Transparentnost Srbija
Transparency Serbia

Transparency Serbia

Overview of activities

April 2019

Newsletter number 4/2019

Activities

In the last month, TS responded to several legislative proposals and laws, initiatives for their changes in order to improve the proposed text or eliminate the illogicalities indicated in public. We sent comments on the Draft Law on the Origin of Property, as well as comments on the Draft Law on Property Determination and Special Tax. We also sent a letter to Members of Parliament regarding the Law on Conversion of Housing Loans indexed in swiss francs, while the letter regarding the controversial provision of the Law on Health Care, on gifts to doctors, was delivered to the addresses of several relevant bodies - minors, the Anti-Agency corruption and parliament. About all these initiatives more detailed in the Newsletter.

Representatives of TS visited Prague at the beginning of April, where they established with the representatives of Transparency International of Czech Republic a methodology for research on public enterprises and state-owned enterprises. Based on a unified methodology, more than 30 indicators will measure transparency of 40 companies in both countries, will be ranked, and a legal framework and practice will be compared and recommendations for improvements or for taking good solutions from another country, will be made.

On April 8th, we participated at a workshop titled “Form, structure and content of internet presentations and Facebook page of local governments”, based on analysis and recommendations for the improvement of websites and Facebook profile of seven cities and municipalities that are users of technical support from USAID's Project for responsible authority (GAI). The proposal made by the experts Mirjana Stanković and Petar Stojković is mostly in line with what the TS advocates through the research of the local transparency index (LTI). The new cycle of this research is in progress and we are going to present the results in the upcoming period.

On April 3th, the representative of TS, Dajana Krajinović, attended the event on the occasion of promotion of the Share foundation’s Guide through the Law on Personal Data Protection and GDPR. In May 2018, General Data Protection Act came into force in the EU, which put the personal data under unprecedented protection. Although GDPR often presents itself as a revolution that changes the rules of data protection from the root, it is, however, only the successor to EU Directive 95/46 on the protection of personal data. In Serbia, the law was adopted in November 2018, with a delay of nine months, starting from August 2019. The text of the law actually represents a customized translation of GDPR, as well as the so-called Police Directive, i.e. EU Directive 2016/680, on the processing of personal data by the competent authorities in relation to criminal proceedings and threats to national security.

On April 11 and 12, a meeting of representatives of Transparency International from the countries of the Western Balkans and Turkey was held in Berlin, where key issues for the fight against corruption in some countries were discussed, measures that can be taken at the regional level and opportunities for cooperation with EU bodies for more effective fight against corruption in the countries of the Balkans.

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In the development of local anti-corruption plans, the selection of bodies that will monitor their implementation and support to those bodies we cooperate with six municipalities and cities, through two projects - one with the support of USAID GAI, and the other with the support of the Agency for the Fight against Corruption.

At the beginning of April, a meeting of the directors of the prEU coalition was held, where the key issues related to the monitoring of the EU integration process were discussed, especially regarding the political criteria and chapters 23 and 24. In this connection, there was specially talk about preparations for presentation a new prEU Alarm report, postponement of the publication of a new European Commission report, as well as the process of revision of action plans. It was also talked about the priorities of the coalition for the next three years and cooperation with other non-governmental organizations from Serbia. The alarm report was presented on April 16 and it is detailed in the Newsletter.

The representative of the TS, who runs the EU Convent's working group for the Chapter 5 on Public Procurement, participated on April 15 in the work of the EU Council of Convent, where was discussed about the situation in certain areas and possibilities for cooperation of representatives of non-governmental organizations covering individual areas. It was also discussed about the next sessions of EU Convent's working groups, as well as activities that could be expected in connection with the presentation of the next European Commission report on the situation in the candidate countries.

Representative of Transparency, Nemanja Nenadić, took part in the round table on State Aid Policy in the EU, which was held on April 17th in the the Belgrade Faculty of Economics. The event was opened by representatives of CEVES, who made a research on the development effects of state aid in international practice, as well as an analysis of the effects in the group of selected companies in Serbia. Representatives of the Association of Economists of Serbia, Foreign Investors Council, Center for European Policies, World Bank, SCTM, Faculty of Economics, University of Belgrade, EBRD participated in the discussion, and also representatives of European Movement, Fiscal Council and ScienesPo from Paris. In this discussion, Nenadić reminded the participants of the findings of two Transparency Research on State Aid, from 2015 and 2017, as well as some progress made in the field of transparency of benefits, based on the recommendations from this research that the Ministry of Economy partially accepted.

However, some of the key issues that were controversial since the beginning, remain unresolved. "Firstly, the concept of state aid control is organized in the wrong way. It is not envisaged to control all state aid, but some of the areas are exempted. The control carried out by a special commission is carried out exclusively from the point of view of possible violation of competition, so that the title of the law itself leads to the wrong track. Furthermore, there are no effective mechanisms for ex-ante control, since no information on all acts that could constitute state aid is available to the Commission. The State Aid Control Commission does not have a clear legal status or the necessary independence. Transparency is not ensured at all stages of the procedure, especially with regard to decisions on who will be granted the assistance. There are no criteria regarding the promotion of support to investors by state officials, so this type of benefits is massively used for election campaigns and other forms of political promotion.

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Finally, the key question remains without the answer- is state aid absolutely necessary and useful - whether the same or even better economic effects could be achieved if the allocated money remained with taxpayers. Regarding this basic issue, representatives of the government never gave a reasoned answer. "

Program Director of Transparency, Nemanja Nenadić, participated in a consultative session of the workshop of the national branch of the Global Organization of Parliamentary Anti-Corruption (GOPAC) with civil society organizations. The meeting was held in the National Assembly of the Republic of Serbia on April 22.

The introductory presentations were given by the Chairman of the Executive Committee of GOPAK Branch, Dubravka Filipovski and Secretary of the GOPAK Branch Elvira Kovac. Among other things, they referred to ranking within the Corruption Perceptions Index and the Open Budget Index, National Assembly's obligations regarding the adoption of anti-corruption regulations and a new anti-corruption strategy, as well as the intention to expand access to data contained in the parliamentary budget portal. The meeting was attended by a relatively small number of deputies and ex-deputies (six), of over forty members of this voluntary body.

On the other hand, the meeting was attended by most of the ten invited NGOs. The tone that was mostly heard was highly critical in relation to the current (non) act of Parliament in relation to all three competencies - electoral, legislative and supervisory. Also the very concrete tasks of GOPAK that are not seen as being realized were mentioned, as well as many other situations in which representatives of civil society had an idea of how GOPAK could help to put things in the National Assembly from a dead point.

Nenadić called on GOPAK to influence the relevant committees in order to proceed as soon as possible with the selection of the Commissioner for Information of Public Importance, based on proposals submitted by civil society organizations. Likewise, the Protector of Citizens should be called to submit his deputies as soon as possible. The Assembly should elect a ninth member of the Anti-Corruption Agency Board. Regarding the transparency of the budget, and in connection with the research of the Open Budget Index, conducted in Serbia by TS, he reminded that the main problem is the disregard for the budget calendar. GOPAK should insist that the Government submit budget documents on time, and in the meantime, through the Fiscal Council, it could check whether the Ministry of Finance complied with the obligation to submit the draft Fiscal Strategy by 30 April.

When it comes to the budget, there is no good excuses that consumption data, which are currently available only to a part of deputies, are not available to the entire public. If the small municipality of Sokobanja and others can keep up to date the state of budget expenditures on a daily basis, there is no excuse that the republican assembly and the government cannot do the same, which also received donor support to collect and process this data.

TS also recently explored the use of the budget reserve, as the way the government most often uses to spend the budget differently than parliament approved. A new study of this kind will follow soon, and we suggested GOPAK to hold a public hearing on this subject. We reminded the present representatives

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of the Assembly to the failure to substantially fulfill the recommendations of GREKO, regarding the legislative procedure. A good indicator is the adoption of the Lobbying Law, which passed without debate on any of the hundreds of proposed amendments (mainly on the proposal of our organization). Lobbying is arranged to fulfill GREKO's recommendation that speaks of greater transparency and participativeness of the legislative process.

President and program director TS, professor Vladimir Goati and Nemanja Nenadić, responded to the invitation of the meeting of the director of the Anti-Corruption Agency, Dragan Sikimić, to consider possibilities for cooperation.

Among other things, it was discussed about the adoption and monitoring of local anti-corruption plans, proposals for improving the draft of the Law on Prevention of Corruption, the preparation of the Agency for the implementation of the Law on Lobbying and the need to provide the public with data on lobbying, meeting the recommendations that Serbia received from international organizations (The European Commission, ODIHR, GRECO), the need for the National Assembly to consider annual reports on the work of the Agency and the effects of the implementation of the National Strategy for the Fight against Corruption for the period 2013-2018, as well as the initiative of the TS to edit the campaign in connection with the referendum.

In Kragujevac, on April 19th, TS organized a round table dedicated to representatives of public and other companies owned by the Republic of Serbia, APV and local self-government units, journalists, civil society organizations interested in accessing information of public importance and representatives of the economy. It was discussed about the key issues in the draft amendments to the Law on Free Access to Information of Public Importance and the main problems in the implementation of this law, how companies owned by state, towns and municipalities must provide the publicity of their work and how much they respect those legal obligations and what effects would have the intended elimination of the possibility for citizens to seek information from a part of the state-owned companies, which companies would be exempted and how citizens and the media could influence their rights.

Nemanja Nenadic, program director of Transparency Serbia and Rodoljub Sabic, a lawyer from Belgrade, who was the Commissioner for Information of Public Importance and Personal Data Protection from 2004 to 2018, gave introductory remarks.

After the introductory presentation and discussion at the round table, representatives of TS, Zlata Djordjevic and Nemanja Nenadic held a workshop with representatives of civil society organizations, journalists and other interested parties, explaining how the requests can be made to companies owned by the state or local self-government, what can be the subject of the request, what kind of answers can be expected in practice, and what kind of assistance can be provided in this regard by Transparency Serbia.

Executive Director of Transparency Serbia, Bojana Medenica, signed on April 10 the Three Freedom Platform for the protection of civil society space in Serbia. It is a document that seeks to protect and promote the freedom of association, assembly and information, and it was signed by 20 organizations

from Serbia. The text of the Platform was presented at the International Civil Society Week which was held in Belgrade from 8 to 12 April.

Representative of the TS, Nemanja Nenadić, participated in the panel discussion on the participation of citizens in the fight against corruption, especially in relation to public finances, in Šabac, on April 2 (http://www.sabac.tv/vesti/26122/ucesce-gradjana-u-borbi anti-corruption).

Transparency Serbia was presented at the first anti-corruption class for high school students, which was held on April 4 at the Nikola Tesla Elektro-Traffic Technical School in Kraljevo. Representatives of the Ministry of the Interior, Prosecutor's Office, Court, Anti-Corruption Agency and NGOs - Transparency Serbia and Whistleblower presented to students of the third and fourth grade of high schools their activities, phenomenon of corruption, methods of suppression in an informal atmosphere. Students had the opportunity to get acquainted with different actors and to ask questions to institutions and organizations that participate in this process.

Representatives of TS, Miša Bojović and Dajana Krajinović, attended the Building Momentum and Open Data Ecosystem training on April 9, together with civil and state sector representatives. The training was conducted by Dave Tarant of the Open Data Institute. He presented the work of the Open Data Institute and the efforts to spread awareness about the importance of open data, after which during the whole day workshop he highlighted positive and negative examples from Serbia.

Anti-Corruption Counseling Center (ALAC) of Transparency Serbia opened eight cases in April - five on the basis of the information received at the ts@transparentnost.org.rs and savetovaliste@transparentnost.org.rs mail, two by post and one by the free number 0800 081 081.

In April, 260 news or annexes were published about the activities of our organization, i.e. the news that quoted the views of the TS representatives. We set up a series of initiatives and analyzes, as well as requests to state authorities and their responses to the TS website, among which is the Anti-Corruption Agency's response to the case against Minister Zorana Mihajlovic for violating the Law on the Anti-Corruption Agency 14 months ago.

We are presenting a selection of texts that we published in the previous month:

Under the magnifying glass

Metro

April the 27th 2019

In the flood of agreements and memorandums concluded by representatives of Serbia with representatives of China, special attention was drawn to the announcement of the engagement of Chinese financiers and contractors in the construction of the Belgrade metro. So one job agreed without publicity and competition would be replaced by others, and the first one was not even completed. Namely, representatives of the City of Belgrade and the Republic of Serbia, eight years ago about the same thing, began to conclude agreements with companies and institutions from France.

Truly, in the meantime, a lot has changed. Among other things, the routes of the planned metro are changed just to suit the needs of a current investor ("Belgrade waterfront") and one announced ("Tesla city" Bogoljub Karic in Makis). In addition to the route, it seems that there will be changes in the concept ("classic" or "light" subway).

As TS pointed out, infrastructure projects should not be conducted under the auspices of interstate agreements. The purpose of such agreements is to exclude competition, responsibility, the possibility of reviewing, and often also elementary transparency of the actions of the authorities. From the economic point of view, contracts concluded on the basis of such agreements may at best be as good as contracts concluded by tender. On the other hand, it is very likely that it will be harmful, either in terms of price, embedded technology, and warranty or related costs.

The troubles with these agreements are that they have a greater legal force than domestic laws, and the Constitution does not provide the possibility that they are reconsidered for possible harm.

Concerning the Belgrade metro, situation is interesting - Serbia currently has two agreements on the same thing, with France and China. Interstate agreements only provide the possibility of concluding a binding contract, and do not create an obligation to do so, and hypothetically, Serbia could have such agreements with 200 other countries and none of them would have an advantage over others. Of course, if a general agreement was followed with some more concrete arrangements, as it seems, was the case in relations with France and companies from that country, we may be faced with some claims for damages..

Amendments to the Criminal Code – Corruption Provision Untouched

April the 23rd 2019

One hundred days have passed since the president of the state, the coordinator of the National Security Council and the president of a political party with an absolute majority in the Assembly, speaking in each of these three properties, announced that amendments to the law will be prepared in 20 days to introduce "systemic measures against crime and corruption ". As we explained before, some very important changes in the criminal and criminal procedural legislation were announced in his speech. Some of them sounded revolutionary, such as limiting the duration of the trial.

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However, no measure was announced that could be called anti-corruption.

These announcements from January were also confirmed by the April draft amendments to the Criminal Code, published by the Ministry of Justice. So far no announcement has been made to amend the Code of Criminal Procedure, so that some of the ideas and promises of Vucic's exposure, such as the one whose execution was most dubious at law, about "trials for a year" were not operationalized.

Within the Criminal Code, as announced, changes are being made to introduce lifelong imprisonment for one of the most serious crimes, as well as other measures that can be expected to result in the imposition of more severe penalties.

In addition to the already existing punitive purposes, it proposes the introduction of a new element, "the achievement of fairness and proportionality between the committed act and the gravity of the criminal sanction."

Some of the changes will have an impact on the more severe forms of corruptive offenses and in repetition. Namely, "in accordance with the initiative of the Ministry of Interior", the provisions related to sentencing in the event of a refund are amended. "The fact that someone was previously convicted of a criminal act done with intent is necessarily taken by the court as an aggravating circumstance. In the case of "ordinary repayment", the court cannot impose a sentence below the limit prescribed by law or a lesser type of punishment if the perpetrator of a criminal offense committed with intent has previously been convicted of an intentional offense and if five years have elapsed since the previous conviction or sentence has been served.

In case of multiple refunds (earlier two or more convictions), the court is obliged to impose a sentence above half the range of the prescribed penalty.

Two conditions must be fulfilled - that the offender was convicted for two or more times for a criminal offense committed with an intent on imprisonment of at least one year, and that five years have elapsed since the day of the release from serving the sentence until the new criminal offense has been committed.

There is also a clash of criminal offenses for which suspended sentence can be imposed. This conviction cannot be imposed for crimes for which a sentence of eight years in prison or a more severe punishment is impounded, instead, as it is now provided for a ten year imprisonment sentence. According to the Ministry, this intervention is harmonizing the Criminal Code with the Code of Criminal Procedure, by envisaging that conditional sentence can be pronounced only for criminal offenses for which the Code of Criminal Procedure provides for a summary procedure.

Poorly formulated provision on gratitude gifts for health workers

April 22nd2019

The new Law on Health Care, adopted as one of the acts passed through the "fast lane" of the National Assembly and without adequate debate, in April 2019, brings rules on conflict of interest, some of which are useful and some very problematic.

The public debate was organized on this act, but at the end of 2016 and early 2017. However, there were no such problematic provisions in

the draft law then, so it cannot be said that all interested parties had an opportunity to declare. Also, it is noticeable that some of the changes in this article may have been inspired by the opinion of the Anti-Corruption Agency of December 2017, but these recommendations have been formulated formlessly.

In Article 234, entitled "conflict of interest", corruption is unnecessary defined, using definitions from other laws, and then "conflict of interest" and "private interest" by a similar model, as it does in the case of the provisions of the laws applicable to public officials and officials.

Paragraph 5 sets a prohibition for healthcare workers and associates, members of the public health care institutions, as well as members of their immediate families, to seek or receive money, gift, service or any other benefit. They may not seek this benefit for themselves, members of their immediate family, or natural and legal persons that are justifiably considered to be interconnected.

Gifts may not be sought or received if they "can affect impartiality or professional performance of duties", and if they "can be considered as a prize in connection with the performance of duties and the performance of healthcare activity".

In this section, the norm is almost identical to that applicable to all employees in public services, although it may be justified to ask the need for it, in view of the provisions of the Criminal Code. Namely, criminal law norms already predict sanctions for "officials" who directly or indirectly receive bribes in order to do what they otherwise have to do, or who use the official position to achieve unlawful benefits for themselves or others.

Laws relating to public service employees should regulate situations where there is suspicion of the permission of a gift or the treatment of an unlawful gift when it was not possible to avoid admission and other disputable issues not regulated by criminal law.

The most controversial is paragraph 6 of this article.

It was tried, probably not with a bad intention, but definitely unknowingly, to edit the reception of "gratitude gifts", which are less valuable. The Law on the Anti-Corruption Agency and the Law on Civil Servants also contain provisions relating to "protocol and suitable gifts of small value". Such gifts can be received and retained if the individual value is less than 5% of the average salary, and the total value over one year is lower than the average salary in the Republic.

What is this about?

Public officials may be able to obtain from the representatives of other institutions and other parties suitable gifts (for example, diaries, calendars, pens, books, ornamental items, etc.) which obviously do not have the purpose to influence their impartial treatment, and therefore there is no reason to ban their reception and retention. As the norm does not break into its opposite, and in order not to create the temptation to influence the performance of the gift, the individual and the general maximum are prescribed. It is also stipulated that such a gift cannot be monetary.

However, in the Law on Health Care, the legislator decided to arrange "gifts of gratitude"

instead of occasional gifts, and this created a problem.

There is no doubt that the gifts of grateful patients and members of their families are widespread practice and that this practice should be arranged so that patients do not create a sense of obligation, and in health care workers expectation and temptation to act unequally in future encounters.

The "suitable gifts" that occur with public officials and officers are essentially a different thing from the "expression of gratitude", and could be regarded as an expression of perseverance and petty attention in various, not so frequent occasions.

For example, when it comes to doctors, it could be a situation when they receive a USB stick or a notebook from representative of the company that produces medications at a seminar, and not gifts that it might want to offer to dozens of grateful patients service provided.

In other words, it seems that the legislator had to go in the direction of educating the public in order to reduce the number of situations in which service users will consider giving gratification gifts appropriate, directing grateful patients to help the work of the institution, not the individuals, or that the work of kind medical workers is rewarded on the basis of a satisfaction survey of service users.

In the current norm, fundamentally different gifts are regulated - expressions of patient gratitude and advertising material and samples, which could be donated by representatives of pharmaceutical and similar companies. These gifts must not be in money or securities. Their individual value must not exceed 5% of the average monthly net salary in the Republic.

The total value is limited to the average earnings, but without the period to which it relates, so that part of the norm is unusable (it is probably by mistake that the rule relates to the calendar year). This is a gift whose individual value does not exceed 2.726 dinars, and the total is 54.521 dinars.

Lawmakers also voted that such a gift "is not considered as corruption, conflict of interest, or private interest, in accordance with the law."

This norm is contrary to the provisions of the Criminal Code. Namely, no matter how unlikely it will be in practice, it is not possible to foreclose in advance the possibility that someone will act biased and provide a patient with a service that does not belong to him or gave him priority in the next intervention and because of such a petty gift. The Health Care Act cannot regulate what is and what is not receiving and giving bribes, so this is one more reason to re-examine this insufficiently thought-out norm.

GRECO conclusions regarding new report from Serbia

April 4th 2019

Conclusions adopted by GRECO at the 82nd Plenary Session held on 18-22 March 2019 on Serbia's report and performance attracted public attention again. However, this time too, instead of primarily talking about the essence of things Serbia should do in the fight against corruption, it's about general estimates. Thus, Ministry of Justice in this report points out that "Serbia is no longer on the list of globally unsatisfactory countries when it comes to the fight against corruption", and that "Republic of Serbia, out of the total of 13 addressed recommendations, partially fulfilled ten

recommendations, while three recommendations have not yet been fulfilled. "

As stated above, the report sounds really positive. However, the essence of the matter is that Serbia has received recommendations from GRECO in 2014, that the deadline for their completion would be the end of 2016, and that more than two years later, none of the 13 recommendations was fully implemented.

GRECO Report really praises the adoption of the Law on Lobbying, as the Ministry points out, but these praises are not fully justified. Namely, this law regulated only some forms of lobbying, and did not ensure that information on who and for whatever reason contacted deputies, are available to the public.

Also, Ministry points out that by passing the Law on Prevention of Corruption, two more recommendations will be fulfilled. This conclusion is certainly premature, having in mind that GRECO explicitly states that they did not have an insight into the current draft and that the previous version should be amended. Finally, most of the recommendations, as the Ministry correctly states, refers to the adoption of an amendment to the Constitution in the field of judiciary.

Expecting that the adoption of the current constitutional amendments will provide fulfillment of GRECO recommendations, is however, unfounded. Namely, GRECO clearly indicates that these constitutional amendments are not in accordance with the recommendations of that body, nor with their own plans of the Government of Serbia. In this regard, it is particularly controversial that the National Assembly will elect (not only formally confirm) half of the members of the judicial councils.

Initiatives and analyzes

Letter to the members of the Parliament–Draft of the Law on Conversion of Housing Loans indexed in Swiss francs

April 28th 2019

Transparency Serbia sent a letter to all parliamentary groups on the debate on the proposal of Law on Conversion of Housing Loans indexed in Swiss francs:

Dear members of the Parliament,

on the agenda of today's session of the National Assembly, as the first point, is included the proposal of Law on conversion of housing loans indexed into Swiss francs, submitted by the Government of the Republic of Serbia.

In yesterday's press release, Transparency Serbia warned that the government's decision to adopt "lex specialis in connection with Swiss franc loans, so that it is found in the parliamentary procedure after an urgent procedure," is directly contrary to the provisions of the Law on State administration and GRECO recommendations.

Negotiations conducted by the Ministry of Finance with associations of beneficiaries of these loans and banks cannot be considered as a valid substitute for a public debate. The absence of a public debate cannot be justified by the fact that, according to Minister Mali, the legal text represents a "compromise solution between several stakeholders" - associations, banks and state.

Namely, in addition to the legitimate interests of the debtors who are in trouble due to the increase in the value of the franc and the banks that gave them loans, "lex specialis" will certainly affect the interests of other citizens, by allocating around 100 million euros from the budget, the impact on the banks' credit policy, prices on the real estate market and in many other ways. Citizens, however, are deprived of the possibility to influence the provisions of the law with their proposals.

The rules on public debate from the Law on State Administration and the Rules of Procedure of the Government, which should oblige the Ministry of Finance, require organizing a public debate in the preparation of new laws. Such discussions must be organized without exception, when the law "substantially changes the legal regime in one area", as well as when "issues that are of particular interest to the public" are regulated. It is obvious that the public debate on the draft of this law was mandatory under both criteria, and that it had to be done before the text was brought before the Government.

This is not the only case of non-compliance with the rules on public debates, but it is definitely one of the most drastic, given the degree of public interest in the subject matter regulated by the law, the financial implications and severely constrained possibilities for the content of the law and the possible

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consequences of its applications are considered at least in the National Assembly. Therefore, we have chosen to address to all parliamentary groups in this way. Otherwise, more detailed information on the legal framework for public debates in the Republic of Serbia and the findings of our organization on the implementation of this legal framework in 2018 can be downloaded from our web site.

In the concrete case, the bill submitted by the Government to the National Assembly does not contain a general overview of whether or not consultations were made with regard to the drafting of the legal text. However, there are some obviously inaccurate or unproven claims in the explanation. Thus, in the framework of the "analysis of the effects of regulations", on the question "to whom and how most likely will influence the solutions in the law", it is said that "the solutions will first of all have a positive impact on the users defined by this law", while the issue of influence on other faces. As part of the assessment of the amount of funds needed for the implementation of the law, it is stated that "the overall effect of this law on the budget of the Republic of Serbia amounts to 11.686.680.000,00 dinars." Bearing this in mind, it is obvious that for the same amount to damage the realization of some other public interests financed from the budget, and in that sense, the "analysis of the effects of the law" is obviously incomplete. In addition, taking into consideration the possibility that the provisions of this law are interpreted as placing citizens in an unequal position (for example, those who have previously converted their loans), that is, placing banks in an unequal position (depending on how much they approve the loan with a currency clause in CHF), as well as the fact that many legal disputes are underway in connection with these agreements, the explanation of the draft law, as far as the consequences of its application are concerned, is at least incomplete.

Consequences of the deviation of the rules on public debates on the international reputation of Serbia in anti-corruption organizations are nothing less relevant. Namely, the Group of countries for the fight against corruption (GRECO), established by the Council of Europe in 2015, obliged Serbia to "develop rules on public debates and improve their implementation in practice". Republic of Serbia did not fulfill this recommendation even after almost four years. On the contrary, in a March report from the GRECO Plenary Session, it is noted that "no safeguards were introduced to limit the use of an emergency procedure". The submission of this law proposal to the Assembly without previously conducted public debate and the request to discuss the problem older than a decade in an urgent procedure, is an indication that Serbia will not meet GREKO recommendations even in the third term - by the end of 2019.

Having all this in mind, we invite you to return this draft law to the proposer (Government of the Republic of Serbia) to ask that a public debate is held before it is again referred to the deputies for consideration.

P.S. The law was adopted on April 25th.

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TS comments on the Draft of the Law on the Origin of Property

April 1st 2019

Transparency Serbia submitted to the Ministry of Justice the comments on the Draft of the Law on Determination of the origin of the Property and special tax.

In addition to a number of concrete proposals and suggestions, TS pointed out that **the introduction of any extraordinary mechanism into the legal system is bad**. Accordingly, all that is not good enough in relation to the existing system of cross-checks, as already exist in the Law on Tax Procedure and Tax Administration, should be solved precisely within the framework of that law, and not through a separate law, unit and procedures.

From a standpoint of protecting society from corruption and combating its adverse consequences, some positive effects are possible, but they will be indirect, and will depend on the currently unknown degree of probability that one of the participants in corruption is covered by controls. Namely, controls will be carried out on the basis of plans, risk assessment which will not be available to the public, and there are no guarantees that will be covered by persons who have exercised public function or otherwise had an influence on decisions on the disposal of public resources or other decisions that can be the target of corruption.

The draft also opens **numerous dilemmas of legal nature**, primarily regarding the constitutionality of the rules on (un) obsolescence and leaves too much space for the essential issues to be regulated by bylaws.

On the other hand, **the explanation does not contain information** which are necessary for citizens of Serbia to understand why legal mechanisms, some of which exist for 17 years, did not bring (bigger) results. If the causes of a normative nature were not the reason for failure, it would not be particularly reasonable to believe that some new standards would solve problems.

TS pointed out in particular that although this law was explicitly announced as anti-corruption for years, **it does not contain norms that would specifically refer** to persons for whom they might first think that they are involved in corruption - **public officials** and other persons engaged on jobs in the public sector.

Namely, provisions can equally apply to any citizen of Serbia. On the other hand, judging by the first draft of the revised Action Plan for Chapter 23 of the EU Integration, in recent times, Serbia will not introduce a criminal offense of "Illegal enrichment" based on Article 20 of the UN Convention against Corruption, which would apply to public officials and officers holding possession of unexplained origin, which was planned in the strategic acts of 2013.

Having this in mind, the draft should be corrected in order to gain elements to contribute to the fight against corruption (ex. obligation to include public officials, former public officials, civil servants who

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have performed certain tasks, etc.) into the control plan, linking control on the basis of this Law with those that are carried out on the basis of the Law on the Anti-Corruption Agency, as well as the deadlines that existed for the reporting of assets and revenues of public officials (since 2004), and the like.

As a problematic solution, TS also emphasized that the previous control procedure was conducted on the basis of the "annual guidelines adopted by the Director of the Tax Administration on the basis of a risk analysis", where the "Annual Guidelines **are not publicly available**."

The clause on the security of control elements is poor. Namely, if these data are not available to the public, only the doubts that are are otherwise present will be intensified, and for which the reason was given by the representatives of the authorities, that some of their more prominent political opponents will be tested.

Regarding the elimination of doubts about selectivity, the argument from the reasoning of this draft is incredible: "The proposed legal solutions apply to all citizens, which excludes any possible selectivity in their application." This claim could be reasonable only if the possibility of checking all taxpayers would exist, and this is obviously not the case.

TS also pointed to the huge difference between the tax rate envisaged by the Law on Tax Procedure and Tax Administration and the current draft. ZPPPA predicted (10% and 15%), without acknowledgment of any standardized costs, and the tax rate for the "special tax" is 75%. Such a **high tax rate has all the characteristics of the punishment** and therefore it is difficult to defend its survival in the law from the point of view of the existence of tax and the unity of the legal system. On the other hand, if the excuse for a "criminal tax" is that the owner has violated the law, then it would only be meaningful to take away all his illegally acquired property (100%), and not to leave him one-fourth of the illicit income.

The full text of the letter, with all TS proposals and comments, can be downloaded from our site: http://transparentnost.org.rs/images/dokumenti_uz_vesti/Nacrt_Zakona_o_utvrdjivanju_porekla_imovine_i_posebnom_porezu_-_komentari_TS.pdf

Press issues

Support, not attack, the work of independent media

April 28th 2019

National Convent on the European Union (NKEU), Working Group on Negotiating Chapter 35 and Inter-religious Sub-Group on Freedom of Expression and Media Freedom express concern over the statement of President of the Republic of Serbia, Aleksandar Vucic , during a visit to Beijing, in which the independent media from Kosovo and Metohija are attacked and labeled in the worst way that report in serbian language.

In his statement, President claims, among other things, that "foreigners" created a "network of agents" of the media in Kosovo and Metohija in order to "destroy the reputation of the Serb List" and "run a campaign to criminalize the north of Kosovo and Serbs in Kosovo". These arbitrary assessments negatively affect the work of independent media and impair their safety in the complex circumstances in which they otherwise act. We expect that President sends messages of encouragement and support to independent media, especially those working in areas where civil rights and security are threatened on a daily basis.

On this occasion, we also remind the President of the statement given during the Internal Dialogue with representatives of the NKEU Working Group for Chapter 35 that "he never divided Serbs to good and bad" and that "since 2012, he did not call anyone domestic traitors or foreign mercenaries." We expect thart President of the Republic of Serbia acts in accordance with his statements given at that session.

NKEU also expresses its concern about the attacks on other independent journalists and media in Serbia, as well as the cancellation of the space for organizing the "Freedom of expression on the trail of European values" tribune, which should be held in Nis, organized by the Institute for European Affairs.

In the end, we remind that Serbia recorded a 14-point drop in the list of media freedom of the Reporter without Borders, which is a clear illustration of the deteriorated state of media freedom and freedom of speech, as well as the overall image of our country in Europe and the world.

Conferences

Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24

April 16th2019

Deadlines for fulfilling commitments from action plans for Chapters 23 and 24 on the rule of law are postponed and existing regulations are not implemented, critical voices in Serbia are dulled and ignored by independent supervisory institutions, while NGOs are proclaimed traitors and formed by "state" NGOs, are some of the assessments from the reports from the Coalition PrEU report.

The latest "prEUgovor Alarm: Serbia's Progress Report in Chapters 23 and 24" refers to the October 2018-March 2019 period and contains an assessment of the political criteria for the EU accession process, as well as fulfillment of criteria in selected areas of Chapters 23 and 24 (the judiciary and basic rights, ie justice, freedom and security).

The report, presented on April 16, showed that alarming tendencies were noted in the areas monitored and, in some cases, alarming tendencies.

As told by Zlatko Minic from Transparency Serbia, the commitments are fulfilled only formally and "there is no visible progress in the fight against high-level corruption". As estimated, the government continued to misuse public resources during the election period, while the executive and the ruling majority continued to deprive the Assembly of its legitimate functions. It is also worrying that the increasing number of laws are passed in urgent cases, in most cases without a public debate.

The government continued the practice of abuse of public resources during the election period, while the executive and the ruling majority continued to deprive Parliament of its legitimate functions. Another worrying fact is the increasing number of laws that are passed by urgent procedure and in most cases without any public debate. These practices have led to an alarming consequence - namely, the opposition has left the Parliament.

Besides the above, the authorities keep undermining the work of independent control institutions by systematically ignoring their recommendations. Once again, we have an atmosphere in which non-governmental organizations are declared enemies and traitors; they are left out of all the dialogues and are not welcome in the resolution of social problems. At the same time, the government is creating its own NGOs (GONGOs).

The fight against corruption is at a very low level, threatening to become a mere simulation that is activated only periodically so that the authorities can easily score some cheap political points. Furthermore, there is a real danger that the very same mechanism (Law on Investigation of Property Origin) could be used against the opposition. Also, there are enormous problems with the potential consequences of the proposed constitutional amendments related to the judiciary, as well as a series of laws that are about to enter parliamentary procedure.

Generally speaking, the commitments made in the existing Action Plans for Chapters 23 and 24 are fulfilled inconsistently, while the deadlines are postponed on a regular basis. Well-known problems with the non-implementation of the existing acts and laws are still present. Having in mind the fact that two crucial EU issues to be addressed are the Rule of Law and the fight against corruption, lack of concrete results in these two areas is still a major alarming obstacle in Serbia's process of integration.

The majority of the key findings expressed in this report coincide with the lowered ratings that were given to Serbia by various international actors (Freedom House, for instance), thus confirming the alarming developments in the areas covered by Chapters 23 and 24.

Coalition prEUgovor consists of seven civil society organizations from Serbia with expertise in various policies under chapters 23 and 24 of the European Union accession negotiations: ASTRA - Anti trafficking Action, Autonomus Women's Center, Belgrade Centre for Security Policy, Center for Applied European Studies, Center for Investigative Reporting in Serbia, Group 484 and Transparency Serbia.

The conference on which the Alarm is presented is part of the project "Public Policy Monitoring: the prEU is following the reforms in chapters 23 and 24" financed by the EU. The organization was supported by the Embassy of the Kingdom of the Netherlands, within the MATRA program.

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