

## Regulation of official's campaign

August 29th 2018

Among numerous proposals for amendments to the Draft Law on preventing of corruption which Transparency Serbia submitted to the Ministry of Justice in the context of a public document, is the amendment to article which regulates separation of public and political functions, which partially should regulate the issue of "Official's electoral campaigns".

Namely, currently the most common form of misusing public function for political promotion allegedly carrying out regular activities of public official and public authorities managed in the time of the election campaign. This issue can be arranged through the electoral and media laws. At this point, the proposed norms that are primarily related to the conduct of a public official in the time of election campaign, although governing individual and other issues. The intention of editing is not to limit the promotional activities of the authorities that are in the public interest, but to prevent abuse through increased conditions of this promotion, or highlighted the participation of public officials in the promotion, which can be clearly related to the fact that elections were held in which the official directly involved or in which it has its favorites.

The idea of norms and problems to be solved is the same all the time, and through experience from all the election campaigns which Transparency Serbia monitored show that the "official campaign" has an increasingly important role, which further confirms the need for the introduction of rules. In addition, it is obvious that the solutions of the current Law on Anti-Corruption Agency, even the solutions proposed in the current draft of the Law on Prevention of Corruption, are insufficient to solve the problems that norms were introduced into the legal system of the Republic of Serbia.

This is supported by the fact that the cases of violation of the norm of the current Article 29 of the Law on Anti-Corruption Agency are extremely rare. Although a small number of cases can be attributed to insufficient reporting of violations of Law, by long procedures or controversial decisions of the Agency in these cases, we consider that there are far more frequent situations in which the norms of the Law were not violated, although there was undoubtedly the existence of officials that were not at all in accordance with the public interest or in which the interest of a political subject has been given priority over the public.

Regarding the issues regulated by this Article, there are certain international standards (ODIHR and Venice Commission) as well as some good examples from comparative practice. In some cases, the rules from comparative practice envisage far stricter limits for public officials than are the solutions proposed to this norm. On these issues Transparency Serbia repeatedly wrote, and key findings are in the publication ["The official's campaign as a form of misusing of public resources"](#)

### **TS proposed that Article of Law reads as follows:**

Article 50 and title above article 50 is amended as follows:

"The separation of public functions and activities of the political entity"

Article 50.

An official can be a member of a political party, to perform a function in political party, to be candidate or representative of a political subject or to otherwise support political subject and participate in its work, if it is not prohibited by other law.

An official cannot use public function and public resources for promotion or for causing damage to the political entities.

It is not considered as a violation of the prohibition from the paragraph 2 of this article that public resources are used for political purposes if it is necessary to protect the safety of officials, members of their families or third parties, based on the regulation or decision of the competent authority.

An official is obliged to undoubtedly present to the interlocutors and to the public whether he expresses the position of the public authority where he performs a public function or the attitude of political entity, except when it is obvious based on the place and circumstances in which that attitude is, or on the basis of visible characteristics.

The deputies and councilors have the obligation from paragraph 4 of this article in case they are to be chaired by the assembly or by a parliamentary working body.

It is forbidden for an official to participate in the activities of a political subject in that capacity.

During election campaign, it is forbidden for an official to organize in that capacity promotional activities of public authority body, to implement them, to participate in promotional activities organized by other persons, except:

- a) When it is prescribed the obligation to carry out a promotional activity at a certain time and in a certain way, and when only the public official is authorized to fulfill that obligation;
- b) When it comes to public events, which by common practice carried out at a certain time and with mandatory participation of that official;
- c) When the participation of official is necessary for the maintenance of international relationship

“Promotional activity” from paragraph 7 of this article is the activity of the official, authorities or other persons with the purpose or can be reasonably expected to result in the publication of words, image or voice of the official in media.

Comment of the proposed solutions from current draft and a detailed explanation of the solutions proposed by TS (in Serbian) can be downloaded from the TS website:

[http://transparentnost.org.rs/images/dokumenti\\_uz\\_vesti/TS\\_predlog\\_-\\_funkcionerska\\_kampanja\\_-\\_Zakon\\_o\\_spre%C4%8Davanju\\_korupcije.pdf](http://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_predlog_-_funkcionerska_kampanja_-_Zakon_o_spre%C4%8Davanju_korupcije.pdf)

On our website there are also available our proposals and formulated amendments to other chapters of the Draft Law on Preventing of corruption: <http://transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts>