

COMPARATIVE ANALYSIS OF
THE LEGAL FRAMEWORK FOR
PARTY AND ELECTION
CAMPAIGN FINANCE
IN THE REPUBLIC OF SERBIA

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Comparative Analyses of the Legal Framework for Party and Election Campaign Finance in the Republic of Serbia

Author: Nemanja Nenadić

Editing: Ondřej Cakl

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Nemanja Nenadić

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Current state for political party funding and campaign finance in the Republic of Serbia

Laws and regulation

The issue of political party and campaign financing in Serbia is regulated by several laws and regulation. The most important one in that regards is the Law on Financing Political Activities, adopted in 2011, and amended in 2014 and 2019¹. For some aspects of party and campaign financing other laws and regulation might be relevant as well, including provisions of Criminal Code, Criminal Procedure Code, Law on Advertising, Law on Media and Public Information, Law on Elections of Peoples' Deputies', Law on Local Elections, Law on Prevention of Corruption, Law on Political Parties, Law on Associations, Law on Business Entities, Law on State Audit Institution and Law on Public Enterprises. Similarly, several by-laws are important to be considered here, in particular Rulebook on Evidences and Reports of Political Subjects, issued by the director of Anti-corruption Agency in 2016² and rulebooks and recommendations for broadcasters issued by the Regulatory Body for Electronic Media, in advance of each election campaign (last one adopted in early 2020)³.

International oversight and commitments in national strategic acts

Rules in the area of political party financing of Serbia are being periodically reviewed by relevant international organizations. So, the GRECO reviewed it in the context of its third evaluation round in 2010⁴, ODIHR issued a number of recommendations that were not fully addressed after parliamentary elections in 2016 and presidential in 2017⁵ and parliamentary in 2020⁶. These rules were also partly considered within the inter-party dialogue 2019/2020 organized in the Serbian parliament with facilitation of European Parliament.⁷

The need to improve significantly rules in various areas of party and campaign financing was clearly recognized in the last National anti-corruption strategy for the period 2013-2018⁸, but it did not happen. Later on, Serbia committed to improve its party and campaign finance regulation within the context of EU negotiation process, in the Action plan for the chapter 23, adopted in 2016.⁹ According to the revised Action plan for this chapter, adopted in July 2020, the changes were planned to take place till the end of 2020¹⁰, which clearly would not happen.

1 ZAKONO FINANSIRANJU POLITIČKIH AKTIVNOSTI ("Sl. glasnik RS", br. 43/2011, 123/2014 i 88/2019)

2 <http://www.acas.rs/wp-content/uploads/2016/01/Pravilnik-o-evidencijama-20161.pdf>

3 Правилник о начину извршавања обавеза јавних медијских сервиса током предизборне кампање („Сл. гласник РС“, бр. 11/2020), and Препорука комерцијалним ПМУ о обезбеђивању заступљености без дискриминације у току предизборне кампање регистрованих политичких странака, коалиција у кандидата

4 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca35b>

5 http://preugovor.org/upload/document/presidential_elections_law_enforcement_and_europea.pdf

6 <https://www.osce.org/odihr/elections/serbia/466026>

7 <http://europa.rs/3rd-inter-party-dialogue-in-the-national-assembly-of-the-republic-of-serbia-on-improving-the-conditions-for-holding-parliamentary-elections/?lang=en>

8 <https://www.mpravde.gov.rs/files/THE%20NATIONAL%20ANTI-CORRUPTION%20STRATEGY%20en.doc>

9 <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>

10 <https://www.mpravde.gov.rs/files/Revised%20AP23.docx>

Basic terms

This Law on financing political activities (LFPA) regulates sources and forms of financing, records and control of financing of activities of political parties, coalitions and citizens' group (commonly named "political entities").

Political activity is operation and election campaign of a political entity as submitter of registered electoral list and nominator of candidates for president of the Republic, members of parliament, deputies and local councilors.

According to the electoral laws, the list may be submitted or candidate proposed either by political party, coalition of political parties or "citizens' group".

Political parties are organizations of citizens recorded in the Register of Political Parties with the competent authority. In order to be registered political parties shall collect 10.000 valid and verified signatures of Serbian citizens (the legal request is lower for national minority political parties). Coalitions of political parties are a form of association of political entities for joint participation in elections, which regulate their mutual relations by contract. Citizens' group is a form of association for joint participation in elections, which regulate their mutual relations by contract. In order to participate on elections any political entity have to collect certain number of valid and verified signatures of citizens' support (10.000 for national elections).

Election campaign is defined as the body of activities of political entities commencing on the date of calling of elections and ending on the date of proclamation of the final election results, for the purpose of public presentation of the election participants and their election programs and inviting voters to vote for them, i.e. not to vote for other election participants and which shall include: the work with the voters and members; organization and holding of gatherings; promotion, preparation and disbursement of the promotional materials, brochures, leaflets and publications; political advertising; public opinion research, media, marketing, PR and consultancy services; implementing trainings for party activities, as well as other similar activities; other activities the costs of which are unambiguously in relation to the election campaign.

Operation is the political activity of a political entity other than election campaign.

Potential sources of funding - overall

Political entities may be financed from public and private sources (LFPA, Article 3), both for financing their operation and costs of election campaign. Furthermore, they may borrow from banks and other financial organization in the Republic of Serbia. Such provision prohibits indirectly borrowing of funds from abroad or borrowing from other legal and natural persons (that is generally acceptable according to other legislation, i.e. the one not specifically related to the political financing).

Public Resources

Public sources for financing of political activities may comprise either in budget transfers or services granted by the Republic of Serbia, autonomous province and local government, their organs as well as organizations founded by them. In order to be granted, such services and goods have to be offered to all political entities under equal terms. Furthermore, organs of the Republic of Serbia, au-

onomous province and local government, as well as other organizations founded by them shall more specifically regulate granting of services and goods through an internal act (LFPA, Article 6). The last requirement is introduced through the latest amendment to the LFPA in 2019, aimed to prevent abuse of public resources for the political financing.

Budget transfers are made from the central budget of Serbia, budget of Vojvodina autonomous province, or some of 170 cities, municipalities and in-city municipalities that function within the territorial system of the Republic of Serbia.

Legitimate Private Sources of Funding

Private sources of financing political activities comprise membership dues, donations, inheritance, legacy income from property and borrowing from banks and other financial organizations in the Republic of Serbia (LFPA, Article 7). This provision partly contradict Article 3, where borrowing is not considered “income” from either public or private sources, but special type of financing.

Membership fees

Membership dues are the pecuniary amount paid regularly by a member of a political party in the form and under conditions set forth by the statute or other general act of the political party (LFPA, Article 8). This type of financing is therefore not available for the “citizens groups”, because they are not established as “legal persons” and may not therefore have members and membership fees. Even if there is citizens association that would like to take part on elections they may not do this directly, but only by establishing an ad hoc “citizens’ group”, for the purpose of elections.

A member of a political party is required to effect payment of membership dues only from his/her bank account. Only very small membership dues (not exceeding 1,000 RSD, i.e. 8 EUR) on annual level may be paid in cash or by postal / bank order. When membership dues are paid in cash the authorised officer of a political party is required to issue a receipt, which is signed by the party member. The authorized officer of a political party is required to pay membership dues received in cash into the account of the political party within seven days.

Donations

Most frequent type of private funding are donations. According to the Article 9 LFPA, a donation is a pecuniary amount, other than membership dues, that a natural person or legal entity voluntarily give to a political entity. It may be also a gift, as well as services provided without compensation or under conditions deviating from market conditions. Similarly, a credit, loan and other services provided by a bank or other financial organizations given under conditions deviating from market conditions, as well as write-off of debt are considered donations.

Proof of Donor Eligibility

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

Collection of Donations

Unlike membership fees, pecuniary donation may be accepted only if being paid from the donor's bank account. A political entity is required to record the donation.

Exerting any form of pressure, threat, discrimination or any other form of direct or indirect placement in disadvantageous position of a natural person or legal entity giving a donation to a political entity is prohibited. The Law also contain declarative provision that the government authorities are required to prevent and punish any violence, violation of rights or threat to a natural person or legal entity for giving of a donation to a political entity.

Ceilings for Donations

Maximum value of donation on at annual level that a natural person may give to political entities for operation shall not exceed 20 average monthly salaries (Article 10, LFPA). When it comes to the legal entities, the ceiling is ten times bigger. The average net salary in Serbia is approximately 500EUR, which means that annual cap of individuals' donations would be around 10.000 EUR, and of corporate donors app. 100.000EUR. Furthermore, political party has to publish any donation exceeding one average net salary on its web-site, within the 8 days deadline.

Assets of Political Party

Political party may use their real estates and movables for political activity and *other allowed activities of a political party*, in accordance with law (LFPA, Article 11). It is however, not quite clear what other activities would be allowed to the political party, but it most probably includes any other activity that is not forbidden to the legal entities in general (e.g. renting of premises, selling of goods). The law says that political party acquires property "through purchase, inheritance and legacy". This provision contradicts to the other that include possibility for the party to obtain property as a gift (donation) as well.

There is specific restriction that relates to the immovable property purchased from the public funds that party received. Such property may be solely used for carrying out their political activities, i.e. not for commercial renting. Before novelties in 2014, the restriction was much harsher, as there was complete prohibition to purchase real estates by using budget subsidies to the political party.

Income of the Political Party

"Income from property" is the income realized by a political party from sale of real estates and goods, lease of real property and interest on deposits with banks and other financial organizations in the Republic of Serbia. Indirectly, it means that political parties are banned from having other types of income, such as the one from deposits in the foreign banks, or from their investments in the financial and other markets.

Prohibited sources of Donation (and other income?)

LFPA in Article 12 provides for an extensive list of prohibited income sources. It is forbidden to finance a political entity by foreign states, foreign natural persons and legal entities, except international political associations that provide technical and other non-pecuniary type of assistance. Serbian citizens with dual citizenships are considered nationals. Companies owned by foreigners, but reg-

istered in the Republic of Serbia are considered national and are allowed to finance political entities, while companies owned by Serbian citizens registered abroad are not.

Financing from anonymous donors is strictly forbidden (it was allowed to certain extent before 2003).

Any type of financing from public institutions, public enterprises, companies and entrepreneurs engaged in services of general interest, institutions and companies with state capital share, other organizations discharging administrative authority is forbidden as well. As previously explained, some types of free of charge services would be allowed. When it comes to the companies and entrepreneurs engaged in services of general interest, the ban is related to those performing certain type of activities, such are providing of communal services, mostly in the areas such are garbage collection and local public transportation. Such ban exists throughout the validity of such contract and for a period of two years subsequent to termination of contractual relations.

On the other hand, there is no ban for financing from business entities that implement public procurement contracts, nor from those receiving government support (e.g. state aid).

Another type of not eligible donors are trade unions, associations and other non-profit organizations and churches and religious communities. This prohibition is particularly relevant when citizens groups are also connected with already establish NGOs, which is often the case or when associations are part of coalitions participating on elections along with political parties (which happens, although is not in accordance with general election rules). Financing of a political entity by an endowment or foundation is also prohibited.

Then, it is prohibited for political entities to be financed from firms involved in gaming industry, importers, exporters and manufacturers of excise goods. Regardless of there are of work, legal entities and entrepreneurs may not finance political parties and campaigns if they have due and unsettled public revenue obligations.

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

While it is clear that parties may not receive any donation from all sources mentioned above, it is not quite clear whether they would be allowed to obtain other types of financing from such legal and natural entities (e.g. from renting of real estates).

Prohibited Collection of Funds

Article 13 of LFPA prohibits exerting any form of pressure on legal entities and natural persons in collecting donations for a political entity, as well as promising or inferring any privilege or personal benefit to donor of a political entity. The same case is with giving a donation to a political entity through a third party and concealing identity of donor or amount of donation.

Ban on Acquisition of Income from Commercial Activity

A political entity may not realize income from promotional, and/or commercial activity, reads Article 14. This ban is not fully elaborated, so it is unclear what activities would be covered and is partly in the conflict with other provisions of the Law. For example, it is clear that political party may lease their real estates and sell some of goods they possess.

Remittance of Unlawfully Acquired Funds

If they obtain some funds that is not lawful, political entities are obliged to transfer or return such funds to the state budget within the 15 days from the day of receiving, according to the Article 15. The law defines when such funds should be paid to the payee and when to the state budget.

Financing political entities operation

The Law provides how much funds from public sources are intended to **finance the work of the political entities' non-electoral operations, based on the number of their representatives** – elected MPs in national parliament, deputies in Vojvodina parliament and councillors in local assemblies. That amount is set at the level of 0.105% (Article 16) of the **tax revenues** of relevant budget. Before 2014 novelties in the law, the percentage was higher (0.15%) and it was calculated against overall budget, which is in some instances significantly higher than tax revenues. High budget subsidies for political parties are introduced with the previous Law on Financing of Political Parties, in 2003. Furthermore, the Law regulates allocation of funds from public sources, the use of the former for financing operation, and rules about the account/s owned by a political party or a coalition and/or citizens' group.

Allocation of Public Funds for Operations

The above-mentioned funds are allocated to political entities winning seats in representative bodies in proportion to the number of votes. Serbia implements system of proportional representation on all levels of the government. The recipient of the funds are **submitters of electoral lists**, and not individual parties whose representatives entered the parliament. However, funds from public sources granted to a political entity which participate in elections as a coalition are divided pursuant to coalition agreement.

Even in case when some MP leaves the party after elections, the recipient of funds stays the same, which was highly relevant in many instances in the past, and in particular in the period 2008-2012, when the most influential opposition party did not receive any budget fund, as it was established by MPs that defected from the party they belonged to before.

The system for allocation is a bit complicated, as there is a mechanism in favor of smaller ones. Namely, the basis for calculation is the number of valid votes for the list, but all votes up to 5% of total are calculated with a quotient of 1.5 (LFPA, Article 17).

The ministry in charge of financial affairs and/or the relevant autonomous province authority or the local government authority, transfers the proportionate portion of funds to political entities before the 10th of every month, for the preceding month.

Use of Funds for Financing Operation

Article 19 of LFPA lists what the funds for financing operation are used for. In addition to functioning, the funds serve for a propagation of the idea of a political entity and presume, among other things, work with the electorate and membership, transportation costs, gatherings, promotional costs, advertising material and publications, public opinion polls, training, salaries, costs of utilities service, etc.

Funds shall also be used for covering costs of election campaigns, in accordance with this Law. Before 2014 novelties, there was a ban to use funds received from the budget for daily operations of politi-

cal parties for financing the election campaign. That was logical ban in order to achieve purpose of this type of state funding, although it was always problematic when it comes to the oversight, because the income from both public and private sources is mixed on the party accounts.

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

These provisions proved not to be sufficiently clear in practice. Namely, the list is formulated as a legal enumeration. However, some of the listed activities are defined rather vaguely. In practice, the most problematic was use of party funds for performing some type of humanitarian (charity) activities.

Financing election campaign costs

Funds from public sources for covering election campaign and funds from private sources are defined in the Law, as well as their allocation. Specific permitted and prohibited activities are provided as election campaign costs.

When it comes to funds from **public sources, they are allocated in the year of regular elections in the amount of 0.07% of the state/province/local government budgetary tax revenues for the budget year** (Article 20). In case of early elections, the respective authorities are required to provide those funds. Novelties of 2014 affected similarly the amount of funds distributed for the election campaign from various budgets. The percentage was 0.1% and it was calculated against total budget.

Funds for election campaign from public sources are allocated by the Ministry of Finance or the relevant authority of autonomous province or local government.

Allocation of public funds

Public funds in the **amount of 20% are allocated in equal amounts to political entities** which, when submitting election lists, later proclaimed, declared to use the funds from public sources to cover election campaign costs. Precondition for such allocation is depositing the **election bond**. If the political entity fails to give election bond within 3 days from the date of proclaiming all election lists or final list of candidates, the portion of funds allocated to the rest of election participants. The main problem with this type of allocation is the fact that available funds for the election campaign is not determined in accordance with the estimation of minimal needs to ensure presentation of election programs to the voters, but are calculated against overall budget. Furthermore, **when the competition on elections is higher and therefore need to invest funds, the money that parties receive would be smaller**. The problem is particularly visible on local level whose budgets are rather small. When several elections are held at the same time, parties competing on local level only are significantly hampered financially in comparison with those competing on national elections as well.

These funds shall be paid within five days from the date of proclaiming of election lists, which is only few days before the election date. It effectively means that election participants should originally collect funds from other sources in order to run the campaign.

The **remaining portion of 80% is allocated to submitters of election lists pro rata to the number of won seats**, within five days from the date of proclaiming of election results, regardless of whether

the funds from public sources were used to cover election campaign costs (Article 21). This system of funds distribution creates many open questions in the practice. Namely, it is usual that political entities design the scope of their campaign based on electoral success expectations and prognosis. In most of instances, they do not have other funds on their disposal while the campaign is still ongoing, but leave all costs to be paid once they receive second instalment of budget subsidies, whose value is unknown during the campaign. In case of the failure on elections, such parties usually have significant debts, and it is unknown from their financial reports how and when such debts will be paid.

In case of elections held according to majority system (presidential), 50% of funds are allocated in equal amounts to proponents of candidates who also declared to use public funds to cover election campaign costs. The remaining half of funds is allocated to the proponent of the winning candidate within five days from the date of proclaiming election results. In case of runoffs for elections, the remaining portion is allocated in equal amounts to proponents of candidates participating in election runoff, under the same conditions. This system is improved as previous legislation, before 2011, granted 20% to all proponents and 80% to the winning candidates' proponent. However, the distribution of as much as 50% of funds equally stimulates appearance of candidates that compete for budget funds rather than for the electoral success.

Financing from private sources

A political **entity is allowed to raise funds from private sources** for election campaign costs. According to LFPA Article 22, natural persons and legal entities may give donations in a single calendar year in which election are held, in addition to donations for operation, also for election campaign costs up to maximum stipulated amount at annual level. Limits are the same as for the donations for operational costs.

Election Campaign Costs

Costs of all activities deemed to be the election campaign by the LFPA, are election campaign costs and have to be reported.

When it comes to the prohibited and allowed sources of income the same rules apply as for the financing of operations. It is explicitly prohibited since 2019 (although it was generally not acceptable according to other laws even before), to use resources that the candidates at elections and election lists, as well as the public officials, state officials, and officials of the autonomous province and the local self-government unit or the directly elected persons, have at disposal for the need of discharging their official duties.

The 2019. novelties also include explicit prohibition to use the official premises, vehicles, websites and inventory of the state, provincial and local authorities, public institutions and public enterprises, except for the public officials using public resources for the purpose of personal safety protection, in case such use of the public resources has been defined by the regulations from such area or by virtue of the decision of the services ensuring safety of officials.

Using of premises and services of public authorities in other instances would be legitimate only if such premises and services are available, under equal conditions to all political entities, based on the publicly available decision of such authorities and organizations and under the condition that they can ensure the use of the premises and services during the election campaign, to each and every political entity having expressed timely interest thereof.

Separate Account for Election Campaign Financing

One of most important rules is the one making mandatory for election participants to **raise all funds for the election campaign and to pay all costs from the separate bank account that may not be used for other purposes** (LFPA, Article 24). Opening of the account for a coalition and/or group of citizens is regulated by the agreement on establishing such political entities.

Election bond and repayment of funds to the budget

Election bond, regulated in the article 25 may comprise of depositing cash, bank guarantee, government bonds or placing a mortgage covering the amount of bond on real property. The election bond is returned to the political entity if winning at elections a minimum of 1% of valid ballots and/or minimum 0.2% of valid ballots if the political entity is representing interests of a national minority.

A political entity failing to win this number of votes is required to return the funds to the budget within 30 days from the date of proclaiming final election results, otherwise the government collect funds from the election bond.

If budget funds were not fully used for the campaign costs, political entity has to return them to the budget before submission of the report (LFPA, Article 30), no matter of electoral success.

Bookkeeping and Reporting

Account for Financing Operation

The **Law allows a political party to have several accounts but only with the same tax identification number**, as well as a foreign currency account, through which it transacts all funds earmarked for financing operation. Coalition and/or citizens' group define accounts used for transaction of all funds earmarked for financing operation by the agreement establishing such political entities.

Book-keeping

All registered political parties and other political entities that are represented in parliaments should keep bookkeeping records of all revenues and expenditures. Bookkeeping is done by origin, amount and structure of revenues and expenditures. Political entities implement both general accounting regulation and the one specific for this type of entities. They also have to keep separate records of donations, gifts and services extended without compensation, and/or under conditions deviating from market conditions and records of property.

Reporting

There are two types of reports. According to the article 28, all registered parties and other political entities represented in parliaments have to submit an annual financial report to the **Anti-corruption Agency**, along with a report on donations and assets. These documents should be followed with the opinion of a certified auditor. Deadline is April 15th (for the preceding year). Political entities should publish these reports on their websites, while Agency publish all of them.

Report on election campaign costs has to be submitted within 30 days from the date of publication of final election results. The report covers costs for the period from the date of calling of elections until

the date of publishing final election results. Agency is publishing these reports, while there is no similar duty for the political entity itself.

The content of both reports is regulated through the by-law. Agency established software for reporting, that was upgraded for the last elections (2020). However, the reports are still not published in user friendly format and information is not machine readable. Even if the reports are quite extensive and detailed, there are many weaknesses as well. For example, some important information are not listed separately (e.g. social network advertisement), and in some instances reporting format does not allow to enter multiply information on service providers even if parties would like to disclose them. When it comes to the annual financial statements, the reporting form cover both costs of ordinary activities and election campaign organized during the same year, so it is sometimes hard for distinguish between them.

Responsible persons

The law stipulates (article 31), that each political party has to define the manner of conducting internal control of financial affairs and the right of the membership and/or voters supporting an election list to be informed of revenues and expenditures of a political entity.

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

That person signs all reports and is responsible for keeping of records regarding financing of the political entity. At the request from the Agency the authorized person is required to forward bookkeeping data for inspection also during the fiscal year.

Oversight Powers and Duties

The Agency has the right of direct and free access to bookkeeping records and documentation and financial reports of a political entity (LFPA, Article 32). Agency may also hire competent experts and institutions in that regards. Similarly, Agency may access records and documents endowments and foundations founded by a political party.

Aside from direct access Agency may request from political entity submission of all documents and information necessary to the Agency to carry out oversight.

Public authorities, but also banks, and natural persons and legal entities financing political entities performing for and/or on their behalf particular services have to forward to the Agency at its request and within the deadline defined by the Agency all data required (up to three days during the election campaign). This obligation supersedes any other restriction or limitation that may appear in any other regulation (such as bank secrecy).

Agency is entitled (LFPA, Article 33) to the separate budget funds aimed to perform control of election campaign funding, that is decided as a portion of funds distributed from the budget to the political parties (at least 1% of funds distributed for national elections). However, in practice, Agency does

not submit request to the Ministry of Finance for all funds they are entitled to according to the law. Furthermore, in practice, Agency is using these funds only for the monitoring of campaign costs during the campaign, and not for hiring of experts once the verification of campaign finance reports is on agenda.

The Law provides for possible involvement of State Audit Institution in this process (LFPA, Article 34) Namely, Agency may, after conducting control of financial reports of a political entity, forward a request to the State Audit Institution to audit these reports, in accordance with the law governing competencies of the State Audit Institution. On the other hand, the Law on SAI does not provide for the audit of political parties' reports as a mandatory part of their audit plan. According to the same law, it is SAI who is fully independent in deciding which audits will be conducted, and there is no possibility for the Agency to influence SAI decision.

Agency runs proceedings to establish violation of LFPA and to pronounce measures set in this law ex officio (LFPA, Article 35). However, Agency may act also on basis of someone's complaint.

During the campaign, when Agency receive complaint, they have to notify the political entity against which proceedings have been launched within 24 hours. The Agency may summon the authorized person of the political entity as well as the complaint submitter to obtain further information. The Agency has to pass a decision deciding on whether or not a violation of this Law in the course of the election campaign has occurred within the next five days period and to publish this decision on its website within 24 hours.

This provision is most useful novelty of 2019 amendments to the Law. Previously, there was no deadline for Agency to investigate reported wrongdoing. Even now, there is no deadline for the Agency to investigate reported wrongdoing out of campaign period, not to conduct their ex officio controls.

When identify wrongdoing that may be corrected, Agency issues a warning measure to a political entity. If the political entity fails to act upon the measure before the deadline specified in the Agency's decision expires, the Agency shall initiate misdemeanor proceedings. However, there are various possible interpretations on what may be corrected. For example, during the June 2020 election campaign, Agency issued several warning measures to the political parties that abused public resources when preparing their promotional campaign adds. Warning measure served well to prevent further broadcasting of such adds. However, the wrongdoing was already accomplished and there was also ground for other types of liability on that basis.

Penalties

Criminal Offence

The Law, in Article 38 provides for the criminal offence for some types of wrongdoing. Interestingly, the criminal offence has no title, which is an unique example in Serbian legal practice. Furthermore, it is uncommon for criminal offences to be regulated in other laws, and not in the Criminal Code.

There are at least two different criminal offences within this one. First, whoever gives, and/or provides for and on behalf of the political entity, funds for financing of the political entity contrary to the provisions of LFPA with intent to conceal the source of financing or amount of collected funds of the political entity, shall be punished with imprisonment from three months to three years. If the offence

involved giving or receiving more than one million and five hundred thousand dinars, the imprisonment may be between six months and five years. Illegal funds shall be confiscated.

Second type of illegal action performs the one who commits violence or threatens violence, places in disadvantageous position or denies a right or interest based on law to a natural person or legal entity based on giving donation to a political entity. Such crime may be punished by imprisonment of three months to three years.

Transparency Serbia proposed amendments to this article soon after the law was adopted. As elaborated¹¹ in these proposals, the amendments and formulation of two criminal offences are necessary to include this offense in the Criminal Code and to correct existing problematic provisions.

Current provision sanctions any person who, in the name and for the account of the political entity, obtains funds for financing political entity, contrary to the provisions of the law and in order to disguise the source of funding or the amount of funds collected for the political entity. The disadvantage of this legislative solution is that the precisely defined intention is stipulated as a condition of criminal responsibility. The intention that can be expected to exist in illegal allocation of benefits is in fact quite different from the one that is incriminated - in case of donors, it is to exercise some influence on decision-making by means of a political entity to whom they give a contribution, and in case of a political entity, it is to raise the funds needed to carry out his activities. In both cases, the concealment of the source and amount of funding is just a way or means to obtain donations (e.g. because a certain person is not allowed to make contributions according to the Law or because he may not give more than the legal limit).

Another type of criminal activity currently prescribes sanction for the person that commits violence or threatens with violence, put at a disadvantage or denies a right and legitimate interest to a person or a legal body and due to the fact that he contributed to a political entity. This solution is flawed because it stipulates the punishment of only those persons who discriminate or threaten the suppliers of benefits. However, the same situation may apply to any person who did not give favor to a political entity, but there is only a conviction about it by the perpetrator of the crime. Also, the providers of services to political entities may be endangered the same as the providers of donations.

Misdemeanours

A political party shall be fined from 200,000 to 2,000,000 RSD (app. 1.700 to 17.000 EUR) for a 19 type of misdemeanours listed in the article 39. However, some of prohibited actions of political parties are omitted. Furthermore, there is no such liability when it comes to the “citizens’ group”, but only political parties as only one type of political entities. There is another fine, for the responsible person of a political party, but also of any other political entity (from 50,000 to 150,000 RSD, i.e. 400 to 1.200 EUR). Funds obtained through commission of misdemeanours shall be confiscated.

Separate Article (40) regulates misdemeanours by donors. A legal entity shall be fined with 200,000 to 2,000,000 RSD for three types of wrongdoing and their responsible persons shall also be fined with 50,000 to 150,000 RSD. If there is wrongdoing of an entrepreneur, the fine would be between 100,000 to 500,000 RSD. Finally, any other natural person shall be fined with 50,000 to 150,000 RSD. Illegal funds also have to be confiscated.

¹¹ <https://www.transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>

Misdemeanours from this law have longer statute of limitation than the most of other petty offences. It is as much as five years, while the ordinary deadline is one year only.

Loss of Budget Funds

Additional penalty for the violation of this law is “**loss of right for public resources**” (LFPA, Article 42). Such measure should follow conviction for a criminal offence or misdemeanour. The political party will lose the right to funds from public sources dedicated for financing of the political entity in the amount that may not be less than the amount of funds acquired through commission of a criminal offence or misdemeanour, and not less than 10% of the amount of funds from public sources allocated for financing political entity operation for the coming calendar year.

The amount of funds is determined pro rata to pronounce punishment for criminal offence or misdemeanour, and decision is issued by the Agency.

While criminal or misdemeanour procedure is ongoing, budget funds may be temporary suspended, based on Agency’s request. The suspension decision may be challenged before the Administrative court, which has to issue decision within the 30 days.

Annex A: Transparency Serbia, Dialogue on elections in 2019 – priority recommendations not addressed in government proposals

Election Campaign Finance

1. **Amendments to the Law on Financing of Political Activities**, in particular:
 - a. **Clearly defined duties of the Agency for ex officio control**, content and deadline of the report on control etc.
 - b. **Budget funds dedicated for campaign** should serve solely to provide more equal opportunities for presentation of electoral lists in fixed and equal amounts, and should be distributed in early phases of campaign;
 - c. **Information on campaign finance should be published during the campaign as well**, not just more than a month after, and all costs and loans should be paid back before reporting
 - d. **Rules are needed for distribution of costs of several simultaneous electoral campaigns (e.g. national and local)**
 - e. **More precise rules in many areas that would enable more effective control** (free services, non-market prices etc)
 - f. **More precisely defined Criminal offence from article 38** , regulating additional misdemeanours
2. **Amendments to the Law on Prevention on Corruption (article 50)**, in a way that would limit official activities of public officials during the electoral campaign to the fulfilment of duties that cannot be postponed and where the presence of such public official is either mandatory by the law or necessary for international relations
3. **Introducing of more strict and precise rules on public authorities' and political party advertisement**
4. **Amendments to the Law on organization and powers of state bodies in suppression of organized crime, terrorism and corruption and Criminal Procedure Code**, in order to ensure involvement of anti-corruption prosecutorial units and using of special investigative techniques for criminal offences related to the illegal campaign financing
5. **Election of Oversight Board**, in a way that would enable selection of qualified and independent members, and not just any Government appointees
6. **Determination of eventual conflict of interest of the ACA director**, due to earlier connections with the political party
7. **Public call and enabling safe channels for reporting wrongdoing in the course of campaign (ACA, Prosecution, REM)**

Media

1. **Presentation of election programs** – to make mandatory for media to report on whether election participant presented pre-electoral program and all and what is the content of that program
2. **Mandatory instructions of REM on reporting of public officials activities, in line with relevant international standards**
3. **Monitoring of public officials campaigning by the ACA**
4. **Ban of broadcasting of whole party rallies on TV stations**
5. **Publishing of media price lists and payment conditions** for election advertisement
6. **Strict legal duties of REM in regards to the oversight of media during campaign** (what has to be checked, deadlines, publishing of monitoring results on daily bases, 48 hours to resolve complaints etc)

Electoral administration

1. More precise rules on **when REC may cancel elections due to irregularities**
2. **Publishing of all REC decisions**
3. **Limiting the right of parties** that have member of permanent election committee on polling station **to appoint also member of additional member in non-permanent part of the committee**

Voters rights

1. **To establish REC role as a body to receive complaints of whistleblowers** and to conduct informative campaign about that
2. **To prevent vote buying:** Ban of any kind of evidence collecting about how the person voted, e.g. by taking and sharing picture of the ballot etc.)
3. **Public prosecution:**
 - a. Anti-corruption departments from Belgrade, Novi Sad, Nis and Kraljevo to provide safe channels for reporting of criminal offences
 - b. Republic prosecutor to organize campaign and to explain elections related criminal offences
4. **Criminal offence of bribery related to the voting** should be amended in accordance with Transparency Serbia proposal¹²
5. **To limit activities on expense of the budget** before or during or immediately after campaign

¹²http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_prilog_za_okrugli_sto_zastita_birackog_prava_sept_2019.pdf

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6. To introduce duty to **publish information on using of official vehicles and telephone costs of public bodies.**
 7. **To limit or clearly define:**
 - a. More than necessary collection of support signatures for the electoral list
 - b. Collection of „sure votes“
 - c. Providing of free services or gifts to the voters by election participants

Annex B: Basic features of the Czech electoral code regarding the transparency of the political campaigns

We can also identify several features of electoral code in the Czech Republic which proved to have positive influence for campaign transparency.¹³ Altogether the features build up robust framework ensuring basic accountability of political working in the Czech Republic. Some of the features therefore shall function as an inspiration for Serbian electoral code too.

Limits on donations from individual beneficial/end donors.

Each donor in the country can only donate up to cca. 120 000EUR a year to a party. Limits must go hand in hand with the “beneficial donor” rule. That means, the donor can not his/her companies or legal entities to donate more or further. And there must be specified banking account for donations only on the side of the parties – the banking account accessible by public on-line (so called transparent account). Other accounts for donations are restricted.

Limits on costs-spending for the parties/political subject during the campaign.

Officially and legally the campaign starts only after its being declared by the president of the country, the candidate lists has to be registered, 90 days prior the E-day. The costs of campaigns are therefore counted till the election day and are limited. In case of parliamentary election the costs of one campaign/one candidate subject is for example 3,6 million EUR (90 million CZK). Additionally, there is the ratio of cash payments (cash payment limit up to 5000CZK: 200EUR).

Mandatory publishing identity of donors

Three days **before** the election day the parties are due to publish an official list of donors for campaign, including in-kind donations. None other donations are then supposed to be used as campaign support in final reports.

Transparent account

For each election campaign by each candidate subject there has to be special public bank account set. This account has to be **accessible on-line** and all the costs of the campaign shall be paid from that. Other means of cost payment are restricted (excluding small cash payments). Example:

<https://ib.fio.cz/ib/transparent?a=2101724269>

Third persons mandatory registration

Anyone who is interested in promotion of political subject during campaign must register themselves and accept limits for campaigning (lower than actual candidate/party), as well as a duty to have a transparent account for costs connected to campaign and thus become Registered third person – RTP. There can not be a political campaign in the public space during the pre-election period without registered person behind it. This rule is targeted to avoid hidden, negative campaigning and foreign influences, to set them illegal and avoid financial flood by application of limits to third party campaign.

¹³ Act on the political parties and Election Code (no.247/1995, no. 424/1991, no. 275/2012, Coll.).

Financial campaign reports

The financial campaign reports has to be published 90 days after campaign, then being audited by independent Office for the Supervision of the Finances of Political Parties and Movements, with set of punishment for breaching electoral code. Admittedly, 90 days is rather long limit and parties in the Czech Republic therefore tend to execute payments of their campaign costs long after the elections are over. Therefore the transparent accounts actually do not show all the costs during the campaign, all the payments are visible only 90 days after the election.

Duty to mark: contracting authority and contractor

Every piece of advertising must state who paid for it and who produced it. Without this strict rule there would be no chance to cross-check the actual ads with financial reports. Without it the reports and other features (third persons, transparent accounts) would lose their impact.

Oversight bureau

The competence of oversight over political finance and political campaigning is given to the Office for the Supervision of the Finances of Political Parties and Movements, which is an independent state body secluded from Election Commission. The Office has the authority to oversight the campaign, audit the financial reports (annual and campaign), initialize the misdemeanour proceedings etc. The members are appointed by different branches of legislative and executive powers of the Republic and endowed with equal powers.

MORE INFO:

For further reading we recommend the eBook “POLITICAL PARTIES AND POLITICAL CAMPAIGN RULES IN THE CZECH REPUBLIC,” in pdf by Petr Vymětal.¹⁴

¹⁴ https://www.transparency.cz/wp-content/uploads/Vymetal_PoliticalFinancingCZ_212FINAL.pdf

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