Backgrounder on the case of "The List" -

the abuse of anti-money laundry legislation

for the suppression of civic space in Serbia

Prepared by Civic Initiatives

The topic of legal regulation in the area of preventing money laundering and terrorist financing as it concerns the functioning and financing of civil society organizations (CSOs)[1] first came up on the agenda in Serbia after the publication of the 2016 report by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). The report cites, among other things, several risks with regard to the functioning of civil society organizations: a lack of transparency and inadequate control of CSO funding and insufficient monitoring of the sector's work. After the publication of this report, and based on the harmonization of the legal framework with the obligations of the Republic of Serbia towards the Financial Action Task Force (FATF), and as part of the global fight against terrorist financing, Serbia adopted the Law on the Prevention of Money Laundering and the Financing of Terrorism in 2017. Such an obligation was also part of the process of Serbia's accession to the European Union as part of Chapter 24: Justice, Freedom and Security. However, by itself, the adoption of the law did not demonstrate sufficient effort in this area, which was reflected in the fact that, in 2018, Serbia, along with eight other countries, was added to FATF's so-called gray list -- the list of countries with "strategic deficiencies in their regimes to counter money laundering and terrorist financing".

The role of civil society in passing the law itself, but also in eliminating deficiencies and Serbia's removal from the gray list was very important. In cooperation with the Administration for the Prevention of Money Laundering (APML) and the Office for Cooperation with Civil Society, CSOs organized the first dialogue between the Administration and civil society, took part in the awareness raising and training g about the risks of abuse of non-profits with regard to terrorist financing, and contributed to the development of Guidelines for Risk Assessment in this area. A significant part of the recommendations made by CSOs have been taken into account in the process of developing the second Action Plan. In this way, CSOs have made a significant contribution to overcoming problems and further regulation in this area, which ultimately resulted in the removal of Serbia from the gray list of countries.

[1] In FATF terminology: nonprofit organizations (NPOs)

The List

On July 13, 2020, the Administration for the Prevention of Money Laundering sent an official request to all commercial banks in Serbia to provide the information and documentation concerning the accounts and financial transactions undertaken by 57 CSOs, media and individuals[2]. The request concerned all relevant information for the period beginning with January 1, 2019 and ending with the date of receipt of the request, and included the demands for information about the turnover on all local and foreign currency accounts, as well as the identity of the payer and recipient for each transaction, as well as if they have a safety box in the bank. The public was only made aware of the APML's actions two weeks later, on July 27, in the form of unofficial information leaked to broadcaster Newsmax Adria, the authenticity of which was first confirmed at the meeting of APML director and Newsmax Adria and later the APML has repeatedly tried to dispute.

The List consists of:

- Media associations and support organisations and investigative journalists' portals
- Philanthropic organizations that support local community engagement and citizens' donations for public causes (e.g. collection of the assistance to the journalist after his house was put on fire)
- the CSOs working on human rights protection and providing support to local activists and grass-root organisations by the provision of free legal aid, strategic litigations, public advocacy
- CSOs and artistic groups dealing with the past and war crimes
- Accountability watchdogs and expert organisations on foreign policy and security
- Business publishing media and movie production house

As a legal basis for these demands, the request referenced the **provisions of Article 73 of the Law on the Prevention of Money Laundering and the Financing of Terrorism**, which allows such a request to be made **if there are *grounds for suspicion* (*Serbian osnovi sumnje*) that point to the subject of the probe being involved in money laundering or terrorist financing**.

[2] Belgrade Centre for Security Policy, Belgrade Center for Human Rights, Balkan Investigative Reporting Network, Proaktiv, Business Info Group, Center for the Rule of Law, Centre for civil society development Protekta, Center for Investigative Journalism of Serbia, Center for Research, Transparency and Accountability, European Movement in Serbia, Humanitarian Law Center, Catalyst foundation, Trag foundation, Civic Initiatives, Civic position, Helsinki Committee for Human Rights, Youth Initiative for Human Rights, Lawyers' Committee for Human Rights, Crime and Corruption Reporting Network, Libek, National Coalition for Decentralisation, Non-Aligned Films, Novi Sad School of Journalism, Independent Journalists'Association of Serbia, CANVAS, Bureau for Social Research, Youth Center CK13.

The acting director of the APML, Željko Radovanović, initially claimed that the list visible on a copy of the request that was leaked to the media was not accurate, claiming that some persons and entities mentioned in public are not in fact subject to the probe, as well as that the probe also encompassed other organizations not featured on the list. He also tried to explain that the request to banks was not made as part of an investigation, but rather **that it represented a regular activity in the process of an analysis and risk assessment of the non-profit sector, on the basis of which it was going to be further assessed whether there are grounds for an investigation to be conducted**. This explanation **did not adequately answer the question of whether or not the probe fulfilled the criteria of the existence of grounds for suspicion of involvement in terrorist financing or money laundering**, especially having in mind that the list includes organizations and individuals dealing with investigative journalism, human rights protection, transparency, film production, democracy development, rule of law and philanthropy. These are so called expressive activities, which in international practice have not been found as risky for financing terrorism. Besides the advocacy for democracy and human rights, the organisations have in common that the European Union as the most frequent donor. This raises the question of whether the Administration for the Prevention of Money Laundering suspects that the EU finances organizations that participate in terrorist activities.

The response by civil society

Civil society organizations immediately recognized the significance of the list, and the potential damage that could be caused by it, so the day after the list was published, they publicly petitioned the Government to stop abusing mechanisms for preventing money laundering and terrorist financing. On July 28, a joint statement was issued stating that civil society and the media would not be intimidated to give up the fight for a democratic and free Serbia. This statement was supported by over 270 civil society organizations, media outlets and associations and attracted a great deal of attention from the domestic and international public. This was followed by joint activities in order to inform citizens, colleagues in civil society and international partners about the problems that have arisen, as well as about future steps. In this regard, on August 4, a meeting was organized with representatives of embassies and international organizations, which was attended by more than 40 people. Simultaneously, the smear campaign against the organisations from the List took place in the media that is financed by Government.

The organizations and individuals that were subject to the probe sent the requests for Freedom of Access to Information (FoI) and personal data protection s to the relevant institutions, namely to the Administration for the Prevention of Money Laundering and the commercial banks, **asking for clarification regarding the criteria according to which the investigation was initiated and conducted**. In their responses to the data protection requests, the banks referred to the fact that, according to the Law on the Prevention of Money Laundering and the Financing of Terrorism, they are prohibited from disclosing whether they received such a request from the APML, as well as the content of the request. Additionally, in their response to the FoI request, the APML stated that the requested information was declared confidential by law, and that they therefore did not have the legal authority to make it available to the public.In solidarity with the organisations on the List, the four Working Groups within the National Convention on the EU organized on October 15, 2020 a public online event to launch a constructive dialogue on this issue and invited the APML director to take part in it. The online event was

attended by more than 100 interested representatives of CSOs, media, embassies and international organizations. At the event, Acting Director of the APML, Željko Radovanović, presented that the **investigation is part of a strategic risk assessment that will later be used as an input for National Risk Assessment, stating that the request was issued with the aim of "analyzing the civil sector in terms of its size, structure and risk elements."** Asked why the **APML used the provision of the Law on Prevention of Money Laundering (Article 73) which is specifically based on the existence of a specific suspicion that the subject of investigation is involved in activities related to money laundering or terrorist financing, Mr. Radovanović simply replied that there is no such suspicion for the organisations on the List, but that they did not have other mechanism to collect the information about the donations.**" Speaking at the panel, Mr. Radovanović publicly promised to participate in a meeting with the representatives of CSOs and banks, where he would explain the motives behind the investigation and confirm that the listed entities are not suspected of money laundering, terrorist financing or any other illegal activities. He also promised that the results of the analysis will be publicly available, and that the deadline for the completion of the analysis is the end of October. To this day, no such meeting has been held nor have the results of the analysis been made available to the public.

The individuals and organisations from the List had sent the information to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rappourteur on the situation of human rights defenders.

The reactions by relevant international authorities

Significant attention was given to this case in Serbia's 2020 Progress Report, published by the European Commission on October 6, in which the APML's probe is mentioned in connection to the political criteria for the accession, the Chapter 24 – Justice, Freedom and Security, as well as the Chapter 4 – Free Movement of Capital. In the Report, the Commission warned that it was necessary to establish a legal basis for investigation and to determine whether the actions of the Administration in this case are in accordance with Financial Action Task Force (FATF) recommendations.

On November 11, 2020, a statement was issued by the United Nations Special Rapporteurs alleging that the State of Serbia had abused its anti-money laundering and anti-terrorist financing mechanism to intimidate and restrict the work of civil society and human rights defenders and stifle criticism of the authorities. The statement also underlines that measures adopted by individual States in the fight against money laundering and terrorist financing must be in accordance with international law, especially human rights law, and that such a wide and arbitrary use of the Law on the Prevention of Money Laundering and the Financing of Terrorism, targeting CSOs, media and individuals, is not in line with Serbia's obligations in that regard, as it threatens the rights to freedom of expression and association of civil society. The United Nations Special Rapporteurs also sent the requests for further information on this case to the Serbian Government, Financial Action Task Force (FATF) and MONEYVAL.

The Serbian Government also issued an official statement to the UN Special Rapporteurs regarding the APML's conduct, **stating that the only motive for the request and probe was to help the APML to**

better understand the risk aspects of the current system before beginning work on a new risk assessment strategy. More specifically, they had two objectives to identify two groups of organisations. The first one are the organisations whose activities may raise suspicion on money laundry or terrorist financing and that should be further scrutinized by the working group coordinating different inspections (tax inspection, administrative inspection etc.). The second goal was to identify civil society organisations that do not raise suspicion on illegal operation and that could be considered potential partners in implementing the activities envisaged in the national Action Plan for countering money laundry and financing of terrorism, such as in the national risk assessment activities. At the public event on 15 October 2020, acting director of APML did not provide the response on why the organisations were not invited to take part in the assessment and voluntary provide information but treated as suspects without grounds. The last explanation is contrary to the good practice in implementation of FATF recommendation No. 8 (dealing with non-profits organisations), which calls for outreach to the nonprofit sector in the preparation of risk assessments.

In the response its statement to the UN Special Rapporteurs, FATF found that States cannot conduct probes unless there are grounds for suspicion that the subject being investigated is involved in money laundering or terrorist financing, which was not present with regard to any of the subjects placed on the list. The FATF response indicates that the APML's actions could be considered contrary to the standards set out in FATF Recommendation 29, which refers to the competences of financial intelligence units such as the APML. It states that the **powers given to financial intelligence bodies in the fight against money laundering and terrorist financing do not include seeking non-selective requests for information from commercial banks for the purposes of conducting strategic analyses.**

MONEYVAL, in its published response to the UN special procedures, announced that this issue will be discussed at the upcoming plenary session in April 2021. It is also stated that, depending on the outcome of the debate, **it may be decided to subject this issue to further monitoring by requiring the Serbian authorities to take concrete measures to address shortcomings (if identified) or to refer the matter to other competent Council of Europe bodies for further monitoring, independently or in cooperation with MONEYVAL.**

After the publication of Serbian government, FATF and MONEYVAL response to the UN, the civil society organizations and media featured on the List published a statement asking that the Administration for the Prevention of Money Laundering and Terrorist Financing to issue a response to the FATF's findings as soon as possible, as well as take concrete steps to repair the damage caused to organizations and individuals who are inappropriately targeted. Specifically, the affected CSOs and media demanded that the APML publish the key findings of their so-called strategic analysis, which confirm that organisations and individuals from the list conduct their business in accordance with the law, and to respond to the invitation of the civil society to jointly notify the commercial banks in Serbia of these findings, as the acting director of this institution publicly promised in October, and has so far failed to do. In the statement, it was also concluded that the FATF's response as the most competent international body in this field clearly establishes a process that can be applied in all other cases of potential abuse of anti-

money laundering and terrorism financing mechanisms in order to put pressure on civil society and the media in other countries.