

Elements of State Capture in Serbia

Case studies in two sectors

Executive summary

Within Transparency International's research project on possible state capture in several South-East European countries, Transparency Serbia investigated elements and patterns of this worrying phenomenon in two specific sectors: **urban planning** in the capital city of Belgrade and the functioning of **public enterprises** in the energy sector.

Urban planning in the capital city of Belgrade based on private and political interests

Urban city planning in Belgrade, Serbia's capital city, is being captured by the interests of private investors – and more precisely by the interests of those that are closely linked with the ruling political elite. Although Serbia has rules and regulations on urban planning that envisage the preparation of expert studies, public consultation and approval of plans in the city council, in reality those plans are in most significant cases adapted or even adopted in the first place with major purpose being to serve particular interests.

While Belgrade city has a long history of abuse as regards construction permits, changing of land purposes and unifying of parcels, and non-transparent urban planning in general, participants in such corruptive arrangements have usually tried to stay hidden when violating the rules or abusing legal loopholes.

Since 2012, the promotion and support of private interests has been presented by the political leaders of Serbia and of the city of Belgrade as a matter of prime national interest. For the purpose of the "Belgrade Waterfront" project (with a size of approximately 900,000 square metres), Serbia violated its own rules on expropriation, public-private partnerships, taxation and public procurements, through "one-time" legal mechanisms such as "lex specialis", adopted by the Parliament in April 2015, and the wide provisions of an inter-state agreement between Serbia and the United Arab Emirates (where the private partner for this project is registered). Urban planning for the project formally followed the rules, but the whole state and city apparatus sought to fit that planning with the interests of what at that time was the only perspective investor.

As a result, a) *the largest construction project in the centre of the capital in recent memory was not planned* through an architectural competition, as was originally envisaged; b) the purpose of this construction land was not decided in a participative manner; c) the investor was not selected on the basis of a competition; d) the state entered into a 30-year contract as a minority (32%) partner in a joint venture, although the value of the land and investments to clean up the terrain is significantly

higher than the value of the private investment; and e) the state committed to assign the procurement of public works with a value of almost €300 million, without competition.

More recently, a minor partner in the governing coalition, Bogoljub Karic, a businessman, announced a huge residential construction project on the Belgrade periphery (Makis), stating that everything has already been agreed. The city authorities did not confirm (nor deny) these claims, so a competitive procedure is still possible, but other potential investors have already been discouraged regarding expressing an interest in the same area. The city of Belgrade authorities have changed the water source protection rules in the area in order to enable building on the site and have changed the urban transportation plan so as to include the currently non-existing settlement, with the first subway line of the perspective Belgrade metro network planned to run to the site.

These huge construction projects are presented by the top state and city politicians as a success in terms of attracting investors and economic growth and development. On the other hand, anti-corruption legal mechanisms have been circumvented and key information about businesses and other risks, and the duties of investors, that are related to the public interest, are missing. At the same time, all forms of criticism and calls for accountability have been fiercely rejected and attacked by the government and government-controlled media (as well as most of those that are privately owned).

Damaging effects of political control of the Electricity Company of Serbia

The Electricity Company of Serbia (“Elektroprivreda Srbije”, EPS) is probably the most important company in the country, having in mind the number of employees, income and resources. It a complex public enterprise, incorporating dozens of smaller legal entities (e.g. hydro and coal plants).

While the Law on Public Enterprises, both in its 2012 and 2016 versions, promotes the professionalization, accountability, transparency and efficiency of public entities, none of these goals has been achieved. EPS, being the single largest publicly-owned company, shows this on a massive scale:

- a) The operative management, and in particular the acting director, is purely politically appointed and widely considered as not qualified for the position; similarly, many of the lower level managers are considered incompetent as well.
- b) There is no information that the oversight board of the company, appointed by the government, has made efforts to rectify any of the identified problems.
- c) EPS practises party-affiliated employment, that is facilitated by frequent reorganisation of the company structure, discretionary changes of systematisation act with the description of working places, and by maintaining several firms formerly connected to EPS plants in Kosovo.
- d) EPS's profit is artificially increased in order to make a transfer to the budget, to present a budget surplus and to obtain political gain by linking this surplus this with the success of government policy.

e) There is no comprehensive reporting and accountability for the achievement of EPS's goals, only regarding its financial results.

f) The price of EPS's services has for decades been maintained at a lower level than in most of the neighbouring countries, in order to keep the "social peace" and to avoid political leaders seeing a decline in their popularity.

EPS is repeating on a large scale problems that exist in the wider public sector, such as public procurements. Namely, it spends many millions or euro annually on the procurement of various services, whereas the need for such services is often doubtful and it is suspected that illegal party financing takes place.

This all adversely affects EPS's ability to perform its functions and the future development of this enterprise overall. Surplus expenditures, bad management, a reluctance to invest in the maintenance of the system and the development of new capacities, while it might offer some individual pecuniary or political interest could have damageable long-term effects for the company.

These effects might include reducing EPS's potential as regards an eventual privatisation in the future. They also include the need for the state to obtain new loans in order to obtain the necessary development of EPS's capacities. Another negative effect is the fact that EPS seeks to secure new investments through public-private partnerships (some of them on the basis of non-competitive procedures and inter-state agreements), instead of using EPS's own income for that purpose. Moreover, due to the size of the company and the scope of its work, the negative effects already include Serbia's lower gross domestic product and might include the potentially weakened stability of the overall energy sector.

Key recommendations

Serbia should not enter inter-state agreements that make it possible to circumvent any anti-corruption laws, and it should not enter into individual contracts based on previously signed inter-state agreements

The European Union (EU) should more clearly recognise the risks arising from the mechanism of inter-state agreements to the overall rule of law in Serbia, and in particular in the context of Chapter 23 of the accession negotiations, but also in other areas (such as Chapters 5, 8, 32).

Urban planning

The Serbian authorities should not exclude metropolitan areas from the overall legal regime by declaring a private investment to be in the "national interest", or by adopting a one-off "law" for a specific project

The authorities of the city of Belgrade should ensure the transparency, inclusiveness and predictability of urban planning, by following pre-set rules and considering public consultation inputs.

The authorities of the city of Belgrade should react to the public statements of potential investors that claim that there is pre-set agreement for certain pieces of land, in order to protect the competitiveness of land lease procedures in the future

The EU should, in the context of the negotiations under Chapter 23, recognise more clearly the risks arising from shaping urban plans according to the potential investors' needs and public officials' support for private investment projects.

Public enterprises

The Government of Serbia should appoint professional management in all public enterprises.

The public prosecutor should investigate suspicions about abuses in public procurements and employment in public enterprises, including EPS.

Public enterprises should seek to fulfil their basic functions, to maintain and develop their capacities (e.g. in electricity production in the case of EPS) and not be a tool for the government's social or fiscal policy

EU should recognise the importance of public enterprise oversight and management from the perspective of the fight against corruption (Chapter 23) and the overall rule of law.