



Strasbourg, 9 December 2010

Opinion no. 604/2010

CDL (2010)140
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON FINANCING OF POLITICAL ACTIVITIES
OF SERBIA

DRAFT LAW ON FINANCING OF POLITICAL ACTIVITIES

I. INTRODUCTORY PROVISIONS

SUBJECT OF THE LAW

ARTICLE 1.

This Law regulates sources of financing, book keeping records and control of financing of political parties, coalitions and group of citizens (hereafter: political actors).

Political activity within the meaning of this Law, is a regular work and election campaign of a political actor as submitter of the registered electoral list and the candidate for the president of the Republic, for members of the Parliament in the Republic parliament, councilors in the provincial assembly and councilors in the local self governments assemblies and assemblies of cities` municipalities.

MEANING OF THE TERMS

ARTICLE 2.

Some terms used in this Law have the following meaning:

- „political party” is a citizens` organization enlisted in the register at a competent authority in accordance to the law;
- „coalition” is a form of association of political actors for joint participation at elections, who regulate their mutual relationship by contract, certified in accordance to the law regulating certification of signatures;
- „group of citizens” is a form of association of voters, for joint participation at elections, who regulate their mutual relationship by contract, certified in accordance to the law regulating certification of signatures;
- „election campaign” is a scope of activities of a political actor from the day elections are called until the election day;
- „election guarantee” is a guarantee of a political actor who participates in elections to return funds received from public sources for financing election campaign, if fails to achieve 1% of votes at elections, or in case of a political actor representing national minority interests, if fails to achieve any mandate;
- “value of donations” is a total value of all donations (membership fees, donation) that a natural or legal person gives to a political actor annually;
- „average monthly salary” is an average monthly net salary, without taxes and contributions, for the previous year in the Republic of Serbia according to the official data of the institution in charge of statistics.

II. SOURCES AND WAYS OF FUNDING

1. FINANCING OF POLITICAL ACTORS

ARTICLE 3.

Political actors are funded from public and private sources.

Funds from sources mentioned in para 1 of this article political actors use for funding of regular work expenditures and of election campaigns expenditures.

Political actors may take loans from banks and other financial organizations in the country in accordance with the law.

PUBLIC SOURCES

ARTICLE 4.

Public sources funds are financial resources from budget of the Republic of Serbia, budget of the autonomous province and budget of the local self government unit aimed at funding of political activities.

Public sources funds are also other services and goods, defined according to other laws, provided by state bodies and other institutions established by the Republic of Serbia, territorial autonomy unit or local self government unit, without compensation or under the conditions deviating from market conditions for funding of political activities.

PRIVATE SOURCES

ARTICLE 5.

Private sources funds comprises of a membership fee, donation, inheritance, legacy and property income.

MEMBERSHIP FEE

ARTICLE 6.

Membership fee is the financial amount a member of a political party is due to regularly pay, in a manner and under conditions stipulated by the party statute or its other legal act.

Member of a political party is obliged to pay the membership fee only from his bank account.

Membership fee of an annual amount less than 1,000 dinars (10 Euro) may be deposited in cash or money order. When deposited in cash a responsible person of a political actor is obliged to issue a receipt on received membership fee. Receipt is duly signed both by a member depositing a membership fee and a responsible person.

DONATION

ARTICLE 7.

Donation is amount of money, save the membership fee, a natural or legal person voluntarily donates to a political actor, a gift as well as a service rendered without compensation or under conditions deviating from market conditions.

Donor performing business activities is obliged to submit to a political actor, when donating or on following day at latest, a statement or attestation of a competent authority that it has fulfilled all obligations regarding public revenues, a statement that it is not nor has performed in the previous two years activities of public interest upon contract. Legal person, a donor, is obliged to also submit data on its ownership structure.

Political actor is obliged to receive the amount of money from para 1 of this Article only from the bank account of a donor.

The maximum annual value of donations a natural person may donate to a political actor for its regular work is up to 20 average monthly salaries.

The maximum annual value of donations a legal person may donate to a political actor for its regular work is up to 200 average monthly salaries.

All donations of natural and legal persons from para 1 of this Article are to be registered.

Annual donations exceeding one average monthly salary are to be publicly presented.

Political actor is obliged to publish such donation on its website within eight days from the day value of donation has exceeded one average monthly salary.

POLITICAL ACTOR PROPERTY ACQUIRING AND PROPERTY INCOME

ARTICLE 8.

Political actor`s property comprises of real estates and movable objects that are used for achieving political goals, participating at elections and other permitted goals as regulated by law.

Political actor acquires property through purchasing, inheritance and legacy.

Political actor may acquire real estate property by virtue of legal transaction only using funds collected from private sources.

Property income comprises of income a political actor obtains from selling its real estate properties and movable objects, from renting its own real estate property and from interests on deposits.

PROHIBITED FUNDING SOURCES

ARTICLE 9.

Funding of a political actor is prohibited by: foreign states; foreign natural and legal persons except from international political associations; anonymous donors; public institutions, public companies, companies and enterprises providing services of general interest; institutions and companies with state capital shares; other companies vested with public authorities; trade unions; associations and other non-for-profit organizations; churches and religious communities; organizers of games of chance; importers, exporters and producers of excise products; legal entities and enterprises that have accrued but not fulfilled obligations from public income, unless regulated differently by this Law.

Donation from international political associations cannot be in money.

Funding of political actor is prohibited by a legal person rendering services according to the contract with state bodies and public institutions during the contracting period and two years after the expiry of the contract.

It is prohibited for political actors to obtain shares or ownership stakes in a legal entity.

ARTICLE 10.

It is prohibited to exert any form of pressure against natural and legal persons when collecting funds for political actor.

It is prohibited to give promise or create expectation of any privilege or personal benefit to a donor to political actor.

It is prohibited to donate political actor through a third party.

ARTICLE 11.

Political actor cannot acquire income from promotional or commercial activity and political party neither from shares or ownership stakes in legal entities.

ARTICLE 12.

Financial resources acquired in contravention to the Article 9 of this Law political actor is obliged to transfer to the State Budget account within 15 days from their receipt.

Membership fee acquired in contravention to the Article 6 para 3 of this Law political actor is obliged to transfer to the State Budget account within 15 days from its receipt.

Donation received without due documents as regulated in the Article 7 para 2 as well as amount of donation exceeding the permitted amount as regulated in the Article 7 para 4 and 5 of this Law, political actor is obliged to return to the donor within 15 days from receiving donation.

In cases where funds from para 3 of this Article cannot be returned to the donor`s account, they are to be transferred to the State Budget account.

III FINANCING REGULAR WORK OF POLITICAL ACTORS

PUBLIC SOURCES FUNDS

ARTICLE 13.

Public sources funds granted for regular work to political actors whose candidates are elected members of parliament, councilors in provincial assemblies and/or councilors in local self government assemblies are established at a level of 0,15% of the State Budget (deducted for transfers to other levels of authorities and organizations of social security), 0,1% of the autonomous province budget (deducted for transfers from other levels of authorities and to other levels of authorities) and 0,1% of the local self government unit budget (deducted for transfers from other levels of authorities).

If funds from para 1 of this Article are below the amount of three average monthly salaries, the missing amount shall be transferred from the State Budget.

DISTRIBUTION OF PUBLIC SOURCES FUNDS

ARTICLE 14.

Funds from Article 13 of this Law are distributed to political actors in proportion of votes calculated according to the method defined in the para 2 of this Article.

Number of votes of a political actor that is taken as a basis for allocating funds is calculated by multiplying number of votes up to the 5% of total valid votes with quotient 1.5 and number of votes beyond the 5% of total valid votes is multiplied by quotient 1.

Funds from Article 13 of this Law received by a political actor who participated at elections in a coalition are distributed according to the coalition contract.

Ministry of Finance, or the competent body of the autonomous province and local self government unit transfers the proportional part of the funds from para 1 of this Article to political actors every month, until the 10th day of a month, for the previous month.

ACCOUNT FOR FINANCING REGULAR WORK

ARTICLE 15.

Political actor may have several bank accounts only with the same tax identification number and a hard currency bank account for transfers of funds for regular work.

USE OF FUNDS FOR REGULAR WORK

ARTICLE 16.

Funds for regular work of political actors are used for functioning and propaganda of ideas of political actor and comprises of: work with voters and members, expenditures for promotions, advertising material, publications, public surveys, education, training and international cooperation, staff salaries and staff compensation expenditures, utilities (rent, heating, phone, electricity, internet etc) and other related activities.

Public sources funds received for regular work are to be used by political actor in at least 5% of amount for professional enhancement and training, acquiring practical skills, international cooperation and work with members.

IV FINANCING ELECTION CAMPAIGN EXPENDITURES

PUBLIC SOURCES FUNDS

ARTICLE 17.

Public sources funds granted to cover election campaign expenditures are provided in the year when regular elections are held at a level of 0,05% of the State Budget (deducted for transfers to other levels of authorities and organizations of social security), autonomous province budget (deducted for transfers from other levels of authorities and to other levels of authorities) and local self government unit budget (deducted for transfers from other levels of authorities) for the year for which the budget is approved.

In case of by- elections, competent authorities are obliged to provide funds from para 1 of this Article.

DISTRIBUTION OF PUBLIC SOURCES FUNDS

ARTICLE 18.

Funds for election campaign are allocated in equal amounts to all submitters of registered electoral lists or candidates.

Every submitter of electoral list or candidate receives the twentieth part of funds from Article 17 of this Law within 24 hours of registering respective electoral list.

If less than twenty electoral lists have been registered, the remaining funds from the total amount from the Article 17 of this law are allocated in equal amounts to all registered electoral lists within 24 hours from publishing of joint electoral list.

In elections with two election rounds, funds from Article 17 of this Law are divided in two equal parts, where in the first round one half is allocated according to para 2 and 3 of this Article, where the second half, in cases no candidate obtained absolute majority in the first round, is divided between two top candidates.

If funds from the Article 17 of this Law received by political actor from local self government unit budget is below half of the average monthly salary, missing amount is transferred from the State Budget.

PRIVATE SOURCES FUNDS FOR ELECTION CAMPAIGN

ARTICLE 19.

Political actor is permitted to collect funds from private sources for financing election campaign.

Natural and legal persons apart from donations for regular work, may, in one calendar year when elections are held, transfer funds for election campaign expenditures up to maximum annual amount regulated in the Article 7 para 4 and 5 of this Law.

ELECTION CAMPAIGN EXPENDITURES

ARTICLE 20.

Election campaign expenditures are expenditures incurred on activities during election campaign notably: posters, advertising materials, promotions, commercials, advertisements, publications, party conventions and other related activities.

Funds collected from public and private sources for elections campaigns expenditures may be used only for activities from para 1 of this Article.

On any rented media time, regulations and rules on media conduct during election campaign are applied.

SPECIAL ACCOUNT FOR FINANCING ELECTION CAMPAIGN

ARTICLE 21.

For purposes of collecting funds for financing election campaign, submitter of electoral list or candidates opens special permanent bank account that cannot be used for other purposes.

Political actor without a bank account as specified in the para 1 of this Article is obliged to open it after elections are called and before registering its electoral list.

All funds aimed at financing election campaign are to be deposited to the account from para 1 of this Article and all payments of election campaign expenditures are to be done against that account.

Funds collected for regular work, political actors may spend on election campaign expenditures, provided they are deposited on the account from para 1 of this Article.

ELECTION GUARANTEE

ARTICLE 22.

When submitting its candidacy, political actor intending to use public sources funds for financing election campaign is obliged to deposit election guarantee in amount equal to funds from Article 18 para 2 of this Law.

Election guarantee from para 1 of this Article comprises of depositing cash, state securities or of mortgage, at a value of a guarantee, on real estate owned by a guarantor.

Certificate on election guarantee is lodged at the Ministry of Finance or competent authority of the autonomous province or local self government unit.

RETURN OF FUNDS

ARTICLE 23.

Political actor that obtained less than 1% of valid votes, or in case of a political actor representing national minority interests less than 0,3% of valid votes, is obliged to return funds received according to the Article 18 para 2 within 30 days from the day final election results are published.

In case political actor does not return funds within the deadline established in para 1 of this Article, Ministry of Finance shall withdraw the election guarantee.

V REGISTRIES AND REPORTING

ARTICLE 24.

Political actor with representatives in legislatures is obliged to keep books on all income and expenditures.

Accounting books are kept according to the origin, amount and structure of the income and expenditures, in accordance to the accounting regulations.

Accounting records of income and expenditures of actors from para 1 of this Article are subject to annual control of competent authorities.

Political actor is obliged to keep separate record on donations, gifts and services rendered without compensation or under conditions deviating from market conditions as well as records on property.

The content and manner of keeping records from para 1 to 4 of this Article is regulated in detail by the Director of the Anti Corruption Agency.

ARTICLE 25.

Political actor with representatives in legislatures, is obliged to submit annual financial report to the Agency as well as records on donations and on property, together with the opinion of a licensed auditor, until the April 15 of a given year for a previous year.

Political actor is obliged to provide without delay, at a request from the Anti Corruption Agency, all documents and information needed for performing its duties and competencies.

Political actor is obliged to immediately, and no longer than 8 days after submitting the annual financial report to the Agency, publish it in the "Official Gazette of the Republic of Serbia".

ARTICLE 26.

Political actor participating in election campaign is obliged to submit to the Agency the Report on election campaign expenditures within 30 days from the day final election results are published.

Report on election campaign expenditures contains details on the origin, amount and structure of collected and spent funds from public and private sources.

Report on election campaign expenditures covers the period from the day elections are called until the day final election results are published.

Report on election campaign expenditures is published on the Agency website.

The content of the report on election campaign expenditures is regulated in detail by the Director of the Agency.

ARTICLE 27.

All funds from public sources not spent during election campaign, political actor is obliged to return to the budget until the day report is submitted.

All funds from private sources not spent during election campaign, political actor is obliged to transfer to its account for regular work until the day report is submitted.

ARTICLE 28.

The manner of internal financial control and right of members to be informed about the income and expenditures of a political actor has to be regulated by the political party Statute or relevant legal act of a political actor.

Person responsible for financial affairs, reporting and book keeping as well as authorized to communicate with the Agency is to be designated by the political party Statute or political actor contract (hereafter: responsible person).

The Agency is to be informed on the appointment of a responsible person from para 2 of this Article within three days from his appointment.

Political actor is obliged to inform the Agency on any changes that may occur in this regard.

Responsible person signs all the reports and is responsible for keeping books.

At a request by the Agency, the responsible person is obliged to provide reports during the fiscal year.

Political actor is obliged to keep its reports at least for six years after submitting them.

ARTICLE 29.

In performing duties from this Law, the Agency has the right of direct and free access to documents and reports of political actors, the right to seek insight into books, invoices and registries as well as to hire experts or institutions.

Political actor is obliged to provide at a request from the Anti Corruption Agency and within the deadline set up by the Agency but no longer than within 15 days, all documents and information needed for performing its duties and competencies.

During election campaign political actor is obliged to provide at a request and within deadlines established by the Anti Corruption Agency but no longer than within 3 days, all data needed for performing its duties and competencies.

For the purpose of performing control regulated by this Law, banks as well as other natural or legal persons financing political actor, or rendering on their behalf or in their name certain services, are obliged to provide information at a request by the Agency.

ARTICLE 30.

Resources for performing control of election campaign expenditures for elections for the President of the Republic, elections for members of the Parliament, elections for councilors in autonomous province assembly and councilors for local self government unit assemblies are provided to the Agency from the State Budget.

Funds for purposes specified in para 1 of this Article are provided in the State budget at the level not less than 1% for elections for the President of the Republic and elections for members of the Parliament, 0,5% for elections of councilors in autonomous province assembly and councilors in city assemblies and 0,25% for elections for councilors in local self government unit assemblies, from the total amount allocated from the State Budget for election campaign for elections of members of parliament.

In case more elections or elections at different levels are held during one calendar year, this percentage is taken for every election.

ARTICLE 31.

State Auditing Institution performs auditing of reports of political actors who use public sources funds.

The Agency, after concluding control of financial reports of a political actor, may forward a request to the State Auditing Institution for auditing the report in accordance to the law.

State Auditing Institution is obliged to act upon such a request and to inform the Agency on the outcome of the auditing procedure within 90 days from the day the report is received.

VI PROCEDURE AND DECISIONS IN CASE OF VIOLATIONS OF THE LAW

ARTICLE 32.

Procedure in which the violation of this law is established and sanctions issued is initiated and conducted by the Agency ex officio.

Procedure from para 1 of this Article may also be instituted by the submission of a natural or legal person.

Agency informs political actor on initiating the procedure from para 1 of this Article.

Agency may invite the responsible person in a political actor, as well as a person who instituted a procedure, to provide information as well as needed data in order to decide on possible violation of this law.

In proceedings before the Agency the public is excluded.

APPROPRIATE APPLICATION OF REGULATIONS

ARTICLE 33.

In proceedings before the Agency not specified in this Law, provisions of the Law regulating the general administrative procedure is accordingly applied.

MEASURE

ARTICLE 34.

Agency can issue a measure of warning to a political actor if in a course of a control procedure finds failures that can be corrected.

If a political actor fails to comply with the measure of warning within the deadline established in the measure, Agency initiates the misdemeanor procedure.

PENAL PROVISIONS

CRIMINAL OFFENSE

ARTICLE 35.

Who gives, or in the name or on behalf of a political actor, obtains funds for financing political actor in contravention with provisions of this law and with that hide the source of funding or the amount of collected funds of political actor shall be punished by imprisonment from three months to three years.

If through the offense committed from para 1 of this Article resources given or received are in the amount exceeding one million and five hundred thousand dinars, or equivalent amount in foreign currency, the perpetrator shall be punished by imprisonment from six months to five years.

Funds from para 1 and 2 of this Article shall be forfeited.

ARTICLE 36.

A political actor shall be fined from 200.000,00 dinars to 2.000.000,00 dinars for misdemeanor if:

- 1) receives funds in contravention to the Articles 6, 7 a 2 and 11 of this law;
- 2) does not publish donations according to the Article 7 of this law;
- 3) receives funds in contravention to the Article 9 of this law;
- 4) does not transfer within 15 days funds in accordance to the Article 12 of this law;
- 5) opens several accounts in contravention to the Article 15 of this law;
- 6) use funds in contravention to the Article 16 of this law;
- 7) use funds in contravention to the Article 20 of this law;
- 8) does not open special account for financing election campaign in accordance to the Article 21 or uses funds in contravention to the Article 21 of this law;
- 9) keeps registry in contravention to the Article 24 of this law;
- 10) does not provide for annual report in accordance to the Article 25 of this law;
- 11) does not provide for the report on financing election campaign in accordance to the Article 26 of this law;
- 12) acts in contravention to the Article 27 of this law;
- 13) does not designate responsible person for financial affairs in accordance to the Article 28 of this Law or does not report change of responsible person;
- 14) does not submit to the Agency requested data in accordance to the Article 29 of this law;

For misdemeanors in para 1 of this Article a responsible person in political party or other political actor shall also be fined from 50.000,00 dinars to 150.000,00 dinars.

ARTICLE 37.

Natural person providing donation in contravention to the Article 7 and Article 19 para 2 of this Law shall be fined from 50.000,00 dinars to 150.000,00 dinars.

Natural person from within business activity providing donation in contravention to the Article 7 and Article 19 para 2 of this law shall be fined from 50.000,00 dinars to 500.000,00 dinars.

Legal person providing donation in contravention to the Article 7 and Article 19 para 2 of this law shall be fined from 200.000,00 dinars to 2.000.000,00 dinars.

For misdemeanor from para 3 of this Article a responsible person in a legal person shall be fined from 50.000,00 dinars to 150.000,00 dinars.

ARTICLE 38

Natural person who provides funding for political actor or has rendered in its name or on its behalf certain service shall be fined from 50.000,00 dinars to 150.000,00 dinars if fails to provide to the Agency requested data in accordance to the Article 29 of this law.

Natural person from within a business activity who provides funds for political actor or has rendered in its name or on its behalf certain service shall be fined from 50.000,00 dinars to 500.000,00 dinars if fails to provide to the Agency requested data in accordance to the Article 29 of this law.

Banks as well as other legal entities financing political actor, or in its name or on its behalf rendering some services shall be fined from 200.000,00 dinars to 2.000.000,00 dinars if fail to provide to the Agency requested data in accordance to the Article 29 of this Law.

For misdemeanors in para 3 of this Article a responsible person in a bank or other legal entity from para 1 of this Article shall be fined from 50.000,00 dinars to 150.000,00 dinars.

ARTICLE 39.

Misdemeanor procedure cannot be instituted if five years pass since the misdemeanor was committed.

ARTICLE 40.

After misdemeanor proceedings are instituted, at a request by the Agency, the Ministry of Finance, or the competent authority in the autonomous province or local self government unit, shall temporarily freeze the transfer of public sources funds, until the final decision of the competent misdemeanor court is issued.

The decision of the Ministry or competent authority of the autonomous province or local self government unit from para1 of this Article can be appealed to the competent administrative court or administrative body.

SECURITY MEASURE

ARTICLE 41.

Misdemeanor court shall issue to a political actor together with the fine from the Article 36 para 1 of this Law, a measure of losing the right to funds from public sources in the amount ranging from 10 to 100 percent, for the following calendar year.

VII TRANSITIONAL AND CLOSING PROVISIONS

ARTICLE 42.

Proceedings initiated within the control of political parties before this law was effected shall be finalised according to the Law on Financing of Political Parties ("Official Gazette of the Republic of Serbia, No. 72/03, 75/03 – correction, 97/08 and 60/09 – the decision of the Constitutional Court).

ARTICLE 43.

Bylaws established by this law shall be adopted within 90 days from the day this law is enacted.

ARTICLE 44.

On the day this law is effected the Law on Financing of Political Parties ("Official Gazette of the Republic of Serbia, No. 72/03, 75/03 – correction, 97/08 and 60/09 – the decision of the Constitutional Court) ceases to be valid.

ARTICLE 45.

This Law is enacted on the eighth day from the day of its publication in the "Official Gazette of the Republic of Serbia" and is effected from January 1, 2011.