



BRIEF

ALERT



Stop Illegal Appointments in the State Administration

Belgrade, October 2022



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There are currently 408 positions in the state administration of the Republic of Serbia. Seventeen years after the introduction of the statutory obligation, only 41% of these have been filled by way of competition. Acting officials occupy the remaining positions, a quarter of whom are still performing their duties despite their terms of office expired. As part of the Action Plan for Chapter 23 of the accession negotiations with the European Union, the Government of Serbia undertook to announce and complete the competition for all these positions, but there were no results.

Although contrary to the Civil Servants Act of 2005, the practice of awarding these posts as party spoils continued unabated even after its enactment. The deadlines set by amendments to the Law (in 2010, 2014 and 2019) to fully implement the planned professionalisation and depoliticisation of the state administrations' heads in Serbia have expired several times. Although numerous competitions were indeed held, the political decision of the Government to appoint one of the three best candidates for five years never materialised. Instead, most positions are still filled by easily replaceable acting officials appointed for three-month periods. While the 'acting situation' used to be justified in various implausible ways, today's politicians are no longer afraid to publicly say that the reason for this is the desire to keep these officials under control.

In less than two years of work, the outgoing (second) Government of Ana Brnabić made no less than 1,258 decisions on the appointment of acting officials in the state administration, referring to 290 persons. Two hundred thirty were consecutively appointed as acting officials for three months between two and eight times, even though the Law allows this to be done only once. In total, 77 per cent of the Government's decisions on the appointment of acting officials were unlawful on this basis alone. The number of cases where the 'acting situation' in the state administration could be justified by objective reasons (e.g. replacement due to a prolonged absence) is negligent. At the same time, in this period, only 106 positions were filled based on competition, while 61 officials were appointed after competitions between 2017 and 2020.

An even higher level of lawlessness and violation of legal certainty has been reached through the practice of retroactive appointment of acting officials. The Constitution and laws of the Republic of Serbia as well as rules of physics, were violated in approximately 30% of the decisions that were made during Ana Brnabić's second Government convocation. Namely, in those decisions, the date preceding the Government session when the decision was made is stated as the day of assumption of office. The Administrative Court should determine the nullity of these decisions of the Government. The most significant case of this type is pending before the mentioned court, based on a lawsuit filed by the Republic Public Prosecutor, which

was submitted at the initiative of a member of prUgovor, the organisation *Transparency Serbia*.

Solving this major problem is, therefore, one of the issues that can serve to show whether the new Government of Serbia is ready to re-establish at least fundamental legal certainty and embark on the path of true professionalisation and depoliticisation of the state administration, as outlined in the country's planning documents. Solving this issue is one of the critical points in fulfilling one of the benchmarks from Chapter 23 of the negotiations with the European Union. However, it is also essential to fulfil Serbia's obligations in almost all the other areas in which professional state administration must prepare and implement reforms.

In this document, we present the main findings concerning the current situation, key measures that should be implemented by the new Government of Serbia and other state authorities and services, and the European Commission within the framework of monitoring progress in this area. In addition to stopping the unlawful practice, we propose measures to announce the nullity of illegal decisions made in the previous period, as well as those that would ensure transparency and regular monitoring of the fulfilment of legal obligations.

Positions in the state administration as party spoils

Who are the appointed officials?

- Assistant ministers,
- Secretaries of ministries,
- Directors and assistant directors of administrations, inspectorates and directorates that operate within the ministries,
- Directors, deputy directors and assistant directors of special organisations (secretariats, institutes, offices, agencies), and
- Directors of various Government services.

From the time the multi-party system was restored in Serbia until 2005, the highest official positions in the state administration were, quite legally, part of the "party spoils". Assistant ministers and directors of special organisations did not have the status of civil servants; instead, they were called "appointed civil servants". This practice changed after adopting the [Law on Civil Servants](#), based on the [State Administration Reform Strategy](#). The plan was to replace approximately 400 "appointed officials" with professionals who would be appointed after the conducted competition. However, no Government fulfilled this obligation.



This “depoliticisation” was initially delayed by changes made to laws and by moving the deadlines; in the meantime, the Government used the opportunity to appoint and dismiss people “[based on earlier regulations](#)”. The first attempt to resolve the matter occurred five years later when it was written into the Law that “the duty” of civil servants, appointed based on earlier regulations, “shall end on 31 December 2010 in any case”.

However, this did not happen, and the Government continued with its earlier practice, only this time without a clear legal basis. An important novelty appeared via the [amendments to the Law on Civil Servants](#) of 2014, which formally introduced the institute of “acting officials” (Article 67a), limited their mandates, and prescribed that only a person who meets the requirements for the position in question may be appointed as an acting official.

In the meantime, the European Commission took an interest in this problem; it included the issue in the progress [benchmarks](#)¹ relating to the fight against corruption and now regularly monitors the absence of said progress in its [reports](#). Furthermore, it is only from these reports, and the [quarterly reports](#) of the Ministry of Justice on the implementation of the Action Plan for Chapter 23, that one can learn how many appointed positions currently exist and how many have been filled by way of a conducted competition. Neither aggregate nor detailed data on filling such positions are publicly available in one place. Since 2011, prUgovor member Transparency Serbia has [attempted](#) to obtain this data on several occasions. The Human Resources Management Service submitted a list of [acting officials](#), appointed [civil servants](#) and [vacant](#) positions only after *Transparency Serbia* submitted a request for free access to information of public importance in 2022.

Another consequence of Brussels’ interest in this problem was setting a new deadline for ending the ‘acting situation’ through [amendments to the Law on Civil Servants](#) of 2018. On 1 July 2019, the term of office of all acting officials that existed at the time ended by force of Law, rendering all the documents they would sign in the future null and void. The report from the Government [session](#) held only three days before the scheduled ending of the ‘acting situation’, which contains no less than 20 decisions on the appointment of acting officials, speaks most eloquently about the seriousness with which this deadline was taken.

That this practice was not just negligence on the part of the Government towards its obligations was also confirmed by direct statements of officials, including the Prime Minister, from whom we [heard](#), e.g. the following words:

“... I believe they are now motivated to work even better...” [speaking of acting directors and acting assistant ministers]. “We are thinking of changing the Law... because when someone becomes an assistant minister and is not in the acting capacity, it is very difficult... to replace him/her...” [the legal reasons for dismissal due to poor work and insufficient results are prescribed in [Article 78 of the Law on Civil Servants](#)]. “So, I think that, at the moment, this [referring to the acting management in public enterprises and public administration] is not bad, as shown by the level of investments in Serbia and the number of opened job positions.”

It is worth mentioning at this point that the completion of the competition does not guarantee professionalisation. Namely, when the party managing the ministry changes – which happened on the most massive scale in the period 2012-2014 – many of the officials who had previously passed the competition but were not to the liking of the new rulers resigned before their mandates expired. The most often used method of removal of ‘unfit’ appointed officials is the application of organisational changes. Any merger, separation, and sometimes even a simple renaming of a sector within the ministry leads to the termination of the old position and the creation of a “new” one, which makes it possible to appoint a new acting official instead of the ‘unfit’ one.

The appointment of officials to positions without conducting competitions, the primary purpose of which was the division of spoils among the parties, has evolved over time. In addition to the possibility of appointing officials this way who might not be among the top three in the competition, control over their work became an even stronger reason for keeping the ‘acting situation’ alive and well in the state administration. Indeed, this mechanism makes it possible to remove those who do not perform well more easily because an acting official can be replaced, easily and without explanation, by another. On the other hand, this practice renders appointed officials doing well in their jobs completely unprotected, not only from arbitrary dismissal but also if they oppose harmful or unlawful orders from their political superiors.

Open lawlessness: Excessive and retroactive appointment of acting officials

All the above-described long-term practices have been applied in an attempt to at least partially preserve the façade of the rule of Law. Each new amendment to the Law on Civil Servants, adopted under pressure from the EU to put things in order, made it more difficult to maintain the semblance of the legality of the endless ‘acting situation’ because there were more and more procedural steps that had to be repeated several times

1 2.2.6.2 - Completion of all initiated competitions to fill the appointed positions, and initiation of competitions for all vacant job positions (including appointed positions currently held by acting officials).

per year regarding some 400 appointed positions in the state administration: announcing new competitions, ignoring their results, inventing unnecessary changes in the organisation of the ministries, and so on.

Thus, the Government of Serbia embarked on the path of undisguised lawlessness, which only became more evident after 1 July 2019. This lawlessness has two main aspects. The most frequent are situations when the Government appoints the same acting official several times in a row for a period of three months. However, according to the inexorable letter of the Law, it is allowed to do so only once. Any subsequent appointment is legally null and void, as well as any decisions taken by the head of a sector in a ministry or the director of a special organisation who was appointed in this way.

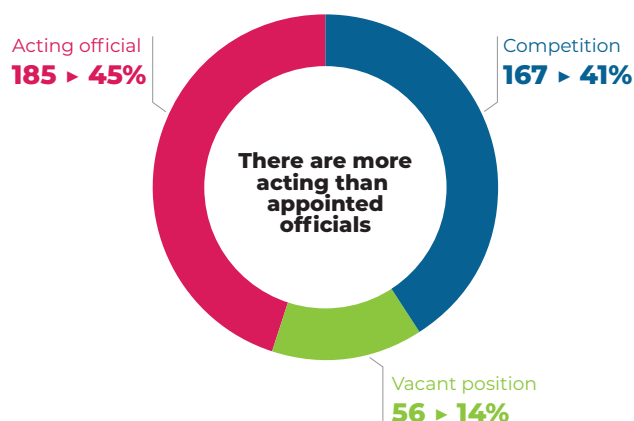
An even more drastic degradation of the rule of Law is when the Government appoints officials retroactively, violating not only the Constitution and laws of the Republic of Serbia but also the laws of physics. The most famous case of this kind is when the Government, at the session on 15 April 2021, appointed Filip Radović to the position of Acting Director of the Environmental Protection Agency for a period of three months, *starting from 9 October 2020*. Incidentally, from March 2015 to November 2021, the same person was appointed to the acting position 25 times, of which 23 times unlawfully, which means that he unlawfully performed the duties of director for a total of 5 years and three months. This decision became known because it was precisely then, in November 2020, that whistleblower Milenko Jovanović was [dismissed](#) from the position of head of air quality at the Environmental Protection Agency.

Regarding this landmark case, the member of prUgovor *Transparency Serbia* indicated in the [initiative submitted to the Republic Public Prosecutor's Office](#) that, based on everything presented, it can be reasonably assumed that the adoption of the aforementioned decision, with the retroactive appointment, was intended to legitimise the acts passed by the former acting director in the period in which he had no right to decide on behalf of the Agency. *Transparency Serbia* also sent a [letter to the Prime Minister of Serbia](#) in which it drew her attention to the case and called on the Government to stop the practice of retroactive appointments. The same day, the Government "replied" by retroactively appointing three other acting officials besides Filip Radović! On the other hand, the Republic Public Prosecutor's Office accepted the initiative and, on 21 June 2021, filed a [lawsuit](#) with the Administrative Court to annul the Government's decision, having fully accepted the arguments contained in *Transparency Serbia's* initiative. The court has yet to decide; 15 months later, at the time of publication of this text, it is unknown what stage the proceedings are in or even whether and in what way the Government of Serbia has responded to the lawsuit.

The second Government of Ana Brnabić – More than three-quarters of the appointments were unlawful

During its shortened mandate, which lasted almost two years (from 28 October 2020 to October 2022), the second Government of Ana Brnabić appointed acting officials in the state administration no less than 1,258 times, ending with the session held on 1 September 2022.²

According to the data provided by the Human Resources Management Service, on 8 September 2022, there were 185 acting officials in the state administration. In addition, according to the same records, there were 56 unfilled appointed positions. The number of appointed officials was 167. "Vacant appointed positions" are positions no acting official has been appointed to, which were not filled by competition. Analysing the list submitted by the Human Resources Management Service and comparing it with the previous practice, it can be concluded that these are mostly positions to which acting officials will be appointed retroactively but have not been appointed yet. Another possibility is that one of the civil servants from those sectors, who meets the requirements, has been temporarily assigned to a managerial position.



A total number of acting officials appointed in the state administration during the period from 28 October 2020 to 1 February 2022

1,258
of which:



For a period of six months: **179**
For a period of three months: **1079**



The number of three-month appointments per person:

No. of persons	No. of appointments
7	8 times
53	7 times
56	6 times
37	5 times
29	4 times
30	3 times
22	twice
60	once



An analysis of the decisions made during Ana Brnabić's second Government shows that 290 persons were appointed acting officials in the state administration. In contrast, the number of appointed positions they occupied was slightly lower (274). This means that for each acting official, the Government adopted an average of 4.34 decisions concerning appointment and that the appointed positions were mostly occupied by the same persons throughout the entire period.

Since, according to the statutory provisions, the three-month appointment of an acting official can only follow their previous six-month position, the number of appointments for a shorter period had to be equal to, or lower than, the number of six-month appointments. In reality, it was six times higher, which clearly indicates a large number of unlawful decisions. Only 60 out of 290 acting officials mentioned in the Government's decisions were appointed for three months only once, which is the maximum allowed by Law, while others were appointed up to eight times.

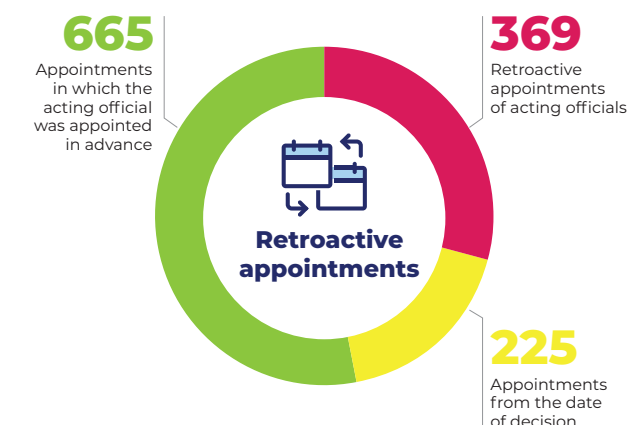
A more profound analysis shows that, on this basis alone, the number of unlawful appointments was 972, that is, 77% of the total.

As seen from the previously presented data, approximately 30% of the outgoing Government's appointments during its mandate were retroactive. In 321 cases (25.5% of the total) the unlawfulness is twofold (retroactivity, plus appointment of acting officials that is not legally possible due to exceeding the number of persons appointed for a period of three months).

When it comes to retroactivity during the time of the second Government of Ana Brnabić, the award goes to the decision mentioned above on the appointment of Filip Radović, which was adopted 188 days after the day he took office. In a total of eight cases, not only was the decision made retroactively, but the three-month period for which the acting official was appointed had already passed when the decision was made. In another 53 cases, the Government passed a decision more than a month after the duty was to be assumed.

Things were not much better before 2020

The actions of the first Government of Ana Brnabić during its three-year mandate (2017-2020) were not much better either. Out of 1,152 appointments, 323 (28%) were retroactive, lasting a total of 9,061 days, that is, 302 months. In one case, the difference was no less than 639 days. A total of 340 acting officials were appointed to the state administration. Since, in 179 cases, the appointment was made for a period of six months, it is an optimistic estimate that the number of lawful appointments of acting officials was 358, i.e. 31%.



4,773
(Approx. 160 months)

Total number of days the unlawfully appointed officials spent at their workplaces before the Government decided to appoint them





Recommendations:

- The new Government of Serbia programme should clearly intend to fulfil the obligations from the Law on Civil Servants fully.
- The new Government should completely abandon the practice of violating the Law on Civil Servants by making retroactive appointments and appointing officials for a three-month period when this is not allowed.
- The Human Resources Management Service should publish on its internet presentation a list of filled and vacant appointed positions and a list of acting officials and update it regularly. It should also post an overview of other information related to filling appointed positions (when competitions were announced, when they were finished, whether (and when) a candidate was proposed after the competition, etc.)
- The Government should publish staffing decisions and other documents on its internet presentation in searchable form, not in the form of zipped documents.
- Because of the far-reaching significance of the dispute that the Republic Public Prosecutor's Office initiated, the Administrative Court should issue a judgment as soon as possible on whether the decision on the appointment of the acting official is null and void and present the judgment to the general public.
- After the judgment of the Administrative Court, or even without waiting for it, the new Government of Serbia should cancel the unlawful decisions made by the previous Governments, in line with the rules contained in Article 183 of the Law on General Administrative Procedure.
- When monitoring measure 2.2.6.2 from the Action Plan for Chapter 23 of the Serbia-EU negotiations, data should be collected and published not only on competitions and appointments but also on the number of cases when acting officials were appointed unlawfully (retroactively or without meeting the statutory requirements).

About prEUgovor

Coalition prEUgovor is a network of civil society organisations formed in order to monitor the implementation of policies relating to the accession negotiations between Serbia and the EU, with an emphasis on Chapters 23 and 24 of the Acquis. In doing so, the coalition aims to use the EU integration process to help accomplish substantial progress in the further democratisation of the Serbian society.

Members of the coalition are:

Anti-Trafficking Action (ASTRA)

www.astra.rs

Autonomous Women's Centre (AWC)

www.womenngo.org.rs

Belgrade Centre for Security Policy (BCSP)

www.bezbednost.org

Centre for Applied European Studies (CPES)

www.cpes.org.rs

Centre for Investigative Journalism in Serbia (CINS)

www.cins.rs

Group 484

www.grupa484.org.rs

Transparency Serbia (TS)

www.transparentnost.org.rs

PrEUgovor's key product is the [semiannual report](#) on the progress of Serbia in Cluster 1.



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