



# **Transparency Serbia**

## **Overview of activities**

### **May 2019**

**Newsletter number 5/2019**





## *Activities*

At the invitation of the EU Delegation to Belgrade, several dozen NGOs from Serbia had the opportunity to discuss the latest European Commission report for Serbia on May 30. The invitation was addressed to coordinators for individual chapters in the National Convention on the EU, as well as to organizations that submitted their annexes to this report. Transparency Serbia coordinates the working group for Chapter 5 within the framework of Convent, and submitted its contributions for the report of the European Commission within the framework of the prEU coalition. Our representative, Nemanja Nenadić, took the opportunity at the event to point out that the European Commission should give greater importance to the issue of political management of public enterprises in the future reports, because the modality is the same as the one used in the state administration (politically set acting agents, contrary to legal obligations). Nenadić welcomed the importance of this report in meeting ODIHR recommendations regarding the financing of election campaigns and the misuse of public resources for political promotion. He also pointed to the places where the report should have been more critical, among other things, on the fact that criticism of the solutions in the recently adopted Anti-Corruption Law is missing, although the drafts were available at the time of writing the Report.

On May 29, TS participated in the session of the Programme Council of the NCEU, where further activities of this group of non-governmental organizations were agreed, especially in connection with the discussion that should be organized on the occasion of the new EC report. The fight against corruption is identified as one of the issues that deserve special attention.

On 27 and 28 May, within South East Europe Legal days, TS presented results of the Anti-Corruption Advisory Center - ALAC, providing legal assistance to citizens who suspect corruption. In addition to the TS, other organizations from the region which provide legal counseling were present. A two-day event, organized by Civil Rights Defenders, besides the promotion of various actors, offered a range of panels on the topic of protection of rights.

Nemanja Nenadić from TS was participant of the first panel at the international conference "State aid - locomotive of development or wrong crossover? The EU rules help assess", which was held in Belgrade on May 27th. Development effects of state aid policy in Serbia were analyzed, as well as the ways in which the existing approach can be enriched, guided by the experience of other European countries, and especially Croatia, Slovenia and Ireland.

Compliance with EU rules was specifically considered. On the panel dedicated to these issues, Vladimir Međak from the European Movement in Serbia, spoke about the complexity of solving the state aid issue in Negotiation Chapter 8 - (Competition Law). This was reinforced by Vladimir Antonijević, new president of the State Aid Control Commission, who described the current process of alignment with EU regulations, as well as steps Serbia still has to make. Ms. Marijana List, former head of the Working Group for Chapter 8, described the challenges that Croatia was facing in this domain, which are very similar to Serbia. Nemanja Nenadić, programme director of TS, pointed out that regarding transparency,



situation in Serbia is slightly improved since 2015, as there are new information, but systematic estimates are still missing. Panelists agreed that transparency throughout the process allows building public confidence in politics, but also leaves space for analytical research.

In his presentation, Nenadić recalled the findings of the TS on state aid from previous years, lacks of institutional framework (status of Commission for state aid control), insufficiently good legal framework regarding the conditions for conducting control, the scope of control and transparency. He especially drew attention to the specific types of state aid that remain "under radar". These are situations where public companies maintain low prices for their services or when they do not charge them, as well as situations where state authorities selectively act in controlling the compliance of obligations by various economic entities (inspections) or in collecting taxes and contributions.

A workshop on political corruption was held in Warsaw from 8 to 10 May, organized by Transparency International and the OSCE Office for Democratic Institutions and Human Rights. Zlata Đorđević participated in the workshop in front of TS. The main topics were the integrity of the elections process, the financing of political parties and electoral campaigns and the abuse of state resources during the electoral process. ODIHR experts, as well as representatives of the European academic community, indicated the ways TI's organizations can analyze, observe and investigate potential cases of political corruption in their countries and improve practice for prevention of political corruption.

Assistant Administrator for USAID's Bureau for Europe and Eurasia, Brok Bierman and the representatives of USAID Mission in Serbia, attended on 13 May workshop with leaders of Sombor, Šabac, Vranje, Raška, Sjenica, Dimitrovgrad and Vrnjačka Banja and representatives of TS talked about the local transparency Index. The workshop participants discussed the importance of supporting the USAID Project for Responsible Authority and the impact of cooperation between GAI and local governments in the defined areas to improve the results of the Transparency index in the next cycles of conducting this research. In these areas of cooperation belong improvement of internet presentations, transparency of the budget process, involvement of citizens in the process of creating local policies, development, implementation and monitoring of local anti-corruption plans, improvement of the quality of local services and transparency of the work of local public enterprises and others.

On 14 May, Transparency Serbia participated in a meeting held in Belgrade, with representatives of the ODIHR delegation, comprised of Ulvi Akhundl, election advisor, Raul Muresan, project coordinator and Lusina Badalyan, senior advisor for elections. Representatives of the TS presented our findings on the monitoring of election campaigns in Serbia, proposals for regulating the issue of "public officials' campaigns", information on the delay in reforming regulations on financing the election campaign, the failure to act of Anti-Corruption Agency, Regulatory Body for Electronic Media and Public Prosecutor's Offices in cases of violations of the law and failure to act of state bodies of Serbia in connection with the application of earlier recommendations of the ODIHR.

On 9 May, representatives of International Monetary Fund visited Transparency Serbia. Besides getting to know the tasks of the mission and priorities in the work of Transparency, meeting was about the implementation of public procurement and public-private partnerships in Serbia, bypassing bidding



through intergovernmental agreements, the need to improve legal framework in certain areas, unassigned professionalization of SOEs, insufficient transparency in the drafting and implementation of the budget, as well as other major problems for more efficient fight against corruption.

On 8 May, Nemanja Nenadić participated at the first meeting of the working group of the City of Sombor for drafting of the Partnership for Open Administration Action Plan. The city of Sombor appointed nine members in the working group, of which four applied for the previously announced competition. In live discussion, several areas were mentioned in which activities that would help openness of the authorities could be organised. Among other things, there were some words about employment in public enterprises and public institutions founded by the City, but also about the public information on the performance of their tasks. Possibilities for monitoring the state of "health" of trees in the city parks, solving the problem of stray dogs and the possibilities for increasing the publicity based on findings of the Local Transparency Index, developed by TS, were also discussed.

Round Table, which was organised by Municipality of Sjenica, USAID Government Accountability Initiative and TS on May 7, marked the end of the public debate on the Draft Revised Local Anti-Corruption Plan of the Municipality of Sjenica. Draft envisages the adoption of more than 50 general acts and regulations, establishment of seven publicly available records and registry data, as well as the publication of a series of documents on the website of the Municipality. The draft LAP is to be adopted by Municipal Council and Assembly. After that, the process of selecting the members of the working body will begin, which will monitor whether the measures and activities from LAP are implemented in the manner and within the deadlines predicted in this document.

The closing round table within the public debate on the draft Local Anti-Corruption Plan for the municipality of Raška municipality was organized on May 21. The draft was made by a working group consisting of representatives of the municipal administration and three representatives of CSOs. Members of municipal council, representatives of the civil sector and employees in municipal administration, including members of the working group, attended the final round table.

In May, 185 news or articles were published about the activities of our organization, i.e. the news in which representatives of the TS were quoted. We set up a series of initiatives and analyzes on our website, as well as requests to state authorities and their responses to the TS, including the response of Ministry of Construction, Transport and Infrastructure, in which they informed us that the memorandum signed with Chinese company on the construction of the subway in Belgrade is declared secret and therefore, they cannot deliver it to us.

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



## *Under the magnifying glass*

### **Why is the public debate on changes to the Criminal Code necessary?**

May 6 2019.

However good it is that the Ministry of Justice decided to consider a petition signed by a large number of citizens and to formulate changes to the Criminal Code, this fact is not a valid legal reason, nor is a justification that a public debate is not organized on the proposal of the norm. By the existence of a petition, the Minister of Justice explained the direct violation of the obligation of Ministry from the Law on Public Administration to organize a public debate on these important changes.

Such obligation exists always when the editing of a certain area is significantly changed and when it comes to changes that are of public interest, and in this case, both criteria are fulfilled. Public debate would not be obligatory if citizens filed a proposal of concrete legislative changes instead of a petition and submitted it to the Assembly.

If the Minister of Justice considers that the rules on the public debate are not good enough, she could initiate changes within the Government of the Law on Public Administration and Law on Referendum and People's Initiative. There was more than enough time for such a thing. Namely, the petition of the Tijana Jurić Foundation was submitted 18 months ago, so there was more than enough time to change the rules in the Criminal Code and rules on public debates.



Particular absurd that precisely this ministry requires an excuse not to organize public debates, lies in the fact that it was the maker of (unfulfilled) National Anti-Corruption Strategy which, among other things, predicted the expansion of a circle of situations in which participation in the process of passing regulations to "interested entities and the public" was enabled.

In addition to the formal ones, in this case, there are strong substantive reasons for conducting a public debate. Namely, according to the explanations of the proposed changes to the Criminal Code, the issue of the replacement of a prison sentence of 40 years to life imprisonment was considered in 2015, but then the Ministry did not take the position "because the expert public on this issue was divided". However, in the reasoning, the reasons that have prevailed for this sentence are now not offered.

Judging by some reactions, the biggest problem could be the abolition of the conditional release of lifelong imprisonment for certain convicts. In connection with this, the argument has already been stated that "the European Court of Human Rights clearly states that the practice of banning parole in cases of imprisonment is inconsistent with the European Convention".



Unfortunately, Serbia has a rich experience of paying compensation to offenders and suspects for violating obligations under international conventions and therefore this issue must be fully and reasonably clarified before making changes to the Criminal Code in further procedure.

## Abuse of public function

May 2 2019.

After 15 months from the election campaign for local elections in Belgrade, within which we focused our attention to Anti-Corruption Agency on some of the most serious violations of Article 29, which prohibits politicians to use public function to promote party interests, we were informed that in one such case The Agency found a violation of the law.

Namely, according to the Agency, the violation was made by Minister and Deputy Prime Minister, Zorana Mihajlovic, on February 5, 2018, during a visit to the village of Skela when she visited works on the reconstruction of the section of the regional road and said that "she does not give empty promises and false promises at the time of the elections can not be heard from her, from ministers or from the SNS, and that they can hear it from ..."the two leaders of the opposition lists for the city elections she has appointed. Due to this use of the public function for the promotion of the SNS, whose member she is, ministers, the Agency issued a "warning measure" to Minister.

Since this warning measure is not published, and on the other hand, this type of abuse of public function is not something specific only to

### МИХАЈЛОВИЋЕВА МЕШТАНИМА СКЕЛЕ: НИСМО ТУ ДА ДАЈЕМО ЛАЖНА ОБЕЋАЊА, ВЕЋ ДА ЗАЈЕДНО СА ВАМА РЕШАВАМО ПРОБЛЕМЕ

05.02.2018 - 13:11



Потпредседница Владе и министарка грађевинарства, саобраћаја и инфраструктуре, проф. др Зорана Михајловић, посетила је данас месну заједницу Скела у општини Обреновац, где је са мештанима разговарала о пројектима важним за ово село и проблемима које треба решити зарад бољег живота њених становника.

"Данас сам овде не да бих вам давала лажна обећања, то чине неки други, попут Ђиласа и Шапића, не би ли се опет вратили да униште оно што ми поправљамо. Данас сам ту да чујем вас и да помогнем да живот у Скели буде још бољи", изјавила је Михајловићева.

Потпредседница Владе подсетила је мештанима Скеле да је недавно завршена сигнализација у близини школе, али и да је у плану изградња физкултурне сале како би деца из Скеле била безбеднија и имала једнаке услове за одрастање као њихови вршњаци у Обреновцу и Београду.

"Знам да сте сви ви добри домаћини који сваког дана вредно раде. И све што смо до сада урадили, радили смо заједно и одговорно. Ми не дајемо лажна обећања. То нећете чути ни од председника Србије, ни од мене, нити од Српске напредне странке", рекла је Михајловићева.

the this Minister, but is equally characteristic for almost all members of the Government and many other public officials at all levels of government, this decision of the Agency was published on TS website.

In many other cases, contrary to the evidences of the use of a public function for political promotion, which were in some cases more powerful than in this, the Agency was of the opinion that the law was not violated.

Such was, for example, the case of promotion of SNS candidates in Zemun gymnasium or the promotion of a party rally on the Facebook account of the municipality of Voždovac or a political settlement of the Minister of energy with the opposition, through the ministry website. (more detailed in TS publications).

We also remind that TS made concrete proposals in order to prevent or limit the functionary campaign, in the analysis of 2017, as well as in the proposal for supplementing the current draft of the Law on Prevention of Corruption.



## *Initiatives and analyzes*

### **Letter to Members of Parliament –Law on Prevention of Corruption does not solve important problems**

May 13 2019.

Transparency Serbia sent proposals for improvement of 65 out of 114 articles of the Law on Prevention of Corruption to all parliamentary groups in the National Assembly.

Transparency considers that, among other things, the solutions are not satisfactory in terms of preventing the abuse of public officials for political promotion ("functionary campaign"), the conditions for election of the director and the way of selecting members of the Board/Council of the Agency, cumulation of functions, resolving conflicts of interest, reporting of property and punishment for giving false information about the property and income of a public official.

We particularly draw attention to the fact that the proposal is worse in relation to the previous drafts, for the reason that, without explanation, those who perform their functions in the companies established by public enterprises and non-privatized companies are excluded from the circle of public officials.

The Law on the Anti-Corruption Agency, according to the plans from the anti-corruption strategy, should be significantly improved in 2014, and according to the obligations from the negotiation chapter 23, in 2016. However, even after the three previously published drafts, neither the draft law that is submitted to the parliamentary procedure resolves problems that are observed in practice.

Although a public debate was organized in 2016, 2018 and 2019, the Ministry of Justice, contrary to the obligation under Article 41 of the Government's Rules of Procedure, did not publish a report from a public debate in which it would indicate why it considers unacceptable the proposals received and that proposed solutions are better than those suggested by participants in the public debate.

Transparency also indicates that there is no reason why it is necessary to discuss this act in an urgent procedure (meeting GRECO recommendations). Namely, it is a matter of obligations for which the first deadline expired on December 31, 2016, and the new additional deadline is December 31, 2019, while the beginning of the full implementation of the law is foreseen for September 2020. Therefore, TS proposes that the Assembly discuss this proposal in regular procedure, allowing for a thorough review of all contentious issues.

TS letters and comments are available on the [Initiative and Analysis](#) page in Serbian.



## *Press issues*

### **The EC report pointed to important problems for the fight against corruption**

May 31 2019

TS expresses its satisfaction with the fact that the European Commission, in its latest [Report](#) on Serbia, points out, among the most important recommendations and problems, many of the issues that our organization points out, especially regarding political promotion, big procurement, political influence in public administration and prosecution of corruption. Nevertheless, in some aspects, the Report is not sufficiently critical in the assessments.

We consider it particularly significant, as already in the impact section in the summary of the Report, European Commission is asking Serbia to **fully and in the highest priority** "meet all the recommendations of international observers." This is a request to increase the transparency of party financing and electoral campaigns, to divide the party and state activities of public officials and to ensure equal representation of the participants in the elections in the media. Contrary to its own plans, Serbia did not improve the Law on Financing Political Activities for five years. The ODIHR recommendations from 2016 and 2017 were completely [ignored](#) by the Government and the Assembly, and the latest opportunity to better organize the "functionary campaign" was missed this month by not accepting the [TS proposal](#) to improve Law on Preventing Corruption.

European Commission highlighted the problem of duty holders which is used as a means of political influence in the tops of public administration. On the other hand, the Brussels administration missed the opportunity to point to the identical mechanism of illegal political influence exercised through appointed duty-holders in large public enterprises.

Concerning the prevention of corruption, European Commission justifiably claims that reforms did not produce a "measurable impact." Regarding repression, as in all previous years, **credible indicators** of the independent acting of the Prosecution and a final verdict for high-level corruption, as well as confiscation of property, are demanded from Serbia. Equally accurate is the European Commission's assessment that "the private sector is underdeveloped and blocked by weakness in the rule of law and ensuring fair competition."

According to TS, it is very important that European Commission clearly indicates that the National Assembly damaged the exercise of its supervisory and legislative role by the practice of the parliamentary majority acting. The first reactions of Serbian authorities in these objections are not [encouraging](#) at all.

On the other hand, European Commission's assessments of public debates in drafting legislation are insufficiently strong having in mind the scale of the problem, as it is not just about the objections of representatives of civil society organizations, but about the unequivocal violation of the law.



Unlike the government's self-esteem about a large number of [corruption](#) convictions, which were not followed by comparison with the previous period, the EC's report shows that the number of corruption convictions in 2018 decreased by about 9% in comparison with the previous year. EC is still cautious in assessing the effectiveness of special anti-corruption and economic crime departments, although it has been 14 months since the beginning of their work.

EC points to public procurement, infrastructure projects, health, education, urbanism and state-owned enterprises as areas that are **particularly vulnerable due to corruption** and points to the lack of visible progress in increasing transparency in these areas. They also recall that the Government is still not considering the systemic recommendations of its Council for the Fight against Corruption.

Regarding the recently adopted Law on Prevention Corruption, EC points out that it must be in line with international standards and GRECO recommendations, from which it can be concluded that the legal text did not receive a previous positive assessment. However, the problem is that European standards in this area are underdeveloped, and GRECO recommendations regarding the work of the Agency are not comprehensive. Therefore, it may happen that this law, whose preparation lasted five years and did not solve many of the [problems identified in practice](#), may occasionally receive an unjustified transitional assessment.

It is highlighted the need to amend the **Law on Free Access to Information of public importance** ensure full application, but without reference to problematic provisions in the last published draft. The EC report speaks of unjustified denial of information of public importance, but misses to point to the key fact - that the Government never secured the execution of final decision of the Commissioner. It is good that EC reminds Serbian parliamentarians of the neglected obligation - to elect the Commissioner - but more importantly, to make that election "in a transparent way, taking into account the relevant professional experience".

EC reminds us of the findings of the Anti-Corruption Agency, according to which **the measures from the Anti-Corruption Strategy** for the period 2013-2018 were fulfilled in only 26% of cases, and they are not even in 61% of the situations. On these devastating results, the National Assembly, to which the report was submitted, did not yet discuss.

No progress has been made in the **area of public procurement**. Serbia is required to adapt the law to new European public procurement rules, public-private partnerships and concessions. More importantly, EC urges Serbia to ensure that intergovernmental agreements and their application cease to restrict competition and to be based on the principles of transparency, equal treatment and non-discrimination. We remind that in recent years Serbia has implemented almost all infrastructure projects through direct agreements, disregarding not only European rules, but also its own [Law on Public Procurement](#).

Transparency Serbia considers particularly important that the European Commission **explicitly requested from the Government of Serbia to measure the impact in the implementation of its anti-corruption policies**, in order to prepare a new ambitious strategy and action plan.



The previous steps in this direction were not good enough, as there was no consideration of the reasons why the previous strategic acts [did not produce results](#). Therefore, we consider it necessary that the Government and the Parliament of Serbia, regardless of the dynamics of their relations with the European Union, change the approach in solving the problems of corruption, and that the EC report is considered as a useful impetus for achieving this goal.

## **Public Procurement Law being ignored**

17 May 2019

Transparency Serbia warned that the eight agreements on loans which parliament is currently debating are bypassing the Law on Public Procurement.

„The practice of contracting the costliest public works through inter-state agreements raises questions about the validity of the system in which the state sets strict rule of competition in public procurement and treats violations as acts of crime,“ a statement said.

The TS warned that MPs are set to confirm agreements worth more than a billion Euros which bypass the law which was adopted in 2012 to combat corruption and secure transparency and competition. The law, on the other hand, prescribes rules for open bidding for all procurements worth over 4,000 Euros.

For instance, along with the loan from the Chinese Export-Import Bank for building a railroad from Novi Sad to Kelebija, it is envisaged that this job, worth 1,162,810,000 USD, would be done by the Joint Venture of China Railway International Co.Ltd & China Communications Construction Company. Furthermore, the China Communications Construction Company would also be building a highway Preljina - Požega worth more than 520 million USD. Part of the money for financing these projects (15%) will be coming from the state budget or from Serbia Railroads, or Serbian Roads company.

The organization said the loans conditions were presented to the public as favorable but with no details about the evaluation of the projects or whether the costs would be lower if a tender had been called.

„The Serbian government also proposed the approval of six contracts on development loans under the rules of international financial institutions,“ it said. Although the implementation of the domestic Public Procurement Law has not been agreed, at least at least the rules providing for competition will apply.

Transparency reminds that the current drafting of the new Law on Public Procurement is being done in the first place in order to comply with European standards, and that, as part of the negotiations on Chapter 5, it is pointed that one of the problems is too often exemption from the application of laws on the basis of interstate agreements.

