
Analytical Report - Working Paper

"Campaign of Public Officials" as a special kind of abuse of public resources for political promotion¹

Description of the problem and possible solutions

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Campaign of Public Officials – term and main findings

"**Campaign of public officials**"² is a term which describes the activities of public officials in the pre-election period, posing as their "regular work" while essentially they are a part of the political promotion. On these activities media are reporting in the news program, outside blocks related to the presentation of parties. In this way, parties with who voters are identifying public officials are receiving additional promotion in quantitative and qualitative term - reports on "campaign of public official" are placing in the context of "objective reporting", and news programme ratings are far higher than pre-election ratings of promotional or advertising blocks.

This form of election propaganda is not covered by the regulations governing access of participants of elections to the media (e.g., equal presentation of electoral lists). Since, it legally does not have a treatment of pre-election propaganda, the appearance of state-party leaders in the news program does not fall under the breakdown of costs of the election campaign neither it is a subject to the control of financial reports of political entities.

Transparency Serbia (TS) has monitored the "campaign of public officials" systematically in three election cycles - 2012, 2014 and 2016. Methodology and results of monitoring were presented separately, and the main findings are:

- campaign of public officials mostly is not regulated by legislation and by itself, in majority of cases, does not constitute punishable violation of laws;
- there are cases where the activities of public officials within the campaign have elements of violation of the provisions of the Law on the Anticorruption Agency (for example: the use of public resources for the promotion of political entities referred to in Article 29 of the Law) or other regulations;
- campaign of public officials can have positive financial effects for political parties which public officials are representing (or with which voters are identifying them, even if parties are not explicitly mentioned in the activities and reports), and negative financial effects or additional costs on public finances;

² In the narrow sense, campaign of public officials is most often manifested through promotional activities of public officials: visits to companies, schools, hospitals, courts, opening of factories, construction sites, fairs, signing agreements and memoranda of construction and investment, scholarships, presenting of plans for construction, delivery of scholarships, help and gifts, conversation with citizens, workers. Monitoring of TS also includes other forms of activities that may have promotional elements (visits abroad, cabinet meetings with local and foreign officials, athletes, etc., on-site meetings with local officials and officials participating in events (conferences, meetings, round tables, solemn academies, and celebrating significant dates). For practical identification of "promotional activities" within the campaign of public officials two test questions may be used - whether this activity is something that would be possibly important in two months (what will be the effect) and whether this would happen and whether it would work in the absence of public official. More details in the section related to the monitoring of 2012, 2014 and 2016.

- campaign of public officials is a phenomenon that is not characteristic just for one party or just one level of authority. It was identified at local, provincial and national level, and public officials, who are participating in it, are from all parties which, in the reporting period, had the authority. Therefore, with a great degree of certainty, can be assumed that initiatives for changes of regulations and practices in this area did not encounter support of representatives of political parties.

Namely, Transparency Serbia, in particular since 2012, is actively committed to regulate this form of promotion through regulations (laws and bylaws), as well as to change practices of public officials themselves, but also the relation of media toward this form of promotion.

TS have indicated the following:

- significant step toward solving the problem of “campaign of public officials” would be the existence of awareness in media on what is news and what promotional activity or "pseudo-event" organized to promote (and consequently abstained reporting from such events), or about the role of public officials at these events (reporting what happened - “factory is opened”, for example - rather than what public official has done and said);

- Regulatory body for electronic media could stipulate rules for reporting in such cases;

- significant step in practice would be respect of the Article 99 of the Law on the Election of Members of the Parliament, or the establishment of the Parliamentary Supervisory Committee. One of the tasks of that body would be monitoring of campaign of public officials, pointing out and warning officials, media and public on controversial phenomena;

- through the electoral legislation it could be stipulated what public officials can and what cannot do during the campaign.

In the reports on monitoring of campaign of public officials in Serbia, TS had also pointed out on some of the examples from the region where the campaign of public officials is regulated by legislation. Within cooperation with other branches of Transparency International from the Balkans, TS had organized a regional conference on July, 12th 2016 in Belgrade, with the aim to consider how this issue is treated legally in other countries, how these rules are applying and what the international standards are. All these experiences will help us to concretize proposals for amendments to laws.

How the campaign of public officials is (not) regulated

Serbia has a number of regulations related to the use of public resources and promotion of public officials during the election campaign, but, as has already been pointed in the introductory chapter, promotional activities within the campaign of public officials most often are in the "gray zone" and belong to the "problematic behavior" not covered by the regulations adequately.

Abuse of office is generally stipulated by the provisions of the **Criminal Code**³, which in the Article 359 stipulates imprisonment for "an official who by abuse of office or authority, by exceeding the limits of his official authority or by dereliction of duty acquires for himself or another any benefit, or causes damages to a third party or seriously violates the rights of another".

Law on Budget System⁴ stipulates in the Article 71 that "an official or head of direct, and/or indirect budget beneficiaries shall be accountable for commitment creation, commitment verification, issuance of payment orders to be executed from the funds of the authority he or she manages, as well as the issuance of orders for payment of funds belonging to the budget. An official or head of direct, and/or indirect budget beneficiaries shall be accountable for legal, purposeful, cost effective and efficient usage of budget appropriations".

Aforementioned provisions would be of importance if the liability of public officials and civil servants would be determined for abuses that may be behind certain forms of "campaign of public officials", which from the "gray" zone goes into a "black". For example, the accountability for violation of the Law on Budget System would be existed if a head of the authority ordered the payment of funds for social help, although they are not foreseen in the budget; criminal accountability for abuse of office would exist when public officials are using entrusted resources or work of directly subordinated servants for a party promotion. Similarly, violations of other regulations are possible (e.g. Public Procurement Law).

Most common offense in connection with the campaign of public officials refers to the provisions of the **Law on the Anti-Corruption Agency**⁵. In the Article 29, Paragraph 2 of this Law it is stipulated that: "An official may not use the public resources and public meetings which he/she attends in capacity of official for promotion of any political parties".

Paragraph 3 permits an exception: "As an exception to paragraph 2 of this Article, an official may use public resources for personal security if the use of such resources is governed by relevant regulations or decision of the services tasked with security of officials".

And finally, in the Paragraph 4 of the Article 29 is stipulated that: "An official is required at all times to unequivocally present to his/her interlocutors and the general public whether he/she is presenting

³ Criminal Code (Official Gazette of the RS No. 85/2005, 88/2005 - corr., 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014)

⁴ Law on Budget System, (Official Gazette of the RS No. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 - corr., 108/2013, 142/2014, 68/2015 – other law and 103/2015)

⁵ Law on the Anti-Corruption Agency, (Official Gazette of the RS No. 97/08, 53/10, 66/11-US, 67/13-CC and 8/15-CC)

the viewpoints of the body in which he/she holds an office or viewpoints of a political party, i.e. political entity". Members of the Parliament and representatives of parties in other assemblies do not have such a duty.

In the penal provisions of the Law, in the Article 74 it is stipulated that an official shall be fined from 50,000 to 150,000 RSD for violation of the provisions of the Paragraph 2 and 4 of the Article 29.

Law on Financing Political Activities⁶ is indirectly significant for this subject, insofar as it obliges political parties, coalitions and citizens' groups to keep records of income and expenditure of the campaign, that campaign is funded from the special accounts, to report in detail the Anti-Corruption Agency on the sources of revenue and cost structure. It is explicitly prohibited to finance a campaign from state bodies, public institutions, state-owned enterprises and other public sources (Article 12), except through a dedicated budget subsidies and free services that are given to all participants in the elections under the same conditions. Any use of public resources for campaign (official vehicles, office equipment, working time of civil servants, posting on the official web-site, etc.), and even the involvement of public officials themselves, therefore represent a violation of rules on campaign financing from the Law, for which the political entity and / or responsible persons may be fined in misdemeanor proceedings or criminal sanction⁷, and after that through the administrative measure of "denial of the right to public funds". While in the case of use of material resources violation of these rules is obvious, it would also exist when it comes to the use of illicit human resources for the campaign. Namely, the Article 9, Paragraph 1 of the Law stipulates that: „a donation is a pecuniary amount, other than membership dues, that a natural person or legal entity voluntarily give to a political entity, a gift, **as well as services provided without compensation or under conditions deviating from market conditions**". With regards to these free or less paid services the law makes no distinction between officials, party members and other persons who are engaged without compensation in favor of the candidate.

Law on the Election of Members of the Parliament⁸ in the Articles 99 and 100 stipulates the establishment of the supervisory board whose task "in the process of conducting elections" is to conduct "general control over the actions of political parties, candidates and mass media during the election activities." Supervisory board shall:

1. monitor pre-election activities and point out possible irregularities in the acts of political parties, candidates and other participants in the electoral procedure,
2. control the mass media activities in application of provisions of this law regarding providing of equal conditions for presentation of submitters of the electoral lists and candidates from the electoral lists,

⁶ Law on Financing Political Activities (Official Gazette of the RS, No. 43/2011 and 123/2014)

⁷ Article 38, Paragraph 1 and 2: „Whoever gives, and/or provides for and on behalf of the political entity, funds for financing of the political entity contrary to the provisions of this Law with intent to conceal the source of financing or amount of collected funds of the political entity, shall be punished with imprisonment from three months to three years. If the offence referred to in para 1 involved giving or receiving more than one million and five hundred thousand dinars, the offender shall be punished with imprisonment from six months to five years.“

⁸ Law on the Election of Members of the Parliament (Official Gazette of the RS, No. 35/2000, 57/2003 – decision of the CCRS, 72/2003 – other law, 75/2003 – corr. other law, 18/2004, 101/2005 – other law, 85/2005 – other law, 28/2011 – decision of the CC, 36/2011 i 1and4/2009 – other law)

3. suggest measures for respecting equality of candidates in presentation of their programs,
4. address the public in order to protect the moral integrity of candidate's character,
5. warn of acts of political parties, administrative bodies, candidates and the mass media which hinder the electoral campaign and jeopardize equal rights of all candidates.

If any participant of the electoral campaign behaves in such a way to incite violence, or spread national, religious or racial hatred, or encourage gender inequality, the supervisory board for the electoral campaign shall, without delay, initiate the procedure before relevant state authorities.

In case the agreement on presentation is not concluded in the period stipulated, the supervisory board shall determine the number and duration of broadcasts for equal presentation of submitters of the electoral lists.

Supervisory board have ten members, and half of those members shall be appointed by the National Assembly of the Republic of Serbia based on recommendation of the Government of the Republic of Serbia, and the other half at recommendation of the parliamentary groups of the National Assembly of the Republic of Serbia, from the ranks of prominent public officials, under the condition that they are not members of the political party bodies taking part in the elections.

Law does not stipulate sanctions for failure to fulfill this obligation.

Law on the Election of the President of the Republic⁹ stipulates that elections for the President of the Republic are conducted and implemented by the bodies responsible for the implementation of the elections for the MPs of the National Assembly and for issues which are not specially regulated by this Law, provisions of the Law regulating the election and the termination of the term of office of the MPs of the National Assembly shall be mutatis mutandis applied. Therefore, the provisions on the supervisory Board are relating to the campaign for the election of the President.

This is not a case with the **Law on Local Elections**¹⁰ which contains no provisions regarding the campaign coverage, the way it was done by the Law on the Election of Members of the Parliament. In the Law it is explicitly stated that the provisions of the Law on the Election of Members of the Parliament on voters' registers, balloting material, appointment to the electoral commission and electoral committees, polling stations, information to citizens on the candidates, ban on duration of election propaganda and announcement of early results or estimates of election results of voting, voting, ascertaining and announcement of election results, tax and charge exemption for funds paid as fees for work of persons in electoral bodies and fines, shall accordingly be applied to the election of councilors, unless provided for otherwise by the Law on Local Elections.

Law on Government¹¹ does not stipulate in detail powers of Government "in a technical mandate," which is practically period during which public official's campaign last. In the Article 17 which stipulates "powers of Government and Member of Government after the termination of government

⁹ Law on the Election of the President of the Republic, (Official Gazette of the RS, No. 111/2007 and 104/2009 – other law)

¹⁰ Law on Local Elections, (Official Gazette of the RS, No. 129/2007, 34/2010 – decision of the CC and 54/2011)

¹¹ Law on the Government (Official Gazette of the RS, No. 55/2005, 71/2005 - corrections, 101/2007, 65/2008, 16/2011, 68/2012 – decision of the CC, 72/2012, 7/2014 – decision of the CC and 44/2014)

term of office" is stipulated that "a Government whose term of office is terminated may perform **only routine tasks** and may not propose to the National Assembly laws and other general acts or pass regulations, unless their passing is linked to a time limit specified by law or if so required by the needs of the state, interests of defense or a natural, economic or technical accident".

Government in a technical mandate "may not appoint officials in state administration authorities and, upon exercising founding rights of the Republic of Serbia, may only appoint or consent to the appointment of an acting director and members of management and supervisory board".

Law on Local Self-Government¹² also does not stipulate in detail the powers of local officials whose term of office is terminated, or the temporary authority. Article 51 stipulates that " with termination of the mandate of the Assembly, the mandate of municipal executive bodies is terminated, but they **perform routine tasks** in their jurisdiction until the entry into office of the new President of the Municipality and the Municipal Council, the President and members of the interim authority if the Assembly mandate was terminated due the dissolution of the Assembly", while Article 86 stipulates that "constitution of the Assembly and the election of executive bodies of local self-government, **routine and urgent tasks within the jurisdiction of the Assembly and the executive bodies** of local self-government, performs a temporary body of the local self-government, which consists of President and four members".

It is important to note that **there is no law or bylaw which would generally** (that is, regardless of whether it is in a campaign or not) **stipulate issues** of "opening ceremony" of public and private buildings, promotion of concluded contracts and other situations which are often used for promotion, as well as a way of promoting the activities of state bodies. Public officials and authorities have no obligation to be engaged in such activities and to promote them, but, on the other hand, it is not forbidden. This opens a **wide space that through discretion decisions achieve personal or party interest at the expense of the public** and also at the time outside the election campaign.

Also, it should be noted that there are no legal restrictions regarding the "timing" of the activities of the authorities so as to start or finalize in good time before the elections (e.g. planning of certain public works so as to put an end to the era of the election campaign, determining the time when to increase pensions or social help benefits to be shared, recruitment of civil servants, etc.).

As for the relation of media attitude toward election campaign in general and toward the campaign of public officials in particular, reference should be made to three media laws, the actual act of the Regulatory body for the electronic media and the Code of Journalists of Serbia.

Law on Public Information and Media¹³ contains general provisions on information on matters of public interest, freedom of media, journalistic obligation of attention, as well as provisions on the status of holders of public and political functions (obliged to suffer critical opinions concerning the results of the work). On the issue of the pre-election campaign, only deadlines for the publication of the reply and corrections are specially regulated.

¹² Law on Local Self-Government (Official Gazette of the RS, No. 129/2007 and 83/2014 – other law)

¹³ Law on Public Information and Media (Official Gazette of the RS, No. 83/2014 and 58/2015)

Law on Electronic Media¹⁴ regulate work of the Regulatory body for the electronic media (REM), conditions and the manner of providing audio and audiovisual media services, conditions and procedures for issuing licenses for the provision of audio and audiovisual media services. It is stipulated that the REM among other things, "prescribes the rules that are binding for media service providers" and "encourages development of professionalism and a high level of education of employees in the electronic media in the Republic of Serbia, as well as the improvement of editorial independence and autonomy of providers of media services". Law, in the Article 47, stipulates obligations of the of media service providers in relation to program content. Among the other, "media service provider, in relation to its program content, in accordance with their program concept", shall "provide free, true, objective, complete and timely information"; to "transmit communications of public authorities of an urgent nature relating to the endangerment of life, health, safety, or property"; to "contribute to raising the general cultural and educational level of citizens; to respect the ban on political advertising outside of political campaigns and during the such campaign enable registered political parties, coalitions and candidates representation without discrimination".

"Regulator can impose on media service provider a remonstrance, warning, temporary ban on publication of the program content or may revoke their license" due to a violation of this obligations

Law on Public Media Services¹⁵ stipulates in Article 7 public interest which public media service exercised through its program content. Among other things, these are "true, timely, complete, impartial and professional information to the citizens and to allow the free formation and expression of opinion of listeners and viewers on the territory of the Republic of Serbia, autonomous provinces and local self-government" and "free and equal representation of political parties, coalitions and candidates which have verified electoral list for the republican, provincial or local elections, during the pre-election campaign".

Law on Advertising¹⁶ regulates certain activities that do not have the status of advertising in terms of definition of advertising in the law, among them the election campaigns and other promotional activities of political organizations in accordance with the regulations governing the elections, as well as regulations governing the electronic media.

Rules on obligations of providers of media services during the pre-election campaign¹⁷ is bylaw prescribed by the Regulatory body for electronic media, which(along with two other acts related to the protection of the rights of minors and protection of human rights) had replaced the earlier General Binding Instruction on Broadcasters' Conduct (the Code of Conduct for Broadcasters).

Rules defines pre-election program as "a program content that is intended to inform about the pre-election activities of electoral lists and candidates, their presentation or political advertising" and information about the pre-election activities as a "program content that is broadcasted without financial or other compensation, in the framework of an information programs or special programs devoted exclusively to the pre-election campaign, with the aim of reporting on pre-election actions

¹⁴ Law on Electronic Media (Official Gazette of the RS, No. 83/2014 and 6/2016 – other law)

¹⁵ Law on Public Media Services (Official Gazette of the RS, No. 83/2014 and 103/2015)

¹⁶ Law on Advertising (Official Gazette of the RS, No. 6/2016)

¹⁷ Rules on obligations of providers of media services during the pre-election campaign (Official Gazette of the RS, No.55/2015)

of electoral lists applicants or candidates, ideas and opinions that they had expressed during these actions or in the form of interviews or discussions (e.g. TV or radio duel, public debate, etc.), where was discussed on certain matters arising in connection with their activities, ideas and opinion". Rules define the (free) presentation of electoral lists and (paid) political advertising.

Rules enters into the area of campaign of public officials (but does not regulate it) in the provisions concerning covert or indirect recommendation of electoral lists and information about the election campaign of the candidate lists. Namely, it is prohibited (Article 5) to broadcast election program disguised as news or other programs, and in informing, media service provider is obliged to provide their representation in the program without discrimination when information about the campaign activities of electoral lists and candidates ensure their (Article 6)¹⁸.

Code of Journalists of Serbia¹⁹ stipulates that a journalist is obliged to state in text/feature states "if the individual or organization paid travel expenses to journalist /editor/editorial board".

¹⁸ On particular problematic or incomplete solutions in this Rules, such as equal representation of electoral lists we dealt with in a separate analysis,
http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Pravila_oglasavanja_u_izornoj_kampanji_analiza_mart_2016.doc

¹⁹ <http://www.savetzastampu.rs/cirilica/kodeks-novinara-srbije>

Findings of TS monitoring

Transparency Serbia has monitored the campaign of public officials in 2012 elections (local, parliamentary and presidential elections), 2014 (parliamentary and elections for the city of Belgrade) and 2016 (parliamentary and local elections).

In 2012 elections²⁰ only some of the activities of public officials has been followed: conferences, round tables; visits to infrastructure facilities under construction, factories; opening of new roads; cultural, sporting and entertainment events; signing contracts with investors; celebration of significant dates; awarding prizes.

From monitoring were excluded events such as meetings with foreign government officials, sessions of the Government and other state bodies and press conferences organized on this occasion. To make a sample of monitoring relevant, activities were compared with the same time period of the previous (non-elective) year. Activities of 18 public officials has been monitored – the President of the Republic, the President of the Parliament, ministers, President of AP Vojvodina Government, the Mayor and Deputy Mayor of Belgrade and a director of public enterprise (at the same time member of the Parliament).

On average, public officials have been 140% (2.4 times) more active compared to the same period of the previous non-election year. Level of activities was lower only in ten cases. Activities of the President of the Republic increased by five times, the National Assembly President eleven times, Minister for Infrastructure was six times more present in the public than in the previous year at the same time, a director of a public enterprise "Srbijagas" seven times.

It was concluded that promotional activities of public officials were deliberately planned for the period of the election campaign. There have also been other uses of public office for political purposes. One of them is the mixing of party campaign with "regular" activities of public official during the same day, with possible use of public funds for public office performance and party promotions. As another type of potential abuses, examples of promotional activities that have nothing to do with tasks that are within competence of public official have been notated

In 2014 elections²¹ TS have changed methodology for monitoring campaign of public officials.

Activities in the following five categories has been followed: events such as round tables, conferences, solemn academies, celebration of significant dates; meetings in the cabinets (with local and international officials, athletes, etc.); on-site meetings with local officials (such as meetings with representatives of local governments, etc.); activities abroad; and promotional activities, which includes visits to infrastructure facilities in construction, visits to factories, schools, health institutions, ceremonial opening of buildings, roads, fairs, signing contracts, memorandums, delivery of grants, scholarships, awards, conversation with citizens, workers.

²⁰ <http://www.transparentnost.org.rs/images/stories/materijali/Finansiranje%20kampanje%202012.pdf>

²¹ <http://www.transparentnost.org.rs/images/stories/materijali/13062014/Aktivnosti%20javnih%20funkcionera%20tokom%20kampanje%20za%20izbore%202014,%2013.06.2014.pdf>

Monitoring covered activities in their capacity as public officials - both those that are announced, which was reported on the official websites of state bodies, but also those activities in which officials were announced as party officials, but they were performed from a position of its public office. From monitoring we excluded sessions of the Government and other state bodies and press conferences organized on this occasion.

TS have monitored activities of 27 public officials (the President of the Republic, the President of the Parliament, 11 members of the Government of Serbia, two directors of the Republic PE, two members of the Provincial Government, 10 Belgrade officials) during the six-week campaign, and compared these results with the same period a year earlier, as well as with the period after the elections (which is a novelty in relation to the monitoring of 2012). This post-election monitoring was aimed to determine whether the increased activity prior to the elections was due to the fact that, regardless of elections, it was necessary to do a huge number of current tasks.

TS have concluded that public officials in 2014 campaign significantly used functions for promotion of the campaign, in order to provide additional appearance in news broadcasts, outside segments dedicated to promotion of participants in elections. We have found that situation from 2012 elections has repeated, which abounded in this type of promotions, whereby the use of functions for party promotions on the monitored sample was even more intensive than two years earlier.

It was found that the officials during the campaign had a huge increase in the number of promotional activities in relation to the same period a year earlier - 848% (9.5 times). Similarly, a huge decline in activity was recorded in the period immediately after the elections - the number of promotional activities was five times lower, and was reduced to 18 percent of activities from the campaign period.

What is particularly important, correlation was determined between the campaign of public officials and campaign costs. Party which has won the city elections - SNS - did not have paid television campaign for municipal elections in Belgrade. On the other hand, the President and the Secretary of the Interim Authority had a total of 53 promotional activities that have dominated in the news programs of media, providing significantly stronger presentation to voters than it would be possible through paid TV spots.

With regards to different forms of use of functions for promotion, monitoring recorded a number of cases in which public officials, acting in capacity as holders of public functions, openly promoted their parties, as well as cases when public officials were appearing at events that were outside of their scope of work (such cases were more often visible during 2012 campaign). However, a regular occurrence was a combination of state and party activities during the same visit. Also, regular was a promotional activity in which contacts with foreign investors were used - presence of government officials at the presentation of the investments, investment plans, signing of the memorandums.

For 2012 and 2014 elections, the National Assembly has failed to form a Supervisory Board (obligations under the Law on the Election of Members of the Parliament), which could, in the absence of precise rules, monitor campaign of public officials.

In 2016 elections²² the same methodology was applied as two years earlier. 28 public officials has been monitored (President of the Republic, President of the Assembly, Prime Minister, ministers, three provincial leaders, two directors of public enterprises, two city officials and leaders of four city municipalities).

Summary for all public officials, number of promotional activities was almost three times higher (195%) compared to the same period in 2015. During six weeks of 2015, there were 148, and for six weeks in 2016, 436 promotional activities. At the same time for about 20% number of other activities has been reduced (categories: travels abroad, meetings of the Cabinet, events), so the total number of activities increased from 413 during the monitored period in 2015 to 651 in 2016. This is an increase of 58%, or 1.6 times.

Particularity of this monitoring is the fact that some members of the Government practically already after 2014 elections began a new "pre-election cycle," with unusually large number of promotional activities, but even that number further increased in the campaign for the elections in 2016.

Most promotional activities in 39 days of the campaign (and three days after the campaign, because the activities of public officials have been continued) had the Mayor of Belgrade, Sinisa Mali - 62 and City Manager, Goran Vesic - 60. In 2015, in the same period they had 18 and 17 promotional activities. City officials are another particularity of this monitoring. In Belgrade, the elections for members of the City Assembly held in 2014 and this year early elections were not organized. City officials have nevertheless been extremely "election-promotional" active. In the largest number of cases in these promotional activities they had appeared in the company of SNS candidates for members of assemblies of city municipalities (or candidates for presidents of city municipalities). It is not about the open party promotions, but about alleged activities of city officials where other city or local officials accompanied them.

After the elections, like in 2014, number of activities significantly has been reduced. Out of 13 public officials who have had a significant number of promotional activities before the elections (more than 10), seven of them have had a decrease between 80 and 100% after the elections (even four in three weeks after the elections did not have any promotional activity), five had a decrease between 50 and 79%, and only one public official has kept a relatively high number of promotional activities, with a decrease of 21%.

In six weeks prior to the elections all of 28 public monitored officials collectively had 438 promotional activities, and in three weeks after the elections 50, which is with the correction due to the length of the monitoring period, a decrease of 77%.

In the report it was pointed out to numerous examples of violations of laws and use of function for party purposes. Some of them have been categorized: use of public resources for party purposes; connection of state activities with party meetings; disclosure of party positions on the websites of state authorities; situations where it is unclear what is the role of public official at some events; support of public official to party candidate; statements in the capacity of public official at party

²²http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Funkcionerska_kampanja_2016_izve%C5%A1taj_maj_2016.pdf

meetings. It was pointed out to cases when media were mixing party and state functions and on practice of organizing transport for media to activities of some public officials.

Supervisory Board has not been formed again, but this time one step has been made – on February 3, the President of the Parliament called the Government (letter to the Prime Minister) and parliamentary groups to submit proposals for candidates for the Supervisory Board. In response to this call proposals had been submitted by the parliamentary group of SPS (United Serbia (Jedinstvena Srbija) has supported the proposal of SPS) and the parliamentary group of the Democratic Party. Government of Serbia, as well as the parliamentary group of SVM, SPO-DHSS, SDA - PDD, SDS - JSA-ZS, PUPS, NS, SDPS, LSV and SNS did not propose any one, thus violating the Law on the Election of Members of the Parliament and leaving another electoral process without oversight.

Reports of international organizations

In the Report of the International Election Observation Mission in the Republic of Serbia (early parliamentary elections, 24 April 2016), in the Report on the preliminary findings and conclusions is the result of a joint enterprise in which participated the Office for Democratic Institutions and Human Rights of the OSCE (OSCE / ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE)²³, „ inter alia the following is stated:

“The legislation provides an overall sound basis for the conduct of democratic elections in line with OSCE commitments and other international obligations and standards. However, a number of previous recommendations by the OSCE/ODIHR and the Council of Europe’s Venice Commission remain unaddressed. Key shortcomings include insufficient rules on candidate registration, ineffective measures against the misuse of administrative resources for campaigning, inadequate regulation of campaign finance, deficiencies in dispute resolution, absence of sanctions for certain violations, and the lack of provisions on observers.”

“Fundamental freedoms were respected and candidates were able to campaign freely. However, the ruling Serbian Progressive Party and, to a lesser extent, the Socialist Party of Serbia, increased their participation at official events during the electoral campaign, taking undue advantage of incumbency and blurring the distinction between state and party activities, at odds with OSCE commitments and Council of Europe standards. Widespread reports of the ruling parties exerting pressure on voters, particularly those employed in the public sector, and enticing voters through welfare initiatives raised concerns about the ability of voters to cast their vote freely, as provided for by OSCE commitments.”

“Public media provided equal airtime to contestants to present their platforms, in compliance with legal obligations. However, the government and the ruling party activities dominated campaign coverage in the news and current affairs programs. The analytical and critical reporting on the influential nationwide television channels was narrow, partly due to widespread self-censorship resulting from political control over the media sector. In the absence of an effective mechanism for monitoring media conduct during the campaign, media bias, instances of a smear campaign, and cases of infringement of media freedom were not addressed.”

Most parties conducted their campaigns through rallies and outdoor campaign material. Opposition parties complained to the OSCE/ODIHR LEOM that, due to a lack of financial resources, their ability to purchase campaign advertising on billboards or in print and electronic media was limited. In contrast, billboards and posters promoting the SNS were the most prevalent, and the party had a dominant presence in electronic media advertising. In addition, both the SNS and SPS used official events, such as visits to schools, the inauguration of public institutions and the opening of private factories to promote their campaign messages²⁴. This amounted to taking undue advantage of incumbency,

²³ <http://www.osce.org/sr/odihr/elections/serbia/235941?download=true>

²⁴ The media reported that in March, Prime Minister Vucic visited 25 schools as well as two medical facilities and in April, he attended the opening of factories and infrastructure projects. Foreign Minister Dacic attended a rally that coincided with the opening of a pedestrian area in Vranje.

blurring the distinction between state and party activities, at odds with OSCE commitments and Council of Europe standards²⁵. The SNS and the Alliance of Vojvodina Hungarians enjoyed the support of foreign dignitaries.²⁶

²⁵ Paragraph 5.4 of the 1990 OSCE Copenhagen Document provides for “a clear separation between State and political parties.” Paragraph I.2.3 of the Code of Good Practice states that “Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to: i. the election campaign; ii. coverage by the media, in particular by the publicly owned media; iii. public funding of parties and campaigns.” See also the OSCE/ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes.

²⁶ Hungary’s Foreign Minister lent support to both parties at a political rally in Pancevo on 5 April. The Hungarian Prime Minister joined Prime Minister Vucic at the opening of a private factory in Subotica on 13 April. The Deputy Speaker of the Russian State Duma was a guest at the SNS final convention in Belgrade on 21 April.

Practice of state bodies

As much as the rules on "campaign of public officials" are insufficient, they are more developed the practice of competent state bodies.

With the risk that we have missed some important information, here are data that we were able to collect.

Republic Broadcasting Agency, which legal successor is REM, analyzed within the **Report on supervision over the work of broadcasters during the election campaign for republic and local elections 29.01.2014 – 13.03.2014**²⁷ and presence of public officials in news and news reel. Results were compared with the presence of public officials in news and news reel during the campaign of 2012. Report presents overall data, as well as data of some individual broadcasters that have been monitored. At the time of preparation of this document, similar analysis for 2016 elections was not available²⁸. We did not see a single case of recent date in which RRA/REM had determined the responsibility of broadcasters for violations of the rules under consideration in this analysis. Anti-Corruption Agency, according to recently published data from CINS database²⁹ had led only one proceeding against public official for use of public office for promotion of a political party. According to these allegations, it is a proceeding against the former Minister of Health, Zoran Stankovic, who during his official visit to Denmark had made a statement which was subsequently used for party purposes. According to published information, decision of the Director of the Agency was brought, which for the second time was "measure of public announcement of the decision on the violation of the law", appeal has been filled and the Agency's Board has not yet decide on it.³⁰

When it comes to criminal proceedings, data are even scarcer. Although allegations for abuse of public offices at the time of pre-election campaign are traditional part of the political struggle, they rarely result in criminal charges and never with proactive actions of public prosecutors. On one of the rare cases, in which at least the question of criminal responsibility has been risen, media had reported as follows: Nebojsa Nenadovic, as head of DS (Democratic Party) has been for three years the President of the Municipality of Bojnik, but soon after the takeover by SNS he was arrested for alleged embezzlement of municipal funds. After his release from prison, he turned over the entire local committee of DS into SNS. His court case has not yet been finalized³¹.

²⁷ http://www.rra.org.rs/uploads/useruploads/izvestaji-o-nadzoru/IZBORI-2014---zavr_ni-izve_taj.pdf

²⁸ <http://www.rra.org.rs/cirilica/izvestaji-i-analize-o-nadzoru-emitera>

²⁹ Center for Investigative Journalism, <https://www.cins.rs/srpski/search-postupci-protiv-funkcionera/>

³⁰ <http://www.acas.rs/wp-content/uploads/2010/10/Zoran-Stankovi%C4%87-pov-Zak.pdf>

³¹ Source: http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=10&dd=15&nav_id=651960

<http://toplickevesti.com/bojnik-svi-odbornici-prelaze-u-sns.html>

<http://jugmedia.rs/poverenik-sns-bivsi-lider-ds/>

Recommendations

In order to solve described problems, Transparency - Serbia recommend changes of regulations and practices in the following directions:

1. To prohibit participation of politically elected public officials (ministers and state secretaries, the President of the Government, members of the Parliament, members of the assemblies at local level, mayors, provincial secretaries, etc.) in promotional events, visits, conferences etc. organized by the authorities during the election campaign, as well as in other events that are intended for media promotion, unless if it is clearly stated that it is the activity carried out by a political party, coalition or group of citizens participating in the elections;
2. To stipulate some activities of the authorities and public officials in general, with purpose to reduce the space for discretion on a case-by-case basis (e.g. introduction of rules to define in which cases minister must attend the opening ceremony of an object in whose construction the ministry was involved - by value or type);
3. To define rules on the relationship between the authorities and media - a complete prohibition, partial prohibition (in the time of the election campaign), or clear rules about when and how the authorities can cover the costs of media coverage of their activities;
4. To define rules on informing the public about the work of public authorities and public officials - which information must be published on websites, in which case, statutory or as a rule, press releases are issuing and press conferences are convoking, etc.;
5. To instruct public officials more clearly in which way to respond to party – related question when speaking in public officials' capacity;
6. More detailed and comprehensive regulation of issues of public and political advertising;
7. To specify and to monitor the implementation of the rules on media financing when funding is intended to follow the work of the authorities, in order to prevent favorable reporting on the activities of public officials;
8. More detailed organization of activities planning of the authorities, in accordance with the adopted strategic acts, in order to reduce the space for discretion and the "timing" of promotional activities at the time of the election campaign;
9. To set restrictions or additional mechanisms for approval and verification for taking over new obligations, debt relief, renunciation of public property and public expenditures in the period of the election campaign;
10. Legal specification of the Government and other authorities powers when they are in "technical mandate" in order to reduce it to urgent tasks only;
11. To specify responsibilities of authorities in charge to monitor compliance of rules that are intended to prevent "campaign of public officials" and other forms of abuse of public resources for campaign purposes;
12. To adopt and implement "transitional arrangements" until complete regulation of this matter – establishment of the Supervisory Board before the election and engagement of this body to prevent abuse of public resources; to adopt binding rules or recommendations of the REM on the manner of reporting to media on the activities of public officials during

the campaign (e.g.. without video coverage and audio recording of speeches of public officials); monitoring activities of public officials in the campaign by the Anti-Corruption Agency; monitoring commitments and public expenditures by the Fiscal Council; business audit of budget users during the election campaign by the State Audit Institution; an open invitation of the public prosecution for reporting abuses of public resources in connection with the election campaign, giving and accepting bribe in connection with voting and other related criminal acts, placing the appearance of the witness protection of such acts and investigation of suspects in existence of such criminal acts even before obtaining criminal charges.