Transparentnost Srbija
Transparency Serbia

Transparency Serbia
Overview of activities
March 2019

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Activities

In the previous month, we submitted our remarks and suggestions for improvement of the draft of two regulations which were on the public debate– Law on Prevention of Corruption and Law on Investigation of Property Origin and special tax. More detailed in the newsletter, the Initiatives and Analysis section, and on the TS website.

Representatives of Transparency Serbia, Bojana Medenica and Nemanja Nenadić participated on March the 15th in the public debate regarding the third draft of the new Law on Prevention of Corruption. A small number of NGOs actively participated in the debate, and in the end and after the debate there were comments in public regarding the selection of the organizations which were invited to take part in the event. Ministry of justice also published their opinion on the event.

The fact that there were almost no interested parties to discuss the concrete questions from this Law with representatives of the Ministry of Law was used by Nemanja Nenadić as an opportunity to point out to many contraversial points in the draft. He reminded of many articles of the Law which were commented by Transparency Serbia in August 2018, and that in the meantime the report from the public debate were not published, nor the draft was improved.

When we talk about key issues in the current draft, in correlation with previous versions, TS supported the intention of introducing the greater expertise of the members of the Agency's Board. However, we argued that it would not be correct to exclude authorized proposers from the process of their choice. Namely, the key role of the Board is to protect directors who manage this body, from the immediate political influence. From this function of the Board nothing would be left if the members of the Board would be elected (among the persons with a minimum of expertise) by the majority of deputies. On the contrary, by the change of the list of authorized applicants the greater independence of the Agency should be guaranteed. Increasing the independence is, after all, one of the key GRECO recommendations, on which the Ministry of justice usually points out when explaining the reasons for law changing. Besides that, Nenadić points out to numerous points where this law is not completely harmonized with the rest of the legal system in Serbia or where the intentions of the proposers on some of the norms are not clear enough. That is specially case regarding the norms about publicity of the work, where it can be interpreted as there will be the absolute exception from access to information from public importance, which would be unacceptable, as well regarding treatment of alerters. Finally, the solutions proposed by this law are inconsistent with the solutions for which the Ministry advocates in the other legal proposal, in the Law on Investigation of Property Origin which is also currently in the public discussion. It is not logical, that for the control of the property and public official incomes weaker mechanisms is foreseen than prescribed in the general tax law, which would apply hypothetically for any citizen who owns the property of the certain value.

In the public debate, the representative of the Ministry of Justice, State Secretary Radomir Ilić, pointed out to the opinion that there is not space in this law for provisions about separating public and

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political function, and that one provision can not solve all the controversial questions regarding the conduct of the election campaign. If the Ministry decides that instead of one provision in the Law on Prevetion of Corruption dealing with "officials campaign", they propose a special Law which would regulate those questions, Nenadić kindly offered the support of Transparency Serbia.

The representatives of TS, Zlata Đorđević and Nemanja Nenadić, participated on 29th of March in the meeting with representatives of five other NGOs, within the project "Civil society for responsible Government", where common activities for the promotion of good governance and the rule of law are planned. For the beginning of the May publishing the final version of the publication on free access to the information is planned, which is the product of TS work, and which will be supplemented based on the conversation on the conference from the 5th of February.

Representatives of TS participated in planning the methodology for coordinating and monitoring the implementation of the local anticorruption plans, and which was developed within the project Government Accountability Initiative. It is expected that this methodology can be adopted by the Agency for fight against corruption. Also, it is expected for this methodology to be recommended for use to all local self-governments. Transparency Serbia plans to also formulate concrete suggestions of the internal acts which should be adopted and implemented by the bodies in charge of monitoring the implementation of LAP in cities and municipalities we cooperate with.

Transparency Serbia participated in the meeting of representatives of several NGOs which are worried because of narrowing the space for functioning of NGOs, on 26th of March. Specially there was a word about public debates in the process of preparation of the regulations, about the situation when they are not held, when the representatives of the government do not consider the given proposals or when they make an illusion of public debate and the consultative process in general, through disproportionate giving in importance those associations that are pro acts of the government. Also, there was a word about participation of NGOs on forthcoming international conference CIVICUS in Belgrade.

Nemanja Nenadić, programme director of TS, met with Mrs. Erin Sawyer, director of the Office for programmes in Europe and Middle Asia within the Buro for question of the international trade of narcotics and criminal prosecution, within the Ministry of foreign affairs of USA ,on 21stof March. At the meeting they discussed many different questions relevant for the fight against corruption in Serbia and the role of civil society in that process.

The representative of TS, Miša Bojović, participated in the third international day of whistleblowers, held in Tirana on 21st of March. There was a discussion about important topics regarding the protection of whistleblowers, with the participation of the journalists, representatives of the regional and local institutions and NGO from the region. During the event in the name of Coalition for whistleblowers protection, an award for freedom of speech was given to the Albanian journalist who exposed corruption on the high state level.

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Within the international initiative Open Government Partnership – OGP,from the 11th to the 17th of March 2019, the Week for Open Government Partnership was held – Global Action with the goal of promoting open administration, encouraging inclusion and improving the managing through cooperation between governments and citizens.Open Government Partnership initiative was established to support the governments with the goal of improving the transparency, government responsibilities, fight against corruption, empowering the citizens and public participation, as well as using new technologies for improving management and services. Ministry of state government and local self-government, in cooperation with OSCE Mission in Serbia, organized conference Open Government Partnership – openness in the service of trust, as a final event within this week. In this conference, within one of the parallel round tables, Nemanja Nenadić from TS moderated the discussion of representatives of local and central bodies of the Government, as well as NGOs, with the subject: Transparency of the public finances.

We continued our work on drafting and revising local anti-corruption plans, especially establishing bodies for monitoring their implementation and support on already formed bodies, in six cities and municipalities within two projects – Novi Pazar, Vranje, Šabac, Vrnjačka Banja, Raška, Sjenica.

In early March, Transparency International organized two-day workshop in Berlin, as a preparation meeting for conducting the research on integrity of business sector (Business Integrity Country Agenda - BICA). This workshop was held within the preparation for the new round of BICA research which will relate to Romania and Serbia, and which is implemented by TI branches from those two countries. BICA research has already been carried out in several countries, among the others, Italy, Brasil, Kenya and Cambogia. In the workshop many different experiences from other countries have been discussed, the process of data collection, grading by individual categories and developing the recommendations for improving the legal framework and practice. Within this research the key point are indicators regarding the public sector (for example criminalization of corruption, public procurements, anti-money laundering), private sector (measures for increasing of integrity and publicity of the work, as well as protection of whistleblowers), as well as the media and the civil sector which follow the work of private sector. One of the first activities is gathering the Advisory Board of research, in which TS will soon invite the representatives of relevant institutions and organizations.

Anti-corruption legal advisory (ALAC) of Transparency Serbia opened 10 cases, based on reports via free phone line 0800 081 081, and based on information received 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. The most of the cases are in the domain of construction, followed by health sector, education, employment and public procurements. In March, 155 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:

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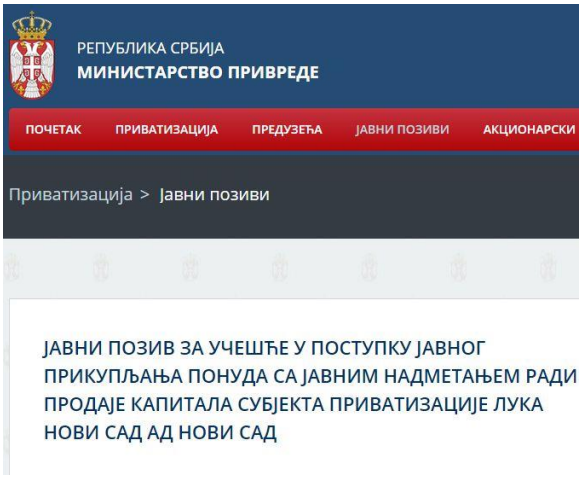
Under the magnifying glass

How much logic and information is there about selling Port Novi Sad

March the 23rd 2019

The news that one financial offer for purchase of the Novi Sad Port was declared successful, indicates that the process of selling this company will be soon completed. However, statements of the State Secretary Dragan Stevanović opened the question on the logic of the state conduct in this case. From his statement the citizens found out that the initial price of around 8 million euros was offered (previously the initial prize was twice as high), and that investments in next 3 years will "probably be higher than 15 million euros" (14,9 million was the minimum according to tender documentation), of which 5 million will go to port infrastructure. He explained that the Port currently has transshipment which is half less than its capacity, and that in the company 150 people work and that the past 4 years were profitable. He added that the next owner of the Novi Sad Portis within the DP World Group, the third largest port operator in the world, and that it would be their first exit to the Danube, which has great importance for Serbia.

On the question why would the state go for privatization of the Port Novi Sad, given that the company is profitable, he points out that if the company has profit does not mean it works properly. "Port is outdated, technologically devastated", Stevanović said, adding that the Port "requires serious investments and only from own funds, that is not accomplishable, no matter the profit."



The bankrupt is the only thing that could happen to Port Novi Sad if there was no this privatization.

Numerous negative comments about this privatization on public resources came from the wrong assumption that the company which brings profit is not eligible for selling. Profitability of the company is not the reason that it sells, but is the factor which should influence the determination of the minimum acceptable selling price. Is this the case here, it's hard to tell. On the website of Ministry of Economy, several documents 10 years old were published, as well as the public call, in which there are no details about year income. There is also the statement that "the fair market price" of the company (which was not offered in the previous call) is higher than 15 million euros. If the fair market prize is that far from the one which is achieved on the marker, then something is not correct with evaluation experts/method of the estimation or with the conditions under which the sale was advertised.

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The statement of the State Secretary inevitably encourages curiosity in the readers. Namely, if the buyer found the calculation to invest 5 million euros in port infrastructure and 10 million euros in accompanying contents, and to pay another 8 million euros to became the owner of the Port Novi Sad, is that investment profitable to the state during it was the owner of the company?

Namely, as the State Secretary of the Ministry of Economy stated, there was the possibility for those capacities to double. The circumstance that the company had no own capital does not mean that it could not take the loan for which the state would guarantee.

Unlike many other loans in which from the start was certain that the guaranteed loan would be charged from the state, here was the realistic possibility to charge the loan from company's income. Of course, the business of the company is a complex matter, so many factors unknown to the public could affect on assessments and decisions of the market participants.

For example, investing in the Port is probably more profitable to some company that normally carries that kind of responsibility, than to the state, due to the knowledge of the market and customer needs, more profitable arrangements for purchasing the equipment, the experience of the workforce, and administration etc. However, the fact remains that the state representatives did not provide a reasonable response to the question about why is this type of sale better that state investment. Otherwise, in one of the previous statements, the same State Secretary stated that the Port "according to the Strategy of Ministry of Construction, requires investment of 4 million euros per year, and for that the state has no funds."

Such an explanation is even more necessary for one additional reason – due to the fact that there is only one offer, which is not far from the initial prize. If no one wanted to offer the prize higher than half of the evaluated price of the Port, that can be the result of the unreasonable high estimated prize, even it can be the indication that the conditions were excessively restrictive.

Indeed, when we look at the conditions, we can see that notanyone with 8 million euros and the possibility to invest 15 million euros more could purchase the Port Novi Sad. The bidder could be only the company that has been performing the port activity continuously in the last 10 years as the major activity, which had the business capital of at least 20 million euros in 2017, and in 3 previous years has the transfer of 1,4 million tons. In this way, potentially interested customers who are not currently doing the transfer of the goods are eliminated, as well as those who have entered the port activity in the last 9 years, also the port companies that have scope of business similar to one that has the bought company, or smaller one. Choosing the customer this way can only have some justification when it comes to possible competition between companies from this industry.

Several months ago, Stevanocić stated that it is expected "that 3 world companies, which were interested even before tender – Dubai Pors, German Renus and American Valona will apply for the call". However, that was not the case, even in a failed tender last October, not even now, and it showed that the approach was not correct.

This sale can also be seen in the context of the announced amendments to the Law on Free

Access to Information of Public Importance. Namely, according to the most controversial solution from the current draft of the amended law, citizens of Serbia would be left with no possibility to seek information from state-owned companies at all.

Who is responsible for abuses in Serbia Railways?

March the 13th 2019

Trials for abuse in public enterprises in Serbia are that rare that even if it comes to a verdict, it opens question whether everything is being investigated and why no investigations are conducted in other similar cases. Public welcomes negatively also those cases in which there is a high level of doubt of corruption that came to the court but are not followed up with convicting verdict.

That, of course, does not necessarily mean that the court made a mistake – the courts judgments above all point to the quality of the evidence and the basis of the allegations presented in the indictment, and the quality of conclusion in the first instance verdict.

The trial of the former director of Serbia Railway and his associates, again on 12th of March came to the first instance verdict, this time acquitting.

According to the trial council "the prosecutor did not offer enough evidence to substantiate its allegations", and the procurement of used locomotives "could be done in Serbia, without intermediaries, which accused denied, referring to the laws at that time, but first of all according to the Law on Financial Leasing, they did not have to call the tender, but they could have done "urgent purchase"".

According to the indictment, the disputed locomotives and wagons, for which the procurement Šarančić was charged, were purchased at a significantly higher price through an intermediarycompany, not directly from the bidder.

The prosecution claim that by the purchase from the second or third hand, the price of the locomotives and trains significantly increased from the price offered by direct bidder, and that the damage to the public company was estimated at various amounts, mostly around 1 million euros.

The case of purchase used locomotives is characteristic, because in it there were a lot of media publicity, even before the criminal proceeding began.

Based on those information, the only conclusion that can be conducted about the existence of two necessary elements for criminal offense of abuse of office – violation of the prescribed procedure and the occurrence of the damage to

a public enterprise.In the criminal procedure should be examined and proved the existence of third – the intention of the managers and officials in the public enterprise. However, if we judge by media reports, now the court claims there was no violation of procedural rules of public procurement.

Such position is in a great contradiction with the data about implementing these procurements which were known by now, and because of that this case should be discussed not only in the context of concrete trial, but also because of the further functioning of the public procurement system in the Republic of Serbia.

Nothing less interesting than the news itself, were the statements of liberated Šarančić and his defense attorney Petronijević. In those statements there is no reflection on issues covered by this specific indictment and the verdict, if we exclude the allegations that "the procedure was directed and carried out in the offices of the former regime". So, the former director Šarančić, when talking about the useful purchase he had, claims that the procurements costed 7 million euros, and that they brought 120 million. Such claim can be completely correct, even if it has nothing to do with the subject of the possible abuse, because the key question is – could the purchase of locomotives cost for example 6, not 7 million euros.

Even more interesting were the claims of Šarčević, that even in 2005, himself based on the internal control findings, wrote to the police and prosecution the letter in which allegedly he described 7 or 8 cases of abuseseveral million euros worth. He also claims that "no one reacted". Among other things, some of those abuses are allegedly related to the leasing locomotives and towing trains. Also, the specific company was mentioned, which was "close to the former regime". Having in mind that "the former regime" is former for several yearsalready, it is hard to believe that political pressures could be done on the police and prosecution. It is also hard to believe even if there were those pressures, that they could be the reason for those abuses not to escalate, unless the members of the former regime changed sides in the meantime.

However, Šarančić, as the submitter of those reports, also the successor companies of the former Serbian Railways, should request information from prosecution about if the investigation is on-going. Also, are criminal charges submitted or rejected and for what reason, should be a part of their interest. In any case, eventual responsibility of Šarančić's predecessor and/or successor in Serbian Railways for some other abuses is not relevant for determining his guilt/innocence, but it can certainly complete the picture of available funds by public companies in Serbia.

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Initiatives and analyzes

The Law on Investigation of Property Origin at the first glance

March the 7th2019

When 6 years ago presidents Vučić gave the assignment to his ministers to create a Law on Investigation of Property Origin, announcing that it should be adopted in few months, no one knew what the law should specifically be about. The question was also what is not good with the current law, so the new one is necessary. The law was not prescribed by the Strategy for the fight against corruption, nor the European Commission mentioned it in its recommendations. But, something had to be figured out, promises, announcements and deadlines were too many, and undoubtedly we talk about the topic which can be well used for winning the voters. Since 2016, the adoption of this law became part of the government's program (expose of Prime Minister), and it was only one of two laws announced as anti-corruption.

Of course, similar announcements and actions were also made at the time of former political setting, so following the promotion several laws became effective, Law on Extraprofit (2001), Law on Seizing the Property Originated from Criminal Offense (2009), as well as the Law on Tax Procedure and Tax Administration (2002). In the meantime professor Čedomir Čupić carried the idea of creatinga law which would specifically relate to "verification of the property's origin".

The targeted distribution of information on the spoon, in order to announce that the government is working on this law, lasted for years. On March the 5th the document on which the argumented debate can be conducted, was published – the draft of the Law on Investigation of Property Origin and Special Tax.

With the draft, a scarce explanation was published, which does not provide enough information about why the proposer considered this materia adequate for regulating through new law, and not only through amendments on existing laws. First of all, here we can mention the Law on Tax Procedure and Tax Administration, within which even in 2002 the possibility of crosschecking of the property and the incomes for determining taxpayers, was prescribed. Furthermore, there are special rules about reporting the property and determinating the accuracy and completeness of those reports, which since 2004 relate to several thousand holders of public functions. Since 2010 the criminal offense in case of giving the incorrect data in the reports is foreseen. Finally, since 2009 Serbia has established a legal mechanism in which is possible to reverse the burden of proof, and to seize the property in case of suspicion that the suspect for committing serious criminal offenses has property without the base in legal incomes. Besides that, all the time in legislation there is a possibility of seizing the property for which is known that is acquired through the commission some criminal offense, commercial offense or offense.

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Having that in mind, the necessary step that should preceded not only for laws to became effective, but also in the initial stage of writing the law, to determinate in which situations there are legal mechanisms which are not good enough, whether is the weakness of the legal provisions or lacking the resources and will to apply them.

The explanation is even more necessary in the field of possible confusions of legal nature. Namely, the draft provides significantly different rules regarding determining tax base, the amount of the tax rate and obsolescence in relation to those that have existed so far. For January the 1st 2007, which is taken as the initial point, no legal arguments were mentioned, but it is mentioned that since then the tax administration has an "unique electronic record of taxpayers and their property". Among other dates that can be defined as a starting point, we can mention January the 1st 2003, when citizens were obligated to submit the records for property worth more than 20 million RSD, or maybe the deadline for determining tax obligations (5 years).

Although this law has been explicitly declared as anti-corruption for years, it should be emphasized that the law does not contain the norms that would specifically refer to persons who might initially be involved in corruption – public officials, and other persons engaged in public sector jobs. Namely, the provisions can equally apply to other citizens of Serbia. On the other hand, judging the first draft of revised Action plan for chapter 23 EU integrations, Serbia will not introduce a criminal offense "illegal enrichment", based on the article 20 of UN Convention against corruption, which would apply to public officials and officialswho own the property of unexplained origin, and which is planned in Strategic acts in 2013.

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