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# THE SERBIAN 2011 LAW ON FINANCING POLITICAL ACTIVITIES

LEGAL PROVISIONS AND RECOMMENDATIONS FOR ENFORCEMENT



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The Serbian 2011 Law on Financing Political Activities - Legal provisions and recommendations for enforcement

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## INTRODUCTION

The purpose of this report is to give a brief analysis of the Law on Political Financing which was published in the “Official Gazette of the Republic of Serbia” on 14 June 2011. In addition, comments are given regarding the enforcement of this Act, focusing on the successful implementation in relation to the elections planned for early 2012.

The analysis is based on a review of the recently passed law and on discussions with Serbian and international stakeholders during a visit on 4 – 9 July 2011. During this stay, meetings were held with the Director of the Anti-Corruption Agency and the President of the State Auditing Institution, as well as with representatives from the Fund for an Open Society, the Centre for Free Elections and Democracy, the Bureau for Social Research and Transparency International Serbia. Meetings were also held with the United States Agency for International Development, the Organisation for Security and Co-Operation in Europe and the Judicial Reform and Government Accountability project, as well as with one of the Serbian political parties.<sup>1</sup>

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<sup>1</sup> Meetings were requested with a series of Serbian political parties but only one answered favourably. It is to be hoped that this does not reflect the level of interest or preparedness on behalf of the political parties to comply with the provisions in the new law. Special thanks are due to the IFES Country Representative Radivoje Grujic for arranging all meetings and providing crucial assistance.

# 1. THE 2011 LAW ON FINANCING POLITICAL ACTIVITIES

## BACKGROUND

Political financing has been regulated in Serbia since 1997 when the first Law on Financing Political Parties was passed.<sup>2</sup> Since then, laws and revisions have been passed in 2003, 2008 and 2009. Significant problems with transparency and oversight of political party and campaign finance remained, and a new law was enforced in June 2011. The below analysis is based on the English translation of the law provided by the Organization for Security and Cooperation in Europe (OSCE) Mission to Serbia (published June 23), and takes into account previous recommendations by the European Commission for Democracy Through Law (Venice Commission), the Group of Countries Against Corruption (GRECO) and others.

## REGULATIONS ON INCOME

The new law contains several restrictions on how political parties and election campaigns in Serbia can be funded. Overall, the regulations provide reasonable limitations while allowing political parties to function effectively. In comparison with previous legislation, the new regulations are arguably less burdensome for the political entities.

### *ALLOWED SOURCES OF INCOME*

The new law states that “Political entities are financed from public and private sources” (Article 3). The allowed sources of income for political parties have not changed radically from previous legislation, meaning that the main sources of income are anticipated to be membership fees and donations from citizens, donations from Serbian legal entities and public funding.

The law explicitly bans the following sources of income;

- Foreign interests (states, individuals and legal entities – international political associations can provide non-monetary assistance)
- Public institutions and enterprises (other than through regulated public funding)
- Companies with government contracts or partial government ownership (or which have been “in contracted activities of general interest” during the last two years).
- Trade Unions
- Non-profit organisations
- Churches and religious communities
- The gaming industry
- Importers, exporters and manufacturers of excise goods
- Companies and entrepreneurs with unpaid taxes (“public revenue obligations”)

To allow for control of these bans, anonymous and indirect contributions are also prohibited. With the exception of the gaming industry, the bans in the new law are common in European countries and should not represent undue restrictions on the fundraising by political parties and entities.

### *INCOME FROM PRIVATE SOURCES*

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<sup>2</sup> Official Gazette of the Republic of Serbia No. 32/97.

While there are indications that Serbian political parties depend predominantly on public funds, support from private individuals and legal entities will be important, especially during election campaigns.

Private funds can be gained through “membership dues, donations, inheritance, legacy income from property” as well as bank loans (Art 7). However, political entities are banned from benefitting financially from commercial activity and they may not buy stock in legal entities.

Limits are set for donations from both private individuals and legal entities. The former cannot donate more than 20 average monthly salaries per year for regular activities and the same amount for election campaigns. For legal entities the limit is 100 average monthly salaries (note that the campaign contribution limit applies per year, regardless of the number of elections held).<sup>3</sup>

The average monthly salary is set by the Statistical Office of the Republic of Serbia, and in May 2011 it was estimated as 35,362 Dinars (around €358).<sup>4</sup> This means that if around €4,500,000 in total is available as public funding for an election campaign (see further below), around 630 maximum donations from private individuals would be needed to balance that amount, and 922 maximum donations would be needed to balance the public funding provided for regular work in 2010.<sup>5</sup> The same figures for donations from legal entities would be 126 and 184, respectively.

Note that membership fees are defined separately from donations, and the limits discussed above do therefore not apply. This means that by allowing for very high membership fees, political entities can effectively bypass the donation limits. In this regard, the final version of the new law did unfortunately not heed the recommendations of the OSCE/ODIHR and the Venice Commission to include membership fees in the funds placed under limit.<sup>6</sup>

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<sup>3</sup> These limits determine how much each donor can give in total – if someone wishes to support more than one entity, the sum of their donations must not exceed the above amounts.

<sup>4</sup> Зараде по запосленом у Републици Србији, мај 2011, available at <http://webzrs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=596>.

<sup>5</sup> Naturally, few individuals would be able to afford donating twenty average monthly salaries. If we assume that an average donor may be willing to donate the equivalent of one week’s salary per year, the political entities would jointly need to engage over 73,000 donors to balance the public funding provided for regular work in a year.

<sup>6</sup> OSCE/ODIHR & Venice Commission (2010) Joint Opinion on the Draft Law on Financing Political Activities of the Republic of Serbia, p 4.

## INCOME FROM PUBLIC SOURCES

Political parties in Serbia receive both direct and indirect support from public sources. This is in line with the European experience, as today 89 percent of countries in this region provide public assistance.

Direct public funding is provided on a monthly basis to support “regular work” of entities that have won political representation (regular work is defined in the new law as “political activity of a political entity other than election campaign”).<sup>7</sup> The overall amount provided is as the previous legislation determined as 0.15 percent of the government budget, which in 2010 meant that €6,600,000 were distributed according to GRECO.<sup>8</sup> The allocation criteria used is somewhat unusual, in that the first 5 percent of votes won is multiplied by a quotient of 1.5, and the following by one (the threshold for Parliamentary representation is 5 percent for national parties).

The new system for ongoing public support will come into force after the 2012 elections (see Article 47 of the new law). *As an illustration*, if the system was applied to the situation after the 2008 Parliamentary elections, the following distribution would be used;

Political entity	vote %	seats	quote	share
For a European Serbia – Boris Tadić (За европску Србију – Борис Тадић)	38.42%	102	40.92	37.36%
Serbian Radical Party – Dr Vojislav Šešelj (Српска радикална странка – Др Војислав Шешељ)	29.46%	78	31.96	29.18%
Democratic Party of Serbia – New Serbia – Vojislav Koštunica (Демократска странка Србије – Нова Србија – Војислав Коштуница)	11.62%	30	14.12	12.89%
Socialist Party of Serbia (SPS) – Party of United Pensioners of Serbia (PUPS) – United Serbia (US) (Социјалистичка партија Србије (СПС) – Партија уједињених пензионера Србије (ПУПС) – Јединствена Србија (ЈС))	7.58%	20	10.08	9.20%
Liberal Democratic Party – Čedomir Jovanović (Либерално демократска партија – Чедомир Јовановић)	5.24%	13	7.74	7.07%
Hungarian Coalition – István Pásztor (Мађарска коалиција – Иштван Пастор)	1.81%	4	2.715	2.48%
Bosniac List for a European Sanjak – Dr Sulejman Ugljanin (Бошњачка листа за европски Санџак – др Сулејман Угљанин)	0.92%	2	1.38	1.26%
Albanian Coalition from Preševo Valley (Коалиција Албанаца Прешевске долине)	0.41% percent	1	0.615	0.56%

A comparison between the columns for vote share and the share of public funding shows that the system (at least as applied hypothetically to the situation after the 2008 elections) remains fairly proportional. To some extent, it works to the disadvantage of the largest political entities, whereas the main beneficiaries are those that reach just over the five percent threshold, and therefore benefit fully from the 1.5 quotient. For the

<sup>7</sup> It is further defined that the public funding should be used for the “functioning and propagation of the idea of a political entity and presume work with the electorate and membership, promotional costs, advertising material and publications, public opinion polls, training, international cooperation, salaries and emoluments for staff, costs of utilities services and expenses related to other similar activities.” In addition, “...not less than 5% of aggregate funds received for regular work at annual level for professional upgrading and training, acquiring practical skills, international cooperation and work with the membership.” Art 19.

<sup>8</sup> Group of Countries Against Corruption (2010) Evaluation Report on the Republic of Serbia, Transparency of Party Funding (Theme II). Adopted by GRECO at its 48th Plenary Meeting (Strasbourg, 27 September – 1 October 2010), p 5.



smallest entities that gain representation (these will be entities representing minorities, as these are not bound by the threshold), the quotient system may make little difference.

Serbian political entities that participate in elections also benefit from public assistance to their campaigns. In these cases, 0.1 percent of the government budget is provided, and 20 percent of these funds are distributed equally to all entities that submit election lists in proportional elections, with the remaining 80 percent distributed by votes won. For majority elections, half the funds are distributed equally to all candidates and the remaining 50 percent to the winning candidate. The latter provision could be considered somewhat unfortunate for example in relation to presidential elections given that the runner-up may be faced with a very significant financial burden.<sup>9</sup>

It is worth contemplating how the assistance provided in Serbia compares to other countries, and the size of assistance can be judged in either absolute or relative terms. Regarding the first, GRECO estimates that during an election year around €12 million is provided to Serbian political parties.<sup>10</sup> To make a meaningful comparison with other countries we must however take two factors into account. The first is the size of the population, as the larger the country is the more resources will be required to reach them.<sup>11</sup> The second factor is the varying purchasing power in different countries. The best way to take this later factor into account would be to create an index of typical expenses incurred by political parties, but no such index currently exists. The average salary in different countries has therefore been used as a proxy.<sup>12</sup>

Adjusting for population size and financial level, the funding provided in Serbia is lower than in the Czech Republic and Cyprus and on par with that in Sweden. However, it is higher than in the Former Yugoslav Republic of Macedonia and Slovakia and more than three times than that in countries like Slovenia, Poland, Portugal, Armenia, Azerbaijan and the United Kingdom.<sup>13</sup>

The second way to judge the size of public funding is to see it in comparison to the private funding of political parties. In many ways this is a more relevant approach since it shows the relative dependency of political parties on public funds. However, the difficulty is that this calculation depends on access to reliable data on the private funds raised by political parties. In Serbia, the disclosure system before the passing of the current law did not provide such information, though GRECO reports an estimate of 70-80 percent of parties' funds coming from public sources.<sup>14</sup> Again, comparisons can be made with other countries, though caution must be used in interpreting the data.

According to the official reports submitted by the political parties in Bosnia & Herzegovina in 2006 (election year), they relied on public funds at an average of 59 percent (varying from 43 percent to 77 percent).<sup>15</sup> Petak has estimated that Croatian political parties receive around 80 percent of their funds from public sources in-

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<sup>9</sup> Political entities qualifying for election campaign assistance must provide an "election bond" of the same value. If they fail to win 1% of the vote (0.2% of the vote for entities representing national minorities), the public funds received must be returned; if the entity fails to do so, the bond will be used to recoup the same amount. Art 25-26.

<sup>10</sup> Calculated as the sum of the average amount for ongoing assistance (six to nine million Euro) and the average amount for election assistance (four to five million Euro). GRECO (2010) p 5.

<sup>11</sup> For the purposes of the calculations here, the voting age population calculated for each country has been used, with the International IDEA database on voter turnout as source (<http://www.idea.int/vt/>). Information on total public funding provided comes from the respective GRECO reports, data used for the latest year available.

<sup>12</sup> This data has been gathered from different sources, which introduces some uncertainty into the calculations.

<sup>13</sup> Calculations by the author. Public funding was removed in Azerbaijan in 2010.

<sup>14</sup> GRECO (2010) p 13.

<sup>15</sup> Calculations by the author.

between elections.<sup>16</sup> Data from the voluntary disclosure by political parties in Sweden show that they were funded from the public purse at an average rate of 76 percent in 2009 (a non-election year).<sup>17</sup>

Indirect public funding is also available to political parties and candidates in Serbia through free advertising with public service broadcasters (Broadcasting Act Art 78.6).

## REGULATIONS ON EXPENDITURE

One of the major changes in the new law was the removal of limits on how much political parties are allowed to spend. Previous legislation contained fairly strict spending limits on political entities, though it was expressed as limits on the amounts that entities could raise in total. In the previous system, private funds raised in relation to election campaigns could not exceed the public funds provided by more than 20 percent and 100 percent respectively, subsequently guaranteeing that the public funds would account for *at least* 46 percent and 33 percent respectively of entities' campaign and regular funds.

The removal of the spending limit may play a role in reducing what GRECO reported as a;

“...general perception in Serbia that political parties receive and spend much more money than appears in their accounts and records. This situation acquires significant importance during the campaign period. In particular, the GET was told that campaign costs in Serbia had increased in recent years and that the official figures on income and expenditure presented by political parties represented only a fraction of the real spending.”<sup>18</sup>

Spending limits are used in many countries, and in some for a long time (spending limits for candidates were introduced in the UK in 1883), but some countries have removed them in an attempt to increase honesty and transparency in the financial disclosure by political entities.<sup>19</sup> The argument is that spending limits will force political parties to lie in their report, since no one wants to admit to breaking the law, and that the increase in transparency from removing spending limits may be more important than the increase in spending (especially if the spending limits were routinely ignored anyway). Some countries, however, are going in the opposite direction, and the former government party in the Czech Republic (ČSSD) recently proposed the introduction of spending limits for political parties there.<sup>20</sup>

With the new law there are very few regulations on spending, other than to define campaign spending as “costs related to political activities during the election campaign” (in other words a definition relating to a certain time period rather than particular activities), and stating that spending for both regular work and campaign activities must be done from specified bank accounts (Art 18, 34 & 24).

## RECORD-KEEPING AND REPORTING

The new law includes information about the requirements for book-keeping and reporting by registered political parties (and by other political entities if they have representatives in elected bodies), though detailed regulations are left for the Anti-Corruption Agency to determine.

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<sup>16</sup> Petak, Zdravko (2005) “Financing the 2005 Presidential Elections: The Role of Regulative Institutions” in *Politička Misao*, Vol XLII, No 5), p 78.

<sup>17</sup> Ohman, Magnus (2011) *Global Trends in the Regulation of Political Finance*. Paper presented at the IPSA-ECPR Joint Conference, Sao Paulo 16 – 19 February 2011, p 10.

<sup>18</sup> GRECO (2010) p 13.

<sup>19</sup> The Council of Europe has admittedly recommended that “States should consider adopting measures to prevent excessive funding needs of political parties, such as establishing limits on expenditure on electoral campaigns”. Council of Europe, Committee of Ministers, Recommendation 2003 (4) on common rules against corruption in the funding of political parties and electoral campaigns, Art 9.

<sup>20</sup> Presentation by the ČSSD Chairperson at the Roundtable on Party Financing, Prague 16 June 2011.

### *BOOK-KEEPING*

Political parties must keep detailed financial records including “all revenues and expenditures,” and these are subject to control by “relevant authorities” (the “content and manner” of record keeping is to be determined by the Anti-Corruption Agency).

Separate records must be kept of all donations, gifts and in-kind contributions (defined as “services extended without compensation, and/or under conditions deviating from market conditions and records of property”) (Art 27).<sup>21</sup>

### *ANNUAL REPORTS*

Political parties are required to submit an annual financial statement to the Agency (which is tasked by the law with specifying the required content of these reports). Such reports were also required under the previous legislation, but the regulations were very vague, and did not provide a deadline for when the reports should be submitted.

The annual reports should, in accordance with the new law, be submitted no later than 15 April each year, cover the preceding calendar year and be accompanied by the opinion of an accredited auditor. Once submitted, the entity must publish the information on its website within eight days and send it for publication in the official Gazette.

Annual reports about the financial activities of political entities can provide important information on the funding of politics in Serbia. It is expected that the financial activities will be most intense in relation to election campaigns, and this period is covered by separate reports (see below). However, since those reports only cover the official campaigning period, annual reports can provide interesting information (if they are accurate) about transactions taking place before and after the campaign (fundraising often takes place long before the start of the official campaign and loans and other obligations are often honoured after the elections have taken place).

### *CAMPAIGN REPORTS*

Previously, political parties participating in elections had to submit financial reports no later than ten days after polling day. This deadline was as GRECO pointed out “extremely short,” and most likely served to reduce the quality of the reports that were submitted.<sup>22</sup>

In the new law, this deadline has been extended to 30 days after the announcement of final elections results.<sup>23</sup> This is more in line with international practice and should provide sufficient time for the political entities to prepare their financial statements, and still allow for relevant information to be made available while there is still public interest concerning the preceding elections.

Although the law refers to these reports as “reports on election campaign *costs*” (emphasis added), they must include information “on origin, amount and structure of raised and spent funds from public and private sources.” The reporting period is from the date of calling the elections until the date the final results are announced.

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<sup>21</sup> The term “gift” is not clearly defined in the law. In Art 9 it is included in the definition of donations, but in Art 27 the implication is that it has a meaning outside of donations.

<sup>22</sup> GRECO noted that many political parties that did submit reports claimed to have had no income or expenses at all in relation to the election campaign.

<sup>23</sup> The Presidential Election Law and the Law on the Elections of Representatives note that final results must be announced not later than 96 hours after the end of polling. Article 17 and 86 respectively. For local elections the deadline is 24 hours (Law on Local Elections Article 44).

As for the annual reports, the law provides little detail, leaving instead for the Anti-Corruption Agency to provide detailed regulations. Campaign finance reports are published by the Agency, while the law contains no deadline as to when that should be done. It is recommended that it is done as soon as possible upon receipt. There is no need to await formal review by the Agency; the data should be published as it was submitted, according to the principle established for the annual reports. This allows for the public to assist the Agency in scrutinising the accuracy of the submitted records.

### *REGULATION ON CANDIDATE FINANCE DISCLOSURE*

One potential weakness is the lack of regulations relating to financing candidates in elections. There are no limits on how much money can be donated to a candidate and spending by candidates is not included among the transactions that must be reported to the Anti-Corruption Agency. The PR electoral system used in Serbia for most elections (excluding for example presidential elections) will likely reduce the level of campaigning by individual candidates, but that does not exclude the possibility that they can be used as channels for financial transactions that subsequently bypass both reporting requirements and contribution limits.

The importance of this issue is recognised both in the UNCAC Article 7(3) which mainly focuses on the importance of transparency in “the funding of candidatures for elected public office.” Similarly, the Council of Europe Committee of Ministers Recommendation 2003 (4), Article 8 notes that “the rules regarding funding of political parties should apply *mutatis mutandis* to the funding of electoral campaigns of candidates for elections...”

### OVERSIGHT AND DETECTION

One of the major changes in the new law was the formal transfer of responsibility for overseeing political party and campaign finance to an independent institution; the Anti-Corruption Agency. This Agency started its work in 2010, and unlike the institutions previously involved in political finance oversight (the Finance Committee of the Serbian Parliament and the Republican Electoral Commission), it has an explicitly non-partisan composition.

It is important to note that while the new law requires political parties to submit financial reports to the Agency, it does actually *not require* the Agency to perform any kind of review of the received information. Neither does it give much instruction on how the Agency should engage this issue.

The Agency does, however, have the authority to request information from political entities and to access their record keeping upon request (each political entity is required to register an “authorised person” with whom the Agency can interact directly). The Agency can additionally request information from “natural persons and legal entities financing political entities performing for and/or on their behalf particular services” (see further below under the heading “Request information from other sources to verify the expenses by political parties”).

Finally, the new law allows the Agency to “engage relevant experts and institutions” and it explicitly provides funds specifically for review of received campaign reports (Art 33). For parliamentary elections, the Agency should receive the equivalent of 1 percent of the funds allocated for public funding, which should amount to around €45,000 based on the information about public funding provisions given by GRECO.<sup>24</sup> If elections for deputies and councillors for city councils and for deputies for municipal councils are held at the same time, this amount could be increased to around €80,000.<sup>25</sup> Note, however, that the law provides no funds for the

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<sup>24</sup> GRECO (2010) p 5.

<sup>25</sup> Art 33, paragraph 2, “For the purposes referred to in para 1 of this article, the funds are allocated in the budget of the Republic of Serbia in the amount not less than 1% for elections for the president of the Republic and members of

review of annual reports, meaning that the Agency needs to utilize its existing funds for controlling those statements.

## SANCTIONING

The most damning judgement on the previous systems of political finance control in Serbia was the note in the GRECO report that “not a single sanction has ever been applied in practice for violations of the rules of political financing” (p 21). Unless actors have reasonable expectations that breaches of existing regulations can lead to some form of penalties, they are unlikely to take any notice of the rules, whatever their merits may be.

The new law includes long lists of sanctions against various types of political finance infractions (Art 39 & 40). It also gives the Agency the right to issue warnings in case of “deficiencies that may be corrected” (Art 37), with sanctions being applied if such corrections do not occur before the set deadline.

Apart from fines and prison sentences, a notable sanctioning tool available in the new law is the loss of public funding (upon suspicion transfers can be temporarily suspended). This has proved an important tool in preventing and sanctioning political finance violations, especially in countries where parties depend heavily on public funds.<sup>26</sup>

In theory, the sanctions available seem to represent a useful range of penalties against various types of violations, and they should serve to prevent financial mismanagement. How effective these new sanctioning tools will be in practice depends on whether or not they are applied, and on whether actors will change their behavior to avoid such punishment. Only when this happens will the sanctions be “effective, proportionate and dissuasive,” as is called for by the Council of Europe.<sup>27</sup> This is discussed further in the second part of this report.

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parliament, 0.5% for elections for deputies and councillors for city councils and/or 0.25% for elections for deputies for municipal councils, out of the aggregate amount of funds allocated in the Republic of Serbia budget for election campaign for the election of members of parliament.

<sup>26</sup> See Ohman, Magnus (2009) “Practical Solutions for the Public Funding of Political Parties and Election Campaigns” in Ohman, Magnus & Zainulbhai, Hani (eds) *Political Finance Regulation: The Global Experience*. IFES, Washington, p 72.

<sup>27</sup> Council of Europe, Committee of Ministers, Recommendation 2003 (4) on common rules against corruption in the funding of political parties and electoral campaigns, Art 16.

## 2. IMPLEMENTATION OF THE NEW LAW

The passing of the 2011 law on Financing of Political Activities is an important step towards increased monetary transparency in Serbian politics. However, the law means nothing itself – only through a well considered implementation process can legal provisions lead to improved transparency in Serbian political finance.

As indicated by the law, the Anti-Corruption Agency will have the leading role in achieving this. It is important that the Agency interacts closely with other stakeholders, without blurring the roles or functions of different groupings and while maintaining the Agency's role as "an autonomous and independent government body."<sup>28</sup>

Naturally, it should not be expected that complete transparency and adherence to all regulations will be achieved within the near future. The global experience shows that the period for attaining significant progress in this field is normally measured in decades rather than years. There must be a visible improvement in the upcoming elections in early 2012, compared to previous years and elections. If a positive trend in political finance transparency cannot be identified as a result of the new law, the level of confidence among Serbians regarding corruption within its political parties will stay low.<sup>29</sup>

### ADDITIONAL REGULATIONS BY THE ANTI-CORRUPTION AGENCY

The new law includes no details on how the Agency is to control the accuracy of submitted financial reports and verify that regulations have been followed. The Agency needs to fill in the gaps through additional regulations. This relates in particular to two areas.

This first concerns how reliable political entities are to keep records and submit their annual and campaign reports. The Agency is mandated to regulate these issues by Articles 27, 28 and 29 of the new law. In doing this, the Agency should, as much as possible, consult stakeholders and those who will be required to keep and submit financial records. Transparency must be maintained, and the reporting requirements must be detailed enough to allow for meaningful review of the records without being overly burdensome for the political parties. It has been indicated that there are existing bylaws and reporting structures that can be modified to make them compliant with the new law. Such an approach can save time for the Agency. During this process of adjustment it should also consider if there are aspects of the existing procedures that contributed to the low level of compliance and non-existent enforcement during the previous system.

The second area relates to procedures the Agency will utilize to detect and sanction violations of the regulations in the new law. While consultation will be useful, exact approaches determined by the Agency should not be made public, as this would jeopardize the effectiveness of investigations. Given that enforcement has not been attempted in Serbia, it is suggested that the Agency seek assistance from institutions with a similar mandate in other countries. In doing so, the Agency would make use of its right to "engage experts and institutions" according to Article 32 of the new law. Hands-on assistance in developing the necessary strategies and procedures should be the first priority for the Agency before other initiatives are attempted.

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<sup>28</sup> Anti-Corruption Agency Act (2008), Art 3.

<sup>29</sup> In the 2010 Global Corruption Barometer by Transparency International, Serbians judged political parties at 4.2 on a five-point scale of corruption (with five meaning "extremely corrupt"). This was significantly higher than the institution they judged as the second most corrupt (the judiciary). Transparency International (2010) *Global Corruption Barometer*, TI Berlin, p 45.

In relation to the 2012 election campaign reports (and the 2011 Annual reports due in April 2012), the Agency should focus on key areas of enforcement, seeking to do a limited number of things well rather than many things with less success.<sup>30</sup> Some of the tasks that need to be undertaken include:

*Inspect the internal coherence of submitted reports*

The Agency should ensure that the income and expenditures of a political entity match annual and campaign reports, taking into account assets and liabilities. If a party reports that they have spent much more money than they raised without a corresponding reduction in assets, the report cannot be correct. Equally, if political parties report, as they have in the past, that they had no income or expenditures,, it is unlikely that the report is accurate. Sanctions should be applied upon verification. This is the first level of control to be applied to all received reports.

*Utilize other actors to collect information on behalf of the Agency*

In addition, it is suggested that the Agency makes use of other agencies to collect relevant information. Media advertising is of particular interest, especially since media covers a significant part of campaign expenditure.<sup>31</sup> It would be valuable if the Agency tracked media advertising in a large number of outlets, either through its own staff or through contracting private companies focusing on media tracking. The latter option may be more reasonable, given the significant workload to befall the limited number of staff members dealing with these issues at the Agency. Most likely, the Agency will also need to limit the media outlets being covered; it is important that the sampling conducted includes media outlets used by all sides of the political spectrum, without bias.

The information in reports submitted by the political parties and entities can subsequently be compared with the information collected by the Agency. It is important that the Agency has a clear contract with any institution collected data, and such institutions must be credible companies that may not be suspected of political bias.

The provision of funds from the Republic of Serbia budget outlined in Article 33 of the new law can be used to funds activities of this kind.

*Request information from other sources to verify the expenses by political parties*

As a complement to the above, it should be noted that many institutions mandated to oversee political finance rely in part on information they officially request from other actors, which can be compared with statements submitted by political entities. Such actors can include media outlets, printing firms and others engaged in financial transactions relating to election campaigns (and to some extent regular party work).

Paragraph four of Article 32 entitles the Agency to request data from those “performing for and/or on their [political entities’] behalf,” if that data is needed for the Agency to “discharge duties from its purview set forth

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<sup>30</sup> While the exact timing of the upcoming elections (and subsequently the reporting deadlines) is not known, it is possible that political entities will need to submit their campaign finance reports almost at the same time as their 2011 Annual reports (15 April 2012). While the Agency has a responsibility to review both sets of reports, it is suggested that it place emphasis on the campaign finance reports, partly since political parties tend focus fundraising and expenditure to pre-election periods, and partly since voters tend to be more interested in the role of money in election campaigns than in ongoing (often administrative) party activities.

<sup>31</sup> Note that if political parties receive advertising for free or at a reduced rate, the impact on their expenditure will be less. However, any such transactions must be reported by the political party as in-kind income in accordance with Article 9 of the new law.

under this Law.” While the Agency will not have the capacity to investigate all expenses and must not overburden anyone with requests, they will be able to request information that will aid investigation.<sup>32</sup>

### *Control if reported contributions actually originate with the stated donor*

The new law states that “giving a donation to a political entity through a third party is prohibited,” and that “Concealing [the] identity of donor or amount of donation is prohibited” (Article 13). This means that if a certain person is listed as having made a contribution to a political entity, the donated funds must *originate* with that person. One way that the Agency can control this is by comparing the amounts donated with reported income or personal wealth of registered donors. This approach has been used in Moldova, though of course such an approach requires that necessary information is readily available. It is possible that the requirements in paragraph four of Article 32 can be used as a basis for the requisition of such information, and the Agency may utilize modes of cooperation with other authorities as outlined in the Anti-Corruption Agency Act, Article 25.

### *Receive and investigate reports of financial misbehaviour by political entities*

The Agency should also consider mechanisms for reception and investigation of complaints or reports of financial mismanagement by political entities. Specifically, mechanisms should be able to receive and react on information provided by civil society actors monitoring campaign finance (see further below).

The quantity or quality of such complaints or reports cannot be predicted, so it must be up to the Agency to determine what criteria reports must fulfil in order for the Agency to initiate an investigation. Such criteria should be clearly established by the Agency – although details should not be shared outside the institution – to ensure that reports are investigated fairly and without bias.<sup>33</sup> A clear point of contact and mode for submitting complaints or reports of mismanagement should be established, and the website of the Agency could be useful in this regard.

## CAPACITY BUILDING OF AGENCY STAFF

At present, the number of staff members working with political finance oversight at the Agency is limited. Detailed and practical training should be provided to relevant staff members. Identifying training requirements should be on the agenda during the development of reporting and investigation procedures. It has been reported that overall training has been provided by the OSCE and additional sessions are in the works. Assistance to the Agency will also be provided by the USAID Judicial Reform and Government Accountability Project and by other stakeholders. However, additional training needs to be provided without delay in order to truly build the capacity of the new staff.

Since the Agency receives financial reports from political parties on election campaigns just once a year, the workload fluctuates. This means the Agency should consider an approach where either permanent staff are assigned to these tasks when needed or, if necessary, additional staff are brought onboard on a temporary basis to assist in the receipt and investigation of financial reports from political entities.

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<sup>32</sup> Again, the sampling process must be designed to avoid any potential bias.

<sup>33</sup> One example can be the Enforcement Policy of the Election Commission in the UK. See [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/106743/Enforcement-Policy-30March11.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/106743/Enforcement-Policy-30March11.pdf)



## THE DEVELOPMENT OF INFORMATION MATERIALS

Political parties in Serbia have little experience recording and reporting finances, either regarding ongoing activities or the election campaign. The Agency must be active in developing relevant and easy-to-use materials about how tracking and reporting should work. Printed materials and web-based solutions can be combined with a “hot-line” for authorized persons within parties to receive information from the Agency.<sup>34</sup>

The materials should be developed through consultation with the bodies required to comply with the reporting requirements. Given the limited time available for the 2012 elections, however, focus should be on developing materials of the highest possible quality quickly, followed by an extensive evaluation after the elections to ensure more long-term improvements.

It is also conceivable that other stakeholders may produce materials to increase awareness and understanding of political finance issues, including the rules against abuse of state resources. Such initiatives should be welcomed, although it is important that they strictly adhere to the new law, by-laws and other strategies subsequently developed by the Agency.

## TRAINING OF POLITICAL ENTITIES

Regardless how informative web or paper materials are, they cannot replace hands-on trainings of the relevant staff. Therefore, the Agency or other institutions working in partnership should provide practical training sessions with the political parties.

Such trainings should be based on the new law and the public by-laws and procedures developed by the Agency, and on information gained from the political entities about their needs. Trainings should preferably take place as soon as necessary guidance documents and information materials have been developed and approved. If the campaign for the upcoming elections starts in January or February 2012, these trainings should take place no later than the end of November 2011 so that information can be communicated effectively within parties.

Authorized persons, party accountants and possibly party appointed auditors should receive training. How far the trainings should extend to sub-national party structures should be discussed with the entities themselves. Something to take into account is that only the central structure of each entity has a formal reporting obligation, and variations in accounting systems between different political parties may make trainings by external actors more complicated.

## MONITORING BY CIVIL SOCIETY ACTORS

The global experience in overseeing political finance shows clearly that no individual actor can manage oversight individually, and that different stakeholders have different roles to play.<sup>35</sup>

Apart from the formal role played by the Agency as mandated by the new law, the most important oversight function is arguably that of civil society. Civil Society Organizations (CSOs) have two main functions in this context; to monitor political finance activities by political parties (in most cases focused on campaign expenditures), and to control the activities of those responsible for formal oversight (in this case the Agency).

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<sup>34</sup>Regarding internet sources, see for example <http://www.fec.gov/info/compliance.shtml>, <http://www.electoralcommission.org.uk/guidance> and [http://www.izbori.ba/documents/ENG/Audit\\_of\\_political\\_party\\_financing/Education\\_questions\\_and\\_answers.pdf](http://www.izbori.ba/documents/ENG/Audit_of_political_party_financing/Education_questions_and_answers.pdf).

<sup>35</sup> See for example Ohman, Magnus & Zainulbhai, Hani (eds) *Regulating Political Finance – the Global Experience*, IFES, 2009, p 20.

To achieve maximum effect, it is important that the Agency and relevant CSOs maintain a positive and engaged interaction. However, so as not to blur their different roles and functions, it is crucial that their respective independence is maintained. As mentioned above, it is advised that the Agency considers how to deal with information received through civil society monitoring efforts in advance.

It is suggested that field activists from Serbian CSOs (individually or in collaboration) monitor the 2012 elections campaign, either throughout Serbia or in selected localities.<sup>36</sup> Monitoring should, if possible, start somewhat before the announcement of elections so as to cover “pre-campaign campaigning” and last until the elections themselves. There is sufficient time to prepare for such monitoring if this is addressed now, and if funding is made available by actors not related to the Serbian state.

The monitoring can make estimates of total amounts spent by political entities in order to judge the accuracy of their official reports submitted to the Agency, although the removal of spending limits in the new law means that monitoring cannot focus on adherence to such regulations. The extent through which the results of the monitoring can be compared with the data reported by parties to the Agency will depend largely on the level of detail applied in the formal reporting structures. Monitoring can also take into account important areas like the abuse of state resources – an issue that is not satisfactorily covered by the new law – and activities of the Agency related to enforcement.

## ACTIVITIES BY THE MEDIA

The driving force behind reforms and changed behavior in political finance is often political scandal. While in some cases, scandals are the result of discoveries by official regulators, they most often originate through the media.

With this in mind, it is important that information received from political parties and other entities is not only published in a timely manner, but that it is presented in an easy-to-use, accessible manner. The Agency should welcome enquiries and extend assistance to media outlets in a way that is consistent with the independence of the institution.<sup>37</sup>

## CONCLUSION

The new law on financing political activities provides a unique opportunity for strengthening political finance in Serbia and building public confidence in political parties. While expectations must not be too high regarding what can be achieved in the immediate future, there must be some visible improvements in the system, like sanctioning political entities that refuse to cooperate. Given that there has never been a single sanction issued in Serbian history, the bar is set fairly low.

Successful implementation of the law will depend on the efforts of Serbian stakeholders and involved international actors. The Anti-Corruption Agency will have a leading role in this by developing and implementing necessary procedures. In parallel with the activities of the Agency, CSOs and the media should carefully monitor developments.

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<sup>36</sup> Some recent examples of similar monitoring efforts in Poland, Georgia and Armenia can be found at <http://www.batory.org.pl/doc/European%20Parliament%20Elections%202009.pdf>, <http://www.transparency.ge/en/post/press-release/transparency-international-georgia-publishes-political-party-finance-report>, and <http://www.ifes.org/Content/Publications/Papers/2008/Monitoring-of-Election-Campaign-Finance-in-Armenia-2007-2008.aspx>.

<sup>37</sup> Article 64 of the Anti-Corruption Agency states that “In performing tasks from its purview, the Agency shall cooperate with research organizations, the media and associations.”

After the 2012 campaign finance reports have been reviewed, the system should be evaluated to allow for further improvements. At this point, an in-depth discussion should also be initiated about the respective roles of the Anti-Corruption Agency and the State Auditing Institution, as the current provision in the Act (Article 34) is somewhat unclear. The two institutions have separate mandates and must maintain their respective independence. It is important that their activities relating to political finance is complementary without unnecessary overlaps.

The timelines below are intended as a starting point for discussions on the implementation of the new law by both the Agency and Civil Society Organisations. Since the exact dates for the upcoming elections are not known, the dates provided are of course only estimates.

## TENTATIVE TIMELINE FOR SUCCESSFUL IMPLEMENTATION OF THE LAW ON POLITICAL FINANCING



# APPENDIX. LAW ON FINANCING POLITICAL ACTIVITIES

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## *I INTRODUCTORY PROVISIONS*

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### **ARTICLE 1            SUBJECT OF THE LAW**

This Law shall regulate sources and manner of financing, records and control of financing of activities of political parties, coalitions and citizens' group (hereinafter "political entities").

### **ARTICLE 2            MEANING OF TERMS**

Individual terms used in this Law shall mean:

- "political activity" is regular work and election campaign of a political entity as submitter of registered electoral list and nominator of candidates for president of the Republic, members of parliament, deputies and councillors;
- "political party" is an organization of citizens recorded in the Register of Political Parties with the competent authority, in accordance with law;
- "coalition" is a form of association of political entities for joint participation in elections, which regulate their mutual relations by contract, attested in accordance with law governing attestation of signatures;
- "citizens' group" is a form of association of political entities for joint participation in elections, which regulate their mutual relations by contract, attested in accordance with law governing attestation of signatures;
- "election campaign" is the body of activities of a political entity from the day of calling of elections until the day of proclaiming final election results;
- "regular work" is the political activity of a political entity other than election campaign;
- "election bond" is the guarantee of a political entity participating in elections to return the amount of funds received from public sources for financing of political campaigns if it fails to win 1% percent of valid votes, and/or in case of political entity representing and advocating national minority interests if it fails to win 0.2% percent of valid votes;
- "value of contribution" is the aggregate value of all contributions (membership dues, donations) that one natural person or legal entity gives to a political entity at annual level;
- "average monthly salary" is the average monthly salary in the Republic of Serbia, without tax and dues, pursuant to data of the authority with competence for statistical affairs for the preceding year.

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## *II. SOURCES AND MANNER OF FINANCING*

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### ARTICLE 3            SOURCES OF FINANCING OF POLITICAL ENTITIES

Political entities are financed from public and private sources.

Political entities use funds from sources specified in paragraph 1 of this article for financing of regular work and election campaign costs.

Political entities may borrow from banks and other financial organization in the Republic of Serbia, in accordance with law.

## **ARTICLE 4 PUBLIC SOURCES**

Public sources for financing of political activity comprise pecuniary funds and services granted by the Republic of Serbia, autonomous province and local government, their organs as well as organizations founded by them.

## **ARTICLE 5 PECUNIARY FUNDS FROM PUBLIC SOURCES**

Pecuniary funds from public sources are funds from the budget of the Republic of Serbia, autonomous province budget and local government budget, designated for financing of political activity.

## **ARTICLE 6 SERVICES AND GOODS FROM PUBLIC SOURCES**

Services and goods from public sources are services and goods defined under separate regulations given to political entities by organs of the Republic of Serbia, autonomous province and local government, as well as by other organizations founded by them.

It is obligatory to grant services and goods referred in paragraph 1 of this article to all political entities under equal terms.

Organs of the Republic of Serbia, autonomous province and local government, as well as other organizations founded by them shall more specifically regulate granting of services and goods referred in paragraph 1 of this article.

## **ARTICLE 7 PRIVATE SOURCES**

Private sources of financing political activities comprise membership dues, donations, inheritance, legacy income from property and borrowing from banks and other financial organizations in the Republic of Serbia.

## **ARTICLE 8 MEMBERSHIP DUES**

Membership dues are the pecuniary amount paid regularly by a member of a political party in the manner and under conditions set forth by the statute or other general act of the political party.

A member of a political party is required to effect payment of membership dues only from his/her current account.

As an exception to paragraph 2 of this article membership dues not exceeding 1,000 RSD on annual level may be paid in cash or by postal / bank order. When membership dues are paid in cash the authorised officer of a political party is required to issue a receipt to the member for received dues. The receipt is signed by the member paying the membership dues and the authorised person of the political party.

The authorized officer of a political party is required to pay membership dues received in cash into the account of the political party within seven days from the day of issuing of receipt.

## **ARTICLE 9 DONATION**

A donation is a pecuniary amount, other than membership dues, that a natural person or legal entity voluntarily give to a political entity, a gift, as well as services provided without compensation or under conditions deviating from market conditions.

A donation is also credit, loan and other services provided by a bank or other financial organizations in the Republic of Serbia given under conditions deviating from market conditions, as well as write-off of debt.

A donor engaged in commercial activity is required when giving a donation and not later than the following day to forward to the political entity a personal statement or attestation from the relevant authority that it has settled all obligations relative to public revenues, as well as a statement that it is not engaged in or has been engaged over the past two years in contracted activities of general interest. A legal entity, as donor, is required to also submit data on its ownership structure.



A donor is required to forward a statement that it has not exceeded the donation ceiling specified in article 10 paragraphs 1 and 2 hereof not later than three days from the date of giving of donation.

A political entity is required to accept payment of pecuniary amount specified in paragraph 1 of this article only from the donor's current account.

A political entity is required to record the donation referred in paragraph 1 of this article.

Exerting any form of pressure, threat, discrimination or any other form of direct or indirect placement in disadvantageous position of a natural person or legal entity giving a donation to a political entity is prohibited.

Government authorities are required to prevent and punish any violence, violation of rights or threat to a natural person or legal entity for giving of a donation to a political entity.

## **ARTICLE 10        MAXIMUM VALUE OF DONATION**

Maximum value of donation on at annual level that a natural person may give to political entities for regular work shall not exceed 20 average monthly salaries.

Maximum value of donation at annual level that a legal entity may give to political entities for regular work shall not exceed 200 average monthly salaries.

Donations exceeding at annual level one average monthly salary are published.

A political entity is required to publish each donation referred in paragraph 3 of this article on its web site within eight days from the date the value of donation has exceeded the amount of one monthly average salary.

## **ARTICLE 11        ACQUISITION AND INCOME FROM PROPERTY OF POLITICAL PARTY**

Assets of a political party comprise real property and movables.

Assets referred in paragraph 1 of this article serve for political activity and other allowed activities of a political party, in accordance with law.

A political party acquires property through purchase, inheritance and legacy.

A political party may acquire real property only with funds collected from private sources.

Income from property is the income realized by a political party from sale of real property and movables, lease of real property in its ownership and interest on deposits with banks and other financial organizations in the Republic of Serbia.

## **ARTICLE 12        PROHIBITION ON FINANCING**

It is prohibited to finance a political entity by foreign states; foreign natural persons and legal entities, except international political associations; anonymous donors, public institutions, public enterprises, companies and entrepreneurs engaged in services of general interest, institutions and companies with state capital share, other organizations discharging administrative authority; trade unions, associations and other non-profit organizations, churches and religious communities; gaming industry; importers, exporters and manufacturers of excise goods, legal entities and entrepreneurs with due, and unsettled, public revenue obligations, unless set forth otherwise by this Law.

Donations from international political associations may not be in money.

Financing of political entity by a natural person or legal entity engaged in activities of general interest pursuant to contract with organs of the Republic of Serbia, autonomous province and local government and public services founded by them is

prohibited throughout the validity of such contract and for a period of two years subsequent to termination of contractual relations.

Acquisition of shares or stock in a legal entity by a political entity is prohibited.

Financing of a political entity by an endowment or foundation is prohibited.

### **ARTICLE 13      PROHIBITED COLLECTION OF FUNDS**

Exerting any form of pressure on legal entities and natural persons in collecting donations for a political entity is prohibited.

Giving promises or inferring any privilege or personal benefit to donor of a political entity is prohibited.

Giving a donation to a political entity through a third party is prohibited.

Concealing identity of donor or amount of donation is prohibited.

### **ARTICLE 14      BAN ON ACQUISITION OF INCOME FROM COMMERCIAL ACTIVITY**

A political entity may not realize income from promotional, and/or commercial activity.

### **ARTICLE 15      REMITTANCE OF UNLAWFULLY ACQUIRED FUNDS**

A political entity is required to pay pecuniary funds acquired contrary to article 12 hereof in favour of the Republic of Serbia budget within 15 days from the date of receiving such funds. If the payee of funds has ceased to exist, a political entity is required to transfer the paid amount to the Republic of Serbia budget within 15 days from the day of receiving of funds.

A political party is required to pay membership dues received contrary to article 8, paragraph 3 hereof in favour of the Republic of Serbia budget within 15 days of receiving membership dues.

A political entity is required to return to the donor a donation without forwarded documents of the donor stipulated in article 9, paragraph 3, as well as a donation exceeding the amount set forth in article 10 hereof within 15 days from the date of receiving the donation.

If funds referred to in paragraph 3 of this article cannot be returned to the account of the payee, the funds are paid into the budget of the Republic of Serbia.

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## ***III FINANCING OF REGULAR WORK OF POLITICAL ENTITIES***

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### **ARTICLE 16      FUNDS FROM PUBLIC SOURCES**

Funds from public sources appropriated for financing of regular work of political entities whose candidates have been elected members of parliament, deputies and/or councillors are set at the level of 0.15% percent of the Republic of Serbia budgetary expenditure, territorial autonomy budgetary expenditure and/or local government budgetary expenditure.

### **ARTICLE 17      ALLOCATION OF FUNDS FROM PUBLIC SOURCES**

Funds specified in article 16 hereof are allocated to political entities winning seats in representative bodies in proportion to the number of votes calculated according to the method defined in paragraph 2 of this article.

The number of votes of a political entity taken as basis for allocation of funds is calculated by multiplying the number of votes of all voters up to 5% of valid votes with a quotient of 1.5, and the number of votes over 5% of valid votes of all voters with a coefficient of 1.

Funds specified in article 16 hereof granted to a political entity participating in elections as a coalition are divided pursuant to coalition agreement.

The ministry with competence for financial affairs and/or the relevant autonomous province authority, and/or the local government authority, transfers the proportionate portion of funds referred to in paragraph 1 of this article to political entities every month, before the 10<sup>th</sup> of the month for the preceding month.

## **ARTICLE 18      ACCOUNT FOR FINANCING REGULAR WORK**

A political party may have several accounts but only with the same tax identification number, as well as a foreign currency account, through which it transacts all funds earmarked for financing regular work.

Coalition and/or citizens' group define accounts used for transaction of all funds earmarked for financing regular work by the agreement establishing such political entities.

## **ARTICLE 19      USE OF FUNDS FOR FINANCING REGULAR WORK**

Funds for financing regular work of political entities are used for functioning and propagation of the idea of a political entity and presume work with the electorate and membership, promotional costs, advertising material and publications, public opinion polls, training, international cooperation, salaries and emoluments for staff, costs of utilities services and expenses related to other similar activities.

A political entity is required to use funds received from public sources in the amount not less than 5% of aggregate funds received for regular work at annual level for professional upgrading and training, acquiring practical skills, international cooperation and work with the membership.

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## ***IV FINANCING ELECTION CAMPAIGN COSTS***

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## **ARTICLE 20      FUNDS FROM PUBLIC SOURCES**

Funds from public sources for covering election campaign costs are allocated in the year of regular elections in the amount of 0.1% of the Republic of Serbia budgetary expenditure, of the autonomous province budgetary expenditure and/or of the local government budgetary expenditure for the budget year.

In case of early elections the relevant authorities are required to provide funds specified in paragraph 1 of this article.

## **ARTICLE 21      ALLOCATION OF FUNDS FROM PUBLIC SOURCES**

Funds specified in article 20 hereof in the amount of 20% percent are allocated in equal amounts to submitters of proclaimed election lists who at time of submission declared to use the funds from public sources to cover election campaign costs. These funds shall be paid within five days from the date of proclaiming of election lists.

The remaining portion of funds specified in article 20 hereof (80%) is allocated to submitters of election lists *pro rata* to the number of won seats, within five days from the date of proclaiming of election results, regardless of whether the funds from public sources were used to cover election campaign costs.

In case of elections held according to majority system, the funds specified in article 20 hereof in the amount of 50% are allocated in equal amounts to proponents of candidates who declared at time of filing of candidacy to use funds from public sources to cover election campaign costs. These funds shall be paid to proponents of candidates within five days from the date of determination of final list of candidates.

In case of holding elections referred in paragraph 3 of this article the remaining portion of funds specified in article 20 hereof (50%) is allocated to the proponent of the winning candidate within five days from the date of proclaiming election results, regardless of whether the funds from public sources were used to cover election campaign costs.

In case of runoffs for elections specified in paragraph 3 of this article, the remaining portion of funds specified in article 20 hereof (50%) are allocated in equal amounts to proponents of candidates participating in election runoff, within five days from the date of proclaiming election results of the first election round, regardless of whether the funds from public sources were used to cover election campaign costs.

If the submitters of election lists and/or nominators of candidates declaring to use funds from public sources for covering election campaign costs fail to give election bond within the deadline set forth under article 25 paragraph 3 hereof, the portion of funds allocated to such submitters of election lists and/or nominators of candidates is carried over to the remaining funds specified in paragraphs 2, 4 and 5 of this article.

Funds for election campaign from public sources are allocated by the ministry with competence for financial affairs and/or the relevant authority of autonomous province or local government.

## **ARTICLE 22      FINANCING ELECTION CAMPAIGN FROM PRIVATE SOURCES**

A political entity may raise funds from private sources for election campaign costs.

Natural persons and legal entities may give donations in a single calendar year in which election are held, in addition to donations for regular work, also for election campaign costs up to maximum stipulated amount at annual level specified in article 10, paragraphs 1 and 2 hereof, regardless of the number of election campaigns in a calendar year.

## **ARTICLE 23      ELECTION CAMPAIGN COSTS**

Election campaign costs are costs related to political activities during the election campaign.

Funds raised from public and private sources for financing election campaign costs may be used only for activities specified in paragraph 1 of this article.

Rules and regulations governing action of media during election campaigns shall apply to each time slot purchase in the media.

## **ARTICLE 24      SEPARATE ACCOUNT FOR ELECTION CAMPAIGN FINANCING**

For the purpose of raising funds for election campaign financing a political entity shall open a separate account that may not be used for other purposes.

A political entity not having the account specified in paragraph 1 of this article is required to open such account after calling of elections and before registering own election list.

All funds intended for financing of election campaign are paid into the account specified in paragraph 1 of this article and all payments of election campaign costs are made from that account.

A political entity may use funds raised from private sources for regular work for election campaign financing with the proviso that such funds are paid into the account specified in paragraph 1 of this article.

Opening of the account referred in paragraphs 1 and 2 of this article for a coalition and/or group of citizens is regulated by the agreement on establishing such political entities.

## ARTICLE 25 ELECTION BOND

A political entity declaring intention to use funds from public sources to cover election campaign costs is required to give election bond in the amount of funds specified in article 21 paragraphs 1 and 3 hereof, allocated to such political entity.

Election bond referred to in paragraph 1 of this article comprises of depositing cash, bank guarantee, government bonds or placing a mortgage covering the amount of bond on real property of the persons giving the bond.

The election bond specified in paragraph 2 of this article is given to the ministry with competence for finance affairs and /or relevant authority of autonomous province or local government, within three days from the date of proclaiming all election lists and/or determination of final list of candidates.

## ARTICLE 26 RETURN OF FUNDS

The election bond is returned to the political entity if winning at elections a minimum of 1% of valid ballots and/or minimum 0/2% of valid ballots if the political entity is representing interests of a national minority, within 30 days from the date of declaring final election results.

A political entity failing to win the number of votes specified in paragraph 1 of this article is required to return the funds for which he gave an election bond within 30 days from the date of proclaiming final election results.

If a political entity fails to return the funds for which it gave an election bond within the deadline set forth under paragraph 2 of this article, the Republic of Serbia, autonomous province or local government shall collect such funds from the election bond.

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## *V KEEPING RECORDS AND REPORTING*

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## ARTICLE 27 DUTY TO KEEP BOOKS AND RECORDS

A political entity with representatives in representative bodies and registered political parties are required to keep bookkeeping records of all revenues and expenditures.

Bookkeeping is done by origin, amount and structure of revenues and expenditures, in accordance with regulations governing accounting and audit

Bookkeeping records of revenues and expenditures of political entities referred to in paragraph 1 of this article are subject to annual control of relevant authorities.

A political entity with representatives in representative bodies and registered political parties are required to keep separate records of donations, gifts and services extended without compensation, and/or under conditions deviating from market conditions and records of property.

The content and manner of keeping records specified in paragraphs 4 of this article is specified by the Director of the Anti-corruption Agency (hereinafter "the Agency").

## ARTICLE 28 ANNUAL FINANCIAL REPORT

A political entity with representatives in representative bodies and registered political parties are required to submit to the Agency an annual financial statement, as well as a report on donations and assets, together with the opinion of an auditor certified in accordance with accounting and audit regulations not later than 15 April of the current year for the preceding year.

Political entities referred in paragraph 1 of this article are required to publish within eight days of submission of the annual financial statement to the Agency, the statement on their web site and forward it for publishing in the "Official Gazette of the Republic of Serbia".

The Director of the Agency shall specify the content of the annual financial statement.

## **ARTICLE 29      REPORT ON ELECTION CAMPAIGN COSTS**

A political entity participating in election campaign is required to submit to the Agency a report on election campaign costs within 30 days from the date of publication of final election results.

The report on election campaign costs contains information on origin, amount and structure of raised and spent funds from public and private sources.

The report on election campaign costs is compiled for the period from the date of calling of elections until the date of publishing final election results.

The report on election campaign costs is published on the web site of the Agency.

The content of the report on election campaign costs is specified by the director of the Agency.

## **ARTICLE 30      RETURN OF FUNDS FROM PUBLIC SOURCES**

A political entity is required to return all funds from public sources not used in the election campaign into the budget of the Republic of Serbia, autonomous province and/or local government by the date of submission of report.

A political entity is required to transfer all funds from private sources not used in the election campaign to the account used for regular operation, by the date of submission of report.

## **ARTICLE 31      AUTHORISED PERSON**

A political party's statute and/or appropriate decision of a political entity must define the manner of conducting internal control of financial affairs and the right of the membership and/or voters supporting an election list to be informed of revenues and expenditures of a political entity.

A political party's statute, or contract establishing a political entity, must provide for appointment of the person responsible for financial affairs, reporting and keeping of books, who is authorized to contact the Agency (hereinafter "authorised person").

A political entity notifies the Agency of the appointment of authorised person specified in paragraph 2 of this article within three days of his/her appointment.

A political entity is required to notify the Agency of any change in regard of authorised person.

The authorised person signs all reports and is responsible for keeping of records regarding financing of the political entity.

At the request from the Agency the authorised person is required to forward bookkeeping data specified in article 27 of this Law for inspection also during the fiscal year.

A political entity specified in articles 28 and 29 of this Law safeguards its financial statements for a minimum of six years from the date of submission to the Agency.

## ARTICLE 32 POWERS OF THE AGENCY

Within the purview defined under this Law, the Agency has the right of direct and free access to bookkeeping records and documentation and financial reports of a political entity and to engage relevant experts and institutions. The Agency is also entitled to direct and free access to bookkeeping records and documents of an endowment or foundation founded by a political party.

A political entity shall at the Agency's request and within the time frame set by the Agency which may not exceed 15 days, submit to the Agency all documents and information necessary to the Agency to carry out tasks from its purview set forth under this Law.

In the course of election campaign, a political entity is required upon the request of and within the time frame set by the Agency, which may not exceed three days, to submit information necessary to the Agency to carry out tasks from its purview set forth under this Law.

Organs of the Republic of Serbia, autonomous province and local government, banks, as well as natural persons and legal entities financing political entities performing for and/or on their behalf particular services, are required to forward to the Agency at its request all data required by the Agency to discharge duties from its purview set forth under this Law.

The obligation to provide information from para 4 of this Article supersedes any other restriction or limitation that may appear in any other regulation.

## ARTICLE 33 PROVISION OF FUNDS REQUIRED FOR PERFORMING CONTROL

Funds for performing control of election campaign costs for the election of president of the Republic, election of members of parliament, deputies and councillors are provided to the Agency from the Republic of Serbia budget.

For the purposes referred to in para 1 of this article, the funds are allocated in the budget of the Republic of Serbia in the amount not less than 1% for elections for the president of the Republic and members of parliament, 0.5% for elections for deputies and councillors for city councils and/or 0.25% for elections for deputies for municipal councils, out of the aggregate amount of funds allocated in the Republic of Serbia budget for election campaign for the election of members of parliament.

In case there are more than one election in the same calendar year, the percentage specified in paragraph 2 shall apply to every election.

## ARTICLE 34 CONTROL BY THE STATE AUDIT INSTITUTION

The Agency may, after conducting control of financial reports of a political entity, forward a request to the State Audit Institution to audit these reports, in accordance with the law governing competencies of the State Audit Institution.

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## VI ACTIONS AND DECISION TAKING IN CASE OF VIOLATION OF LAW

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## ARTICLE 35 PROCEDURE

Proceedings to establish violation of this Law and to pronounce measures in accordance with this Law are launched and conducted by the Agency *ex officio*.

Proceedings referred to in para 1 of this article may also be launched on basis of complaint by a natural person or legal entity.

The Agency shall notify the political entity of the initiation of the proceedings referred to in para 1 of this article.

The Agency may summon the authorized person as well as the person on whose complaint the proceedings were launched to obtain information as well as request forwarding necessary data in order to decide whether there is a violation of this Law.

## **ARTICLE 36 APPLICATION OF OTHER REGULATIONS**

Provisions of the law governing general administrative procedure shall appropriately apply to proceedings referred in article 35 hereof if not regulated by this Law.

## **ARTICLE 37 MEASURE**

The Agency issues a warning measure to a political entity in case it identifies during control deficiencies that may be corrected.

If the political entity fails to act upon the measure before the deadline specified in the Agency's decision expires, the Agency shall initiate misdemeanour proceedings.

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## ***VII PENAL PROVISIONS***

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## **ARTICLE 38 CRIMINAL OFFENCE**

Whoever gives, and/or provides for and on behalf of the political entity, funds for financing of the political entity contrary to the provisions of this Law with intent to conceal the source of financing or amount of collected funds of the political entity, shall be punished with imprisonment from three months to three years.

If the offence referred to in para 1 involved giving or receiving more than one million and five hundred thousand dinars, the offender shall be punished with imprisonment from six months to five years.

Whoever commits violence or threatens violence, places in disadvantageous position or denies a right or interest based on law to a natural person or legal entity based on giving donation to a political entity, shall be punished by imprisonment of three months to three years.

Funds referred in paragraphs 1 and 2 of this article shall be confiscated.

## **ARTICLE 39 MISDEMEANOURS OF A POLITICAL ENTITY**

A political party shall be fined from 200,000 to 2,000,000 RSD for a misdemeanour if it:

- 1) receives funds contrary to article 8, paragraph 3 hereof;
- 2) fails to publish donations in accordance with article 10, paragraphs 2 and 4 hereof;
- 3) acts contrary to article 11 hereof;
- 4) acts contrary to prohibition specified in article 12, paragraph 3 hereof;
- 5) acts contrary to prohibition specified in article 13 hereof;



- 6) acquires income contrary to article 14 hereof;
- 7) fails to remit funds in accordance with article 15 hereof;
- 8) opens multiple accounts contrary to article 18 hereof;
- 9) uses funds contrary to articles 19 and 23 and article 24, paragraphs 3 and 4 hereof;
- 10) fails to open a separate account for financing of electoral campaigns pursuant to article 24 hereof;
- 11) fails to keep records pursuant to article 27 hereof;
- 12) fails to submit the annual statement pursuant to article 28, paragraph 1 hereof;
- 13) fails to publish the financial statement on its web site or fails to submit it to the "Official Gazette of the Republic of Serbia" for publication, within the time frame set forth in article 28, paragraph 2 hereof;
- 14) fails to submit the report on electoral campaign costs pursuant to article 29 hereof;
- 15) acts contrary to article 30 hereof;
- 16) fails to appoint the authorized person, fails to report change in authorized person or notify the Agency thereof, in accordance with article 31, paragraphs 3 and 4 hereof;
- 17) fails to provide access to the Agency pursuant to article 32, paragraph 1 hereof;
- 18) fails to submit to the Agency documents, information and data pursuant to article 32 paragraphs 2 and 3 hereof;
- 19) fails to act in accordance to the pronounced warning measure (article 37, paragraph 2).

The responsible person of a political party or other political entity shall also be fined from 50,000 to 150,000 RSD for offences specified in paragraph 1 of this article.

Funds obtained through commission of misdemeanours specified in paragraph 1, items 1), 3) through 7), 9) and 15) of this article shall be confiscated.

## **ARTICLE 40 MISDEMEANOURS BY DONORS OF FUNDS**

A legal entity shall be fined with 200,000 to 2,000,000 RSD if it:

- 1) gives a donation to a political entity contrary to articles 9 and 10 and article 22 paragraph 2 hereof;
- 2) fails to ensure access to the Agency in accordance with article 32, paragraph 1 hereof;
- 2) fails to submit data to the Agency pursuant to article 32, paragraph 4 hereof.

The responsible person of a legal entity shall also be fined with 50,000 to 150,000 RSD for misdemeanour specified in paragraph 1 of this article.

An entrepreneur shall be fined with 100,000 to 500,000 RSD for misdemeanour specified in paragraph 1 of this article.

A natural person shall be fined with 50,000 to 150,000 RSD for misdemeanour specified in paragraph 1 of this article.

Funds obtained through commission of misdemeanour specified in paragraph 1, item 1) of this article shall be confiscated.

## ARTICLE 41 STATUTE OF LIMITATIONS ON LAUNCHING MISDEMEANOUR PROCEEDINGS

Proceedings for misdemeanours specified in articles 39 and 40 hereof cannot be instituted after expiry of five years from the date of commission of misdemeanour.

## ARTICLE 42 LOSS OF FUNDS FROM PUBLIC SOURCES

In case of conviction for a criminal offence specified in article 38 hereof or if a political party or responsible person of a political entity is fined for misdemeanour specified in article 39 hereof, the political entity shall lose the right to funds from public sources dedicated for financing of the political entity in the amount set forth pursuant to paragraphs 2 and 4 of this article.

The amount of funds referred in paragraph 1 of this article may not be less than the amount of funds acquired through commission of a criminal offence or misdemeanour, up to a maximum of 100% of the amount of funds from public sources allocated for financing of regular work of the political entity for the coming calendar year.

If the amount of funds acquired through commission of a criminal offence and/or misdemeanour is less than 10% of the funds from public sources allocated for financing of regular work of the political entity for the coming calendar year, the amount of funds specified in paragraph 1 of this article may not be less than 10% of the funds from public sources allocated for financing of regular work of the political entity for the coming calendar year.

The amount of funds referred in paragraph 1 of this article is determined pro rata to pronounce punishment for criminal offence or misdemeanour, pursuant to rules set forth in paragraphs 2 and 3 of this article.

The decision on loss of rights to public funds allocated for financing of regular work of a political entity for the following calendar year wherein the amount thereof is also defined, is issued by the Agency and may be appealed through administrative dispute.

## ARTICLE 43 SUSPENSION OF TRANSFER OF FUNDS FROM PUBLIC SOURCES

At the request of the Agency and following launching of criminal proceedings for the offence referred in article 38 hereof or misdemeanour proceedings for a misdemeanour referred in article 39 hereof the ministry with competence for financial affairs and/or the competent authority of autonomous province and/or local government, issues a decision for temporary suspension of transfer of funds from public sources to the political entity until issuing of final decision in criminal, and/or misdemeanour proceedings.

The decision of the competent administrative authority of autonomous province, and/or local government referred in paragraph 1 of this article may be appealed with the relevant authority of the autonomous province and/or local government.

Administrative dispute may be instituted against the decision of the ministry referred in paragraph 1 of this article and the decision of the competent authority of autonomous province and/or local government.

The administrative court is required to decide within 30 days from the date of filing of complaint in administrative dispute referred in paragraph 3 of this article.

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## VIII TRANSITIONAL AND FINAL PROVISIONS

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## ARTICLE 44

Control of the work of political parties commenced prior to coming into force of this Law shall be concluded pursuant to provisions of the Law on Financing of Political Parties ("Official Gazette of the RS", no. 72/03, 75/03 – corrigendum, 97/08 and 60/09 – Constitutional Court decision).

#### ARTICLE 45

Bylaws provided under this Law shall be enacted within six months from the date of coming into force of this Law.

Until enactment of the bylaws referred in paragraph 1 of this article the bylaws enacted pursuant to the Law on Financing of political Parties ("Official Gazette of the RS", no. 72/03, 75/03 – corrigendum, 97/08 and 60/09 – Constitutional Court decision) shall apply unless contrary to this Law.

#### ARTICLE 46

With the coming into force of this Law, the Law on Financing of Political Parties ("Official Gazette of the RS", no. 72/03, 75/03 - corrigendum, 97/08 and 60/09 - Constitutional Court decision) shall cease to apply with the exception of article 4 that shall cease to apply as of 1 July 2012.

#### ARTICLE 47

This Law shall come into force on the eighth day of publication in the "Official Gazette of the Republic of Serbia, except articles 16 and 17 that shall come into force on 1 July 2012.