



Transparency Serbia

Overview of activities

February 2019

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Activities

In February we presented the results of research on the publicity of the work of the organs of central and local government. More details in the chapter “Conferences”.

On the occasion of the first draft of the revised Action Plan for Chapter 23, on the 20th of February, the National working group held a session of the Working Group on the EU's National Conventions on Chapter 23 in National Assembly. The process of revision of the Action Plan for Chapter 23 was presented by the Head of the Negotiating Team for Negotiating the Accession of the Republic of Serbia to the EU, Ms. Tanja Miščević, while the review of measures and activities from the draft of the revised Action Plan for the area of justice was given by Ms. Majda Kriškapa, Deputy Director of the Judicial Academy, followed by a debate about the part related to the judiciary, with an emphasis on activities related to changes of Constitution of Republic of Serbia.

Part of the meeting was dedicated to the chapter – fight against corruption in the Action Plan with the moderator Bojana Medenica, executive director of Transparency Serbia. In the first part, she referred to key comments and recommendations that Transparency Serbia initiated to the Ministry of Justice within the public debate on the first draft of the revised Action Plan for Chapter 23. More details in the chapter Initiatives and analysis. The whole document is available (on Serbian) on the Transparency Serbia website: http://transparentnost.org.rs/images/dokumenti_uz_vesti/Komentari_na_Prvi_nacrt_revidiranog_Akcionog_plana_za_Poglavlje_23_-_februar_2019.pdf

The representative of Transparency Serbia Nemanja Nenadić participated on February the 28th in public debate on a good governance policy and a European Bank for Reconstruction and Development which was Belgrade. The public debate was regarding the changes in politics of EBRD related to 3 thematic groups. The first part was about the politics on Protection of the environment and social politics, the second was about the public information policy, and the third one was about the project appeal mechanism. The gathering attended: representatives of financial institutions, of non-governmental organizations, of the trade unions, and experts in certain areas from Serbia, other countries from the region and from EBRD headquarters.

The representative of Transparency Serbia, Nemanja Nenadić, attended on February the 25th, in Čačak, on one of the five gatherings which were held throughout Serbia, for the promotion of the draft: Media strategic and discussion of solutions that the draft recommends. Nemanja Nenadić in his presentation pointed to several key questions about which this Strategy talks, less or more effective.

Access to information of public importance, whereby is very important to ensure that there is no reduction of the rights of citizens and the media to access data owned by state-owned companies. Furthermore, it is necessary for that right to be guaranteed and when there is a word about companies in minor ownership of the state, but have huge public assets, for example, on the ground of some of the forms of public-private partnership. Nenadić pointed to negative trends in December draft of the law



changes and on the intention to exclude the National Bank of Serbia from the competence of the Commissioner for information. He also pointed out that the strategy does not cover any of the questions present in the practice - that the government representatives are not equally available (for the statements, additional explanations, interviews, debate shows) to all the media, which makes the work significantly harder and makes the accomplishing the mission difficult for some of them.

When we talk about project co-financing of the programme, Nenadić reminded us on the amendments that Transparency Serbia suggested at the time when the current laws are adopted, and advocates for that the process of allocation of funds should be more transparent and more confidential, so that all projects should be rated according to pre-set criteria, similar to public procurement. Also, it is necessary to provide more effective legal protection to competition participants, but also bigger role of publicity in the process of planning priorities which will be financed from the budget of local government and country. When there is a word of this way of financing, it is visible that very little number of local governments finances projects from the field of anti-corruption and the control over the spending of public funds, even though it is undoubtedly a question that interests citizens in every field.

Regarding public procurements, Nenadić pointed to the solutions in the new draft for some problems that existed until now, because from now there will not be allowed excluding certain public procurements from electronic media. However, problems are big in the field of public-private partnerships, where the transparency is on a significantly lower level, even when we talk about legal solutions. That is one reason more for not opening the possibility of creating new media according to the model of public-private partnerships, even though one part of publicity stands for that idea. Public-private partnerships are not a magical solution. In the practice, they would function similarly as the media owned by the state because the state would replace their losses. The difference is that in case of accidental profit, it would probably finish in the pocket of a private partner. The possibility of supervision and control with these arrangements are very limited, and experiences until now are bad.

On February the 4th and the 5th we participated in the conference “Civil society for responsible government”. Within the second panel “State of democracy in Serbia”, Tara Tepavac in front of the CRTA, Danilo Ćurčić – programme coordinator A11 Initiative for economic and social rights, Vida PetrovićŠkrero – deputy president of Management board Center for Juridical research, Nemanja Nenadić – programme director of Transparency Serbia and Rade Đurić in front of foundation SlavkoČuruvija, represented biggest irregularities which influence the development and strengthening the democratic system in Serbia.





Transparency Serbia in the frame of the project which we implement with organization CRTA, CEPRIS, Foundation SlavkoČuruvija, A11 initiative for economic and social rights, did the analysis of state in the field of free access of information in Serbia. In that occasion, researcher of Transparency Serbia MišaBojović, participated in a 3-day visit to Brisel, with the goal to present the state in the field of rule of law and fight against corruption to the representatives of EU institutions. Eight meetings were held with representatives of European Parliament service, European commission, EMPs, DG NEAR, DG JUST, EEAS, including David McAlister reporter of European Parliament for Serbia.

In a workshop about the open budget, in the organization of International Budget Partnership in Washington DC, on 7th and 8th of February, Zlata Đorđević, represented the TS research about the consummation of the funds from the current budget reserve, and which confirmed all previously identified weaknesses unforeseen funds system and revealed some new. This research was significant because, in Serbia, use of resources from the budget reserve throughout the year has an important influence on the budget, and, on the other hand, has no effective control over the expenditures, nor the Government informs the Parliament about its decisions.

We continued our work on drafting or revising the local anti-corruption plans, more precisely on creating bodies for tracking their implementation or support of existing bodies, in six towns and municipalities within two projects: Novi Pazar, Vranje, Šabac, Vrnjačka Banja, Raška and Sjenica.

EBRD together with National Bank of Serbia represented new survey on February the 20th about new transition report, which is drafted by experts of these institutions, engaged also on many programmes in Serbia. Within the presentation main economist of EBRD, MrSergejGurijev, met with programme director of Transparency Serbia, Nemanja Nenadić. Nenadić used this opportunity to point to some of the questions from the EBRD survey, which were also subject of interest of Transparency Serbia, within some previous and also current projects.

Especially, in this regard, stands out theunassailable depolitization of the management of public companies, and besides the clear legal provisions, the manner of implementing and the insufficient publicity within public-private partnerships, the risks that stand out from the practice of direct contracting on the basis of interstate agreements.

Also, we talked about upcoming modifications of the Law on public procurement, Law on access to information of public importance, and other relevant question for understanding legal and economic reforms in the country.

Zlata Đorđević held on February the 22nd in Šabac the lecture with the theme “What is the future of right to free access to information of public importance” within the project of Belgrade open school for strengthening the capacity of programme partners for free access to information of public importance in the process of Serbia’s accession to the European Union. Representatives of the civil sector, journalistic associations and media were present.



Anti-corruption legal advisory (ALAC) of Transparency Serbia based on answering the free phone number 0800 081 081, and based on received information on email addresses ts@transparentnost.org.rs and savetovaliste@transparentnost.org.rs, by post, based on direct contact or based on information found in press clipping or on the internet, opened 8 cases. The cases are in the domain: healthcare (2 cases), construction permits, banking operations, social security rights, public procurements, local self-government, and employment process.

In one of the cases, the client contacted us because of the doubts in the regularity of determining the manner of solidarity assistance for employees in a Public company for underground charcoal exploitation Resavica. Assistance is paid in goods, through Đulacompany, not in cash. Request for access to information of public importance has been submitted to the company, in which we are requesting delivery of Collective agreement JP PEU Resavica, which regulates the assignment of solidarity assistance and which would help us see if the director has authorization for deciding about the way of payment of solidarity assistance.

In February, 257 news or articles were published about the activities of our organization, i.e. the news in which representatives of the TS were quoted. We have posted on our website a series of initiatives and analyzes, as well as FOI requests to authorities.

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



Under the magnifying glass

Unusual post on the Agency's website

February the 21st 2019.

On the website of Agency for fight against corruption, on February the 21st we spotted an unusual post, the declamation was already in the title "The president of the Republic of Serbia did not break the Law on Anticorruption Agency". From one point of view, we can praise the fact that Agency reacted quickly on the claims that are made or doubts that the high official broke the rules about which the Agency is or should be competent. However, that act was very unusual. Declamations and doubts about breaking the Law on Anticorruption Agency by the high officials in media and public are made on an everyday basis, but about those the Agency does not comment publically.

At the first glance, the explanation could be, that the Agency's comment was "regarding report", which was made. However, even if that is correct, the post is still unusual, because there is no practice that the Agency in other cases makes this kind of a statement on their website, when the possible violations are reported by officials or political parties. For example – Transparency Serbia has pointed to possible violations of the article 29 of the Law on Anticorruption Agency several times, inter alia in correlation with acts by the officials of the Belgrade and members of the Government, about which we got answers and opinion of the Agency, but they are not published on the Agency's website.



The reader of the post, which was published by a lot of media, has no information about who submitted the report about the possible violation of law by the president, nor, more importantly, on which violations that report point out. Thanks to exhaustive press clipping, we managed to find that was the report made by the group of organizations under the common name „Civil front“, and the news about the filled report was submitted by several media.

They asked the Agency to determine if article 29 of the Law, is violated and which quotes "an official may perform a function in a political party, or political entity and to participate in its activities if that does not violate the preformation of the public function and if that is not by the law forbidden". With that article, it is foreseen that the official cannot use the public resources and gatherings on which he participates, and meetings that he goes to as an official, for the promotion of political parties, or that official may be excluded from this provision only if it uses public resources to protect personal safety."



The fact is that information about the campaign is broadcasted on the internet portal www.vucic.rs, on which there are contents about party activities of President of Serbia, which by our conviction represents the violation of the article 29, paragraph 2 of Law on Anticorruption Agency”, was the declamation of organization Civil Front in the request addressed to the Agency. They added that they are convinced that President Vučić has violated the Law when he went to media with comments about leaders of political parties and movements, at the beginning of the campaign.

In the end, they suggested the Agency for fight against the corruption to initiate the procedure in accordance with its authority, and in accordance with the law. The request was signed by: Bureau for Social Research, Initiative “Ne davimo Beograd”, the association of free tenants movement from Niš, as well as citizens’ association “Naš grad naša stvar” from Zrenjanin, “Lokalni front Va” from Valjevo, “Lokalnaalternativa” from Vrbas, “Lokalnaalternativa”, from Bečej and “Samojako” from Mladenovac.

What did the Agency announce on that occasion? First of all, “that in the concrete situation the President is performing the Constitutional authorization, and that there is no word about activities regarding promotion of political parties by using the public resources”. Representation of the Republic of Serbia in the country and abroad is one of the constitutional authorities of President of Serbia. Neither the Constitution of the Republic of Serbia, nor Law of the President of the Republic specifies in details what the representation of country includes.

On this basis, the Agency is stating that in the campaign “BudućnostSrbije” Law of Agency for fight against corruption is not violated.

Furthermore, that “internet portal www.vucic.rs, on which the submitter of request points out, is not the public resource, therefore publishing information about the campaign “BudućnostSrbije” does not represent the violation of Law of Agency.

And third, in correlation with the statement from the request that the President of the Republic “commented leaders of political parties and movements”, the Agency points out that the official, elected directly by the citizens, is excluded from the obligation to provide unambiguously to interlocutors and the public if they are representing the attitude of the body in which they perform public function or the attitude of political party, or political subject.

From all of the above, it could be concluded that the Agency received the request on possible violation the Law, after which the Agency conducted the procedure, and in the procedure established the facts and on that basis concluded that there was no violation of regulations from the agency’s jurisdiction. However, it is not visible, on which facts the Agency stated its conclusion. So, according to first point, from constitution regulation, that the President represents the country in the country and abroad, Agency practically concludes that Aleksandar Vučić within the campaign “Budućnost Srbije”, performed as the President that he is and in that occasion in front of the citizens of Vranje, Pančevo, Šabac and many other cities “represented the Republic of Serbia”.



That is after all possible, but it would probably be necessary, in order to establish the facts, that the Agency came into possession of information through about the purpose of the campaign.

Regarding the second point, that the internet portal www.vucic.rs is undoubtedly not the public resource, it should be determined whose resource is it then. Even though it is not a public resource, it matters from the application of the law point of view, is it a personal website of Aleksandar Vučić, the portal in the possession of his political party or the third party property.

Namely, as publishing the party's content on state website would be controversial from one reason, so would be publishing the content related to the performance the state function on party's or personal website could be controversial on another basis.

Finally, the Agency is completely right in the part that Aleksandar Vučić is not in obligation to undoubtedly presents the interlocutors and the public whether it is the position of the state body or the position of its party because it is a citizen-elected official.

That is one of the most serious lacks of article 29 of Law on Anti-corruption Agency.

That provision is suitable for deputies, and local deputies, who have been elected on the function from party lists and who continue to perform their function representing the interests of their political parties, but not for the president of the Republic or for President of National Assembly, who after election to these functions represent unity of the country, that is, the institution they lead.

Regarding that, we remind that TS in many occasions suggested how to preformulate this regulation, last time this summer, during the discussion about the new law which will regulate this field.



When comparing the news about possible violations of the Law and the Agency's issue, it can be noticed that there are some questions which are not directly answered, or examined. That is the question of using the public resource and using the gatherings on which the official participates, and meetings he has as the president for promotion of political parties. In other words, judging the published request, the Agency was supposed to examine and establish other facts other than those mentioned in the announcement.

Primarily, is the gathering on which Vučić participated at the same time used for parties purposes.

So, the exception from the article 29.5 of the Law, which relates to elected officials do not have to undoubtedly point out to interlocutors in what capacity they speak (and in that way to remove the dilemma), that does not mean that they can use meetings where they participate as state officials (when there is no dilemma with the listener) for party purposes.



The procedure for selecting a new commissioner has not begun

February the 15th 2019

The official answer that Transparency Serbia received from the National Assembly confirms that the information according to which the relevant parliamentary committee started the procedure for the elections of the new Commissioner for information of public importance, by inviting parliamentary groups to nominate candidates, are not true. That means that even 55 days after the expiration of the mandate of the previous commissioner, the Committee has not started the procedure for electing a new commissioner, not even through consultations with deputy groups.

We remind you that more than 60 non-governmental organizations requested from the Committee to open the candidature and election procedure of a new Commissioner in order to enable the candidate with the best qualifications to be selected.

Namely, in National Assembly answer from February the 14th 2019, claims that: "The Culture and Information Committee did not initiate the procedure for selecting a new Commissioner for Informations of public importance and protection of Personal Data, and even did not bring the decision about initiating the election procedure."

With this, the news published on January the 28th 2019 that "The Culture and Information Committee initiated the call for all deputy groups to deliver their recommendations" is declined.

That is when the leader of deputy group SNS (Srpskanaprednastranka) Aleksandar Martinović declared in National Assembly that his party has several serious candidates for new Commissioner for Informations of public importance and protection of Personal Data, and that their proposal will be completely opposit of previous Commissioner RodoljubŠabić.

Introducing a legal obligation, not promises

February the 1st 2019

Transparency Sebia considers that publishing the contract about negotiating of state bodies not in any case should be an act of a goodwill of public officials, nor the deadlines for publishing should count on their media announcements and statements, but according to the legal obligations.

Novo obećanje iz Vlade: U narednih mesec dana objavićemo Ugovor o koncesiji beogradskog aerodroma

Objavljeno: 30.01.2019

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Predstavnici vlasti ponovo su pomerili rok koji su dali za objavljivanje ugovora o koncesiji aerodroma Nikola Tesla koji je država potpisala sa francuskom kompanijom Vansi pre deset meseci. Prvi rok je bio septembar 2018, zatim kraj godine, a sada je poručeno da će ugovor biti objavljen „u narednih mesec dana“. Novi datum posle premijerke Ane Brnabić, a zatim i ministra finansija Siniše Malog sada je dao pomoćnik ministra za vazdušni saobraćaj Zoran Ilić.



Aerodrom "Nikola Tesla" Beograd. Foto: Srđan Ilić



“Insajder” reminded that the governmental representatives changed the deadline that they gave for publishing the contract about Airport Nikola Tesla concession, that state signed with the French company. The first deadline was September 2018, and then the end of the year, and now it is announced that the contract will be published “in next few months”. New date, after Prime Minister Ana Brnabić, and right after the Minister of Finances Siniša Mali, now the deadline is given by Minister for Air Traffic Zoran Ilić.

In the meantime “Krik” broadcasts the details from one of the annexes of that contract, which is not published.

It’s a document “Minimal technical requests”, where is requested that the significant part of the money go to purchasing the land for expanding the airport, for the price of 100 euros per square meter.

Transparency Serbia considers that publishing the contract about negotiating of state bodies not in any case should be the subject of the goodwill of state official, nor the deadlines should be calculated regarding their media announcements. The problem of non-transparency of the Government’s management considering this concession, are not individual, but are systematic.

As Transparency Serbia already established in corruption risk analysis within the Law on public-private partnership and concessions, the current rules about data publicity do not secure the contract publicity and other relevant documents regarding this field. The rules of data publicity and so-called “register of public contracts” are regulated by regulation, which makes them easily changeable.

Regarding the current rulebook, publishing only individual elements of the contract, is foreseen, but not also the contract with the annexes.

Such a rule is absurd and it can be seen on this case of Airport concession: the list of contract annexes was published with a note which one of them are confidential, but even annexes without that note are not published.

The rule should be placed opposite – all of the documents should be public, except the information which are justifiably kept for safety reasons or which are business secret. Of course, neither determining business secrets can not be infinite.

As a secret should not be marked either one information from the contract, or accompanying document in which the obligation of state authorities are prescribed or explained. Change of the Law on public-private partnership and concessions, for the fight against the corruption, were planned for 2017, but until now there is not even a draft.

Highway Belgrade-Zrenjanin still through the land of PKB or around, and 25 km longer?

February the 10th 2019

Not even a week after resor Minister ZoranaMihajlović denied that the road from Belgrade towards Zrenjanin will expand by purchasing the land of PKBA which is sold to Al Dahra company, and announced that the experts will decide on the road, the confirmation that the road will go through that land comes “from the highest place” of political decision – from the President.



Journalists of the "Insajder" investigated the sale of PKB land in the Banat part of Belgrade and spotted a possible failure of the sale - for the announced and necessary expansion of the Zrenjanin road, the state would have to buy the newly sold plots! (<https://goo.gl/t6FSKv>) The resort minister denied this, arguing that since the extension this time has been dropped, the decision was made to build a highway from Belgrade to Zrenjanin, which certainly will not go over the sold plots, but at that point, she did not have any information where the road will go through. Such a decision, if adopted, is certainly a surprise, and is contrary to previous announcements and plans. (<https://goo.gl/Kg5Ssb>)

The truth is, the news about highway construction, firstly was published in November 2018, around one month after the PKB land was sold to Al Dahra. (<https://goo.gl/bhJy3M>) From the news it can easily be concluded that there is no word about independent decision of Serbian Government, about what has a priority of financing from the state budget, but is about the necessity of Chinese investor that his production plants near Zrenjanin connect with the highway network. There is nothing controversial in that will, but it would be suitable that the will realizes through giving the opportunity for the interested investor to build a highway through concession, but not the state to finance the highway construction from the budget or credits, for which there is no previous calculation.

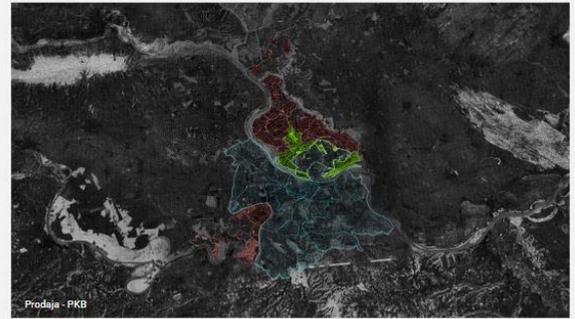
However, for the highway, one thing is for sure, it will depart from Borča (municipality on the current road Beograd-Zrenjanin), and it should go nearby Opovo (a municipality which is also

PKB i Al Dahra: Šta tvrde premijerka i ministri, a šta su činjenice (VIDEO)

Objavljeno: 6.02.2019

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Država Srbija je, prema istraživanju Insajdera, prodajom imovine PKB-a prodala i parcele koje su obuhvaćene planom izgradnje puta Beograd-Zrenjanin. To znači da će država, prema postojećem planu, morati da otkupi parcele od Al Dahre, ali po tržišnim cenama. Za sve ovo postoji zvanična dokumentacija koja sve to dokazuje. Činjenice koje pokazuju da je u pitanju očigledan propust državnih institucija, međutim, nisu dovoljne predstavnicima vlasti da grešku priznaju, već uporno na pitanja odgovaraju zamenom teza.



on the current Zrenjanin road). Namely president Vučić, today in his pre-election political-promotional campaign promised to the citizens of Opovo that the highway will connect them with Belgrade, Zrenjanin and Novi Sad. (<https://goo.gl/oibDpk>)

When we look at the map of PKB land, which is sold to Al Dahra, we can see the highway which would go from Opovo, towards Zrenjanin, can be built without PKB sold land, only if it is around 25 km longer, and in that case it would go through Pančevo.

In any case, government representatives who give information on the spoon about investments worth several hundreds millions of euros, now own the answer about why did they by selling the state-owned land alongside the existing Zrenjaninski put significantly hampered and/or raised one the possibilities for development of the transport infrastructure and who is responsible for that mistake.



Initiatives and analyzes

Comments on the draft of the revised Action plan for chapter 23

February the 20th 2019

Regarding the publishing, The first revised Action plan for chapter 23 Transparency Serbia delivered to the Ministry of Justice comments on the draft of the revised Action plan for chapter 23 and proposal for amendments to certain parts.

Key comments and recommendations:

- Government, more precisely the Ministry of Justice should make the **analysis of why the planned obligations are not realized** and which are the reasons and problems that would lead to that. In the meantime, moving the deadlines without this analysis will not bring the results not even in the next period.
- The Ministry of Justice **should publish numerous analysis** on which they would refer while promoting specific solutions within the draft of Action plan
- **Changes of Law on Anticorruption Agency** should be planned so that the flaws can be removed, and problems identified in practice, not only because of one GRECO recommendation (eg measures that would prevent selecting the persons directly related with political subjects, for Agency director and members of the Committee, establishing higher level of authority of the Agency for work it performs, determining the competences of the Agency regarding opinions about risks from corruption in regulations, etc.)
- **Changes of the Law on public procurement** should be planned so that, in addition to further harmonization with EU rules, better supervision in this area is ensured. The description of the situation in this area should be supplemented with information on the problems in sanctioning.
- **Law on free access of information of public importance** – in the recommendation there is a word about improving the rules for free access to information, but also to ensure the implementation of rules on access of information in practice, while through the activities in Action plan only measures about changing the law frame are considered. Therefore, through the revision of the Action plan it is necessary to foresee activities which will ensure the application of current (and future) rules on access to information.

The analysis of the law frame which was conducted in the previous period does not represent a comprehensive analysis of the implementation of the Law on free access to information of public importance, but only some of its aspects. Besides that, the analysis does not refer on access of certain types of information which are specifically listed in the recommendation and Transition Scale, so that this activity can not be deleted from the Action plan, nor this analysis can serve as a legal ground for the Law changing.



- There is a positive change in the Action plan and that is the purpose of adopting a new National Strategy for fight against corruption and sectoral strategies for certain areas (health, taxes, education). However, a shorter deadline for its adoption should be envisaged, and a timetable for the start of the work on the Strategy should be determined. It should also define what its main goals are. In the current context, it should first of all deal with issues that are not covered by the Action plan for chapter 23, but also to support the implementation of the Action plan measures for Chapter 23.
- In the current context, it should first of all deal with issues that are not covered by the Action plan for Chapter 23, but also to support the implementation of the Action plan measures for the Chapter 23.
- **Vocabulary – “track records”**. Still, we do not have an adequate translation of this expression. On many places, in the occasion of defining the assignments in the revised Action plan, the term is very misinterpretative “Serbia should have established initial tracking” (acting on the requests for access of information, tracking the corruption, suppression irregularities in public procurements, in financing the parties, conflict of interests etc.). We find that is a wrong translation of the request that Serbia achieves the results in those fields.

The whole document is available (in Serbian) on the Transparency Serbia website:

http://transparentnost.org.rs/images/dokumenti_uz_vesti/Komentari_na_Prvi_nacrt_revidiranog_Akcionog_plana_za_Poglavlje_23_-_februar_2019.pdf

Press issues

Deterioration of the unfulfilled anti-corruption plan

February the 11th 2019

Transparency Serbia – points out that the draft of the revised Action plan for chapter 23 of negotiations Serbia and EU, which currently is on the public debate, does not bring answers not even for one problem because of which the realization of this plan was unsuccessful until now.

Action plan for Chapter 23, wrote 4 years ago, and adopted in April 2016, represents the main plan document of Serbia for improvement of the judicial system, human rights and fight against corruption. Transparency Serbia criticized this document at the time of writing and made the suggestions for improvement. We warned that the purpose of the activity (that is, what needs to be achieved with the law changes or conducting the training) is not sufficiently precise, that some important dilemmas-questions are not covered by the plan and there is no system of responsibilities for fulfilling the obligations. The special problem is that the performance indicators are positioned in precisely (for



example “improving the application of the law”, without the measurable parameters), which leaves room for manipulations in interpretation if Serbia has met the standards for joining the EU.

Regarding those lacks, we hesitated if the plan will formally be adopted, and that it will not lead to crucial improvements in fight against corruption. The outcome is, for now, even worse, because not even the current norms are fixed, nor their implementation. So that, today in Serbia the Law on Anti-corruption agency, financing the parties, public procurements, free access of information, public-private partnerships, are not improved, even though the deadlines are met years ago.

Instead of carrying out a thorough revision of the Action Plan and designing activities that could improve the real state of affairs during EU integration of Serbia, the Ministry of Justice presented a public hearing to the text that reduces certain unfulfilled obligations of state authorities.

It is an inappropriately short deadline for making the comments, on the request of civil society, it is extended for two weeks (until February the 22nd 2019). However, for a public debate on plans for the future could be argued, the Government **should publish reports on the implementation** of the current Action Plan, which is not done even in the second half of 2018, and to announce the **reasons for failure to fulfill its obligations**. More importantly, is that the Ministry of Justice announce the **numerous analysis on which it refers** to when advocates the problematic solutions because it is impossible to have a debate about the fulfillment of attitude from unpublished documents.

Among other things, the revised Action plan, brings worse solutions from the existing text regarding to following: 1) The composition of the Anti-corruption Council changes, involving the representatives of the ministries of the Government of Republic of Serbia, which for the effect should have reduction of actual independence, rather than resolving the actual problem – and the problem is that the Government is not considering the reports of advisors constantly; 2) Changes of the Law on public procurements are now being planned only for the purpose of harmonization with EU standards, not for the better supervision; 3) Changes of the Law on Anti-corruption Agency are planned only for the fulfillment of the GRECO recommendation, not for the elimination of all observed deficiencies; 4) The final decision about introducing criminal offense “illegal enrichment” is moving for an unspecified future; on the other hand, Action Plan does not refer to the announcements of adoption of the Law on Property Testing. As good improvements in the Action plan, the intention of introducing new anti-corruption strategies and sector strategies for individual areas (healthcare, education, customs service) can be highlighted.

On many places, on the occasion of defining the tasks, the terms “Serbia should initiate own records” is often used (requests for access to information, prosecution of corruption, suppression of irregularities in public procurements, financing of the parties, conflict of interests etc.). We consider that is a wrong translation of Brisel request for Serbia to achieve the results in those fields (“track record”). In general, even besides some positive steps, the draft of the revised Action plan should suffer some serious changes so it could serve as a frame for a successful fight against corruption until accession to the EU.



Conferences

Dissatisfactory publicity of the work of the authorities

February the 28th 2019

Transparency Serbia on February the 28th 2019 has represented on the Conference for media the results of research within the project “Local and central government – transparency, anticorruption potential and corruption risks.”

The state regarding publicity of work of the authorities is satisfying neither on normative level nor in practice. Because of that, the role that the transparency of the process should have regarding decision making, in the fight against corruption is not realized. The importance of transparency is correctly recognized in national strategic documents and in plans related to European integration.

However, the strategic acts adopted in 2013 (anticorruption strategies), and in 2016 (Action plan for the Chapter 23), are in a great level not realized and besides the fact that the deadlines for realization have expired in 2018. Due to this, besides everything, neither norms nor practice of application of the rules for free access of information from public importance, public procurements and public-private partnership. On the other hand, there are plans and legal solutions which could have positive impact, such as extended obligations of leading consultations about strategic documents, the obligation of leading the debate about capital part of the budget on local level, introducing the obligation that the data about the work of the authorities publish in open format and self-commitment of individual authorities through Partnership for open government.

No significant progress has been noticed regarding the publicity of National Assembly, so that the certain information which is foreseen for publishing, still not available (for example suggested amendments and opinions of the Government on those amendments). When it comes to the Government, the creation of a new web presentation with improved technical solutions is not used to enlarge also the scope of information that the Government publishes about its work.

The suggestions of regulations that the Government still considers, the conclusions that the Government decides about many important topics, explanations of decisions about appointing and dismissing functionaries, are still unavailable. The flow of the Government session still considers “top secret of high confidentiality”, even though in nearby Bulgaria and Croatia in a similar situation the notes and/or audio recordings are published.

The Government also continued the practice of ignoring the requests for access of information, and not in one case did provide execution of the Commissioner for Information solution when it was not possible to enforce with other legal resources.

Based on the Law on Electronic Administration and accompanying regulations, during 2018, finally, the obligation for the authorities is established, authorities on all levels create their own web presentations and to publish the data in the open form, which will enable the search and further use (regulations



adopted since January the 5th 2019). However, the opportunity has been missed that with this occasion to regulate in details also the mandatory elements of those web presentations, so still, the act that most closely regulates this field is the Regulation on the creation and publishing the work informer. The obligation of publishing and regular updating of the informer (on monthly level) authorities do not fully respect.

Changes of the Law on free access of information, which are currently in the preparation (draft) should increase the capacity of available data, through inclusion the certain subjects that currently do not have the obligation to comply by the requests (for example, public notaries, private companies performing utility activities).

However, the draft contains the intention to completely disable access to data on the disposal of public high-value assets, as well as other data owned by majority state-owned companies. By contrast, there is a strong need to expand the right to access to information also to the companies that are in minor state ownership, but they are entrusted with the assets of high value or the country guaranteed for their credits. The typical example are companies that operate through various forms of public-private partnerships. Unlike the public procurements and other regulated procedures, in public-private partnerships and concessions, even the publicity of contracts is not provided.

Additional problem represents numerous situations when the state negotiates within the interstate agreements, because those arrangements bring direct contracting, without competition, and the citizens are left without an argued explanation about if their resources could be used on the more effective way.

In the field of public finances still, it is not provided the publishment of current data about public expenditures, even though for something like that there are adequate technical solutions and possibilities (for example Slovenian app Erar, examples for several local self-government which publish those data)

Certain partial solutions could have useful effects, which relates to individual public expenditures (for example, creation of the new public procurement portal after expected changes of the law, publishing the data about funds received by media on the basis of the solution from new media strategy, publishing individual data about stimulus for co-financing the investment projects, opening the data about the budget on the POA (partnership for open administration) basis, measures undertaken within the local anti-corruption plans), but still there are no indications that all the data about public expenditures could be consolidated and displayed soon.

When we talk about the decision-making process, the opportunity is missed that the Law on lobing secure full publicity of data about influences towards bodies of government, and their representatives and officials. Therefore, just in the part of these data, the record will be the must, and legally it is not foreseen the obligation of their publication on the web-presentation of the authorities.



Regarding data on prosecutions, the data are still kept in different ways in individual bodies (police, prosecutors, courts), and are available exclusively within the annual reports, and even then they are not available in the search form.

At last from the application of the principle of transparency point of view, as a problem in practice are more often situations when the governmental bodies do not make the documents even though that is their legal responsibility, they claim that they do not have the documents which they normally should have, they refuse to give reasonable explanations on public questions about the reasons for decisions they make and about the nature of management or they avoid responsibility to act by the decisions of Commissioner for information unjustly searching from the Republic public prosecutor to initiate administrative dispute, because it would allegedly violate the public interest by giving the data.

More details:

- [Publicity of the work of the authorities–Informers, budget, concourses for co-financing of media projects \(In Serbian\)](#)
- [Public debates – changes of regulations and practice of implementation during 2018 \(In Serbian\)](#)

