How to Improve Transparency and Control of Campaign Financing

Proposals and Comments on the Draft Law on Financing Political Activities

Transparency Serbia

Belgrade, December 2021

Contents

Introduction

Rules for Campaign Financing - Formal Compliance with ODIHR Recommendations and Unresolved Issues

Draft of the new Law on Financing of Political Activities which was published on November 25, 2021, is, in fact, the existing Law on which interventions were carried out in a more significant number of articles, which is why it is formally marked as new. Some of the changes made now come from an earlier draft of this Law (from 2016), which was then being worked on by the Ministry of Finance and the Anti-Corruption Agency, and which is no longer available online. The Working Group of the Government of Serbia for Cooperation with the OSCE / ODIHR made a significant number of changes, hidden from the public eye. As it is publicly known, the Working Group sent the draft amendments to the LFPA to the ODIHR in June 2021 but did not publish it or submit it to interested civil society organizations, from which it had previously (in February 2021) requested an opinion on how the ODIHR recommendations should be implemented. As a result, precious half a year was lost, during which the public was able to discuss these proposals. Some of the changes are a consequence of recent agreements from inter-party dialogues, which we commented on in the last prEUgovor Alarm report. Finally, some changes are related to parts of the Action Plan for Chapter 23, which existed in almost the same form in the Action Plan for the implementation of the National Anti-Corruption Strategy from 2013 but have not been implemented in the past eight years.

This draft law has not been prepared in accordance with the standards for public consultation in policy making. Not only was the public not consulted, but there are no indications that all relevant state bodies participated in its preparation, not even the political parties themselves. The composition of the working group that drafted the text was also not announced. Since this Law relates to an area with constant changes and improvements in standards that are comparatively happening as a response to new challenges in party financing and protecting the democratic decision-making process from undue influence, it would be more than justified to consider relevant experiences from other countries before amending the Law. In this regard, it was essential to consider possible ways to regulate the financing of election campaigns by third parties and the financing of political activities through promotion through social networks.

Transparency Serbia, on behalf of the prEUgovor coalition, has prepared several proposals to improve this draft law. We reacted similarly when the same Law was changed after the previous inter-party dialogue. We have proposed legal solutions to several significant problems, including the following:

1) loans should not be treated as a "source of income", and it should be ensured that the sources of financing the repayment of loans taken for the campaign are visible in the financial statements;
2) the value of contributions provided by interrelated legal entities should be limited to prevent circumvention of the permitted maximum;
3) a provision should be returned to the Law prohibiting the funds that parties receive from the budget to finance regular work (that is, anything other than the election campaign) to be used for the election campaign;
4) in order to increase the equality of participants in the elections, 50% of the money from the budget should be divided into equal parts (and not 30% as proposed);
5) advertising material should contain a clear indication of the political entity and the election campaign to which it refers;

6) we have proposed, in line with the practice of most European democracies, to limit the total cost of the campaign, with limits similar to those in Bulgaria, Croatia, Hungary, the Czech Republic and Slovakia (300 million dinars for parliamentary and 200 million for presidential elections);
7) we have proposed measures that would provide significantly greater publicity of campaign finance data while it lasts;
8) when it comes to the control of financial reports performed by the Agency for the Prevention of Corruption, we have proposed criteria for determining the plan and content of the Agency's Report, which should guarantee that all critical issues are subject to control;
9) as for punishing irregularities, we have proposed a much clearer and more thorough regulation of criminal responsibility, both for illegal financing of parties and campaigns and in terms of pressure and retaliation that someone would exert on party donors and companies that provide services.

General Comments and Suggestions

The new Law on Financing Political Activities' Draft essentially represents amendments to individual articles, the changes that were planned before (changes that the Anti-Corruption Agency and the Ministry of Finance worked on five years ago). In addition, the Draft contains changes that were worked on by the Working Group of the Government of Serbia for Cooperation with the OSCE / ODIHR, hidden from the public eye. Namely, as it is publicly known, this working group sent the draft amendments to the LFPA to the ODIHR in June 2021, but did not publish it or submit it to interested civil society organizations, from which it had previously (in February 2021) requested an opinion on how the ODIHR recommendations should be implemented. Based on the insight into the text of these changes and additions made by journalists, it can be concluded that the same changes found a place in this Draft. This further means that, without any reason, the precious half a year was missed to discuss these proposed changes in public and to find the best solutions.

This draft law has not been prepared in accordance with the standards for public consultation in policy making. The public debate on the draft law, which is currently being organized, is only part of the consultative process that should have been conducted before the adoption of such an important law. It was necessary, among other things, to create a starting point for adopting a new law (or to change the existing one), i.e., analyses that would show areas with the biggest problems that need to be solved. Only after setting priorities for resolution, changes have to be made. Besides the associations that monitor this area, their opinion should also give political entities to which the Law applies, the Agency for the Prevention of Corruption – which implements the Law, the media to which relates a significant part of the costs of political entities, the Public Prosecutor's Office and misdemeanour courts that act in cases when political entities violate the Law, as well as other state bodies that may have certain competencies in this regard (e.g. State Audit Institution, Tax Administration, Anti-Money Laundering Administration, MIA and others). It is not clear from the explanation of the Draft Law how these entities were consulted in the implementation procedure.

Also, although the standard procedure for draft laws is to be prepared by working groups formed by line ministries, and based on the Government's Rules of Procedure, there is a duty to publish a list of working group members, this was not done in this case.

Since this Law relates to an area with constant changes and improvements in standards that are comparatively happening as a response to new challenges in party financing and protecting the democratic decision-making process from undue influence, it would be more than justified to consider relevant experiences from other countries before amending the Law. In this regard, it was essential to consider possible ways to regulate the financing of election campaigns by third parties and political activities through promotion through social networks.

There is no sign in the explanation of the Draft Law that any of the above has been done. This is a serious step backwards from the process of passing the existing Law on Financing Political Activities, which was adopted in 2011 following a lengthy drafting process that consulted international experiences, associations active in this field, academia and political actors, with active participation the then Anti-Corruption Agency. Although the consultation process itself was far from ideal and the outcome itself, as Transparency Serbia pointed out on time to the Working Group, the line ministry, the Government, MPs and relevant international organizations, it was far better than the current one. We remind you that before the adoption of the Law, a public hearing was organized in the National Assembly, which should certainly be done on this occasion as well to reduce at least a part of the shortcomings.

The explanation also contains many untrue allegations. Thus, it is stated that "for this law, it is not necessary to analyze the effects of the law, since its adoption would not create new obligations for economic and other entities." This assessment is certainly not correct because the Draft, in the existing text, brings some new obligations for political entities and potentially for other legal and natural persons. Furthermore, it is stated that "for the implementation of this law, it is not necessary to provide financial resources in the budget of the Republic of Serbia", which is also not true. Namely, applying some of the provisions of the Law will require the additional engagement of state bodies – e.g., Anti-corruption agencies in connection with preliminary reports on campaign expenditures, for the Tax Administration in terms of including certain entities in the annual control plan.

The explanation states the following:

"*Provisions on party financing and the election campaign need to be further improved in line with earlier OSCE / ODIHR recommendations in order to introduce stricter regulations and greater transparency." The Working Group prepared the text of the Initiative to amend the Law on Financing Political Activities in order to strengthen the responsibility of political entities that participate in elections in terms of use and disposal of public resources, but also the obligation of the Anti-Corruption Agency to sanction political entities that do not comply with the Law during the election campaign. The Ministry of Finance considered the text of the Initiative, so it fully accepted it and proposed the adoption of the Law on Amendments to the Law on Financing Political Activities. This Working Group continued its work in 2020, and after analyzing all the recommendations from the Final Report of the ODIHR Special Mission for Election Assessment, dated October 7, 2020, both Priority and Other Recommendations, which she incorporated into the text of the Law, proposed the adoption of a new Law on the Financing of Political Activities."*

It is not clear how the individual ODIHR recommendations were discussed and how the conclusion on how to proceed with each of them was reached. In addition, the draft law obviously does not reflect some of the ODIHR's recommendations, most notably the lack of limits on the overall cost of the election campaign. As can be seen from some of the proposed changes, the transmission of some ODIHR recommendations was automatic and without sufficient consideration of which solutions would best suit the problems that arise in practice. An example is the proposal to submit a preliminary report on campaign costs, although there was a possibility that the problem of insufficient publicity of funding while the election campaign was still ongoing would be resolved in a way that would provide much greater transparency and less burden on political actors and the Anti-Corruption Agency, although the Serbian Government's Working Group for Cooperation with the ODIHR was aware of such proposals.

The explanation also states the following:

"*Also, the obligation to pass the Law on Financing Political Activities derives from the Action Plan for Chapter 23, adopted in July 2020. Namely, to the extent 2.2.2.1. It was determined to amend the Law on Financing of Political Activities so as to clearly define and delineate the obligations of the Anti-Corruption Agency and the State Audit Institution and other bodies in the process of controlling political activities and entities in accordance with qualitative analysis of the application of the provisions of the Law on Financing of Political Activities. Measure 2.2.2.2. introduces the obligation to the ministry in charge of finance to prescribe that the audit program must include the audit of parliamentary political parties at the national level, as well as to introduce the obligation of the Director of the Tax Administration to include financial service providers in the annual or extraordinary plan of tax control funds and other services to political entities in accordance with the Report of the Anti-Corruption Agency on the financing of political activities and entities*."

This part of the explanation does not state the deadlines for fulfilling the obligation and why it was not fulfilled within the prescribed time frame. However, there was obviously enough time for that, and the Law on Financing Political Activities was changed in the meantime. Namely, this obligation was not determined for the first time in July 2020; it was stated in the original Action Plan for Chapter 23 (April 2016), and even before that, in almost the same text in the Action Plan for the implementation of the National Strategy for Combating corruption, passed in 2013.

The general part of the explanation of the Draft Law reads as follows:

"*For these reasons, the government has proposed the adoption of the Law on Financing Political Activities*."

This explains the Draft Law published by the ministry when putting it up for public discussion. The purpose of the public debate is to improve the Draft Law based on proposals and comments of the participants. Such an explanation discouraged potential participants in public debate since the Draft Law is presented as if it was already a Bill proposed by the Government of the Republic of Serbia.

Further discouragement for participating in public debates is the non-planning of public gatherings (either online or in the form of a live meeting) where new solutions would be presented and where participants could get additional explanations and point out possible improvements.

Due to all these shortcomings of the consultation process and the slight possibility to influence substantial changes in all disputed provisions of the Law, we focused primarily on those provisions that are new in the Draft in relation to the existing Law on Financing Political Activities. In addition, we intervened with certain other provisions where we considered that these changes were the most urgent, i.e. where the shortcomings of the text of the Law are the greatest.

All changes are shown for easier tracking in the "track changes" format, except when completely new provisions are proposed.

Comments and Suggestions for Individual Articles

Private sources
Article 7

Private sources of financing political activity are membership fees, contributions, inheritance, legacies~~,~~ and income from property~~. and borrowing from banks and other financial organizations in the Republic of Serbia.~~

Explanation

Borrowing from banks and other financial organizations is not the income of a political entity but their obligation. By deleting the provisions on loans from the definition of private sources, the harmonization with the regulations in the accounting field is performed, based on which the loan funds do not represent the legal entity's income. This way, the harmonization with the provisions of Article 3 of this Law is also performed, in which the issue of loans is discussed in paragraph 3, while the different types of sources of income (public and private) are discussed in paragraph 1, which indicates that loans do not belong to either private or public sources of income.

The maximum value of a donation
Article 10

The maximum value of annual donations that an individual can give to political entities for regular work is a maximum of 10 average monthly salaries.

The maximum value of annual donations that a legal entity can give to political entities for regular work is a maximum of 55 average monthly salaries.

The maximum value of donations per year which several related legal entities, in terms of the Law governing the work of economic entities, can give to political entities for regular work, is 165 average salaries.

Benefits whose annual value is more than one average monthly salary are publicly announced.

A political entity is obliged to publish the donation referred to in paragraph 3 of this Article on its website within eight days from the day when the value of the donation exceeded the amount of one average monthly salary.

Explanation

It is the practical significance of reducing the maximum allowed contributions of natural and legal persons, although this is the implementation of one of the ODIHR recommendations. As can be seen from previous reports on the financing of election campaigns, there were very few situations when the contributions received were close to the maximum allowed amount. In addition, in the structure of political entitiesć revenues, especially in election campaigns, the share of such high revenues is negligible.

If something changes in this Article, it should be a priority to prevent circumvention of the rules. Currently, there is no obstacle for several legal entities that are interconnected (one company is the founder of another, the same natural person is the founder of several companies) to donate the amount up to the maximum allowed amount to finance political activities. Since the number of such related legal entities is not limited, imposing the current legal prohibition would make sense. Therefore, a solution was proposed according to which

the maximum amount for related legal entities would be calculated in the overall level, which is twice as high as the one valid for one legal entity.

Acquisition and Income from Political Party Property
Article 11

The property of a political party consists of real estate and movables.

The property referred to in paragraph 1 of this Article shall be used only for political activity and other permitted activities of the political party, in accordance with the Law.

A political party acquires property by sale, inheritance and legacy.

A political party, which acquires immovable property with funds from public sources, may use that property exclusively for the conduct of its political activities.

The real estate referred to in paragraph 4 of this Article may not be alienated by a political entity without compensation or at a price lower than the market price according to the assessment of the competent tax authority and cannot guarantee the return of loans or other financial obligations.

Funds generated from the sale of property referred to in paragraph 4 of this Article shall be considered funds from public sources.

Property income consists of income that a political party generates from the sale of movable and immovable property, leasing of immovable property owned by a political party and interest on deposits given with banks and other financial organizations in the Republic of Serbia.

Explanation

The current norm in paragraph 4 prescribes a restriction for political parties that buy real estate with funds received from public sources - that they can use that real estate exclusively to implement their political activities. However, this restriction can be circumvented by the political party buying real estate from public sources, then selling that real estate and using the money obtained from that sale without restrictions. Similarly, the purpose of a legal restriction could be circumvented when a political party alienate real estate without compensation or at a price that deviates from the market price, especially if such a contract is concluded with a related legal or natural person. For the same reason, it would be disputable to use the real estate thus acquired as collateral for a loan (e.g., a mortgage) or to pay other financial obligations.

In order to solve the described problems and fully achieve the purpose for which the restrictions are prescribed in paragraph 4 of the existing text of this Article, new paragraphs 5 and 6 are proposed. These paragraphs stipulate that political entities may not alienate real estate referred to in paragraph 4 without compensation or at a price lower than the market according to the assessment of the competent tax authority, and that such real estate cannot guarantee repayment of loans or other financial obligations. Funds obtained by political entities through the sale of property referred to in paragraph 4 would be considered funds from public sources.

Use of Funds to Finance Regular Work
Article 19

Funds for financing the regular work of political entities are used to function and propagate the idea of a political entity and include: work with voters and membership, costs of transportation and meetings, costs of promotion, advertising materials and publications, costs of public opinion research, training, international cooperation, costs salaries and compensation of employees, utility costs, as well as costs for other similar activities.

Funds for financing the regular work of political entities originating from public sources cannot be ~~are~~ used to finance election campaign expenses and to repay loans used to finance election campaigns.

Funds originating from public sources in the sense of paragraph 2 of this Article are considered to be:

1) all funds in the account of the political entity for financing regular work on the day when the election campaign begins, less the amount of funds for which the political entity has evidence that they were collected from private sources during the current year, and when the election campaign begins on April 15 or previously for the amount of funds for which the political entity has evidence that they were collected from private sources during the previous year;

2) all inflows to the account of the political entity for financing regular work during the election campaign and after the election campaign until the submission of the report on its financing, except for those for which the political entity has evidence that they were collected from private sources during that period;

Funds obtained from public sources in the amount of at least 5% of the total funds received for regular work on an annual basis, the political entity is obliged to use for professional development and training, international cooperation and work with membership.

Explanation

The Law on Financing Political Activities provides for two legal bases for financing political entities - financing regular work and financing the election campaign. Considering the definitions from the ZFPA, it can be concluded that the "regular work" of political entities consists of all those activities that do not constitute an election campaign. The current Law on Financing Political Activities has clearly distinguished these two types of activities and the purpose of funds allocated from public sources for their financing. However, the Law did not prescribe clear criteria for determining whether a political entity, which transfers funds from a permanent party account to a special campaign finance account, uses funds from public or private sources. In the meantime, the 2014 amendments drastically violated the original concept of the Law by stipulating that money received from the budget of the Republic, autonomous province and local self-government for one purpose (financing regular work) can be used opposite to that purpose - to finance election campaign expenses.

In order to eliminate inconsistencies in the separation of the two types of funding from public sources and to ensure that funds allocated to political entities from the budget are spent in accordance with their purpose, a provision was proposed stipulating that funds allocated from the budget to finance regular work of political entities cannot be used to fund the election campaign. To achieve the same purpose, i.e., in order to prevent its circumvention, a restriction has been proposed, which refers to the source of funds for repayment of loans taken by a political entity to finance election campaign expenses.

In addition, in order to eliminate possible doubts when determining whether some funds in the account for financing the regular work of a political entity come from public or private sources, precise criteria have been proposed. These criteria introduce the assumption in favour of political entities - that the funds come from private sources. For example, suppose a political entity received 10 million dinars during the year to finance regular work from the budget and collected 2 million dinars from private sources during the same period and on the day the election campaign starts has 5 million dinars in its account, it will be considered that only 3 million dinars (five minus two) come from public sources, while 2 million will be available for the campaign financing. In case the election campaign starts on April 15 or earlier in the year, an additional benefit for political entities is reflected in the fact that "private sources" include those from the previous year. This date was chosen because it is the deadline for submitting the annual financial report for the previous year. Specifically, suppose in the last year, the political entity, as in the current one, had 2 million dinars of income from private sources, and on the day of calling the elections, it had 5 million dinars in its account. In that case, it will be considered that only one million dinars come from public sources while 4 million dinars can be used to finance the campaign.

Since the transfer of funds for election campaign financing can be done during the election campaign, and even after it until the time of submitting the report, there is an assumption in favour of political entities - that everything collected from private sources in that period can be used for financing the election campaign.

Allocation of Funds from Public Sources
Article 21

Funds referred to in Article 20 of this Law in the amount of 50~~30~~% shall be distributed in equal amounts to the submitters of the announced electoral lists who, when submitting the electoral list, gave a statement that they will use funds from public sources to cover election campaign expenses. These funds shall be paid within five days from the day of the decision determining the collective electoral list to the political entity that has submitted the electoral guarantee within the period prescribed by Article 25, paragraph 3 of this Law.

The remaining part of the funds referred to in Article 20 of this Law (50~~70~~%) shall be allocated to the submitters of electoral lists who won seats, in proportion to the number of seats won, within five days from the day of issuing the report on the overall election results regardless of whether they used funds from public sources to cover the costs of the election campaign.

In the case of holding elections under the majority electoral system, the funds referred to in Article 20 of this Law in the amount of 50~~30~~% shall be distributed in equal amounts to the nominators of candidates who submitted a statement that they will use funds from public sources to cover election campaign expenses. These funds shall be paid to the nominators of candidates within five days from the day of making the decision determining the list of candidates if they have passed the election guarantee within the period prescribed by Article 25, paragraph 3 of this Law.

In case of holding the elections referred to in paragraph 3 of this Article, the remaining part of the funds referred to in Article 20 of this Law (50~~70~~%) shall be allocated to the nominee of the candidate who won the mandate within five days from the day of reporting used funds from public sources to cover election campaign expenses.

If the elections referred to in paragraph 3 of this Article are held in two constituencies, the remaining funds referred to in Article 20 of this Law (50~~70~~%) shall be distributed in equal amounts to the nominators of candidates participating in the second round, ~~in proportion to the number of votes election round,~~ within five days from the day of announcing the election

results of the first round, ~~of the adoption of the report on the overall election results in the second round,~~ regardless of whether they used funds from public sources to cover the costs of the election campaign.

If the submitters of electoral lists, i.e., the nominators of candidates who have given a statement that they will use funds from public sources to cover the costs of the election campaign, do not submit an election guarantee within the deadline prescribed by Article 25, paragraph 3 of this Law, the candidate is transferred to the remaining part of the funds from para. 2 and 4 of this Article and shall be awarded to them in accordance with Article 25, paragraph 4.

Funds for the election campaign from public sources are distributed by the ministry in charge of finance, i.e., the competent body of the autonomous province or local self-government unit.

Explanation

The prEUgovor coalition believes that the system of financing the election campaign from public sources is set up completely wrong. Namely, the purpose of financing in the Law was not clearly defined in 2011, nor is it clearly defined in the Draft. It can be assumed that the purpose of financing election campaigns from the budget is twofold. On the one hand, taxpayers' money should enable election participants to enter the election race more equally. In that sense, a part of the money from the budget is distributed in equal parts to all submitters of electoral lists/nominators of candidates, who express their intention to use these funds and provide an election guarantee. The current rules are illogical regarding achieving this goal because the amount allocated to participants is determined by external factors - the amount of the budget and the number of participants. As a result, in cases where there are more participants in the elections, each of them will receive less money from the budget, although their needs for money for promotion are greater. Determining the amount of benefits according to the budget also has two consequences for election participants. When it comes to large budgets and low-intensity campaigns, it can easily happen that the allocated budget funds are too large, and then political entities figure out how to spend that money for purposes other than the campaign or pay excessive costs for activities in campaigns related to individuals and legal entities. On the other hand, when total budgets are small, the funds allocated to political entities are negligible and do not provide even the minimum level of promotion. This is the case, for example, with allocations from cities and municipalities for local elections. The paradox of such a separation system is best seen when national and local elections are held simultaneously, and some of the political entities participate only in the local ones. In that case, entities that participate in both national and local elections receive several hundred times more money from the budget and have a significant initial advantage at the local level.

Another possible purpose of public funding is to reduce corruption risks. In that sense, the legal concept that has existed since 2003 (Law on Financing of Political Parties) provided that 80% of the money from the budget is allocated after the elections only to those political entities that get seats, i.e., on whose proposal the President of the Republic is elected. Such a division could be defended by the logic that only these political entities can be exposed to corruption risks because they will be able to influence decision-making in some way. The apparent weakness of such a model is reflected in fact, confirmed in practice, that activities are undertaken before the election success is known, and that political entities, although no one can know in advance how much money they will receive based on electoral success, calculated costs of their campaigns based on the prediction of the election result. This gave a huge advantage to those political entities projected to have better prospects while exposing many political entities (which fail to pass the census) and their suppliers to enormous risks.

This system was positively corrected in 2011 by envisaging a different distribution model for the presidential elections. It provided that all nominees shared 50% of the funds in equal parts, while those nominees who entered the second round shared the rest. This concept is abandoned in the Draft Law, and we do not consider such a change justified.

Although Transparency Serbia is in favour of changing the distribution system, with all the above, we currently do not offer concrete solutions. They can be reached only after a comprehensive discussion determining the minimum funds allocated to all participants in the election, which would not depend on external factors.

If the concept of distribution of these funds remains the same, we suggest its adjustment in relation to the currently envisaged provisions. Regarding the distribution of funds for the presidential elections, the method of distribution should not be changed with regard to the provisions of the current Law on Financing Political Activities. In other words, it should be envisaged that half of the funds are distributed to all nominators and the rest equally to the nominators of candidates who enter the second round, i.e. the nominator of the candidate who wins in the first round.

When it comes to the parliamentary elections, we believe that the legal solutions should be compared to the existing presidential election campaign model. Therefore, the share of funds distributed in equal parts to all submitters of electoral lists should be increased to ensure greater equality of participants in the elections, from the current 20% (or 30% as envisaged in the Draft) to 50%. The rest of the money could be distributed based on the current model.

Financing Election Campaign from Private Sources and Loans
Article 22

A political entity may raise funds from private sources to finance election campaign expenses.

In one calendar year in which elections are held, natural and legal persons may, in addition to giving for regular work, also provide funds for election campaign expenses up to the maximum prescribed amount at the annual level referred to in Article 10 para. 1 and 2 of this Law, regardless of the number of election campaigns in a calendar year.

To finance the election campaign costs, a political entity may use loan funds with a repayment period no later than 30 days from the day of the election.

Explanation

The current provisions of the Law on Financing Political Activities do not set limits on the time by which loans taken by political entities in order to finance an election campaign must be repaid. This opens the possibility that the election campaign costs will be paid later, after the submission of the report on its financing, and in the unlimited future period. As a result, the purpose of submitting campaign finance reports, the publicity and control of the accuracy and completeness of those reports are compromised. For example, a political party may state that it financed the election campaign with 90% of the loan. This information says nothing about the sources from which these costs will eventually be paid. The only way to achieve full transparency of election campaign revenue sources is to set a deadline within which the loan initially used as a source of funding must be repaid. It is proposed that the deadline be 30 days from the day of the elections. Alternatively, the deadline may be the same as the deadline for reporting campaign costs. However, this deadline cannot be predicted in advance (at the time when the loan is agreed) because it is not known within which deadline the election commissions will announce the final election results, while the day of the elections is determined in advance. Therefore, setting this deadline achieves greater legal certainty for political entities and banks.

Election Campaign Costs
Article 23

The costs of the election campaign are the costs of all activities that are considered an election campaign in terms of Article 2, indent five of this Law.

For the purpose of implementing activities within the election campaign, the political entities will be prohibited from using the budget funds of the Republic of Serbia, the budget of the autonomous province and the budget of the local self-government, that the candidates at elections and election lists, self-government or directly elected persons, have at their disposal for the purposes of performing their official duties.

Political entities are prohibited from using other public resources during the election campaign, except for public services and goods allocated in accordance with Article 6, paragraph 2 of this Law, including official premises, vehicles, websites and inventory of state, provincial and local authorities, public institutions and public enterprises, except for those public officials who use public resources to protect personal safety, if such use of public resources is regulated by regulations in this area or by a decision of the services that take care of the safety of officials.

A political entity may use the premises and services of bodies and organizations referred to in Article 6, paragraph 1 of this Law for the election campaign if those premises and services are available under equal conditions to all political entities, based on publicly available decisions of those bodies and organizations. they can ensure the use of premises and services during the election campaign to any political entity that has expressed interest in it in a timely manner.

Funds collected from public and private sources to finance the costs of the election campaign may be used only for the activities referred to in paragraph 1 of this Article.

Regulations and rules governing the conduct of the media in the election campaign apply to each rental of terms in the media.

If political entities distribute advertising material, brochures, leaflets, publications, they are obliged to mark this material with precise data on the name of the entity that provides services for the production of advertising material, brochures, leaflets, publications.

The advertisement and any other type of promotional material used in the election campaign must contain the identification of the political entity participating in the election campaign and the election campaign to which the material refers.

Explanation

The current norm stipulates the obligation to identify the entity that provides services (e.g. printing house) and not the political entity for whose needs the advertising is performed.

An amendment has been proposed regarding the identification of the entity participating in and advertising in the election campaign. Any type of campaign material (e.g., television and print advertisements, social media posts, publications, leaflets) should include a label of the political entity to which it belongs. This creates the preconditions for controlling the accuracy and completeness of the campaign finance report. Although the objectives of this amendment can be partially met by the application of the Law on Advertising ("Official Gazette of RS", No. 6 of January 28 2016, 52 of July 22 2019 - other Law), the need to amend Article 23 still exists, because it is not certain that the Law on Advertising would be applied to the production of all materials used for the purpose of the election campaign.

In addition to mentioning the political entity behind a specific promotional material, it is also obligatory to state the campaign to which the material refers. This is important because of the possibility of campaigning for multiple elections at the same time, so that precise identification of materials allows more effective control of the accuracy of financial reporting on election campaign expenses, as it clearly indicates whether promotional material refers to parliamentary, presidential, provincial or local elections in some local government.

Separate Account for Election Campaign Financing
Article 24

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 the financing of the election campaign shall be paid into the account referred to in paragraph 1 of this Article, and all payments of election campaign expenses are made from that account.

Funds collected for regular work from private sources may be used by a political entity for election campaign expenses, provided that it pays them into the account referred to in paragraph 1 of this Article.

Opening of the account from para. 1 and 2 of this Article for the coalition, i.e., the group of citizens shall be regulated by the agreement on establishing such political entities.

Explanation

In paragraph 4, harmonization with other provisions of this Law has been performed. Namely, funds for the regular work of political entities may be collected from private sources, as provided in Article 22 of this Law, while funds from public sources shall be distributed, as prescribed in Art. 16, 17, 20 and 21 of this Law.

Since we have suggested in Article 19. that funds obtained from public sources cannot be used to finance the election campaign, this amendment is needed for harmonization.

Election Bond
Article 25

A political entity declaring an 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 consists of depositing cash, bank guarantee, government securities or mortgaging the amount of the bond on the immovable property of the person providing the guarantee.

When funds owned by a political entity are not used as an election bond, the rules from this Law regarding contributions shall apply to the election bond.

Funds from the election bond referred to in paragraph 2 of this Article shall be submitted or deposited with the ministry in charge of finance, i.e., the competent administrative body of the autonomous province or local self-government unit, within three days from the day of the proclamation of all electoral lists.

A political entity declaring an intention to use funds from public sources to cover election campaign costs and does not provide an election bond within three days from the day of proclaiming all electoral lists, i.e., determining the final list of candidates, is entitled to funds from public sources to cover the election campaign costs, in the same amount allocated to the political entity that posted the election bond, if it wins at least 1% of valid votes or at least 0.2% of valid votes if the political entity represents the interests of a national minority, within five days from the date of the report on the overall election results.

Explanation

The new paragraph 3 prescribes the similar application of the rules relating to the annexes provided by this Law if a political entity does not use funds in its own ownership as an electoral bond.

In the absence of this provision, it could happen that a political entity guarantees funds owned by a person who would not otherwise have the right to be a contributor to the election campaign or that the value of these funds is higher than the maximum allowed value of contributions for the election campaign. If the bail is collected for the reasons provided by the Law, it could happen that the political entity received a contribution that it was not entitled to receive, and it would not be possible to eliminate this shortcoming. The proposed amendment aims to prevent the possibility of such a situation.

Return of Funds
Article 26

The election bond is returned to the political entity if winning at elections a minimum of 1% of valid ballots, or at least 0.2% of valid ballots if the political entity is representing and represents the interests of a national minority, within 30 days from the day of declaring the 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 funds.

In the case referred to in paragraph 3 of this Article, the political entity is obliged to present the funds deposited as an election bond owned by another person as a contribution of those persons.

Explanation

Pursuant to the proposed changes in Article 25, the treatment of the given bond as an attachment is specified here if it is collected.

Limiting Election Campaign Costs
Article 26a

A political entity for financing the election campaign in the elections for deputies cannot have expenses that exceed three hundred million dinars.

A political entity for financing the election campaign in the elections for the President of the Republic cannot have costs that exceed two hundred million dinars.

A political entity for financing the election campaign in the elections for deputies in the Assembly of the Autonomous Province cannot have costs, and for councillors in the Assembly of the City of Belgrade cannot have expenses that exceed fifty million dinars.

A political entity that finances the election campaign in the elections for councillors in the City Assembly cannot have campaign expenses exceeding ten million dinars.

A political entity that finances the election campaign in the elections for councillors in the municipal assembly and the city municipality cannot have campaign expenses exceeding five million dinars.

A political entity with the election campaign financing costs higher than the limits from para. 1 to 5 of this Article is required to, within 30 days from the day of submitting the report on campaign expenses, i.e. from the day when the Agency determined exceeding the allowed expenses, pay into the budget of the Republic, autonomous province, i.e., local self-government twice the amount of the difference between the actual and allowed costs of the election campaign.

Explanation

One of the ODIHR recommendations that have not been implemented at all through the Draft provisions is recommendation number 5, given after the 2016 parliamentary elections. The ODIHR calls for implementing the recommendations made earlier in each new report. It is a recommendation that emphasizes the need to limit the overall level of election campaign costs.

The purpose of adding a new member is to limit the amount a political entity can spend in an election campaign. Regulating the financing of the election campaign, and in particular, limiting the costs that a political entity can use in the election campaign, is needed to protect the democratic decision-making process, that is, to prevent financially overwhelming political entities from occupying public space to the extent that it hinders the possibility of successful representation of other candidates and electoral lists.

To achieve these goals, it is necessary to prescribe in the Law the maximum allowed amounts that a political entity can use in elections.

This position is supported by the practice in the vast majority of European and world countries, where the mentioned restrictions have already been largely prescribed. If we take the example of countries in the region that are similar in size and have a similar population as Serbia, and they are members of the European Union – like Hungary, Bulgaria - we can find restrictions that political entities can spend in election campaigns. In Bulgaria, campaign expenses are limited to approximately € 1 million for the presidential election campaign and € 2 million for the parliamentary elections, while in Hungary, the parliamentary election limit is € 2.7 million for the parliamentary list proposing the maximum number of candidates (and relatively less for lists that do not compete across the country). In Slovakia, which is slightly smaller than Serbia, a presidential candidate can spend only half a million euros in an election campaign, and in the Czech Republic, the limit for parliamentary elections is 3.5 million euros,

and for presidential elections about 1.5 million if the candidate participates only in the first round. If he participates in the second round, the presidential candidate must not spend an amount of slightly less than 2 million euros (including the amount spent in the first round). In the newest EU member and former SFRY member, neighbouring Croatia, the limit is about 1m euros for the presidential election and about 2.4m euros in total for the parliamentary elections - for parties competing across the country (approximately 200,000 euros for parliamentary elections units, of which there are 12 in Croatia).

Having in mind the mentioned restrictions from the closest environment of the Republic of Serbia, we proposed that the total expenditures of one political entity be limited to 300 million dinars (approximately 2.5 million euros) for the parliamentary elections and to 200 million dinars (about 1.7 million), for the presidential election.

Similarly, restrictions have been proposed for other types of elections, which are significantly lower. For provincial and Belgrade elections, 50 million dinars (about 420 thousand euros) is proposed, for elections in other cities 10 million dinars (about 85 thousand euros), and for elections at the level of municipalities and city municipalities 5 million dinars (about 42 thousand euros).

A special paragraph prescribes the manner of punishing excess expenditures. A political entity to whom it happens will be obliged to pay to the budget twice the amount for which it exceeded the allowed costs and should fulfil that duty within 30 days. The deadline starts from the day of submitting the report on the campaign's expenses when the political entity reports the excess of the allowed expenses. Another possible situation is when the participant in the election does not report the overrun, but it is subsequently discovered. Therefore, it is prescribed that the deadline begins to run from the day when the Agency determines that the political entity has exceeded the legal maximum.

Report on Election Campaign Costs
Article 29

A political entity participating in the election campaign is required to submit to the Agency a preliminary report on election campaign expenses up to seven days before the day of voting and a final report on election campaign expenses within 30 days of publication of the overall election results.

The reports referred to in paragraph 1 of this Article shall contain data on the origin, amount and structure of funds collected and spent from public and private sources, as well as on assumed obligations towards suppliers.

The preliminary report on the expenses of the election campaign refers to the period from the date of calling of elections until 15 days before the day set for voting.

The final report on the expenses of the election campaign refers to the period from the date of calling of elections untli the date of publishing the overall report on the election results.

The preliminary report on election campaign expenses shall be published on the Agency's website within three days from the day of receipt of the duly submitted and duly submitted report, and the final reports on election campaign expenses shall be published on the Agency's website within seven days from the day of receipt of a proper and in the prescribed form submitted report.

The content and manner of submitting the report referred to in paragraph 1 of this Article shall be regulated in more detail by the Director of the Agency.

The act referred to in paragraph 6 of this Article shall be adopted by the Director of the Agency within a period that ensures that the act enters into force no later than five days from the day of calling the elections. Amendments to the act referred to in paragraph 6 of this Article may not be made during the election campaign.

The special campaign finance account data are public except for the bank account number and the contributor's address.

The manner of providing the public with data from the special account shall be regulated in more detail by the act of the Director of the Agency referred to in para. 6. of this Article.

Explanation

Based on the recommendations of the ODIHR, the Draft Law envisages the submission of "preliminary reports". However, this solution is conceptually wrong, and its effect is almost non-existent. Fifteen days before the election, participants will pay only a negligible part of the campaign costs. In fact, most election campaign expenses are paid only after the election itself. However, this does not mean that the transparency of data is irrelevant. On the contrary, it is necessary to find an adequate solution to secure it.

The purpose of the proposed amendments is to provide publicity on campaign finance data as long as it lasts adequately. Public record on campaign finance during the campaign should be ensured by publishing income and expenditure data (from a special campaign finance account) and records of commitments made during the campaign, which will be paid after the election. The introduction of the obligation to publish information on campaign revenues and expenditures from a special account for its financing should not additionally burden participants in the election process.

The precondition for that is in technical and legal solutions, such as those in the Czech Republic - the bank with which the account is kept, based on the legal obligation, i.e. the user's consent, provides public insight into transaction data. This endeavour would be even easier in Serbia because most participants use the account opened with the Treasury to finance the campaign. Doing so, it should not make public and some protected private data (e.g. current account number or donor JMBG).

Essentially, campaign participants would not be obliged in this way to disclose any information that is not already (in principle) publicly available. The only difference is that data on revenues and expenditures – if the publicity of data from special accounts for the campaign is introduced – would become public as soon as these transactions occur, and not only after submitting a report to the Anti-Corruption Agency.

The introduction of the obligation to keep records and publish information on unpaid expenses (commitments) would be an important novelty and a possible burden for political entities. However, the introduction of such a rule is very important in the context of applying the current regulations on campaign financing. Namely, experience from all previous elections shows that the vast majority of campaign expenses are paid only later, after receiving budget grants based on election success, and that a significant part of costs remains unpaid even after submitting a report on campaign expenses, although all campaign activities end two days before the election. Therefore, it is necessary to provide not only public information on the costs paid before the election but also on the obligations that were assumed towards suppliers in that period (e.g. the value of broadcast TV commercials, leased billboards, etc.). At least for the highest costs, disclosure of this information should not be an excessive burden for election participants, as they already have contracts or purchase orders related to promotional activities. The practical importance of publishing this data, both for citizens and for the control performed by the Agency for the Prevention of Corruption, is great. Namely,

publishing these data would significantly narrow the possibility of adjusting the data on revenues, and especially campaign expenses, to the future uncertain circumstance - the success of a political entity in elections, and to avoid the legal obligation to return the unspent part of budget grants to the budget or for other types of violations of the ZFPA.

In order to solve the described problems, we propose minimal interventions in Article 29. The first is the introduction of the obligation to keep records of commitments. This commitment aims to provide public information on the commitments made in the "preliminary reports" (in case the concept of publicity of campaign finance accounts is not adopted).

The amendments to paragraphs 7 and 8 create the preconditions for broader changes. Paragraph 7 introduces the legal presumption of publicity of data from special accounts (all information except the account number and the address of the contributors). Paragraph 8 stipulates that the manner of providing data to the public will be regulated in more detail by an act of the Director of the Agency.

Return of Funds from Public and Private Sources
Article 30

All funds from public sources that he did not spend during the election campaign, the political entity is obliged to pay into the budget of the Republic of Serbia, autonomous province or local self-government unit, by the day provided by Law for submitting reports.

All funds from private sources not spent during the election campaign and not returned to the contributors, the political entity is obliged to transfer to the account he uses for regular work until the day provided by Law for submitting reports.

Unless otherwise agreed, contributions are returned in reverse order from the date of receipt.

If the contributor refuses to accept the contribution or the return is otherwise impossible, the unspent part of the funds shall be transferred to the account used by the political entity for regular work, and if that is not possible, then to the account referred to in paragraph 1 of this Article.

Explanation

The current text of the Law regulates the issue of returning the unspent part of funds from public sources to the budget, while the funds collected from private sources are expected to be transferred to the permanent account of the political entity. Such a solution is problematic because some political entities do not have a permanent account (groups of citizens, especially those who do not pass the census and do not exercise the right to finance regular work). In addition, there is no possibility for other political entities which received a contribution from citizens and legal entities for one purpose (election campaign financing) to return that contribution to donors (who might not give their contribution for financing the regular work of a political entity).

Amendments have been proposed to address both of these issues. Unless otherwise agreed (when making contributions), unspent funds from received contributions would be returned in reverse order from the date of their receipt.

Rules are also provided if the contributor does not want a refund and if such a refund is impossible for any reason.

Powers of Agency and Control of Financing
Article 32

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

A political entity shall, at the Agency's request and within the time frame set by the Agency which may not be shorter than three days and 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 the election campaign, a political entity is required upon the request of and within the time frame set by the Agency, which may not be shorter than 24 hours or longer than 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 provinces and local self-governments, banks, as well as legal and natural persons financing political entities, performing for and/or on their behalf particular services are required to forward to the Agency at its request and within the deadline defined by the Agency, and which, in the course of the election campaign cannot be longer than three days, all data required by the Agency to discharge duties from its purview set forth under this Law.

With regard to the obligation to submit data determined in paragraph 4 of this Article, the prohibitions and restrictions determined by other regulations shall not apply.

Explanation

Paragraphs 2 and 3 of this Article propose deadlines within which political entities are required to respond to the Agency's requests. During the election campaign, the Agency sends a request with a shorter deadline, according to the urgency and importance of the request. Currently, the Law envisages only the most extended deadlines that the Agency can set for data submission, but not the shortest ones, so the proposed amendments eliminate this shortcoming.

Article 33

The control of the reports of political entities referred to in Articles 28 and 29 of this Law shall be performed by the Agency according to the control plan adopted by the Director of the Agency.

The plan of control of annual reports on the financing of political entities must include reports of political entities that receive funds from the budget of the Republic of Serbia for financing regular work, political entities that in the reporting period carried out political advertising or organized promotional activities estimated at more than 1,000,000 dinars, political entities that in the previous reporting period had debts of more than 1,000,000 dinars, as well as political entities with which the Agency found irregularities in the previous reporting period.

The control plan of the report on the expenses of the election campaign must include the reports of all political entities that nominated candidates, i.e. submitted electoral lists in the elections for President of the Republic, deputies, deputies in the Autonomous Province Assembly, councillors in the Belgrade Assembly.

When elections for the city councillors and municipal assemblies are held simultaneously in five or fewer local self-governments, the control plan includes the reports of all submitters of electoral lists.

The control plan in paragraphs 2 to 4 of this Article shall contain a description of the activities that the Agency will undertake to carry out control in the period covered by the report and after submitting the report in order to determine their accuracy and completeness i.e., compliance with legal obligations.

The plan for control of annual reports on the financing of political entities is published on the Agency's website by March 15 of the current year, and the plan for control of reports on election campaign expenses is published on the Agency's website five days after the election.

The control plan may be amended or supplemented based on information relevant to the control observed by the Agency itself or based on received proposals.

Amendments to the control plan, and the decision on the consideration of proposals for amendments to the plan, the Agency publishes on its~~it shall be published on the Agency's~~ website within three days from the day of the amendment or supplement, i.e., the decision on the consideration of the proposal.

The Agency shall prepare a report on the findings~~results~~ of the control of the annual report on the financing of the political entity, which shall be published on the Agency's website by February 1 of the following year.

The Agency prepares a report on the findings ~~results~~ of the control of the final reports on election campaign expenses, which includes the control of preliminary reports of the political entity, which is published on the Agency's website no later than 120 days from the deadline for submitting the final report on election campaign expenses.

The reports referred to in paragraphs 9 and 10 of this Article are an integral part of the annual report on the Agency work for the year in which they were published.

The report of the Agency referred to in paragraph 11 of this Article must contain a description of the information obtained by the Agency in the process of control of individual reports, a comparison of data related to the same costs in the reports of political entities, as well as those that were not subject to verification by the Agency, identification of political entities where irregularities were found, identification of other persons who did not act under the Law and description of measures taken by the Agency to eliminate these irregularities and initiate proceedings against perpetrators works.

Explanation

The novelties brought by the new Article 36 are significant. For the first time, the obligations of the Agency in the procedure of control of the report on the campaign financing are prescribed, not only the powers of this body.

However, these rules are incomplete and do not guarantee that their application will provide more complete control of the report than has been the case so far.

The new paragraph 2 proposes mandatory elements for the control plan of annual reports on the financing of political entities. These would be, above all, the parties and groups of citizens represented in the National Assembly. In addition, we suggest that the control be carried out by those political parties that have organized activities (e.g., mass rallies) whose value is estimated at over one million dinars or have carried out political advertising (outside the campaign) in any value. Finally, those entities that operated incorrectly in the previous year would also be subject to control.

We have proposed mandatory control of all national, provincial and Belgrade elections reports regarding campaign expenses. Also, control would be compulsory for all reports on the financing of city and municipal elections held independently from others. The reason is an assumption that the public and party infrastructures would focus on those places, so the risks of illegal campaign financing could have broader significance than local.

We have proposed a significant amendment concerning the specification of the control plan, not only in terms of the number of reports that must be reviewed but also of the mandatory content. Therefore, the control plan should contain a description of the Agency's activities during the control (it does not dispute the possibility to undertake other activities within its competencies). This ensures greater reliability of the control procedure and provides the public with insight into whether it was well planned and whether those plans were met. The purpose of the control was also set - determining the accuracy and completeness of the report and compliance with legal obligations.

Important additions have also been proposed regarding changes to the control plan. Namely, the Agency must publish decisions regarding the consideration of the proposal for supplementing the control plan (e.g. the proposal to cross-examine the costs of advertising on a specific social network).

In the last two paragraphs, amendments have been proposed regarding the Agency's reporting on the conducted control. The first amendment aims to have the reports on this segment of the Agency's work considered in the National Assembly. The current parliamentary practice is such that the Agency's reports on the conducted control are not considered before the parliamentary committees, and there is no trace of them in the conclusions of the National Assembly.

The last position solves another shortcoming demonstrated many times in practice - the lack of mandatory content of the Agency's report on the control of election campaign financing. It is proposed that the Agency describe the information obtained in the process of control of individual reports, the conclusions reached by comparing the same costs from the reports of various political entities, for which reported revenues and expenditures the Agency found to be credible and funded by Law.

In addition, it is important for the Agency to state clearly which political entities have been found to have irregularities, which persons other than political entities have acted contrary to the Law and what the Agency has done to eliminate these irregularities and initiate disciplinary proceedings.

Article 36

The annual plan of tax control, which is adopted in accordance with the Law governing the tax procedure and tax administration, includes control of contributors and suppliers of goods ~~financial resources, i.e., goods~~ and services to political entities.

Taxpayer control plan ~~The selection of the provider of financial resources, i.e., goods and services~~ referred to in paragraph 1 of this Article shall be made based on data from the report of the Agency for Prevention of Corruption and data available to the Tax Administration, in cases where there is the reliability of documentation related to trade in goods and services.

Explanation

The current norm from the Draft, i.e. its purpose, is not clear enough. As it is now written, the Tax Administration would control the contributors and the providers of goods and services to political entities. This part of the norm would be unnecessary since the notion of contribution already implies the provision of goods and services (if it is done free of charge or at a lower price than the market price). If the idea was that suppliers of goods and services for political entities are also subject to control, then the existing norm does not achieve that.

An even bigger problem is the fact that it is said that the Tax Administration will include certain entities based on data from the Agency's report without prescribing any additional criteria. This opens up the possibility for discretionary interpretations and for subjecting natural and legal persons to the control of the Tax Administration, although there is no justifiable reason for that. This discourages contributions to political entities and opens up space for abuse (e.g., harassment of opposition party donors).

The changes we propose would solve both of these problems. The first paragraph would specify that the control of the Tax Administration can apply to both contributors (of any kind) and suppliers of goods and services for political entities.

The provisions of paragraph 2 provide rules for the content of the control plan. Thus, the only reason for the control by the Tax Administration would be the suspicion that the said persons had their own funds when they contributed to the political entity or the doubt regarding the authenticity of the documentation related to the trade of goods and services. Such suspicions may arise based on data determined by the Agency in its report, or they may be based on data available to the Tax Administration itself (e.g. data on citizens' incomes listed as contributors).

Procedure
Article 37

The procedure in which it is decided whether there is a violation of this Law and impose measures in accordance with this Law, is initiated and conducted by the Agency ex officio and on the basis of a complaint by a natural or legal person.

The procedure on deciding whether there is a violation of this Law in the election campaign may be initiated ex officio, upon the report of the person referred to in paragraph 1 of this Article, as well as on the basis of a report by a political party, a coalition of political parties or a group of citizens, which is also a submitter of a proclaimed election list, i.e. election candidate nominator.

The Agency shall notify the political entity against which proceedings have been launched about the initiation of the procedure referred to in paragraph 1 of this Article, and informs the political entity against the procedure referred to in paragraph 2 when the procedure is initiated within 24 hours from the receipt of the application.

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.

The Agency is obliged to confirm, within five days from the day of receipt, that the political entity has been informed about the application referred to in paragraph 2 of this Article and, if requested, after the deadline for submission, data from Article 32, para. 3 and 4 of this Law, shall issue a decision establishing that there has been or has not been a violation of this Law in the election campaign.

Upon the report referred to in paragraph 1 of this Article, which refers to the violation of this Law outside the election campaign, the Agency shall issue a decision establishing that there has been or has not been a violation of this Law within 15 days of receipt of confirmation that political entity notified of the application, i.e., within 15 days after the deadline for submission of data referred to in Article 32 para. 2 and 4 of this Law.

The Agency is obliged to publish the decision referred to in paragraphs 5 and 6 of this Article on its website within 24 hours of its adoption.

Explanation

The proposed paragraph 6 refers to solving the problem of violating this Law while the election campaign is not in progress. Namely, the current legal solutions envisage deadlines for the Agency's actions only while the election campaign is in progress. On the other hand, the Law does not set deadlines for control over reports of violations of the Law outside the election campaign. The proposed deadlines are longer than those valid during the election campaign, because the urgency of such actions is lower.

Measure
Article 39

The Agency shall issue a warning to the political entity if it finds deficiencies in the control procedure that can be remedied or the possibility of reducing the harmful consequences of illegal conduct.

If the political entity does not act in accordance with the warning, by the expiration of the deadline specified in the decision, the Agency shall submit a request for initiating misdemeanour proceedings for failure to act in accordance with the warning.

Acting on the imposed warning measure does not release the political subject from misdemeanour and other responsibilities.

Explanation

The current norm on the measure of warning creates numerous dilemmas in practice. In some situations, the Anti-Corruption Agency issued warning measures to political entities, such as the illegal use of public resources in advertisements broadcast during the election campaign. In such cases, the political entities did act as a warning and stopped further broadcasting such advertisements. However, that does not change the fact that the provisions of the Law have already been violated, that it had harmful consequences (the ad has already been broadcasted and seen by many citizens), and that the responsibility of the perpetrators should be adequately established. Acting with caution in such situations has only reduced the harmful consequences of violating the Law.

Bearing in mind that paragraph 2 stipulates that the Agency will initiate misdemeanour proceedings only if the political entity does not act in accordance with the warning, this could be interpreted as that there is no misdemeanour liability if the political entity acts based on such a measure, which is by no means appropriate.

The proposed amendments address these issues. Paragraph 1 specifies that a warning measure may be issued in situations where there is a possibility to reduce the harmful consequences of illegal conduct (as in the example described above with pre-election announcements).

Paragraph 2 specifies that this is a particular basis for misdemeanour prosecution (failure to act in accordance with the warning), which is appropriate because the political entity failed to reduce the damage from its illegal conduct.

Paragraph 3 stipulates that a political entity shall not avoid misdemeanour or other liability even if it acts in accordance with the imposed warning measure if such liability is prescribed.

Article 40
Illegal Financing of a Political Entity

Whoever gives or who in the name and on behalf of a political entity obtains funds for financing a political entity contrary to the Law in the amount of more than fifty thousand dinars will be punished by imprisonment for three months to three years.

By imprisonment for a term between three months and three years will be punished whoever conceals the source or value of the funds used to finance a political entity by giving it the funds received for that purpose from another person, whoever pays the cost of activities of the political entity, receives compensation for goods and services provided to the political entity by a third party or fails to provide information on the source or value of financing of a political entity in the accounting records or financial report, in the amount of more than fifty thousand dinars.

If by committing the act referred to in paragraph 1 and paragraph 2 of this Article, funds received or concealed in the amount exceeding one million and five hundred thousand dinars were given, the perpetrator shall be punished by imprisonment for a term between six months and five years.

Funds from Art. 1 and 2 of this Article shall be deducted.

~~**Article 40**~~
~~**Criminal act**~~

~~Whoever gives, i.e., in the name and on behalf of a political entity obtains funds for financing a political entity contrary to the provisions of this Law in order to conceal the source of financing or the amount of collected funds of a political entity, shall be punished by imprisonment for three months to three years.~~

~~If by committing the act referred to in paragraph 1 of this Article funds in the amount exceeding one million and five hundred thousand dinars have been given or received, the perpetrator shall be punished by imprisonment for a term between six months and five years.~~

~~Whoever commits violence or threatens violence, puts in an unequal position or denies a right or a legally based interest to a natural or legal person due to the fact that he contributed to a political entity, shall be punished by imprisonment for three months to three years.~~

~~Funds from Art. 1 and 2 of this Article shall be deducted.~~

New Article 40a is added after the Article 40:

Article 40a

Violation of the Rights of Natural and Legal Persons in Relation to the Financing of a Political Entity

Whoever commits violence or threatens violence, puts in an unequal position, denies the right or violates the law-based interest of a natural or legal person due to the fact or belief that he contributed to a political entity, sold goods or provided services to a political entity, or intends to prevent a natural or legal person who makes a contribution, sells goods or provides a service, shall be punished by imprisonment for a term between three months and three years.

Whoever commits the act referred to in paragraph 1 in a cruel manner or by the threat of murder or grievous bodily harm or kidnapping shall be punished by imprisonment for a term between six months and five years.

If a natural or legal person has suffered damage in the amount of more than four hundred and fifty thousand dinars by committing the criminal offense referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term between six months and five years.

If the commission of the criminal offence referred to in paragraphs 1 and 2 of this Article resulted in serious bodily injury or other serious consequences, the perpetrator shall be punished by imprisonment for a term between one and ten years.

If due to the act from para. 1 and 2 of this Article, the perpetrator shall be punished by imprisonment for a term between three and twelve years.

If the work from para. 1 and 2 of this Article committed by an organized criminal group, the perpetrator shall be punished by imprisonment for a term between five and fifteen years.

An official who has committed an act referred to in para. 1 to 3 of this Article shall be punished by imprisonment for a term between one and ten years, for the offence referred to in para. 4 to 6 of this Article shall be punished by imprisonment for a term between five and fifteen years.

Explanation:

The first paragraph of the current Article 38 of the Law on Financing Political Activities, i.e. Article 40 of the proposal of the new Law, sanctions a person who in the name and for the account of a political entity obtains funds for financing a political entity contrary to the provisions of that Law in order to conceal the source of funding or the amount of funds raised by the political entity. The main disadvantage of this legal solution is that as a basis for criminal responsibility, it envisages a precisely determined intention of the perpetrator, which was incorrectly determined. The intention that can be expected with illegal donations is quite different from the one incriminated - with donors to exert some influence on decision-making through the political entity to which they contribute, and with political entities to raise funds needed to carry out their activities. In both cases, concealing the source and amount of funding is only a way or means to obtain a donation (e.g., because a certain person may not make a contribution at all based on the Law, because he must not give more than the legal limit), and not the purpose of the illegal enterprise.

The second paragraph of the current provision prescribes a higher penalty in the event that funds are given or received in excess of a certain amount, and it is not disputable.

The third paragraph of the current norm prescribes a sanction for a person who commits violence or threatens violence, puts in an unequal position, or denies a right or a legally based interest to a natural or legal person because he contributed to a political entity. This solution is flawed because it provides for the punishment of only those who discriminate or threaten the contributors. However, persons who did not contribute to the political entity could find themselves in the same situation, although there is only a conviction about it among the perpetrators of the crime. Also, as well as contributors, service providers to political entities may be at risk.

Instead of the existing criminal act from the Law on Financing of Political Activities, in order to overcome these problems, we proposed the introduction of two new articles. It would be right for these crimes to be included in the Criminal Code, which should already codify all crimes, for example, after the existing Article 156 ("Giving and receiving bribes in connection with voting"), as new articles 156a and 156b.

Article 40, which proposes the title "Illegal financing of a political entity", proposes the incrimination of persons who provide funds for financing a political entity contrary to the Law in the amount of more than 50,000 dinars, as well as persons who receive such compensation in the name and on behalf of a political entity. . In practice, this incrimination may refer to situations where someone intentionally gives or receives a cash contribution over the stated amount knowing that this type of contribution is not allowed, if someone gives or receives a contribution that exceeds the maximum value of one person's contribution knowing that it exceeds the legal limit if someone makes a contribution even though he is aware that he has no right to do so because he belongs to the circle of persons who are not allowed to finance political entities, etc. Unlike the current criminal offence under the Law on Financing of Political Activities, this proposal would not prove that the giving or receiving of funds was connected with a specific intention (intent is sufficient), but, on the other hand, the minimum value of the given or received funds, which is the basis for criminal liability at all. The amount of 50,000 dinars was set as the limit in that sense. We did not find an adequate analogy in the Criminal Code to determine this amount. Namely, the amount envisaged for distinguishing between "theft" and "petty theft" in the Criminal Code is very small (5,000 dinars), so determining such a low amount would lead to the possibility of criminal prosecution in situations where social danger is caused by illegal financing political entities relatively small. Violators of the rules in cases where the value is lower would be liable for some of the violations of the Law on Financing of Political Entities.

In order to clarify the different grounds for a criminal prosecution, it is proposed to separate the existing paragraph 1 into two new ones.

While para. 1. incriminates conscious giving or receiving funds contrary to the Law, in para. 2. it is proposed to incriminate various forms of concealment of sources or values of financing of a political entity. Four forms of such concealment are explicitly mentioned. The first form is to give a political entity funds received from another for that purpose, i.e. situations when one potential contributor, who is not entitled to personally financially assist a political entity (e.g. because it would thus exceed the legal limit because it belongs to circle of persons who are not allowed to finance political entities or because they do not want to know that he made a contribution) instead distributes their funds to other people, who then appear as donors to the political entity. Another form of a criminal offence is paying the costs of the political entity activities as if they were their own. The Law requires political entities to pay the costs of their activities themselves, from their own account. The exception is free services, i.e. services that someone directly provides to a political entity and which are recorded as such among the received contributions. This envisages sanctioning perpetrators who falsely present the expense of a political entity as their own or as a third party expense. For example, when the founder of a media outlet is paid to broadcast a political entity's advertisement, and the payment report shows it as some other type of promotion. The third form of the criminal offence from this paragraph is the flip-side of the previous one – it provides for the sanctioning of persons who provide services or deliver goods to political entities and then receive compensation for those costs from a third party (e.g. a political entity leases buses to transport rally participants and then that cost is directly borne by the owner of the local gas station to the trucking company). The fourth form of this criminal offence may be committed by responsible persons in a political entity who intentionally fail to state a source of financing of a political entity in the accounting records or financial report, who states an incorrect source of funding or a wrong amount. In this case, too, it is envisaged that criminal liability, unlike misdemeanour liability, exists only when the value of concealed funds is over 50,000 dinars.

Paragraph 3 envisages a heavier penalty in cases when the value of given, received or concealed funds are over 1,500,000 dinars, and in para. 4. it is prescribed that illegally obtained, given, or concealed funds will be confiscated.

The proposal of the new Article 40b, entitled "Violation of the rights of natural and legal persons in relation to the financing of a political entity" stipulates that a person who commits violence or threatens violence, puts in an unequal position, denies a right or violates a legitimate interest a natural or legal person due to the fact (or misconception) that the person has contributed to a political entity, sold goods or provided a service to a political entity. This provision eliminates the shortcomings in the existing Article 38 para. 3. of the Law on Financing of Political Entities, i.e. in the newly proposed Article 40 para. 3.

Namely, it is envisaged to punish persons who endanger the rights of service providers and sellers of goods to political entities, not only contributors' rights. The need for such an extended norm stems from the fact that, in practice, persons who provide a service to a political entity for market compensation may be as vulnerable as those who contribute to it. Both practices are equally socially dangerous because they threaten freedom of business and the open market. In addition, incrimination is envisaged not only in situations where someone has endangered the rights of a contributor or service provider due to the fact that the latter contributed to a political entity or provided a service, but also in situations where the threat was motivated by the perpetrator's misconception that such contribution date or service provided. Regardless of whether the endangerment of the rights of contributors and service providers to political entities is based on the intention to harm the actual or presumed contributor/service provider, the social danger is equal. There is no reason not to sanction this form of behaviour in the same way.

The current norm envisages criminal prosecution only in situations of violence or violation of rights against persons who have already contributed. On the other hand, it is easy to imagine that the same situation can occur when the contribution has not yet been given. Therefore, it is necessary to prescribe the criminal responsibility of perpetrators who use violence, threaten violence or endanger the rights and interests of natural and legal persons in order to prevent those persons from contributing to a political entity. According to the previously given explanation, the perpetrators who illegally influence natural and legal persons not to sell goods or provide services to a political entity should be punished in the same way.

It is also proposed through the provisions that refer to the more serious form of committing this criminal act. These norms are mostly designed on the model of already existing criminal offences, primarily the criminal offence of "Coercion" from Article 165 of the Criminal Code. Thus, it is envisaged that more severe punishment will be imposed if the rights of financiers of political entities and service providers are done in a cruel way, or the threat of murder or grievous bodily harm or kidnapping will be punished by imprisonment from six months to five years.

By a special norm, which is designed on the model of Article 336c, para. 5. "Attack on a lawyer", it is prescribed that the perpetrator will be severely punished in the event that a natural or legal person has suffered damage in the amount of more than four hundred and fifty thousand dinars. This may be due to the fact that the legal entity or entrepreneur did not agree to provide certain services to a political entity (due to the threat of violence), but also in many other cases of retaliation for financing a political entity or providing services (e.g. termination of a contract, which would not otherwise have occurred).

Stricter penalties are provided when committing an act (violence) that lead to serious bodily injury to a financier of a political entity or service provider or when various forms of crime result in other serious consequences (e.g. permanent consequences for donor health, bankruptcy.)

An even more severe form exists when violence has resulted in death or an act committed by a group, and the most severe form is when an organized criminal group has committed a crime.

Finally, stricter penalties are envisaged when the perpetrator is an official than those that would otherwise apply.

Loss of Funds from Public Sources
Article 45

In the case of a conviction for a criminal offense referred to in Article 40 of this Law or if a political party or a responsible person in a political entity is punished for a misdemeanour prescribed in Art. 41 and 42 of this Law, a political entity loses the right to receive funds from public sources intended for financing a political entity, in the amount determined in the manner prescribed in para. 2 to 4 of this Article.

The amount of funds referred to in paragraph 1 of this Article may not be less than the amount of funds obtained by committing a crime or misdemeanour, and up to 100% of the amount of funds from public sources intended to finance the regular work of a political entity for the following calendar year.

If the amount of funds obtained by committing a criminal offence or misdemeanor is less than 10% of funds from public sources intended to finance the regular work of a political entity for the next calendar year, the amount of funds referred to in paragraph 1 of this Article may not be less than 10% intended to finance the regular work of a political entity for the following calendar year.

The amount of funds referred to in paragraph 1 of this Article shall be determined in proportion to the amount of the sentence imposed for the committed criminal offence or misdemeanour in relation to the prescribed minimum and maximum penalty, in accordance with the rules prescribed in para. 2 and 3 of this Article.

The decision on the loss of the right to receive funds from public sources intended for financing the regular work of a political entity for the next calendar year, in which their amount is determined, is made by the Agency, and an administrative dispute may be initiated against it.

The Agency shall publish the decision referred to in paragraph 5 on its website.

Explanation

It is specified how to determine the amount of funds referred to in paragraph 1 of this Article. Paragraph 6 stipulates the obligation of the Agency to publish the decision referred to in paragraph 5 on its website, and thus provide the interested public with its work, but also the work of political entities.

Suspension of Transfer of Funds from Public Sources
Article 48

After initiating criminal proceedings for a criminal offence referred to in Article 40 of this Law or misdemeanour proceedings for misdemeanours referred to in Articles 41 and 42 of this Law, at the request of the Agency, the ministry in charge of finance or the competent administrative body of the autonomous province on temporary suspension of the transfer of funds from public sources to a political entity until a final decision is made in criminal or misdemeanour proceedings.

An appeal may be lodged against the decision of the competent administrative body of the Autonomous Province, i.e., the local self-government referred to in paragraph 1 of this Article, with the competent body of the Autonomous Province, i.e. the local self-government unit.

An administrative dispute may be initiated against the decision of the ministry referred to in paragraph 1 of this Article and the decision of the competent body of the autonomous province, i.e. the unit of local self-government referred to in paragraph 2 of this Article.

The Administrative Court is obliged to decide within 30 days from the day of submitting the lawsuit in the administrative dispute referred to in paragraph 3 of this Article.

The request of the Agency referred to in paragraph 1 of this Article and the decision referred to in paragraph 2 to 4 of this Article shall be published on the Agency's website.

Explanation

The Agency's obligation to publish requests and decisions on its website, referred to in this Article, is envisaged so that the interested public can have an insight into the measures taken by the Agency and compliance with the Law by political entities.

About PrEUgovor

The prEUgovor coalition is a network of civil society organizations established to monitor the implementation of policies relating to Serbia's accession negotiations with the European Union, emphasizing Chapters 23 and 24. The prEUgovor aims to help use the EU accession process to make substantial progress in further democratizing Serbian society.

Members of the coalition are ASTRA - Anti-trafficking Action, Autonomous Women's Center (AWC), Belgrade Centre for Security Policy (BCSP), Center for Investigative Journalism in Serbia (CINS), Center for Applied European Studies (CPES), Group 484 and Transparency Serbia (TS).

The main product of the preEUgovor is the semi-annual progress report on Serbia in Chapters 23 and 24.

You can follow the activities of prEUgovor on website, Facebook and Twitter.

B | T | D The Balkan Trust for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND

Norway

The production of this publication was made possible by the Balkan Fund for Democracy, the program of the German Marshall Fund of the USA and the Embassy of the Kingdom of Norway in Belgrade within the project "PrEUgovor for the Rule of Law and EU Integration".

The content of the publication is the sole responsibility of the authors and does not necessarily represent the views of these donors or their partners.