THE REVIEW OF EXAMINATION OF

THE PROPOSAL IN CONNECTION WITH

DRAFT ACTION PLAN FOR CHAPTER 23

Belgrade, December 13, 2014

Amended Action Plan draft for Chapter 23 – a handful of good and a dozen of bad news

The Ministry of Justice published a second draft of the Action Plan for EU negotiations on Chapter 23, a recapitulation of the costs of its implementation, and the report of the received proposals of civil society organizations on the first draft of Action Plan. By doing so, the Ministry made an important step forward in comparison to its previous practice (when the action plan for the implementation of anti-corruption strategy was drafted in 2013, neither thereceived proposals nor the reasons fortheir refusal/ acceptance were published).

However, the impression is much worse when we look at the results of examination of the proposal and objections. To begin with, the reluctance to acknowledge a mistakeis reflected in the claim that "Due to technical problems while submitting documents,a part of the draft containing the proposed activity was not visible on the website of the Ministry of Justice for a short period of time, which was immediately rectified." In reality, the website of the Ministry presented a version that did not contain half of the activities in the field of fight against corruption that took place in theperiod of public debate to which civil society organizations were invited (from August to October 10, 2014), and the full version was presented only on October 13.

The mistakes from the first Action Plan were corrected in accordance with our comments in all cases where the activities that stipulate amendment of some laws did not originally identify National Assembly as the agent, but only the relevant ministries, as in some cases related to formulations that are not in compliance with regulations, technical omissions or spelling (e.g. the term "anti-corruption" was kept).

On the other hand, none of the suggestions related to the need to quantify indications that the Action Plan produced results were accepted, with a reference that "this wasnot in accordance with the methodology of the Action Plan drafting".For example, success indicator for "strengthening the system of control in public procurement" will reflect in "a number of initiated and completed offense proceedings for violation of the Public Procurement Law", without any referenceto the number of such procedures and judgments that could indicate that the goal was achieved. Other examples relate to activities such as training and campaigns, where success indicator reflects in the fact that these activities were implemented, regardless of the number of trained persons or achieved campaign goals.

This creates dual danger. If state bodies in Serbia perform well, the absence of quantitative parameters would enable the EC or any other EU Member State to state that the progress is not sufficient (e.g. due to political reasons). However, if state bodies are underperforming, the absence of quantitative parameters would enable the government tostate in 2018 that the activities and the EU recommendations were implemented (even if only one procedure from the example above wasinitiated), and the EC will have no evidenceto claim the opposite. The final outcome in both cases would be the conclusion that Serbia failed to use the opportunities provided by the accession process for the realization of substantial anti-corruption reforms.

Particularly irritating are the explanations in regards torejection of the proposal that refer to the fact that "the EC issued a positive assessment"of the current text. Civil society organizations from Serbia were invited to give assessment of APto the Ministry of Justice of the Republic of Serbia, because this stage refers to the document used by our state authorities to conceptualize their activities. If the EC had addressed proposals of civil society organizations, it might have given a positive assessment as well.

This, for example,resulted in dismissing proposals to specify themannerof changing the powers and obligations of the Agency for fight against corruption in connection with verifications of reports on property, conflict of interest, and other issues, and pointed to the fact that the currently stipulated measures are not sufficient to prevent "leaks of information" about criminal investigations in progress.

Hereby we present one among a dozen of examples of dismissed objections and reasons given for the the dismissal:

The proposal to specify the deadline for Serbian government toexaminethe reports provided by the Council for fight against corruption and mandatory contents of that examination were evaluated as "excessive details". We proposed the Government to consider these recommendations of the Council "... so as to determine whether a recommendation was justified, whether it was possible and useful to accept it,to determine deadlines for the implementation of a recommendation and to inform the Council and the public if a recommendation was published."The recommendation to publish the government examination of Council's reports (at least those that do not compromise ongoing investigation), since the Council reports are publicly available,was also dismissed with the "explanation"that "activities"(which are now stipulated) "should contribute to the interaction between the government and the Council. "

Some of the responses were rude, as in the case of recommendation 1.1.6. Here we indicated that impact indicators should be reformulated to reflect not only individual perceptions of judges, prosecutors and journalists in regards to their knowledge of standards, but also their actual knowledge of these concepts (indicators 1 and 2); that the indicator 4 is unclear, because it does not specify the manner in which the increased or reduced number of requests for offense proceedings will be treated. Although the first impression is that reduced number of such cases may seem desirable, it is very likely that increased number of such procedures would be a positive sign, that is, it would indicate that these standards are applied in practice.We also pointed out that certain activities should be revised accordingly. For example,activities 1.1.6.1 and 1.1.6.3. should examine not only perception, but also actual experiences; activities 1.1.6.7. to 1.1.6.9. are formulated in such a way that it could be understood that the goal is to raise awareness among citizens about the limits in criticizing judicial decisions, so that citizens would not engage in such actions without grounds. This is also important, but it should be emphasized that the aim of the campaign is to reduce citizens' tolerance to situations when politicians criticize court decisions, as this is exactly what the EC recommendations pertain to, sothat suchactions of politicians could be recognized and punishedin elections or, in other words, to support other measures for accountability of such politicians.

We received the following response: "The representatives of Transparency organization are apparently not familiar with the fact that were no such proceedings in the previous period, and that their concerns are understood by experts in this field as initial increase followed by a decrease in the number of proceedings. When it comes to campaigns aimed at citizens, we must conclude that they were properlyunderstood bymembers of the professional public, EC representatives and members of the negotiating group and that there is no need for their amendment."

Ourrecommendationsthat stressed the need to develop new activities, instead of only improvingthe existing ones, were not even considered. Thus, the recommendations in two important areas - access to information and de-politicization of public administration, were dismissed without explanation.

Our following comments and suggestions were **adopted**:

- To set a deadline for amendments to the legal framework for the fight against corruption (fourth quarter 2016);
- To plan actions to strengthen judiciary independence within the possibilities provided by the current Constitution;
- In addition tosole adoption of the Regulation on criteria, standards and procedures for evaluating judicial assistants, the quality of that act should be examined as well (to ensure fair and transparent system of evaluation of judicial assistants). It is interesting to note that the Ministry has not adopted the remarks in that direction in regard to the adoption of two regulations on the criteria for examining qualification, competence and worthiness for the selection (of judges and court presidents, or candidates for public prosecutor's office), indicating that we were "confused by complex names of documents". Thus, the same EC recommendation stipulates that success in adopting two sets of regulationswill be assessed on the basis of bare fact that they were adopted, and in case of one regulation, on the basis of the fact that it ensures exercise of certain goals. In other words, the Ministry representatives had more interestin emphasizing that we did something "wrong", than in improving the AP by stating the purpose of adopting all these regulations!
- New activities are planned for achieving transparency and accountability in the work of High Judicial Council and State Prosecutorial Council, as well as indicators of their achievement –The second draft is said to have planned additional activities designed for achieving transparency and accountability: 1.1.4.1, 1.1.4.2, 1.1.4.3 and 1.1 .4.7. The second draft alsostipulates indicatorsof transparency and accountability: meetings of High Judicial Council are public by rule; decisions of High Judicial Council are explained; reports on the work of the High Judicial Council are published on the Council's website; clear procedures of institutional responsibilities of High Judicial Council and State Prosecutorial Council are established;
- Activities regarding training of judges and prosecutors are further developed;
- Activities regarding the status of the Ombudsman and the ombudsmen on other levels of government are revised;
- One of our recommendations that was adopted indicates that even though public enterprises do not have "administrative boards," (or should not have them any longer after the amendments of the law), it is still necessary to amend the Law on Public Enterprises to provide for the adoption of a bylaw that would establish the criteria for the selection of directors at provincial and local levels.The explanation of the "adoption" states that the term "administrative" was "mistakenly" used for the term "executive". However, the new draft of AP also references "administrative boards" (although the mistake was apparently recorded); and noamendments to the Law on

Public Enterprises were stipulated, only the adoption of criteria by the minister of economy, who is not authorizedto perform such act!

- The remark that State Audit Institution does not perform "control" but "revision" of public enterprises was"partially adopted" (the amended AP does not include this change either).
- The remark regarding the scope of activities in the fight against corruption in education was "adopted"; in fact, only one part of the proposal was adopted, disregardingthe part thatrefers to the need for developing activities aimed at creating a legal basis and specifyinginstitutional responsibilities in terms of subsequent verification of doctoral thesis

The new draft also contains cost estimates for individual activities. We did not address this theme ingreat detail, but at first glance, there seem to be unreasonably estimated expenditures. For example, the analysis of Serbian legal compliance with international standards will cost over $4 million euros, and the work on amending legislation for the purpose of harmonizationwill cost hundred times less; the amendments to the Law on National Assembly thatstipulate the introduction of onesection, whose content is already accurately described in the activity, will cost taxpayers 48,650 euros; monitoring the implementation of the Law on Financing Political Activities and the Law on Protection of Whistleblowers will cost only 213 euros each per year; the costs of establishing internal control in all public companies are estimated at 8,642 euros–which is half as much than the costs for the adoption of the "Code of conduct for government members that regulate the practice of commentingjudicial decisions and procedures",etc.

On the basis of everything listed above, we can conclude the following:

- The second version of the Action Plan needs to be significantlyrevised so the AP can serve as a driving force of significant reform changes related to the work of judiciary and the fight against corruption, instead of just serving the as a formal fulfillment of conditions to be agreed with the EU;
- The accepted concept of failure to specify precise indicators of performance creates a serious concern that the success of implementation in case of many activities can be realistically estimated, due to which the assessment of the effectiveness for these parts of AP will be based on arbitrary estimates of the Government, the EC or EU Member States;
- Collecting proposals and comments of civil society organizations is underutilized as a chance to improve the quality of the text;
- The second version of the Action Plan retained some of the solutions that are not in accordance with the statutory powers of individual institutions (although substantially smaller number than in the first version), certain activities are not fully understandable and deadlines are either too long or at odds with those from the AP for implementation of anti-corruption strategies;
- In addition, new questions are being raised about the reality of cost estimates for the implementation of activities and certainnewly formed activities.