

Comments and proposals related to the new Draft Law on referendum and people's initiatives

Transparency Serbia

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Version commented: <http://mduls.gov.rs/obavestenja/ministarstvo-drzavne-uprave-i-lokalne-samouprave-objavljuje-nacrt-zakona-o-referendumu-i-narodnoj-inicijativi/>

Material used:

<https://preugovor.org/Amendments/1665/Proposals-for-improving-the-Draft-Law-on-the.shtml>

<http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2021/07/Komentari-na-Nacrt-zakona-o-referendumu-i-narodnoj-inicijativi-Bg-centar-Crta-Cepris-TS-Yucom.pdf>

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Notification on referendum issue and duties of media

Article 26 - Notification and referendum campaign

Venice Commission urgent opinion¹:

47. According to the draft law, the Government provides citizens with objective information on the issue submitted to referendum (Article 23, now Article 26), which “should faithfully and equally reflect the view of the parties advocating different answers to the referendum question”. This is a positive step. However, this competence too should belong to an election commission or another impartial authority. Moreover, the deadline for providing such information, “which is eight days since the calling of the national referendum”, raises serious concerns. It appears impossible for the various political forces to provide their opinion and for the government to prepare a document with such information in such a short timeframe, let alone the time for sending the document to the voters. This goes against the principle of legality, which is one of the pillars of the rule of law and implies that legislation must be implementable. The extension of the deadline is therefore imperative; however, voters should receive the information well in advance of the vote. The Venice Commission recommends revising the relevant provisions of the draft.

Comment related to new draft/VC opinion:

New draft Law resolved the issue when it comes to the deadline to provide information (15 instead of 8).

When it comes to the body in charge for providing information, there is no improvement in new draft.

Aside from VC Opinion, it is important to note that there is no procedure envisaged in new draft for collecting information from various stakeholders, on the basis of which “objective information” may be prepared.

48. Article 23.4 provides that both public and private mass media for the campaign must ensure equal access to the parties that advocate different answers to the referendum question. In contrast with public mass media, private media are not subject to a requirement of neutrality, even if equal conditions for radio and television advertising must be ensured. The Venice Commission recommends providing for less strict rules for private media.

Comment:

Draft law is changed mostly in line with VC Opinion.

However, in Serbia both public and private media are obliged to inform citizens about election participants equally, as bellow:

¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)033-e)

LAW ON THE ELECTION OF MEMBERS OF THE PARLIAMENT

Article 5

The citizens shall have the right to be informed by the mass media about the electoral programs and activities of submitters of the electoral lists, as well as about the candidates on the electoral lists.

The mass media shall be obliged to ensure equal accessibility of information about all submitters of the electoral lists, and about all candidates on those electoral lists.

Electoral promotion through the mass media and public gatherings, as well as publication of estimated electoral results shall be forbidden in the period of 48 hours before the day of the elections, as well as during the election day until the closing of polling stations.

Having that in mind there is no reason to limit the rules for referendum campaign to public broadcasting services only.

Transparency Serbia earlier comments that are still valid:

Although there is probably a good intention behind article 26 - to provide citizens information about what is the subject of a referendum vote, that intention has not been realized in the proper manner.

First of all, it is unclear why the Government, or executive bodies at other levels, would be the one to notify citizens of the referendum, given that the decision to conduct the referendum is made by the assemblies. If it is to ensure as much neutrality as possible in formulating these notices, then it would be more appropriate for such notification to be carried out by the National Electoral Commission RIK, or other bodies that carry out actions related to the referendum. The Revised Guidelines (I 3.1.e.) also stipulate that an impartial body must provide voters information about the text they will be voting on in the referendum, as well as a report or material representing the views of parties that are for or against the proposal that citizens are to vote on in the referendum. That body should have at least one representative each of the judiciary or some other independent legal expert, a representative of the Interior Ministry, as well as representatives of national minorities. Campaign organizers should be allowed to oversee the body's work. (II 4.1.)

In order for the legislator's intent expressed in the existing Article 26 to be achieved, it is necessary to regulate in more detail the ways of gathering the views on the reasons for different answers to the referendum question, whose views are taken into account in the formulation of information (e.g. the views of the registered referendum campaign organizers, the views expressed by the participants in the public hearing, the views of the proposers), as well as the maximum volume of information where the text of the document distributed to citizens would be too extensive). In any case, the possibility should be used to make the full text of the views on the referendum available on the website of the body conducting the elections. In addition, the costs and time it takes to translate into the languages of national minorities should also be considered.

Finally, it is equally important to ensure that citizens receive the text of the document they will vote on in the referendum, or at least instructions as to where they can find the text (online, in local communities, etc.), if it is an extremely extensive document.

The obligation of the media from paragraph 8 is stated, but is not operationalized. Therefore, consideration should be given, at the very least, to prescribing the obligation of the Electronic Media Regulatory Authority to determine by its act how to achieve equality, both for public and privately owned media service providers.

Our Amendment to this Article:

The competent election commission Government is obliged, within fifteen days from the day of calling the national referendum, to determine **the text of the notification** of its act by which it provides citizens with objective information on the issue, i.e., on the act to be decided on the referendum, and to publish it on the official website and **to present it in the next ten days**, in the media, and especially in the republic and provincial media public service.

The competent election commission shall deliver the notification referred to in paragraph 1 of this Article to the citizens and deliver it to the citizens at the residence address **no later than ten days before voting**.

~~In the case of calling a provincial referendum, the provincial government has the duty referred to in paragraph 1 of this Article, and in the case of a referendum in a local self-government unit, the municipal or city council has that duty.~~

~~The information shall be made information from paragraphs 1 and 2 of this Article should faithfully and equally reflect the views of the parties advocating for different answers to the referendum question and be available in all languages in official use in the area for which the referendum is being called.~~

The notification referred to in paragraph 1 of this Article shall contain:

1) a decision on calling a referendum referred to in Article 14 of this Law or a summary of the decision if it is of a more extensive scope;

2) the reasons publicly stated for the different answers to the referendum question;

When drafting the notice, the competent election commission shall consider the views of the proposers, relevant scientific institutions, independent state bodies and international organisations regarding the subject of the referendum, other opinions expressed during the public debate, as reasons announced by the referendum campaign organisers.

The notification shall equally, in an equitable manner and substantially present the reasons given for and against the decision.

The competent election commission shall publish the draft notice no later than 10 days from the day of calling the referendum, against which an objection may be submitted within 24 hours.

The competent election commission shall publish the received objections to the draft notification and the explanation for their acceptance, i.e., rejection.

The public media services are obliged to provide equal access to the parties that advocate different answers to the referendum question and enable equal and correct information. All media are obliged to ensure equal conditions for advertising to parties that advocate different answers to the referendum question.

In order to fulfil the obligation referred to in paragraph 9 of this Article, the Regulatory Body for Electronic Media shall issue a binding act for all media service providers within its competence at least 90 days before the referendum, while the competent election commission shall regulate the manner of monitoring the obligation by other media.

What is considered referendum campaign

Article 27 – The concept of the referendum campaign

Venice Commission urgent opinion:

50. According to Article 24.1 (Now 27.1), public opinion research is considered to be a referendum campaign activity. However, where such research is not aimed at targeting voters' groups but just at making opinion polls (for their publication or scientific research), such activities are not aimed at the result of the referendum and should not be considered to be a referendum campaign activity. Organisers of this activity should not be obliged to follow the rules on campaign financing and reporting. More generally, this provision should not be interpreted too broadly. It should not be extended to any position taken or debate organised by any individual or group on the issue submitted to referendum. The Venice Commission recommends reconsidering the relevant provision.

Comment:

New draft Law excluded some of above-mentioned activities from the definition, as VC recommended.

However, some important issues raised by TS were not addressed (see below).

Furthermore, VC recommendation “not to interpret provision too broadly” may be achieved only by setting more detailed rules in the Law. Otherwise, there will be no safeguard from “too broad” interpretations.

Transparency Serbia earlier comments that are still valid:

Paragraph 1 of Article 27 stipulates what is considered a referendum campaign, listing the various activities that can be carried out within such a campaign. However, it steps short of specifying whose activities are those, so they can only be interpreted as *anyone's* activities. Such interpretation, in conjunction with other provisions of the Law, could lead to serious problems, i.e. violations of the constitutionally guaranteed rights and freedoms of citizens, associations and companies. For example, if a citizen wants to invite his fellow citizens (in direct contact, on social media and the like) to vote in a certain way in a referendum, he/she will be conducting a referendum campaign; if a citizens' association invites its members to vote in a referendum, that would constitute a campaign; if a scientific institution were to present referendum proposals, it would be a campaign, etc. Therefore, the definition would have to be amended, so that it clearly applies only to individuals campaigning in such a way that is subject to other obligations under this Law (registration, financing, control).

When it comes to the activities of various subjects related to the referendum (e.g. presentation of referendum questions, presentation of various views, invitation of citizens to vote or not to vote on referendum), some regulation is needed in order to prevent circumvention of rules related to the referendum campaign financing.

The second paragraph stipulates that "No material funds from private and public sources shall be promised or provided to the citizens in consideration for conducting the referendum campaign, nor can any form of intangible assistance be provided or promised". This prohibition partly coincides with the existing criminal offence of "Giving and receiving voting-related bribes" under Article 156 of the Penal Code. Actions by which another is offered, given or promised a reward, gift or other benefit for voting or not voting in the referendum in favor of or against a particular person or proposal, constitute a criminal offence. It should certainly be considered to what extent these provisions differ and whether these differences are justified. One of the differences that can be observed and which is a possible deficiency, is that the criminal provision also applies to cases of bribing citizens to merely turn out to vote in the referendum at all (or not turn out), while such behaviour would not be prohibited under the Law on the Referendum and People's Initiative. It would be clearer in any case if the provision were formulated differently.

Paragraph 3 of this article states that "the performance of tasks from the purview of state and other authorities in terms of this Law is not considered a referendum campaign". Such provision is still needed, even if the definition of the referendum campaign is narrowed in the new draft law.

Some important issues are not regulated, such are activities of public officials (and not directly public institutions they represent) during the referendum campaign. Similarly to the rules on election campaign, Agency for prevention of corruption should be competent to assess whether public officials violated these restrictions.

Therefore, it is still needed to reformulate this article.

[Our Amendment to this Article:](#)

A referendum campaign is a set of activities starting from the day of calling a referendum and ending on the day of the referendum, to publicly present referendum proposals in order to invite citizens to vote in favour of or against the proposed decision that is the subject of the referendum, which include: organising and holding **public** gatherings; promotion, production and distribution of **publications and other promotional** advertising material, brochures, leaflets and **publications**; advertising; **as well as procuring goods, services and works related to the implementation of other activities of the referendum campaign.** ~~media, marketing, PR and consulting services.~~

The referendum campaign may be led by the organiser of the referendum campaign.

The publication of personal views and expert opinions of individuals, the views of associations and expert opinions of scientific institutions on issues to be decided in a referendum should not be considered to be a referendum campaign.

~~In order to conduct a referendum campaign, citizens may not be promised or given any material resources from private or public sources, nor may any kind of intangible assistance be promised. For the purposes of this Law, the activities within the competence of the state~~ **The activities of the competent election commissions of the bodies determined by this Law aimed at the public presentation of referendum proposals carried out in accordance with the provisions of this Law should not be considered to be a referendum campaign.**

The activity of other persons who faithfully present referendum proposals to citizens, in a balanced way present the reasons for acceptance or rejection of the proposals, as well as the activities in which the citizens are invited to participate in the referendum without instructing how to vote, or not to participate in the referendum, should not be considered to be a referendum campaign.

The organiser of the referendum campaign may ask the competent election commission to determine that the activity of the person referred to in paragraph 5 of this Article is a referendum campaign.

The competent election commission shall make and publish a decision on the request referred to in paragraph 6 of this Article within 96 hours, giving the person referred to in paragraph 5 of this Article the opportunity to state its opinion on the request within 48 hours.

It is prohibited in the referendum campaign to promise or give voters any gift, except for the distribution of promotional material of lesser value, to provide or promise free services or services at a price lower than the market price, or to give voters any kind of material or non-material assets.

Persons performing a public function may not, in that capacity, or in situations in which they find themselves performing a public function, conduct a referendum campaign, nor may they participate, as public officials, in the activities of the organisers of a referendum campaign.

During the referendum campaign, the Agency for Prevention of Corruption, by applying the procedure in which it is determined whether the public official violated the obligations from the Law governing the prevention of corruption, decides on the report submitted for violating the prohibitions under this Law within five days from the day of initiating the procedure ex officio, i.e., from the day of receiving the application of a legal or natural person.

Organiser of referendum campaign

Article 28 - Organiser of the Referendum Campaign

Transparency Serbia comments:

While this article defines only who can organize the referendum campaign, it does not stipulate how it will be determined whether a domestic legal entity is the organizer of the referendum campaign or not. There are no such dilemmas with "citizen groups", because these groups are established solely for these needs, which is further elaborated on through other provisions.

From a meaningfulness standpoint, it is not understandable why the right to organize a referendum campaign is held only by citizen groups and not also by an interested citizen – individual. Equally illogical is the fact that a group of domestic legal entities is not vested in the right to organize an election campaign (while a group of natural persons has that possibility).

Therefore, one possible solution would be as proposed by Transparency Serbia.

Our Amendment to this Article:

The organizer of a referendum campaign may be: ~~any domestic legal entity or group of citizens, formed in accordance with the regulations governing elections for Members of Parliament.~~

- 1) a person who has the right to vote in a referendum for which a campaign is organised;
- 2) more citizens from p. 1) of this paragraph, based on the concluded agreement;
- 3) national legal entity;
- 4) several national legal entities, based on the concluded agreement;
- 5) a political party and another political entity in the sense of the Law governing the financing of political activities, from whose electoral list members of parliament, deputies or councillors were elected at the last elections.

The organiser of a referendum campaign may not be a state body, territorial autonomy body and local self-government, a public institution, a public enterprise, an institution, enterprise and other legal entity owned directly or indirectly by the Republic of Serbia, territorial autonomy or local self-government.

The organiser of a referendum campaign may not be a company or entrepreneur performing activities of general interest, any other natural and legal persons exercising public authority, except when the referendum decides on issues directly related to the achievement of the goals for which they were established, i.e., their rights, obligations and business interests.

The organiser of the referendum campaign submits an application to the competent election commission and encloses evidence, i.e., a written statement on the fulfilment of the conditions, thus acquiring the rights from this Law.

A statement of interest can be submitted even before the referendum is called.

The content of the application, the manner of submission and the manner of proving the fulfilment of the conditions shall be regulated in more detail by the Republic Election Commission, no later than 30 days before the announcement of the referendum.

The application referred to in paragraph 5 of this Article may be submitted at any time until the day of the referendum.

The competent election commission determines the fulfilment of the conditions within 48 hours and publishes on its website the names of the organisers of the referendum campaign that have been determined to meet the requirements.

Individuals and legal entities are prohibited from providing advertising services that represent a referendum campaign to persons whose names have not been published following paragraph 10 of this Article.

The advertisement and other material used in the referendum campaign must contain the identification of the referendum campaign organisers.

Ads and other material used in advertising which, in the sense of Article 27, paragraph 5. of this Law are not considered a referendum campaign, must contain the advertiser's identity.

Financing of referendum campaign

Article 29 - Financing of the referendum campaign

Venice Commission urgent opinion comments:

49. The organisations which are prohibited to finance campaigns are too widely defined (Article 26): churches and religious communities could have a legitimate interest in some issues submitted to a referendum. The same applies to foundations and unions. Limitations which could be acceptable in an electoral campaign could go against the principle of proportionality in a referendum on a subject which may address the core activities of these organisations. Moreover, foreign nationals are also excluded from contributing to the financing of campaigns. This should not be the case if they are legal residents in Serbia and the referendum is not about the Constitution or constitutional laws. The Venice Commission recommends reconsidering this provision.

Comment:

Following VC recommendations new draft law does not prohibit financing of referendum campaigns from churches, foundations and unions. However, provision is still too restrictive when it comes to other possible sources (e.g. some companies with the interest for referendum issue).

Ban of financing from foreign nationals with the right to vote is still there.

52. The Guidelines provide that the use of public resources by the authorities for campaigning purposes must be prohibited and that payment from private sources for the collection of signatures for people's initiatives and requests for referendums should, as a rule, also be prohibited.²⁶ If payment from private sources is permitted, it must be regulated with regard to both the total amount allocated and the amount paid to each person. The Venice Commission recommends addressing these issues if they are not addressed by the legislation in force.

Comments:

New draft does not clearly regulate this issue. While “collecting of signatures” is not listed as one of referendum, i.e. PI campaign activities (so one may interpret as any financing of such activity is not allowed), another interpretation would be equally correct (that there are no limits, as the issue is not regulated). Ban of using of public funds for these purposes may probably be derived from laws generally regulating how such funds may be used. However, there is no such limit when it comes to the use of funds of political parties or other private funds. Possible solution for VC recommendation may be introducing of provision where only person who signs also pays for authentication of the signature from his/her own funds.

53. Article 26.4 prohibits financing the costs of referendum campaigns with funds obtained from public sources that political subjects receive for financing regular work or election campaign costs. However, it is not possible to distinguish between the costs of organising campaign activities and other costs, as the costs for political party organisation (bureau costs, salaries, computers, cars etc.) are aimed at implementing all tasks of the political party. The Venice Commission recommends reconsidering this provision.

Following VC recommendations, the provision is changed. While VC pointed on the problem of technical nature (to determine origin of funds), it would be more appropriate that the law set criteria to distinguish between funds obtained from public and private sources, than to cancel this restriction. Namely, political parties receive budget support for election campaign and for their regular work, so using of these funds for referendum campaign would be in contrary to the purpose stated in the LFPA.

Transparency Serbia comments:

This article is drafted as an analogy with certain provisions of LFPA, which is not always appropriate. On the other hand, not all relevant provisions of the LFPA have been taken into account.

The notion of private sources used in paragraph 1 of that article is not defined in this Law, but paragraph 31 provides that LFPA will apply accordingly. However, the necessary application is not entirely possible, as the term "own funds" in LFPA refers to a political party's own funds, which political party is prohibited from generating certain forms of income allowed to economic entities.

In LFPA, it is allowed to finance the campaign from a bank loan, but their legal nature is determined ambiguously (as a separate source of income and/or as a private one). Therefore, the issue should be regulated unequivocally, and it may be appropriate to prohibit this type of financing (due to the impossibility of subsequent control of the sources from which the loan will be repaid) or to set strict rules.

As to prohibited sources of financing, they are only partially appropriate. Some of these sources may be prohibited by a special provision (a ban on financing from public sources). In other cases, the ban is illogical. Namely, the right to organize an election campaign is vested in all domestic legal persons. On the other hand, some of these persons would not have the right to financially support their own campaign! This is, for example, the case with certain business entities (e.g., excise products importers). Not only would such legal entities have the opportunity to organize a referendum campaign, but it would be quite appropriate in for them certain situations to organize and finance it. For example, if a referendum were to be conducted on a ban on smoking in public places, it would be of obvious interest to cigarette manufacturers to campaign on that issue.

At the very least, relative to the existing proposal, an exception must be provided in the sense that the referendum campaign can be financed by companies when issues related to achieving their goals, i.e., their interests are put on referendum.

In paragraph 8 we proposed that **political entities should be prohibited from financing the costs of the referendum campaign with funds from public sources.** This would amount to a consistent ban on the use of funding from public sources. In this regard (when a similar ban existed in LFPA, between 2011 and 2014), it was problematic to determine which funds, used by the party for the election campaign, came from which sources. Therefore, in paragraph 9 we specified which funds should be considered to originate from public sources in terms of paragraph 8 of this Article.

Paragraph 5 (now Article 29.2) has a legitimate goal, but the latter is not fully realized. As the use of budget funds is prohibited, the use of other public funds (e.g., public enterprises, public institutions, etc.) should be prohibited as well, and the ban must apply to employees of those services, institutions and businesses.

Paragraphs 6 and 7 rely on LFPA. Part of the wording in paragraph 6 is clumsy because it says that "the organizer of the referendum campaign is prohibited from", and then that the ban does not apply to funds used by individual public officials. It would have been better if this exception had been singled out in a special paragraph.

In general, these provisions should be improved within LFPA itself, and concrete proposals put forward by Transparency of Serbia, when amendments to this Law were last discussed, can be found here:

https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_dopis_za_poslanike_i_pre_dlog_amandmana_-_C4%8Detiri_antikorupcijska_i_izborna_zakona.pdf

Our Amendment to this Article:

To finance the costs of the referendum campaign, the campaign organizer may use its own funds, ~~as well as~~ **and collect the own and use funds of other persons who are not prohibited from financing the referendum campaign.** ~~from other private sources.~~

It is prohibited to finance the referendum campaign with publicly owned funds and funds owned by public institutions and public companies and with funds of other companies owned directly or indirectly by the Republic of Serbia, territorial autonomy or local self-government.

~~The rules on financing the election campaign in accordance with the Law governing the financing of political activities shall apply accordingly to the collection of funds referred to in paragraph 1 of this Article and the use of own funds.~~

It is prohibited to finance the costs of the referendum campaign from foreign countries, foreign natural and legal persons, international political associations and; **persons whose identity is unknown.** ~~to anonymous donors.~~

Notwithstanding the provisions of paragraph 4 of this Article, a referendum campaign may be financed by a foreign natural person who has the right to vote in a referendum.

It is forbidden to finance the costs of the referendum campaign from: ~~public institutions, public enterprises, companies and entrepreneurs providing services of general interest; institutions and enterprises with the participation of state capital; other natural and legal persons exercising~~

public authority; gambling organisers; importers, exporters and manufacturers of excise products; legal entities and entrepreneurs who have due and outstanding liabilities based on public revenues, **except when the referendum decides on issues that are directly related to the achievement of the goals for which they were established, i.e. their rights, obligations and business interests.**

The organiser of the referendum campaign is obliged to inform the competent election commission within 48 hours of receiving the contribution for financing the campaign from the person referred to in paragraph 6 of this Article, which shall determine within 48 hours whether the conditions for using those funds are met.

Political entities are prohibited from financing the costs of the referendum campaign with funds from public sources.

Funds originating from public sources in terms of paragraph 8 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 referendum campaign begins, reduced by the amount of funds for which the political entity has proof that they were collected from private sources during the current year in terms of the Law governing financing political activities, and when the referendum campaign begins on or before 15 April, and 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 referendum campaign and after the referendum campaign and 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 in that period in terms of the Law governing the financing of political activities;

When a political entity finances a referendum campaign with loan funds, that loan repayment cannot be made with funds obtained from public sources to finance regular work or election campaign expenses.

To finance a referendum campaign, a political entity may collect contributions from one natural person or one legal entity in the amount of up to the maximum prescribed amount for the contributions of one natural or legal person during the year in accordance with the Law governing the financing of political activities.

The contribution referred to in paragraph 11 of this Article shall not be included in the maximum value of benefits on an annual basis.

Article 29a

Rules for receiving a contribution

The organiser of the referendum campaign may receive a contribution in cash only from the current account of the donor and is obliged to record that contribution.

It is prohibited to exert any pressure, threat, discrimination or any other form of direct or indirect placement in a disadvantageous position of a natural or legal person who contributes to the financing of the referendum campaign or who sells goods, provides services or performs works for the needs of the referendum campaign.

State authorities are obliged to prevent and punish any violence, violation of rights or threat to a natural or legal person referred to in paragraph 2.

Article 29b

Using public resources to fund a campaign

In order to carry out the activities within the referendum campaign, it is forbidden for public officials, civil servants and officials in the autonomous province and the local self-government unit, **employees in public services and publicly owned enterprises** to use the budget or other **public funds** at their disposal for the performance of their official duties.

The prohibition referred to in paragraph 1 of this Article shall not apply to public officials when they use public resources for the protection of personal safety, if such use of public resources is regulated by regulations in that area or by a decision of services that take care of officials' safety, to the extent necessary to achieve the purpose.

The organizers of the referendum campaign are prohibited from using public resources during the campaign, including official premises, vehicles, web presentations and inventory of state, provincial and local authorities, public institutions and public companies, ~~except for those public officials who use public resources to protect personal safety. if such use of public resources is regulated by regulations in that area or by a decision of the services that take care of the safety of officials~~

The organizer of the referendum campaign may use the premises and services of the bodies of the Republic of Serbia, the autonomous province and local self-government units, as well as other organizations of which they are founders, **if that body or organization has published the decision on its website and premises, no later than seven days after the referendum campaign, as well as information on the availability of premises and services during the referendum campaign.**

The decision referred to in paragraph 4 of this Article guarantees the right of all interested organizers of the referendum campaign to use the premises and services under equal conditions and in a manner that ensures their use equally to every organizer of the referendum campaign who expressed interest in a timely manner. ~~if those premises and services are available under equal conditions to all organizers of the referendum campaign, based on a publicly available decision of those bodies and organizations.~~

Financing of referendum campaign and implementation of LFPA rules

Articles 30 – 32- merged

51. Reference is made to the law governing the financing of political activities (see, e.g., Articles 26.2 and 31.2 – Now Articles 29.2 and 34.2, which makes a general reference to this law). In this opinion, the Venice Commission will not address the conformity of that law with international standards, nor examine which of its provisions should be applied in conformity with Article 31.2 of the draft law. Rather, the opinion will focus on some specific issues to be found in the draft law.

Comment:

While if it is understandable that VC couldn't comment on provision of other laws (in particular Law on financing of political activities - LFPA) it would be highly important to stress to the stakeholders in Serbia the need for these issues to be discussed in an open debate before the Law is adopted. As it may be seen from TS proposed amendments, there is number of provisions where implementation of LFPA provisions would not be possible without more detailed regulation in the Law on referendum and peoples' initiatives or where this would not be appropriate for different type of campaign and campaign financing.

Transparency Serbia comments:

This articles are also drafted on the basis of the corresponding provision of LFPA. However , this is not entirely appropriate, especially given the very broad definition of the organizers of the election campaign. Within such broadly set definitions, the obligations under Article 30-32 would be unreasonably high for some campaigners and could undermine their legitimate rights and interests, which are not contrary to the public interest.

If the broad concept of the referendum campaign and the organizers were to be retained, then one should consider scaling down duties from these articles in a different way.

Such scaling down could apply to "non-political" campaign organizers, while political entities would always have to keep special records and accounts about the referendum campaign, as they normally do when campaigning for elections.

Article 30 - Costs of the Referendum Campaign

Transparency Serbia comments:

The Law dictates that funds to finance a referendum campaign are used only for campaign activities, but it stops short of prescribing how to handle money not spent during the campaign (e.g., proportionate repayments to payers). In this regard, it would also be useful to have a clear

rule - a ban on any cost of the referendum campaign being paid after the referendum (or at least after the report is submitted).

Rules on advertising in the media during the election campaign exist, but they are not complete. Separate rules should be specified given the nature of the referendum vote, the equality of those who advocate both for the positive and the negative answer to the referendum question, but also the equality of subjects who are for or against that answer for different reasons.

[Our Amendment to this Article:](#)

The costs of the referendum campaign are the costs of carrying out all activities referred to in Article 27, paragraph 1 of this Law.

The funds collected to finance the costs of the referendum campaign may be used only for the activities referred to in paragraph 1 of this Article.

All costs related to the referendum campaign must be paid by the time the campaign costs are submitted.

Regulations and rules governing the conduct of the media in the election campaign apply to any advertising in the media.

Article 31 - Special account for financing the referendum campaign and records of income and expenditures

Transparency Serbia comments:

This provision comes from LFPA. Similar to that Law, the public should be given insight in data on income and expenditure accounts from the separate account while the campaign is ongoing.

[Our Amendment to this Article:](#)

To raise funds for financing the referendum campaign referred to in Article 29, paragraph 1 of this Law, the organiser of the referendum campaign shall open a special account that cannot be used for other purposes.

All funds intended for the financing of the referendum campaign shall be paid into the account referred to in paragraph 1 of this Article, and all payments of the costs of the referendum campaign shall be made from that account.

The obligation to open an account referred to in paragraph 1 of this Article has the organiser of the referendum campaign on any of the grounds referred to in this paragraph. Referendum campaign organiser:

- 1) is a political entity in terms of the Law governing the financing of political activities;
- 2) uses its own funds in the value of more than 1,000,000.00 dinars for the referendum campaign, or 100,000 dinars for the provincial or local referendum;

- 3) collects monetary contributions from other persons for the referendum campaign;
- 4) performs paid advertising or otherwise conducts a referendum campaign using promotional material of another referendum campaign organiser;

The organiser of the referendum campaign is obliged to keep records of the income and expenses of that campaign even when there is no obligation to open a special account.

The organiser of the referendum campaign is obliged to transfer the unused part of the funds for financing the referendum campaign to the persons who financed the campaign until the submission of the report on the expenses of the referendum campaign, making a refund starting from the last received payment, reduced by fund transfer costs.

Article 32 - Report on the costs of the referendum campaign

Transparency Serbia comments:

While it is quite clear in the elections who must report on campaign financing, because participants are previously "registered" with the electoral commission, this is not the case here. Therefore, the prerequisite for meaningful implementation of the rules on controlling the costs of the referendum campaign is the introduction of the obligation to register for those who will then have to submit the reports (and the relevant way of control and punishment for a failure to do that).

When it comes to the obligations and powers of the Anti-Corruption Agency (which would be the same for the referendum), it should be noted that the obligations have not been sufficiently elaborated – e.g., until when the report must be audited, what must be audited, when the report on the audit is published, at which time the proceedings against offenders are initiated, etc. Consequently, this control is often lacking in practice, as can be seen on the example of the last parliamentary elections.

<https://www.transparentnost.org.rs/images/publikacije/KONTROLA%20FINANSIRANNJA%20IZBORNE%20KAMPANJE%202020.pdf>

To control campaign finance reports, the Agency is legally entitled to additional funds, based on the prescribed criteria. Such a provision is not foreseen in this Law, nor is there a possibility to apply the LFPA accordingly, and this should be revised.

[Our Amendment to this Article:](#)

The organiser of the referendum campaign referred to in Article 28, paragraph 3 is obliged to submit a report on the costs of the referendum campaign to the agency body responsible for preventing corruption (hereinafter: the Agency) within 30 days from the day of publishing the overall referendum results.

The organiser of the referendum campaign, who received only contributions in the form of gifts, services provided free of charge or under conditions that deviate from the market, when the

total value of these contributions exceeds 1,000,000 dinars or 100,000 dinars for a local referendum is also obliged to submit a report.

The report on the costs of the referendum campaign shall be published on the Agency's website.

The content of the report on the costs of the referendum campaign and the **manner of keeping records referred to in Article 28, paragraph 4. of this Law** shall be regulated by the Director of the Agency.

The act referred to in paragraph 4 of this Article may not be changed during the referendum campaign.

Article 29a

Control of the report on the costs of the referendum campaign

In exercising control over the report on the costs of the referendum campaign, the Agency ~~has obligations and powers provided by the Law governing the financing of political activities.~~ **has the right of direct and unimpeded access to the accounting records and documentation and financial reports of the organisers of the referendum campaign to the extent necessary to determine the accuracy and completeness of the report.**

To perform control, the Agency may engage appropriate experts and institutions.

The organiser of the referendum campaign is obliged to submit all documents and information necessary for the Agency to perform the tasks prescribed by this Law, at the request of the Agency, within a period determined by the Agency, which may not be longer than three days.

Bodies of the Republic of Serbia, autonomous provinces and local self-government units, banks, as well as legal and natural persons financing the referendum campaign, i.e. who have performed a specific service in their name and on their behalf, are obliged, at the request of the Agency, and within the deadline determined by the Agency, which during the referendum campaign cannot be longer than three days, shall submit all data necessary for the Agency to perform the tasks prescribed by this Law.

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

For performing control activities, the Agency shall be provided with additional funds from the current budget reserve of the budget of the Republic of Serbia no later than seven days from the beginning of the referendum campaign, based on the reasoned proposal of the Agency.

Article 33 - Authorised person

The provision on the authorized person has been transposed from LFPA. In the context of the possibility of a referendum campaign organizer being a group of citizens, it is necessary to specify a way of determining an authorized person.

Since some of the organisers would not have the obligation to open a special account (according to our proposal, see below), the obligation to inform the Agency is related to the moment when the election commission determined the capacity of the organizer of the referendum campaign.

[Our Amendment to this Article:](#)

The appropriate decision of the organiser of the referendum campaign must determine the authorised person who is responsible for the use of funds for financing the referendum campaign, submission of reports and contact with the Agency.

A group of citizens shall designate an authorized person referred to in paragraph 1 of this Article by an agreement on their forming.

Within three days from the day of **publishing the decision of the competent election commission**, ~~to open an account for financing the referendum campaign~~, the organiser of the referendum campaign is obliged to submit to the Agency data on the person referred to in paragraph 1 of this Article.

The organizer of the referendum campaign is obliged to, in case of any change of the authorized person, inform the Agency about the change within three days from the change.

Article 34 – Appropriate application

Transparency Serbia comments:

The appropriateness of all the aforementioned rules should be considered in light of the provisions on the people's initiative.

As for the consequently applying the LFPA "to issues not regulated by this Law", the matter deserves a broader analysis, in order to look at what provisions of LFPA might apply in this way. Only after such analysis will it be possible to determine whether this Draft needs to be supplemented by another norm (because it is not possible to determine how the "consequent implementation" might be conducted).

[Our Amendment to this Article:](#)

~~The provisions of this Law governing the referendum campaign shall apply accordingly to the organisation of the campaign in support of the people's initiative.~~

~~The provisions of the Law governing the financing of political activities shall apply accordingly to issues not regulated by this Law, which concern the referendum campaign.~~

The financing of the referendum campaign and the campaign in support of the people's initiative, unless otherwise regulated by the provisions of this Law, shall be applied accordingly to the rules from the Law governing the financing of political activities, which refer to: definition of "private sources" and specific private sources; publishing received contributions; collecting evidence from the contributor who performs business activity; a ban on concealing

the identity of the donor and making contributions through a third party and rules on the transfer of illegally acquired funds.

Peoples initiatives and related campaign

Transparency Serbia proposed special rules for financing campaign related to the people's initiatives.

Article 58 - Initiative Board

[Our Amendment to this Article:](#)

In order to carry out a people's initiative, citizens shall set up an initiative board of at least three members eligible to vote.

The initiative board may establish special boards for the collection of signatures at individual locations.

By the decision of the competent body of the association in whose membership is at least three citizens of the Republic of Serbia who have the right to vote, the rights and obligations of the initiative committee in terms of this law may be exercised by that association.

Article 60 - Verification of the Proposal

Venice Commission urgent opinion:

84. Article 56.3 (Now Article 60.3) regulates the procedure after the initiative group has submitted a proposal to the President of the Assembly. If the President of the Assembly considers that the submitted proposal goes against legal requirements concerning its form or content, and the initiative group sticks to the proposal, the proposal shall be put on the agenda of the parliament instantly. While it is legitimate to verify whether the proposal goes against superior law or human rights, there are two risks: 1) that the verification procedure, if politically biased, may delay the parliamentary debate; 2) that a high number of proposals, which may not be serious in nature, be presented for verification only in order to hamper the ordinary work of the parliament as the draft law allows an initiative committee consisting of three persons only. If every proposal has to be added to the agenda of the Assembly unless verified by the speaker, there could be hundreds or even thousands of such proposals, which could paralyze the work of the legislative body. The Venice Commission thus recommends enabling an independent body (such as an election commission) to verify the initiative, with a possible judicial remedy in case the proposal is rejected. The law could provide for a deadline for such verification.

Comment:

The provision in new draft remained largely the same.

TS proposed changes to resolve number of issues, only some of them being tackled by VC opinion.

[Our Amendment to this Article:](#)

The ~~Speaker~~ **Secretary** of the Assembly to which the initiative board has submitted the proposal shall establish whether the proposal has been formulated in accordance with Articles 48 and 57 of this Law and whether it pertains to matters falling within the competence of the Assembly, and if so, shall notify **the President of the Assembly** and the initiative board thereof within seven days (verification of the proposal).

If the conditions prescribed by this Law have not been fulfilled, the ~~Speaker~~ Secretary of the assembly shall grant the initiative board an additional 15-day time limit to remedy the deficiencies, **and shall inform the President of the Assembly thereof.**

If the initiative board remains with the submitted proposal and the Speaker of the Assembly considers that the submitted proposal is not formulated in accordance with Articles 48 and 57 of this Law or does not pertain to matters falling within the competence of the Assembly, the Speaker shall put that proposal on the agenda of the first subsequent session of the Assembly and notify the initiative board thereof.

The representative of the proponent ~~shall attend~~ **must be invited** to the session of the Assembly at which the proposal is being considered.

If the proponent representative is not designated, the first signatory in the initiative board shall be invited to the assembly session.

The representative of the submitter has the right to explain the proposal and to answer the questions referred to him by the people's deputies, deputies or councillors.

The Assembly may decide to verify or reject the submitted proposal, and the Speaker of the Assembly shall notify the initiative board of the Assembly's decision within seven days from the day the decision was made.

If the Speaker of the Assembly, i.e., the Assembly does not act in accordance with paragraphs 1, 2 and 6 of this Article, it shall be considered that the proposal has been verified.

Article 64 - Financing and Campaign Costs

[Our Amendment to this Article:](#)

~~After receiving notification, or after the deadline for the notification referred to in Article 60 of this Law has expired, the initiative board may start raising funds to finance people's initiative campaign.~~

~~Fundraising for the financing of people's initiative campaign and expenses shall be governed by the provisions of At. 27—33 of this Law, save for the Law provisions governing financing of political activities, related to the amount of contributions.~~

The campaign for support of the people's initiative may be carried out by the initiative committee, in accordance with the rules from this law, starting from the day of receiving the notification, i.e., the expiration of the notification deadline from Article 57 of this law.

The campaign in support of the people's initiative may also be carried out by other persons, to whom in that case the rights and obligations related to the Initiative committee apply.

The campaign for support of the people's initiative is considered to be activities aimed at convincing the citizens to support the people's initiative, i.e., the Assembly to act in accordance with the people's initiative, starting from the day from paragraph 1 of this Article, until the day of deciding on the initiative, including: organized direct address to citizens; organizing and holding public gatherings; promotion, production and distribution of publications and other promotional material; advertising; as well as the procurement of goods, services and works related to the implementation of other listed activities.

The members of the initiative committee, which is not a legal entity, before starting the campaign in support of the people's initiative, determine by mutual agreement the person who will be the bearer of rights and obligations before the initiative committee regarding the legal financing of that campaign.

The initiative committee may collect funds for the campaign referred to in paragraph 1 to a special account opened for that purpose.

Funds for financing the campaign in support of the people's initiative can be collected from all legal sources, in the form of payments of members of the initiative committee, contributions of other persons in money, as well as contributions in the form of gifts, services provided free of charge or under conditions that deviate from market.

It is forbidden to collect donations for financing the campaign in support of the people's initiative from donors whose identity is unknown.

All campaign costs referred to in paragraph 1 shall be paid from a special account.

The initiative committee has the obligation to open an account when:

- 1) it is a legal entity in the capacity of an initiative committee;
- 2) it collects financial contributions for the support campaign, which are the own funds of the members of the initiative committee, and the total value of these contributions exceeds 1,000,000 dinars, or 100,000 dinars for the people's initiative related to local self-government level;
- 3) it collects contributions from others for the support campaign, in any amount;

All costs of the campaign referred to in paragraph 1 must be paid no later than the day of submission of the report.

Article 64a

Report on the costs of the campaign in support of the people's initiative

The initiative committee referred to in Article 60, paragraph 9 is obliged to submit to the Agency a report on the costs of the support campaign, within 30 days from the day when it was determined that the people's initiative was launched.

The initiative committee is obliged to submit a report when it received a contribution for the campaign in the form of gifts, as well as services provided free of charge or under conditions that deviate from the market, when the total value of these contributions exceeds 1,000,000 dinars, or 100,000 dinars for a people's initiative related to the level of local self-government.

The obligation to submit the report referred to in paragraph 1 of this Article, i.e., the additional report, also exists when the initiative committee led the campaign until the decision on the people's initiative was made.

The report referred to in paragraph 3 of this Article shall be submitted within 30 days from the end of the campaign, and no later than 30 days from the day of deciding on the initiative.

The report referred to in paragraphs 1 and 3 of this Article shall be published on the Agency's website.

The content of the report referred to in paragraphs 1 and 3 of this Article shall be regulated in more detail by the act and manner of submission by the Director of the Agency.

If during the campaign for support of the people's initiative the act from paragraph 6 of this article is changed, the report can be submitted according to the rules that were valid on the day of the beginning of the campaign.

When controlling the report on the expenses of the campaign in support of the people's initiative, the Agency, in relation to the initiative committee and other persons, has the same powers and obligations as in controlling the report on the costs of the referendum campaign.

For the performance of control activities referred to in paragraph 8, the Agency shall be provided with additional funds from the current budget reserve of the budget of the Republic of Serbia, no later than 7 days from the beginning of the campaign.

The initiative committee is obliged to keep records of campaign income and costs even when there is no obligation to open a special account.

The initiative committee returns the unused funds according to the rules prescribed for the return of funds for financing the referendum campaign.

Article 69 - Deciding on the Initiative

Venice Commission urgent opinion:

80. *The deadline of 90 days for the collection of signatures seems adequate. However, the obligation for the Assembly to decide on the proposal no later than within six months from the day of initiating the people's initiative (Article 65.1 – now Article 69.1), appears too short. While the Assembly should not delay the examination of the draft, the deadline could be extended by a few months at least. Moreover, an appeal against the inaction of the Assembly should be introduced.*

81. *Article 65.3 (69.3) stipulates that when the Assembly accepts the general initiative, it obliges the competent authority to prepare a draft legal act and to decide on it within 180 days. The aim of this provision is unclear. The proposal has to be in the competence of the parliament, not of any other authority. It is the task of the Assembly itself to adopt a law if it accepts it. The law could regulate the possibility of the parliament to request the government to draft such a law and present it to the parliament, but not its adoption by any other institution. A deadline seems overly restrictive in this case, as it is up to the parliament to decide on the urgency of the matter. If there is no such urgency but a need to discuss the draft law for a longer period, the parliament could reject the general proposal just to formally respect the legal deadline. Moreover, a strict deadline could go against the principle of democracy: acceptance of a proposal by the outgoing parliament should not oblige a newly elected parliament to draft and adopt legislation implementing this general proposal. Sanctions for not following the general proposal after its formal adoption by the parliament should not be legal, but just political. The Venice Commission recommends reconsidering this provision.*

Comment:

TS did not analyzed implementation of these recommendations in the new draft.

On the other hand, TS raised another issue, that is not sufficiently regulated in the draft.

[Our Amendment to this Article:](#)

National Assembly shall decide on the proposal contained in the launched people's initiative at its first next sitting of the regular session, but not later than six months from the day people's initiative has been launched, in the manner and according to the procedure stipulated by the Constitution and the law or the Rules of Procedure of the Assembly.

Assembly of the autonomous province or local self-government unit shall decide on the proposal contained in the launched people's initiative at its first next meeting, but not later than 90 days from the day people's initiative has been launched, in the manner and according to the procedure stipulated by the Constitution and the law or the statutes of the autonomous province or local self-government unit.

When the Assembly approves a general initiative, it shall task the competent authority or body to prepare a draft of the appropriate legal act and shall decide on that act within 180 days from the day general initiative has been approved.

Representative of the initiative board shall have the right to participate in the drafting of the act referred to in paragraph 3 of this Article, **which includes the right to participate in the working group preparing the act, the duty of the competent authority to submit without delay all proposals, comments and opinions which gets on the draft, i.e., the draft act and the right to address the members of the Assembly and its working bodies at the session at which the act is considered.**