It should be noted, though, that data from foreign bank accounts can only be obtained through mutual legal assistance (via the Ministry of Justice).

- The asset declaration is submitted within 30 days of the election or appointment date, at the latest. Also, officials must submit their asset declaration within 30 days of the termination of office.
- The asset declaration and the bank secrecy-waiving statement are submitted to the State Commission for the Prevention of Corruption (SCPC) and the Public Revenue Office (PRO).³⁹
- During their term in office, these persons are obliged within a period of 30 days, to declare any increase in their assets or the assets owned by their family members, such as the building of houses, purchases of real estate, securities, vehicles or any other movable assets exceeding 20 average net salaries in the previous quarter (the State Statistical Office defines the monthly average net salary and publishes it on its website). The declaration submitted to the SCPC and PRO is accompanied by contracts or any other documents which are the grounds for acquiring the property, and a document indicating the payment method. Salary is not subject to declaration, but data on the salary is derived from tax declarations.
- The other category of officials are civil servants, who must submit, within 30 days of the date of their employment in state bodies or in the municipal administration, their completed asset declaration form giving a detailed list of the property owned by themselves or members of their families and the grounds for the acquisition of the declared assets. They are also bound to submit the asset declaration within 30 days of the termination of their employment and when there is an increase in assets exceeding 20 average monthly net salaries. Salary is not subject to declaration, but data on the salary is derived from tax declarations.
- The asset declarations for this category of officials shall be submitted to the respective state body where they are employed. The manner of handling the asset declarations is regulated by the special Rulebook

adopted by the Ministry of Justice.⁴⁰ The state body where the civil servant is employed must submit the asset declaration to the SCPC, at its request, providing the SCPC acts upon a concrete cause of action for the respective official.

The primary responsibility for the acceptance, registration and verification of the asset declarations for the first category of officials (elected and others) lies within the SCPC. The PRO performs the procedure for examination of assets.⁴¹

The procedure for initial assessment of the asset declarations (internal/administrative) is uniform for all officials belonging to the first category. This means that the asset declarations are accepted following the completion of administrative verification concerning the completeness of basic necessary data – first name and surname, title, address, unique citizen ID number, date of appointment/termination of mandate, date of submission of the asset declaration and signature.

The second category — state servants — in accordance with the current regulations, is subject to verification of the completeness of their asset declarations without entering their content. These asset declarations are maintained in special records and in electronic format within the employing institution.

The SCPC initiates the procedure for the checking/verification of the asset declarations in the following cases:

- If there is a notification/complaint proving that the official possesses assets which are not listed in the asset declaration. Any legal or natural person may report to the SCPC or the PRO any suspicions concerning the official's asset status (especially on property and vehicles). In practice so far, the SCPC has carried out on-site inspections to check the reported allegations (buildings, their size and exterior and similar).
- Acting upon cases giving grounds for suspicion of corruption against a concrete public official.

40 Rulebook on the manner of handling asset declarations.

41 SCPC's statistics related to asset declarations in 2012.

- Based upon an established systematic check-up/verification.

Towards the end of 2010 and at the beginning of 2011, the SCPC undertook intensive activities aimed at improving the procedures for the systematic verification and tracking of assets of elected and appointed public officials.

To that effect, working meetings were held with the Ministry of Internal Affairs, the Real Estate Cadastre Agency, the Central Registry, the Central Depository for Securities, and the Public Revenue Office regarding the manner and procedures for obtaining data available at these institutions, which the SCPC needs to compare with the information provided in the asset declarations. In 2007, the SCPC signed a Protocol for Cooperation on the Prevention and Repression of Corruption and Conflicts of Interest with 19 institutions, including those mentioned above. The Protocol, among other things, includes the modalities of data exchange. The SCPC and the PRO have prescribed the “Criteria on the manner for determining which asset declarations will be subject to verification”, which will help to determine quotas of asset declarations from a particular capacity (public officials with a particular function) which will be monitored by the SCPC. The specific asset declarations to be verified are randomly selected on the basis of the number referred to in the SCPC’s consolidated electronic database of asset declarations.

After the adoption of the criteria, the SCPC began with the verification of the asset declarations of holders of public functions from the legislative, executive and judicial branch of the government and determined the specific numbers for each quarter.

The verification/check-up procedure means collection of data from the Ministry of Internal Affairs, Real Estate Cadastre Agency, Central Registry and Central Depository for Securities. After receiving the data, the SCPC compares it with the data in the asset declarations. In case of identified deviations from the reported assets, the SCPC adopts a conclusion for submitting a request to the PRO to investigate the asset status of the public official.

1.2 Registering

Upon receiving the asset declarations submitted by the first category of officials (elected and others), the SCPC conducts an administrative registration in the Record Book according to the regulations applicable to administrative operations. The data in this Record Book is not public.

As soon as the asset declarations have been registered, the complete data is entered into the SCPC's electronic database. Afterwards, the data is processed in accordance with the Law on Personal Data Protection, and the data which is not protected under this Law is published on its website. Also, all reported changes in the official's asset status are published, by updating the basic data which was previously submitted.

1.3 Submission compliance

Submission compliance is checked by the SCPC. The deadline for submitting the asset declarations is within 30 days of election or appointment, termination of office and if there is an increase in assets exceeding 20 average monthly net salaries.

If the official fails to comply with the prescribed deadline, the SCPC initiates a misdemeanour procedure with the court.⁴² For this offence the Law on the Prevention of Corruption prescribes a fine of the equivalent of €500–1000.

The SCPC obtains the data on officials elected in direct elections from the competent institutions in charge of verification of their terms in office – the State Election Commission. The data on officials from the judiciary branch is obtained from the competent bodies – the Judiciary Council and the Public Prosecutors' Council. The SCPC finds the data on the remaining officials elected and appointed by the Parliament and the Government in the Official Gazette of the Republic of Macedonia.

Having in consideration that the Register of elected and appointed officials has not been established yet, the SCPC is facing practical difficulties in securing complete data on all elected and appointed officials, and has to invest additional effort and resources in order to realise its competencies concerning the monitoring and sanctioning of officials who have violated

⁴² See statistics for 2012.
Verification methodology

the law. For these reasons, and bearing in mind that this is an extensive project that should include numerous competent institutions, the SCPC has envisaged the establishment of a Register of elected and appointed persons in the State Programme for the Prevention and Repression of Corruption and Conflicts of Interest with its Action Plan for 2011–2015.

The public has access only to the asset declarations published on the SCPC's website, that is, for those officials that have actually submitted one. Since there is no Register of Elected and Appointed Officials, the public does not have access to a list of all the officials who are obliged to submit an asset declaration to the SCPC.

As for family members living in the same household as the official, there is also no specific register. Information on such family members could be obtained from the databases of residential (place of residence) and civil registers (marriage, birth). However, this would only show the *de jure* residence, but not the *de facto* residence. Information on the personal data (first name, surname and address) of the family members given in the asset declarations is not public, because this data is protected when published on the SCPC's website. Keeping this in mind, for family members, the SCPC mostly relies on data provided by officials, which it cross-checks with other data in some cases.

1.4 Formal check

The formal check of asset declarations is done by the SCPC which means that after receiving the asset declaration, it is verified whether the basic data has been provided – the first name and surname, function/position, address, unique citizen's ID number, date of appointment/dismissal, signature and date of submission of the asset declaration. Otherwise it is deemed that the official has not submitted his/her asset declaration.

Other data related to the assets is not subject of this formal check. The asset declaration form contains instructions on how to fill it in. However, officials, if they deem it necessary, may request practical advice from the SCPC services when filling in the asset declaration, thus avoiding the risk of inadequately completing parts of it.

The asset declarations are submitted to the SCPC exclusively as a hard copy since there is still no established online system for submission of asset declarations.

1.5 Plausibility check

The plausibility check of data is conducted by the comparison of the data provided in the asset declaration submitted by the official and the data available from a standard set of state agencies. The procedure for plausibility check is not conducted for all declarations, but only in cases mentioned under “background information” (if there is a notification/complaint proving that the official possesses assets which are not listed in the asset declaration; when acting upon cases giving grounds for suspicion of a corruption against a concrete public official and based upon the established systematic check-up/verification).

In 2012 in total 99 asset declarations were subject to the plausibility check. Out of this number, 85 declarations submitted by all mayors in the country were checked based on the established systematic verification and 14 more were checked based on notifications for unreported assets.

In order to perform this comparison, the SCPC begins with the name of the submitter and the members of his/her family. The procedure is comprised of a written request for information or with direct access to databases or registries of other competent authorities. The SCPC has established electronic transfer systems with certain institutions (the Cadastre, Central Registry and Central Depository for Securities), which enables it to access their databases and run quick checks on a specific official.

Specifically, the procedure for the plausibility check and comparison includes the collection of data from the Ministry of Internal Affairs about vehicles, the Real Estate Cadastre Agency about real estate, the Central Registry about the founding and ownership rights in companies and the Central Depository for Securities about securities and shares. The comparison is done manually and conducted by the SCPC service. The plausibility check does not look at the relationship between assets and income.

1.6 Audit

In case of deviations identified under the plausibility check, the SCPC adopts a conclusion for submitting a request to the PRO to investigate the real asset status of the official.⁴³ In addition to the data used for the plausibility check, the investigation includes information from the official himself, from private legal entities and natural persons, and from any other state body not contacted before. However, under the Law on the Prevention of Corruption, the SCPC has no competency for running further investigations on the official, including performing lifestyle checks.

The investigation of assets and asset status is not done for the asset declarations of all officials but only in the following cases:

- If the person has not submitted an asset declaration or has not provided data in the asset declaration form
- If the person has provided inaccurate or incomplete data or has not reported asset changes (if this is detected during step 1.5)
- If it is determined that the assets of the official or the assets of a family member, during the term in office have increased disproportionately to the regular income such as salaries, dividends and other income from business activities or assets

The PRO is the competent institution for conducting this procedure, which acts either on its own initiative or upon request from the SCPC. By initiating the procedure, the PRO submits a proposal to the competent lower court for a temporary measure prohibiting the disposal of assets by the public official in question.

During the procedure, the official is obliged to present evidence to the PRO concerning the funding sources used to acquire the assets at the disposal of him/herself and his/her family members.

State bodies, local self-government units, banks and other natural persons and legal entities, at the request of the PRO, and within the deadline set thereby, are obliged to provide all information necessary to determine the actual status, relevant to the investigation of assets and asset status. For

43 In 2012 the SCPC instigated 14 procedures to the PRO for investigation of the assets.

example, the PRO requested in the past information from the Financial Police about whether they have any investigation on transactions of the companies owned by the public official or his/her family members. Also the Directorate for Financial Intelligence regularly informs the PRO about suspicious transactions according to their procedures. This information is used by the PRO if it is related to the public official about whom the audit is being conducted.

If, during the procedure for investigating the assets and asset status, it is not proven that the assets have been acquired or increased as a result of income that has been reported and taxed, the PRO will adopt a decision for the payment of personal income tax.

The basis for calculating the tax is the difference between the asset value at the moment of acquisition and the proven amount of funds used for the acquisition of the asset.

The following (somewhat simplified) calculation is used for determining unreported income (example values are shown in thousands of Euros “K€”):

Step 1: Increase in assets/property of the official and household members.

Property at the time of			Difference	
assuming office	K€	audit	K€	K€
Real estate	30	Real estate	90	+60
Movables	10	Movables	30	+20
Deposits	1	Deposits	10	+9
Shares	2	Shares	5	+3
Intellectual property	0	Intellectual property	5	+5
Claims (as creditor)	0	Claims (as creditor)	10	+10
	0	<i>Minimum subsistence</i>	13	+13
Total	43	Total	150	+120

It should be noted that the minimum subsistence (daily expenses on clothing, food, rent, transport, etc.) is added to the assets, as it is a necessary but

invisible expenditure for which legal income needs to be accounted for.

Step 2: Taxed income accumulated until audit, plus loans received and not yet paid back of the official and household members.

Taxed income	K€
Salary	20
Other net income	10
Subtotal	30
Loans (not subject to tax)	K€
Received, not yet paid back	10
Total	40

this calculation, the declared income of several years/Reports is added up, for the time from assuming office until the time of the audit.

Step 3: Unexplained income

Increase in assets	minus	declared accum. income	equals	unexpl. income
120	-	40	=	€80K

The tax rate on unreported income is 70%. Also, pursuant to the Law on Taxation Procedure, interest is calculated and charged on the amount of the calculated (but unpaid) tax, as of the day of the enactment of the decision on taxation.

Legal remedy is available against this decision under the Law on Taxation Procedure. However, this does not postpone the tax collection. The tax collection pursuant to the decision is conducted in compliance with the provisions of the Law on Taxation Procedure.

In case it is determined that the assets have been increased to a large extent⁴⁴ by using unreported income, the PRO submits to the Public Prosecutor's Office a request for a criminal investigation against the person under Article 359a "Unlawful acquisition and concealment of property" of the Criminal Code.

The PRO shall inform the SCPC of all undertaken activities.

The final taxation decision may be challenged by taking legal action for an administrative dispute before the competent court. The court proceeding is deemed urgent.

The procedure for investigating assets and asset status has the following steps:

- Upon receiving the request from the SCPC, or on its own initiative, the PRO adopts a conclusion for launching the procedure for investigating the asset status and the grounds thereof. The conclusion is submitted to the official for whom the procedure is being instigated. The conclusion also includes the request for the information of family members that – according to the declaration – were part of the household for the investigation period. The information is required in written form stating that it is given under the moral, material and criminal responsibility for the truthfulness of the data.
- The PRO requests information from other competent institutions: the Cadastre, the Municipality where the person has been registered for payment of real estate taxes, Central Depository for Securities, Ministry of Internal Affairs, the Central Registry and others (see above 1.5).
- Pursuant to the Law on Banks, the PRO has the right to request access and get statements of accounts from national banks. Pursuant to the bilateral agreements for avoiding double taxation, the PRO may request information from tax offices of other countries about whether and what kind of taxes a specific person pays in the respective country.

⁴⁴ Article 122 of the Criminal Code defines that benefit, value or damage of a large extent means gain, value or damage corresponding to the amount of 250 average monthly salaries at the time of the crime.

As for mutual legal assistance, no requests related to the investigation of assets conducted by the PRO have been made so far in the past.

- Upon receiving the requested data, the PRO prepares a draft summary report on assets and income.
- The PRO schedules a hearing with the official during which it presents the data from the draft summary report on assets and income and the data from the asset declaration. During the hearing, minutes are prepared including the final report on assets and income and calculation of living expenses according to official statistical data.
- The PRO prepares the mathematical calculation and based on its findings adopts a decision for taxation or a conclusion for ending the procedure.

1.7 Evaluation

The systematic checks are primarily of a preventive nature, since elected and appointed officials may expect the verification of their asset status and the asset status of their family members, making them more responsible when declaring their overall assets and asset changes. In a specific number of cases, upon completing the procedure of investigating the asset status, it was determined that assets were acquired with unreported and untaxed income, which was adequately sanctioned, thus confirming that the investigations of asset status are effective means for identifying hidden assets. Since 2004 the SCPC has submitted to the PRO 176 requests for the investigation of assets and asset status, and in the 14 cases of unreported and untaxed income, €460,000 of personal income tax has been collected.

The remaining challenge for the upcoming period is the creation of conditions for verifying all asset declarations submitted to the SCPC, and the establishment of a Register of Elected and Appointed Officials, as well as receiving data on family members residing with the official. Also, the possibility for establishing a verification system for the asset declarations of civil servants should be considered.

G. Montenegro

1.1 Background

The Law on Amendments to the Law on the Prevention of the Conflict of Interest⁴⁵ strengthened the control functions of the Commission for the Prevention of the Conflict of Interest (hereinafter: the Commission). Thus, the Commission now has powers to carry out verifications of the reported data, i.e. to compare the data submitted by a public official with the data on the income and assets of the public official that the Commission obtains through data exchange from the following authorities in Montenegro: the Real Estate Administration, Tax Administration, Public Procurement Directorate, Ministry of Internal Affairs, Ministry of Transport and Maritime Affairs, and the Securities Commission. Soon, a system of electronic data transfer will be established.⁴⁶ The electronic data check by the Commission is expected to be more effective, reliable and efficient, while also strengthening cooperation between the competent state authorities.

According to the Law, public officials are obliged to submit the income and asset reports to the Commission, as well as income and asset reports for their spouses and children, if they live in a shared household.

The types of income and assets to be declared subject to different thresholds include:⁴⁷

Income:

- Monthly compensations for the public offices he/she discharges
- Monthly compensation for memberships of management and supervisory bodies of public companies, institutions or other legal entities with a capital share owned by the state or municipality
- Monthly compensation for memberships of working bodies and commissions

45 The Law on the Prevention of the Conflict of Interest (Official Gazette of Montenegro 1/09, from January 2009; Amendments: 41/11 from August 2011 and 47/11 from September 2011).

46 See below at 1.6.

47 Detailed contents of the Report and its form are established by the Commission.

- Debts (loans received)
- Income from the performing of other activities (scientific, educational, cultural, artistic, sports, etc.)
- Income from agriculture, renting, etc.
- Other incomes (from copyright, patent and related rights, intellectual and industrial property, etc.)

Assets:

- Immovable and movable assets
- Stocks and shares
- Deposits in banks and other financial organizations, in the country and abroad
- Cash and securities
- Intellectual property
- Claims

Public officials are required to submit the reports within 30 days of taking public office. During the discharge of public office, public officials are required to submit the reports once a year, and in case of a change in data contained in the reports, in terms of an increase in property exceeding €5,000, within 30 days of the day the change occurred. Upon expiry or termination of his/her term of office, a public official is required to inform the Commission thereof, within 30 days of the day of termination of the office, and submit the report. One year after leaving office, the public official submits a report to the Commission, in accordance with the state of affairs on the day of the submission of the report.

The verification of the reports is carried out by the Commission, as an independent body established by the Parliament of Montenegro. The Commission is composed of a president and six members with a five-year term of office. The professional and technical tasks of the Commission are executed by the Professional Service (nine civil servants and employees), managed by the Secretary of the Commission, who is appointed and dismissed by the Commission. The opinions and decisions of the Commission concerning violations of the Law on the Prevention of the Conflict of Interest are binding for public officials. If he/she does not agree with the Commission's

decision, the public official may request a review of the decision. The Commission's decision upon such a request is final but it can be challenged in an administrative procedure (Administrative Court and Supreme Court).

The Commission performs *ex officio* verification, i.e. verification of all reports submitted by officials (Art. 20a). The Commission carries out the verification of the reported data pursuant to the stated article, but does not examine the origins of assets.⁴⁸ All verifications generally include the following steps:

- A basic check, which looks into whether the report is properly completed, if there are mistakes, i.e. obviously incorrect entries or missing information.
- Simple verification, concerning the data confined to the contents of the report itself, e.g. whether the declared assets appear sufficiently accounted for by declared/legal sources of income or whether declared data appear to indicate a conflict of interest.
- An audit, which includes recourse to data other than that in the report, those held by the registries of relevant institutions (as stated above).

Due to its insufficient administrative capacity, the Commission cannot carry out the verification of data contained in income and asset reports of all 3,584 public officials (the number registered at the end of 2012). Therefore, the Commission always examines incomes and assets of high-level state and local officials (the President of Montenegro, President of the Parliament of Montenegro, the Prime Minister and ministers, judges, prosecutors and most responsible local officials). During 2012, the Commission performed *ex officio* data verification of a total of 731 income and asset reports of the highest-level state and local officials, by comparing the reported data with the data held by the Tax Administration, Real Estate Administration, Public Procurement Directorate, Ministry of Internal Affairs, and Ministry of Transportation. It discovered discrepancies in 76 cases. The Rules of Proceedings before the Commission for the Prevention of the Conflict of Interest⁴⁹ govern in more detail the verification of asset declarations performed by the Commission. The Commission also checks the reported data upon the notice/request of

48 Annual Report of the Commission for 2011, page 12.

49 Rules of the Proceedings before the Commission for the Prevention of the Conflict of Interest (Official Gazette of Montenegro, 80/09), Articles 18-22.

a legal entity or natural person; and does so within 30 days from the date it receives the notice/request.⁵⁰

In addition, public officials are required to furnish the Commission with the information on received/rejected gifts; in case of incompatibility of functions, which function they opted to perform; as well as to seek and abide by the Commission's interpretation of the possible cases of conflict of interest (i.e. carrying out additional work, *pantouflage*, etc).

The new Law on the Prevention of the Conflict of Interest defined three important functions of the Commission: preventive, educational and corrective, while at the same time the Commission is expected to strengthen its control function in the future, i.e. data checking and initiating proceedings for violations of the Law.

1.2 Registering

According to the Law, the data which public officials provide in the reports is entered into the Register of Income and Assets, which is kept by the Commission and is available to the public. The Register of Income and Assets is published upon the entry of reports into the register. The Commission keeps the register in the prescribed manner and form, and in accordance with the Law on the Protection of Personal Data and the Commission's internal rules on the processing and protection of personal data.⁵¹

All data on incomes and movable and immovable assets contained in the Register of Income and Assets are available for public access, with the exception of those on public officials protected by the Law on the Protection of Personal Data, such as: personal identification number, home address, home telephone number, names of minors (see 3.2: Privacy).

50 Law on the Prevention of the Conflict of Interest (Article 24) and Rules of the Proceedings before the Commission for the Prevention of the Conflict of Interest (Article 19).

51 Internal rules on processing and protection of personal data, dated 6 April 2012.

1.3 Submission compliance

Submission compliance is checked by the Commission. There is a roster of all officials and his/her family members who are obliged to submit reports, which is established in accordance with the definition of public official provided in Article 3 of the Law on the Prevention of the Conflict of Interest:

“A public official is an elected, nominated and appointed person in a state body, state administration body, judicial body, local governance body, local administration body, an independent body, a regulatory body, public institution, public company and other legal entities performing public authorities, i.e. activities of public interest or which is in state ownership, as well as a person for whose election, nomination or appointment consent is given by an authority.”

The data on officials, as well as any changes therein, are submitted by the authorities who appoint and elect the officials. The Commission establishes the Register of Public Officials, based on the information it receives from the authorities (from the Parliament for the public officials it elects and appoints; the Secretariat-General of the Government for the persons appointed by the Government; the Judicial Council for judges; the Prosecutorial Council for prosecutors; the Municipal Assemblies submit lists of councillors, management board members, public institutions' councils, public services, etc; and municipalities for the heads of local administration bodies and heads of public services). The state authorities submit the lists periodically or at the Commission's request. The Commission also updates the register by checking the Official Gazette of Montenegro. In some specific situations, the Commission decides at its meetings that certain persons are public officials, considering the functions they perform, i.e. deans, members of the Social Council, chief inspectors, etc.

As for family members living in the same household as the official, there is no register similar to the Register of Public Officials. Information on such family members could be obtained from the databases of residential (place of residence) and civil registers (marriage, birth). However, this would only show *de jure* residence, but not *de facto* residence. Still, as information on family members is public, there is a risk for officials that their possible lying

about resident family members would be detected by the public. Keeping this in mind, for family members the Commission mostly relies on data provided by officials, which it cross-checks with other data in some cases.

The number of public officials in 2011⁵² stood at 3,075, of which 40% were central government officials and 60% local officials. By the end of February 2012 (the original legal deadline for submission of the reports), 14.3% of public officials had not submitted their income and assets reports for 2011. However, having in mind that the amended Law entered into force on 1 March 2012, and according to it, the legal deadline for the submission of income and assets reports is the end of March, the Commission refrained from adopting decisions and initiating misdemeanour procedures against those public officials, until the new legal deadline expired.

The number of public officials is likely to increase for 2012, as the amended law containing the broadened definition of public official entered into force in March 2012. At the time of the preparation of the Commission's Report on the income and assets of public officials for 2011 (May 2012), the number of public officials had already risen to 3,217 (local government officials: 59%; central government officials: 41%).

Once the deadline had expired, the Commission adopted decisions that 68 central government and 232 local government officials had violated the Law. Requests for initiation of misdemeanour procedure were filed against all those public officials at the competent misdemeanour court, and the decisions on the violations published on the Commission's website and sent to the authorities where the public officials are employed, for their information and action, i.e. undertaking of internal measures against the public officials.

Nonetheless, the Commission asserted that the percentage of the submitted reports was higher than the year before (2010), as 5.6% more of central government and 6.0% more of local government officials submitted data on

52 Report on the income and assets of public officials for 2011, 25 May 2012. This study uses the latest data available, i.e. data for 2011, as the Commission's report for 2012 will be completed after 31 March 2013, which is the deadline for the submission of regular annual income and assets reports for public officials. According to the data held by the Commission, the total number of public officials on 31 March 2013, was 3,584, of which 520 did not submit reports within the legal deadline, i.e. 14.5%, while in 2011, the percentage was 14.3%.

their incomes and assets, showing a more responsible attitude of the officials with respect to this obligation.

The Commission also noted that public officials (about 90% of them) submit their reports just a few days before the legal deadline, which makes the work of the Commission's Professional service for data processing and control more difficult due to the heavy workload, and to delays during upload of the information on the website.

It has been noted that public officials often submit incomplete reports (e.g. unsigned; no personal identification numbers for the official, or his/her spouse or children – in which case it is not possible to verify the reported data with the data held by other competent authorities) or incorrectly completed income and assets reports. In those cases, the Commission returns the report to the public official to correct or complete the report, as required by the Law. Should the public official fail to do so, the Commission will take further action to initiate a misdemeanour procedure at the competent court due to the violation of the Law. Data on the number and type of sanctions are provided in the Commission's Annual Activity Reports.⁵³

Information on the officials who have not submitted their reports (or have otherwise violated the Law) is published once the Commission asserts so in its decisions, which are published on its website.

1.4 Formal check

As outlined above, the Commission first performs a basic or formal check. They check if the report is properly completed, if there are any mistakes, obviously incorrect entries or missing information.

Practice has shown that a relatively large number of public officials do not provide complete information or the reports have other deficiencies (e.g. an unsigned report). Such income and assets reports are returned to the public officials to complete them as required by the Law. If they fail to do so, the

53 www.konfliktinteresa.me; Annual Activity Report for 2011.

Commission does not accept such reports and takes further action to initiate misdemeanour procedures at the competent court.

Many public officials do not submit all the required information (personal identification numbers for themselves or their family members, home addresses, the public office and the date they took the office, education, occupation, the date of leaving office, etc). Some public officials submit their reports unsigned. Of the total number of submitted reports for 2011, one in three reports was incomplete. These statistics take into account all reports: annual reports; reports submitted after leaving office; reports following an increase in income over €5,000; and those submitted one year after leaving public office.

Against all public officials who have not submitted the report on time, or have submitted an incomplete report on time, or for whom it has been determined that they have not provided accurate information, the Commission adopts the decisions on the violation of the Law and files a request for initiation of a misdemeanour procedure to the competent misdemeanour authorities. Once the Commission's decision is final, i.e. upon the final decision by the misdemeanour authorities or by ordinary court deciding on the misdemeanour case, the Commission's decision on the violation of the Law is published on its website⁵⁴, as well as being submitted to the relevant authorities for information and further action, in terms of taking internal measures against such public officials (e.g. disciplinary measures, such as a 20% salary reduction for one year). Between 1 January and 31 March 2013, a total of 83 judgements were brought by the misdemeanour authorities. The year before, in 2012, 14 public officials appealed against the decision of the Commission before the Administrative Court, which upheld the decisions of the Commission in eight cases. The Supreme Court of Montenegro has dealt with one appeal against the Commission's decision and confirmed the Commission's decision.

The procedure in which it is being decided whether a violation of the Law took place is launched by the Commission at the initiative of:

- The authority where the public official performs or has performed public office
- The authority in charge of election, i.e. appointment of the public official
- Other state authority or municipal authority, other legal or natural entity

54 www.konfliktinteresa.me.

The procedure may also be initiated by the Commission if the cause appears in the line of duty. The data on the initiator is confidential.

1.5 Plausibility check

The plausibility check entails verification confined to the contents of the report itself. The Professional Service checks whether the declared assets appear sufficiently accounted for by declared/legal sources of income or whether the declared data appears to indicate a conflict of interest.

Once they complete the check, the Professional Service publishes the reports on the Commission's website.

The Commission has no legal basis, nor the administrative capacity to identify cases of "illicit enrichment".⁵⁵ Thus, the Commission checks the accuracy of the reported data, but not their origin.

1.6 Audit

The audit covers a verification that involves recourse to data other than that in the report. This involves comparison of the stated data with other sources, i.e. the abovementioned registries of public authorities and institutions. Along the way the Commission can request explanations from the official i.e. special reports, so as to decide on the conflict of interest or violation of the Law.

Subject to an audit are public officials at the highest level of all three branches of power. This means that up until 1 May 2013 a total of 1,162 declarations (622 state public officials + 546 local public officials)⁵⁶ for the year 2012 were subject to an audit (out of a total of 3,584 declarations). Out of a total of 622 state public official's declarations, 59 or 11% were incorrect according to the Commission, and out of a total of 546 declarations of local public officials, 95 or 17% were incorrect.

Besides the level of position and the actual signature of public tenders above €500,000 each, there are no other risk factors leading to an audit,

55 "Illicit enrichment" is not defined as an individual criminal offence in the Criminal Code of Montenegro.

56 www.konfliktinteresa.me Aktualnosti.

including red flags in the declarations. The Commission receives from the Procurement Directorate a list of public officials who signed public tenders above €500,000.

All public officials submit reports in the same form and the audit procedure is the same for all those reports that are subject to audit. As of 1 March 2012, the reported immovable assets of public officials and their family members are checked electronically through the database of the Real Estate Administration; the income is checked through the database of the Tax Administration, and from the beginning of 2013, the data provided by public officials who own securities or shares in companies is checked against the data held by the Securities Commission of Montenegro. The Commission has established cooperation with other authorities that have data on assets: the Ministry of Internal Affairs (information on the ownership of registered movable assets, i.e. motor vehicles, boats, guns, etc.), the Ministry of Transport and Maritime Affairs (information on the ownership of movable assets, i.e. boats, yachts, etc.). Obtaining such data is now possible on the basis of a written request submitted to those authorities by the Commission.

The verification is carried out successfully, although the verification of reported data requires extra effort due to the lack of unique information systems at the state level, as well as the lack of staff in the Commission. Under the same IPA project, the Commission's new database is being established, which will link its database with the databases of the Tax Administration and Real Estate Administration. The Commission is now implementing the preparatory activities for the project with the NGO CEMI and with USAID. Under that project, a database aggregating data from various institutions (State Election Commission, Central Register, Securities Commission, Public Procurement Administration and Commission for the Control of Public Procurement) will be established.

At the moment, the Commission has no competences to check the origin of assets, but only to verify the accuracy of the reported data by comparing them with the data held by public authorities. So, if someone were to report a lottery win, the Commission would accept such data and publish it on its website without much possibility of further verification of that income.

The Commission signed several agreements on information exchange with relevant authorities (Tax Administration, Public Procurement Directorate, etc). The latest one was concluded on 29 March 2013 between the Commission and the Real Estate Administration. The purpose of such agreements is to provide access to and enable efficient exchange of data and information pertaining to assets of public officials, in order to contribute to the efficiency of the Commission's work and accuracy in determining the assets of public officials, so as to prevent conflicts of interest, corruption and organized crime. The cooperation agreements entail data and information exchange during the checking process, through common projects, activities and timely information sharing.⁵⁷

The Law on Amendments to the Law on the Prevention of the Conflict of Interest, Article 20a, provides that the Commission checks the data from the reports by collecting data on the assets and income of public officials from the authorities and legal entities that have such information, and comparing them with the reported data. As of 1 March 2012, the Commission has been using the available data from other state authorities (Property Administration, Tax Administration, Public Procurement Directorate and Securities Commission), in accordance with the abovementioned Article and with Article 20 of the Rules of Proceedings before the Commission.

The verification is performed by using the personal identification numbers of public officials and members of their family households to search the databases of Property Administration and Securities Commission, while Tax Administration and Public Procurement Directorate submit to the Commission the list of all persons who have generated income during the previous year (on the basis of memberships of steering committees, working groups, etc), or persons who have concluded procurement contracts.

Under the IPA 2010 Twinning Project "Support to the implementation of the Strategy and AP for the fight against corruption" (September 2012-February 2014), the Commission should overcome the issue of banking secrecy, as currently enshrined in the Law on Banks. As one of the possible solutions, adoption of a form of the Statement permitting bank account checking, which

⁵⁷ www.konfliktinteresa.me, The agreements emphasize the cooperation in terms of data exchange.

would be signed by public officials, is being examined. That would allow the Commission to verify the submitted reports on income and assets in the part concerning bank accounts.

For the time being, the Commission does not use data on the real estate ownership of the Montenegrin citizens abroad. The Commission consulted the Real Estate Administration as to whether it has such data, and received the response that the Administration does not have such data, and it could obtain them only upon receiving individual written requests from the Commission. Apart from this, the Commission has not as yet initiated an international legal assistance request through the Ministry of Justice. Furthermore, the Commission has no competences to check the lifestyle of public officials (i.e. see where officials live, etc).

1.7 Evaluation

At the moment, the Commission has no legal powers to perform the function of uncovering irregularities/hidden wealth. However, initiating misdemeanour proceedings and imposing penalties, and recently imposing administrative penalties (requests for removal from office, disciplinary measures or suspensions requested by final decisions of the Commission) have led to a decrease in the number of violations with regards to the submission of incomplete reported data (personal identification number, incomes and assets, memberships of private company management boards, memberships of several management boards).

The Commission's greatest challenge at the moment is the processing itself of the reports submitted by public officials. For the Commission it would be particularly useful to have additional tools and resources, such as a single networked database (which is being developed), and more employees who would be in charge of the verification of assets and incomes.

H. Serbia

1.1 Background

The Anti-Corruption Agency of Serbia is established by the Law on the Anti-Corruption Agency.⁵⁸ According to Article 5 of this Law, the Anti-Corruption Agency, among other things:

- institutes proceedings and pronounces measures in case of a violation of this Law;
- keeps a register of officials;
- keeps a register of the property and income of officials;
- cooperates with other state bodies in drafting regulations in the field of the fight against corruption;
- keeps separate records in accordance with this Law; and
- acts on complaints submitted by legal entities and natural persons.

All public officials have an obligation to declare property and income (Article 43). According to Article 2 of the Law on the Anti-Corruption Agency, an official is: every person elected, appointed or nominated to the bodies of the Republic of Serbia, of its autonomous provinces, local self-government units, bodies of public enterprises and companies, institutions and other organizations, whose founder or member is the Republic, an autonomous province or a local self-government unit, or any other person elected by the National Assembly. Therefore, most civil servants do not have an obligation to declare, as — per the definition of Article 34 of the Civil Servants Act — they do not fall under the category of officials who are “*elected, appointed or nominated*”.

According to Article 45 of the Law, members of the management or supervisory board of public enterprises and similar organizations founded by the Republic, an autonomous province or the City of Belgrade are obliged to submit to the Agency the Report. Members of the management or supervisory board of public enterprises and similar organisations founded by a municipality or town are exempt from declaration obligations, unless the Agency exceptionally demands a declaration.

58 www.mpravde.gov.rs/images/LAW%20ON%20THE%20ANTI-CORRUPTION%20AGENCY_180411.pdf.

Officials are obliged to declare property and income for their spouse or common-law partner, as well as minors living in the same household.

The content of the Report of Property and Income is stipulated in Article 46 of the Law on the Anti-Corruption Agency:

1. Property rights on real estate at home and abroad
 - type, structure and area
 - address, place/town and state
 - ownership share
 - legal source of acquisition
 - first name and last name/surname of the owner
 - year of acquisition
2. Property rights on movable property subject to registration with the competent authorities in the Republic of Serbia and abroad
 - type of premises
 - brand
 - legal source of acquisition
 - registration number
 - year of production
 - first name and last name/surname of owner/leaseholder
3. Property rights on high-value movables without a concrete threshold (valuables, valuable collections, art collections, etc.)
4. Deposits in banks and other financial organizations, at home and abroad
 - name and headquarters of the bank/financial institution
 - account number
 - amount of deposit
 - currency code
 - first name and last name of depositors
 - type of account
5. Shares and interests in legal entities and other securities (bonds, treasury bills, commercial bills, insurance policies, bills of exchange...)
 - name of legal entity
 - identification number
 - office of legal entity
 - percentage share/ share/share number

- total nominal value
 - first name and last name of the owner
 - to indicate whether the official transferred his/her management rights in a legal entity to a trustee as required by Law and under certain conditions if the official owns more than 3% of the legal entity's capital
6. Rights deriving from copyright, patent and similar intellectual property rights
 7. Debts (principal, interest and repayment period) and claims
 - credit type
 - name of creditor
 - closing date
 - debt amount (capital and interest)
 - remaining payment period
 - first name and last name/surname of debtor
 8. Source and amount of income from the discharge of public office, or public functions
 9. Entitlement to use an apartment for official purposes
 10. Source and amount of other net incomes
 11. Other public functions, jobs or activities discharged in accordance with the Law and other special regulations
 12. Membership of civil association bodies (as a possible source of income or conflicts of interest)
 13. All other data and evidence deemed by the official as relevant for the implementation of the Law on the Anti-corruption Agency such as:
 - bonuses
 - use of a safe deposit box
 - fees

According to Articles 43 and 44 of the Law, an official shall, within 30 days of election, appointment or nomination, submit to the Anti-Corruption Agency a disclosure Report on his/her property and income.

Also, an official shall file a Report of Property and Income no later than 31 January of the current year, with the status as of 31 December of the previous year, if any significant changes occurred with regard to the data from the Report of Property and Income filed previously.

The Anti-Corruption Agency is in charge of the verification of the Reports of Property and Income. It is an autonomous and independent state body accountable to the National Assembly for performance of duties within its purview.

1.2 Registering

The procedure of registration is the same for each Report of Property and Income. The Anti-Corruption Agency receives the Report in both written and electronic form. According to Article 8 of the Ordinance on the Register⁵⁹ the public official has to personally submit the Report, in electronic form, and upon receiving the computer-generated code confirming electronic registration of the Report, the official immediately and no later than eight days later needs to send the Report in printed form. After the Anti-Corruption Agency receives the Report, it is registered in the Sector Operations Division and allocated an ID number. Afterwards, the Sector Operation Division checks the formal accuracy of the electronic and paper form of the Report. Subsequently, the Report is published on the Agency's web site. All data from the Report is kept in an electronic database.

The plan is to improve the application for the sending and verification of the Report. Processing applications is still in its early stages and, among other things, would include electronic networking with other government agencies for obtaining information from third parties on the data contained in the Report.

1.3 Submission compliance

According to Article 68 of the Law, the Anti-Corruption Agency keeps two registers: the Register of Officials and the Register of (their) Property. The method of keeping the Register of Officials and the Register of Property is prescribed in the respective Ordinance.⁶⁰

All authorities have to notify the Anti-Corruption Agency within seven days of an official entering or leaving office. This data is collected in the Register

59 http://www.acas.rs/images/stories/Pravilnik_o_registru_funkcionera_i_reg_imovine_integralni_tekst.doc

60 bid.

of Officials. Submitting the Report of his/her Property and Income is an official's personal obligation. The date of submission is noted in the Register of Property.

There is no automatic submission compliance check through the electronic system. Checking is done by comparing the data from the Registry of Officials and the Registry of Property and Income of public officials. The Anti-Corruption Agency plans to connect these two registers electronically.

The data to be recorded in the Registry of Officials, is verified by the Anti-Corruption Agency.

Notice of entry and termination functions is verified in the same manner as the Report of Property and Income.

The Agency maintains a list of all state bodies, organizations, public companies and institutions that are obliged to inform the Agency of entry/termination functions. By checking the list, the Agency will determine which authority has not fulfilled its obligation.

The system of electronic submission of the Report of Property and Income prevents an official from sending the Report off without it containing a minimum set of data (see below under 1.4). Furthermore, if the Report has not been submitted as a hard copy, and if it was not personally signed, the Agency will not consider it as submitted and will notify the official.

The moment a Report of Property and Income is electronically submitted, the system records the date of submission and publishes it on the website of the Anti-Corruption Agency.

1.4 Formal check

The electronic online system for completing and submitting Reports of Property and Income is in use as of 1 January 2012. The following information is published on the Anti-Corruption Agency's website:

- Instructions for filling out the Report of property and income⁶¹
- An example of a properly completed Report⁶²

When submitting the Report in electronic form, the system is set up to automatically verify the (formal) accuracy and completeness of the data. The system also requires that certain data is filled in a specific way (personal identification number, dates, amounts, etc.). The Report template contains fields that are required to be filled in, otherwise the Report cannot be submitted. For example, the following fields are mandatory:

- Name of the body in which the official holds an office
- Source of income
- Interval of income
- Net income
- Date since performing a function.

In addition, the filling out of the Reports has been facilitated by the existence of a pull-down menu with a set of options. For example, when filling in the data related to real estate, the following options are offered as the kinds of real estate:

- Flat
- House
- Country house
- Apartment
- Garage
- Field
- Meadow
- Orchard

Once the electronic Report is submitted, it is allocated a barcode. This facilitates the IT-based processing of the paper print-out once it reaches the Anti-Corruption Agency. After receipt of the Report, the Anti-Corruption Agency compares whether the data in the electronic and printed versions matches. This is also an opportunity to check manually whether all the parts of the Report are filled in. For example, officials often do not report their bank

61 http://www.acas.rs/images/stories/Uputstvo_za_popunjavanje_formulara_izveaja_o_imovini.pdf.

62 http://www.acas.rs/images/stories/Izvestaj_o_imovini_i_prihodima.pdf.

accounts. If the official does not have a bank account, that part of the Report will remain empty. This also applies to other parts of the Report that have no data (i.e. income from royalties, membership of associations, etc.).

1.5 Audit

Sample

The Anti-Corruption Agency has processed over 30,000 Reports of Property and Income which were submitted to it since its establishment on 1 January 2010. For the year 2010 alone, 16,000 Reports were filed; in 2011 it was 4,151; and in 2012, 6,760. Due to the large number, it is impossible for all Reports to undergo a full review.

Therefore, according to Article 48 of the Law, the Anti-Corruption Agency mandatorily checks the accuracy of information in the Report of Property and Income for a certain number and category of officials. To this end, the Annual Verification Plan determines a certain number and category of officials. The Secretariat of the Anti-Corruption Agency, proposes to the Agency's Board what categories of officials, should be subject to control. In 2010 the declarations of 250-300 top-ranking officials were audited, in 2011 about 500 and in 2012 about 350.

The Plan is public and the names of the all officials subject to an audit will be published on the Agency's website.

In addition, the Secretariat of the Anti-Corruption Agency can exercise an extraordinary audit:

- In case of a disparity between the income and the increased value of assets (noted during the previous processing of the Report of property and income)
- In the event of a conflict of interest, if the Anti-Corruption Agency on the basis of data from the Registry of Officials determines that the official performs multiple functions, or if he/she did not report the performance of all functions
- Based on complaints and reports from citizens
- Based on media reports

- Based on information obtained from other government bodies (Prosecutor, Ministry of Internal Affairs, etc.)

Both regular and extraordinary audits are performed in the same way.

Cooperation

According to Article 25 of the Law, state bodies and organizations, territorial autonomous and local state bodies, public services and other legal entities with administrative authority are required to forward within 15 days, at the request of the Anti-Corruption Agency, all documents and information necessary for the Anti-Corruption Agency to perform its tasks.

In the process of auditing the accuracy and completeness of the data from the Report of Property and Income are checked. The Anti-Corruption Agency in cooperation with other state agencies obtains information from state agencies: for each audit, the Agency collects data from the following agencies:

- From the Ministry of Internal Affairs, the Anti-corruption Agency uses information from their database of domicile/residence, owners of motor vehicles and data on registered gun owners.
- From the Tax Administration — data on income from employment and other sources, including from abroad (year, amount and tax levies).
- From Local Authorities the Anti-Corruption Agency obtains data about property taxes.
- From the Republic Geodetic Authority, the Anti-corruption Agency obtains information about the ownership of real estate.
- From the Central Securities Depository and Clearing House, the Anti-Corruption Agency obtains data of the owners of the company shares.
- From the Agency for Business Registers, the Anti-Corruption Agency obtains data about founder and ownership stakes in the companies, information on the management structure — the directors, the persons authorized to represent them and members of supervisory boards.
- From the Port Authority, the Anti-Corruption Agency obtains information about vessel owners.
- From the Administration for the Prevention of Money Laundering — data on suspicious or large financial transactions concerning public officials.

For all the above agencies, data exchange is carried out at the request of the Anti-Corruption Agency and the information is provided in both printed and electronic form. In addition, the Anti-Corruption Agency has signed a special agreement on cooperation with the Republic Geodetic Authority; thus, the Anti-Corruption Agency has access to a specially protected online portal of the Authority. The Anti-Corruption Agency is also currently about to sign cooperation agreements with the Central Securities Depository and Clearing House and in the future with the Agency for Business Registers and Tax Administration.

The agreements on cooperation regulate the availability of data as well as the persons who have a right to access the data. The agreements are concluded for an indefinite period, but foresee their possible termination as well as a dispute-resolution mechanism.

The Anti-Corruption Agency may also request assistance by other authorities (such as the Prosecutor's Office) to obtain data from financial institutions other than banks, from business companies and from citizens.

Referring to bank secrecy and data protection under the Banking Law, some of the banks in Serbia do not provide data about accounts to the Agency. However, most of the banks submit complete data on bank accounts and owners, such as information about the owners of opened or closed accounts, transactions on these accounts, current status, and data on loans, as well as all other business relationships between the bank and officials and related persons. Currently, the Law on the Anti-Corruption Agency is in the process of being amended; once enacted, the amendments would clearly define and specify the obligations of banks to send information.

The Anti-Corruption Agency also uses data from foreign business registers that are publicly available. Information from abroad may be sought through international legal assistance via the Ministry of Justice. However, so far such assistance has not been required.

The Anti-Corruption Agency has no authority to make an immediate scrutiny of the movable and immovable assets of officials ("lifestyle checks"). According to the Law on the Anti-Corruption Agency, it conducts background checks on the basis of documents and data obtained from state agencies

and banks. However, from this information the lifestyle of some officials can be indirectly identified, for example by identifying lavish payments through debit and credit card records.

The most powerful tool for timely delivery of complete and accurate information from officials is the publication of Reports. Once the data is available to the public on the Agency’s website, it may lead to the discovery of hidden or undeclared wealth by scrutiny of every citizen.

Irregularities

According to Article 49 of the Law two types of discrepancy are possible:

- A discrepancy between the data presented in the Report of Property and Income and the actual status of property and income
- A discrepancy between the increased value of the property of the official and his/her lawful and reported income.

The Anti-Corruption Agency shall establish the cause of such a discrepancy and notify the body where the official holds office. This body shall, within three months of receiving the notice, notify the Anti-Corruption Agency of the measures taken (disciplinary measures, notification of the prosecutor, warning, etc).

The following calculation is used for determining a discrepancy between income and property (example values are shown in thousands of Euros “K€”):

Step 1: Increase in assets/property

Property at time of		Difference		
assuming office	K€	audit	K€	K€
Real estate	30	Real estate	90	+60
Movables	10	Movables	30	+20
Deposits	1	Deposits	10	+9
Shares	2	Shares	5	+3
Intellectual property	0	Intellectual property	5	+5
Claims (as creditor)	0	Claims (as creditor)	10	+10
Total	43	Total	150	+107

Step 2: Declared income accumulated until audit

Accumulated income	K€
Salary	20
Other net income	10
Loans (received)	10
Total	40

this calculation, the declared income of several years/Reports is added up, for the time from assuming office until the time of the audit.

Step 3: Unexplained income

Increase in assets	minus	“declared accum. income”	equals	unexpl. income
107	-	40	=	€67K

If the audit shows that the revenues from public and other sources, which are presented in the Report of Property and Income, are in accordance with the declared assets and income, as well as debts, and there is no increase in assets which cannot be explained by the legal income, then it is concluded that there is no disparity.

In addition, the Agency often requests information from banks to see the daily/monthly/quarterly/annual turnover on an official's accounts. This is a further strong tool for the Agency to determine whether the expenditures of a public official are greater than the reported income.

Statements by official

The Anti-Corruption Agency may request the official to submit information on his/her property and income and those of other associated persons⁶³ within 30 days if there is reasonable doubt that the official is concealing the real size of his/her income or the real value of his/her property. The Agency can also summon the official or an associated person in order to obtain information. The official may be required to submit documentation in order to support his/

63 Article 2 of the Law: an *associated person* is a spouse or a common-law partner of the official, lineal blood relative of the official, lateral blood relative to the second degree of kinship, adoptive parent or adopter of the official, as well as any other legal entity or natural person who may be reasonably assumed to be associated in interest with the official.

her declaration, such as: contract of sale of real estate or movable property of sizable value (car, boat), decision on inheritance, etc.

The Agency does not check whether a public official reported for all his/her family members; should it turn out, though, that he did not, the Agency will initiate an extraordinary audit.

Challenges

One of the challenges in practice is the processing of the Report of Property and Income. Namely, when filling out Reports, officials often omit certain data or fill out the Report incorrectly. Employees of the Agency must then take steps to correct the formal mistakes in the Report (by calling the official, checking which revenue is public, comparing the data from the Report with the data from the Registry of officials, etc.). Furthermore, the greatest challenge in practice is the detection of hidden assets or property and incomes, as well as assets transferred to third parties.

Any additional tools for practitioners would need regulation in the Law on the Anti-Corruption Agency. Such tools would allow direct access to the documents of other state agencies and the possibility of directly checking the lifestyle of officials. Also, more cooperation with other governmental agencies and private entities is needed, particularly with the prosecution, the tax administration, banks and other legal entities that have information relevant to the verification of properties and incomes; in particular, procedures of verifying the accuracy and completeness of the information which officials provide in the Report would be carried out more efficiently and faster if the cooperation between all authorities was more intensive. One form of such cooperation would be to electronically connect the agencies, which would significantly accelerate the exchange of information. Detection of hidden property and income would also be strengthened through international cooperation between anti-corruption institutions. Even though there has been no mutual legal assistance request in the past from the Agency, less formal forms of data exchange would facilitate cross-border involvement in verification procedures.

2. Typology of Hiding Wealth

A. Overview

No.	Official	Trigger	€	Hidden asset/ income	Main source of data	Sanction
AL i.	Mid-level	Regular audit	22k	Company dividend	Business registry	False declaration (ongoing)
AL ii.	Mid-level	High loan	65k	Alleged loan received	Third person	False declaration
AL iii.	Mid-level	Citizen complaint	70k	Procurement winning	Procurement register	False declaration
AL iv.	Mid-level	Regular audit	190k	Real estate	Business registry	False declaration (ongoing)
AL v.	Mid-level	Plausibility check	80k	Real estate	All databases	Investigation ongoing
AL vi.	Mid-level	Regular audit	85k	Real estate	All databases	Investigation ongoing
BiH i.	Deputy	NGO inquiry	220k	Shares	Securities register	not applicable
BiH ii.	Deputy	NGO inquiry	n/k	Real estate, company	Public information	not applicable
BiH iii.	Deputy	NGO inquiry	16k	Unexplained income	Declaration (plausibility)	not applicable
HR i.	Minister	Media	3.3m	Land development	Media article	Investigation ongoing
HR ii.	CEO	Media	9.7m	Foreign real estate	Media article	Investigation ongoing
HR iii.	Prefect	Media	n/k	Land development	Media article	Investigation ongoing
KO i.	Mayor	Citizen complaint	n/k	Real estate	Observation, land registry	-

No.	Official	Trigger	€	Hidden asset/ income	Main source of data	Sanction
KO ii.	Senior official	Family complaint	n/k	Real estate	Land registry	-
KO iii.	Senior official	Plausibility check	n/k	Savings	Bank data	-
KO iv.	Senior official	Regular audit	n/k	Business	Business registry	-
KO v.	Deputy	Media	12k	Income supplements	Declarations, legislation	-
KO vi.	Court president	Alleged gifts	n/k	Real estate	Land registry and other	Organized crime (ongoing)
KO vii.	High level	Volatility of data	n/k	Real estate	Declarations	-
KO viii.	Deputy	Media	n/k	Real estate	Media	-
MK i.	Mayor	Non-submission	24k	Real estate	Various databases	70% tax
MK ii.	Agency director	Crime suspicion	18k	Inexplicable income	Various databases	70% tax
MK iii.	Dean	Anonymous tip	-	none	Various databases	-
ME i.	Municipal Pres.	Regular audit	-	Illegal private job	Declaration	Fine
ME ii.	Municipal Dir.	Regular audit	-	Illegal 2nd public job	Declaration	Fine
ME iii.	Judge (1 st inst.)	Regular audit	n/k	Real estate	Land registry	Fine
ME iv.	Municipal VicePr	Appointm. notice	-	non-submission	Official Gazette	Fine
SE i.	High level	Media	70k	Savings	Tax and bank data	Prosecutor: no charges
SE ii.	Mid-level/ CEO	Regular audit	n/k	Various assets	Various databases	Investigation ongoing
SE iii.	High-level	Media	n/k	Various assets	Various databases	Investigation ongoing
SE iv.	High-level	Other agency	140k	Several incomes	Copyright registry	-

The above 32 examples are cases investigated by the oversight bodies in the Western Balkans. Even though it is probably fair to say that the selection of examples is non-representative, one can derive the following conclusions:

- Income and asset declarations do have a real **impact** in the fight against corruption and can lead to meaningful investigations and sanctions.
- Investigations concern all **levels** of officials from all branches of power. It is a common prejudice that income and asset declaration leave high-level officials untouched. Some of the above examples support the contrary argument.
- Even the smallest **amounts** of hidden wealth are considerably higher than monthly wages – the smallest specified amount in above examples is €12,000 (Case KO vi), whereas the highest amount is €9.7 million (Case HR ii).
- Anti-Corruption policy makers sometimes question the **effectiveness** of an income and asset declaration regime because it seems hard to imagine public officials “stupid” enough to be caught with hiding wealth by a simple look at declarations or a simple comparison with data from state sources. Many of the above cases though have been triggered or even concluded by such **simple contradictions** (for example Cases SE i and ii). Thus, schemes of hiding wealth are not always as elaborate as it might appear from the perspective of an outsider; however, the above cases only allow an insight into known cases, whereas more complicated schemes might not be uncovered.
- In most cases, inexplicable wealth would appear from **real estate**. This calls for verification mechanisms to ensure automatic online verifications of financial declarations at least with land registries or real estate tax databases.
- The above examples support the importance of declarations being available to the **journalists**, as media reports on contradictory data are a frequent trigger for further investigations.
- Oversight bodies should verify declarations with a wide range of **databases**: the above examples include cases where irregularities in declarations were detected by matching them with data from rather “exotic” sources such as copyright/authors’ registry (Case SE iv) or the procurement registry (Case AL iii).

- Whenever oversight bodies have access to **banking** data this considerably facilitates investigations.
- Income and asset declaration can be the trigger point for uncovering **serious crimes**, such as was the case in Kosovo* (Case KO vii) with a large-scale organized real estate fraud.
- Besides being a source of financial information, income and asset declarations are always a possible source of information for (undeclared) **conflicts of interest** and should be used as such (Cases ME i and ii).
- Cases are sometimes well investigated, but seem not to get past the stage of **prosecutors** or **judges** despite showing sufficient merits. This challenge could be addressed either by training prosecutors and judges or by entitling the oversight body to the right to appeal against a court's or prosecutor's decision.

B. Albania

2.1 Company dividends

The public official A.M., in his Initial Assets Declaration before the start of his duty on 15 November 2012 declared that he possessed movable and immovable property as well as liquidities, altogether with a total value of ALL 8,000,000 (approx. €50,000). Later on he also declared the origin of these assets as being created by a legitimate private business. After a full audit of his declaration (based on the drawing of lots), the HIDAA found out that the official A.M. was the sole owner of the 'Drini' Limited Liability Company established in 1998. From the L.L.C.'s verification of financial reports it was concluded that the official AM had withdrawn dividends (during the period 1998–2011) of a total value of (only) ALL 3,000,000. Therefore, the HIDAA concluded that the official A.M. had made a false declaration because the difference of ALL 5,000,000 was not justified.

The official A.M. was summoned by the HIDAA to provide explanations about the discrepancy between his declaration and the control result and a record was kept. The official A.M. could not prove that the whole amount of ALL 8,000,000 had been gained from his declared legal business. The legal

provision of the Article 38 – Making a False Declaration of Law No. 9049 dated 10 April 2003 states that:

“Declarations and all documents that accompany them are official documents. Submitting false data in them constitutes a criminal act and is punished according to the legislation in force”.

Moreover Art. 257 of the Criminal Code states that:

“The refusal to declare the assets of elected persons...when administrative measures have been taken, constitutes a criminal contravention and is punishable by a fine or until 6 months of imprisonment. Hiding wealth or a false declaration of elected persons or public officials or any other person who has an obligation to make a declaration is punishable by a fine or by 3 years’ imprisonment.”

Therefore, the HIDAA filed charges against the official A.M. with the District Prosecutor’s Office. The investigation by the Prosecutor is still ongoing.

2.2 Borrowed money

The official B.N. in his Annual Periodic Declaration of 2012 stated that the origin of his declared assets was the return of borrowed money from the citizen D.L. of a total amount of ALL 9,000,000 (approx. €65,000). This statement gave cause for the HIDAA to look further into the declaration. After full auditing based on Art. 7/1 of Law No. 9049 dated 10 April 2003, as amended, with the approval of the HIDAA’s General Inspector, a request for a Declaration of Assets was addressed to the citizen D.L., taking into account his position of being a ‘related person’ with the abovementioned official B.N. (because of the loaned/borrowed assets). The citizen D.L. refused to declare his assets and therefore a fine of ALL 100,000 was imposed on him. The HIDAA filed charges against the citizen D.L. in the District Prosecutor office based on Art. 257 of the Criminal Code. The investigation of the Prosecutor is still ongoing.

2.3 Transfer of money to family member

Based on the information (received voluntarily from citizens) submitted to the HIDAA’s offices informing them that official F.G. had transferred to his son in

Switzerland the amount of €70,000 a full auditing procedure was conducted by its inspectors.

The official F.G. in July 2012 had transferred via a commercial bank in Tirana the amount of €70,000 to the account of his son. The official F.G. during his hearing in the HIDAA's offices stated that he was not aware nor had he been informed that such a transaction should have been declared during the same year. Moreover, he could not explain/prove the legal origin of the abovementioned assets. From the investigation conducted (the data received from the standard list of 45 state and private entities, i.e. all state institutions as mentioned in the chapter on "verification" plus all secondary banks and non-bank financial institutions) it resulted that this amount of money was transferred from the account of "A&Z" Limited Liability Company which was the winner of a public procurement contract from the state institution where the official F.G. had been appointed director. The HIDAA filed charges against the official F.G. in the District Prosecutor's Office based on Art. 257 of the Criminal Code. The investigation by the Prosecutor is still ongoing.

2.4 Down-payments on an apartment

The official B.L. declared the acquisition from G&T L.L.C. of an apartment for the price of €200,000 and at the moment of signing the contract he paid only the guaranty amount of €10,000 declaring that the rest of the price (€190,000) would be paid in several instalments in the coming years. The official B.L. was selected for a full auditing by a public process of drawing of lots. From the administrative investigation (the data received from the standard list of 45 state and private entities, i.e. all state institutions as mentioned in the chapter on "verification" plus all secondary banks non-bank financial institutions) conducted by the HIDAA's inspectors, including the financial report of "G&T" Limited Liability Company, it was concluded that the official B.L. was not a debtor of the abovementioned company. As he had apparently fully paid for the apartment right away, the origin of the difference (€190,000) was illegitimate and therefore the HIDAA filed charges against the official B.L. with the District Prosecutor. The investigation by the Prosecutor is still ongoing.

2.5 Acquisition of apartment

Subject A.B., who is the subject of the obligation to submit a declaration of assets from 2004, in his initial declaration (on starting his duty) had declared as assets 1 house and 1 vehicle. During 2005–2008, subject A.B. had declared only wages as incomes for himself and his wife. In the declaration of 2009 he declared the acquisition of an apartment with a value of €80,000. From the logical-arithmetical control of the declaration resulted that the sources of incomes declared during the past 5 years did not cover/justify the acquisition of his immovable property. Subject A.B. was summoned to the HIDAA's offices, where he declared that the source of his assets was the selling of an old house for the value of €25,000 as well as the remittances coming from his son of an approximate amount of €10,000 per year. However, these periodic amounts of money were never declared.

How to qualify such a case and what are the legal steps to be taken by the HIDAA?

- First of all the value of the old apartment should be verified (location, value of the market etc.) in order to conclude if the amount of €25,000 declared is the real value or if the selling contract is false. (aiming to avoid the real estate property tax).
- Verifications can be conducted through the TIM system, checking his entering/departing the country (immigration database), the duration of his stay or/and any other documents such as the son's passport.
- Verifications of the working contract, sheet of tax payments, or any other supporting documents as attestation from the employer of the son abroad.
- Verification will be carried out in order to understand the way in which the assets were received, either through bank transfer, Western Union, etc. or whether they were handed over in person. Declarations could be sought from the sender.
- The calculation of income from the wages of subject AB, as well as his wife, will be taken into consideration (wage statements for the period 2004–2008).

In case during the period of time it is verified that subject A.B. acquired no other property or assets than the ones from the sale of the apartment and the

acquisition of a second one, the HIDAA can conclude a case of negligent incorrect asset declaration. Based on such a conclusion, Art. 27 of the Law on the Declaration of Assets, the administrative sanction foreseen in point ((ë)) of Art. 44, as well as the information of the superior will apply to subject A.B.

2.6 Construction costs for apartment

Subject B.N. started the declaration of assets in 2008. In his *initial declaration* form before starting his duty he declared the acquisition of an apartment with a value of €85,000 with family incomes and in the page of his financial obligations an amount of €15,000 was declared as a debt to a construction firm.

In his declaration of 2009, subject B.N. declared a cash amount of €20,000 obtained over the years in order to pay the construction firm. In the obligation page the same declaration of €15,000 remains, even after the transfer of the finished apartment from the latter.

During the full auditing subject B.N. was summoned to the HIDAA's offices in order to provide explanations about his assets and their origin. The subject declared that his apartment had been bought with the incomes from his and his wife's work. They have been working in the private sector since 1992. The amount of cash had also been obtained through their work over the years in order to complete the payment of the apartment after its delivery from the construction firm. However, according to the declaration the income from wages arising from their work was of an average of ALL 1,500,000/year (approx. €10,000).

How to qualify such a case and which are the legal steps to be taken by the HIDAA?

During the full auditing process, a financial analysis should be done including his family incomes during the years, incomes from private sector activity, etc. This financial analysis should be based on written documents in order to ensure verification of the concrete declared amount from the abovementioned subject (confirmation of his work in the private sector as well as incomes arising from this activity). For this the following data sources would be used: tax statements, banking information, social security, and all other data received from the standard list of 45 state and private entities, i.e. all state

institutions as mentioned in the chapter on “verification”, plus all secondary banks, non-bank financial institutions).

If from the financial analysis, the HIDAA concludes that the amount of €70,000 has been paid (€85,000 prize minus €15,000 debt) then it can also be concluded that with incomes of ALL 1,500,000/year during a period of 2 years, subject B.N. has completed his/her payment to the constructing firm. However, the declaration of the current year might bring more clarification concerning his assets situation. Taking into account that subject BN is a new subject with an obligation to declare assets (new official), an administrative measure will be imposed according to point (ë) of Art. 44 of Law No. 9049 as well as notification of his/her superior. The investigation is still ongoing.

C. Bosnia and Herzegovina

Taking into account the absence of a sufficient verification mechanism, it is evident that the public and media are the key stakeholders in the process of verification of asset declarations. Therefore, the following text is based on the results of research by the Centre for Investigative Reporting from Sarajevo (hereinafter CIN) which tackled the potential scenarios of the cases of “hiding wealth”. This study was undertaken by representatives of the media, as it has not been processed through the prism of the existing institutional system in BiH. In the framework of the research project, the CIN published a text entitled “Assets of Officials Concealed” stating:

“The candidates concealed their incomes and assets, so the CIN after analysing the available data can conclude that the candidates for the general 2010 elections generally presented smaller amounts of earned income in their property records, where some politicians have not reported on possession of apartments, businesses, shares, parcels and other property. Also, it was found that numerous BiH politicians have not presented the data on their total personal income and estate.”⁶⁴

64 Source: www.cin.ba, Istraživačke priče - imovina zvaničnika; Kandidati prikriili prihode i nekretnine; Objavljeno: 29.9.2010. godine.

Researchers conducted an analysis between the data found in the asset declarations and the data on the income of the Parliamentary Assembly and the Parliament of the Federation (FBiH), the BiH Ministry of Finance, from registers and land certificates.

Thus, the CIN has identified politicians who have not been honest with their declarations. The comparison was conducted on a sample of 120 politicians from the ruling and opposition parties.

2.1 Shares in companies

One of the candidates in the 2010 elections failed to report the actual market value of the shares in one or two companies. In the asset declaration from 2010, this candidate reported ownership of shares in the company X.X. amounting to BAM 280,000. According to information obtained from the FBiH Register of Securities, the abovementioned person owns 28,159 shares in this company with a nominal value of BAM 506,870. The market price of the shares, according to the information of a stock market in BiH on the last trading day of 2010 amounted to BAM 732,145, which is BAM 452,145 more than was submitted in the asset declaration by the person concerned.

2.2 Real estate and business

An elected official of the BiH legislative body stated in his/her asset declaration that he/she owns a home, land and company, but omitted to report on two commercial buildings covering an area of 3,198 square metres, as well as his/her construction company.

2.3 Income discrepancy

The CIN had found cases characterised by a large discrepancy between the total of revenues reported in the asset declarations of the elected officials and the actual amount they received. The largest unreported amount was registered in the case of an official appointed to the BiH legislative body, whose total income in 2009, according to available data, amounted to BAM 92,557. In 2010, his asset declaration reports a salary of BAM 50,796 and compensations of BAM 8,880, thus making an unreported amount of BAM 32,881 (approx. €16,500).

D. Croatia

In the context of the officials' obligations to report their assets and the authority of the Commission for the Identification of Conflicts of Interest, the hiding of income and assets of the officials is observed as their failure to correctly, completely and truthfully list their property, whether it is due to random error, ignorance, misunderstanding of instructions for completing the required form or due to their direct intent to hide the real property which is owned. It is unquestionable that in theory there is always the possibility that officials formally register their property as if it was owned by other family members, friends and other people of trust who are individuals that are not required by law to publicly disclose data on their assets in an asset statement. It is also a fact that many other circumstances in Croatia, such as disordered data in the land registry, can help "hide" and suppress certain assets, such assets *de facto* being assets of officials and, as such, not being recorded in the official public records and registers. But, as it was previously explained in this study, if it is the case that such property was acquired in connection with the illegal actions of officials which may be considered a criminal offence, particularly under a corruption offence, the investigation and sanctioning of such cases falls under the jurisdiction of the prosecuting authorities. Seizure of such property can be the consequence of such proceedings.

Given the fact that the obligation of public declaration of the assets and revenue of officials is prescribed as a liability in the field of preventive anti-corruption, as well as a liability in the field of conflicts of interest, this study will analyze three fresh cases or cases under the jurisdiction of the Commission, showing the importance and role of the public disclosure of declarations and showing the severity of the consequences that the holder of a public office can experience in case of breach of proper, complete and accurate financial disclosure.

2.1 Minister of Tourism, Veljko Ostojic

At the beginning of 2013 investigative journalism informed the public that the family of Veljko Ostojic, who at that time held public office in the government, as the Minister of Tourism, had bought land in Buje, in the region of Istria, at a cost of HRK 860,000 (approx. €115,000). Soon after the sale, there was

a refit of the land in question from agricultural to building land, allowing him to maximize its value, despite the fact that the previous owners reportedly received information from the authorities that such a refit was not possible. The land was later transferred to the ownership of a company, which was co-owned by the wife of Minister Veljko Ostojić and the company itself was subsequently sold at a price of approximately HRK 25,000,000 (approx. €3,300,000). Following the publication of this information, the tourism minister resigned on the grounds that the publication of this information had prompted a public campaign against him which would prevent the normal performing of his public duties. Specifically, in relation to this case, the public argued the fact that, in the declaration submitted by Minister Veljko Ostojić regarding his financial situation, he did not show the income or assets that his wife had made by the purchase of land at a cost of HRK 860,000 and its subsequent sale at a price of HRK 25,000,000. The case was transferred to the Office for Combating Corruption and Organized Crime as the prosecuting authority and is still being investigated.

2.2 The case of Josip Jagušt

At the beginning of 2013, also thanks to the efforts of investigative journalism the public became aware that Josip Jagušt, CEO of the state-owned company Petrochemical Inc., was the owner of luxury real estate in a desirable part of London and that this property was not listed in his declaration. This piece of real estate had a market value €9,700,000 which drastically exceeded the legal reported income (€37,000) of Mr. Josip Jagušt. In relation to the official in question the Commission had also received a complaint regarding his violation of the obligation to file a complete and accurate declaration. The proceedings before the Commission are in progress. As a vital part of the process Mr. Josip Jagušt must make an official statement on the method of acquisition and the sources of funding by which he has acquired this property, along with the presentation of relevant evidence.

2.3 County Prefect, Ivan Jakovčić

The Commission received notification from a journalist of a possible conflict of interest regarding the actions of Mr. Ivan Jakovčić (County Prefect, region of Istria) at the beginning of 2013. The apparent cause was the problematic way

of acquiring real estate and agricultural land that had been previously owned by the state, considering the fact that the Law on Agricultural Land prescribes restrictions on the possibilities of acquisition of such land. In the process of reviewing of this case, the Commission *ex officio* obtained certain documents from the Agency of Agriculture, which has the authority to supervise the tendering procedure, with all the official acts brought by the other relevant authorities in the tendering procedure (approval from the public prosecutor on concluding the contract) and the evidence does not show that the tendering procedure for sale of the land was carried out illegally. However, a verification of his asset declarations that was conducted regarding this case, disclosed that Mr. Ivan Jakovčić had failed to notify the Commission about changes in his property. In accordance with the statutory procedural provisions the Commission requested Mr. Jakovčić to submit to the Commission a properly, fully and truthfully filled-out asset declaration, including the part of the data relating to the ownership of the property in question, the agricultural land that was purchased by him from the Republic of Croatia in 2012 on the basis of a public contest conducted in 2010. The official made no comment and failed to reply to the Commission within the prescribed period, so he is currently being charged for violation of the provisions of the Law on the Prevention of the Conflict of Interest. The process is on-going.

Regarding this case it is interesting to point out that the Law on the Prevention of the Conflict of Interest expressly stipulates that officials performing a public duty must truthfully and completely answer the questions of the Commission about their assets, the sources of funds and the manner of their acquisition. At the time that the Commission received a notification in relation to Mr. Ivan Jakovčić (at the beginning of 2013), he had just made a guest appearance on a popular show on Croatian Radio and Television, in which he was explicitly asked by the reporter about his current assets, to which he responded that his current assets were significantly lower than the ones he had owned at the beginning of assuming office. It should be noted that he had been active in politics for two full decades. In any case he had been performing public duties at the time of the introduction of the legal responsibility of reporting of assets. Documents and excerpts from the land registry and Purchase Agreement obtained by the Commission confirmed that during 2012 (only one year before his public statements on national television), he had purchased land from the Republic of Croatia through public tender – registry items in Istria, whose

total area exceeded 61,478 m². In addition to these pieces of real estate the Commission discovered from obtained excerpts from the land registry that Mr. Ivan Jakovčić owns additional real estate which he failed to report in his declaration of assets. The Commission is still investigating this case.

E. Kosovo*

Concrete cases of non-transparency

Throughout the Agency's action in overcoming deficiencies in the area of Property Declaration, many cases with illegal or improper circumstances have been identified.

Most cases have to do with “no fear” of law, negligence, and a careless mentality, and suffer from the non-transparency of data and a lack of accountability of the officials concerned.

2.1 House with swimming pool

An official on his declaration of property for 2008 had not declared a house in the city where he comes from and where he had been mayor for two terms.

Initiation of the case

Since 2011, asset declarations have been available to the public online. The Agency received an anonymous tip-off that an official in his hometown owned a very luxurious house with a swimming pool.

Auditing period

2008 until 2011

Proceeding

The Agency contacted the anonymous source who agreed to cooperate informally. The source and Agency officials went to the town where the house was claimed to be. The Agency took some pictures of the house and requested data on the ownership from the Department of Geodesy and Cadastre of the respective municipality. The Agency received a very quick

response and it turned out that – as stated by the source – the true owner was the former mayor of the municipality, who was now a member of the Kosovo* Assembly.

To address this situation, a special working group was formed and eventually the Director of the Agency proposed to take measures.

Statement by the official

Because in 2008 submitting a false declaration was not an offence, the Agency confronted the official with its findings. The senior official admitted right away, that he was the owner. For justification he gave the following statement:

“When I declared my property in the first year (2008) the Law on the Declaration of Property did not allow the publication of declaration forms, which remained at the Agency. I actually thought that during this time of crisis it would be better to show more modesty and not my wealth to the public. I inherited the house in question from my father who had worked abroad for a long time for it.”

With the data available, the Agency could not contest that his father had acquired the means for the house by working abroad.

Further proceedings

He submitted a new declaration for 2008 which included the house. This change of declaration is available to the public.

2.2 Subsidised housing

Initiation

A senior official from the local level did not declare his ownership of a flat. Following the publication of the declaration, a close relative of the official informed the Agency about the apartment and its address (in the town where the officer is employed).

Auditing period

2010

Analysis and finding

At the stage of investigation, the Agency obtained a document certifying the official's ownership of the apartment. Further data requested by the Agency from other state agencies confirmed this finding.

Statement by the official

The official stated that in his municipality a public subsidized housing project was constructed for about 40 families to be selected by the Housing Committee. By suppressing information on his apartment he hoped to be selected for receiving the right to live in one of the 40 apartments.

Further proceedings

The Agency informed the Housing Committee that the official should be removed from the list of candidates; it also informed the superior of the official about his attempt to defraud the state of subsidised housing (there is no feedback yet as the outcome of a possible disciplinary procedure). The official had to submit a new declaration which is public on the website of the Agency.

2.3 Poor family members

Initiation

A senior official declared her assets, among which were savings in a bank. The amount was very small compared to the income that she and her husband generated, attracting the interest of the Agency.

Auditing period

2010

Declarations

The senior official declared for herself income of €2,500/month and for her husband €2,500/month, thus in total €5,000/month or €60,000/year. Also she declared a house, an apartment, a rather expensive vehicle and bank savings of €12,700.

Analysis

The Agency started off with a request to the respective bank asking for the exact amount of savings. The data received from the bank confirmed a serious discrepancy (above €10,000) between the declared and real amount.

Statement by the official

The official gave a very personal statement:

“My husband’s family is very poor, we help out a little but I do not like them, I do not want my savings generated by my hard work be transferred to them. If our savings are fully public someone from my family will ask for a loan or for funds.” On the other hand I have young children and want to save up for quality education abroad. We have enough real estate and do not plan to expand it any further. All savings will provide for the education and lives of our children. However, publication of the real amount of our savings would jeopardize relations with my husband’s family and will also carry the potential risk of our children being kidnapped for ransom.”

She acknowledged that she had decided to rather risk a wrong declaration.

Further proceedings

The Agency convinced the official to correct her declaration.

2.4 Hidden business

Initiation

Regular audit based on the senior position of the official.

Findings

The senior official was known for his numerous businesses. The Agency compared the data in his declaration with data from the Business Registration Agency. The comparison revealed that the official had not declared two

businesses. This act contravenes two laws: the Law on the Declaration of Property, because of the false statement; and the Law on the Prevention of the Conflict of Interest which does not allow such (undeclared) private business activities of public officials.

Statement by the official

The official admitted that he owned and controlled the two businesses. He stated that he had ceased any management function in both businesses. However, there was no proof of such cessation in written form as required under company law. Furthermore, the official claimed that he did not know that even purely administrative ownership of such businesses required declaration (in terms of assets and in terms of conflict of interest).

Further proceedings

The Agency asked the official to deregister the two businesses with the Business Registration Agency, or to keep them registered but properly declare them. He decided to keep them registered and declare them, and to transfer the management in the legally required form to a trustee.

2.5 Diverse income of deputies

Initiation

Some members of the Assembly of Kosovo* declared a level of income that was unrealistically low. One of the newspapers with the largest circulation in Kosovo* published an article on how much income an MP receives per year. Therefore, the Agency formed a working group to examine this problem.

Auditing period

2011

Analysis

The Agency took a sample of 30 MPs (25% of all MPs). The income figures in all declarations did not match with each other, even though they concerned the same work. The Agency requested from the Department of Finance of the Assembly of Kosovo* the payroll for the previous year for all members of

the Assembly. It turned out that none of the members had disclosed the full extent of revenues. In accordance with the Law of 2011, the Agency invited the MPs to submit extraordinary declarations (Declaration of Assets at the request of the Agency) and some additional explanation on the discrepancy.

Statement by public official

All MPs gave the same answer that they declared their basic salaries but did not declare other revenues.

Findings

Thus, it turned out that the MPs had applied a double standard: on the one hand, they provided for themselves a far-reaching scale of funds, and on the other hand, they made it look small in the eyes of citizens by hiding a large part of this income. As determined under legislation, an MP's salary is €1,480. In addition, there is compensation for travel expenses, per diem allowance, pay for participation in committees and commissions, etc. Taking those additional compensations into account, there was not one MP who received less than €2,500 per month, which for the standard of Kosovo* is a high income.

Further proceeding

Because in 2011 a false declaration was not a criminal offence, the Agency requested that the declarations be updated with the full income. The modified declarations are available to the public. In 2013, the Agency raised the awareness of all public officials on such cases and on the new criminal sanctions against wrong declarations.

2.6 Organized real estate crime

In 2008, a President of a Municipal Court, in the part of his property declaration form concerning the assets of family members, declared that his children (son and daughter) each owned a flat in the capital. On the question of the origin of these flats, he stated that they had been gifts. This was a sufficient reason for the Agency to launch a full investigation.

Forms were not published at that time. A special group of investigators was formed, verifying all – not at all small – properties which the official had

declared. Also a business premises was reviewed that he had declared to be in the joint ownership of the judge's spouse and her sisters stemming from an inheritance.

From the relevant Municipal Department the Agency requested proof on who was registered as the legitimate owner of the facility. The data showed that the property was registered in the name of the mother-in-law of the judge.

The judge was asked for an additional statement in which he explained:

“Yes, it is true that ‘on paper’ the owner is the mother-in-law.”

She had no son as an heir. However, traditional law recognized only sons as heirs. Therefore, she decided to proportionately give the wealth to her four daughters. The Agency asked the official why this case was not registered in the cadastral books as such. He replied that the proper registering was underway. The Agency visited the premises which was located in the city centre, close to some of the Central Institutions and it was being used by an independent institution of Kosovo*.

The Agency reviewed the rent contract. The contract was entered into between the Independent Institution of Kosovo* (which has the mission of arranging a very sensitive area and to report its work to the Assembly of Kosovo*), and a lawyer who was authorized by the mother-in-law of the judge. The rent was about €5,000 per month. From the Kosovo* Chamber of Advocates the Agency retrieved data about the lawyer. It turned out that the lawyer was the husband of the judge's daughter – the son-in-law – giving the case another twist. In order to exchange information, the Agency met with several investigators from the “Financial Investigation Unit”, previously under UNMIK, and later on part of the European International Mission – EULEX. In 2007, as soon as the Agency became operational, it secured information from a real estate businessman. He claimed that in the court where the aforementioned judge was president, real estate transactions took place through “organized crime”. At first the businessman just reported his allegations verbally and then later he filed a written statement with the Agency that can briefly be summarized as follows: Enormous real estate

assets, which are state/municipal-owned property, are being alienated by a network installed within state institutions. Formal lawsuits were carried out by a network of people that had allegedly owned the real estate property earlier, before it was nationalized. Requests for the change of ownership were formulated by the judge's son-in-law – the lawyer.

The Department of Geodesy and Cadastre in the municipality did not react (it was part of the network), and the judge would expedite with urgency and priority these cases. Since he was the president of the court, he could and would appoint only judges whom he could “trust” with such a matter. Many properties were alienated and the network expanded – it would later also include people in Serbia who had fled during the war in Kosovo*. These persons would file fictitious claims for property sales and the mafia team would do its work (“owners” from Serbia, mediators from Kosovo*, a lawyer from Kosovo*, court administrative officials, municipal judges, municipal officials, etc.). A whole network of criminals used “the anarchy” created after the war and the great need of the citizens to secure property. It carried out this masterly crafted plan and the “denationalized” properties were very quickly laundered by selling them to third parties.

The data from his property declarations and many newspaper articles published at that time became a strong basis for major doubts about this court president. Reports portrayed him always as a focal point of evil, with very powerful elements around him, and gave grounds to notify international investigators. However, investigators would go and come, but in this case no criminal procedure started. Meanwhile, the President of the Municipal Court left the judiciary and started a new career as a lawyer. One day, in the daily newspaper with the largest circulation, an article was published on its front page. A citizen complained about the work of the judiciary as a whole and mentioned several cases of abuse of official position of some officials about whom we had obtained evidence at an earlier stage. The newspaper also published that international investigators had been notified about this. The Head of Agency urgently requested a meeting with the international prosecutors with whom the Agency had good and professional communication (including a memorandum of cooperation). Soon after, at the meeting, the Head of Agency presented again all the information linked to the case, but the international investigators could not find the files which the

Agency had submitted to them earlier, probably because there had been a constant change of investigating officers.

In practice, the Agency never submits original material, but always keeps it at the Agency. So, in this case, within several days the whole material was copied and forwarded to the prosecutor. The Agency also forwarded all the property declaration forms of all the people suspected in this case. Many meetings followed between the international investigation officials and Agency officials. At the beginning of 2013, the EULEX Prosecutor published an Indictment against more than ten individuals: the list of defendants was headed by the former Municipal Court President, followed by judges, lawyers, businessmen, police officials and municipal officials.

The indictment is extensive and included many aspects, to which the Agency contributed. The defence stated that the premises was owned by the mother-in-law; however, it was temporarily seized and eventually confiscated. The indictment elaborates that this premises is located in a very high-demand area, and was not supported by any construction permit, and had blocked two side streets. The flats declared as gifts to the Court President's children turned out to have been bought with cash, indicating an illegal source.

Eventually, although the case was quite protracted and somewhat neglected, it is now beginning to come to the light of day. The indictment points out that most of the defendants have taken part in many cases of "privatizing" state-owned property.

2.7 Volatile real estate value

A high-level official of an independent institution has been declaring his property over the years. His real estate is always the same, but he each time estimates the value the property differently. In the first year, he gave a high-value estimate and in numerous analyses made by the media and civil society, it appears that the official is a millionaire. The following year, for the same property he declared an amount 6 times less than for the previous year. On being contacted by the Agency to clarify this, he said:

"Last year many people from media were all over me, they also

declared me to be a millionaire and this has caused me a lot of trouble; this year, I decided to give a lower value.”

The law states that the value of the declared property is to be freely assessed at the discretion of the declarer. The Agency is working on lobbying for a legislative change on this. The viewpoint of the Agency is now that the property should be simply declared without any value, as it is difficult to determine the value of each property according to the market.

2.8 Stone quarry business

A Member of the Assembly of Kosovo* declared his property in 2011. After its publication on the website of the Agency, he was for several days the focus of almost all the media in the country. Not known in politics, a journalist by profession, he had declared many real estates, with almost all the assets being located in the city. Responding to questions from his former journalist colleagues about where all these assets came from, he stated that they were all financed from his income as a journalist and as a businessman owning a stone quarry. It turned out that he was registered with the Business Registration Agency as the co-owner of several companies around a stone quarry business. The seat of these firms or worksites was in northern Kosovo* which, since the war, has been synonymous with the division of Kosovo* and a not well integrated part of the country. It did not go down well with the public that he owned large assets from an activity for which he had no professional qualifications, that the business was located in a part of Kosovo* where there is still no full rule of law, and where state taxes and other contributions are not paid. He was attacked several times in the Kosovo* Assembly including by opposition MPs for doing illegal work and having amassed great wealth within a short period of time. Upon having to submit his next declaration (annual regular deadline until 31 March), the MP went public and stated: he would not declare his property as he had been a victim of the previous declarations, that the declarations should not be made public and that the Agency was not professional. He also made accusations against the legislation in force and the institutions that were responsible for enforcing it. Some media provided

him with the platform to call for general disobedience, disrespecting the law, but fortunately he remained isolated. In no year before had declarations of property been as successful as in this year: over 99% of senior officials declared their property; so he remained the only member of the Assembly not declaring his property. The Agency assessed declarations as a potential risk but fortunately it turned out that the declaration was something positive and that citizens should know about the property of those who govern them.

F. Macedonia

2.1 Inexplicable down-payments

Initiation

The case was opened *ex officio* by the State Commission for the Prevention of Corruption due to non-compliance with the legal obligation of the mayor to submit an asset declaration after termination of office. Upon receipt of the request for investigation of property status from the SCPC, the Public Revenue Office (PRO) adopted a conclusion to initiate a proceeding.

Auditing period

2005–2009

The property acquired before 2005 was not subject to the proceeding since the statute of limitations is 5 years, as per Article 110 of the Law on Tax Proceedings. Also, the property acquired after the termination of the mayor's office was not subject to the proceeding. In order to establish the average life expenses for the mayor's family of five members, data from the State Statistical Office was used for each year separately.

Analysis

During the proceeding, the PRO *ex officio* requested and obtained written evidence from the competent institutions. This evidence contained data from the asset declaration submitted by the mayor when he was elected, data from the Ministry of Internal Affairs in regards to motor vehicles, the Central Depository for Securities, the Real Estate Cadastre, the municipality where the mayor lives in regards to paid taxes on real estate sales, the State Statistical Office concerning life expenses, account and savings statements

from domestic banks, as well as data from the annual tax returns held by the PRO concerning personal income tax. For the purpose of determining the adequate and complete real asset situation, the PRO scheduled a hearing with the mayor and minutes were drafted. During the hearing, the PRO presented the evidence obtained *ex officio*, and the mayor also presented the additional written evidence in his possession.

Findings

The PRO did not take into account movable and immovable property acquired before 2005 – in this case a house, land, motor vehicles, securities and cash. The subject of the investigation proceeding was property acquired between 1 January 2005 and 1 April 2009, that is, until the termination of the mayor's office. Property that was subject to the investigation included an apartment, vehicles, business premises, bank deposits and income, salary income and other income due to employment and pensions of family members.

The evidence presented by the mayor during the hearing was also taken into account in the proceeding. When establishing the factual situation concerning the income that was used to acquire the property of the mayor and his household members, and in accordance with the data obtained *ex officio* by the PRO, as well as the evidence submitted by the mayor, the income reported in the annual tax return was taken into account as far as it was recognized by the provisions of the Law on Personal Income Tax. In this respect, the statement given by the mayor in the hearing with the PRO contained to a large extent the means that the mayor had been paid as per-diems for business trips in the country and abroad; in this way, he tried to justify the acquisition of his property. However, under the legal regulations, per-diems for covering business trip expenses and allowances paid for using personal vehicles during business trips may not be considered as income. Furthermore, PRO determined that in 2007 and 2008 the mayor was paying back instalments for buying an apartment, office space and a vehicle with means totalling more than reported and taxable income from salaries, sales of movable property, real estate and stocks of the mayor and

his family members. Taking into account the findings and the calculations for each year that was subject to the investigation, PRO established that in 2007 and in 2008 the mayor acquired property originating from untaxed income amounting to MKD 1,500,000 (€24,400).

Further proceedings

As per Article 36a of the Law on the Prevention of Corruption the abovementioned amount of MKD 1,500,000 (€24,400) is subject to a 70% tax rate. The basis for calculating the tax is the difference between the property value at the time of acquisition and the proven amount of assets for the acquisition of the property. Accordingly, the PRO ordered the mayor to pay personal income tax for unreported and untaxed income amounting to MKD 1,050,000 (€17,000). Also, the PRO submitted a request to the Public Prosecutor's Office for initiating criminal proceedings for violation of Article 353 – "Misuse of Official Position and Authorization" of the Criminal Code, due to the substantiated suspicion that the mayor had misused his position by disbursing high unjustified amounts of travel allowances and per-diem to him. This proceeding is still ongoing.

With regard to the non-submission of the asset declaration after termination of office, as per Article 33, paragraph 2 of the Law on the Prevention of Corruption, the SCPC submitted misdemeanour charges to the court, and subsequently the mayor was fined MKD 30,000 (€500).

Comment

The case has a preventative effect, since it represents a "warning" to all officials to comply with the provisions in the Law on the Prevention of Corruption in regards to the submission of asset declarations, as otherwise property investigation proceedings may follow. The warning effect is supported by the fact that the SCPC provides (anonymous) information on sanctions at its press conferences and in its annual reports.

2.2 Insufficient income for daily subsistence

Initiation

The procedure was instigated *ex officio* by the SCPC against a director of

a national agency that allocates funds from European Union sources. The SCPC received allegations that the director had misused his position, and consequently defrauded European funds. It opened a case in accordance with Article 49 of the Law on the Prevention of Corruption and in parallel adopted a conclusion for submitting a request to the PRO for investigating the director's property status.

At the SCPC's request, the PRO adopted a conclusion to initiate an investigation.

Auditing period:

2007-2009

The auditing period was the period when the director held his position in the national agency.

Analysis

The PRO, in accordance with the stated procedures, asked for and reviewed the written evidence obtained *ex officio* from the competent institutions. This evidence contained data from the asset declaration submitted by the director when he was appointed, data from the Ministry of Internal Affairs in regards to motor vehicles, the Central Depository for Securities, the Real Estate Cadastre, the municipality where the director lives in regards to paid taxes on real estate sales, the State Statistical Office concerning life expenses, account and savings statements from domestic banks, as well as data from the annual tax returns held by the PRO concerning personal income tax. The PRO compared this information with the data in the asset declaration of the director. For the purpose of a proper and full determination of the factual situation, several hearings were conducted with the director during which the PRO presented the evidence obtained *ex officio*, and the director presented the written evidence in his possession (in particular inheritance and real estate acquisition documents). By assessing all evidences the PRO ascertained that the director possessed the following property: two apartments, a villa, two garages and a motor vehicle. The PRO also determined that he had inherited one of the apartments, the villa and a garage, and that he had

acquired the other apartment before he was appointed as a director.

Findings

During the hearings, in order to prove the legality of the acquired property in his possession, the director presented numerous evidence dating from 1985 up to 2006 for the revenues of his whole family – parents, sister, grandmother and grandfather, with whom he lived in a family household.

The evidence about the family income was evaluated accordingly: the grandfather's and grandmother's employment abroad and their pensions and savings; compensation of workplace injuries to his grandfather; sold real estate; salary of his mother; and his personal savings.

With all the evidence presented, the PRO calculated that the total of acquired assets of the director's family for the period 1985-2006 was MKD 10,615,524 (€172,610).

Following the calculation of the living cost for the director and his family members in the period 1985-2006, the PRO determined that his total income and that of his family members, with whom he had lived (in 2008 he got married and moved to another address, thus his family became a two-member household), could not justify the acquisitions of property while he held the office of director.

The auditing by the PRO for 2007 and 2009 did not find any unreported or untaxed income, but the PRO calculated that in 2008 the director acquired property (a motor vehicle and garage) amounting to MKD 2,462,220 (€40,000), whereas the total taxed income for that year was MKD 1,534,158 (€25,000). The total income that was at his disposal during 2008, after deduction of living expenses for a two-member family amounting to MKD 200,684 (€3,300), was MKD 1,333,474 (€21,700). The difference between the property value acquired in 2008 equal to MKD 2,462,220 (€40,000) and the amount of taxed income equal to MKD 1,333,474 (€21,700) is MKD 1,128,746 (€18,300).

Pursuant to Article 36a of the Law on the Prevention of Corruption, this difference is subject to a 70% tax rate. Applying this provision, PRO adopted a decision to

charge the director personal income tax. The basis for calculating the personal income tax for unreported and untaxed income was MKD 1,128,746 (€18,300), and accordingly the calculated tax charge was MKD 790,122 (€12,850).

The director paid the set tax amount.

Other proceedings

After opening the case based on information raising the suspicion that the director had misused his position, the SCPC acting in compliance with the competences in the Law on the Prevention of Corruption, established that there were sufficient elements to initiate a criminal prosecution proceeding at the Public Prosecutor's Office. The application for an indictment stated the grounds for suspicion that the director had committed the following criminal offences: misuse of official position and authority, as per Article 353 paragraphs 1 and 5, and malpractice conduct in an official capacity, as per Article 353c of the Criminal Code of the Republic of Macedonia, because he had acted contrary to his official authorization while managing the national agency, and did not ensure proper and lawful utilization of the agency's funds. At the same time, when selecting the final beneficiaries of the funding programmes, he violated the regulations on the conflict of interest, acted dishonestly while executing his authorizations and duties, and acquired proceeds for himself and another party.

In 2010, the Government of Republic of Macedonia dismissed him from the position of director of the national agency.

Comment

When opening a case against public officials on allegations for corruption, the SCPC regularly adopts a conclusion for investigating their property.

2.3 Groundless suspicion on dean

Initiation

An *ex officio* proceeding for investigation of assets by the PRO against a

dean was initiated at the request of the SCPC. The SCPC had received an anonymous notification about the dean's property status with an allegation that he possessed property which had been not reported in his asset declaration and that it might have been acquired due to corrupt behaviour.

The anonymous information was received in 2010.

Auditing period:

2004 – 2010

The period for which the investigation was conducted was the period when the dean was in office.

Analysis

While working on the case, the SCPC determined that the dean had complied with Article 33 of the Law on Prevention of Corruption and had submitted asset declarations for his first term in office in 2004, for the second term in office in 2006 and after the termination of office in 2010.

Acting upon the notification, the SCPC conducted a check of the dean's asset declarations and requested data about him and the members of his family from the competent institutions: the Real Estate Cadastre and the MoIA (with regards to motor vehicles). When reviewing the obtained data, the SCPC ascertained that the data on the real estate property was not consistent with the data in the asset declarations, particularly data related to his family members.

Following the legal procedure, the SCPC submitted an *ex officio* request to the PRO to initiate a procedure for investigating the dean's property status. Consequently, the PRO adopted a decision to initiate a procedure and requested and reviewed the written evidence obtained *ex officio* from the MoIA concerning motor vehicles, the Central Depository concerning securities, the Real Estate Cadastre, the municipality where the dean lives in regards to paid taxes on real estate sales, the State Statistical Office

concerning life expenses, account and savings statements from domestic banks and data from the annual tax returns held by the PRO concerning personal income tax.

After collecting the data the PRO scheduled a hearing with the dean.

Findings

From the obtained data, the PRO ascertained that the dean owned: an apartment as a joint property with his spouse; agricultural land as a joint property with his spouse; business premises as a personal property; a motor vehicle as a personal property; Macedonian denar and foreign currency accounts. Also the PRO ascertained that his spouse owned a quarter of a family house and orchard, and his son owned a house and land in a village. The real estate of the spouse and the son were not reported in the dean's asset declarations.

During the hearing before the PRO, the dean submitted numerous pieces of evidence, particularly on the real estates of the spouse proving that the property had been acquired through inheritance and was of low value and that the property was still not distributed among the inheritors. The Macedonian denar and foreign currency deposits were acquired from his income and from the income of his spouse – university and scientific work over a long period of time (published scientific and expert works) which was proven by documents submitted by him.

In regards to the real estate of his son, he submitted documents from the municipality and a copy of his son's ID card, thus proving that during the period for which the investigation was conducted he did not live in the family household together with the dean. Especially assessing this essential fact – that his son did not live in a family household with the dean, which is the main element for reporting the property in the asset declaration, the PRO adopted an act to end the procedure. The PRO's conclusion also explains that from the data obtained *ex officio* and data presented by the dean, the PRO ascertained that the property of the dean and of his family members was not acquired, nor increased as a result of non-reported and non-taxed revenues and income; in other words, the property in his possession and

the assets at the disposal of his family originate from revenues which were subject to taxation. The PRO submitted the conclusion to the SCPC, and the SCPC closed the case establishing that the allegations were not proven and there were no elements for further proceedings.

Comment

The dean proved with hard evidence that his son was not a family household member at the time he was a dean, and consequently he had no obligation to report his son's property in the asset declarations.

G. Montenegro

2.1 Incompatibility of private sector activity

Initiation

The Commission analyzed the income and assets report submitted by the public official X.Z., who is the president of a municipality, and found that X.Z. also performs the duties of Executive Director in a private company (as he had declared).

Auditing period

2012

Findings

Article 8 of the Law:

“A public official may not be the president or member of a management body or supervisory body, nor the executive director or member of management in a company. “

“A person elected, nominated or appointed to a public office in the sense of this law, shall submit a resignation to duties, i.e. office referred to in paragraph 1 of this Article within 30 days from the day of election, appointment or nomination.”

The Commission initiated an administrative procedure and determined that the public official X.Z. had not resigned within the legal deadline, and thus

adopted the decision that X.Z. had violated the provisions of the Law on the Prevention of the Conflict of Interest, by performing two incompatible functions. The Commission also initiated a misdemeanour procedure against X.Z.

Further proceedings

The Misdemeanour Court imposed a fine on X.Z., in accordance with the Law on Misdemeanours. X.Z. continued to discharge the functions of the President of the Municipality, but has transferred the rights and duties of the executive director in the company to another person, who is not related to X.Z. Upon receiving the above information, through the Central Register of Companies, on the actions of X.Z. following the court's decision, the Commission noted that the public official X.Z. had eliminated practices contrary to the Law. In the following reporting period, the Commission's analysis of the report submitted by the same public official X.Z. showed that X.Z. now performs the duties of the President of the Board of Directors in the same private company, thus again violating the Law on the basis of the incompatibility of functions. After the completion of the proceedings before the Commission, the Commission adopted the decision that the President of the Municipality X.Z. had again violated the provisions of the Law on Prevention of Conflict of Interest and initiated the misdemeanour procedure.

Final result

The Misdemeanour Court again imposed a fine, in accordance with the Law on Misdemeanours.

The President of the Municipality X.Z. continued to perform duties of the President of the Board of Directors in the private company. However, as according to the former legislation, presidents of municipalities were elected by direct vote, they could not be removed from office on the basis of the Commission's final decision on the violation of the Law on the Prevention of the Conflict of Interest.

According to the new law, the Municipal Assembly elects the President of

the Municipality, so the Commission should find that X.Z. is violating the Law in the same way, and it will submit a request to the Municipal Assembly to remove X.Z. from office.

2.2 Incompatibility of two public functions

Initiation

The Commission analyzed the income and assets report submitted by N.M., the Director of a Public Institution (founded by the Municipal Assembly), and found that N.M. was – as declared – also a member of the Municipal Assembly.

Auditing period

2008–2010

Findings

According to the Article 91 paragraph 2 of the Law on Local Self-Government, the function of the head of a public institution is incompatible with the function of the member of a Municipal Assembly.

The Commission adopted the decision that the public official N.M. violated the provisions of the Law on Preventing the Conflict of Interest, by performing two incompatible functions, and initiated a misdemeanour procedure. The Misdemeanour Court imposed a fine on N.M., in accordance with the Law on Misdemeanours.

Statement by public official N.M.

The public official N.M. filed a request for a review of the Commission's first-instance decision, stating that he had been appointed to the function of member of the Municipal Assembly in 2008, while the amended Law on Local Self-Government, prescribing the incompatibility of functions in question, was published in the Official Gazette of Montenegro on 31 December 2009, so it could not be applied retroactively.

In the Commission's view, the fact that the public official was appointed as a

member of the Municipal Assembly in April 2008, while the amended Law on Local Self-Government was published in the Official Gazette of Montenegro on 31 December 2009, did not absolve him of his legal obligation.

Further proceedings

In accordance with the Law on Administrative Procedure, the public official N.M. appealed to the Administrative Court of Montenegro and sought an annulment of the Commission's decision.

In its decision, the Administrative Court rejected the appeal by N.M. as unfounded. It also found that the Commission fully and properly determined the facts, pursuant to the appropriate substantive law. In accordance with the Law on Administrative Procedure, the public official N.M. filed a request for an extraordinary review of the court decision to the Supreme Court of Montenegro, seeking its adoption and annulment of the judgment of the Administrative Court.

Final result

The Supreme Court of Montenegro confirmed the judgment of the Administrative Court, and therefore the decision of the Commission as well.

Comment

After the judgment of the Supreme Court, the public official N.M. resigned from both of the functions he was exercising.

2.3 Real estate as a “surprise” for spouse

Initiation

As of 1 March 2012, the amended Law has been in force, which, among other things, stipulates that the Commission shall check the data reported in the income and asset reports (Article 20a of the Law). In exercising its legal competences, the Commission checked the declared immovable assets of a public official by comparing the reported data on her assets with the data held by the Real Estate Administration.

Auditing period

The last fiscal year prior to the audit

Findings

During the procedure, having compared the data provided by the public official X.Y. with those obtained from the competent authority, the Commission noted that the data on immovable assets of the public official's spouse were not complete. The Commission initiated proceedings to determine that the public official X.Y. had failed to fulfil her obligation under Article 19 of the Law on the Prevention of the Conflict of Interest (*"A public official shall report accurate and complete information for herself or himself and members of the shared household"*). In accordance with Law, the Commission submitted a request to the public official to give a statement on why not all registered assets of her spouse had been declared.

Statement by the public official X.Y.

In her statement, the public official stated that there was a mistake in the records of the Real Estate Administration, and that she was not aware that her spouse owns a land parcel of 400 square metres in a village. Spouses are not obliged to co-sign the declaration or to authorize it.

Further proceedings

After the completion of the proceeding before the Commission, the Commission decided that the public official X.Y. had violated the provisions of the Law on the Conflict of Interest and initiated an administrative misdemeanour procedure. Following the first-instance decision of the Commission in this procedure, the public official filed a request for a review of the decision, along with an addendum to the income and assets report (in accordance with Article 19, paragraph 3:

"A public official shall submit a report in case of change in data contained in the reports, in terms of increase in property exceeding €5,000, within 30 days from the day the change occurred."

In her request, the public official X.Y. stated that she was now having troubles in her marriage, since her spouse said he had bought the land, but had not

shared that information with her because he wanted to surprise her. The spouse is not a public official, but an artist and the land was bought with the aim of building a studio for his work. After obtaining additional information, and given that the addendum report had been submitted declaring the disputed piece of land, the Commission noted that the public official had now rectified the violation of the Law and handed down the second-instance decision, though taking into account the rectification.

Final result

This second-instance decision was final in the proceedings before the Commission. In the following misdemeanour procedure before the court, the public official was fined, in accordance with the Law on Misdemeanours, which will, according to the court, prevent such violations from taking place in the future.

Comment

In the above case, the Law has obviously been violated by failing to report complete data on the immovable assets of the spouse, but the case ended with the imposition of a fine by the misdemeanour authority.

2.4 Failing to evade submitting declarations

Initiation

In June 2012, the Official Gazette of municipality decisions reported three new appointments of vice-presidents. The termination of office of the three former vice-presidents was not announced in the Official Gazette, and the respective municipality did not inform the Commission.

Therefore, the Commission checked by telephone with the Administrative Office of the municipality about the fate of the three former vice-presidents of this municipality. The Administrative Office confirmed to the Commission that all three former vice-presidents of that municipality had terminated their duties. The Commission took a written note of this information.

Auditing period

2012

Procedure

In exercising its legal competences, the Commission checked all three cases and found out that one of the three former vice-presidents of the municipality had failed to fulfil his obligation under Article 19, paragraph 4 of the Law on the Prevention of the Conflict of Interest. The Commission initiated proceedings to determine that the public official X.Y. had failed to fulfil his obligation. According to the Law, the public official was obliged to notify the Commission within 30 days of the day of termination of the office. Upon expiration of one year from the termination of office, the public official had to submit his declaration to the Commission, stating his assets on the day of the submission of the declaration).

Statement by the public official X.Y

The public official X.Y. did not submit any additional oral or written statement concerning his obligations.

Findings

The Commission decided that the public official had failed to fulfil his obligation to notify the Commission within 30 days of the day of termination of the office.

Final result

In the misdemeanour procedure, the public official was fined, in accordance with the Law on Misdemeanours, which will, according to the court, prevent such violations from taking place in the future.

Comment

In the above case, the Law had obviously been violated by failing to inform the Commission of the termination of office and to submit a report to the Commission, but the case ended with the imposition of a fine by the misdemeanour authority.

H. Serbia

Background

The Law on the Anti-Corruption Agency has been in force only since 1 January 2010. So far, the Anti-Corruption Agency has no authority to investigate the origin of the property; therefore, its power to audit property and income of officials is quite limited.

Nevertheless, the Anti-Corruption Agency is profiting from cooperation with other state bodies. For example, the Ministry of Internal Affairs conducted preliminary proceedings for collecting evidence on bribery by an official. Naturally, the official had not reported the bribery proceeds as income to the Anti-Corruption Agency. Therefore, the Ministry of Internal Affairs, in cooperation with the Anti-Corruption Agency, filed a criminal complaint with the competent prosecutor.

Officials are using different ways to try to conceal their property and income and those of related parties. Three examples are as follows:

2.1 Company profit

Initiation

The Anti-Corruption Agency launched an extraordinary audit of the property and income of the public official based on information published in a daily newspaper.

During the extraordinary audit the Agency found that the official had filed a Report in 2010 and 2011.

Auditing period

From 2010 until July 2011.

Ingoing cash flow

The public official reported a total monthly income of RSD 115,000 (approx. €1,000), from performing a public function. In the Report of Property and Income he reported four related parties – one spouse and three minor children. The spouse realized monthly income amounting to RSD 100,000 (approx. €900).

Outgoing cash flow

In terms of savings, the official reported cash amounting to €70,000. Furthermore, the official had a 50% stake in a company, valued at €250. As further expenditures he reported RSD 80,000 (approx. €750) as the cost of the monthly rent for an apartment and RSD 30,000 (approx. €250) as monthly down-payment on a vehicle leasing contract.

Audit

During the audit, the Anti-Corruption Agency obtained data from state agencies on tax returns indicating income from the profit of a company that the official did not report to the Anti-Corruption Agency. Data obtained from banks showed that the turnover on his accounts was several times higher than the reported income. The annual turnover on his accounts amounted to nearly €200,000, corresponding to a monthly amount of approximately €16,000. This turnover was clearly higher than his income. The funds were spent in the country and abroad in exclusive restaurants and designer clothing stores.

Statement by the official

In accordance with legal provisions, the Anti-Corruption Agency requested that the official make a statement regarding the identified disparity. In his explanation the official said that he had reported all his income to the Tax Authority. As for his savings, he filed a new Report of Property and Income in which he no longer declared the cash (€70,000) because he alleged that he did not have it any more. The official also submitted a falsified contract to the Anti-Corruption Agency by which he tried to justify income of €50,000. Information received from the Tax Administration showed that the tax return on this income was filed 10 months after the date prescribed by the Tax Law, raising suspicion about its truthfulness.

Further proceedings

In accordance with the provisions of the Law on the Anti-Corruption Agency, the Anti-Corruption Agency filed charges with the competent prosecutor for suspicion that the official had committed the criminal offence specified in Article 72 of the Law on the Anti-Corruption Agency (Article 72 – “Failure to report property or reporting false information”:

“An official who fails to report property to the Agency or gives false information about his/her property, with the intention to conceal facts about the property, shall be punished by imprisonment for a period of between six months and five years.”⁶⁵⁾

The Prosecutor’s Office dismissed the charges stating that the elements of criminal offence referred to in Article 72 of the Law on the Anti-Corruption Agency had not been established. The Agency required from the prosecution the reasons for not bringing criminal charges. In response, the prosecution stated that it had not found sufficient grounds to establish the official’s intent to commit a criminal offence under Article 72 of the Law.

2.2 Unreported real estate

Initiation

The official’s Report of property and income was checked according to the Annual Verification Plan. The official is a member of the Board of Directors of a public company. The audit included the official and his wife who worked as a teacher in school. The public official submitted to the Anti-Corruption Agency only one Report of Property and Income upon assuming his office in 2010.

Auditing period

From 2010 until the beginning of checking in September 2012.

Incoming cash flow

The official reported the following revenues:

- Monthly income of RSD 35,000 (approx. €320) on the basis of membership of the Board of the Public Company

65 www.osce.org/serbia/35100.

- Monthly revenue of his wife from employment at the school amounting to RSD 45,000 (approx. €410)
- Income from selling real estate of a total monthly amount of RSD 200,000 (approx. €1,800)

Outgoing cash flow

The public official reported:

- Monthly down-payments of €500 (in RSD) on a mortgage on his house taken 2008 in the amount of €50,000 with a repayment term of 10 years.
- Foreign currency deposits on his bank account amounting to €3,500.
- Real estate owned by him and his spouse:
 - A 100m² apartment which he inherited from his father
 - Two commercial spaces 25m² acquired under the Agreement on the Area of Construction, with the owners of the land on which the building is constructed
 - Commercial space of 95m², which is owned by his spouse and which was purchased in 2006

Audit

In the process of auditing the data in the Report of Property and Income, the Anti-Corruption Agency requested information about the assets and the revenue of the official and his spouse from state agencies as follows:

- Ministry of Internal Affairs – data on residence, weapons and motor vehicles
- Tax administration – data on income from employment and earnings outside of employment
- The Agency for Business Register – information on whether the official or his wife appear as the owner of a company
- The Republic Geodetic Authority – details about real estate owned
- The administration of public revenues in the territory of residence of officials – data about property tax payment
- Banks – accounts, safe deposit boxes, and information about any other business between the official and his spouse and banks

Findings

According to data received from the state authorities in the official records of the Republic Geodetic Authority, the official is registered as the owner of a large number of properties. Data received from the Public Revenue Administration showed that the official and his spouse paid taxes on several real estate properties. For two of these properties the official and his spouse did not provide data to the Anti-Corruption Agency. Moreover, the Tax Administration provided data on incomes earned outside the employment, which were not included in the Report of Property and Income. Therefore, the Anti-Corruption Agency determined that there was a discrepancy between the data submitted in the Report of Property and Income and the actual financial status; the Agency thus sent a request to the official to explain the reasons for the discrepancy. In his statement, the official submitted documentation certifying that he had already sold several properties that were still registered in his name in the Republic Geodetic Authority. Apart from that, the official confirmed the discrepancy between the Report of Property and Income and the actual facts. The Anti-Corruption Agency determined that the official had not reported the following property and income:

- Property
 - Ownership of two commercial spaces of 31.17m² and 40.55m², acquired in 2005, as well as funds from the sale of a 31.17m² business premises in December 2012
 - Ownership of an apartment of 63.30m²
 - Serbian dinar and foreign currency deposits and savings
 - Co-ownership (50%) of a 170m² flat that was purchased in 2011
 - Real estate acquired by purchase in 2010 (a 50% share in a two bedroom apartment of 72m²; a 50% share in a two bedroom apartment of 78m² and a 50% share in a 13m² commercial space all at the same address)
 - Ownership of real estate – a ground-floor flat – a 40m² outbuilding and a shed of 12m² acquired under an agreement on exchange of property
 - Ownership of a house of 100m² which is owned by his spouse and which she acquired by inheritance
- Income
 - Part of the funds obtained from the sale of business premises of

23m² amounting to €13,600

- Income of the official's spouse from renting commercial space for a monthly amount of €300
- Fees for providing legal services, for a total of RSD 2,000,000 (approx. €18,000)

Further proceedings

Because of the suspicion that the official had failed to report all property and incomes, and that he had given false information about his income and property, the Anti-Corruption Agency filed a criminal complaint with the Prosecutor's Office because of reasonable suspicion of a criminal offence under Article 72 of the Law on the Anti-Corruption Agency.⁶⁶ The process is ongoing and it is in the authority of the prosecution.

2.3 Real estate purchase by attorney

Initiation

The Anti-Corruption Agency launched an extraordinary audit of the property and income of a public official, based on information published on one anti-corruption web site and a daily newspaper. Also, the Agency received a complaint from a natural person that the official had failed to report his property and income for himself and his wife.

During the extraordinary audit the Agency determined that the official had filed a Report in 2010, 2011 and 2012.

Auditing period

From 2010 until the beginning of checking in August 2012.

Incoming cash flow

The official reported the following income:

- Monthly income of RSD 100,000 (approx. €1,000) on the basis of his public function
- Monthly income of RSD 50,000 (approx. €500) on the basis of membership of the Board of a public company
- Monthly revenue from employment of his wife at a bank of an amount of RSD 445,000 (approx. €4,500)

66 See above at footnote 6.

Outgoing cash flow/assets

- Foreign currency deposits on his bank account amounting to €250,000.
- Foreign currency deposits on his wife's bank account amounting to €100,000.
- Real estate owned by him and his spouse:
 - Apartment of 48m² in Belgrade, owned by the official's wife;
 - One-third share of a 160m² house that was purchased in 2000;
 - One-third share of a field of 4 hectares in a village;
- A loan his wife borrowed from a natural person amounting to €170,000.

Audit

Looking into the allegations made by a natural person, the Anti-Corruption Agency requested from the Republic Geodetic Authority details about the real estate that the official and his wife purchased in 2011.

Findings

The Agency received data from the Republic Geodetic Authority that indicated that the official had not reported all data on real estate owned by him and his wife.

The Anti-Corruption Agency sent a request to the official to explain the reasons for not reporting significant changes in assets, i.e. the purchase of real estate.

In his statement the official claimed that his attorney, without the official's knowledge, had signed a contract on his behalf, for the purchase of land for the construction of residential buildings.

From this statement, the Anti-Corruption Agency concluded that the official had not reported all his property, according to Article 44 of the Law.

Further proceedings

Because of the suspicion that the official had failed to report all property and that he had given false information about his property, the Anti-Corruption Agency filed a criminal complaint with the competent prosecutor's office because of reasonable suspicion of a criminal offence under Article 72 of the Law on the Anti-Corruption Agency.

The process is ongoing under the authority of the prosecution.

2.4 Royalties

Initiation

The Anti-Corruption Agency, based on the proposal of the Department for Conflicts of Interest, launched *ex officio* an extraordinary audit of the property and income of a public official in a health institution, who has been in that position since 2009.

In the process of checking the timeliness, completeness and accuracy of data in the Report, it was found that the official had submitted to the Agency four Reports on Property and Income in 2010, 2011, 2012 and 2013, as well as two additional letters – submitted in 2012 and 2013.

Auditing period

From 2010 until the beginning of checking in September 2012.

Incoming cash flow

In the Report of 2010 the official stated that he had realized the following income in 2009:

- As the Director of a Health Institution RSD 115,000 (approx. €1,000) per month;
- As a member of various committees in the medical and healthcare sector revenues of around RSD 10,000 (€100) per committee session, totalling annually about RSD 270,000 (approx. €2,500);
- As principal investigator for clinical trials, annual income of €5,500;
- Fees from private colleges amounting to RSD 140,000 (approx. €1,200) per semester.

In his Report of 2011 the official stated for 2010 the same income as in the previous year regarding salary and membership fees of committees.

As new information, the official reported income from holding public lectures amounting to €2,500 annually. As principal investigator for clinical trials he realized an annual income of €20,000. In his Report of 2012 the official stated for 2011 exactly the same income as the previous year.

In his Report of 2013 the official stated for 2012 the following income:

- As the director of a health institution, RSD 133,000 (approx. €1,200) per month;
- As a member of various committees in the medical and healthcare sector, revenues of around RSD 10,000 (€100) per committee session, totalling annually about RSD 270,000 (approx. €2,500);
- Fees from private colleges amounting to RSD 20,000 (approx. €200) per month;
- As principal investigator for clinical trials, annually €60,000;
- Fees from contracts with private hospitals amounting to RSD 17,000 (approx. €160) annually;
- The Serbian Authors' Agency paid the official €800 as compensation under a contract for copyrighted work.

Outgoing cash flow/assets

- The public official voluntarily reported in 2010, 2011, 2012 and 2013 monthly annuity payments of €300 in Serbian dinars to fulfil his obligation to pay child support.
- The official in his Report from 2012 stated having claims against third parties amounting to €30,000, and in his Report from 2013 claims for the amount of €5,000.
- In his Report of 2010, the official reported deposits in banks amounting to €30,000, US\$6,000 and RSD 450,000 (approx. €4,300).
- In his Report of 2011 the official reported deposits in banks amounting to €47,000, US\$10,000 and RSD 500,000 (approx. €4,700).
- In his Report of 2012, the official reported deposits in banks amounting to €12,000, US\$200 and RSD 100,000 (approx. €1,000).
- In his Report of 2013, the official reported deposits in banks amounting to €20,000, US\$3,000, CHF 15,000 and RSD 700,000 (approx. €6,500).

Audit

The Agency asked the state authorities – the Ministry of Internal Affairs, the Tax Administration – the Tax Police Department, the Business Registers Agency, Customs, Serbian Authors' Agency and banks for data on the income

and property situation of the public official, as recorded in the respective databases.

Data received from the Tax Administration, the Agency for Business Registers and the Serbian Authors' Agency, was not in accordance with the information stated in the official's Report.

Findings

Based on the data obtained from these state authorities the Agency determined that the official received a much higher income than reported. He did not submit accurate data on actual local and foreign currency revenues from contracts with pharmaceutical companies relating to clinical trials (data from the Tax Administration), the income earned through the Serbian Authors' Agency and the shares he had in a company (data from the Agency for Business Registers). According to data from the Tax Administration the official earned as principal investigator for clinical trials €100,000 and US\$60,000 in 2009 and 2010. Data from the Serbian Authors' Agency revealed that the official had copyright agreements with several pharmaceutical companies. The total revenue by the official as per the data from the Serbian Authors' Agency was as follows:

- 2009: RSD 140,000 (approx. €1,300)
- 2010: RSD 222,000 (approx. €2,100)
- 2011: RSD 60,000 (approx. €600)
- 2012: RSD 100,000 (approx. €1,000)

In his statement, the official partly confirmed the discrepancy between the Report of Property and Income and the actual facts. He stated that he paid taxes to the Tax Administration for all income which he did not report to the Agency; thus he had no intention of hiding his income. As he had paid taxes, he thought that there was no need to report it to the Agency. The official also submitted documentation certifying that he had lent money to friends for amounts of €30,000 and €5,000. The official confirmed that he is a shareholder in a company. As a reason for not reporting this fact, he said that the company had made no substantial income. For additional funds that he was paid through the Serbian Authors' Agency, he claimed that he had reported them together with funds provided under the contract for the clinical study.

Further proceedings

The Agency did not file charges with the prosecutor, because of the impossibility of proving the intention to hide assets and income, in accordance with Article 72 of the Law and due to the lack of legal authority of the Agency to undertake further investigations. However, since the official concluded contracts with pharmaceutical companies for research and for lectures and as such earned considerable funds, the Agency submitted the relevant data for further investigation to the Prosecutor's Office. The investigation has so far not produced enough evidence for proving a criminal offence. The public official's employer was not notified about disciplinary action, as there would not be enough grounds without a criminal offence being committed.

3. Transparency of Declarations Versus Privacy

A. Overview

Real life cases show that often journalists or concerned citizens take a look at published financial declarations and as a consequence trigger relevant investigations into implausible data. In this sense, it is generally agreed that publicity of financial declarations is essential to an effective declarations regime.

Obviously, there is a price to pay for the publicity of data: public officials will enjoy less privacy as far as the published data is concerned. Cases from the Western Balkans show that some irritations can arise from this invasion of privacy:

- Family members might know about the actual wealth of public officials, putting the public official in the uncomfortable situation of being asked for money by needy family members (see above Chapter 2, Case KO iv).
- A public official might not be able any more to acquire valuable assets without his or her partner knowing about it (see above Chapter 2, Case ME iii).
- Business or labour secrets are partially lost when a public official or family member has to disclose the amount of salary generated from that consultancy or labour contract.
- The media might abuse the published data in order to scandalize the public official (see above Chapter 2, Cases HR i and KO ix; however, the claims by the public officials of being scandalized do seem to be rather unfounded).

Practitioners often paint scenarios of public officials being blackmailed or kidnapped once their wealth becomes public not only to citizens but also to criminals. However, none of the Western Balkan countries could actually confirm that any of such risks ever materialized. One should mention in this context that in Croatia financial declarations of judges, public prosecutors and deputy public prosecutors are not published, but only available under freedom of information legislation.

No public official has yet challenged in court his/her obligation to publicly declare his/her finances. There are two court decisions in the region, Albania and Bosnia Herzegovina. Both cases were brought to court not by public officials, but by an NGO (Albania) and the Data Protection Agency (Bosnia Herzegovina) respectively.

No court in the Western Balkans has set constitutional limits for the publishing of financial declarations. On the contrary, courts have acknowledged the need for declarations to be published in order to allow public verification of the data:

“Likewise, not declaring the assets or restricting their publication will significantly increase the risk of concealment or manipulation of data on the declaring subject assets, diminishing significantly the effective implementation of this legislation.” (Albania)

However, in Albania and Bosnia Herzegovina, the legal framework foresees publication of financial declarations under the respective freedom of information legislation. The Constitutional Court of Albania and the Court of Appeals in Bosnia both stated that public access under freedom of information legislation did not justify active (online) publication of the declarations, but only provision of the data upon individual request by citizens. Neither court decision indicates that online publication would be unconstitutional per se. Thus, it seems that there is no constitutional decision yet against online publication of the declarations if the sub-constitutional law were to be amended in the future to allow for publication outside the more narrow freedom of information legislation.

On the European level, there is no jurisprudence yet as well of the European Court of Human Rights (Council of Europe) or the European Court of Justice (European Union) concerning financial declarations directly. However, other

jurisprudence indicates that both courts would probably rather not object to the publishing of financial declarations where the need for fighting corruption would justify this measure.

B. Albania

3.1 Background

In the Republic of Albania the information provided in assets declaration forms is in large part publicly disclosed but not fully. It was Article 34 of Law on the Declaration of Assets (...) which articulated in the first place the publication of declaration forms of the subjects obliged to declare assets (as defined in Art. 4) upon request to its monitoring body – the HIDAA. With the recent amendments of 2012, with the aim of finding the right balance between public disclosure and personal data protection⁶⁷, the amended Article 34 stipulates that:

“the data collected from the declaration is available to the public only in accordance with Law No. 8503, dated 30 June 1999 “On the Freedom of Information for Official Documents” and Law No. 9887, dated 10 March 2008 “On Personal Data Protection”.

Moreover, elements of the Law on Personal Data Protection inter alia the terms of ‘personal data’ and ‘data processing’ were also included in the assets declaration law⁶⁸ with the aim of harmonizing the terminology used in both laws and ensuring that the declaration processing is done in accordance with the requirements of the legislation on data protection.

As regards the procedure of publication of asset declarations, the recent amendments clarified the moment when the asset declaration could be disclosed to the general public as well as the supporting documents that should accompany the declaration form. Thus, according to paragraph 2 of Art. 34, the data declared to the HIDAA could be available to the general public (upon request) only after the termination of the verification procedures

67 Before the amendments Art 34 on ‘Publication’ stated: “The data collected from the declaration forms, are available to the public only in accordance with Law No. 8503, dated 30 June 1999 “On the Freedom of Information for Official Documents”.

68 Art. 2 para. 9. The definitions “personal data” and “data procession” have the same meaning as the one defined in Art. 3 of Law No. 9887, dated 10 March 2008 “On Personal Data Protection”, as amended.

that include: the preliminary checking, the arithmetic and logical control and the verification of documents with its outcome.

In Albania the public disclosure of declarations takes the form of access given to individual files/declarations upon request and it is a paper-based process. Based on the Law on Freedom of Information for Official Documents, proactive publication is currently not allowed (as pointed out in Decision No. 16, dated 11 November 2004 of the Albanian Constitutional Court – see below). The High Inspectorate of the Declaration and Audit of Assets does not and may not make public on its own initiative the personal data contained in the statement of the declaring subject. This data is made public based only on a request being made (by media/the public) and in accordance with constitutional and legal criteria for each specific case, without the need of prior consent by the declaring subject.

In concrete terms, the disclosure of data could happen only after the process of administration of declarations to the HIDAA is over and after all asset declarations are registered, scanned and processed. Moreover, a reasonable fee of ALL 1,000 (approx. €7) per declaration is imposed on each applicant asking for information on a specific declaration, in order to cover the HIDAA's administrative costs (on the reproduction of copies of the declaration).

The public disclosure of the declaration includes, beside the assets of the declaring subject, also those of his/her family in a strict sense (husband/wife and adult children). However, this public disclosure is limited with regards to the part of declaration which may contain the names and personal or property data of the declarer or third persons or their families, who are not subject to the Law on the Declaration of Assets (...), but who are related to these subjects as “related or trusted persons” (Art. 2 paragraph 4 - They

“[...] had or have property relations with the person who carries the obligation to declare [...]”).

This data, according to Article 4 of Law No. 8503 “On the Freedom of Information [...]”, including their identity or other data, cannot be made public, since they are not declaring subjects. In addition, they may not be aware at all about the declaration made (on their behalf) by the declaring subject or on the correctness of the data declared.

Expenses are included as a new requirement on the declaration of assets if above ALL 500,000/year⁶⁹ (approx. €3,500) for the officials or the elected persons with a duty to declare assets (recent amendment of 2012). This data is not publicly disclosed. Expenses are included in the last sheet of the asset declaration, which contains confidential data. Expenses are considered details or elements that can serve the HIDAA or other public authorities only for the purpose of verification and auditing process. This information is regarded as not being of any public interest. Therefore, its access and divulgence is strictly prohibited and is punishable by the legislation in force.

3.2 Privacy

The notion of privacy is articulated in the Constitution of the country and it is also regulated by the specific Law “On Personal Data Protection”. Thus, the protection of private and family life is ensured in several provisions of the Albanian Constitution, particularly Article 35 (protection of personal data), Article 36 (freedom and privacy of correspondence), Article 37 (inviolability of residence), Article 53 (protection of marriage and family), etc.

In this context, in Article 35 of the Constitution, in its 1st and 2nd paragraphs, it is stated that

“1. No one may be compelled, except when required by law, to disclose data related to his person.

2. The collection, use and disclosure of data about a person shall be done with his consent, except in the cases provided by law[...].”

The Albanian Law on personal data protection adopted by the National Assembly in 2008 regulates the protection of personal data as fundamental rights and freedoms of the Albanian citizens, and especially the rights to privacy as related to the personal data procession. In this context, the protection of freedoms and human right takes an important place in the constitutional and legal framework of the country; hence, it was almost inevitable that Art. 34 on the Publication of Asset Declarations would be challenged as unconstitutional.

69

Art. 4 point (h) of the Law on the Declaration and Control of Assets (...).

Thus, early in 2004, one year after the coming into force of the Law on the Declaration and Control of Assets (...) the Constitutional Court of the Republic of Albania⁷⁰ took into consideration in a trial hearing the application of the Albanian Helsinki Committee (AHC) with the subject: “Abrogation as non-compliant with the Constitution of Article 34 entitled ‘Publication’ of Law No. 9049, dated 10 April 2003 – On the Declaration and Control of Assets, Financial Obligations and Certain Elected Officials.” Therefore, this application to the Constitutional Court was not done by officials, elected persons or any subjects obliged to declare assets, but by the AHC which is a not-for-profit organization (NPO) known for its work in the protection of human rights. This NPO was legitimated to file similar applications to the Constitutional Court “for issues related to its interests”, if the raised claims are related to the protection of fundamental human rights and freedoms, which, according to the Statute of the organization, is the main purpose of its activity.

Based on Article 131a, Article 134 paragraph 1 point (f) and paragraph 2 of the Constitution of Republic of Albania, the Albanian Helsinki Committee asked to the Constitutional Court to declare as unconstitutional Art. 34 of Law No. 9049, dated 10 April 2003, titled “Publication”, presenting the following arguments:

- The reference made by Art. 34 of Law No. 9049 that the “data obtained through declaration under this law is available to the public” to Law No. 8503, dated 30 June 1999 “On the Freedom of Information for Official Documents” was unconstitutional (violation of Article 35 of the Constitution – “On Protection of Personal Data”, and of Article).
- That Article 34 of Law No. 9049 was unconstitutional, also, because the publication of data can be effected without the consent of the declarer, which would be a violation of Article 35 of the Constitution (On Protection of Personal Data).
- The applicant questioned the constitutionality of Article 22 of Law No. 9049 “On the Declaration and Audit of Assets (...)”, in which the obligation of declaration of assets for family members of the declaring the subject, if they possess separate assets registered in the state administration or judicial bodies, is provided.

70 Decision No. 16, dated 11.11.2004 (V – 16/04) (V - 16/04) on “Abrogation as non-compliant to the Constitution of Article 34 on ‘Publication’ of Law No. 9049, dated 10 April 2003 “On the Declaration and Control of Assets, Financial Obligations and Certain Elected Officials.”

- The same was claimed to be true of Article 8 of the Law on the Declaration of Assets, which provides for the declaration of assets of a certain category of subjects for a period of two or four years after their release from office.

The Constitutional Court of the Republic of Albania unanimously decided to “reject the application”.

As regards the issue of the unconstitutionality of the reference made by Art. 34 ‘Publication’ to the Law on the Freedom of Information for Official Documents, the Constitutional Court stated that:

Article 34 of Law No. 9049 ‘On the Declaration and Audit of Assets[...],’ entitled ‘Publication’, notes that “the data obtained from the statement is available to the public pursuant to Law No. 8503, dated 30 June 1999 ‘On the Freedom of Information for Official Documents.’” The Constitutional Court considered that this reference was not unconstitutional. It is in line with the main goal of the legislator in drafting this law, to give priority to the right to information (i.e. public interest) against private interests, in this case expressed in the Form of Declaration and possible publication or data disclosure.

“From the formal point of view, this law (on asset declarations) stipulates, inter alia, that the statements/declarations of assets and all other documents enclosed in them constitute ‘official documents’ (Article 38). For this reason, the reference to the Law On the Freedom of Information for Official Documents is a guarantee that the eventual publication of these statements will not be done arbitrarily, but in accordance with the provisions of this Law and other applicable laws, some of them referring directly or indirectly to Law No. 8503 ‘On the Freedom of Information for Official Documents’. Hence, Article 4 of this Law allows the restriction of the right/access to information in whole or in part for certain official documents, including the statements of assets, if there is data, the publication of which is prohibited by another law (data constituting a state secret, data of a sensitive character, etc.).”

As regards the issue of the specific conditions for access to information on asset declarations, the Constitutional Court stated:

“The partial or complete restriction of the right/access to information in these cases must be justified by the relevant authority. On the other hand, in accordance with Article 4 of Law No. 9049 ‘On the Declaration and Control of Assets[...]’, as a rule the information that relates to the nature of the assets declared and their origin by the relevant subject is public, except for such irrelevant details or elements that can serve only for the purpose of verification and auditing process by the High Inspectorate of the Declaration and Audit of Assets or other public authorities, but that in itself are not regarded as of interest to the public. The High Inspectorate of Declaration and Audit of Assets does not and may not make public on its own initiative the personal data contained in the statement of the declaring the subject. This data is made public based only on the request made (by the public) and in accordance with constitutional and legal criteria for each specific case, definitely without the need for prior consent by the declaring subject.”

The Court decision did not provide any specific constitutional reason for this restriction on publishing asset declarations (as the latter constitute official documents), but repeatedly referred to the respective laws. In addition, the Court did reject the application for unconstitutionality. Therefore, it seems as if the Constitutional Court based its decision on the interpretation of several constitutional principles (freedom of expression, access to information, protection of private and family life) on the one hand and on an interpretation of the sub-constitutional Law on the Freedom of Information for Official Documents and the Law on Asset Declarations on the other hand, which does indeed not foresee publication of documents without a request by the interested applicant. As a consequence, if the sub-constitutional laws were to – after an amendment – clearly provide for the online publication of asset declarations, there is so far no indication that this would be unconstitutional per se.

As regards the issue of authorization as a prior consent by the declaring subject the Constitutional Court stated:

“The obligation of Article 10 of Law No. 9049 to provide a specific authorization by the declaring subject through which the relevant authorities (HIDAA) are authorized to verify the declared data, does not constitute consent to the disclosure of personal data, but rather the validity of their control by the High Inspectorate of the Declaration and Audit of Assets or any other authority provided by state law. Without this authorization this verification process would be almost impossible, particularly in the respective proceedings outside the territory of the Republic of Albania.

“It is the duty of the High Inspectorate of Declaration and Audit of Assets in accordance with Law No. 8503 ‘On the Freedom of Information for Official Documents’ and the legislation in force, including Law No. 8517 ‘On Personal Data Protection’, to determine the conditions, criteria, procedures and deadlines for providing information on the individual statements declaring subjects according to this law. Furthermore, the abovementioned criteria and legal requirements should be taken into consideration by the High Inspectorate of Declaration and Audit of Assets in the processing or decision making in dealing with each individual case. Individuals, who may complain that the publication of data/asset declarations violates a particular constitutional or legal right, may appeal to an administrative or judicial body, claiming not only reinstatement of the violated right but also the respective remuneration. Law No. 8503 ‘On the Freedom of Information for Official Documents’ guarantees such a right (see Articles 15-17 of this Law).”

As regards the issue of disclosing the assets of the family members of the declaring subject the Constitutional Court stated:

“It is considered that the family in the strict sense, in normal conditions, is composed of the spouse/s and children. In a broader sense it includes other vertical, horizontal family connections, etc. In this case, the lawmaker has restricted the concept of family members carrying the obligation of declaring assets as

provided by Article 22 of Law No. 9049. In the first paragraph of Article 21 of this law it is stipulated that “the declaration includes the assets of the declaring subject and his family (husband/wife and adult children).” Certainly, in these cases, in accordance with Article 34 of Law No. 9049, the public has the right to know the contents of these statements. This limited circle of people is closely related to the declaring subject assets and interests. Therefore the restriction of their right to privacy in the form of a separate asset declaration and the possibility of its publication serving transparency and control is fair and proportionate to the objective to be achieved. It is in accordance with the requirements of Article 17 of the Constitution. Likewise, not declaring the assets or restricting their publication will significantly increase the risk of concealment or manipulation of data on the declaring subject assets, diminishing significantly the effective implementation of this legislation.”

As regards the obligation of certain declaring subjects to disclose Asset Declarations for a period of 2 years after leaving the position the Constitutional Court stated that: (based on the same grounds as above), the abovementioned obligation is considered fair and justified.

“Moreover, for certain categories of officials, depending on the important tasks of the special responsibilities in performing official duties, this obligation extends for a period of four years. Limitation of privacy in this form for a relatively short period after leaving public office is in the logic of Law No. 9049 ‘On the Declaration and Audit of Assets[...].’ It serves to facilitate the best practical implementation of this law, especially transparency for these people, avoiding conflicts of interest and the fight against corruption. It is quite clear that there are or may be direct links between property, financial obligations or commitments in a business or other activities of the individual, the official function or duty that he has performed. Therefore, this legal obligation is not of an unconstitutional character. Even the statements made in this period, may be published in accordance with Law No. 8503 ‘On the Freedom of Information for Official Documents’.”

However, this provision of the Law on the Declaration of Assets requiring submission of the declaration 2 years after the end of public office has been abolished. Therefore the actual law foresees only the obligation of the declaring subject to declare 15 days after leaving public office.

As regards the restriction of disclosure of asset declarations, the Constitutional Court stated that:

“The statements/declarations may contain the names and personal or property data of third persons or their families, who are not subject to the obligation to declare, but that are related to these subjects within the meaning of Article 2, paragraph 4 of Law No. 9049 ‘On the Declaration and Audit of Assets...’ (They ‘[...] had or have property relations with the person who carries the obligation to declare [...]). This data can also be provided to the public. However, according to Article 4 of Law No. 8503 ‘On the Freedom of Information for Official Documents’ the actual names/data of these people cannot be made public, since they are not declaring subjects, pursuant to Article 3 of Law 9049 ‘On the Declaration and Audit of Assets [...]’ Besides, they may not be aware of the declaration made on their behalf and on the accuracy of the declaration [...])”

As a conclusion, the Constitutional Court stated that the obligation to declare personal income and assets and the possibility of their publication are not intended to degrade or damage the subjects of the declarations, but lend more rigorous transparency and control over the enrichment of or financial relations with third parties. From this perspective, the Constitutional Court finds that the public has a legitimate interest, through transparency, to be informed in detail not only on the performance and activity, but also on the income, possessions and the origin of them for elected persons or public officials. So the balance found is assessed as fair and grounded. Therefore, it is concluded that the interference in or limitation of their private lives in the form of providing information on the assets and their sources and the possibility of their publication, are justified and essential in the current conditions of the Albanian society.

C. Bosnia and Herzegovina

For quite a long period of time, the CEC published asset declarations on its official website. However, following a decision of the Agency for the Protection of Personal Data of BiH, the Appellate Court on an appeal by the CEC rendered a decision in 2012 that asset declarations can no longer be publicly available, because this would violate the provisions of the Law on the Protection of Personal Data.⁷¹ However, the Court did not make any explicit statement that the publication of asset declarations in the future – under an amended law – would be unconstitutional.

The access to the information held in the institutions of BiH enabled several achievements: transparency, democracy, and improvements in the field of the fight against corruption. The procedure of access to information is defined by the Law on the Freedom of Access to Information of Bosnia and Herzegovina treating: the information and personal data; the right to access information; the procedures for obtaining the information; the role of the Ombudsman in relation to this Act; the public interest test; as well as the cases in which the right to access information is limited. In addition to this, the Law prescribes the fines for violation of these provisions.⁷²

On the other side, we have the protection of personal data as a constitutional right and as protected under the European Convention on Human Rights (ECHR) (Article 8). The protection of personal data is defined by the legislative framework of the Law on the Protection of Personal Data of BiH⁷³ and the other regulations on the policy of keeping, supervising, verifying and filing complaints related to personal data. The competent authority in this field is the Personal Data Protection Agency in Bosnia and Herzegovina as an independent administrative organization in charge of supervising the implementation of this Law and other laws on personal data processing, and following personal data protection requirements by giving proposals for enacting or amending legislation on data processing, or giving opinions on

71 Judgement of 4 April 2012, SI 3 U 007099 12 UvP, www.azlp.gov.ba/images/UpravniBOS/Presuda%20Apelacionog%20vije%C4%87a%20Suda%20BiH.pdf, following Judgement of First Instance of 7 December 2011, S1 3 U 007099 11 U, www.azlp.gov.ba/images/UpravniBOS/Presuda%2019911.pdf.

72 Source: - Agidata: <https://www.agidata.org/pam/ProfileIndicator>.

73 Official Gazette of Bosnia and Herzegovina 49/06.

the proposed laws and taking care of the fulfilment of the criteria relevant to data protection originating from international treaties that are binding for Bosnia and Herzegovina.⁷⁴

The inspection of the CEC, which was conducted in April 2011, resulted in, among other actions, an administrative measure aimed at terminating the publishing of the scanned asset declarations of candidates and elected members of the government on the official CEC website. The Administrative Appeals Chamber of the Court of Bosnia and Herzegovina, as the final instance, rendered the abovementioned decision explaining that the “availability of data” (as prescribed by the Election Law of BiH, Article 15.9) does not necessarily require and imply publishing. Instead, it would be sufficient to meet the requirements for the availability of personal data in accordance with Law on the Freedom of Access to Information of BiH. The decision did not state explicitly, though, that the ECHR or the Constitution would generally forbid publication of declarations; it only noted, that under current data protection legislation (on the level below the Constitution), the publication had no sufficient basis in the sub-constitutional law: the Freedom of Information Law would only provide for publication upon individual request but not for a proactive publication without a request for information:

“This Appellate Council believes that availability to the public, in terms of Article 15.9 of the Election Law does not involve active disclosure of personal information [...], but the establishment of a system that ensures that any person interested has access to information in accordance with the Law on Free Access to Information in BiH.”

For future legislative amendments paving the way for publishing declarations again, it will be necessary to find the right balance between the protection of personal data on one hand, and transparency on the other as one of the essential pillars of democracy and of an open society. It is important to emphasize the importance of the remarkable involvement of the NGO sector in this area, which, in the absence of systemic control, contributes through the voice of the media and the public to the verification of the data submitted in the declaration.

According to the available information, there are no reported cases where publication caused problems because it was used by criminals, or resulted in discrimination (because details on the family life of an official had become public).

D. Croatia

Data from the asset declarations of public officials is partially published on the website of the Commission for the Identification of Conflicts of Interest. Property cards of judges, public prosecutors and deputy public prosecutors are not publicly available online, but are available under freedom of information legislation.

Publicly available data from the asset statement is released just after the completion of the preliminary (administrative) data verification if the verification confirms *inter alia* that the declaration form was correctly and completely filled out and signed by the official or holder of public office.

The following is publicly published:

- Whether the declaration was submitted on the occasion of the start of the official's term
- Significant changes in the assets existing at the end of the term
- The date of receipt of the declaration by the Commission
- Official data on the official (name, qualifications, position, party affiliation, marital status, number of children and residence)
- Data on the duty of the official (the name of the public office, institution or public authority where the public duty is undertaken, the headquarters of the office, business phone, fax, official e-mail, the date of the beginning of the mandate, the manner in which the public duties are exercised, whether the public duty is performed professionally or voluntarily)
- The level of the salaries of officials on an annual basis, gross and net
- The level of annual bonuses and awards of profits
- The same data must also be given regarding the spouse or common-law spouse of the official

- The type of property, area or place where the property is located, a form of property rights, the market value of the property and the manner of its acquisition
- Movable property: the type or description of the property, brand or type, year of manufacture or age, form of ownership, market value and acquisition
- The name of the company and personal identification number in which the official, spouse or common-law spouse or minor child has interests in property must be included (capital), as well as the headquarters of the company, the number and size of shares, their nominal value, the form of ownership, information on the transfer of control rights and manner of acquisition
- The amount of cash savings, form of ownership savings and manner of their acquisition must also be listed
- Bank credits, loan debts, guaranties and other commitments

Other data from the declaration, namely personal data, is not publicly available via the link “view of property cards” on the official website of the Commission (www.sukobinteresa.hr).

The legal basis for the publication of this data derives from the provisions of Article 8, paragraph 10 of the Law on Preventing the Conflict of Interest, which stipulates that the data regarding the duties of the official, performed either in a professional or private capacity, the data on other duties performed by officials, or the activities that they perform, as well as activities that were carried out immediately before taking office, and information on their assets, the property of their marital or extramarital spouse and minor children, may be published without the consent of officials.

Data from the asset declarations of judges, public prosecutors and deputy public prosecutors has not been made public, but is publicly available in accordance with the provisions of the Freedom of Information Act.

The Law on the State Judicial Council stipulates that the public has a right to review the declaration of assets of judges, and that the National Judicial Council shall in accordance with special laws allow access to the Declaration of Assets within eight days of the submission of the written request.

The State Judicial Council adopted a Regulation on the Declaration of Assets in which it is provided that the Council will allow access following a written request if the request contains the purpose and legal basis for the use of personal data in accordance with the Law on the Protection of Personal Data while also taking into account the principle of proportionality. The State Judicial Council will not allow access to data which is prohibited or limited by the Law on the Protection of Personal Data, nor access to information that can compromise the privacy or security of judges.

The Law on the Public Attorney's Office stipulates that the public has a right to review the declaration of assets in accordance with special laws.

Article 37 of the Constitution⁷⁵ states:

“Everyone shall be guaranteed the security and confidentiality of personal data. Without consent, personal data may be collected, processed and used only under conditions specified by law. The protection of personal data and supervision of the information systems in the country will be regulated by the law. The use of personal data contrary to the purpose of their collection is prohibited.”

The Law on the Protection of Personal Data⁷⁶ stipulates that the purpose of the Law is the protection of personal data, the protection of private life and other fundamental human rights of individuals in regards to the collection, processing and use of personal data. The law also stipulates that the provisions of the law are applicable to the processing of personal data by government agencies. Article 2 paragraph 1 of this law defines personal information as any information relating to an identified natural person or a natural person who can be identified. The person who can be identified means the person whose identity can be determined directly or indirectly, in particular on the basis of an identification number or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

75 Ustav Republike Hrvatske Narodne Novine 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10 i 85/10.

76 Zakon o zaštiti osobnih podataka Narodne novine 103/03, 118/06, 41/08 i 130/11, Pročišćeni tekst Zakona o zaštiti osobnih podataka Narodne novine broj 106/12 od 26.09.2012.g.

Article 7 of the Law on Personal Data Protection provides that personal data may be processed only in cases prescribed by law, in cases where data processing is necessary for the fulfilment of a task carried out in the public interest, and in other cases that are referred to in that article. The same article expressly provides that personal data relating to minors may only be collected and processed in accordance with the law and with the specific protection measures prescribed by special laws.

Article 12 of the Law on Personal Data Protection stipulates that personal data can only be used within the time that is necessary to achieve a specific purpose, and that with the lapse of that time, it must be deleted, unless the special act specifies.

The Data Protection Agency was established for the protection of personal data for the purpose of supervision over the control and handling of personal data. It is independent in the performance of the tasks within its jurisdiction and reports to the Parliament. Anyone who believes that his/her right guaranteed by the Law on Protection of Personal Data has been violated may make an appeal to the Agency for Protection of Personal Data. A decision made by the Agency may not be appealed, but an administrative dispute can be made.

At the time of the filing of this study, there was no dispute that stemmed from the publication of data from the declaration, nor is there any indication that publicly available data led to their unauthorized use or use for illegal purposes. There is also no indication that publicly disclosed data caused officials discrimination on any grounds. The Law on the Prevention of the Conflict of Interest expressly stipulates that citizens have the right to be familiar with the behaviour of public officials as public persons/individuals relating to the performance of their public duties. Public disclosure of data from the declaration on the financial situation is an important part of the realization of the right of the abovementioned citizens' rights and the public interest in general.

E. Kosovo*

3.1 Background

As stated in Chapter 1, on 11 February 2010, the Assembly of Kosovo* promulgated the Law on the Declaration and Origin of Property and Gifts for Senior Public Officials. The Law enabled the Agency for the first time to publish the declared data.

3.2 Privacy

Privacy is guaranteed in Kosovo* in the highest legal act – the Constitution. Article 36 of the Constitution [Right to Privacy] states:

“1. Everyone enjoys the right to have her/his private and family life respected, the inviolability of residence, and the confidentiality of correspondence, telecommunication and other communication. [...]

4. Every person enjoys the right of protection of personal data. Collection, preservation, access, correction and use of personal data are regulated by law.”

In some instances, the Anti-Corruption Agency received complaints from officials who stated that the publication of financial data would bring danger to the physical wellbeing of their family members. For example, children could be subject to kidnapping for ransom. In addition, the publication would negatively affect family relationships: on the one hand, savings in bank accounts would be published, and on the other hand, the mentality in Kosovo* would require the official to support family members (with these savings). The publication of financial data would subject the officials to the moral pressure of supporting all family members, even in cases not deemed opportune to the officials. For spouses, the publication of data could lead to divorces, as the declarations might expose “black” funds which spouses had created over the years (but kept secret from their partners). It can be said, that the cultural environment in Kosovo*, the family tradition, the patriarchal and national mentality and other aspects of the country could conflict with the publication of financial data. Despite all complaints, since the publication of the declarations not even the smallest problem was officially recorded.

Three years have passed since the beginning of the publication of property of senior officials but in no case did the Agency identify any case where the above stated risks actually materialized. None of the officials concerned was ever the subject of a criminal case with the police (for example because of kidnapping) and none of the officials ever formally lodged a privacy case with the courts in Kosovo*, including the Constitutional Court, nor with the Ombudsperson for data protection. The exact limits of privacy in Kosovo* are determined by the Law on Personal Data Protection, which established the Agency for the Protection of Personal Data and the Ombudsman for data protection. The Law on the Declaration and Control of Property which is implemented by the Anti-Corruption Agency determines precisely what should not be published. The Agency coordinated the publication of declarations with the State Agency for Personal Data Protection and the Ombudsperson; so far, there have not been any problems with alleged violations of data protection, such as for example mistaken publication of protected data.

Article 13 — “Data pertaining to the declaration of property of senior public officials” of the Law of 2011 explicitly describes the elements that are published:

- First name, last name, function, name of institution, address of institution, appointment date, date when the declaration form has been submitted, functions and other activities exercised by the public official besides his/her public function
- Real estate: type, size, origin, value as assumed by the declarer, ownership
- Movable property: type, origin, year acquired, presumptive value, ownership
- Shares in commercial enterprises or similar entity
- Possession of securities
- Cash money held in financial institutions
- Financial obligations of public officials towards natural entities and legal persons
- Annual revenues

All this data shall be published on the webpage of the Agency within sixty (60) days from the deadline for submission of declarations.

Certain data is not published in accordance with the Law on the Protection of Personal Data:

- Address of residence
- Personal identification number (civil registry number)
- Name of the children
- Name of the banks where official holds accounts

Obviously though, this data can be used by the Agency if it has to further investigate and combat corruption or control potential conflicts of interest during the exercise of official duty.

Personal data is processed in the Register in accordance with the Law on the Protection of Personal Data.

The competent authority which administers and maintains the Register is the Agency. The Agency archives the data of senior public officials from declarations for ten (10) years from the time of termination or dismissal from office; after this period, the data is destroyed.

F. Macedonia

3.1 Background

When approaching the aspect of disclosing the asset declaration data in the Republic of Macedonia there has been an evolution since the date of adopting the basic Law on the Prevention of Corruption through the amendments thereof and amendments to the legislation regulating personal data protection.

The Law on the Prevention of Corruption adopted in 2002 defined the asset declaration data as bearing the notion of official secrecy. Hence, it was not available to the public. In that period, the State Commission for the Prevention of Corruption (SCPC) treated the asset declarations in accordance with the acts regulating the handling of this data as protected by a certain level of secrecy.

Shortly after it was realized that such secrecy would not achieve the ultimate

goal: providing the public with the possibility of monitoring the assets of public officials during their mandate and thus creating a preventive effect for public officials.

These were the reasons for the first amendments of the Law in 2004, aimed at turning asset declarations into more public information, excluding only the data protected by the Law on Personal Data Protection.⁷⁷ These amendments also eliminated the need for formal approval from officials for disclosing data from the asset declarations. Furthermore, with these amendments, the SCPC is obliged to publish the data from asset declarations on its website⁷⁸, except for protected data.

The following is an English translation of the website providing online access to declarations:

State Commission for Prevention of Corruption

Data from the Assets Declarations of the elected or appointed public officials

Search by name

Search by surname


Search by function

Search by institution

Press to show results

FOUND RESULTS:

Name	Surname	Function	Institution	Detailed preview
				Press for preview
				Press for preview
				Press for preview

 **NEXT**

NOTE: The publicized data in electronic format are taken from the Assets declarations of the elected or appointed public officials in the Republic of Macedonia. The data is checked continuously and updated when officials submit Assets declaration "For the election or appointment on the position" and "For changes of assets".

77 Law on Personal Data Protection (<http://www.dzlp.mk/en/Regulation>).
 78 http://www.dksk.org.mk/imoti_new/.

After pressing the “Press for preview” button for certain public officials, another display pops up which shows detailed information about the assets:

State Commission for Prevention of Corruption

Data from the Assets Declarations of the elected or appointed public officials

Detailed preview

Name	Surname	Function	Institution

Property	Ownership	Type of the property	Value of the property	Characteristics / details

The State Commission for the Prevention of Corruption requested and received instructions from the Directorate for Personal Data Protection about which data is considered personal. The Directorate pointed out that the data, when published, would violate the core privacy and the personal integrity of the officials along with the integrity of their family members, and would therefore have to be protected.

Hence, the following data from asset declarations is not disclosed: public officials’ unique citizen’s ID number, the names of their parents; address; private telephone number; first name and surname of their family members; the address of their family members; the address of their real estate; in part VII of the asset declaration form dedicated to receivables – personal data of the persons the assets were received from; in part VIII dedicated to other income – the data of the entity where the income is generated.

3.2 Privacy

The Constitution of the Republic of Macedonia⁷⁹ ensures the safeguarding and privacy of personal data and guarantees the protection of the personal integrity of citizens from data registration and data processing.

⁷⁹ Article 18 of The Constitution of the Republic of Macedonia (<http://www.sobranie.mk/en/default-en.asp?ItemID=9F7452BF44EE814B8DB897C1858B71FF>).

Implementation of this constitutional right is regulated in the Law on Personal Data Protection containing the international standards in this area, which means that the Law implements the EC-Directive 95/46 on the protection of personal data⁸⁰ in national law. A supervisory role is assigned to the Directorate for Personal Data Protection.

Although asset declarations are uploaded onto the website, in accordance with the Law on the Free Access to Public Information, the media, NGOs, citizens, and other interested parties can order paper copies from the SCPC and in such cases the SCPC protects personal data by editing out certain parts in the photocopy of the declaration.

In general, the SCPC had no significant objections from the officials whose declarations were published. During the first years after starting publishing declarations, there were some reactions from officials' families; however those reactions were mainly informal and not transmitted in writing to the SCPC or to the Directorate for Personal Data Protection. No official brought any legal procedure, because the published data did not include core private data.

In light of the fact that the public is entitled to know the assets of officials, the SCPC considers the current practice of publishing data from asset declarations as proper and supports it in the interest of the public at large.

G. Montenegro

3.1 Background

The publication aspect of asset declarations is foreseen in the Law on the Prevention of the Conflict of Interest. Besides the need for public scrutiny, this approach strengthens the responsibility for timely and accurate submission of data to the Commission. Since 2005 the Commission has been publishing information on: the assets and incomes of public officials; received gifts⁸¹;

80 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>.
81 www.konfliktinteresa.me; Gift Register and Public Gift Register.

the final decisions and opinions of the Commission, as well as the decisions of misdemeanour authorities and ordinary courts on violations of the Law.⁸² The Commission publishes and regularly updates the records on all public officials in Montenegro (state and local, by municipalities and functions); gifts; regulations and forms; judgements and sanctions imposed on public officials; matters related to the Commission's work (education, cooperation with other institutions, etc.). The high number of website visits proves the interest of the general public, the media and others.⁸³

Furthermore, via the *Ask the President* link, the Commission's website allows interested parties to report suspected cases of conflicts of interest, obtain information and opinions concerning the implementation of the Law, and other things. Bearing in mind the above, as well as the need to enhance the effectiveness of the checking and accuracy of the data contained in the current database, the Commission is now searching for the optimal legal and technical options to link the data between the Commission and other relevant authorities in Montenegro and to develop a platform for collecting data from various institutions.

The Commission enters data from the reports on income and assets as submitted by public officials in the Register of Income and Assets, which is available for public access with the exception of the aforementioned protected data.

Data held by the Commission that is not published includes personal identification numbers, home addresses, telephone numbers and the names of minor children, in accordance with the Law on Personal Data Protection. Also, pursuant to Article 24 paragraph 3 of the amended Law, data on the person initiating the procedure against a public official is confidential. As of February 2012, the Commission does not publish final judgments brought by the misdemeanour courts for violations of the Law, in accordance with the opinion of the Agency for the Protection of Personal Data (but only data on the judgements which would not allow conclusions about the defendant).

82 www.konfliktinteresa.me; The Law and by-laws in English are also available at the Commission's website.

83 In 2011, over 125,000 visits were registered on the Commission's website.

3.2 Privacy

In Montenegro, privacy is guaranteed by the Constitution of Montenegro⁸⁴ (“Article 40: Every person shall have the right to private and family life”) and the Law on Protection of Personal Data⁸⁵).

Since 2005 the Commission has maintained a database in which details of all public officials are entered (Reports on Income and Assets). Article 21 of the Law on the Prevention of the Conflict of Interest stipulates that the data from the reports are entered into the Register of Income and Assets, and the Register maintained by the Commission; paragraph 2 of the same article stipulates that the data referred to in paragraph 1 shall be available to the public. The registered data is published on the Commission’s website, with the exception of personal data, such as personal identification number, home address, telephone number, the names of minor children, in accordance with the Law on Protection of Personal Data.

Data transparency is one of the essential tools for combating conflicts of interest and corruption, which is why at the first EU candidate countries’ screening meeting in Brussels (26-27 March 2012),⁸⁶ the President of the Commission for the Prevention of the Conflict of Interest was informed by EU experts that publishing information about public officials on the internet is based on the public-interest exemption to data protection; however, the balance between personal rights and the principle of transparency would have to be determined in each individual case.

The Commission took the view that the data from the reports is being published in accordance with Law on Preventing the Conflict of Interest, taking into account the Law on Personal Data Protection (thus, excluding the data specified in the Law on Personal Data Protection, i.e. the names of minor children, personal identification number, address and telephone number).

There were requests from some public officials to the Commission to also exclude from publishing information concerning savings. The Commission concluded that it cannot treat certain public officials differently and that all data must be published in accordance with the Law on Preventing the

84 Constitution of Montenegro, Official Gazette of Montenegro, 1/07.

85 Law on Personal Data Protection, Official Gazette of Montenegro, 79/08, 70/09.

86 www.gov.me/en/News/112839/Montenegro-and-EU-Commission-discuss-law-harmonisation-in-judiciary-and-fundamental-rights.html.

Conflict of Interest and the Law on Personal Data Protection.

On 19 October 2012, the Agency for the Protection of the Report noted that the legal basis for processing and publishing personal data on the Commission's website was the Register on the Income and Assets of Public Officials (Official Gazette of Montenegro 13/12), and that the publishing of such information may be interpreted in two ways: making it available to the public through the requests for free access to information or by publishing it on the website; or finding requests for information more appropriate in terms of the Law on the Protection of Personal Data (Official Gazette of Montenegro 79/08 and 70/09).

The Report also found that there were no clearly defined boundaries between privacy protection, i.e. the scope of information to be published, and the principle of transparency; furthermore, according to Article 2 paragraph 2, and Article 4 of the Law on Personal Data Protection certain information on public officials should not be published on the Commission's website. The Report requested that the Commission reduce the scope of processing and publishing on the Commission's website of personal data on income and assets of a public official (E.S.) and his relatives, which is not related to the exercise of the public function, i.e. income and assets acquired before taking public office. The Commission's position was that, for the sake of transparency and public access to information, the data concerning movable and immovable assets and bank accounts of all public officials should continue to be published, as has been the practice so far.

The Agency for Personal Data Protection rejected as unfounded the complaint filed by the Commission (27 July 2012). To that end, the Commission has initiated an administrative procedure before the Administrative Court and requested the Court to annul the decision of the Agency for Protection of Personal Data.

Other than this case, the Commission has had no other controversial opinions and viewpoints regarding transparency of declarations and data protection. Until today, there is no jurisprudence by the Constitutional Court or other courts that would argue against the Commission's practice of publishing data on the property and income of officials. On the other hand, there have not been any requests or formal proceedings by citizens under freedom of information laws for more information than currently published.

H. Serbia

3.1 Background

The following data on income of officials is available to the public:

- Information on salary and other incomes received by the official from the budget and other public sources
- Information about the public offices he/she is discharging

The following information concerning property of the official is available to the public:

- Ownership of real estate (domestic or abroad), without specifying the address of such property
- Ownership of a vehicle, without specifying the registration number
- Savings deposits including the amount but not the name of the bank and the account number
- Right to use an apartment for official purposes

Information on the family members of the official is not public. Furthermore, information on all other declared financial positions such as loans, shares, debts, intellectual property etc. is not public.

Other information about the property of an official might be public in accordance with other regulations (such as, for example, the land registry). The Agency may disclose information to the public with the consent of the official or his/her family members.

The (public) information is accessible on the official web site of the Anti-Corruption Agency (http://www.acas.rs/sr_lat/registri.html).

Certain officials of courts and prosecutor offices working on organized crime, corruption and other particularly serious crimes, are required to submit Reports, but under the Law, information about their financial status is not published for security reasons.

Information from the Reports that is not public may not be used for other purposes except in formal proceedings on possible law violations (such as, for example, prosecutions).

3.2 Privacy

The Constitution in Article 42 provides for the protection of personal data as follows: *“Protection of personal data shall be guaranteed. The collecting, keeping, processing and using of personal data shall be regulated by the law.”*⁸⁷

The Law on the Protection of Personal Data stipulates the protection of data that is provided to every individual. The Commissioner for Information of Public Importance and Personal Data Protection provides this protection. Article 13 “Processing by Public Authorities” of the Law on the Protection of Personal Data states:

“Public authorities shall process data without the consent of the person concerned if such processing is necessary for them to perform duties within their spheres of competence as defined by a law or another regulation with a view to achieving the interests of national or public safety, national defence, crime prevention, detection, investigation and prosecution, the economic or financial interests of the state, protection of health and ethical norms, protection of rights and freedoms and other public interests, while processing in all other cases shall require consent in writing from the person concerned.”

Article 47 of the Law on the Anti-Corruption Agency is such a Law as is mentioned in Article 13 of the Law on the Protection of Personal Data: Article 47 regulates the publication of personal data in the interest of “crime prevention” and “detection”.

Right up until the present day, there has been no jurisprudence by the Constitutional Court or other courts that would forbid the legislator to allow more publicity on property and income of officials under Article 42 of the Constitution. Furthermore, there are not any related decisions by the Commissioner for Information of Public Importance and Personal Data Protection. At the same time, there are no cases so far where officials

⁸⁷ Article 42, Protection of Personal Data: “Protection of personal data shall be guaranteed. The collecting, keeping, processing and using of personal data shall be regulated by the law [...]” http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav_odredbe.php?id=218.

have complained about their private data being published, either to the Commissioner or to the courts. This is probably due to the fact that the Anti-Corruption Agency publishes only limited information about the income and property of public officials and no information about their family members. One should also mention in this context the special protection of court and prosecutorial officials dealing with certain sectors (such as organized crime, corruption, etc.). There were only a few minor disagreements by officials about what should be understood as “public revenue” (which is public).

Citizens often make requests for access to public information, and seek information on the property and income of officials that are not public. In such cases, the Anti-Corruption Agency refuses to provide non-public information and only provides access to data that is already publicly available. So far, there have not been any formal proceedings by citizens under freedom of information laws to enforce their requests for more information.

I. European Jurisprudence

3.1 European Court of Human Rights

There is no case law yet by the European Court of Human Rights on the issue of financial declarations by public officials. However, certain jurisprudence of the European Court of Human Rights from similar contexts suggests that the publication of financial declarations would be justified under the European Convention on Human Rights (ECHR)⁸⁸ in environments with substantial corruption problems in the public sector.

“Article 8 ECHR – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.”

“2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests

88 Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>.

of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

3.1.1 Applicability of privacy

It is long-standing jurisprudence of the European Court of Human Rights that the publication of personal data falls under the privacy protection of Article 8 ECHR.⁸⁹ However, whenever public officials consent to their financial data being published, Article 8 ECHR is no longer applicable. The European Court of Human Rights has admitted in several cases and with regard to different human rights that they can be waived for certain instances,⁹⁰ including Article 8 ECHR.⁹¹ Waivers can be explicit or implicit.⁹²

3.1.2 Interference

The publication of financial data is a direct interference with the right to privacy of public officials.

3.1.3 Measures in accordance with the law

The European Court of Human Rights would require the following, in order for the publication of financial data to be “*measures in accordance with the law*” (Article 8, paragraph 2 ECHR):

- A legal basis
- A legitimate aim
- Proportionality

89 See, for example, *Z. vs. Finland* (No. 22009/93), Judgment of 25 February 1997. Disclosure of medical information about the applicant, who was infected with HIV, in the context of proceedings concerning a sexual assault. Violation of Article 8 on account of the publication of the applicant’s identity and medical condition in the Helsinki Court of Appeal’s judgment.

90 Peter Kempees, *A Systematic Guide to the Case-Law of the European Court of Human Rights, 1960-1994*, Volume II, 1996, pages 1365ff. (Waiver of a Right) with reference to different decisions; *Sciacca v. Italy*, judgment of 11 January 2005, application No. 50774/99. The applicant submits that the dissemination of the photograph at a press conference organised by the public prosecutor’s office and the tax inspectors infringed her right to respect for her private life, contrary to Article 8.

91 *M.S. vs. Sweden*, Application No. 20837/92, Judgment of 27 August 1997. The waiver was however not valid in the concrete case;

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57887#{%22fulltext%22:%2220837/92%22}>;

92 Grabenwarter/Pabel, *Europäische Menschenrechtskonvention*, 2012, § 19 No. 33.

As for the legal basis, a legal provision which allows for an interference with privacy as protected by Article 8 ECHR has to be accessible, sufficiently clear as to the circumstances under which an interference may be justified and consistent with the rule of law. This criterion should normally be met by anti-corruption laws, and has only been problematic in cases where citizens were subject to secret interferences in their private lives.⁹³

The fight against corruption through an asset declaration regime certainly serves several legitimate aims under Article 8 paragraph 2 ECHR: “national security”, “public safety”, “the economic well-being of the country”, “prevention of crime”, and “morals”. In this context, the preamble of the Council of Europe Criminal Law Convention on Corruption⁹⁴ almost literally enumerates the aims of Article 8, paragraph 2 ECHR:

“Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.”

As for the proportionality, it should be noted that the European Court of Human Rights has regularly granted the member states of the Convention wide discretion when it came to the protection of the state:

*“However, the Court recognises that the national authorities enjoy a margin of appreciation, the scope of which will depend not only on the nature of the legitimate aim pursued but also on the particular nature of the interference involved. In the instant case, the interest of the respondent State in protecting its national security must be balanced against the seriousness of the interference with the applicant’s right to respect for his private life. [...] In these circumstances, the Court accepts that the **margin of appreciation** available to the respondent State in assessing the pressing social need in the present case, and in particular in choosing the means for achieving the legitimate aim of protecting national security, was a **wide one**.”⁹⁵*

93 See for example *Leander v. Sweden* judgment of 26 March 1987, Series A No.116 (Violation of Articles 8, 10 and 13 of the Convention). Use of information kept in a secret police-register when assessing a person’s suitability for employment on a post of importance for national security.

94 Of 27 January 1999, ETS 173, <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>.

95 See *Leander vs. Sweden* (see above note 86) – emphasis in bold letters by author.

At the same time and as stated already, international law by the Council of Europe acknowledges that corruption poses a risk to the existence of the state itself: “corruption threatens the rule of law, democracy and human rights”.⁹⁶

In addition, the ECHR and case law by the European Court of Human Rights have subjected public officials to less protection of human rights than general citizens, for example in the realm of freedom of expression,⁹⁷ or freedom of assembly and association.⁹⁸ More specifically, it has put the personality right of public officials behind the interests of a public watchdog to receive information from state agencies.⁹⁹

Publishing declarations would be a disproportionate measure, though, if an equally effective alternative existed that was less intrusive. A less intrusive measure would be to allow access to declarations under freedom of information legislation without actively publishing the declarations online. However, such a measure would not allow the public at large to scrutinize declarations. Requesting declarations under freedom of information legislation requires an administrative effort and entails costs. It also focuses only on individual declarations, but does not allow large-scale verifications as are done by some NGOs. Such individual limited access would thus be less effective and not constitute an equivalently suitable alternative to publishing declarations online.

96 See above note 87.

97 *Vogt v. Germany*, Application no. 17851/91, Judgment of 26 September 1995: “[W]henever civil servants’ right to freedom of expression is in issue the ‘duties and responsibilities’ referred to in Article 10 para. 2 (art. 10-2) assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim.”, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58012>.

98 See Article 11 para. 2 s. 2 ECHR: “This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

99 *Társaság A Szabadságjogokért (Hungarian Civil Liberties Union) vs. Hungary*, Case Number: 37374/05, Date of decision: 14 April 2009; The Court ruled that it would be fatal for freedom of expression if public figures could prevent public debate by referring to their personality rights. A Hungarian Member of Parliament filed a complaint with the Constitutional Court about Hungary’s drug laws. The Hungarian Civil Liberties Union (HCLU) applied to the Court to receive a copy of the complaint, but were refused on the grounds that the petition constituted “personal data” that could only be disclosed with its authors’ permission. The Court stated that it would be fatal for freedom of expression if public figures could prevent public debate by referring to their personality rights.

3.1.4 Conclusion

In view of the above, there can be no doubt that the European Court of Human Rights would more likely accept as justified the interference that published financial declarations cause to the privacy of public officials.

3.2 European Court of Justice

There is as yet no case law by the European Court of Justice on financial declarations by public officials of the organs of the European Union. This is probably also due to the fact that European Union officials have little or no obligations on publicly disclosing their income or assets. At the European Commission, Commissioners are obliged to declare their interests, including assets. The signed declarations are published online.¹⁰⁰ The same is true for members of parliament.¹⁰¹ Judges of the European Courts do not submit declarations with individual data; in addition, declarations are not published.¹⁰²

There is one case, Toland vs. the European Parliament, concerning the income of members of the European Parliament, in which the Court decided in favour of publicity under the European Union's freedom of information legislation.¹⁰³ However, the decision does not touch on the issue of privacy and is only binding for the organs of the European Union, but has no legal relevance for its member states, let alone for states outside the European Union. Furthermore, the situation on the level of European Union officials would seem to be rather incomparable to that of officials in a national state, at least not to one with a systemic bribery problem.

100 http://ec.europa.eu/commission_2010-2014/interests/index_en.htm.

101 <http://www.europarl.europa.eu/sides/getDoc.do?type=RULES-EP&reference=20130521&secondRef=ANN-01&format=XML&language=EN>; <http://www.europarl.europa.eu/meps/en/full-list.html>.

102 The Court of Justice of The European Communities Code of Conduct, 2007/C 223/01, http://curia.europa.eu/jcms/jcms/Jo2_7028/, Article 4 Declaration as to financial interests: 1. On taking up their duties, Members shall submit a declaration as to their financial interests to the President of the Court of Justice. 2. The declaration referred to in paragraph 1 shall be worded as follows: 'I declare that I have no interest in any property or asset which might compromise my impartiality and my independence in the performance of my duties'.

103 Judgment of the General Court (Second Chamber) of 7 June 2011, Ciarán Toland vs. the European Parliament, Access to documents - Regulation (EC) No 1049/2001 - Audit report on the parliamentary assistance allowance - Refusal of access - Exception relating to protection of the purpose of inspections, investigations and audits - Exception relating to protection of the decision-making process, Case T-471/08, Reports of Cases 2011 II-02717, T-471/08, <http://curia.europa.eu/juris/liste.jsf?language=en&num=T-471/08>.

Toland vs. the European Parliament¹⁰⁴

3.2.1 Facts

In June 2008, Ciarán Toland, an Irish lawyer, applied to the European Parliament for access to the 2006 Annual Report of its Internal Audit Service (Report No 07/01), including the 16 audit reports referred to in paragraph 24 of the European Parliament Resolution of 22 April 2008 (para. 3). The Report is an annual audit of the Parliamentary Assistance Allowance given to members of the European Parliament each year, including information regarding the operation of the Allowance and its abuses by members of the Parliament. In March 2008, the Bureau of the European Parliament carried out a series of reforms to implement recommendations contained in the Report, but the European Parliament voted to keep the report confidential.

The Secretary-General of the Parliament granted Toland partial access to Report No. 07/01, redacting one paragraph dealing with an audit still pending (para. 4). Nevertheless, the reply did not mention the other 16 requested reports (para. 4). Toland submitted a second request for those reports, including the redacted paragraph of Report No. 07/01 (para. 5).

In a letter dated 11 August 2008 (the “Contested Decision”), the Parliament denied access to the redacted paragraph, granted full access to 13 of the 16 internal audit reports, partial access to two further internal audit reports, and denied access to the fourteenth of those reports, namely Internal Audit Report No. 06/02 of 9 January 2008 entitled “Audit of the Parliamentary Assistance Allowance” (Report No. 06/02) (para. 6). Parliament viewed the Allowance as a “sensitive matter” and argued that disclosure of Report No. 06/02 was not required because disclosure might compromise the report’s effective use and purpose (under Article 4(2) of Regulation 1049/2001) and that disclosure would be detrimental to Parliament’s decision-making process under Article 4(3) of Regulation 1049/2001 and compromise reform (para. 9-12).

The Applicant initiated proceedings against the Parliament in the General Court of the European Union and the Governments of Sweden, Finland and Denmark intervened in his favour.

¹⁰⁴ The following text is taken almost verbatim from the decision itself and from a summary available at http://www.right2info.org/cases/plomino_documents/r2i-ciaran-toland-supported-by-sweden-finland-and-denmark-v.-european-parliament.

3.2.2 Decision

The Court noted that, for the purposes of Article 4(2) and Article 4(3) exceptions to disclosure, Parliament would have had to determine that: (i) access to a requested document would specifically and actually undermine the protected interest and that there is no overriding public interest justifying disclosure of the document concerned; and (ii) the risk of the protected interest being undermined is reasonably foreseeable and not purely hypothetical (para. 29).

Article 4(2) provides that institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits unless there is an overriding public interest in disclosure (para. 42). The Court ruled that it would have been appropriate to ascertain whether, at the time of the adoption of the Contested Decision, inspections and investigations were still in progress which could have been jeopardized by the disclosure of the requested documents, and whether those activities were carried out within a reasonable period. Instead, the Parliament's decision would have withheld documents until the given "follow-up action to be taken has been decided", which is improper because that would make access to documents dependent on an uncertain, future and possibly distant event, depending on the speed and diligence of various authorities (para. 45). Thus, this exception did not apply because the Contested Decision made no mention of any specific inspection or investigation or of any other administrative checks ongoing at the time of the decision that might have jeopardized implementation of the actions recommended in Report No. 06/02 (para. 58). The Court found no need to examine the "overriding public interest" prong of Article 4(2) (para. 58).

Article 4(3) provides that access to a document drawn up by an institution for internal use or received by an institution relating to a matter concerning which a decision has not yet been made shall be refused if disclosure would seriously undermine the decision-making process, unless there is an overriding public interest in disclosure (para. 69). This exception requires it to be established that access to the document in question drawn up by the institution for its internal use in question was likely, specifically and actually to undermine the interest protected by the exception, and that the risk of that interest being

undermined was reasonably foreseeable and not purely hypothetical (para. 70). In addition, disclosure must risk seriously undermining the decision-making process (para. 72). Though the audit report was drawn up by the Parliament for internal use and related to an issue on which the institution had not yet taken any decision, the Court determined that disclosure of Report No. 06/02 would not seriously undermine its decision-making process (paras. 72-78). The contested decision made no mention of the existence, on the date on which it was adopted, of any acts undermining, or attempting to undermine, the ongoing decision-making process, or of objective reasons on the basis of which it could be reasonably foreseen that the decision-making process would be undermined if Report No. 06/02 were disclosed (para. 79). Furthermore, the contested decision failed to contain any reasoning regarding whether overriding public interest did not, despite everything, call for disclosure of that report (para. 83). In finding that the Parliament had improperly withheld access to Report No. 06/02, the Court awarded costs to Toland.

3.2.3 Conclusion

The European Court of Justice has strengthened the publicity of data under European Union regulations. Apparently, the Court did not see any problem that the publishing of the income data would violate the right of members of parliament under Articles 7 and 8 Charter of Fundamental Rights of the European Union¹⁰⁵, arguably the European Union pendant to the European Convention on Human Rights.

105 2000/C 364/01, http://www.europarl.europa.eu/charter/default_en.htm; Article 7 – Respect for private and family life: Everyone has the right to respect for his or her private and family life, home and communications. Article 8 – Protection of personal data: 1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority.

4. Summary and Policy Recommendations

Each of the three earlier chapters of this Study looks at the effectiveness of an income and asset declaration system from a different angle: the right verification methodology (Chapter 1) is crucial for detecting the hidden (illicit) wealth of public officials; the case studies (Chapter 2) show how the methodology actually translates into real life and thus showing possible strong and weak points in the declaration system; the publicity of the declarations (Chapter 3) is essential for public scrutiny of the declarations and for possible tip-offs leading to audits and investigations.

The **verification methods** applied in the Western Balkan countries in general overlap to a large extent: declarations undergo a formal check, and to some extent a plausibility review and audit (with Bosnia and Herzegovina still in the process of establishing a plausibility review and audit procedure). However, differences in technical details show substantial leverage in the effectiveness of detecting hidden wealth. For example, it makes a great difference if an oversight body has access to the data of banks and/or financial intelligence units in order to cross-check the veracity of declared financial flows. Obviously, an oversight body will probably feel it rather has its hands tied if it is limited to looking into data of a defined range of state agencies but cannot (if only on a voluntary basis) collect data from private sources (companies, citizens) or make on-site observations (of real estate etc.).

The typology of **real-life cases** confirms that financial declarations are an effective tool in the fight against corruption. They not only lead to sanctions against public officials at all levels and from all three levels of state power,

but also trigger investigations of serious crimes. Whereas on the one hand hidden wealth is often detected with the simplest means (for example cross-checking declarations with the land registry), officials with more refined schemes of hiding wealth require the oversight body to use all public and private data sources available on a national and international level. The real-life cases also show challenges which would not be visible by looking only at the legislation or verification practice: Some cases – despite being well investigated – seem not to get past the stage of prosecutors or judges despite showing sufficient merits. It is hence necessary to ensure that cases of hidden wealth are adequately prosecuted and adjudicated.

The number of cases where NGOs, citizens and even family members have triggered investigations into dishonest public officials confirms that public availability of the declarations – best online – leads to successful investigations, which otherwise would most likely not have taken place. In this context, it is worth noting that no court in the Western Balkans has set constitutional limits on **publishing** financial declarations. However, (sub-constitutional) freedom of information legislation in two countries does not yet allow for online publication of declarations. At the European level, in particular the European Court of Human Rights (Council of Europe), there is no jurisprudence yet concerning financial declarations directly. However, other jurisprudence indicates that the Court would more likely not object to the (online) publishing of financial declarations where the need for fighting corruption would justify this measure.

Specifically, from Chapters 1 to 3 the following recommendations can be derived:

1. **Red flags:** Oversight bodies should compile a list of red flags for triggering a full verification of declarations.
2. **Publication:** In order to allow scrutiny by the public, declarations should be made public proactively; legislation should be adapted if necessary in order to allow such publication.
3. **Verification mechanism:** All declarations should be subject to a verification mechanism.
4. **Training:** A capacity-building programme should be developed for public officials to whose work declarations are relevant. The

capacity building should include *inter alia* good practices on handling declarations, using investigative tools, calculating wealth, and solving simulated investigations of complex case scenarios; such a capacity-building programme will profit from the real-life cases provided in Chapter 2 – “Typology of hiding wealth”. Civil society organisations working in the field of integrity could also benefit from such a capacity-building programme by enhancing their understanding and skills of scrutinizing declarations.

- 5. International cooperation:** In view of the rather time-consuming procedures of formal mutual legal assistance, oversight bodies should conclude bilateral or multilateral agreements on data exchange (Article 48 United Nations Convention Against Corruption – UNCAC), make use of FIUs’ existing data exchange structures (Articles 14 para. 1 b, 52 para. 2 of UNCAC), or of tax authorities’ options under international double taxation agreements.
- 6. Prosecution:** Oversight bodies should have the possibility to have a prosecutor’s decision to not bring charges reviewed by a court, and prosecutorial and judicial staff should be adequately trained.
- 7. Household members:** Oversight bodies should not rely solely on declarations by public officials for verifying the existence, number and identity of (household) family members. Verification means include the civil registry and allowing public scrutiny through active publication. In this context it should be ensured that regulations are clear in defining household (*de facto* or *de jure*).
- 8. Daily subsistence:** Oversight bodies should include subsistence levels in their calculations for checking the balance of income and expenses.
- 9. Investigative power:** Oversight bodies should have the competence to request (voluntary) information from citizens and private companies and should not only compare data but follow up on the origin of assets.
- 10. Banking information:** Oversight bodies should have direct access to banking data, either by public officials waiving their banking secrecy in the declarations, by legislation making an exception for oversight bodies, or by other means.

ReSPA is an international organisation which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans. As such, ReSPA is a unique historical endeavour, established to support the creation of accountable, effective and professional public administration systems for the Western Balkans on their way to EU accession.

ReSPA seeks to achieve this mission through the organisation and delivery of training activities, high level conferences, networking events, summer schools, study tours and publications, the overall objectives of which are to transfer new knowledge and skills as well as to facilitate the exchange of experiences both within the region and between the region and the EU Member States.

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