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Transparency Serbia

COMMENTARY ON CERTAIN PARTS OF THE INTER-PARTY AGREEMENT ON ELECTION CONDITIONS

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SUMMARY

The political Agreement between the two ruling and seven opposition political parties and the Speaker of the National Assembly envisages some measures that can increase the integrity of the election process and the equality of the participants. Still, many problems are not touched at all or only seemingly solved. In addition, part of the Agreement on calling early parliamentary elections and establishing a "Control Body" is a violation of the Constitution and the Law.

When it comes to financing the election campaign and preventing the misuse of public resources, these improvements are minimal - they do not solve all the problems that are already well known in public, and there are no indications that measures will be taken to follow all ODIHR recommendations to Serbia after the 2020 and 2016 parliamentary elections and the 2017 presidential elections.

It is proposed to increase the budget funds divided by the participants in the elections into equal parts (30% instead of 20% of the total amount). There are no additional rules for classifying campaign costs between multiple elections, which will be held simultaneously. It is planned to introduce the obligation to submit preliminary reports on campaign expenses five days before the elections. This measure will increase transparency only if the parties publish both already paid costs and the agreed obligations because, in practice, about 90% of the costs are paid after the given date.

A helpful novelty is the publication of the price list of advertising media in the campaign, but

the rules should be specified when it comes to discounts, deferred payment and payment of advertisements through marketing agencies.

The new rules on banning media coverage of certain activities of public officials (ceremonial opening of infrastructure facilities) are entirely inadequate - instead of banning the media, the promotional activities of public officials in the campaign should be limited. Such restrictions should apply to other officials, not just those on the electoral list, and should certainly apply throughout the campaign, not just ten days before the election.

From the point of view of the rule of law, the main problem is that the inter-party Agreement envisages obligations for state bodies - among others for the Government and the President of the Republic (determining that the President will dissolve the National Assembly and call elections within a specific deadline). Such an agreement violates the constitutional provision according to which "political parties cannot directly exercise power, nor subordinate it to themselves." Similarly, there is no legal basis for the Inter-party Agreement to provide for the establishment of a "Control Body", which should have powers concerning state bodies and holders of public authority.

Note:

The full text of the Agreement was published on the website of the National Assembly as a [scanned document](#). Therefore, the [text published in the form that allows further usage from one of the participants in the Inter-party Dialogue \(DJB\)](#) was used for the analysis.

* TS's comments are given after individual points of Conclusion, **in red letters**.

** Only those articles of the Agreement that we have commented on are listed in the content.

CONCLUSION OF THE INTER-PARTY DIALOGUE ON IMPROVING THE CONDITIONS FOR HOLDING ELECTIONS UNDER THE AUSPICES OF THE PRESIDENT OF THE NATIONAL ASSEMBLY

1. GENERAL FRAMEWORK OF THE CONCLUSION ON IMPROVING THE CONDITIONS FOR ELECTIONS

Article 1

(1) The inter-party Dialogue on improving the conditions for holding elections conducted under the auspices of the Speaker of the National Assembly determined the Working Body for the Preparation of the Conclusion on Improving the Conditions for Holding Elections, consisting of representatives of the following political parties and political movements: "Dosta je bilo", the Serbian Movement Dveri, the Democratic Party of Serbia, the Movement for the Renewal of the Kingdom of Serbia, the Serbian Radical Party, Healthy Serbia and the Serbian Party Zavetnici (hereinafter: the Working Body).

(2) Members of the Working Body in good faith held talks on improving the conditions for holding elections in the Republic of Serbia, which included all important issues of the election process, grouped into the following four parts: 1) General rules of election

procedure and candidacy procedure 2) Voting at the polling station, determining the election results and protection of the right to vote 3) Financing of political activities and prevention of misuse of public resources in the election campaign and 4) The role of the media in the election process.

Article 2

(1) Starting from the fact that regular elections for the President of the Republic and the Assembly of the City of Belgrade are held in the first half of 2022 and that the implementation of these conclusions should begin as soon as possible, it is concluded that there is not enough time to proceed with structural reforms, as well as radical changes in the existing electoral system, as such reforms cannot be implemented until regular presidential elections are held.

(2) In this phase of the Dialogue, the improvement of the existing proportional electoral system is considered, in which the Republic of Serbia is one constituency.

(3) After the end of the elections in 2022, a dialogue will continue in which the possibilities for structural changes in the electoral system, i.e., broader reforms of the existing electoral system, will be discussed.

TS comment:

Article 2 states that regular presidential and Belgrade elections will be held in the first half of 2022 and that there is no time for structural reforms of the electoral system, including the improvement of the existing proportional electoral system in which the Republic of Serbia is one constituency. However, the parliamentary elections have not been called yet, nor are there any conditions for that (the mandate of the Assembly and the Government lasts until 2024).

1. GENERAL RULES OF ELECTION PROCEDURE AND CANDIDACY PROCEDURE

A. - Simultaneous holding of elections

Article 3

(1) On the same day, April 3, 2022, regular elections for the President of the Republic, regular elections for councillors in the Assembly of the City of Belgrade and extraordinary elections for deputies shall be held.

(2) Elections for the President of the Republic shall be called by the President of the National Assembly on March 2, 2022.

(3) Elections for People's Deputies shall be called by the President of the Republic on February 15, 2022.

(4) Elections for members of the Assembly of the City of Belgrade shall be announced by the President of the National Assembly on February 15, 2022.

TS comment:

This Article states that on April 3, 2022, parliamentary elections will also be held, and the President of the Republic will call them on February 15, 2022. However, according to Article 109 of the Constitution, an elaborated Government proposal to dissolve the National Assembly should precede for the President to call elections for deputies at all. In other words, the group of political parties that signed the Agreement determined the task of the Government of Serbia and the President of Serbia, for which they cannot be competent. The fact that the parties' representatives that make up the Government (and the party whose President is also the President of the Republic) signed the Agreement does not change anything. Namely, Article 5, paragraph 4 of the Constitution prescribes that "political parties may not directly exercise power, nor subordinate it to themselves."

B. – Voting on the territory of the Autonomous Province of Kosovo and Metohija

Article 4.

(1) Citizens of the Republic of Serbia living in the territory of the Autonomous Province of Kosovo and Metohija must be enabled to exercise their constitutionally guaranteed right to vote and to vote in the territory of the Autonomous Province of Kosovo and Metohija.

(2) Given that voting in the territory of the Autonomous Province of Kosovo and Metohija due to the specific security and political situation cannot be conducted in the same way as in other parts of the Republic of Serbia, the Law on Election of Deputies should provide a legal basis for elections in the Autonomous Province Kosovo and Metohija are conducted according to a special procedure, in cooperation with the OSCE.

(3) The Law on the Election of People's Deputies shall provide a legal basis for at least one member of each polling station committee in the territory of the Autonomous Province of Kosovo and Metohija to be elected on the proposal of the opposition electoral list, i.e., electoral lists proposed by a non-parliamentary party, i.e., electoral lists proposed by a parliamentary party that is not part of the ruling coalition

C. – Election administration bodies

a) *Temporary change of permanent composition of the Republic Election Commission*

Article 5.

(1) The Law on the Election of People's Deputies shall provide that the first subsequent elections for the President of the Republic and the elections for People's Deputies shall be conducted by the changed permanent composition of the Republic Election Commission with 23 members and 23 deputy members.

(2) Seventeen members and deputy members shall be elected following the applicable regulations. The remaining six members and deputy members shall be elected by the National Assembly on the proposal of the Speaker of the National Assembly, out of which three members and three deputy members shall be elected on the proposal of the parties participating in the Inter-party Dialogue under the auspices of the European Parliament. The remaining three members and three deputy members shall be elected on the proposal of the parties participating in the inter-party Dialogue under the auspices of the Speaker.

TS comment:

The document does not provide criteria for selecting additional REC members. Namely, the Agreement was signed by seven political

organizations participating in the Dialogue under the auspices of the National Assembly. The participants in that Dialogue were given a "quota" of three members and three deputy members of the REC in the temporarily expanded composition. It is possible that a similar problem exists when it comes to the parties that participated in the second Dialogue (with the mediation of the EU 8 parliaments). The problem is even more significant concerning other points of the Agreement, where the appointment of a smaller number of representatives of the non-parliamentary opposition in certain bodies is envisaged. The absence of additional rules on these issues in the Agreement opens the door to disputes in its application.

b) Local Election Commissions

Article 6.

(1) The Law on the Election of People's Deputies shall provide that city and municipal election commissions (hereinafter: local election commissions) shall be the third body for conducting elections for deputies and elections for President of the Republic (hereinafter: elections at the national level) in addition to the Republic Election Commission and polling station committees.

(2) The local election commission should have a permanent and expanded composition.

(3) When the local election commission conducts elections at the republic level, its extended composition shall consist of representatives of all submitters of electoral lists at the republic level.

(4) The local election commission should have specific competencies in the election procedure,

such as the handover of election material, the formation of polling stations, resolving legal remedies in the first instance on irregularities in the work of polling stations.

c) Temporary solution for the permanent composition of the local election commission

Article 7.

(1) The Law on the Election of People's Deputies shall provide that the first subsequent elections for the President of the Republic and the elections for People's Deputies shall be conducted by local election commissions, which shall have a changed permanent composition.

(2) In addition to the members and deputy members of the local election commission who are appointed according to general rules, one member and one deputy member shall be appointed to the permanent composition of the local election commission on the proposal of the Speaker of the National Assembly, who makes this proposal after consultations with opposition parties participating in the inter-party Dialogue and other opposition parties that show interest in it.

d) Change of criteria for the election of permanent composition of the election administration body

Član 8.

(1) The criteria for appointing members of permanent election bodies should be changed since, according to the valid criteria, electoral lists that have not won enough mandates to form a parliamentary or councillor group

cannot nominate members of permanent election bodies.

(2) Amendments to the law on the Election of People's Deputies provide that in terms of nominating members of the Republic Electoral Commission in permanent composition, i.e., in terms of proposing members of permanent polling stations, a parliamentary group may be considered a single deputy or a group of deputies less than five deputies if the following conditions are met: 1) that all these MPs are elected from the same electoral list, 2) that the electoral list on which they were elected did not win as many seats as needed to form a parliamentary group, 3) that none of them joined another parliamentary group groups and 4) that they all signed a proposal to appoint a certain number of members and deputy members to the permanent composition of the Republic Election Commission, i.e., polling boards.

(3) Amendments to the Law on Local Elections provide that in terms of nominating members of local election commissions in permanent composition, i.e., that in terms of proposing members of polling station committees in permanent composition, a single councillor or a group of less than is required for the formation of a councillor group if the following conditions are met: 1) that all these councillors are elected from the same electoral list, 2) that the electoral list on which they were elected did not win as many seats as needed for the formation of the councillor group, 3) joined another group of councillors and 4) that they all signed a proposal to appoint a certain number of members and deputy members to the

permanent composition of the local election commission, i.e. polling boards.

e) Temporary change of the permanent composition of polling stations

Article 9.

(1) The Law on the Election of People's Deputies shall provide that the first subsequent elections for the President of the Republic and the elections for People's Deputies shall be conducted by a changed permanent composition of the Polling Station Committee consisting of 4 members and 4 deputy members.

(2) Three members and deputy members shall be elected under applicable regulations, while the Republic Election Commission shall elect one member and one deputy member on the proposal of the Speaker of the National Assembly, which makes this proposal after consultations with opposition parties participating in the inter-party Dialogue and other opposition parties that show interest in it.

(3) The same rule shall apply to the referendum and the next local elections.

f) Increase of fees for work in the polling station committee

Article 10.

By changing the bylaw of the Republic Election Commission, it will be envisaged that the remuneration for work in the polling board will increase from 1,500 dinars to 2,000 dinars.

TS comment:

While the increase in the fee for polling station members can be assessed as a positive measure from the point of view of controlling the election process, it is unfortunate that the opportunity was not used to reduce budget costs in parallel with the increase in the fee for polling station members by stipulating that those political parties that have representatives in the permanent composition of polling stations are not entitled to compensation for members of polling stations that they appoint to the extended composition of those bodies. As a result, it can easily happen that budget funds are wasted, that is, that they partially serve to finance the work of party members and not to control the election process.

g) Increasing transparency of the work of election administration bodies

Article 11.

The Law on the Election of People's Deputies will envisage the following obligations of the bodies for conducting elections, which will increase the transparency of their work:

- 1) Sessions of the Republic Election Commission are broadcast live on its website;
- 2) Minutes from the sessions of the Republic Election Commission are published on its website;
- 3) The entry of the voting results data from polling stations, from the beginning to the end, is transmitted on the website of the Republic Election Commission;
- 4) All minutes on the polling stations work shall be scanned and published as soon as possible on

the website of the Republic Election Commission, and if errors in filling in the minutes on the work of the polling station are corrected, an act on correcting the minutes shall be published;

- 5) Every voter has the right to request information from the election administration body responsible for keeping the election material on whether it is recorded in the excerpt from the voter list that he/she voted.

TS comment:

These are helpful changes, partially implemented in the previous parliamentary elections.

h) Designation of polling stations for repeated voting

Article 12

By-laws of the Republic Electoral Commission should clearly stipulate that in case of repeated voting at a polling station, each submitter of the electoral list has the right to change his representatives in the polling station and if he did not appoint his representatives in the polling station at that polling station conducting repeated voting.

D. – Running in elections

a) Reducing the required number of signatures

Article 13.

- (1) The Law on the Election of Deputies shall reduce the number of voter signatures required to submit the electoral list of a national minority party in the elections for deputies to 5,000.

(2) The Law on Local Elections should stipulate the principle that the number of signatures required for submitting an electoral list does not depend on the number of councillors in the assemblies of the local self-government unit but on the number of voters on the day of calling the elections. support at least:

- 200 voters in local self-government units with up to 20,000 voters,
- 300 voters in local self-government units with up to 30,000 voters,
- 500 voters in local self-government units with up to 50,000 voters,
- 600 voters in local self-government units with up to 70,000 voters,
- 800 voters in local self-government units with up to 100,000 voters,
- 1,000 voters in local self-government units with up to 500,000 voters.
- 3,000 voters in local self-government units with more than 500,000 voters.

3) By the Provincial Assembly decision on the election of deputies to the Assembly of the Autonomous Province of Vojvodina, reduce the number of signatures required for submitting the electoral list in the provincial polls from 6,000 to 4,000, and reduce the number of signatures for submitting the electoral list of national minority parties from 3,000 at 2,000.

(4) The Law on Local Elections should stipulate that all valid voters' signatures, submitted by the submitter of the electoral list, which is greater than the number prescribed for submitting the electoral list, shall not be counted in the submitted signatures and shall

not be rejected if repeated when submitting a next electoral list.

TS comment:

The changed rules are planned to reduce demands placed on the national minorities' parties. Such a change is justified. On the other hand, the regulations on campaign financing for these parties have not changed, so they will receive the same level of budget funds as the "majority", although they will have lower costs related to one of the activities during the campaign (signature verification).

b) Competent authorities for signature verification

Article 14.

(1) Amendments to the law on the Election of People's Deputies, enacted immediately after the abolition of the state of emergency, shall remain in force.

(2) During the candidacy process, one city or municipal certifier shall be on duty in the premises of local communities, and electoral lists shall be given the opportunity to set up a table with computers and a printer in the premises of local communities to prepare a voter statement.

c) Naziv izborne liste

Article 15.

In terms of the possibility of determining the name of their electoral list, political parties should be equated with party coalitions, i.e., groups of citizens.

TS comment:

It is unclear what should be equated through the Agreement reached under this point. Namely, the legal solution in Article 42 of the Law on the Election of Deputies reads: "The name of the electoral list is determined by the name of the political party submitting the list, and the name may include the name and surname of the person designated by the political party."

If two or more political parties submit a joint electoral list, the name of the electoral list and a maximum of two holders of the electoral list shall be determined by the Agreement.

Along with the name of the electoral list of a group of citizens, the submitter determines a closer designation of that list. The name may include the name and surname of the person designated by the group of citizens as the holder of the electoral list.

A person designated as the holder of the electoral list may be a candidate for MP.

The person designated as the holder of the electoral list may be a candidate for another state body for which elections are being held at the same time. "

E. - The position of national minority parties in the electoral process

Article 16.

(1) Electoral lists submitted by political parties of national minorities should have a privileged status when running for office and assigning mandates.

(2) The Law on the Election of Deputies shall explicitly prohibit the circumvention of the law

and authorize the Republic Electoral Commission not to recognize a certain submitter of the electoral list as a political party of a national minority if it determines that it is a majority party trying to circumvent the law.

TS coment:

It is unclear what kind of privileges are meant in paragraph 1, as some of them already exist. It is unclear whether some new ones are envisaged or only existing ones are retained (e.g., counting the number of votes those lists received in increased amount, based on Article 81 of the Law on the Election of Deputies, which was amended before the 2020 elections). It is equally unclear how the REC could determine whether a majority party is circumventing the law by claiming to be a national minority party, that is, whether an amendment to the law is envisaged. Currently, the provision reads: "A political party of a national minority, in terms of paragraph 2 of this Article, is a party for which the Republic Electoral Commission has determined that its primary goal is to represent the interests of the national minority and protect and improve the rights of members of the national minority, accordingly with international legal standards."

The Republic Electoral Commission decides by a special decision, at the proposal of the submitter of the electoral list – which must be submitted when submitting the electoral list - whether the submitter of the electoral list has the position of a political party of a national minority or a coalition of political parties of national minorities, in terms of paragraph 2 of this Article. The Republic Electoral Commission may request the opinion of the competent national council of a national minority on whether the

submitter of the electoral list is a political party of a national minority or a coalition of political parties of national minorities." The main problem is that there are no prescribed criteria based on which the REC could determine that the fact that a party has proclaimed as its primary goal a representation of the interests of a national minority is not true.

F. – Voter list

a) Establishment of a working group for voter list control

(1) The Government of the Republic of Serbia shall establish a Working Group for External Control of the Unified Voters' List, consisting of representatives of: Serbian Progressive Party, Socialist Party of Serbia, "Dosta je bilo", Serbian Movement Dveri, Democratic Party of Serbia, Movement for Renewal of the Kingdom of Serbia, Serbian Radical Party. Healthy Serbia, the Serbian Party of Defenders, the Government, the Ministry of State Administration and Local Self-Government and the Republic Election Commission, and three representatives of other opposition parties who show interest in it.

(2) Each member of the Working Group would have the right to submit to the Ministry of State Administration and Local Self-Government a request to verify the accuracy of data on individual voters in the Unified Voters' List including voters located in the Autonomous Province of Kosovo and Metohija.

(3) The Ministry of State Administration and Local Self-Government is obliged to submit to the Working Group every month for the previous month a statistical report on the

situation and changes in the Unified Voters' List for each local self-government unit: number of new entries due to number of deletions based on death or other termination of suffrage; a number of entries due to change of residence and number of deletions due to change of residence.

(4) The Ministry of Internal Affairs is obliged to submit to the Working Group every month for the previous month data on the number of valid identity cards and passports for adults, as well as on the number of persons whose temporary residence abroad is longer than three months.

(5) The Ministry of State Administration and Local Self-Government shall, based on data obtained from the Ministry of the Interior, submit to the Working Group by the 10th of each month: the number of voters on the voter list who do not have a valid ID card; the number of persons who have a valid ID card and are not registered in the voter list; the number of persons whose data on residence in one local self-government unit is entered in the valid identity card, and who are entered in the part of the voter list kept by another local self-government unit; the number of voters on the voter list who do not have a valid passport; the number of persons who have a valid passport and are not registered in the voter list; the number of voters on the voter list who have registered temporary residence abroad or according to the records are not in the country for more than three months.

(6) The Ministry of State Administration and Local Self-Government shall submit to the Working Group in electronic form by the 10th of the month for the previous month a list of

names and surnames of voters for each unit of local self-government.

(7) The Republic Electoral Commission shall organize scanning of excerpts from the voter list from all polling stations and their automatic, electronic comparison with the contents of the Unified Voters' List, comparison with the death register, a database of valid identity cards and passports and the fact of stay in the country during elections and to initiate appropriate procedures in accordance with its competencies if it is determined that people who were not on the voter list, who did not have a valid identity card and/or who were not in the country according to the records voted.

(8) If it is determined that some persons are registered to have voted, but in fact, did not vote, the Republic Election Commission shall submit criminal charges to the competent prosecutor's office.

(9) The Working Group may request from the Ministry of State Administration and Local Self-Government other data and reports to verify the validity of the voter list. (e.g., the number of voters on the voter list at a particular address).

(10) The working group is formed for the period necessary for executing this Conclusion's tasks.

b) Informing citizens about keeping voter list and checking data in the voter list

Article 18.

Competent state bodies (Government, Ministry of State Administration and Local Self-Government, Republic Election Commission)

should conduct a public campaign aimed at informing citizens about how they can check whether they are registered to vote and how they can exercise their rights regarding changes in voter list.

3. ELECTION DAY, VOTING AT THE POLLING STATION, DETERMINATION OF VOTING RESULTS AND PROTECTION OF ELECTORAL RIGHTS

A.- The work of the polling board

a) Prevention of abuse when a voter votes outside the polling station

Article 19.

The Law on the Election of People's Deputies will stipulate that when an elector votes outside the polling station, at least one of the three commissioners of the polling station committee who goes to the elector must be a representative of the opposition electoral list, i.e., electoral lists submitted by a non-parliamentary party, or electoral lists submitted by a parliamentary party that is not part of the ruling coalition.

b) Domestic and foreign observers at the polling station

Article 20.

(1) The Law on the Election of People's Deputies shall provide for the right of domestic and foreign observers to monitor the work of the

polling station committee at all times, from the moment they take over the election material to the moment they submit it after the voting is over.

(2) The Law on the Election of People's Deputies and the acts of the Republic Election Commission shall especially emphasize the right of domestic and foreign observers to attend the opening of the ballot box, the counting of votes and the determination of results at the polling station.

c) Position of representatives of opposition electoral lists at the polling station

Article 21.

(1) The Law on Election of Deputies and acts of the Republic Electoral Commission should primarily emphasize the right of members and deputy members of polling stations appointed on the proposal of opposition electoral lists to monitor the polling station committee work at the polling station and in particular the counting of ballots and filling in the minutes of the work of the polling station committee.

(2) The Law on Election of Deputies and acts of the Republic Electoral Commission should emphasize the obligation of the President of the Polling Station Committee to encourage representatives of opposition parties in the Polling Station Committee to check certain election activities, including whether valid and invalid ballots are well classified, whether the votes received by individual electoral lists are well counted, etc.

TS comment:

It is unclear why such emphasis is needed at all, because all members of polling stations should be able to monitor the work of the polling station committee, count ballots and fill in the minutes of the work of the polling station committee.

d) Special insistence on preventing certain irregularities in the work of polling stations

Article 22.

In the Law on Election of Deputies and acts of the Republic Election Commission should be emphasized that it is prohibited to keep parallel lists, use mobile phones, and that only members of the polling station committee, accredited domestic and foreign observers and electors who came to vote may stay at the polling station.

TS comment:

This amendment seems essential from the point of view of the integrity of the election process. However, it should not be limited to mobile phones but also to other devices that can serve the same purpose (remote communication, audio and video recording).

e) Establishing legal procedures for eliminating errors in the minutes of the work of the polling station committee

Article 23.

(1) The Law on the Election of People's Deputies should prescribe the procedure according to which, when receiving election material in the presence of representatives of the polling station committee and members of the local

election commission, logical-accounting control of the minutes of the polling station committee is performed.

(2) The Law on the Election of People's Deputies should prescribe that gross irregularities in filling in the minutes of the work of the polling station committee shall lead to repeated voting at the polling station.

B. – Determining the results of voting and protecting the right to vote

a) Competence to decide on complaints

Article 24.

The Law on Election of Deputies should provide for three-level protection of the right to vote when it is violated by improper work of the polling station committee so that the request for annulment of voting at the polling station in the first instance is decided by the local election commission, that an objection may be lodged against the decision of the local election commission with the Republic Election Commission, and that an appeal against the decision of the Republic Election Commission may be lodged with the Administrative Court.

b) Cancellation of voting at the polling station ex officio

Article 25.

(1) The Law on Election of Deputies should provide for the possibility for ex officio election annulment bodies to annul voting at a polling station if they determine 1) that the number of ballots in the ballot box is greater than the

number of voters who voted; 2) that the committee enabled a person who is not registered in the excerpt from the voter list to vote and 3) that there is no checklist in the ballot box, i.e., that the checklist is not filled in or signed by the first voter and at least one member of the polling station committee and 4) that the total number used and unused ballots that are in the bag for election material higher than the number of received ballots.

(2) The Law on Election of Deputies should provide for the possibility for ex officio election bodies to issue a decision stating that the results of the voting cannot be determined at a specific polling station if 1) voting at that polling station was not held or was interrupted, and not continued 2) if they do not receive the minutes of the work of the polling station committee 3) if the submitted minutes were not signed by any member of the polling station committee, or 4) if there are gross and unavoidable logical and computational errors in filling in the minutes of the polling station committee.

c) Publication of objections

Article 26.

The Law on Election of Deputies should stipulate the obligation of the Republic Election Commission to publish on its website all submitted legal remedies in the election process and decisions on those legal remedies.

TS comment:

This is a beneficial novelty for gaining insight into the integrity of the election process and the quality of the REC's work.

d) Special rights of members of the REC regarding the control of the regularity of the election process

Article 27.

(1) In the Law on Election of Deputies and bylaws of the Republic Election Commission, it is necessary to emphasize that each member of the Republic Election Commission and the local election commission has the right to inspect the entire election material, count election material from each polling station and check whether the elector who provided his address and unique personal identification number voted.

(2) A decision on correcting the polling station committee's work minutes shall be made for the polling station where the discrepancy between the minutes on the polling station committee work and the content of the election material has been determined.

(3) The minutes on the polling station committee work and the decision on its correction shall be published on the website of the Republic Election Commission.

TS comment:

This also seems to be a useful novelty for protecting the integrity of the election process.

e) Control of the accuracy of the polling station committee work according to a random sample

Article 28.

(1) At the request of the submitter of the proclaimed opposition electoral list which won more than 2% of the votes, and which is submitted within 24 hours from the closing of polling stations, the Republic Election

Commission shall determine the accuracy of % of polling stations on the territory of each city, municipality and city municipality.

(2) If the requirements for control of the accuracy of the minutes on the work of polling stations according to a random sample cover more than 5% of polling stations, control of the accuracy of the minutes on the work of polling stations shall be performed at those polling stations where most voters are registered.

(3) If the control of the accuracy of the minutes of the work of polling stations determines a discrepancy between the content of election material and the minutes of the work of the polling station more than 10% at the level of all controlled polling stations from the city, municipality and city municipality, the accuracy of the minutes of the work of the polling station committee will be checked with another 5% of polling stations.

(4) If after additional control a discrepancy is found between the content of election material and the minutes of the polling station more than 10% at the level of all controlled polling stations from the territory of the city, municipality and city municipality, the accuracy of the minutes of the polling station polling stations on the territory of the municipality, i.e., the city or city municipality.

(5) A decision on the correction of the minutes of the work of the polling station committee shall be made for the polling station where the discrepancy between the minutes of the work of the polling station committee and the content of the election material has been determined.

(6) The minutes of the work of the polling station committee and the decision on its

correction shall be published on the website of the Republic Election Commission.

(7) If there is a reasonable suspicion that a major discrepancy between the minutes of the polling station and the content of election material is the result of conscious and intentional activities aimed at determining the false election result, the Republic Election Commission shall file criminal charges with the competent public prosecutor's office.

TS comment:

Čini se da je i ovo korisna novina za zaštitu integriteta izbornog postupka.

C. – Electoral census

Article 29.

(1) Amendments to the law on the Election of People's Deputies shall remain in force, stipulating that the electoral threshold is 3%.

(2) An electoral list that has passed the electoral threshold, and according to the system of the highest quotient does not have any mandate, must be assigned a mandate on account of the electoral list with the lowest quotient, which is not a minority electoral list and won at least two mandates.

4. FINANCING ELECTION CAMPAIGN AND PREVENTING ABUSE OF PUBLIC RESOURCES IN ELECTION CAMPAIGN

A. – Allocation of funds from public sources to finance the political campaign

Article 30.

(1) The Law on Financing Political Activities should change the criteria for financing election campaign expenses so that 30% of the funds are distributed in equal amounts to the submitters of electoral lists who stated during the submission of the electoral list that they will use funds from public sources, and that 70% of the funds be distributed to the electoral lists that won seats in proportion to the number of seats won.

(2) The Law on Financing of Political Activities should stipulate that submitter of electoral lists, who have submitted a statement that they will use funds from public sources to cover the

election campaign, and who have not given an election guarantee, may receive the corresponding part of the funds after the elections if they achieve the legally prescribed election result.

TS comment:

The changes will provide a juster representation of electoral lists than has been the case so far. However, the issue of determining that amount from the point of view of the purpose of financing remains unresolved. Namely, if the goal of budget grants is to ensure the equal presentation of the program of election participants, then it would be appropriate to divide 100% of budget grants into equal parts and in equal amounts, not just 30%. If the purpose is to reduce the parties' dependence on financiers in order to prevent their influence on

the adoption of the law, then it is appropriate to distribute 100% of the funds only to those participants who entered the Assembly. In any case, the amount allocated from the budget for representation of parties and candidates should not depend on the amount of tax revenues in the budget for a given year and the number of declared electoral lists, but on pre-determined minimum costs of presenting electoral lists. According to the current legal solution (which has not changed since 2003), the parties will receive more money individually when the number of participants in the elections is smaller. Such a situation is contrary to logic (because there is less competition and the need for paid promotion).

The exact effects of this measure are still unknown because the draft budget of the Republic of Serbia for 2022 has not been published. If the basis for the calculation were the same as this year during the parliamentary elections, all participants would divide 245,343,000 dinars into equal parts. In the presidential elections, all candidates would similarly divide 408,905,000 dinars. Having in mind the previous experiences with the number of electoral lists (about 20), that means that each of them could count on close to 100,000 euros from the budget for their activities (they received about 63,000 euros in last year's elections). Those parties that also propose presidential candidates (where the number of candidates is usually smaller, and in 2017 there were 11 of them) would also receive over 300,000 euros from the budget.

Although two types of elections will be held simultaneously this year, and as many as three in the capital, the Agreement does not envisage

any changes when it comes to the parallel conduct of several election campaigns. The development of additional rules for such situations would be justified when it comes to covering the costs from the budget (because the parties that nominate presidential candidates to run such a campaign together with the one for the parliamentary elections, and not separately). Another problem is the classification of costs into one or another type of campaign, which has so far been arbitrary because there was no duty to clearly indicate which elections are covered by which paid ad, nor rules on how costs related to multiple types of expenses must be classified (e.g., that they must be divided equally into parliamentary and presidential campaigns).

B. – Publication of a preliminary report on election campaign expenses

Article 31.

Amendments to the Law on Financing Political Activities should stipulate that submitters of electoral lists participating in the election campaign submit to the Agency for the Prevention of Corruption a preliminary report on election campaign expenses five days before the day set for voting.

TS comment:

This novelty can be helpful but to a very limited extent. Namely, as TS has already pointed out to the participants in Dialogue, the publicity of funding data can be more easily ensured by introducing the obligation to publish data from a special account that each election participant is obliged to use to fund the campaign. There is

no need for parties, coalitions and groups of citizens to prepare special preliminary reports. On the other hand, insight into transactions on accounts can be provided daily, which would give citizens a more comprehensive insight. However, given the fact that the majority of campaign costs are paid only after the completion of the campaign, the introduction of an obligation for parties to publish their records of commitments (e.g., contract advertising on TV stations, billboards, etc.) would be a more significant contribution to transparency.

C. – Special restrictions for public officials in the election campaign

Article 32.

Amendments to the Law on Prevention of Corruption stipulate that, ten days before the day set for voting, the media cannot report on official public gatherings where infrastructure and other facilities are opened (roads, bridges, schools, hospitals, factories, etc.), i.e., mark the start of construction such facilities if public officials who are candidates for the President of the Republic, deputies and councillors of city assemblies or municipalities participate in these gatherings.

TS comment:

It is entirely inappropriate for any media bans to be prescribed in the Law on Prevention of Corruption. This issue could be the subject of media laws (a draft of a new Law on Public Information and Media is currently being prepared) or general election laws. On the other hand, the subject of regulation in the Law on Prevention of Corruption can and should be prohibitions, restrictions and duties related to

public officials - what they may or may not do in the run-up to elections. In that sense, it is unjustified: a) that the new restrictions are set only for ten days before the elections, and not for the entire period of the election campaign; b) that the ban is related exclusively to public gatherings where infrastructure and other facilities are opened (roads, bridges, schools, hospitals, factories, etc.), or marks the beginning of construction of such facilities (e.g., essentially the same problematic situation occurs when a public official visits works that have already started and not completed, but also when without a public meeting, but with the participation of a public official, for example at a press conference, or through online media, promotion of the beginning or end of work); c) the fact that the ban is related only to situations when those public officials who are also candidates for the President of the Republic, deputies and councillors of city and municipal assemblies participate in rallies. Namely, promotional activities with the same effect in practice are performed by officials who are not candidates in the elections but are "seen" as candidates for a position in the executive branch (e.g., Prime Minister, Minister, Mayor), or who indirectly promote the party to which they belong.

D. – Equal access to local community premises

Article 33.

The Ministry of State Administration and Local Self-Government shall send a letter to local self-government units requesting them to allow all participants in this Dialogue, as well as all registered political parties, including those

without deputies and councillors, free use of local community premises for their political activities, but so that during the election campaign, groups of citizens who are the proposers of the declared electoral list, i.e. the declared candidate, would have the right to free use of the premises of local communities.

TS comment:

Although this amendment is valuable, the treatment of other criminal offences related to the election process (e.g., abuse of office) should be monitored in the same way. In addition, it should be envisaged to inform the public about the actions of the prosecutor's offices on such criminal charges. Equal or even greater attention should be paid to promoting safe ways of reporting such crimes and educating citizens about what is forbidden but often happens at polling stations. (for example, the voter violates the secrecy of the ballot by publishing or providing someone with a recording used ballot).

E. – Special activities to combat crimes against suffrage

Article 34.

The Ministry of Justice will address the Republic Public Prosecutor with a proposal to open special registers and records on criminal offences against electoral rights based on Article 148, paragraph 2 of the Rulebook on Administration in Public Prosecutor's Offices during the elections.

TS comment:

Although this amendment is valuable, the treatment of other criminal offences related to the election process (e.g., abuse of office) should

be monitored in the same way. In addition, it should be envisaged to inform the public about the actions of the prosecutor's offices on such criminal charges. Equal or even greater attention should be paid to promoting safe ways of reporting such crimes and educating citizens about what is forbidden but often happens at polling stations. (for example, the voter violates the secrecy of the ballot by publishing or providing someone with a recording used ballot).

5. ROLE OF THE MEDIA IN THE ELECTION PROCESS

A.– Common rules for all media

a) Defining the methodology of media monitoring

Article 35.

(1) The regulatory body for electronic media shall, through a transparent process, determine the methodology for monitoring the media during the election campaign, which will ensure trust and transparency of monitoring and will be based on quantitative and qualitative parameters.

(2) The methodology shall be prepared in consultation with the Interim Supervisory Authority and in accordance with European best practices.

TS comment:

It is not regulated in detail how to ensure transparency of the methodology development process, nor will there be a public debate before special rules are established.

b) Publishing political advertising officials

Article 36.

(1) Public media services and other media with an information program, both terrestrial and cable, will be legally obliged to publish a price list of political advertising.

(2) The criteria according to which the price of political advertising is determined must be valid for all candidates in elections and submitters of declared electoral lists.

TS comment:

The introduction of the obligation to publish price lists helps apply the rules on financing political activities. However, it is not enough to provide only for the publication of price lists and that the criteria according to which the price is determined must be valid for all candidates. For example, based on this Agreement, it is not clear whether equality of criteria means equality of price or it is possible to negotiate different discounts depending on the quantity of advertising, whether it is possible to negotiate deferred payment and what rules will apply when advertising on the media is contracted through intermediaries.

B – Public media service

Article 37.

(1) Public media services are obliged to act according to the principles of an impartial, fair and balanced representation of political entities, i.e. electoral lists and candidates in elections in the regular news program and special programs dedicated to the election campaign.

(2) It is especially recommended that the public media service organize radio and TV duels or confrontations to inform the public about the pre-election actions of candidates, i.e. submitters of electoral lists, to discuss specific current political issues.

TS comment:

A legal obligation exists to present the "program" of election participants, which is not mentioned here. The duels will be conducted according to "current political issues", but how these issues are defined has not been determined, i.e., it is unclear who will determine what is current and what is not. In addition, e.g., when confronting a candidate for President, it can easily happen that a current political issue is not a matter for which the President of the Republic is competent.

a) Establishment of an Interim Supervisory Body

Article 38.

(1) A temporary supervisory body shall be established with the following competencies: 1) media monitoring, 2) consultations, 3) preparation and submission of reports on the application of RTS and RTV regulations, 4) giving opinions on the work of independent institutions and their decisions, 5) informing the public on its assessment and work, 6) monitoring the implementation of recommendations for private broadcasters with national coverage, 7) organizing regular press conferences and performing other tasks in accordance with this Agreement.

(2) The composition of the Interim Supervisory Body should ensure political pluralism and professional expertise.

(3) The temporary supervisory body has 12 members.

(4) Six members shall be nominated by the Regulatory Body for Electronic Media (REM), and the remaining six members shall be nominated by the Speaker of the National Assembly after consultations with opposition parties participating in inter-party dialogues, under the auspices of the representatives of the European Parliament, and the remaining three representatives are elected on the proposal of the parties participating in the inter-party Dialogue under the auspices of the President of the National Assembly.

(5) The temporary supervisory body shall be established by the Government as its ad hoc body and shall provide it with the means and conditions for work

(6) The members of the Provisional Supervisory Body shall be appointed by the Minister of Culture and Information.

(7) No one who is a candidate on any electoral list may be a member of this body.

TS comment:

As TS has already commented in detail, the Government cannot be authorized to establish a temporary body with the stated competencies, that is, the Temporary Supervisory Body has already been formed contrary to the Law and the Rules of Procedure of the Government.

b) Adoption of a binding rulebook for the public media service

Article 39.

To better regulate the coverage of the election campaign, the Regulatory Body for Electronic Media, in consultation with the members of the Interim Supervisory Body, will adopt a binding rulebook for the Public Media Service (RTS and RTV), in line with ODIHR recommendations and applicable legal framework.

TS comment:

Based on the existing legal rules and obligations of the media, the obligations should apply not only to RTS and RTV, but also to other news media.

c) Establishment of a distribution key for the public media service

Article 40.

(1) After announcing the elections, public media services are obliged to organize, without monetary or other compensation, the broadcasting of special programs dedicated to the elections, which aim to acquaint the public with the programs and ideas of all candidates on the principle of impartial, fair and balanced representation. , ie submitters of electoral lists.

(2) The pre-election program must be clearly separated from the rest of the program by an announcement and unsubscribe and clearly marked with a textual notice throughout the program.

(3) The public media service (RTS and RTV) is obliged to adopt a document within 5 days from the day of calling the elections, which will

establish the appropriate distribution key for political advertising on the public media service.

(4) When adopting the document referred to in paragraph 3 of this Article, the Public Media Service shall fully respect Article 7, paragraph 1, item 8 of the Law on Public Media Services, ensuring that all participants receive space in primetime RTS 1.

(5) The public service broadcaster will introduce self-regulation with full respect for the existing framework in order to ensure that all political actors receive adequate space in the prime time of RTS 1.

C. – Private broadcasters with national coverage

Article 41.

(1) The Regulatory Body for Electronic Media, in consultation with the members of the Interim Supervisory Body, shall issue recommendations for private broadcasters with

national coverage, terrestrial and cable, relating to the presentation of candidate programs and electoral lists during the election campaign.

(2) The President of the National Assembly, as a mediator in the inter-party Dialogue, shall address private broadcasters with national coverage, both terrestrial and cable, with a request to submit a reporting plan to the Working Group within 15 days of concluding this Agreement, both for the period before calling the elections and during the election campaign, which will be made in accordance with the principles of impartial, fair, balanced and lawful representation of political entities, i.e. electoral lists and candidates in elections, while respecting the strength of political entities and their own editorial policy.

TS comment:

There is no legal basis for the Speaker of the National Assembly to address private broadcasters to submit a reporting plan.

6. CONTROL MECHANISM FOR IMPLEMENTATION OF THE AGREEMENT

Article 42.

(1) The Control Body of the Inter-Party Dialogue shall be established, which is competent to monitor the implementation of this Conclusion.

(2) The control body consists of representatives of Serbian Progressive Party, Socialist Party of Serbia, "Dosta je bilo", Serbian Movement Dveri, Democratic Party of Serbia, Movement for Renewal of the Kingdom of Serbia, Serbian

Radical Party, Healthy Serbia, Serbian Party Zavetnici, Government, Ministry of State Administration and local self-governments and the Republic Election Commission and three representatives of other opposition parties who show interest in it.

(3) State bodies and holders of public authority are obliged to regularly inform the members of the Control Body about all activities undertaken in the implementation of this Conclusion.

(4) State bodies and holders of public authority are obliged to provide members of the Control Body with information on the activities they undertake if the regulations adopted based on this Conclusion are not applied in practice.

(5) The control body shall be formed with a mandate until the announcement of the final election results.

TS comment:

There is no legal basis for state bodies and holders of public authority to be obliged to regularly inform the members of the Control Body about the activities they undertake in the implementation of the Conclusion from the inter-party Dialogue. It is not clear who will form the "Control Body" and what its legal status is.



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