



CASE STUDY

HOW DOES ONE PRIVATISE A PUBLIC RESOURCE?

CRTA:

The following case study speaks about one of the most blatant examples of abuse of public resources by the ruling Serbian Progressive Party, during the election campaign for elections held in June 2020 at all levels. There were many similar examples, but this is one of the few that was efficiently processed in compliance with the legally prescribed short deadlines, and in which it was determined that the provisions of the Law on Financing Political Activities had been violated. In the same case, certain shortcomings of the existing legal framework were noticed, as well as certain weaknesses and inconsistencies in the actions of the Anti-Corruption Agency, which is responsible for the implementation of this law. Public resources are being misused, primarily by public officials, but also by civil servants, in order to promote political parties during the election campaign. In this way, political parties, which are in power at the time of the election campaign, gain a great and insurmountable advantage over other actors in the election game, primarily over opposition parties.

The advertising video of the Serbian Progressive Party was published on May 19th, 2020, during the campaign for the election of MPs, on a website specialised in sharing and exchanging video files "Youtube¹". The fact that the video was recorded and used for the purpose of the election campaign can be deduced from the cir-

led number "1" shown in the video which clearly symbolises the ordinal number of the electoral list of this political entity in the upcoming parliamentary elections. The video is called "During the last few years, a lot has been invested in health care", and the content is distributed to a larger number of citizens under the hashtag #Vucic#SNS#Serbia# GradimoBuducnostSrbije. The mentioned video was presented to the voters via social networks from the account of the Serbian Progressive Party. The main actor of the video, professor Teodora Beljić Živković PhD, was shown in the hospital circle of the Clinical Hospital Centre "Zvezdara" – Belgrade (hereinafter: CHC "Zvezdara") wearing an official medical uniform – a white doctor's coat with the coat of arms of the Clinical Hospital Centre "Zvezdara" and on that occasion stated: "This new Covid infection has shown how important to the President the health of citizens is, and the fact that we have achieved fantastic results, better than in Europe, convinces me that the President really thinks about our health. This is why I will not hesitate to cast my vote to the Serbian Progressive Party". A video from the first online rally of President Aleksandar Vučić, held on May 16th, 2020, appears in an advertising video showing the premises of the CHC "Zvezdara" or some other specialised Covid-19 hospital, including employees of that health institution.

1 https://www.youtube.com/watch?time_continue=5&v=l4m78zKofDk&feature=emb_title

REGULATING THE PROHIBITION OF MISUSE OF PUBLIC RESOURCES

Pursuant to the most recent legal changes adopted by the end of 2019, the ban on the misuse of public resources is regulated by the Law on Prevention of Corruption, when public resources are misused by a public official, and the Law on Financing Political Activities, when public resources are misused by a political party. The Agency is responsible for the implementation of both laws. **This double ban on the misuse of public resources is the result of many years of dedicated work by civil society organisations, including the CRTA.** As part of the recommendations for improving the election conditions, the CRTA had advocated changes to these two laws. Only by the end of 2019, after negotiations between the Government and the opposition, a working group consisting of representatives of various state bodies partially accepted the CRTA's proposals, after which the National Assembly adopted them in the form of legal amendments.

These amendments to the law **define more precisely the concept of misuse of public resources in both laws, and introduce short deadlines for the Agency to act** in the procedure in which it is determined whether a political entity (political party, coalition of political parties or groups of citizens) misused public resources in the campaign.

These changes in the legal framework represent a significant step towards equalising electoral conditions, although, frankly speaking, there are still many unfulfilled recommendations on the path of achieving fair and free democratic elections. One can ask a question of the importance of preventing the misuse of public resources and punishing officials and political parties during the election campaign. Undoubtedly, this creates an insurmountable advantage in the election race of the parties that are in power at that time over the opposition parties.

Since Teodora Beljić Živković, as a doctor, is not a public official, in this particular case only the provisions of the Law on Financing of Political Activities were violated, as they prescribe a ban on the misuse of public resources by a political party in the election campaign.

Article 23, paragraph 3 of the Law on Financing Political Activities stipulates that for the purpose of implementing activities within the election campaign, the political entities will be prohibited from using the budget funds of the Republic of Serbia, the budget of the autonomous province and the budget of the local self-government units, that the candidates at elections and election lists, as well as the public officials, state officials, and officials of the autonomous province and the local self-government unit or the directly elected persons, have at disposal for the purpose of discharging their official duties.

Paragraph 3 of the same article stipulates that the political entities shall be prohibited, in the course of an elec-

tion campaign, except for the public services and goods allocated in line with article 6, paragraph 2 of the Law, to use other public resources, including the official premises, vehicles, websites and inventory of the state, provincial and local authorities, public institutions and public enterprises, except for the public officials using public resources for the purpose of personal safety protection, in case such use of the public resources has been defined by the regulations from such area or by virtue of the decision of the services ensuring safety of officials.

When the stated legal provisions are applied to the facts and circumstances established by inspecting the video in which Teodora Beljić Živković, Assistant Director for Educational and Scientific Research of the Clinical Hospital Centre "Zvezdara" – Belgrade, Director of the Clinic for Internal Medicine of the CHC Zvezdara and assistant professor at the Medical Faculty of the University of Belgrade, gives her statement in the hospital circle of the CHC "Zvezdara" wearing an official medical uniform – a white doctor's coat with the official coat of arms of the CHC "Zvezdara", and at the end of the disputed video, still wearing the official uniform, states that she will vote for political the party in whose promotional video she appears, this may lead to the conclusion that there has been an abuse of public resources and a violation of legal provisions.

THE AGENCY'S STATEMENT IN THE COURSE OF THE ELECTION CAMPAIGN

During the election campaign for the elections, held in June 2020 at all levels, the Agency published a statement on its website entitled "Online election campaign and potential misuse of public resources."² It was thereby established that the election campaign was largely redirected to social networks and the Internet in general, as a consequence of the situation caused by the Covid-19 pandemic. The Agency came to this conclusion on the basis of reports from election campaign observers, as well as on the basis of complaints submitted to the Agency regarding possible violations of the Law.

The Agency appealed to political entities and holders of public functions to responsibly use all internet platforms and mobile applications, even the free ones, and noted that the content published on them would be subject to sanctions, if a violation of the law were found. Moreover, the Agency pointed out that the law prescribed that a public resource was any real estate, movable property and any other good that was in public ownership, i.e. in another form of ownership used by the authorities of the Republic of Serbia, autonomous provinces, local governments, public companies, companies, institutions and other organisations whose founder, i.e. member is the Republic of Serbia, an autonomous province or a local self-government unite. It was further clarified the suffrage, as general and equal right for all adult citizens, was a constitutional category, and that, in that sense, clear and unambiguous support for political entities participating in elections was allowed and legitimate, but that the use of public resources for that purpose was expressly prohibited by Law. In this regard, **the Agency pointed to the fact that the political promotion of entities participating in elections, via internet pages (websites), accounts and through funds owned by state bodies, represented an abuse of public resources.** Finally, the Agency called on officials and political entities to respect election regulations, as well as to behave responsibly towards citizens, which was also reflected in the proper use of social networks and applications.

THE CRTA FILES A COMPLAINT... THE AGENCY ACTS

Having conducted media monitoring, the CRTA observation mission detected the disputed video on the Internet, gathered evidence and submitted a complaint to the Agency. In that way, **the CRTA prompted the initiation of proceedings before the Agency to determine the violation of the Law on Financing Political Activities.** It was additionally requested that the Agency, after the conducted procedure and correctly and completely established factual situation, impose appropriate measures, i.e. that it submit a request for initiating misdemeanour proceedings to the competent misdemeanour court and to inform the complainant and the public about the actions taken and the outcome.

The Agency conducted proceedings upon complaint respecting the short legal deadlines, **and issued a decision³ establishing that the Serbian Progressive Party violated article 23, paragraph 3 of the Law on Financing Political Activities,** in such a way that for the purposes of its promotion in in the course of the election campaign, it recorded an advertising video featuring the director of the CHC "Zvezdara", professor Teodora Beljić Živković PhD, as she gave a statement wearing an official medical uniform with the coat of arms of this health institution.

By the same decision, the Agency issued **a warning measure** to the Serbian Progressive Party, obliging that political party to comply with the provisions of article 23, paragraph 3 of the Law on Financing Political Activities in the future.

This news was broadcast only by media that do not belong to those close to the ruling parties, N1⁴ and Insider⁵. Public media services, RTS and RTV, as well as other televisions with a national frequency failed to report that the Serbian Progressive Party violated the Law in the course of the campaign.

In the reasoning of the mentioned decision it was stated that the warning measure in the specific case fulfilled the purpose of the law, and acted preventively on the political party to abide by the law in the future. **Despite the warning, the Serbian Progressive Party did not abide by the law in the election campaign and that political party violated the same law on several other occasions during the campaign.** In two more cases the Agency determined that the Serbian Progressive Party abused public resources and re-issued warning measures, **only to establish a violation of the law on July 14th, 2020, after the elections ended, and file a misdemeanour charge against the ruling party, which in the meantime won the elections convincingly.** The Misdemeanour Court in Belgrade is expected to act upon the filed misdemeanour charge.

The CRTA, other individuals and legal entities, filed a to-

² <http://www.acas.rs/saopstenja>

³ Decision of the Anti-Corruption Agency 014-07-00-0251/20-07 dated 08.06.2020, available at <http://www.acas.rs/wp-content/uploads/2020/06/Srpska-napredna-stranka-1.pdf?pismo=lat>

⁴ <https://rs.n1info.com/izbori-2020/a608870-crta-utvrdjeno-da-je-sns-prekrasio-zakon-spotom-u-kbc-zvezdara/>

⁵ <https://insajder.net/sr/sajt/vazno/18882/>

tal of over 30 charges against various political entities, but the Agency found that violations of the law occurred in less than ten cases. All decisions have been published on the Agency's website⁶.

THE AGENCY'S DECISIONS AND THEIR EFFECTS

The significance of the decision stating that the ruling Serbian Progressive Party violated the law by abusing public resources in the campaign is an important precedent in the work of the Agency headed by an official who was undoubtedly a member of the Serbian Progressive Party⁷ and whose election was followed by serious controversy. With this in mind, thanks to this example, the Agency has shown that it can prosecute all participants in the election campaign equally, including the party that is in power at the moment. On the other hand, it is worrying that the media with a national frequency did not report on the illegal conduct of the Serbian Progressive Party during the campaign. Even more worrying is the fact that the Agency did not want to make itself heard on this account before the public. Due to the Agency's passivity and censorship in the media, an indisputably established fact that the Serbian Progressive Party, despite having more funds than other participants in the election match, is abusing public resources in the campaign, has remained hidden from the public.

It is also worrying that in the reports on the work of the Agency, which are submitted to the National Assembly in accordance with the law, such examples are not emphasised and thus a unique opportunity is missed for the Agency's representatives to point out to MPs the illegalities that their political parties resort to in the course of the election campaign. It would also be important to establish a practice for MPs to consider specific case studies quoted in the reports.

AN INDEPENDENT AGENCY — MORE CHOICE FOR CITIZENS

Although the Agency submits reports on its work to the National Assembly, it should in no way be in a subordinate position to the highest representative body, given that the Law on Prevention of Corruption proclaims the independence of the Agency. It would be best if the relationship between these two state bodies were built on the checks and balances system. It is a term used in American constitutional and legal doctrine to describe the relationship between the legislative and the executive powers. The Constitution of Serbia also formulates the principle of separation of powers in such a way that it says that the relationship between the three branches of government is based on balance and mutual control. **The Constitution does not recognise autonomous and independent state control bodies as a separate branch of government, but they actually are ones, as they certainly cannot be considered part of the three main authorities: legislative, executive and judicial.** In this particular case, the National Assembly elects the director and members of the Council, the Agency submits work reports and other reports to the National Assembly, while the Agency controls MPs and other public officials in the Parliament, by controlling their property, gifts, conflicts of interest, within the framework of controlling the misuse of public resources and the accumulation of public functions. Therefore, on the one hand, the Agency is accountable for its work to the National Assembly, while on the other hand, MPs and other parliamentary officials have certain obligations towards the Agency, which controls their activities to a significant extent.

In practice, it is more than obvious that the control is not mutual, but that the Agency avoids to warn, remonstrate and educate MPs, who are citizens' representatives, about violations of the law committed by their political parties. In that way, the role of control state bodies is made meaningless, and their independence and autonomy lose their sense. On the other hand, as expected, MPs did not show interest in considering the Agency's reports either. Thereupon, it seems that there is still no will to systematically solve the problem that has been pointed out. Until this is done, cases will be sporadically resolved while most abuses will remain unpunished, which will put election participants at a disadvantage.

⁶ <http://www.acas.rs/odluke-agencije-po-prijavama>

⁷ <https://www.istinomer.rs/akter/dragan-sikimic/>