

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

April 1st 2019

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

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

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

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

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

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

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

Having this in mind, the draft should be corrected in order to gain elements to contribute to the fight against corruption (ex. obligation to include public officials, former public officials, civil servants who have performed certain tasks, etc.) into the control plan, linking control on the basis of this Law with those that are carried out on the basis of the Law on the Anti-Corruption Agency, as well as the deadlines that existed for the reporting of assets and revenues of public officials (since 2004), and the like.

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

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

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

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

The full text of the letter, with all TS proposals and comments, can be downloaded from our site (in Serbian):

http://transparentnost.org.rs/images/dokumenti_uz_vesti/Nacrt_Zakona_o_utvrdjivanju_porekla_i_movine_i_posebnom_porezu_-_komentar_TS.pdf