



Transparency Serbia

Overview of activities

October 2019

Newsletter number 10/2019





Activities

Transparency Serbia organized, with the support of the Mission of OSCE, series of workshops dedicated to new Law on Lobbying. The discussion included representatives of the Anticorruption Agency, local authorities, civil society organizations and journalists in Novi Pazar, Niš, Šabac, Novi Sad and Belgrade.

Nemanja Nenadić and Zlata Đorđević met on 18 October with representatives of the International Republican Institute that restarted its engagement in Serbia. On the occasion of preparation for their future activities, our guests were vice president of IRI, Scott Mastic and regional director for Europe Paul McCarthy, as well as representatives of this foundation that are engaged in Serbia. Among other, the topics of the discussion were following: current status of election legislation, current proposals of TS for promotion of legal framework, but also of other areas in which Transparency Serbia is active (public procurement, public – private partnership, EU integration, lobbying etc.).

Associate of TS -Zlata Đorđević, was in Brussels during 2 – 4 October, with the representatives of the coalition prEUgovor, whose member is TS. Delegation spoke with the members of administration of the European Union about upcoming elections and dialogue about election conditions in Serbia, work of the Assembly and freedom of media. In the dialogue with representatives of the institutions of the EU, coalition prEUgovore emphasized the need for more efficient monitoring of the reform in the area of rule of law in all the countries of Western Balkans by the EU. Having in mind that these countries face the problem of state capture, which was confirmed by the European Commission in 2018 and 2019, that problem should be more thoroughly and decisively tackled.

Delegation of the prEUgovor visited European Parliament, Council of European Union, as well as permanent representation of the Germany and Netherlands in EU in Brussels. Before publishing of unofficial report of the European Commission about progress in chapters 23 and 24, coalition prEUgovor presented its efforts in independent monitoring of the reforms in these areas in Serbia. Also, meeting with several delegates of the member states in the Working group for enlargement of the EU (COELA) in permanent representation of the Kingdom of Netherlands in the EU was held. During the visits to Brussels, representatives of the prEUgovora discussed the new European administration and its priorities with colleagues from think-tanks with headquarters in Brussels, like Institute for European Policy of the Open Society Foundation (OSEPI) and Center for Studies of the European Policies (CEPS). Delegation of the prEUgovor also participated in a conference on the occasion of 20 years of Tampere program organized by CEPS, with topics of exchange of data, police and judiciary cooperation, Schengen and migration issues.

Program Director of TS, Nemanja Nenadić, participated on 14 October in a meeting of high delegation of OSCE with several domestic non-governmental organizations. George Tsereteli, President of Parliamentary Assembly, and Roberto Montella, Secretary General of the Parliamentary Assembly of



the OSCE, showed an interest into numerous matters, especially related to work of the National Assembly, regulations that regulate elections in Serbia and work of authorized state organs.

Nenadić, among other, spoke about „officials’ campaign“, its forms and its scope in Serbia, related to non-consideration of submitted amendments during the adoption of the Law on Lobbying and Law on Preventing Corruption, related to current status of changes of media regulation, as well as the need to protect the media from trading with influence through advertising of public enterprises and other state organs.

Five days earlier, on the similar occasion, Nenadić participated in a meeting with other high representatives of OSCE, H.E Mr. Tomas Greminger, Secretary General of this international organization.

Conclusion from both meetings is that OSCE should take more active role in monitoring of upcoming election process in Serbia, primarily by ODIHR evaluating the quality of new legal solutions before their adoption/or implementation. Only that ways, emphasized Nenadić, “citizens of Serbia can find out whether measures of the Government of Serbia, represent adequate answer to problems identified by ODIHR in its previous reports.

Nemanja Nenadić to the invitation of the EU delegation in Serbia, participated in the part of the discussion on the occasion of „First interparty dialogue in the National Assembly of the Republic of Serbia about improvement of conditions for parliamentary elections“, held on 9 and 10 October 2019. Nenadić dedicated special attention in the time awarded, to key questions in the area of election campaign financing, that won’t be resolved through current draft changes and amendments of the Law on Financing of Political Activities. Related to that, he emphasized the significance of defining of „officials’ campaign“, introducing of possibility to monitor money flow during the election campaign, and that complete financing for the campaign should be presented the latest after submitting of the report (and not to pay expenses months in advance and years after the elections), defining of obligations of the Anticorruption Agency for the control by the official duty etc. He pointed out to unfulfilled obligations of our state organs on the basis of domestic planned documents and on the basis of received recommendations of ODIHR, to which European Commission relies on in its reports. These conversations are held in the absence of media, and the report and conclusions are published [on the web-site of the Parliament](#).

Coalition PrEUgovor, that TS is a member of, represented on 24 October in Media Center report on the progress of Serbia in chapters 23 and 24. Nemanja Nenadić spoke about the status of the fight against corruption. More details in the chapter "Conferences".





We continue with the activities of the support to municipalities for drafting of anticorruption plans, election of bodies for their monitoring and to initially support the bodies, or local anticorruption forums.

Municipality Sjenica, after the first competition that was approached only by two candidates, organized another competition, in Raška competition was terminated, and November 1 meeting with the candidates is scheduled. Vranje adopted LAP and organized competition, and Vrnjačka Banja is in the process of waiting for the sitting of the MA to elect the members of the LAF. We held several meetings in Šabac with members of the LAF. This project we implement with the support of USAID Program for Open Government.

As part of the training for the civil society organizations to the subject of freedom of information in Serbia, Zlata Đorđević presented, on 26 October in Šabac, results of research of Transparency Serbia Local Transparency Index (LTI) for 2019, as well as methodology and main recommendations to the local authority organs to make their work more transparent for the public.

Anticorruption Legal Advisory Center (ALAC) of Transparency Serbia initiated in October 12 new cases, out of which six related to judiciary.

In October there were 349 news or reports about activities of our organization, or the news with quoted statements of our representatives. We uploaded to our web-site series of [initiatives and analysis](#), as well as requests to state organs and their answers. One of them, that is part of the comments of TS during the public debate on three laws in the package for "promotion of election conditions", we represent in the chapter of the newsletter "Initiatives and analysis".

Here is the selection of articles that we published in the previous month:



Under the Magnifying Glass

Whistleblower from Krušik

15 October 2019.

Faith of potential criminal procedure against whistleblower from „Krušik“ for „revealing of business secret“ depends on several elements. First from the fact on whether the data he provided to the press even had a status of „business secret“. Whether, in other words, that was the information with commercial value because it was not available to third persons or generally known, whether some of the competitors of „Krušik“ will receive economic benefit from revealing and whether „Krušik“ protected secret data, adopted some act to determine secrecy etc. Furthermore, if these are the „data of interest for the Republic of Serbia“, than it would be important whether the rules from the Law on Secrecy of Data were respected, and not only from the Law on Protection of Business Secret.

Other important, and in this case crucial point, is whether the published information was supposed to be proclaimed as secret at all. Namely, both mentioned laws contain the rule according to which secret information cannot be the one that is tagged as such and is used „for covering up of the criminal act, overstepping of authorities or abuse of official post or other illegal act or proceeding“. If it is determined that the secrecy in this case covers up affairs to the damage of state enterprise, than there won't be basis for criminal prosecution of the whistleblower.

Trouble with such concept of releasing of accountability for revealing secret, is that duty of keeping secret is most likely regulated in more general manner, and not especially for these information.

Intention for adoption of such general act most likely is not hiding of illegal or damaging actions. Problem occurs in practice, when implementation of such general act, protects the secrecy of the data on specific business action that is damaging or contrary to the rules.

In such situations whistleblowers should enjoy protection, because they act in public interest. However, Ministry of Justice and National Assembly were not willing to accept proposals of Transparency Serbia during the debate. Namely, Serbian Law on Protection of Whistleblowers, although much praised, has the least one systemic loophole – whistleblowing in public interest, unfortunately, does not represent legal base ground for releasing of criminal or other responsibility. Specifically, when it comes to handling with secret data, this Law, in article 20 envisages possibility for the whistleblower to address „authorized organ“ (e. g. prosecutor, state audit, ministry), but not directly to the public or the press.

Due to that, whistleblower from „Krušik“ won't be able to ask for protection based on that Law. However, that doesn't mean that he/she should be charged or convicted for what he/she has done.

On the contrary, one should insist on proving of unnecessary tagging of published data as secret, as well as on freezing of procedure against him/her before this previously mentioned issue is resolved.



Making of public debate truly public

17 October 2019.

Transparency Serbia considers as inappropriate that Ministries' and Government's group for promotion of election process hasn't made any effort to enable wider public and stakeholders to participate public debate on changes of three laws, and especially the media.

Public debate on changes of the Law on Anticorruption Agency, on public enterprises and financing of political activities was announced on the web-sites of the Ministries of Justice, economy and finances, and in the program of the debate there was no mention on where the debate, scheduled for 16 October, will take place.

Announcement on the public debate was published on the web-site of the Office for Cooperation with Civil society two days before the round table, also without stating the venue. Therefore, the debate, held in the Palata Srbija, was attended by only three civil society organizations that received the invitation directly from the working group - CESID, CRTA and TS. The debate was not attended by the representatives of the media that were not invited to this event in a way state organs usually do.

Such form of organizing of round table is especially strange having in mind that Government stated in its press release issued after holding of the round table that "public debate was initiated with the goal of involving as much as possible stakeholders from both sides of the political scene, government institutions, international and nongovernmental organizations and civil society institutions".

In the meeting itself, no openness to any recommendations of the civil society organizations was shown, that came out of the framework of what government working group formulated as draft. Related to regulating of the officials campaign, it is even explicitly stated that this matter will not be comprehended with this package of law amending.

On the other hand, press release states that "opinions, that are stated during today's public debate, will be inserted as proposals of changes of legal regulations already on the next debate, that will be held in the next period".

TS therefore expects next public debate with unease, in the hope that Government will do everything possible to widen the circle of participants and to enable the press to report directly from it and not through press release or statements.

Minister announced, ministry doesn't know what he is talking about

23 October 2019.

Minister of Finances Siniša Mali stated in April 2019 that study of justification of constructing the national football stadium will be finalized by 10 May 2019. TS [requested](#) from the Ministry of Finances by the beginning of May information—to whom, how, in which procedure was entrusted drafting of study, copy of documentation about drafting of study and the study itself.

Six months later, after the complaint to the Commissioner, TS received the [answer](#) of the Ministry of Finances that they do not have the study, nor any other requested information, or document.



Although Minister announced with extreme certainty and confidence finalization of the study, obviously, Ministry of Finances doesn't know whether some other ministry or some other state organ has the study.

Namely, in compliance with the Law, when one doesn't possess the document with requested information, he/she is obliged to inform the requester "who has, by its knowledge, the requested document".

Otherwise, estimation of the expenses of constructing the stadium varied from 70 to 250 million of euros, and President of Serbia Aleksandar Vučić announced construction of "7 or 8 stadiums".

Statement on donations for sport equipments – confessing the abuse of public resources

24 October 2019.

Statement of the Minister of Finances that since 2014 by today two of the largest football and basketball equipments „received from the state“ around 4,7 billion of RSD, represents confession that donations were accompanied by the abuse of official post or trading with influence.

According to this statement, that was not followed by announcement of documents, state aid was awarded „directly from the budget, through ministries“ or indirectly, „through public enterprises“. Besides, assistance was awarded „through credits, providing of various guarantees and reprogram of tax duties“.

Key part of the minister's statement is that „state provides to both equipments and supports them equally, and tries to balance in the best possible way“.

State organs can, in compliance with the law, support development of sport and sport associations. Distribution of these assets should go exclusively over authorized, Ministry of Youth and Sports.

On the other hand, decisions of public and state owned enterprises of whether they will sponsor sport equipments should be based exclusively on economic criteria, and by no means on political decisions of their directors or suggestions of state managers. Likewise, decisions on awarding credits, state guarantees and reprogram of tax debts should be made equally towards all business entities. Statement of the Minister provides strong reasons for doubt that awarding of state aid to sport equipments did not use the criteria and methods that are based on the law.

Transparency Serbia asked the Ministry of Finances to deliver following documents:

1. Copy of calculation of donation to football and basketball equipments „Crvena zvezda“ and „Partizan“, presented to journalists by Minister of Finances Siniša Mali on 22.10.2019.
2. Copies of documents based on which calculation from point one of this request was made.



Press Releases

Changes of the Law on Financing Political Activities

October 4th 2019

Transparency Serbia (official chapter of Transparency International) finds it useful that draft of amendments to the Law on Financing Political Activities regulates duty of Anticorruption Agency to proceed by complaints during the election campaign in five days deadline, to determine whether there have been violations of regulations and to publish this decision. However, current draft does not deal with other problems recognized by domestic public and international organizations, although strategic acts planned comprehensive changes of the Law first in 2014, and then in 2016. Draft amendments to the Law, do not resolve even some problems identified by ODIHR after parliamentary elections in 2016 and 2017, therefore they should be significantly complemented.

When it comes to control of financing of the election campaign, duties of the Agency during the verification phase of the reports on financing of campaign in the line of duty, what should be the content of the report on control, deadline for finalizing the report and initiated procedures against perpetrators, still remain unregulated. Efficiency of the control of financing of the campaign and transparency of sources of financing will further on complicate possibility to pay for the campaign expenses afterwards. Contrary to the recommendations of ODIHR, there is still no limitation of the expenses of the election campaign, neither is the transparency of data about the sources of financing during the campaign, provided.

Draft does not plan changes in regards to budget allocations for the campaign that are currently set in such a way that favors largest parliamentary parties. Namely, just 20% of that money is divided equally to the participants of the elections, which is insufficient for their presentation to the voters, especially in local elections. Furthermore, since 2014 covering of election campaign expenses with budgetary assets received by parliamentary parties for other purposes (regular work) is allowed, which increases inequality of the participants and provides an impetus to conducting of expensive campaigns at the expense of the citizens.

During the dialogue on election conditions, Transparency Serbia proposed numerous amendments that would enable more efficient control (e. g. criteria for determining „non-market benefits“), as well as more precise definition of the Criminal Act from the article 38. para. 1. of the Law. It is important to provide legal potential for conducting special evidence actions during the investigations on illegal financing of campaigns, as it is the case with other acts of corruption.

Current draft specifies rules on using of public resources for the purpose of election campaign (e. g. renting of premises of the public enterprises and institutions). However, neither this, nor other changes of the Law that were announced by the Government, do not resolve problem of „officials' campaign“ – using of opportunities for additional media promotion of current officials through performing of alleged



regular activities during the campaign (e. g. visits to schools, hospitals, construction sites, distribution of social aid etc.). Thus, promotion, whose value is far greater than any of the paid add, is secured in practice.

Transparency indicates that regulating of advertising of authority organs, that is often used for buying of political influence in media is also very important for preventing of abuses. Having in mind that expenses of advertising on television, represent the biggest expenditure of the election campaigns in Serbia, changes of regulations should specify duty of Regulatory Body for Electronic Media to supervise whether all election participants were provided with equal conditions of advertising and prohibit certain harmful practices (e. g. broadcasting of complete party rallies).

Given all of the above, public debate organized by the Ministry of Finances on this draft, as well as announced dialogue with the assistance of representatives of the EuropeanParliament, should be used to resolve all problems identified so far, by changing the Law on Financing of Political Activities and other regulations, and not to delay complete reform for the period after the parliamentary elections.



Conferences

Report of the Coalition prEUgovor about the progress of Serbia in chapters 23 and 24

24 October 2019.

Coalition prEUgovorascertain ed in the latest report on fulfilling of criteria for chapters 23 and 24 that tendency of degrading continues, that authorities' only concern is whether the opposition will boycott the elections, therefore functioning of institutions, rule of law and establishing of social consensus are not the priorities.



The summary of the report

states that authorities are not investing efforts to fulfill their promises, therefore even formal obligations, adopting and prolonging of certain strategies, are inadequate and insufficient.

Fight against corruption is characterized by inexistence of strategic framework, lack of political will, and regulatory and control bodies are still inactive and don't have enough support, states the report for the period from April to September.

It warns that ruling party abuses state resources and functions for its propaganda and election needs. Regulatory Body for Electronic Media, Anticorruption Agency and other regulatory and control bodies do not perform their function, therefore after unsuccessful negotiations, majority of truly opposition parties announced boycott of parliamentary elections, adds the report.

Number of laws adopted by urgent procedure decreased, while adoption of constitutional amendments is delayed again. Furthermore, it states that activities within the security sector are disturbing, while relations with neighbors are relatively stable—with Croatia and BiH are unchanged, mainly poor, while with Montenegro are even worsened due to adoption of the law that regulates the status of the temples of the SOC.



Negotiations with Kosovo are frozen, and customs taxes of Priština are still valid, mentions the summary, and added that so called internal dialogue about Kosovo is not even mentioned and nothing has been accomplished so far.

Director of the Belgrade Center for Security Policy, Sonja Stojanović Gajić, stated that main messages of the report are: that the EU should continue its policy of association, that is starting of negotiations with North Macedonia and Albania, as well as to create estimations of current status in the chapters 23 and 24 for all Western Balkan countries. According to her words, it is necessary that the EU should more efficiently supervise reforms in the area of rule of law in the countries that are in the process of association, stating as an example PRIBE report for North Macedonia.

Program Director of Transparency Serbia, Nemanja Nenadić, spoke about election process, and dialogue about election conditions on the Faculty of Political Sciences, that he estimated as belated. He stated as example obligations from 2013 to change the Law on Financing of Political Activities, planned for 2014, and only now just three provisions of that law were considered. Nenadić pointed out to "dangerous thesis" not only of local authorities, but also some from the EU, that what could be done by the elections should be done, and the rest should stay for afterwards, indicating that by the time of the elections complete changes of the law could be implemented and not only three of its articles.

He criticized that the authorities haven't done anything to prevent officials' campaign, and especially emphasized example of the president of the Government of Vojvodina Igor Mirović, who abused public resources by sending the driver to the elections in Lučane, as well as using of the money of public enterprises for financing of sport equipments.

Nenadić commended changing of the practice of the Parliament of not using the emergency procedure anymore, as well as consideration of the reports of independent and regulatory bodies, but stated out that quality of adopted conclusions is far worse than five years ago.

Talking about opening of chapters, Nenadić said that the mistake of the EU is to condition opening of other chapters with poor results in chapter 23.

Vanja Macanović from the Autonomous Female Center spoke about implementation of the law on free legal aid, stating that this is the law that confers the message "I give you the right, but I don't actually give it to you".

Researcher of Belgrade Center for Security Policy Saša Đorđević spoke about changes in the security sector, and as most critical points stated that changes of the Law on Public Procurements introduce the article by which the security sector is allowed signing of contracts without the procedure. Đorđević said that by adopting the National Security Strategy it introduces the authorities of the President of the Republic that are not in line with the Constitution. Instead of Government of Serbia, President will manage the complete system of the national security, emphasized Đorđević.

Coalition prEUgovor gathers seven civil society organizations and is established with the purpose of realization of the policies that refer to negotiations about accessing of Serbia to the EU with special



emphasis to chapters 23 and 24. The goal of the Coalition is to help using of association process to the EU as a tool for further improvement of democratization of Serbian society.



Initiatives and analysis

TS delivered comments to proposed changes of regulations related to abuse of public resources

25 October 2019

Transparency Serbia delivered to authorized ministries joint recommendations of organizations Center for Applied European Studies and Transparency Serbia, that refer to matter comprehended with draft changes and amendments of three laws as part of the process of promoting election conditions. These are: Law on Financing of Political Activities, Law on Anticorruption Agency and Law on Public Enterprises.

In the letter of the Ministry of Finances, and in relation to changes of the Law on Financing of Political Activities, TS pointed out to the need to regulate numerous other questions, that are not comprehended with this draft, and that are of special significance for preventing abuse of public resources and improving of election conditions.

Namely, elaboration that followed the draft provides reasons for conclusion that neither Working Group, nor the Ministry of Finances, considered other documents that are of significance for the matter of financing of political activities, except from the Report of the Mission of OSCE/ODIHR, although they are closely related to the subject of changes and amendments. Primary conclusion is that Working Group and the Ministry of Finances have not considered the need to comprehend with legal changes everything that was planned to be changed based on the National Anticorruption Strategy in the Republic of Serbia (2013), following Action Plan and Action Plan for negotiations between Republic of Serbia and the EU as part of the chapter 23.

Furthermore, Draft does not consider even the [findings and recommendations of TAIEX experts](#) from 2016 out of which many are useful, and related to issues pointed out by the recommendations of OSCE/ODIHR.

Finally, this Draft hasn't taken into consideration [proposals for changes and amendments of the Law on Financing of Political Activities](#) that were formulated by the Ministry of Finances by itself in August 2014!

Essentially, proposed solutions do not fulfill in adequate way none of the stated recommendations of OSCE/ODIHR. Namely, even if the stated recommendation is interpreted narrowly, it is obvious that it is not being fulfilled. The truth is that proposed solutions would increase in certain level transparency of work of Anticorruption Agency (proceeding by reports), however transparency of the process of election campaign financing would not increase in any way.



Also, punitive measures envisaged in changes of the Law, vary within existing range of misdemeanor penalties, and changes are envisaged only related to one of many potential misdemeanors and criminal acts related to illegal financing.

Besides, even after proposed changes numerous problems already identified would stay intact, both from international and domestic monitors, along with state organs of the Republic of Serbia.

TS pointed out to some of them [in proposals and recommendations](#) given during the Dialogue about the elections.

TS delivered [specific suggestions](#) related to proposed changes, however, concluded that the only correct solution is to approach comprehensive reform of the rules on financing of political activities and especially the election campaign.

As part of the public debate on changes and amendments of the Law on Anticorruption Agency, TS delivered [joint proposals of CPES and TS](#) to Ministry of Justice.

TS reminded the Ministry in the letter that we already provided numerous other proposals for changes and amendments of the Law on Anticorruption Agency, that is the Law on Preventing Corruption, available on [the web-page Initiatives and Analysis](#).

We especially stressed out [the document](#) with recommendations for comprehensive changes in the article 29. of the Law on Anticorruption Agency/article 50 of the Law on Preventing Corruption, that refers to using of public resources and officials' campaign.

TS also, delivered to Ministry of Economy joint proposals of CPES and TS that refer to matter comprehended with public debate about amendments of the Law on Public Enterprises.

The letter, with specific proposals, indicates to the need to regulate numerous other questions through changes of the Law on Public Enterprises to provide more transparency, more efficient supervision and less discretionary deciding. Some of the suggestions in that regards could be found in the last chapter of the publication of TS "[Political Influence to Public Enterprises and Media](#)".

In regards to potential additional legal solutions that are of special importance for improving election conditions and preventing abuse of public resources, TS invited the Ministry to pay special attention to proposals and recommendations stated during the dialogue on the elections, and especially to proposal to regulate the obligation of publishing of data about purpose and scope of using the vehicles in disposal of public enterprises during the election campaign.

