



Transparency Serbia

Overview of activities

June 2019

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Activities

The Transparency International Regional Meeting for Europe and Central Asia was held on 18 - 20 June 2019 in Berlin. In addition to the meetings dedicated to the planning of the work of Transparency International in the coming years, several workshops were also held at this conference where TI branches' experiences in the fight against political corruption, protection of whistleblowers and other issues were presented.

On the panel dedicated to the phenomenon of "captured state", program director of TS, Nemanja Nenadić, as one of the moderators, presented the findings of the research on the elements of the captured state, in the case of urban planning and amendments to the regulations for the realization of individual projects in the City of Belgrade. The discussion showed that there are different views on what is included in the phenomenon of "captured state", in particular with regard to the question of whether it covers only situations where regulations are adapted to individual needs or also situations when institutions are usurped within the existing legal framework. There was also talk of further use of this term in assessing the situation in individual countries and the use of this term when advocating publicly anti-corruption reforms.



The seventh plenary session of the National Convent on the European Union was held on June 10 at the Great Plenary Hall of the National Assembly of the Republic of Serbia. Coordinator of the NKEU Working Group for Chapter 5 and TS program director Nemanja Nenadić participated in the panel on the topic "Fight against corruption". Participants in the discussion were also Nela Kuburović, Minister of Justice, Dragan Sikimić, Director of the Anti-Corruption Agency and Slobodan Georgiev from BIRN Serbia, and the debate was moderated by Zlata Đorđević from TS.

On June 12 in Novi Sad and on June 17 in Niš, TS organized round tables devoted to the public work of state and local public companies. The round tables were intended for representatives of public and other companies owned by the Republic of Serbia, APV and local self-government units, journalists, civil society organizations interested in accessing information of public importance and representatives of the economy.



The key issues in the draft amendments to the Law on Free Access to Information of Public Importance and the main problems in the implementation of this Law were debates, how do the state-owned enterprises, cities and municipalities must provide the public of their work and how much they respect these legal obligations. We also talked about the effects of the announced abolition of the possibility for citizens to seek information from some state owned companies, which companies would be exempted, and how citizens and the media could influence their rights not to moderate.

On June 26th, Program Director TS Nemanja Nenadić met with Freedom House representatives who prepare a report on the situation in Serbia in the field of the rule of law, democracy and human rights, and he briefed them on the findings of relevant research and recommendations provided by Transparency.

Nemanja Nenadić from TS participated on June 25th at the conference "Transparent and responsible implementation of PPP projects in Serbia" organized by the Institute for Territorial Economic Development (InTER). The conference presented the findings of this organization on individual cases of public-private partnerships in Serbia, and besides the researchers, representatives of the SCTM, the Public-Private Partnership Commission and the municipalities of Topola and Bečej also spoke about this.

The representative of TS used this opportunity to get to know the participants of our organization about public-private partnerships in Serbia, key problems for transparency and recommendations how to solve these problems. Among other things, he pointed to the fact that at the legal level, publicity of contracts for PPPs was not provided, because only some of the information contained in the "public contracts registry" is published, and not the contract itself. In this context, the only positive example is the municipality of Bečej, which published an agreement on providing smelting services, concluded within the PPP. Non-transparency is noticeable in terms of other information. For example, TS has been trying for more than a year to come to a justifiable concession study for a Belgrade airport, which is not available even though the concessionaire has already begun to work and for a long time does not pose any danger of damage to the interests of Serbia. In view of the forthcoming amendments to the Law on PPPs and concessions, as well as the Law on Public Procurement, he especially emphasized that it is necessary to cover all the problems that are known in these two areas, and not just those issues that are relevant for the implementation of the applicable EU directives.

TS submitted to the Assembly Committee on Justice, Public Administration and Local Self-Government on June 17 a proposal to conclude the consideration of the report Commissioner for Information of Public Importance and Personal Data Protection.

Round table, which was organized by the municipality of Vrnjacka Banja, USAID Project for responsible government and organization Transparency Serbia on June 4, 2019, marked the end of the public debate on the Draft Revised Local Anti-Corruption Plan of the municipality of Vrnjacka Banja. During the public debate, which lasted for 20 days, no objection was received on the draft of this text.



On June 6, a meeting of the working group for the preparation of the Local Anti-Corruption Plan was held in Vranje, where were discussed the comments of the TS on working versions of this document and the ways for their implementation in the final text in the light of the documents already adopted by the City of Vranje in the meantime.

It was concluded that in this way all the issues anticipated by the LAP model developed by the Anti-Corruption Agency were considered and that the additional activities that the City of Vranje foresaw in the previous versions of the LAP should be considered at the final meeting.

Nemanja Nenadić from Transparency spoke on the topic "Obligations of local self-governments, inviting the media at sessions, availability of documents", at the round table "Public information in the Bulgarian language", held on June 5th 2019, at the Educational Center of the Sports Hall in Dimitrovgrad. Read more in the chapter "Conferences".

The Commission for the selection of members of the body for monitoring the implementation of the Local Anti-Corruption Plan for the city of Novi Pazar established the proposal of the list of members of the Local Anti-Corruption Forum. The competition intended to select five members of the LAF. At the competition, which was followed by Transparency Serbia, eight candidates appeared, one was canceled before testing, and the remaining seven were rated and ranked. In the first five places, the Commission ranked the following candidates: Esmalotinac, Nikola Kočović, EldinDobardžić, SeadBiberović and BiseraŠećeragić. In accordance with the LAP, members of the LAF will be elected by the Assembly of the city of Novi Pazar.

In June, 218 news or articles were published about the activities of our organization, i.e. the news in which representatives of the TS were quoted. We set up a series of initiatives and analyzes on our website, as well as requests to state authorities and their responses to the TS.

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



Under the magnifying glass

The illegal condition for the candidacy of the Commissioner is withdrawn

June 17, 2019

The Parliamentary Committee on Culture and Informing withdrew an illegal requirement for the selection of the Commissioner for Information of Public Importance.

Mirko Krlic, chairman of the Board, said for *Insider* that a condition that the candidate at the time of his nomination for office was not employed in another state body, is withdrawn. "At the insistence of several NGOs, we have withdrawn this condition, so that anyone who fulfills the legally prescribed conditions could be a candidate for commissioner. However, those who are elected to that office will not be able to work in another state body", Krlic said.

On June 14th, the Parliamentary Committee launched a procedure for the election of a new Commissioner, and the invitation was sent to all parliamentary groups to submit their proposals for a new Commissioner. However, one of the conditions was that the candidate at the time of proposing for the function of commissioner, is not employed in another state body. Due to this condition, eight NGOs, including TS, requested that this condition is deleted and pointed out that, except that this requirement is not provided by law, it is a "eliminating factor" for all candidates currently working in state institutions, including the Commissioner's Office.

Civil society proposes Nevena Ružić for the Commissioner

June 19, 2019

More than 60 civil society organizations, media, representatives of the scientific community are urging MPs to support Nevena Ružić as a candidate for a new Commissioner for Information of Public Importance and Personal Data Protection. We are firmly convinced that Nevena Ružić possesses the expertise, experience and integrity necessary for the management of the Commissioner's institution.

Nevena Ružić is working in institution for 10 years now and is now serving as Assistant Secretary General of the Commissioner's Office. She contributed with her work significantly to the confidence of citizens in the Commissioner's institution, so we believe that she will continue to work in the public interest in the future. We are sure that besides the relevant professional knowledge (master diploma of legal sciences in areas closely related to the field of activity of the Commissioner) and exceptional experience, she also has the integrity necessary for the control and supervision of the work of state bodies.

She showed commitment and dedication through regular communication and cooperation with civil society organizations and continuous professional development. Since 2017 she is a member of the working body of the International Confederation of Information Commissioner.



She was elected in 2012 as a member of the Bureau of the Advisory Committee of the Convention on the Protection of Individuals with regard to the automatic processing of personal data of the Council of Europe, where she also served as Deputy President.

We urge all parliamentary groups in the Serbian Parliament to nominate Nevena Ružić and support her election because she meets all the criteria that guarantee that she will perform the responsibilities of the Commissioner in a responsible and conscientious manner, in accordance with law and good democratic practice, independently from political and other influences.

We urge all the deputies to act responsibly and conscientiously towards the choice of Commissioner.

This institution has great importance for the citizens of Serbia, and the rights it protects - access to data of public importance and protection of personal data is guaranteed by the Constitution rights that are the basis of every democratic society.

We also appeal to the Assembly Committee for Culture and Information to respect the criteria of transparency, openness and integrity when selecting a new Commissioner, in order to enable

the public to be adequately informed and involved in this process.



Initiatives and analyzes

TS' proposal of resolution on the consideration of the Report of the Commissioner for Information of Public Importance

June 17 2019.

Transparency Serbia submitted to the National Assembly Committee on the Judiciary, Public Administration and Local Self-Government a proposal of resolution on the consideration of the Report of the Commissioner for Information of Public Importance and Personal Data Protection.

At its session on June 17, the Committee should consider Commissioner's report on the implementation of the two laws under his jurisdiction, as well as the annual reports of Ombudsperson and Anti-Corruption Agency. In the previous years, these reports were not discussed or were discussed with big delay at the sessions of the relevant committees, and the Parliament did not consider them in the plenum since 2014.

The session of the Committee was scheduled two weeks after the release of the European Commission report, which, among other things, pointed again to this and a host of other bad practices of the parliament.

Transparency proposed that in the resolution proposal (which should be adopted by Parliament at the plenum), it is noted that despite the previous conclusions of the National Assembly, the Law on Free Access to Information of Public Importance is not improved yet, and that the Parliament invites Ministry of Public Administration and Local Self-Government to open a public debate as soon as possible, taking into account SIGMA recommendations and proposals made during the public debate in 2018.

The proposal invites all proposers of laws and other regulations to make sure that the provisions of other regulations do not violate provisions of the law regulating access to information of public importance and protection of personal data, and the Government to propose as soon as possible the appropriate amendments to the law in connections with which the most severe obstacles for exercising citizens' rights have already been observed (Article 102 of the Law on Defense, and Article 45 of the Law on Protection of Competition).

If the TS proposal is adopted, the National Assembly would urge the Government of Serbia to ensure the execution of 238 final, binding and enforceable decisions of the Commissioner, and at the same time obliged to submit a report on the implementation of conclusions to the National Assembly within six months and the report on the implementation of RS conclusions 42 and 43, from 5 June 2014 within 15 days.

The whole [proposal](#) (in Serbian).



Press issues

No Public Procurement Law implementation for „Moravski Corridor“

June 25 2019

Transparency – Serbia (official chapter of Transparency International) emphasizes that special law that is being adopted for the purpose of constructing „Moravski Corridor“ will make more damage to the unity of legal order, and especially to public procurement system in Serbia. Draft Law which is under the parliamentary debate as of today, regulates matters already regulated by the existing laws of the Republic of Serbia on expropriation, public procurements, public – private partnership, planning, taxes and customs. Thus continuing dangerous trend of adopting special rules related to one project only, as in the case of „Sothern Flow“ and „Belgrade Waterfront“. If the Government feels that laws are of poor quality (e. g. related to period of expropriation) then it should propose for their amending, and not to create special regulations for single case only.

Beyond any doubt is the argument of the Government of Serbia that building of high-way that will connect cities of Kruševac and Čačak is overly necessary. However, Serbia already has regulations on expropriation, construction standards, as well as the laws that regulate choosing of contractors or companies for some sort of form of public-private partnership, as this will be the case. On the other hand, draft of special law envisages that choosing of „strategic partner and closing of the contract on planning and construction, as well as choosing of professional supervision over works, doesn't fall under regulations on public procurements.“ Criteria and method of election will be regulated exclusively with by-law act adopted by the Government in 30 days deadline.

Furthermore, it is unusual that elaboration of the draft law states that choosing of strategic partner „is made in a way that guarantees legal safety“, through method „that is legally efficient, and completely transparent“, „respecting the Constitution and procedures“, and that is should „have positive influence to various international indexes of democracy and transparency“. It is unclear what this optimism is based on, having in mind that procedure of electing strategic partner will be regulated with the by-law act of the government, whose content is still unknown, and that implementation of the existing Law on public procurements, that would otherwise provide transparency, non-discrimination and legal protection is explicitly excluded.

The only thing that can be an advantage of this law is that violation of legal system is slightly less than with signing of direct intergovernmental agreements on loan with parallel engaging of contractors. We remind that, in such a way, one month ago, loans were approved for building of railway Novi Sad – Kelebija and high-way Preljina – Požega, and these jobs, that are worth 1.686.000.000 USD, were simultaneously awarded to Chinese companies. When it comes to „Moravski corridor“, with estimated value of 800 million of Euros, Government has already signed „Memorandum on cooperation during the



project construction“ with companies „Behtel“ and „Enka“ from the USA, i.e. Turkey, that still doesn't represent legal obligation to award this job to these companies.

From the standpoint of Serbian international obligations in the area of public procurements and public-private partnerships, and especially having in mind Stabilization and Association Agreement with the European Union, provisions of the article of two special laws, according to which during the construction „domestic materials and equipment will be used and domestic contractors will be hired in a relationship that will be determined with contract on planning and work implementation“ could be disputed. Namely, on the basis of this Agreement, preferential for domestic bidders is canceled on November 2018.



Conferences

Government is not ready to fight endemic corruption

June 12, 2019

Serbia is a country of endemic corruption, which endangers the functioning of society, but the government is not ready to genuinely fight it, nor to build a transparent management system, it was estimated at a round table devoted to the public work of state and local public companies organized by Transparency Serbia in Novi Sad.

Program Director of the TS Nemanja Nenadić pointed out that the previously controversial decision that envisaged the possibility for state bodies to initiate proceedings against the Commissioner for Information of Public Importance is excluded from the second draft amendments to the Law on Information of Public Importance, after numerous complaints from the civil sector.

However, as he pointed out, a "very dangerous solution" is still retained, exempting state-owned companies registered as capital companies, or joint-stock companies or limited liability companies, from the application of the law.

"We consider this provision very dangerous and potentially extremely harmful, because citizens would not be able to ask how public money is spent in those companies, which at the same time have the largest public funds, such as Srbijagas," said Nenadić.

He stated that not only the spending of public money is what represents data of public importance, but also that citizens should be able to ask about the quality of services provided by public companies and other issues. He cited numerous examples of citizens questioned by the public about the sale of the Port of Novi Sad, among which were whether this privatization is justified, whether this port is worth more than the offered price, whether it needs better management ... He added that they would have to get answers to all these questions.

"Another example is the recent decision of a public company from Užice to pay compensation to workers for going to the rally within the campaign "The Future of Serbia", he said.

Šabić: Citizens have the right to know how their money is spent

Former Commissioner for Information of Public Importance Rodoljub Šabić warned that a proposed decision to exclude capital companies from the application of the law on access to public information was at least "controversial", because it would mean, for example, that Srbijagas would not have to answer questions of public interest, but that the BIA should have.

"Those who run big money should never be exempted from the implementation of this law. If this passes, we will get hyper production of capital companies, because everyone will only regroup," Šabić warned.



He pointed out that Serbia has a "chronic problem of corruption" and that according to the estimates of international institutions that measure the index of corruption, it is at the level of the most exploitative Latin American countries.

"Well, I guess in this country we have citizens, not servants, who pay taxes and have the right to know how their money is spent," said Šabić. He added that the latest European Commission Report highlights the existence of corruption in Serbia, pointing out that these estimates are very important for serious foreign investors who are therefore avoiding us.

"I'm not talking about gray capital, but serious investors looking for a regulated market and an independent judiciary, and such investors do not come here, but those who subsidize subsidies," Šabić said.

He recalled that in about 90 per cent of submissions to the Commissioner's office in his mandate were related to ignoring such requests for information by state authorities, unprepared for transparency of work.



According to him, the key problems were that the consequences of the measures and sentences expressed by the Commissioner were not felt by those responsible in state bodies and public enterprises because the penalties were paid from public funds.

"Srbijagas thus paid millions of fines, but the requested information was not provided," Šabić said.

The conference also pointed to the unacceptable attitude of the authorities towards the election of a new Commissioner for information of public importance, which has not yet been selected, even though the previous term expired at the end of last year.

Within the framework of the round table "Publicity of state-owned enterprises and cities", a workshop was held where representatives of local public companies in Novi Sad, the civil sector and journalists reporting on corruption were present.

