**Priorities in the fight against corruption in Serbia 2016-2020**

Starting from belief that the fight against corruption involves the implementation of activities that depend less on particular political programs, and more on **widely accepted principles and mechanisms for fighting against corruption**, by taking possible ideological and other differences between political actors into consideration, National Anti-corruption Strategy, other strategic documents and plans related to the EU integrations, evaluations of relevant international organizations and evaluations of citizens and businessmen in Serbia, Transparency Serbia (a domestic non-governmental organization and member of the global anti-corruption network Transparency International) invites the future Government and Parliament to include the following bullets into their program of activities, and all political groups that participate the work of Parliament, either to accept them as their own or to state reasons as to why they are opposed to the stated priorities, stances, and proposed activities:

1. **The keeping of legal unity and legal security:** a situation should not be allowed to occur in which the Government proposes, Assembly adopts, or the President of the Republic declares a law if they were arguably warned that such act is **contradictory to the Constitution**; under the same reasoning, a situation should not occur in which a law is proposed, adopted or declared, **that it disturbs the legal system** by being in conflict with previously adopted laws; the Government should not adopt any regulation that is contrary to the law, nor regulate matters that can only be regulated with the law by its own regulations, especially when these regulations are not published. **State officials must not leave any doubts on the legal nature of state affairs**, and whether agreements and contracts have already been concluded and what obligations Serbia has undertaken, especially in arrangements with potential investors or the construction of infrastructure facilities.
2. **More transparency and participation in the decision making process:**
3. it should never occur that the Government proposes a law that hasn’t passed the **public debate;** sufficient time should be left for public debate, all suggestions must be **considered,** and the ministry that prepares the act must **elaborate as to why the propositions were accepted or rejected.** To achieve this goal, the Law on State Administration, the Government’s Rules on Procedure, and other regulations should be amended.
4. Parliament should cease poor practices that undermine Constitutional civil rights that draft laws that were submitted as people’s initiative or by opposing parties were not considered at all - there should be a deadline in place for placing such drafts into the agenda. The practice of merging the assembly debate on unrelated acts within a single point should be discontinued.
5. The Parliament should, through public hearings, consider the **effects of the previous implementation of anti-corruption laws** and the need for new ones. When considering the draft laws, the Government and the Parliament should carefully consider the corruption risks identified by the Anti-corruption Agency, as well as the problematic provisions pointed out by other independent state bodies, and to request additional explanations from the relevant ministry on how the risks should be removed.
6. It is necessary to legally regulate **lobbying** and to make it public, whetherit targets executive organs or deputies.
7. **Minutes and discussions from Government sittings should be regularly published**; as to the decisions on appointing, resolving, and proposing of personnel, Government should provide an explanation as well; Similarly, the Government should publish an explanation of the proposed by-law acts (resolutions) and proposals for conclusions on the basis of which it adopts guidelines, reports, plans and the like;
8. the web-site of the Parliament should publish all amendments that are submitted and the reasons as to why the proposer accepts or denies these amendments;
9. the process of negotiations and the transparency of information **related to the signing of international agreements and credit arrangements should be legally regulated**, so that the deputies and public can have a perspective on **whether the potential benefits are greater than the damage that occurs due to the non-implementation of regulations on public procurements and public-private partnership**.
10. **Caution with regulatory and financial interventions:** Each regulatory or financial intervention of the state, especially when it influences the economy, results in an increased danger of corruption. Therefore, such interventions should be done only when necessary, or along with the implementation of measures for the prevention of corruption (e. g. determining clear criteria for awarding the assets, publishing information on decisions, supervision over their implementation). Furthermore, reform of regulations responsible for removing the procedures that burden the economy and citizens, making wider use of the opportunities provided by electronic communications means and opening of data-bases, terminating the practice of giving privileges to business entities through remission or the act of taking over of their debts, and the publishing of a clear calculation of potential benefits from financial incentives through state aid compared to the expenses of such aid.
11. **A strategic approach to the fight against corruption:** Parliament should regularly monitor the implementation of the Anti-corruption Strategy, the Action Plan for Chapter 23 of the negotiations with the EU, and other strategic acts of the Parliament and the Government (related to the reform of the judiciary, public administration, public procurement, financial investigations, financial controls, etc.) on the basis of the report of the Anti-corruption Agency and other relevant authorities, to initiate procedure for amending the Strategy and the Action Plan where these documents are either incomplete or the activities are poorly formulated or there has been no substantial progress, despite the fact that the measures have been implemented and to **hold leaders that failed to perform their tasks accountable**. Action plans from the area of European integration should be used as impetus for accelerating the reforms, and not as an excuse for the ignoring or delay of activities which are recognized as a problem in Serbia and which the EU has not emphasized as a priority. It should not occur that the Government proceeds contrary to strategic acts that are adopted or proposed by itself – if these acts will be treated as non-binding readings, intended only for showing the foreign and domestic public, it is better to not waste energy on their adoption.

1. **Public sector reforms** should comprehend, among others, the following measures: the adoption of the Law on Ministries, where the division of jurisdiction is in sole function of the efficiency of work, and does not satisfy the need of coalition partners; decreasing the **number of members in Government**; the decrease of the total number of public sector employees, that is predominantly the consequence of party employment, to a number that is comparable to European countries of a similar size, but also to the possibilities of budget financing and whereby priority should be given to the priority activities of public administration, public services and public enterprises; the termination of the practice of **increasing the public sector** with the unnecessary relocation of state affairs to public agencies and organized firms with an unclear legal status; the analysis of public administration needs and the publishing of findings; the review of current job classifications and their **harmonization with the actual needs** of organs for fulfilling legal tasks, and not with the existing situation; the introduction of **clear and objective criteria** for employment and advancement, as well as the reconsideration of the expertise of those currently employed; the introduction of measures for the resolving of conflicts of interest within public services (health, education etc.), in organizations of obligatory social insurance (health and retirement fund), and in public enterprises, along with control over the implementation of such measures in state administration and municipalities; the appointing of heads of public enterprises and public services **on the basis of competition** and the quality of proposed programs of work; the regular consideration of the business programs of public enterprises, and reports on their realization as well as the consistent implementation of legal norms or the accountability of the directors for failing to implement the program and to publish these documents; the strengthening of organs that perform supervision within the executive authority, and especially regarding **budget inspection**.
2. **The full respect and strengthening of the status of independent state organs in the fight against corruption:** As one of its first tasks, the new sitting Parliament should thoroughly reconsider the annual reports on the work of the State Audit Institution, Ombudsman, Anti-corruption Agency, Commissioner for Information of Public Importance, and Protection of Personal Data and Republic Commission for Protection of Rights in Public Procurement Procedures for 2014, 2015 and 2016 in order to obligate the Government to resolve the issues indicated in these reports (e. g. failing to act by obligatory decisions, incomplete authorities, conflict of laws). Additionally, the proposition of changes to the Law on Ombudsman and the Law on Free Access to Information that the Government proposed even in 2011 should be adopted (or new ones should be formulated on the basis of these prepositions), or to change the Law on Anti-corruption Agency and the Law on Financing of Political Activities and to amend the Criminal Code with criminal offenses that are now in special regulations (contrary to good practice) and the introduction of criminal prosecution for persons who interfere with the collection of evidence in the proceedings conducted by these authorities. The failure of the Parliament to check the respecting of its conclusions from 2014, to adopt conclusions on the occasion of the report of independent organs in 2015, to hold members of the Government that haven’t respected the obligatory decisions of independent organs accountable, and to elect missing members of the Board of the Anti-corruption Agency reflected negatively on the accomplishments of the jurisdiction of independent organs and supervisory role of the Parliament.
3. The implementation of existing rules and amending them where necessary, in order to provide: complete **termination of the practice of buying media influence or wasting public resources** through the spending of money to promote the activities of public enterprises, ministries, and provincial and local authorities, as well as through public procurement of information services whose primary purpose is political promotion; the transparent **determining of public interest** that is accomplished through the financing of media contents and the **division of assets** for such intentions; the provision of **transparency over media ownership and other data that can indicate the influence over** editorial policy (e. g. data on the biggest advertisers). Adoption of comprehensive and consistent rules on state and political advertising, through amendments to the Law on Public Procurement, the Law on Advertising, media and electoral regulations.
4. Provision of the full implementation and improvement of the **Public Procurement Law** for reducing corruption in all three phases (planning – implementation of procedure – contract execution), as well as the implementation of the PPL rules to public-private partnerships, through strengthening the capacities of the organs that perform supervision over its implementation, greater transparency of all data on the spending of the budget, the use of electronic public procurements, removing unnecessary conditions and other factors that unreasonably reduce competition, the promotion of the system of the protection of rights, functioning of the system for misdemeanor punishment, annulment of null and void public procurement contracts and the termination of the practice of implementing the largest infrastructural projects without administering this law.
5. **The completion of judiciary reform:** It is necessary to promote the practice of publishing data about the **methods of implementing criteria** for election and the evaluation of judges’ work in each specific case, having in mind that recently published data on the scoring of candidates shows inconsistencies, to provide the candidates and the public with arguments on whether certain candidates haven’t fulfilled the conditions to be elected to the post, or why the chosen candidates were better than the others. The Government, Parliament and politicians should not interfere with the work of judiciary organs, neither through the prevention of criminal prosecution, nor by asking for it for certain individuals, and especially not by disclosing data on arrests and criminal proceedings or publishing such data in selected media. Judges and public prosecutors should be held accountable for their work, and the members of HJC and SCP should be held accountable as well, which calls for necessary changes to regulation. The number of public prosecutors and judges that deal with cases of severe corruption should be adequate to the scope of these types of criminals. Even without waiting for the announced constitutional reforms that will exclude the Minister of Justice and the President of the Parliamentary Committee on Justice from the composition of the HJC and the SCP, political officials may renounce their participation in the work of this body or participation in voting. The Government and the Parliament can fully comply with the proposals of the HJC and SCP, even when the current constitutional norm authorizes them to act differently.
6. **More reported and investigated cases of corruption:** Keeping in mind that the main issue of corruption in Serbia is that only a small proportion of criminal acts get reported, it is necessary to undertake measures in order to change this situation. The Law on Protection of the Whistle-blowers, which was adopted for this reason, did not bring about significant changes, judging by the statistics of reported corruption. The norms of this law should be improved, especially in the part relating to the conduct of the authorities with whom the whistle-blowers reported their knowledge of corruption and other problems. For the accomplishment of this goal, it is also necessary, prescribe the obligatory **release of criminal responsibility,** instead of the facultative release of penalty, of a bribe-giving who otherwise could not exercise his rights within a reasonable time and who report the case. The second necessary measure is a more **active approach** in investigating corruption by the police, prosecution, and other organs. Public prosecutors should investigate whether there was corruption even before they receive criminal charge – by reading publicly available reports (e. g. report of SAI), based on the information provided on the case of suspected corruption (e.g. from the Anti-corruption Agency and the Government Anti-corruption Council), but also on the basis of already determined patterns of behaviour (e. g. in the situation of abuses with land construction in one city, for the investigation of the practice in another city that implements the same regulations, through available data). The third set of measures comprehends the **amendments of criminal legislature** for more efficient discovery of corruption (e. g. introduction of “illicit enrichment” from Article 20 of the UN Convention Against Corruption), the **use of mechanisms for the cross check of property and incomes** by the Tax Administration (or the replacement of these mechanisms by the long-announced "the Law on Examining the Property Origin"), specifying the authorities and obligations of the Anti-corruption Agency in the **verification of the accuracy and completeness of data on property and incomes of public officials**, wider use of **special investigative techniques,**  and financial investigations in revealing corruption, in compliance with the law, where special attention should be paid to the preparation of the implementation of new legal solutions (from March 1st, 2018).
7. **Clear and comprehensive plans of work, reports on work and their consideration**: The Government submits annual reports on work, but they are not completely comparable to other plans of work. The Parliament should reconsider these reports, as well as reports on the final budget account, which hasn’t been the case so far. In the consideration of this report, it is necessary to determine whether non-financial indicators from the program budget were accomplished. Competent ministries and the Government should carefully consider plans of work and reports on the work of public enterprises and other institutions, and make these results available to the public. The adoption of the Law on the Planned System of the Republic of Serbia and two additional regulations, created by the Republic Secretariat for Public Policy, would contribute significantly to resolving the stated problems.
8. The clear **division of the jurisdiction and authorities of anti-corruption state organs:** In this sense it is especially important to organize the matter of authorities of the Government Coordinator in the fight against corruption, if there is the intention to keep this concept in future, the removing of **overlapping jurisdictions** between the Government coordination body and the Anti-corruption Agency (when it comes to prevention), or the police Office for the fight against organized crime and corruption and security services (when it comes to the reveal of corruption).
9. The Government should regularly **consider the reports and recommendations of its Anti-corruption Council** and should undertake measures for resolving problems that these reports indicate. When the Council publishes its reports, the Government should inform the public of how it proceeded to resolve systemic problems (e. g. changes in regulations), resolve individual problems (e. g. acceleration or stopping the procedure, dismissal of accountable leaders, inspection control, criminal charges), or further verify the facts.
10. **Regarding the elections and the election campaign, the Government and the Parliament should contribute to respecting existing rules and improving them.** Among other things, this would include supporting the implementation of the through control of reports of campaign financing and the implementation of legal measures against potential offenders. The respect of regulations during the election campaign should be monitored by the following organs: the Anti-corruption Agency (related to campaign financing and the proceedings of public officials), the Regulatory body for electronic media (related to the disruption of equality when advertising and presenting the participants of the election in media), the State Audit Institution (related to the use of public resources during the campaign), the public prosecution (related to the abuse of public resources and bribery related to voting) and the Fiscal Council (related to election promises that can influence the fiscal balance). We conclude with regret that the Supervisory Committee of the National Assembly wasn’t established for 2017 presidential election as well, which was obligatory on the basis of the Law on Election of Deputies. Due to this, no state organ will sufficiently monitor certain problematic phenomena in the campaign. TS believe that this committee should be established right after the new Government is established, in order to be able to perform his function in the first next election process. TS also call for amending of the legal framework for the election campaign, primarily through the limiting of promotional activities of public officials during the campaign, and through the setting up of rules related to campaigns of third persons related to the elections, enabling public information on campaign funding during the campaign and introducing more logical rules for the allocation of budget funds. Let us remind that Serbia has received recommendations for amending the rules from the ODIHR and the EU TAIEX expert, that the deadlines for changing the Law from the domestic strategic documents (end of 2014 and the end of 2016) have already expired twice, but that the problems have not been resolved.
11. **The changing of the Constitution** is currently planned as part of European integrations and for the strengthening of the independency of the judiciary (changes to the composition of the High Judiciary Council and State Prosecutors’ Council); However, amendment of the highest legal act is necessary for a more efficient fight against corruption, among others, for the narrowing of a too wide immunity for criminal prosecution, decreasing the number of deputies, organizing of the status of independent state organs, the setting up of barriers for violations of rules on disposing with public finances through excessive borrowing and international contracts, better organization of resolving conflicts of interest and the provision of firmer guarantees for transparency of authority organs’ work.

Transparency – Serbia

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