Transparentnost Srbija
Transparency Serbia

Transparency Serbia

Overview of activities

August 2018

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Activities

Programme Director TS Nemanja Nenadić participated in meetings of working group for Media Strategy. On Monday, August 6th 2018 at the invitation of the working group Nenadic presented the views and experiences of our organization in terms of regulations governing public ownership in the media. On this occasion he particularly stressed the need to regulate the issue of availability of public information that is essential for drawing conclusions about the risk of the hidden influence on the media editing. He recalled the arguments that TS had made during the drafting of current media laws, in connection with the fact that such risks remain hidden even when it is fully known who invested 100 dinars or 100 Euros of founding capital in media. In other words, there is a need for public data about loans that have not been given at market conditions, gifts and media financing that predominantly comes from a single source. It is also important to ensure full transparency of data on income from public sources of any kind as well as income derived from political subjects.

In that sense, a good basis may be the solutions contained in the draft law that should have dealt with the questions of the ownership of the property about ten years ago, but that was never adopted. This was due to the fact that public ownership data was previously considered primarily as a precondition for setting a ban on the concentration of media ownership, which is an issue that should be considered completely separately.

In terms of regulating media public ownership one should bear in mind the general regulations pertaining to the ownership of legal entities, primarily the recently adopted Law on the central register of beneficial owners which was adopted in the context of international obligations of Serbia for combating money laundering and terrorist financing.

The meeting also discussed many other issues and Nenadic suggested that this working group should deal with the issue of free access to information of public importance, which was accepted by the members of working group.

The Media Strategy Working Group dealt on issues of project and non-project media financing during the meetings on August 13th and 16th. At the first meeting, which was entirely dedicated to the issue of project media financing, Nenadic recalled the problems that TS observed during the drafting of the current Law on Media and Public Information, as well as the accompanying rules issued by the Ministry of Culture. During the session dedicated to other forms of financing, Nenadic recalled the TS findings and proposals regarding the “vicious circle of media advertising” where important issues were not resolved in any of three possible legal acts –Media Law, the Law on Advertising and the Law on Public Procurement. More details in the section “Initiatives and analyzes”.

On the session of the group for media strategy on August 27th Nenadic spoke on the topic of access to the information. Presentation (in Serbian) can be downloaded from the TS website:

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http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Medijska_strategija_-_pristup_informacijama.pdf

Zlata Djordjevic participated in two discussion forums: on August 15th in Pirot and on August 16th in Prokuplje on the topic of fulfilling the obligations of local self-governments to adopt and implement local anti-corruption plans. Forums were organized by the National Coalition for decentralization Approval of the local anti-corruption plans is measure from Action Plan for Chapter 23, which was supposed to have been done by July 30th 2017. One year after the deadline, only 77 local self-governments in Serbia adopted local anti-corruption plans. However, only ten chose the working bodies which should control the implementation of the plan, which means that this measure is completely fulfilled by only ten of 145 municipalities and cities in Serbia.

Within the project "Support to preparation of Local anti-corruption plan and formation of bodies to monitor the implementation of the LAP in the City of Novi Pazar" Zlatko Minic held meetings with representatives of the City of Novi Pazar and several media and Non-governmental organizations in that city on August 24th. There was some talk about the plan of work on the project, previous activities of TS on collecting data that will be useful for the working group. At the Press Conference TS and City of Novi Pazar on August 31st an invitation was sent to turn individuals and representatives of civil society organization in the working group.

The Advocacy and Legal Advice Center (ALAC) of Transparency Serbia in the recent period had 90 new cases – 45 on the bases of free telephone calls to 0800 081 081 and 45 based on the information received at the e-mails ts@transparentnost.org.rs and savetovaliste@transparentnost.org.rs by mail, based on direct contact or on the basis of information found in press clipping and on the internet. We present one of cases from Center: One citizen called Center and said that he was suffering great pressure because he intended to report corruption related situation in the institution where he was employed. He first made his allegations to his superiors, who suggested to him that what he should not spread further his notions. As he decided to check his notions, he had faced threats of dismissal and even other consequences. Given that this is a sensitive case where it is possible for employee to suffer great consequences, the Center will assume a certain part of the responsibility for checking allegations and data collection as well as undertaking actions if necessary to file complaints against the responsible persons who have committed corrupt actions

In August 230 news or articles were published about the activities of our organization, i.e. the news in which the views of TS representatives were quoted.

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

Under the magnifying glass

Investigate allegations of Ristovski against Vučić

August 25th 2018

Transparency Serbia has asked Higher Public Prosecution and the Prosecutor's Office for Organized Crime information regarding accusations made by actor, director and producer Lazar Ristovski on behalf of Serbian President Aleksandar Vucic.

TS requested information from the prosecutors on whether they have been charged in connection with the allegations in an interview Ristovski gave on August 13th in the Morning programme of TV Prva and what they have taken on such allegations – if they have requested additional information from Ristovski, Vucic and those responsible in the RTS.

Ristovski in mentioned appearance said that thanks to Vucic's support "in conversation" with RTS "it has come that the RTS had to financially support his film.

TS pointed out that from Ristovski's statement, one could conclude that Public media institution RTS's decisions on which films to support is not made solely based on artistic and other criteria, that are important from the perspective of the role of these institutions, but that the decision is affected by others, namely the President of the Republic, in whose jurisdiction these issues are not included.

In that context the statement by Ristovski could be understood as an accusation against the President of the Republic and unnamed managers in the RTS that by overstepping their official authority, by misusing their official position, they obtained a benefit for Ristovski, which would constitute the crime of abuse of official position under Article 359 of the Criminal Code, said TS.

With regard to potential disturbance of the public for these accusations we believe that it would be necessary for the prosecution to inform the public about their findings and measures taken regardless of the procedure for this request.

Lobbying in parliament

August 15th 2018

Law proposal that is sent to deputies will not solve some of the key problems, although it is good that it will finally be passed, and there are also some good rules. Although lively public debate was organized on the draft law, the explanation of the law does not include the consideration of unaccepted proposals nor has a report been published from a public hearing, which is mandatory on the basis of the Rules of Procedure of the Government.

After more than a decade of waiting in relation to the previous plans, the work on that law was activated due to the negative publicity to the GRECO statement that Serbia did not fulfill any of recommendations of the fourth round of evaluation. One of these recommendations is asking Serbia to regulate lobbying legislators.

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Among unresolved problems, which we pointed out earlier, are the following:

1. The law does not affect attempts to influence the adoption of individual decisions, but only general legal acts; although most legislators in the world act in a similar way, there is no doubt that it would be equally important to regulate these issues;

2. Through law regulates the reporting of the Anti-Corruption agency on lobbying, but not the release of these data; there is no reporting obligations related to unofficial lobbying – attempts to influence which are exerted before sending of official letters on lobbying

3. This (or any other law) is not engaged in solving a serious problem – that state authorities remain silent on the reasoned initiative of citizens, organizations and businesses to adopt or modify any regulation or to arbitrarily choose which of these initiatives to consider.

On the other hand, compared to the draft, Law proposal is revised so as resolved the issue of lobbying which is focused on some of the advisers of public officials, because they are covered by the term "working engaged persons". However, it is illogical that it will still be outside of the scope of law lobbying that is directed at those members of working groups that are writing laws and who are not engaged in government work, nor are they paid by labor authorities in the working group, but are working as independent experts.

One of the controversial and illogical solutions in the draft law is that a compulsory training for lobbyists is foreseen, which would be carried out by the Anti-Corruption Agency.

Namely, state authorities can and should supervise the implementation of the law and have control over the fulfillment of set rules.

On the other hand, since lobbying is done for the interests of interested clients, the state has no reason to protect these clients from their own wrong decisions. If the client believes that his interests will be well represented to the authorities by someone who is not trained to lobby, there is no justified reason why the state should prevent him from doing so.

Law proposal explicitly states that public announcement of attitudes and submission of proposals, expert opinions and initiatives related to the adoption of regulations is not considered as lobbying although this is undoubtedly one of the forms of lobbying. This is the usual way of acting not only by individuals who are directly interested in the adoption and content of regulations, but also professional mediators who tend to influence public opinion and decision makers for the needs of their clients. From this it could be concluded that the subject of lobbying to which the rules of this law will apply will be only those situations when the addresses to the state authorities have not been made publicly, but through letters to the state bodies that have not been published, as well as through direct personal addresses to officials and employees.

The law recognizes registered lobbyists and natural and legal persons operating as unregistered lobbyists. The latter can lobbying if they are legal representatives or employees of "lobbying user" or represent the interests of the association or company whose member is user of lobbying.

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It could therefore be concluded that in the future it will be forbidden that a group of citizens or a firm contact the state authorities and officials related to passing law through an intermediary that does not belong to any of these categories.

In practice, state authorities will be able to conclude that it is a matter of lobbying, not self-representation of their own interests, only if the person who is lobbying on irregular way just says something like that. Namely, advocating for the adoption or amendment of regulations must not be accompanied by a claim that this regulation is changed or brought in for the interests of a person, group or company. As a result, the question is to what extent this law will be able to change something in practice.

The solution to all mentioned problems is a reversal of focus – instead of regulating who can lobby, it would be better that the emphasis is on actions of the authorities, officials and civil servants, their duty to announce who addressed them and with which proposals, and also to respond to any substantiated proposal for the improvement of regulations and practices.

Endangering the survival of the media through the imaginary collection of tax arrears

August 11th 2018

As reported by Internet portal Southern News from Nis, the Ministry of Finance has initiated the procedure of forced debt recovery for alleged tax liabilities, which threatens the survival of this media.

The alleged tax liability is based on the interpretation of the Tax Administration that the job of the editor in chief in media include public relations and that, regardless of the fact that Predrag Blagojevic, registered as editor of this media, was not employed with the founder of Southern News, there is the obligation to pay taxes and contributions because “the law does not allow factual work”.

In doing this, the Tax Administrations invoked Article 32 of the Labor Act, according to which it is “considered that the employee has employment contract for an indefinite period on the day of commencement of work”.

The arguments for determining the alleged tax debt are multiple wrong. First, because no law stipulated the obligation of the media to have a working relationship with the editor-in-chief with full or part-time work. Second, Tax Administration identified what are the jobs of editor-in-chief on the basis of the catalog of jobs in public services and other organizations in the public sector, which obviously do not apply to private media. The third reason is that the Tax Administration, absurdly, concludes that Blagojevic actually worked on a formal basis solely on a formal element – that he was enlisted as Editor-in-Chief of the Registry, despite the fact that in the decision concluded that in fact these jobs were done by his deputy.

Such rough errors in the interpretation of regulations and logical conclusion, as well as the previous long-term control of this media that has critical attitude towards government, cannot be considered accidental, but are part of the pressure on the media.

Long term solutions should be sought in the new media strategy, changes in the law, and the greater publicity of the work and the responsibility of inspections for their work. In the concrete case, in addition to a faster court judgment that would protect the financial interests of Southern News and their readers, it is also necessary to initiate a procedure for examining the responsibility of the TA officials and managers who led to the emergence of this problem.

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Initiatives and analysis

Regulation of official's campaign

August 29th 2018

Among numerous proposals for amendments to the Draft Law on preventing of corruption which Transparency Serbia submitted to the Ministry of Justice in the context of a public document, is the amendment to article which regulates separation of public and political functions, which partially should regulate the issue of "Official's electoral campaigns".

Namely, currently the most common form of misusing public function for political promotion allegedly carrying out regular activities of public official and public authorities managed in the time of the election campaign. This issue can be arranged through the electoral and media laws. At this point, the proposed norms that are primarily related to the conduct of a public official in the time of election campaign, although governing individual and other issues. The intention of editing is not to limit the promotional activities of the authorities that are in the public interest, but to prevent abuse through increased conditions of this promotion, or highlighted the participation of public officials in the promotion, which can be clearly related to the fact that elections were held in which the official directly involved or in which it has its favorites.

The idea of norms and problems to be solved is the same all the time, and through experience from all the election campaigns which Transparency Serbia monitored show that the "official campaign" has an increasingly important role, which further confirms the need for the introduction of rules. In addition, it is obvious that the solutions of the current Law on Anti-Corruption Agency, even the solutions proposed in the current draft of the Law on Prevention of Corruption, are insufficient to solve the problems that norms were introduced into the legal system of the Republic of Serbia.

This is supported by the fact that the cases of violation of the norm of the current Article 29 of the Law on Anti-Corruption Agency are extremely rare. Although a small number of cases can be attributed to insufficient reporting of violations of Law, by long procedures or controversial decisions of the Agency in these cases, we consider that there are far more frequent situations in which the norms of the Law were not violated, although there was undoubtedly the existence of officials that were not at all in accordance with the public interest or in which the interest of a political subject has been given priority over the public.

Regarding the issues regulated by this Article, there are certain international standards (ODIHR and Venice Commission) as well as some good examples from comparative practice. In some cases, the rules from comparative practice envisage far stricter limits for public officials than are the solutions proposed to this norm. On these issues Transparency Serbia repeatedly wrote, and key findings are in the publication "The official's campaign as a form of misusing of public resources"

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TS proposed that Article of Law reads as follows:

Article 50 and title above article 50 is amended as follows:

“The separation of public functions and activities of the political entity”

Article 50.

An official can be a member of a political party, to perform a function in political party, to be candidate or representative of a political subject or to otherwise support political subject and participate in its work, if it is not prohibited by other law.

An official cannot use public function and public resources for promotion or for causing damage to the political entities.

It is not considered as a violation of the prohibition from the paragraph 2 of this article that public resources are used for political purposes if it is necessary to protect the safety of officials, members of their families or third parties, based on the regulation or decision of the competent authority.

An official is obliged to undoubtedly present to the interlocutors and to the public whether he expresses the position of the public authority where he performs a public function or the attitude of political entity, except when it is obvious based on the place and circumstances in which that attitude is, or on the basis of visible characteristics.

The deputies and councilors have the obligation from paragraph 4 of this article in case they are to be chaired by the assembly or by a parliamentary working body.

It is forbidden for an official to participate in the activities of a political subject in that capacity.

During election campaign, it is forbidden for an official to organize in that capacity promotional activities of public authority body, to implement them, to participate in promotional activities organized by other persons, except:

a) When it is prescribed the obligation to carry out a promotional activity at a certain time and in a certain way, and when only the public official is authorized to fulfill that obligation;
b) When it comes to public events, which by common practice carried out at a certain time and with mandatory participation of that official;
c) When the participation of official is necessary for the maintenance of international relationship

“Promotional activity” from paragraph 7 of this article is the activity of the official, authorities or other persons with the purpose or can be reasonably expected to result in the publication of words, image or voice of the official in media.

Comment of the proposed solutions from current draft and a detailed explanation of the solutions proposed by TS (in Serbian) can be downloaded from the TS website:

http://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_predlog_-_funkcionerska_kampanja_-_Zakon_o_spre%C4%8Davanju_korupcije.pdf

On our website there are also available our proposals and formulated amendments to other chapters of the Draft Law on Preventing of corruption: http://transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts

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Press Releases

Contract confirms illegal hiding information

August 7th 2018

Transparency-Serbia (a member of Transparency International) demands to determine who is responsible for three-years hiding of the management agreement of the Smederevo steelworks from the public, as well as for possible occurrence of damage during its realization and termination. At the same time, we call of the Government of Serbia and the Ministry of Economy to publish the entire text of contract, as well as information on its realization on the basis of which citizens could gain insight as to whether the claims of her former partner in the business were founded.

Transparency-Serbia indicates that published parts of the contract on management in Smederevo steelworks, which the Government of Serbia has concluded with the company of Petar Kamaras confirms that the contract was unlawfully concealed from the citizens in the past three years. In this case it was shown that collusion on the disposal of public property and causes damage to the public key information in the future should be set as a condition of the contract. It also showed how it would be dangerous to state-owned enterprises excluded from the system of access to information of public importance, as foreseen in the current draft amendments to the Law on Free Access to Information. Also, it is extremely important that the changes to the Constitution create a mechanism that would prevent the conclusion of secret agreements on the disposal of public assets.

Contract on management in the Smederevo steelworks from 2015. Was promoted and praised by the highest representatives of the Government of Serbia. A year later, the state canceled the contract with the claim that the Consultant has not fulfilled its obligations. According to the decision agreed to arbitration in London, Kamaras claimed compensation for damages of 10 million dollars and 2,4 million dollars of the costs of the proceedings. For all that time, neither when the contract was declared a salvage solution, nor when it was broken, the citizens of Serbia did not have reliable data on the undertaken obligations and handling of public property, but only the claims of both sides.

Transparency Serbia has requested a copy of contract from the Ministry of economy three years ago. However, not only the request for the access to information was rejected, but the Ministry refused to provide contract by the decision of the Commissioner for information, denying access to these documents even the Commissioner. Regarding this violation of constitutional rights, the Ombudsman also reacted. We recall that, contrary to the secrecy of this contract, which was kept by the Ministry of Economy and guarded at a cost of paying fines, the contract on the sale of steelworks to China's Hestil from April 2016, was immediately published.

Parts of the contract, published by the portal "Insider" confirm that the absolutely secrecy of this document has never been justified nor necessary. Namely, the standard provisions on confidentially are followed by the rule in article 13.2.1. according to which each contracted authorities, which means the

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Government of Serbia, Steelworks and Kamaras's firms, "can announce the information that would otherwise be considered confidential, unless and to the extent required by applicable law". Since the law of the Republic of Serbia is the law applicable to this contract, and the law on Free Access to Information of public importance is undoubtedly a part of this right, it is clear that the Ministry of Economy could have provided copies of all or parts of the contract on request for access to information, without seeking prior approval from a private partner.

We remind that the Ministry of Economy, when it claimed that the contract should not be published, refers to the decision of the Commission for Protecting of competition, pursuant to article 45 of the Law on Protecting Competition. The meaning of this provision is undoubtedly the protection of confidential data which the contracting parties have submitted to that Commission for the purpose of carrying out tasks within its jurisdiction. On the other hand, the procedural decision of the Commission does not impede the signatories of the contract to publish information by themselves or to act on binding decision of other bodies. In order to avoid misinterpretation and similar abuses in the future, the Commissioner recently submitted a proposal to declare this article of the Law on Protection of competition unconstitutional.

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