



# **Transparency Serbia**

## **Overview of activities**

### **January 2019**

**Newsletter number 1/2019**





## *Activities*

In January, we presented the TI's Corruption Perceptions Index (CPI), the most important global ranking of countries that shows how experts and the business world see corruption and anti-corruption successes and failures of 180 countries. More in chapter "Conferences".

In drafting and revising local anti-corruption plans and in forming bodies for monitoring their application and support to already formed bodies, we cooperate with six cities and municipalities on two projects. We are working on the project supported by the Anti-Corruption Agency with the city of Novi Pazar, where the city council has established the LAP proposal and where it is expected that the commission will be formed to elect the local anti-corruption body. USAID, through the Project for Responsible Governance (GAI), supported work with the cities of Vranje and Sabac and the municipalities of Vrnjačka Banja, Raška and Sjenica.

We are collecting data for ranking of all municipalities and cities in Serbia according to the Index of transparency of local self-government. The first research TS carried out in 2015, two years ago we did a small sample survey, and now, with the support of USAID, we have, again, covered all cities and municipalities. With regret, we can conclude that already in the phase of collecting data, in some places was recognized the misunderstanding of the concept of transparency. In three municipalities our associates were confronted with the indignation of security officers and security personnel because they were "screaming, searching for something and writing something" and in one municipality even called the police.

Transparency Serbia chairs the working group for Chapter 5 (Public Procurement) within the National Convention on the European Union. The annual session of Convent was held on January 18th, where were presented the TS recommendations in relation to public procurement and public-private partnerships in the context of EU integration of Serbia and the plan for economic reforms of the Government of Serbia.

Representatives of TS took part in a meeting in Berlin on January 24 and 25th, on the new regional Transparency International's project dedicated to large-scale corruption.

We are active in dealing with problems in the field of access to information of public importance and we had several meetings related to judicial reform and amendments to the Criminal Code, as well as the Action Plan for Chapter 23, after the draft revision of the document was published. In January, 313 news or articles were published about the activities of our organization, i.e. the news in which representatives of the TS were quoted. We have set up a series of initiatives and analyzes, as well as FOI requests to authorities.

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



## Under the magnifying glass

### What is the mayor allowed to?

January 28th, 2019

The news that the president of the Belgrade municipality of Grocka was arrested for ordering an attack (which has elements of attempted murder) against local journalist Milan Jovanović, is good surprise. Namely, it seemed to repeat the scenario of relativizing and covering up the guilt, same as in the case of demolition in Savamala and despite the obvious inevitable participation of state officials in a criminal event, employees in lower positions will be responsible and will even not be punished. Thus, in case of the refusal of police to protect citizens and their property in Savamala, prosecutor's office marked police chief as the sole responsible, and even his sentence was conditional and just below the border through which the job would be lost. Also, the proceeding for the burning of the house of Žig Info portal journalist from Grocka was determined with a conditional sentence for executor, marking of a person who has no unsettled bills with journalist.

The circumstance that this news was announced by the President of the State (which does not belong to his responsibilities) and in an emergency address to citizens, upon his return from the World Economic Forum in Davos, is another blow to the rule of law, certainly not unexpected. If until now it has not been clear if the public prosecutor is not the only one who is responsible for the conduction of the investigation in this case, the fact that the

#### Šta sme predsednik opštine?



Foto: Predrag Trakulac

rest da je uhapšen predsednik beogradske opštine Grocka zbog toga što je naredio napad (koji na elemente pokušaja ubistva) na lokalnog novinara Milana Jovanovića, pri čemu je zmešavanje. Naime, izgledalo je da se u potpunosti ponavlja scenario relativizovanja i atakovanja krivice koji je viđen i u slučaju rušenja u Savamali – da i pored očigledno nezbednog učesnika ljudi iz vlasti u kriminalnom događaju odgovornost padne samo na osobe na nižim pozicijama, a da ni oni praktično ne budu kažnjeni. Tako je u slučaju odličenja policije da zaštiti građane i imovinu u Savamali kao jedino odgovornog tužilaštvo **označio** šefa smene u

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President published news of the arrest is the confirmation of that.

Motives for this sudden turn can easily be derived from the fact that the conference was convened immediately after returning from Davos, where President Vučić participated at the panel on freedom of media and met with European officials. It should also be recalled that the poor assessment of the state of freedom of expression and media in Serbia was clearly announced in the last part of European Commission Report on Serbia.

Therefore, his personal address can also be understood as drawing attention of EU officials to the fact that there is a political will to investigate the attack on a journalist. Maybe foreign officials would not even consider the statement of another official or institution in Serbia, because they, as well as the citizens of Serbia, receive messages for years, that the answer to all essential questions depend on the will of only one man. His presidential address may have one good side - local officers understand that their power is limited and that their loyalty does not provide protection from everything that comes to their minds.

## What does the announcement of “systematic, comprehensive measures against crime and corruption” mean?

January 14th, 2019

At the press conference of the President of the Republic, whose words confirmed, standing behind him and at his side, Prime Minister and Minister of the Interior, were announced "systematic, comprehensive measures against crime and corruption". At the conference was no mention of the measures to fight corruption crimes, but rather the change in the penalties for murder, rape, serious theft, illegal production of narcotics, for returnees, as well as the introduction of the lifelong imprisonment. This conference was held after a meeting of the National Security Council, which could be the explanation why an incompetent official spoke on this issue.

President read statistical data on convictions for serious crimes, showing that for many of them their sentences are below the legal minimum, which should be one of the reasons for the announced changes of the law. To make the story complete, we think that it would be reasonable to present at least some research that empirically proves that the number of murders, rapes, serious thefts and serious drug-related crimes are significantly reduced when the average length of prison sentence is increased.

When it comes to the announcement of the introduction of life imprisonment sentences for crimes which are even now fined with long-term imprisonment sentences, this obviously has little to do with crime prevention, but with

the conviction of citizens that an irreparable perpetrator will not be able to repeat the crime.

Vučić announced changes of the law, but it is still not clear what is the exact problem to be solved. Namely, if it is considered that judges misapply the rules on easing penalties below the legal minimum, this may be the result of the court practice which broadly interprets the reasons for easing penalties or corruption in individual cases.

However, although the general message sent from this conference was that judges massively do not apply the law and that they do so for the benefit of criminals, Vučić also made an obvious contradiction - that 99% of them are doing their job well.



Less attention was paid to the much larger and potentially more important news announced at this press conference - limitation of the time period for criminal proceedings for a year. In this context was mentioned the criminal trial in the case of Kragujevac Faculty of Law, which entered in the second decade with great chances to become obsolete. It is completely unclear what would be the consequence if the deadline breaks - would the criminals be automatically released after 12 months, whether the judge would have been punished or after that time would cease the possibility of



presenting evidence and discussion (as in the Assembly after the expiration of ten hours can no longer be discussed on amendments). However, it is difficult to imagine a solution that would be in accordance with the rest of the legal system.

In the end, but most important: this is another case that citizens get the announcement of implementing some measures of state policy, but without any possibility to check whether these announcements are true and without the possibility that someone competent, whom citizens believe, will assess whether the measures will achieve goals that the political leadership promises.

Namely, Vučić (this time unknown whether as the President of the State, as the head of the National Security Council or as the head of the party that has the majority of deputies) related to that said:

"We needed a lot of time to prepare a part of these measures. They will be available to the public in twenty days, and in the National Assembly, whether we will go as the majority of deputies or as the Government, I would like as the Government, of course I think that Ana will present it to the ministers and make a decision on this issue, we are going with such measures and it will be a difficult struggle, because now specialists will go to various embassies and talk about human rights, criminals will unite ..."

If measures will be prepared "in twenty days", it would be better to wait with the promotion until the draft amendments and supplements to the Criminal Code and the Code of Criminal Procedure are published.

It is unclear who prepared measures so far and who will prepare them for the next 20 days.

Namely, it is clear from Vučić's statement that the draft amendments to these two laws are being prepared outside the competent Ministry of Justice, since the issue of proposers is viewed exclusively as technical - may be proposed by the Government, and if not, a majority of deputies will propose and also adopt laws.

Whoever is proposer, it is announced that public will be "given insight" to these measures. On the other hand, what is required by the Law on State Administration is to open a public debate on important law changes. The aim of such public debate should be improving draft laws, rather than filling in a form.

### **Judgment on missing pensions and comment of the President of State**

4. januara 2019.

At the end of 2018, the Basic Court in Bačka Palanka made the first instance judgment ordering the Pension and Invalidity Fund to pay 478.556 dinars to a pensioner, as the difference between the corresponding and reduced amount of monthly pension for the period from 9.12.2015. until 31.12.2017.

As stated in this judgment, "according to the court's opinion, the defendant was obliged to issue a decision to reduce the pension with a remedy to all users whose pensions are reduced."

It is about one user whose pensions were not paid in full amount at the time of validity of the "Law on the temporary provisions for the administration of pension payments".

As Transparency Serbia warned at the time of the passing of this law, this special law which passed without a public debate, did not reduce



the pensions in a legally valid way, but it stipulated that some of these incomes will not be paid.

This way, the Government, as the proposer and the National Assembly who adopted this law, temporarily secured fiscal stability, but at the same time created the basis for fiscal destabilization in the future, when pensioners whose incomes are not reduced in a legally valid way will realize their claims.

The Basic Court in Bačka Palanka stood at this point. The decision determining the amount of the pension was not changed, the pensioner did not receive such an amended decision, and he was not given the opportunity to appeal against such a decision.

In the New Year's interview for the Espresso Portal, Serbian President Aleksandar Vučić said, concerning this judgment: "... I'm waiting for something to happen. I'm waiting for something to be completed, then you'll be surprised who, how and why brought such a judgment. "

This statement is not "commenting on court decisions", which is forbidden by the codex adopted in the EU integration process for representatives of the executive and legislative authorities.

In fact, President did not comment on court decision, but insinuated that the decision was made by someone else, not by acting judges, and that the judgment was not issued on the grounds and based on the regulations that were stated in it, but from some other motive.



The only relevant "waiting for something to happen", could only be waiting for criminal proceeding against the judge or someone under whose order he acted, for the crime "violation of the law by a judge", because of the abuse of his position to inflict damage on the PIO Fund or to bring benefits to pensioners. And if there were such doubts, evidences or investigation, nobody outside of the competent Public Prosecutor's office and investigative bodies should not have the right to know about that, until the indictment was filed. In the meantime, President's statement can justifiably be considered as a kind of pressure on the Appellate Court in Novi Sad to decide on the appeal of the PIO Fund against the judgment of the Basic Court in Bačka Palanka and on other judges who deal with similar cases, but the High Judicial Council has not yet reacted about that.



## *Initiatives and analyzes*

### **The Draft law on Amendments and supplements to the Law on Free Access to Information of Public Importance still contains harmful provisions**

January 5th, 2019

Transparency Serbia warns that a new draft law on amendments and supplements to the Law on Free Access to Information of Public Importance, despite numerous argued criticisms, excludes the right to access to information on numerous state-owned enterprises that have assets worth billions of euros.

Opportunity to improve other provisions is also missed, for example, provisions related to the selection and dismissal of the Commissioner and the system for the execution of his decisions is not sufficiently effective and harmonized with the rest of legal order. The Draft from December is worse than the Draft from March in one important segment. Namely, the National Bank of Serbia, with an unjustified explanation, is excluded from the Commissioner's competence. Unsatisfied information seekers would thus only have the possibility of managing an administrative dispute, or rather one instead of two legal remedies.

On the other hand, it is very important that it is removed the danger of the slow law enforcement concerning the right to access to information. Namely, Draft from December does not predict possibility for authorities to initiate an administrative dispute, instead of executing Commissioner's decisions. It is also commendable a precise provision concerning new category of authorities - legal entities and entrepreneurs entrusted with public authorizations.

On 19 December 2018, half a year after the public debate on the preliminary draft of the amendments to the law, the Ministry of State Administration and Local Self-Government submitted a new draft of the amendments to the law to the opinion of the state authorities. In the accompanying explanation, it is not explained why many proposals from civil society organizations and citizens from a public hearing held in April this year are not accepted, nor is the opinion of SIGMA experts.

This draft brings some improvements in relation to the existing text of the Law, especially regarding the proactive publication of information in the Information booklet, which will be obligatory for all authorities and will be published in a machine-readable form.

Taking into account that the right to access to information is the right of citizens guaranteed by Constitution, and that the usefulness of this legal remedy for public oversight of entities with significant public funds is proven, we think that the Law on Free Access to Information should not be changed until provisions that reduce the achieved level of rights are moved from the draft - concerning state-owned enterprises and the National Bank. Other provisions should be improved based on proposals from international experts, civil society and the Commissioner for Information.

More detailed analysis of the draft you can find on [the TS website](#).



## **Priorities in fight against corruption for year 2019**

January 29th 2019.

Transparency Serbia considers that following issues are crucial for the successful fight against corruption in 2019:

### **Political corruption**

Putting legal limitations of “public officials’ campaigning”, i.e. allegedly ordinary activities of public officials that are aimed to obtain political promotion

Establishing of independent oversight of rules related to the elections and campaign, having in mind insufficient activities of oversight bodies and suspicions for their political biasness in decision making process (Regulatory body for electronic media, Agency for fight against corruption, Republican Electoral Committee, public prosecutors)

Introducing of rules for referendum campaign financing

### **Anticorruption plans**

To identify reasons for non-achievement of National anti-corruption strategy 2013- 2018 goals, and to adopt new Strategy that would contain accountability measures

Thorough revision of the Action plan for chapter 23 of EU negotiation, by adding new activities and providing more precise indicators of success. Establishing of more effective implementation tracking mechanism.

### **Prosecuting and punishing corruption**

To investigate all suspicions on corruption where documents or direct accusations are published. Public prosecutors should not wait for anyone to submit criminal charge.

Prosecutors should publish information about the outcome of such investigations, including an explanation in case that no criminal liability was identified

Ensuring all necessary resources for prosecuting the corruption and use of special investigation techniques, for financial investigations that would be done in parallel with criminal one and for pro-activity in investigation of corruption

To change Criminal Code in order to prosecute corruption more effectively





### **Prevention of corruption – transparency of work**

Government of Serbia should ensure enforcement of Commissioner's decisions and to act upon all received requests for information

Parliament should elect new Commissioner, based on criteria and in the procedure opened for all qualified candidates to apply

Right to access information should not be decreased by changes of the Law (including current draft provisions on state owned enterprises and National bank)

Public authorities should publish information in an open format, and oversight bodies should compared data from these databases when determining their plan of work and oversight

There should be legal duty to prepare and publish explanatory note for all decisions, including some Government conclusions.

### **Public finances**

To establish an effective oversight of public procurements

To ensure full transparency of public private partnership agreements, planning and execution To stop with the practice of contracting based on interstate agreements, where transparency and competition may be excluded (in public procurements, PPPs and selling of public property)



## *Press issues*

### **What should be done to make the Law on Prevention of Corruption change things for the better?**

January 19<sup>th</sup>, 2019

TS, having in mind the numerous lacks of the Draft Law on Prevention of Corruption of August 2018, welcomes Ministry of Justice's announcement to open a public discussion of the new draft of that law and the approach of the Minister for European Integration that "quality is more important than speed". However, considering that until now published drafts did not contain solutions for all important problems identified in practice, EU reports and plans of the Republic of Serbia, the delay in the reform can also be interpreted as insufficient readiness to solve these problems.

Changes of the Law on the Anti-Corruption Agency were originally planned for 2014 and drafting of the new law began in March 2015. The Ministry of Justice published the first draft law in October 2016, and the second, significantly worse, under the new name (Law on Prevention of Corruption) in August 2018. Although public discussions of these drafts were organized, comprehensive reports on the consideration of the received proposals were not published.

TS suggested that the crime of giving false information on property should be precise and that the prosecution should be facilitated by abandonment of the "unproven intention". We made suggestions for preventing abuse of public function through inventing promotional activities, which serves to functionaries to increase their presence in media during the election campaign period. This is especially important in the context of frequent announcements of new elections and practices in the conduct of "functionary campaigns".

Also, TS considers that it is very important that the Ministry accepts our proposal that the law completely prohibits the cumulation of public functions instead of the current regime of giving approval, that officials should be obliged to report gifts of great value, even when they seem to have not been given in conjunction with a public function, as well as cash in the amount bigger than of 10,000 euros. Business of companies owned by officials with concessionaires, recipients of subsidies and companies that perform business in Serbia based on an interstate agreement should also be controlled.

The supplement according to which the risk analysis of corruption would be obligatory in the preparation of all regulations, would be important in prevention of corruption. Regarding the members of the Board and the Director of the Agency, the eligibility requirement should be disconnection with political subjects on any ground, and not just on the ground of membership in the party (for example, that they were not candidates in the last elections, financiers, members of election commissions, although formally were not party members). Finally, the Agency should have more efficient access to the documents which are necessary for its work, and the tasks of this body should be precise, so that the results of its work can be objectively considered.



## Conferences

### Serbia lost two points and dropped ten places on the list of the Corruption Perceptions Index

January 29th 2019.

Transparency Serbia (Transparency International's chapter) presented Corruption Perception Index (CPI) for 2018. Serbia is still considered as the country with a high level of corruption, with a score of 39 of possible 100 points. This year Serbia dropped ten places on the list of the Corruption Perceptions Index (CPI) and takes 87th place. After a small increase, the score of Serbia is now the same as it was in 2012 and there are no significant changes for more than ten years. This year, we share 87th place, out of 180 countries, with China. In the previous survey, Serbia had two points more and was on 77th place.



According to estimation of Transparency Serbia, Serbia is stagnated in research because neither preventive nor repressive law mechanisms against corruption were applied consistently. Even those cases of suspicion of corruption that are documented in the reports by state authorities and journalistic surveys were not examined, as shown by the recently published TS survey. Concerning the prevention, during the last year were not applied main anticorruption provisions of the Law on Public Enterprises (selection and dismissal of directors), Law on Civil Servants (selection and dismissal of civil servants on the appointed positions), Law on Public Procurement (penalties), Law on Anticorruption Agency (related



with the abuse of public function for party promotion) and Law on Free Access to Information of Public Importance (enforcement of Commissioner's decisions).

Draft of the Revised Action Plan for Chapter 23, main document of the Government policy in this field, does not represent a good basis for improving situation. In fact, the Plan keeps the same unambitious concept as well as the existing text from 2016, only concludes many years of delay and does not give the assurance that anything will change in the future.

Based on the data published so far, it is still not clear whether the long-announced work of four special prosecutor's departments for fighting corruption, since March 1st 2018, brought some positive changes in the prosecution of corruption regarding the number of charges and confiscation of properties. However, it is obvious that, based on the experiences of citizens and revealed doubts about corruption, many cases have not yet been reported and investigated. When it comes to this type of crime, the certainty of discovering the perpetrators is far more important than the amount of imposed sentence.

The bad perception of corruption, according to estimation of TS, is largely influenced by lack of transparency in decision-making and the absence of competition in the conclusion of the large contracts of Government. This is most visible in cases of unrevealed contracts and other documents, as well as in the cases of procurement of works for the construction of large infrastructural facilities by direct contracting, at prices whose market-base is doubtful.

### **Details on the Corruption Perception index and results**

Corruption Perception Index is being created for twenty-four years in a row, by a globally leading anti-corruption organization, Transparency International. This year, 180 countries and territories are ranked, same as in the previous survey. Countries are scored on a scale from 100 (very clean) to 0 (highly corrupted). This year, Serbia is this ranked 87th (last year 77th), with a score of 39, which is two points lower than in the previous year. Fluctuations are minimal and the last significant progress was recorded more than ten years ago. With a score of 39, Serbia is in the group of countries with widespread corruption (under 50). This score puts us four points lower below the world average (about 43) and eighteen points lower below the average of Europe.



**CORRUPTION  
PERCEPTIONS  
INDEX 2018**





On the top of the list are Denmark with 88 and New Zealand with 87 points, while at the bottom are Somalia with 10 and Syria and South Sudan with 13 points. Among the former socialist countries of Europe, best placed is Estonia with a score of 73, and from the former Yugoslavia Slovenia with 60 points. Among the countries of wider region that are not members of the EU, the best perception is for Georgia (58 points). Worse ranked neighbors are Bosnia and Herzegovina (38), Macedonia (37) and Albania (36). Kosovo is subject of special research and its evaluation is 37 (two points worse than in 2017).

It is important to point out that the citizens of Serbia have perception of widespread of corruption as well, which stems from the results of researches carried out on a national ample (e.g. GAI-USAID survey project in 2018, previously published The Global Corruption Barometer of Transparency International, previously published UNDP surveys), although in these surveys the fluctuations in the perception of corruption are significantly higher. High perception of corruption is a problem, because of creating prejudice that without corruption no job can be done. However, the priority of the state authorities should be to prevent, detect and punish existing corruption, and not changing perception of its widespread.

CPI considers 13 relevant surveys that measure perception of corruption in the public sector. These surveys represent the opinion or perception of corruption of state officials and civil servants by those who do business with them or who advise businessman, governments and international institutions. Surveys must be published in the last 24 months and there must be at least three such data sources for one country to be ranked.

This year, Serbia was comprehended with a total of eight relevant surveys (same as in 2017), which guarantees a higher degree of reliability of findings, as well as comparability of data with those from previous years. Surveys used were from the Global Insight Country Risk Ratings, Bertelsmann Foundation, World Economic Forum, the Economist Intelligence Unit, Freedom House, International Country Risk Guide, World Justice Project Rule of Law Index and Varieties of Democracy Project.

All surveys relevant for Serbia, except of one, were published during 2018, and some of them were conducted during 2017. Ratings from individual surveys vary from 34 to 44. The standard deviation is (2.89).

