



**Transparentnost Srbija**  
**Transparency Serbia**

# **Transparency Serbia**

## **Overview of activities**

### **September 2019**

**Newsletter number 9/2019**





## Activities

Research: Local Transparency Index ([LTI 2019](#)), in which we ranked all municipalities and cities of Serbia, was presented on 6. September at the press conference in Belgrade. More information available in the section "Conferences".

With the goal to assist in disseminating of good practices that were identified by the LTI 2019 research, we

organized round tables for the representatives of municipalities. First such meeting in this cycle was organized on 30 September in Vrnjačka Banja.

We presented on September 20 results of another [research](#), where we spoke about monitoring of implementation of the Law on Free Access to Information, with special focus to public enterprises and state owned enterprises. More about this conference in the Bulletin.

Representatives of Transparency Serbia participated on 9. and 19. September on the round tables of the Faculty of Political Sciences, in the debates on election conditions organized by the Open Society Foundation. TS represented, on 9 September, recommendations related to [transparency of election administration](#), and on consecutive meeting – analysis and recommendations related to [protection of the right of voters](#).

Program Director of Transparency, Nemanja Nenadić, met on 3 September in Belgrade with SIGMA expert, Primož Vehar. Topic of their conversation was planned changes of the Law on Free Access to Information of Public Importance, as well as the Law on Ombudsman. Besides individual improvements, announced changes of this Law are in certain segments worse than the existing one.

Nemanja Nenadić, on 28 August had meeting with representatives of the European Parliament, emissaries for Serbia, Eduard Kukan and Knut Flekenštajn, to the subject of conditions for holding of elections, implementation of recommendations of the European Commission and ODIHR and implementation of the laws that regulate the elections, work of the National Assembly and fight against corruption.

In the [meeting](#) of Program Council of the National Convention for the EU, held on 18 September, there was discussion about coordination for monitoring of political criteria, on further organization of





the state organs of Serbia and organs of the EU that are important for association, as well as about plans for creating of new book of recommendations.

Nemanja Nenadić participated in the sitting of jury for awarding of traditional annual prizes to authority organs that performed the best in the free access to information area. Thereby, considerations and experiences of TS related to transparency of work of authority organs in general. Jury, besides representatives of the institution of the Commissioner for Information of Public Importance and Protection of Data, consists of members of two largest journalists' associations, academic community and non-governmental sector. [Awards were awarded](#) on 27 September 2019.

Nemanja Nenadić participated on 12 September in a meeting of Association of Corporative Lawyers of Serbia, in which he represented current researches of TS that are related to the work of private sector, as well as recommendations for improvement of the status.

The discussion especially referred to measures implemented in the area of preventing money laundering and difficulties it creates to the economy, implementation of the Law on Protection of Whistleblowers in private sector, provisions of the criminal legislation, transparency of work, as well as measures that companies undertake for better harmonization with regulations and standards.

Conference on the subject: Social Public Procurements, organized by the European Movement in Serbia and Transparency Serbia, was held on 27 September in Belgrade. State Secretary of the Ministry of Labor, employment, veteran and Social Policy, representative of the Act Group from Croatia and European Movement in Serbia considered social procurements in the context of opportunities for development of social entrepreneurship.



Afterwards, representative of Transparency Serbia and former longtime member of the Commission for the Protection of Rights in Public Procurement Procedures directed their attention to current lack of practice, future trends and advantages of introducing of this mechanism. Questions of the audience referred to certain elements of social and ecologic procurements that can currently be identified when implementing public procurements. Manual for Implementation of Social Public Procurements was also presented at the conference, as well as announced further engagement on promotion of good practice in this area.

As part of the support to municipalities and cities during the creation of local anticorruption plans and election of bodies for their monitoring, representative of TS attended a meeting with candidates for Local Anticorruption Forum on 18 September of the municipality Vrnjačka Banja. Process



of drafting LAP and election of LAF is getting closer to the end. Municipality Raška and Sjenica opened public call for election of LAF, Vranje adopted the LAP, and in Šabac we cooperate with previously elected body.

We participated with the Lawyers' Committee for Human Rights in thematic open doors "Why do trials last long" organized by this organization and basic courts in Leskovac 6 September and Kragujevac 12 September, with the assistance of the USAID.

Anticorruption Legal Advisory Center (ALAC) of Transparency Serbia opened in September 12 new cases, out of which six related to judiciary.

In September, there was 549 news or articles published about the activities of our organization, or the news in which representatives of the TS were quoted. We have published a number of initiatives and analyzes on the TS website, as well as requests and responses from state authorities.

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



## *Under the magnifying glass*

### **RAEM reports – what is their legal obligation**

1 September 2019

Council of the Regulatory Authority for Electronic Media, or person who writes press releases on their behalf and answers to media (CINS, Politika, Danas) tried hard in the past few days to prove that no secret reports on monitoring of broadcasters, during the election campaign in 2016, existed.

When we exclude literary, political and other digressions that make the most of these articles, it brings us to conclusion that main argument of denying recent CINS article is of formal nature – what was prepared by the professional services, and not adopted by the Council of REM hasn't adopted, „is not the report“.

However, following claim from [the last announcement](#) (answer to „Danas“) is more interesting: „there are laws in this country, that we comply to, and that obviously neither SzS nor you are interested in, and in compliance with those laws, the only report RAEM has to adopt is the one on extent of advertising (commercial content), of the political parties in their campaigns.

That report is forwarded to the Anticorruption Agency by RAEM, which then checks based on it how much money has each of the party spent, and other services then, whether the tax has been paid, and we did that in respect to the law.“

RAEM in deed delivers data about commercial advertising to the Anticorruption Agency, and Agency then uses these data in a certain way. Question remains on how the received data are usable for controlling of the financing of the campaign, as well as to which extent Agency performs such control.

Namely, the report of RAEM, shows the scope of advertising but not the price, which is the key data necessary for controlling. However, problem in press release of RAEM is the claim which reports RAEM is obliged to prepare in compliance with the law, and which not, **is false**. Namely, neither in media laws, nor in the Law on Financing of Political Activities there is no such obligation of RAEM to create or adopt the report on commercials that parties broadcasted during the campaign.

Therefore, RAEM sometimes prepares these reports and sometimes not, sometimes they are with more details and sometimes not, and the only reason for that is the fact that obligation of preparation and publishing as well as the content of these reports is not defined by the law. Having that in mind, even the potential personal changes in the Council of RAEM could not resolve [essential problem](#) – which is lack of precisely defined obligation of supervising over the work of broadcasters.

### **Conditions for elections, president in the campaign, media – what is not being mentioned**

3 September 2019

By commenting the decision of several opposition parties to boycott the elections, Prime-Minister, Ana Brnabić, besides the thesis legitimately used in political battle between authorities and opposition, [stated also couple of thesis](#) or missed to mention several facts that

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deserve a comment in regards to rule of law and democracy in Serbia.

Thereby, related to implementation of ODIHR recommendations, it is stated that Government works with this expert body of OSCE ever since 2016 in promotion of electoral conditions and electoral atmosphere. It is also stressed that Government sent comments to Law on Central Register of the Population, mentioned trainings implemented by the REC and states that list of voters has been updated. However, answer does not mention that ODIHR requested improvement of the regulations on election campaign financing and separation from party function. While related to changes of regulations on campaign financing nothing has been done in the past five years, not only on the basis of ODIHR recommendations, but also based on planning documents adopted by the Government in 2013 and 2016, chance to [improve the rules](#) on separation of functions is missed in May this year when the Law on Preventing Corruption was adopted, that was developed ever since 2015.

By commenting one of the requests of the opposition—that President Aleksandar Vučić should not participate – she rightfully criticizes those parties that used to rule, that they haven't implemented the same principle when president was their member. However, argument loses its strength when we consider the fact that SNS got the opportunity to rule in 2012, among other things, thankfully to the promise that they will change that practice.

[Results of monitoring](#) of the officials' campaign implemented by Transparency Serbia in continuity show that Tomislav Nikolić mostly restrained from the activities that would provide support from the presidential function

to party to whose proposal he was elected, which was a rare example of good practice in the past few years.

Inexistent legal framework, after Nikolić's presidency, allowed the President to perform party function. Regardless of that, laws, even now, do not allow for the presidential or any other public function to be used for the promotion of political subject. Therefore, there are no legal obstacles for Aleksandar Vučić to speak during the campaign in party rallies or to be the first in the list on the elections where he is not even the candidate, but there is also no proper reason to increase media presence during the election period through promotional activities in the role of state official, that do not represent performing of presidential obligations.

For example, president of the state will certainly at any time during the campaign meet with foreign ambassadors, participate in international rallies and award a medal on the occasion of state holiday, but [has no legal obligation](#) based on which him alone would be visiting health centers, construction sites, agriculture land or open factories.

Related to situation in media, in this interview as well, well known report of the Anticorruption Council of the Government of Serbia was mentioned in 2011, which described several methods of accomplishing political influence to media. However, the same Council by the end of 2015 dealt with similar topic „[report on potential influence of public sector institutions to media through paying of services of advertising and marketing](#)“ , and draft new Media Strategy shows that channels for influencing still exist. [Resolving of matter of state advertising](#) is just one of many matters



related to media and elections that remains unresolved.

Related to improvement of work of the National Assembly, where ruling majority indeed stopped implementing measures for obstruction of the debate by submitting of pointless amendments and announced doubling the time for discussion on budget, it remains to be seen, in which level it will sustain once the opposition starts participating regularly in full scope in the work of Parliament and when budget debate is placed on the agenda. In order for such debate to have full meaning, Government should finally start submitting and Assembly to discuss final budget accounts from previous years. Absence of such documents still significantly lower the rank of Serbia in international [Open Budget Index](#).

## **What will working group of the Government monitor, and what should it do**

4 September 2019

News about adoption of the decision about establishing of working group for cooperation with OSCE by the Government on its „last sitting“, „whose task is to follow implementation of recommendations of this organization for improving of electoral procedure“, was neither published [in the report from the sitting](#) of the Government from 29 August 2019, nor among news. The only source of knowledge about it, is the paper „Večernje novosti“, that found out that appointed president of the working group is Minister of Internal Affairs Nebojša Stefanović, that his deputy is the Director of the Republic Secretariat for Legislation and former president

of REC -Dejan Đurđević. „Novosti“ also wrote about the fact that they won't receive any financial compensation for this work, that working group will „cooperate with all authorized organs and international institutions that participate in promotion of electoral procedure“ and that „every six months will submit report to authorized parliamentary committee and executive authority“.

Decision on establishing of working group, for starters, is late. Namely, Serbia received [recommendations of OSCE expert organization - ODIHR](#) even after the elections in 2016 and 2017. Since then, certain activities related to recommendations were undertaken (related to list of voters), but nothing has been done to resolve problems related to financing of election campaign, presentation of activities of public officials during the campaign or transparency of work of election administration. In reality, status even regressed since the time ODIHR made recommendations, especially in regards to intensity of officials' campaigns, (non)implementing the control of financing of the campaign and abuse of public resources during the campaign for local elections.

Transparency Serbia, during the dialogue on election conditions pointed out to potential beneficial consequences of establishing of working group on the level of Government, that would make sense only if it would encourage the work of all others on improvement of regulations based on ODIHR recommendations, so that all the reforms could make an effect before the beginning of the campaign for next elections.

However, not only that the work on changes of regulations still hasn't started, but there are no signals at all that there is preparedness to do so



in near future. News according to which work group would report semiannually about its work also indicates that no serious reforms would be undertaken by the end of this year, and that the problems will not be resolved by next parliamentary and local elections.

TS [indicated](#) to what should be done:

- Ministry of Justice in cooperation with the Ministry of Finances: Establishing of working group for changes and amendments of the Law on Financing of Political Activities, that would take into consideration draft of changes and amendments prepared by the permanent working group from 2014, opinion of TAIEX experts, recommendations of ODIHR, but also all other noticed weaknesses and lack of legal solutions from independent monitoring. Representatives of political parties should be involved in the work of working group (e. g. expanded working group), as well as Anticorruption Agency, and then present it to public debate.

- Ministry of Justice: establishing of working group for changes of the Law on Anticorruption Agency in the part that refers to separating of public and political function (article 29), of the Law on Preventing Corruption (article 50), to complement and precise this provision, having in mind recommendations of ODIHR and findings of independent monitoring. Political parties, Anticorruption Agency should declare on this text and it should also be placed to the public debate.

- Ministry of Justice: establishing of working group for changes of other related regulations, related to criminal prosecution of criminal acts that are related to illegal financing of the

campaign. These changes should also undergo public debate.

- Ministry of Culture and Informing and Ministry of Trade: establishing of working group that would deal with resolving of most urgent matters of changes of media legislation and regulations on state and political advertising, and above all comprehensive reforms that will be placed on the agenda after adoption of the Media Strategy.

- National Assembly: organization of public hearing on the occasion of the report of the Anticorruption Agency on implementation of National Anticorruption Strategy and on the occasion of recent reports of financing of the campaign and control of campaign financing.

- National Assembly: election of missing members in the Council of RAEM and Committee of the Agency.

- Regulatory Body for Electronic Media: refinement of regulations for proceedings of the PMU related to the campaign, as well as internal rules on proceedings of RAEM related to monitoring of the campaign, in existing legal deadline and after its change, and publishing of these rules.

- Anticorruption Agency: refinement of rules on proceedings during the control of election campaign financing, parallel to changes of legal framework and publishing of these rules.

- Public prosecution, Anticorruption Agency, RAEM and other authorized organs: public call to all those that have the knowledge on violation of the rules to report about them confidentially and timely publishing of findings and information about undertaken measures. These organs should publish findings of examination and information about undertaken



measures and related to irregularities from previously held elections, as well as by matters that came up in the period in-between elections.

## **Inviting of OSCE to control the elections and what should actually be requested from them**

13 September 2019.

News about President of working group for cooperation with OSCE Nebojša Stefanović, inviting for monitoring of upcoming elections in Serbia, and "asked for a meeting in which all details of future cooperation would be discussed", doesn't say yet anything about whether the Government of Serbia has the intention to ask the monitoring mission to do more than usual so far.

Namely, it could happen that role of this international organization could be similar to that from the previous election processes. That means that certain number of observers monitored the election process, so that experts from ODIHR, on the basis of insight into documents and conversations with participants of the elections, representatives of state organs and other observers came to the conclusions about harmonization with international standards so that their preliminary report is published just after, and final with complete recommendations after several months. Serbia, however in this point is in no need of anything else.

ODIHR made numerous recommendations for resolving of problems after parliamentary elections in 2016 and presidential elections in 2017. European Commission each year ascertains that Serbia hasn't proceeded by these recommendations, whereas it is clear that

they are important for meeting the standards of the EU. Resolving of these problems requested serious thinking, committed work, but above all preparedness of the authorities to admit existence of problems. These recommendations were treated at the best selectively – while certain activities related to lists of voters were implemented, there even was no announcement of state organs improving anything related to financing of the election campaign, control of that process or preventing of abuse of public function for party promotion.

Numerous recommendations of CSOs, related to ODIHR recommendations, including Transparency Serbia's, were presented during the dialogue about elections. These recommendations correspond to certain proposals and requests of the opposition parties, conditioning their participation at the elections with their fulfillment. Therefore it would be the best for Serbia that the authority representatives declare on what will be accepted and ask the ODIHR to evaluate in which level such changes meet their recommendations.

## **What is the value of the land of "Belgrade waterfront"?**

15 September 2019.

[News on sales](#) of the construction land "Marina Dorćol", next to the bank of Danube provides excellent insight into proportion of damage that Belgrade and Serbia suffered by signing of contract for the project "Belgrade Waterfront".

According to the news, 4 hectare of land next to the river bank, in which 76.000 "of squares" of construction land gross, auctioned (for the starting price) for 32,8 billion euros. That means that potential of building one square meter of



residential or business space will cost the future investor, 431 euros. When this amount is reduced for 30%, for aggregate payment, price reduces to 302 euros. If calculated by the hectare of land, price is 5.740.000 euros with discount.

On the other hand, location of "Belgrade Waterfront", that is more attractive for construction, and where new owner was transferred into its property or free lease series of valuable buildings, [construction envisaged](#) is around 1,7 million of meters of residential and business space, on around 170 hectares of construction land. By using the same formula as in the sales of "MarinaDorćol"), the result is that land of "Belgrade waterfront" is worth 975.800.000 euros, or 513.578.947 euros, if calculated by square meter of constructed surface.

Republic of Serbia by investing into land and all other, gained 32% of share in joint company "Belgrade waterfront". On the other hand, private partner paid 150 million of Euros, and provided additional 150 million of euros of credit to joint company. This investment, that is in-between 3,5 and 6,5 times less than state investment (if the parameter is the price for "MarinaDorćol"), and gained double the share in the ownership of the joint company!

Besides, unlike other investors that pay their contribution for landscaping after they purchase the land, in the case of "Belgrade Waterfront", special law envisages that the investor will pay these compensations, around 300 million of euros, with constructing the objects of public purpose. For these procurements investor is not obliged to implement the Law on Public Procurements, so it is free to choose the contractor by its own

free will, in direct arrangement. It was never published what was supposed to be constructed from the objects of public purpose and under which price, and by this day it is not published what was constructed in the past four years and of what value.

As consequence of the fact that this is a joint company that is only in minority ownership of the state, there is no obligation to elect the director through job vacancy, as well as no obligation for the company to proceed by the requests for free access to information of public importance, nor any other mechanism of protection of public interest from the anticorruption laws.

### **Prosecution should react to statements on political blackmail of the employed in the grammar school**

16 September 2019.

Transparency Serbia pointed out to supreme public prosecution in Belgrade—special department for curbing corruption to media statements about blackmailing of employees in in grammar school in BelaCrkva to perform duties beneficial to political party if they wish to save their jobs.

[Beta news agency](#) published information from the Portal [Belocrkvanews](#) which, if turned out to be true, indicate to criminal acts by the responsible persons in grammar school in BelaCrkva and other unnamed persons for criminal act of abuse of public function, and mayor of the municipality of BelaCrkva and other unnamed persons for criminal act of trading the influence, related to employment in the grammar school, or conditioning working in



grammar school with activities beneficial for the political party.

Having in mind public concern, in Bela Crkva, and wider, impossibility of the citizens to determine the truthfulness of these statements, and the fact that these are criminal acts from the real jurisdiction of special department of the Supreme Public Prosecutor for Curbing Corruption, and territorial jurisdiction of Belgrade SPP, we invite you to initiate the procedure without waiting for someone to submit criminal charges, and to inform the public about initiation and result of your activities related to this case.

Transparency Serbia, [in the proposal of measures](#) that should be undertaken before and during the upcoming election campaign, pointed out to the necessity that special departments for fight against corruption use their authorities to provide safe channels of communication to all citizens that indicate to potential abuses of public authorities and resources for the purpose of political promotion.

## Final account

23 September 2019.

Transparency Serbia pointed out that delivering of final budget account to the NA, which has [finally happened](#) after more than four years, is only one of the things that Ministry of Finances and the Government had to do in order to make the budget related proceedings more transparent and accountable. According to international research Open Budget Index, which is published every second year, Serbia [scores worse](#) (last time it had only 43 out of 100 possible points).

Although laws are decent, their violations at least recently were severe. Submitting of the budget and the final account to the National Assembly and the public represents the beginning, and not the end of activities related to this subject.

For example, it would be logical that the Assembly who approves the budget shows interest into situations in which Government steps away from approved, takes assets from the program of one user and transfer it to contingency funds, to spend them for entirely different purpose.

TS is currently implementing the research about use of contingency funds, where we encounter the wall of silence in the Ministry of Finances and the Government in regards to criteria for disbursing of these assets. One thing the Ministry and the Government could do, to significantly improve its transparency. In that sense they could look up to the municipalities and cities within Serbia. Currently, periodical (monthly) reports on spending the budget provide only general overview of the situation by main lines. Instead, they could publish table that would, even on a daily level, show how much money was approved to every user and each program and how much has been spent until today.

## International Right to Know Day

28 September 2019.

This year's 28 September, International Right to Know Day, we welcomed in Serbia in a much better mood than in previous year. Namely, in one of the several meetings that were dedicated to the right to access to information, representatives of the Ministry of State



Administration and Local Self-governance implied that the Law won't be changed after all, so that the companies in state ownership will not be excluded from the control of the public. Instead, the possibility remains that such enterprises deny access to information if the interest for guarding the business secret prevail over the right of public to know, if they properly elaborate their decision and Commissioner agrees with their decision during the complaining process.

Certainly, we cannot be sure of whether the danger is gone as long as the final text of the

amendments remains unknown. Special cautiousness is necessary with the definition of the term of authority organ, not to leave out any legal person that manages the public property. Among other, changes should be such to comprehend dependent companies (e. g. companies established by EPS and other public enterprises) and all other subjects in majority state ownership. It should also comprehend companies where state is the minority owner, but owns the "control package" of bonds, where company has been given public property of large value for use or guarantees for the credits.



## *Press issues*

### **Problem of the "officials' campaigns" remains unresolved**

September 24th 2019

Transparency Serbia (official chapter of Transparency International) emphasizes that interpretation that adoption of the Conclusion of the Government, prohibited or limited "officials' campaigns", are wrong. More strict regulations could be introduced only with Law, and the chances to do so, on the basis of specific proposals of the amendments formulated by TS<sup>1</sup>, was missed in May this year, when Law on Preventing Corruption was adopted (that replaced current Law on Anticorruption Agency).

Conclusion of the Government can be of use just for reminding of "forgetful" public officials to prohibitions and obligations already existent in other laws. On the other hand, main unresolved problem of the "officials' campaign", according to findings of Transparency from monitoring of recent elections, is reflected in the activities of public officials which provide additional media promotion, outside of media space dedicated to presentation of the participants of the elections, although there is no real need for it nor it is related to fulfilling of legal obligations of the officials (e. g. visits and openings of schools, hospitals, households, construction sites etc.).

According to press release of the Government (Conclusion is still unavailable on its web-site), Government reminded public officials of the executive authority, directors of public institutions and enterprises, as well as officials of province and local authority, not to use public gatherings and meetings, in the role of officials, for promotion of political parties or for invitations not to vote for political opponents. It also reminds to the prohibition of the use of public resources for promotion of political party by public official, and defines that it especially refers to "use of official premises, vehicles and inventory of the state organs, provincial and local institutions, public enterprises, except in the case of protection of personal safety, if such use of certain public resources is defined with accompanying regulations or decision of authorized services".

Related to this, Transparency Serbia reminds <sup>2</sup>that the Anticorruption Agency, couple of years ago, provided opinion, in which wrongly interpreted that all ministers have the right to use official vehicles for the activities of political parties, even if they are not persons who enjoy continual protection (such right is awarded to e. g. Minister of Interior), therefore hope remains that Conclusion will influence at least to interrupting of this form of abuse.

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<sup>1</sup>[http://www.transparentnost.org.rs/images/stories/inicijativeianalize/Komentari i sugestije na Nacrt zakona o sprecabanju korupcije iz februara 2019.pdf](http://www.transparentnost.org.rs/images/stories/inicijativeianalize/Komentari%20i%20sugestije%20na%20Nacrt%20zakona%20o%20sprecabanju%20korupcije%20iz%20februara%202019.pdf)

<sup>2</sup><http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9673-sluzbena-vozila-za-partijske-potrebe>



TS reminds that besides various forms of abuse of public resources that are mentioned in the Conclusion of the Government, in practice there are other –for example, publishing of announcements of political party events and statements of the officials on authority organs’ web-sites and social media pages.

Government recommended to the officials not to perform activities related to promotion of political parties and election campaign " during working hours of the authority they are engaged in". This call can be of use, because matter of period in which the campaign should be implemented is currently unregulated. However, to enable violation of this regulation, it is necessary to define such prohibition with law.

Certain significance is also attributed to reminding of the directors of public enterprises and public services to "disrespect of the regulation from the article 29 of the Law on Anticorruption Agency that represents unconscientiously performing of duty that results in significant deviation from basic goal of public enterprise, or public service." In order for this call to reach its full meaning, Government should, as founder of public enterprises and institutions, dismiss the directors of enterprises and institutions that violate these rules, regardless if the Agency considers the case and recommends dismissal. Having in mind that the Law on Anticorruption Agency is effective for as much as nine years, directors that disrespected this obligation in previous election cycles, should be dismissed.

## Conferences

### TS presented results of research and ranking LTI 2019

6 September 2019.

Transparency Serbia presented results of research and ranking of all municipalities and cities in Serbia - LTI 2019. The most transparent in Serbia are Plandište with index 67 and Novi Pazar and Paraćin with 66, while average index for the complete territory of Serbia is 40.

The largest challenge to increasing transparency of municipalities in Serbia represents inexistence of national policy to deal with this matter, stated program director of Transparency Serbia Nemanja Nenadić during presentation of the results.

He said that without such policy, good results are most often consequence of dedication of individuals within municipalities. Nenadić emphasized that the best results are in those areas where there is explicit legal obligation, like in public procurements. But even in such cases when 80% or 90% of municipalities has positive indicators, there is no room for satisfaction because it means that 10 or 20% of municipalities does not fulfill even their legal obligations.



Zlatko Minić from TS pointed out that illustrative example are public enterprises, the worst evaluation of municipalities, although there is legal obligation by the Law from 2012 and 2016 to publish certain documents. Even today, some PE do not even have their own web-sites.

All materials related to research can be downloaded [from the web-site of TS](#).

Deputy President of municipality Plandište - Goran Donevski said that that municipality, compared to previous research, in which scored 49, is now evaluated with 67. He added that thankfully to the results of research of TS it is clear now in which areas it should make some progress.



President of municipality Paraćin -Saša Paunović, said that that municipality for years now records good results in the area of transparency and stated that merit goes to those that did their job, and not the politicians.

Mayor of NoviPazar -Nihat Biševac pointed out that since the research in 2015 till today, transparency index increased significantly thankfully, according to his words, to the desire of local management to increase the citizens trust into local institutions.

Shanley Pinchotti, director of the Office for Democratic and Economic Development of the USAID, indicated that continuous monitoring will help gain an insight into results of the program of support to municipalities by that office.

Milan Marinović, Commissioner for Information of Public Importance and Protection of Personal Data, said that some of the results of this research will be of significance for the work of that institution.

## Too much secrecy of data in public enterprises

20 September 2019.

Since the December last year Transparency Serbia monitors implementation of the Law on free Access to Information and announced changes of that Law. Draft changes and amendments of the Law presented by the Ministry of State Administration and Local Self-government last year, envisaged **significant narrowing the right to free access to information**, by depriving of interested public and journalists of the control of work of enterprises in state, provincial and municipality ownership, that are organized as stock companies.

Having in mind that even those companies that would stay in the scope of law after such changes (those that have status of „public enterprises“), can at any moment change organizational form by the decision of the Government (like in many situations so far), such legal provision could significantly narrow possibilities of public control of that part of public sector that disposes with property of the highest value.



During 2019, Transparency Serbia **submitted large number of the requests for free access to information** to public enterprises and other companies owned by the state and citizens. Out of 58



submitted requests, we received answers to 33, while 25 institutions haven't answered. We presented at the press conference, the most characteristic excuses for denying access to information, based on our requests, as well as data on information requested from the enterprises from the practice of Commissioner for Information of Public Importance.

Associate of TS Zlatko Minić stated that answers did not always have data requested by Transparency, and most interesting are "excuses that public enterprises use when not wanting to answer".

Minić stated as an example Autotransport Pančevo whose buses didn't operate in the direction of Belgrade during the opposition meeting, due to, as stated "insufficient amount of fuel, as well as insufficient number of employees".

To the question of such circumstances, ATP Pančevo answered that list of vehicles and amount of fuel is part of the plan of the defense of the country and is labeled as state secret.

Minić also stated the answer of the enterprise Rembas trans that characterized requesting of information as "mobbing of authorized person", as well as the case of Parking servis that wouldn't answer to which political party it belongs to having in mind statement of its director that activity of removing irregularly parked vehicles "proves that we are the party that creates the order".

Program Director of TS, Nemanja Nenadić said that still many authority organs violate the Law on Free Access to Information of Public Importance by not proceeding upon the requests, but even greater problem is that Government hasn't provided in any of the case execution of Commissioner's decisions. "Not even in this year Ministry of State Administration and Local Self-government, Government and National Assembly haven't eliminated well known problems in access to information, primarily, through changes of the law", said Nenadić.

He added that Constitutional Court of Serbia missed the chance to eliminate some of the forms of violating right to access information through provisions of special law, and as an example stated the case related to the Law on Protection of Competition.

According to his words, authority organs most often deny the information by ignoring the request completely, and later still provide data in the procedure upon complaint. "We have on the one side the Government that does not provide execution of commissioners decisions, and on the other hand adopts Action Plan of Open Government Partnership, that envisages additional commitment of the organs to publish some of the information, even when they are not obliged by the law", said Nenadić. He pointed out that Draft Law on changes and amendments of the Law on Free Access to Information has provision whose goal is to exclude stock companies and companies with limited liability owned by the state, from the implementation of this law, and stressed out that this should not be adopted.

Researcher of Transparency Serbia - Miša Bojović, said that according to data of research, in the previous three years there were 156 unexecuted decisions of the Commissioner related to public enterprises. "We noticed that most often appeared are: EPS, Železnica Srbije, SrbijasandErSrbija".



## *Initiatives and analysis*

### **Protection of the voters' rights**

19 September 2019.

Transparency – Serbia monitors in continuity area of financing of political parties and election campaigns in Serbia since the adoption of the Law on Financing of Political Parties from 2003 and its first implementation in presidential elections in 2004, as well as proceedings of state organs authorized for the control of financing of election campaign. Main part of monitoring is independent collection of data on most important expenses of the election campaign and comparison with the data about reported expenses in the reports on campaign financing. Thus, we monitored elections held in 2007, 2008, 2012, 2014, 2017 and 2018.

Starting from parliamentary, presidential, provincial and local elections in 2012, we developed methodology for systemic monitoring of the phenomenon of the „officials' campaign“, as well as its media promotion. We monitor all the time proceeding of authorized organs related to these matters.

Implementation of the election procedure and exercising of voter's rights were not in the focus of our monitoring. However, certain problems we noticed once they were significant for the topics we processed, and especially election campaign financing. In wider sense, these matters we dealt with in the situations when they were of significance for the fight against corruption in wider sense, through abuse of public resources or through violation of election procedure by bribing the voters. In the past years none of the positive changes were recorded in regards to prevention of the violation of secrecy of voting, by the activities undertaken by political subjects or public officials and officials outside of voting area, or in regards to decreasing potential for abuses of public resources in the goal of influencing the voters.

#### **Problems that should be resolved**

1. **Republic election commission** does not have clearly defined legal status, budget line, or its employees, and persons engaged in work status, therefore it is **disputable whether it can be authorized organ when it comes to internal whistleblowing, while potential for acting in the case of disputable whistleblowing are very limited** (proceeding by the objection of authorized proponents);  
Election regulations do not provide **groups of citizens'** status of legal person, which reflects on impossibility **to treat them as subjects with obligations in compliance with the Law on Protection of Whistleblowers** neither before nor after the elections, while political parties have such duties;
2. **Public does not have the efficient potential to directly insure** into validity of determining results of the elections (minutes of voting committees are not being published), or whether there is evidence on their voting in certain election procedure;



3. Existing **regulations do not provide sufficient protection of known forms of endangering election process** (e. g. „Bulgarian Train“, documenting of the method of voting with photography, placing of special tags or using of special pencils for potential later identification of persons that voted in a certain manner etc.);
4. **REC is passive in election period and post-election period** – there are no invitations to voters to report on potential irregularities, no consideration of the problems from the previous election processes;
5. **Public prosecution and other potentially authorized organs are passive** in the sense of collecting information about illegal activities that can influence accomplishing and use of voters' rights in election and postelection period – there are no invitations to the voters to report potential irregularities, no consideration of problems from the previous election processes;
6. **Criminal act of „bribing and receiving of bribe related to voting“ does not have all the elements** that are of significance for determining violation of the law;
7. **Legal and other mechanisms are not adequately developed for decreasing the potential of abuse of public resources** for the purpose of attracting of voters.
8. **Numerous phenomenon that potentially endanger secrecy of voting or can affect free determination of voters, but are not entirely legally regulated or prohibited** (e. g. practice of collecting „safe votes“, organized bringing of voters to polling stations and other forms of animation to induce their voting by the election participants, giving of valuable objects or providing of free services to the election participants or related persons, keeping of records of specific voters that voted).

#### Potential solutions for stated problems

1. **Republic Election Commission and proceedings in the case of whistleblowing:**
  - a. **REC should undoubtedly determine, and request if necessary from the Ministry of Justice** opinion on whether it has the status of „employer“ in regards to all persons involved in implementation of elections, and related to users of voters' right. If the REC has such status, it should undertake measures from the Law on Protection of Whistleblowers, and to promote its role;
  - b. If the existing legal framework of REC does not regulate the status of „employer“, **amendments** to the Law on Protection of Whistleblowers or the Law on Election of the Members of the Parliament will remove that loophole and **undertake all measures for promoting of this role of REC** (delivering of information to members of voting committees, campaign towards voters, publishing of information on confidential proceedings against reports on illegal activities etc.)
  - c. Amendments to the Law on Election of the Members of the Parliament **widen the authorities of the REC**, to be able to **proceed as external authorized organ** in the case if **anyone points out to irregularities related to election process**;
2. Obligations of political subjects related to whistleblowing:
  - a. Amendments to the Law on Election of the Members of the Parliament or the Law on Protection of Whistleblowers will enable **political parties that have less than 10 employees**, as well as **groups of citizens** that submit election lists **to appoint person in charge of internal whistleblowing** and to enable reporting of illegal activities to persons



- who perform activities on their behalf related to the election campaign or in postelection period (political parties and groups of citizens that win the mandate at the elections);
- b. **Promoting of the implementation of the rules on the protection of whistleblowers among political subjects** and control of fulfilling of such obligations by the REC (publishing of information about method of whistleblowing and name of the person in charge of proceedings on the web site of political subject and delivering of these data along with the submitting of election list);
3. **Insight of the public into data about elections:**
    - a. **Publishing of the copies of the minutes** from the polling stations on the web page of the Republic Election Commission and/or municipalities;
    - b. **Enabling the insight into part of the documentation** that refers to the voter (insight into data on whether it is enlisted if he/she voted in certain elections in a similar way as making an insight into voters' list or receiving of the copy of statements with data on whether he/she voted, for verification of authenticity of the signature);
  4. **Preventing of direct endangering of the secrecy of election process and purchasing of votes:**
    - a. Implementation of measures that would disable or obfuscate by taking out of unused voting paper (like recommendation of CESID for two-part voting paper);
    - b. Prohibition of any form of documenting method of voting, **including defining of rules from the article 160 of the Criminal Code** if not obvious that criminal act represents public presentation or delivering to other person evidences on voting of certain person, **including the one whose ballot it is**;
    - c. **Investigating and consideration of possibilities, in compliance with experiences from other countries**, for preventing the control of the member of voting committee whether prearranged agreement about voting is respected by one or more persons, by placing special tags, using of pencils of certain color etc;
  5. **Passivity of REC** in election and postelection period related to potential irregularities:
    - a. Introducing the **obligation of REC to invite the citizens during the election period** to report all irregularities and to enable safe channel of communication for that, after which REC would be obligated to verify these statements by the official duty;
    - b. introducing the **obligation of REC to organize public hearing**, after finalization of election process, in cooperation with National Assembly, for considering all problems that occurred during the election process and method of their overcoming;
    - c. such **meeting should be organized even before the beginning of next election process**;
  6. **Passivity of public prosecution and other potentially authorized organs:**
    - a. **Special departments of higher public prosecutors** from Belgrade, Novi Sad, Niš and Kraljevo to enable the **safe channels of communication** from the citizens to report illegal activities;
    - b. **Republic Public Prosecutor, special departments of the SPP or all of them in cooperation with REC** should **inform the citizens through media campaign about what represents the criminal act related to elections**, and especially to introduce them with modalities of criminal act of bribing and receiving of bribe related to voting and abuse of official post that has for goal influencing the decision on the elections;



- c. **RPP should** before the beginning of the election process **inform the public about recent cases of investigating suspicion to criminal act of** bribing and receiving of bribe related to voting and abuse of official post related to election process or election campaign;
  - d. **Other state organs, that were reported potential abuses,** should be obligated to **publish information about its proceedings in relation to any doubt in shortest possible deadline** that refers to attempt of influencing the election process (e. g. related to employment in public sector, distribution of social welfare, using of official vehicles).
7. **Criminal act of „bribing and receiving of bribe related to voting“** should be complemented in compliance with the recommendation of Transparency – Serbia that was delivered to the Ministry of Justice several times during the past ten years (enclosed as annex to this analysis)
8. **Other mechanisms for decreasing the potential abuse of public resources for for the goal of attracting the voters:**
  - a. **Setting up of limitations or additional mechanisms of approval and verification** for taking over of new obligations, forgiveness of debts, renouncing of public property and other measures that decrease public incomes and public property or increase public expenditures or disburse existing assets in public property through extraordinary donation, if these activities are implemented during the election campaign, or in certain period before calling for elections or after finalizing the elections, having in mind relevant provisions from the Montenegro and Macedonia and data about their implementation;
  - b. **Setting up of limitations or additional mechanisms of approval and verification** with new employment or other form of work engagement, as well as with widening the circle of users of social welfare and other aid to the citizens or users of subsidies, when these activities are implemented during the election campaign, or in certain period before calling of elections or after finalizing the elections, having in mind relevant provisions from the Montenegro and Macedonia and data about their implementation;
  - c. **Introducing of obligations for all authority organs** (state organs, APV, municipalities, public enterprises and other enterprises in public property, public institutions and public services), except in the case of protection of state security (SIA, Army), to **publish daily updated data about the purpose of using official vehicles** that are in their property or lease during the election campaign, as well **phone expenses**.
9. **Other phenomenon that potentially endangers secrecy of voting or can influence free determination of voters, and is not completely legally regulated or prohibited:**
  - a. **Introducing of prohibition of collecting signatures for the support to election list** in excessive number (e. g. more than 20% from the number that represents legal minimum), to avoid putting of pressure to voters through collecting of excessive signatures;
  - b. **Introducing of prohibition for creating of impression of moral or other type of obligation within voters by political subjects or other persons** to vote at the elections or not to vote or to vote in a certain way, by enlisting them in the „safe votes“ list or in similar way, except through collecting of signatures for the support to election list and enrolment into political party;



- c. **Defining of obligations of public opinion researcher** related to keeping of secrecy of data about political determination of citizens, as well as obligation to enable citizens to verify whether the person that introduces itself as interviewer is really engaged by the public opinion researcher that is subjected to legal obligations;
- d. **Public promotion of possibilities from the article 72a of the Law on Election of the Members of the Parliament, and prohibition for the political subjects to directly provide assistance** to weak and citizens unable to attend the voting, with providing of adequate assistance to interested citizens directly by the organs that implement the elections;
- e. **Prohibition of direct invitation to the citizens to vote or not to vote** on the day of the elections (e. g. home visits, telephone calls, direct messages) or to vote in a certain way (currently covered by regulations about election silence), except from notifications of the Republic Election Commission over media.
- f. **Prohibition of keeping records** about whether specific persons voted or not, both inside and in front of the polling stations;
- g. **Prohibition of donating** to potential voters objects of value, except from promotional objects (e. g. tee-shirts, caps, cups, lighters, pencils, notebooks, calendars) that have clear features of political subject, as well as **providing of free services** by the participants at the elections or related persons (e. g. medical examinations, assistance in household, trainings for skill developing), except when it comes to implementation of trainings intended for the members of political party.

More details [on the web-site of FTS](#).

