

Magnet for New Investments



By: Igor Isailović

Legal safety, management and court efficiency are the most important pre conditions for new investments in Serbia. And new investments are the pre condition for admission of Serbia in European and world integrations. Unfortunately, there are few good examples that we can recommend to domestic and foreign investors. Perhaps that is the exact reason why the investment level in our country is very modest despite the ideas geopolitical location.

The problem of insufficient investments is easily solvable with the good will of citizens and country authority and with not big legal corrections. The problems that often disqualify our country in the competition with the other countries are: corruption level, insufficient efficiency of management and court and contempt of human rights. If Serbia efficiently and permanently deals with the stated problems we are confident that it would involve in European and world integrations as the possible "heaven" for new investments.

Fighting Corruption

The basic mistake in previous fight against corruption is that the fight was carried out unsystematically and not continually. Unfortunately, the result of such fight, besides "exclusive" newspaper articles and imprisonment of certain number of people without adequate evidence is not the lowering the corruption level and return of citizens' trust in authorities. It is not necessary to seek consensus from the citizens and also from the president of the country for fighting corruption, because consensus exists and it is evident. It is necessary to use the existing legal frame, to take steps within the existing regulations and, smaller corrections of the positive law; the success in fighting corruption is within reach.

The first and foremost is that the laws and sub-law acts have to contain legal norms

and not only disposition. Namely, legal norm consists of disposition and sanction. Disposition represents certain code of conduct while the sanction is used for punishing the one who breaches dispositions. The problem of our legislation is that the rules that regulate the code of conduct of administrative and court bodies consist only of disposition. This is exactly one of the reasons for high level of corruption because there are no sanctions against the judge or state official unless it is decided timely on your request. Certainly, in this context, criminal law or violation sanction is not considered the sanction, but "discipline" and civil law sanction. The situation that the efficiency, and sometimes also the quality of decision of the state official

or judge depends on the good will of acting body, is the fertile ground for corruption. Legal changes should be directed towards imposing sanctions for judges and the officials of administrative bodies, for the case that they do not decide timely on the party's request. One of the best examples of effectiveness of such solution is the regulation that regulates the case with Business Registers Agency. Namely, it is anticipated that, if the body does not make a decision within 8 days, it will be considered that the subject has been positively solved. This very regulation has separated this state institution from the cliché of state bureaucracy by its efficiency.

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The opinion is also spread that so called "antidating" decision by judges, authority bodies, misdemeanor body, should be qualified as the crime of forgery, because such manner is used by judges and authority bodies and especially misdemeanor bodies in order to present themselves as efficient which is not the case because we receive the decisions of the above mentioned bodies about a year belatedly.

Besides the mentioned changes the most important thing would be to abolish the crime of bribery, and even to offer the award to anyone that has given bribe if he exposes the state official or judge that has taken bribe. In this way there would not be the closed circle of silence but the state would have the possibility to activate legal institute of "provocative agent" in the right way. On the other hand, the majority of committed crimes of giving and taking bribe has been done for actions that the authority bodies or judges should do when performing their own regular duties, without violating any regulation – commonly known as "accelerating the subject solving".



Better efficiency of authority and court

Legal mechanism for better efficiency of authority and court is exactly the same as the mechanism against corruption. The fact that authority bodies and courts do not have the time limit to answer the party's demands and also are not well motivated for work in material way, they are the basic reason due to the general opinion that state authorities are absolutely inefficient.

That is to say, it is hard to explain someone from the developed world how it is possible:

- to wait for a land registry more than 7 days
- to wait for registering of rights in public real estate registries more than a year, when the efficiency of registering process is the ground for legal security
- that the suits last approximately 5 years
- to wait for certification of an act in front of the court in huge crowds even for two hours, no matter if that is a statement or multimillion agreement
- that only one day is enough for setting up a company and one has to wait for 10 days for TIN
- that tax procedure for getting tax clauses on purchasing and selling real estate lasts up to 30 days (we remind that it is the precondition for registering of property rights in real estate registries)

All these, but also the numerous other problems because of which the investors are reluctant to invest in our country or do not invest at all, it is necessary to record above all in public and more general discussion and to find efficient

solutions that would considerably change the picture of legal system in Serbia. Efficiency could be higher if:

- the material position of judges and employees in authority bodies should improve
- the sanctions for inefficiency in judges work and also in other employees in authority bodies are imposed, with the possibility of lowering the salary, moving to another working place, release or measure of terminating working relation
- the Law on public notary is passed
- the regulation that stipulates that the evidence of paid tax on transfer of absolute rights is the condition for registration of property rights (this regulation has been declared unconstitutional at the time) is abolished

Besides the mentioned, it is necessary to simplify the procedures with authorities in a way that parties do not present the service to the authorities' employees but vice versa (as it was often advertised, without grounds, unfortunately). It is also necessary to connect the data bases that state bodies and authorities use which should stop the need for party to visit many different bodies in order to gain data that are necessary to other body.

These suggestions should, as the part of comprehensive project of organizing legal system of state authority and court, contribute to their efficiency and economy above all, and with that also to raising the rating of Serbia in the eyes of potential investors. □

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