

Letter to the members of the Parliament–Draft of the Law on Conversion of Housing Loans indexed in Swiss francs

April 28th 2019

Transparency Serbia sent a letter to all parliamentary groups on the debate on the proposal of Law on Conversion of Housing Loans indexed in Swiss francs:

Dear members of the Parliament,

on the agenda of today's session of the National Assembly, as the first point, is included the proposal of Law on conversion of housing loans indexed into Swiss francs, submitted by the Government of the Republic of Serbia.

In yesterday's press release, Transparency Serbia warned that the government's decision to adopt "lex specialis in connection with Swiss franc loans, so that it is found in the parliamentary procedure after an urgent procedure," is directly contrary to the provisions of the Law on State administration and GRECO recommendations.

Negotiations conducted by the Ministry of Finance with associations of beneficiaries of these loans and banks cannot be considered as a valid substitute for a public debate. The absence of a public debate cannot be justified by the fact that, according to Minister Mali, the legal text represents a "compromise solution between several stakeholders" - associations, banks and state.

Namely, in addition to the legitimate interests of the debtors who are in trouble due to the increase in the value of the franc and the banks that gave them loans, "lex specialis" will certainly affect the interests of other citizens, by allocating around 100 million euros from the budget, the impact on the banks' credit policy, prices on the real estate market and in many other ways. Citizens, however, are deprived of the possibility to influence the provisions of the law with their proposals.

The rules on public debate from the Law on State Administration and the Rules of Procedure of the Government, which should oblige the Ministry of Finance, require organizing a public debate in the preparation of new laws. Such discussions must be organized without exception, when the law "substantially changes the legal regime in one area", as well as when "issues that are of particular interest to the public" are regulated. It is obvious that the public debate on the draft of this law was mandatory under both criteria, and that it had to be done before the text was brought before the Government.

This is not the only case of non-compliance with the rules on public debates, but it is definitely one of the most drastic, given the degree of public interest in the subject matter regulated by the law, the financial implications and severely constrained possibilities for the content of the law and the possible consequences of its applications are considered at least in the National Assembly. Therefore, we have chosen to address to all parliamentary groups in this way. Otherwise, more detailed information on the legal framework for public debates in the Republic of Serbia and the findings of our organization on the implementation of this legal framework in 2018 can be downloaded from our web site.

In the concrete case, the bill submitted by the Government to the National Assembly does not contain a general overview of whether or not consultations were made with regard to the drafting of the legal text. However, there are some obviously inaccurate or unproven claims in the explanation. Thus, in the framework of the "analysis of the effects of regulations", on the question "to whom and how most likely will influence the solutions in the law", it is said that "the solutions will first of all have a positive impact on the users defined by this law", while the issue of influence on other faces. As part of the assessment of the amount of funds needed for the implementation of the law, it is stated that "the overall effect of this law on the budget of the Republic of Serbia amounts to 11.686.680.000,00 dinars." Bearing this in mind, it is obvious that for the same amount to damage the realization of some other public interests financed from the budget, and in that sense, the "analysis of the effects of the law" is obviously incomplete. In addition, taking into consideration the possibility that the provisions of this law are interpreted as placing citizens in an unequal position (for example, those who have previously converted their loans), that is, placing banks in an unequal position (depending on how much they approve the loan with a currency clause in CHF), as well as the fact that many legal disputes are underway in connection with these agreements, the explanation of the draft law, as far as the consequences of its application are concerned, is at least incomplete.

Consequences of the deviation of the rules on public debates on the international reputation of Serbia in anti-corruption organizations are nothing less relevant. Namely, the Group of countries for the fight against corruption (GRECO), established by the Council of Europe in 2015, obliged Serbia to "develop rules on public debates and improve their implementation in practice". Republic of Serbia did not fulfill this recommendation even after almost four years. On the contrary, in a March report from the GRECO Plenary Session, it is noted that "no safeguards were introduced to limit the use of an emergency procedure". The submission of this law proposal to the Assembly without previously conducted public debate and the request to discuss the problem older than a decade in an urgent procedure, is an indication that Serbia will not meet GREKO recommendations even in the third term - by the end of 2019.

Having all this in mind, we invite you to return this draft law to the proposer (Government of the Republic of Serbia) to ask that a public debate is held before it is again referred to the deputies for consideration.