

Research on Corruption Risks in Laws and "Covid regulations" and Analysis of the Code of Members of Parliament

In the second half of 2020, Transparency Serbia **analyzed corruption risks in the draft laws**. Starting on September 1st 2020, the ministries have an obligation to ask the Anti-Corruption Agency for an opinion on whether a draft law contains a risk of corruption. However, such an obligation exists only for laws in certain areas¹, **although corruption risks may arise in any regulation**. We have demonstrated this on the example of six laws in different areas (e.g. accreditation, rail transport), which the government proposed to the previous assembly, but were not considered by the Parliament², as well as in the case of minor amendments to the Law on Public Service Broadcasters that were adopted in December 2020. The identified risks are reflected in the increased possibility of political influence, mutually contradictory or unclear provisions, great discretionary powers and lack of transparency.

A separate analysis of the provisions of regulations enacted to address the **consequences of the pandemic showed an increased presence of corrupt risks**. This does not necessarily mean that corruption in their application was real, but it suggests that corruption **was easier to carry out** than in the application of "regular laws" and that the possibilities to prevent it were **significantly reduced**. Serbia is not specific for this, because the necessity of an urgent response from state authorities, increased public expenditures and restrictions on citizens' rights, all of which can cause corruption, are present around the world. The problem, however, is that in Serbia, **anti-corruption mechanisms related to "Covid regulations" have been weakened more than necessary**, to a greater extent **than in other countries** that face the same pandemic.

The biggest corruption risks emerged in the area of public procurement, where the Law has not been changed, but the **legal notion of transparency was entirely derogated by the government's conclusion**, although the Law does not foresee such a possibility when it comes to procurement in healthcare. As a result, it remains unknown to what extent other legal principles in public procurement, such as competition and cost-effectiveness, have been respected.

The parliamentary **control did not exist** from March to May 2020, and after that, the government decrees were enacted "in bulk", instead of discussing each of the acts adopted during the state of emergency individually. Also, based on constitutional provisions, it is not clear whether the government was even authorized to issue decrees governing legal matter during the state of emergency, as such an authority is prescribed only for temporary restrictions on human rights. One of the decrees enacted in this way is the decree under which **100 euros in financial aid** has been granted to all adult citizens. In relation to this act, the corruption risk can be best recognized during the period

¹ At issue are healthcare, education, education, privatization, public procurement, police, customs, taxes, local self-government, and the areas are determined by the Action Plan for Chapter 23.

² Between February and November 2020, legislative activity went completely dormant, first during the state of emergency and pre-election period, and then because of the three-month waiting for the formation of a government. During that period, even ministries did not present draft laws for public discussion, although there was no legal obstacle to that.

when such aid was distributed (before the elections), especially given that the right to aid was held by citizens who have voting rights (not minors).

With laws and regulations relating to assistance to citizens and the economy, as well as regulations that provide for working hours restrictions to prevent the spreading of the disease, there are not many risks resulting from possible discretion in determining the users. However, the regulations did not provide sufficient public information on the allocated assistance, control of dedicated use of funds and control of compliance. These regulations apply to a large number of users and taxpayers. In situations where compliance with the rules should be controlled by a relatively small number of inspectors, with no obligation to publish data on undertaken controls, there is a risk of selective enforcement of regulations.

The decree extending deadlines for handling administrative procedures during the state of emergency, undoubtedly for justified reasons, negatively affected the application of anti-corruption laws, primarily the exercise of the right of access to information. It has also raised the possibility of unequal treatment of administration bodies in similar cases, which may have to do with corruption.

The long-awaited **Code of Conduct of Members of Parliament** was adopted more than a decade after the drafting began and four years after Serbia's first deadline set by GRECO expired. The Code was adopted **as a matter of urgency**, just a week after publication. The proposed provisions could have jeopardized the application of conflict-of-interest legislation instead of improving them, which we immediately pointed out to both the Parliament and the Anti-Corruption Agency, and through the amendment, this most serious deficiency was removed.

The adopted Code **contains useful provisions**, which are novelty compared to the legal obligations of MPs so far, such as the duty to explain the reasons for their actions, to answer questions from citizens and the media, and to disclose private interests that MPs have in relation to parliamentary decisions. The possible effects of these provisions are severely limited, in two ways. The first lies in the fact that many provisions of the Code can be interpreted in very different ways. Another limitation is the fact that potential breaches of the Code will be judged by the Administrative-Budget and Mandate-Immunity Affairs Committee, while the independent Ethics Commission has merely an advisory and educational role. Although the Code was enacted to meet GRECO's recommendations, it is not certain to have succeeded. Namely, the rules for determining what is a conflict of interest in parliamentary decision-making are only slightly specified compared to statutory rules and in practice many dilemmas will occur.

Transparency Serbia

Belgrade, 20.1.2020.