



Strasbourg, 1 March 2011

**Opinion no. 619 / 2011**

**CDL-REF(2011)010**  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**  
**ON ALTERING AND AMENDING**  
**THE LAW ON ELECTION OF MEMBERS OF PARLIAMENT**  
**OF THE REPUBLIC OF SERBIA**

**BILL ON ALTERING AND AMENDING  
THE LAW ON ELECTION OF MEMBERS OF PARLIAMENT**

Article 1

In Article 84 of the Law on the Election of Members of Parliament ("Official Gazette of the RS" No. 35/00, 57/03-decision of CCRS, 72/03-oth. law, 75/03-amendments of the oth. law, 18/04, 85/05-oth. law, 101/05- oth. law, 104/09-oth. law, insert two new paragraphs, Paragraph 1 and Paragraph 2 to read as follows:

"At least half of the total number of attained seats shall be allocated to the candidates in line with the order on the electoral list starting from the number 1, and the remaining attained seats the submitter of the list shall allocate to other candidates from the electoral list, while taking into account the exceptional election results achieved by a candidate and the regional representation of the candidate.

Submitter of the electoral list shall see that 25% of the seats won are allocated to the representatives of the under-represented sex on the list."

In the existing Paragraph 1, that shall become Paragraph 3 in the amended text, replace the phrase: "this law" with the following: " Paragraphs 1 and 2 of this Article".

The existing Paragraphs 2 and 3 shall become Paragraphs 4 and 5 accordingly.

Article 2

In Article 88, after Paragraph 1 insert two new paragraphs 2 and 3 to read as follows:

"An MP shall tender his/her resignation to the Speaker of the National Assembly by personally submitting a resignation letter verified by the authority competent for verification of signatures to the National Assembly not later than three days from the date of verification.

It is considered that by tendering his/her resignation in accordance with the procedure stipulated in Paragraph 2 of this Article, an MP has placed his/her mandate at the disposal to the political party from whose list he/she has been elected Member of Parliament."

The existing Paragraphs 2 and 3 shall become Paragraphs 4 and 5 accordingly.

Article 3

In Article 92 Paragraph 2 delete the words: "and this mandate shall be allocated to a candidate from the electoral list for whom the party did not win a mandate".

After Paragraph 2 insert a new Paragraph 3 to read as follows:

"When an MP's mandate is terminated prior to the expiration of the time for which he/she has been elected, and which has been allocated in order of the list, the mandate shall be allocated to the first following candidate on the list for whom the party did not win a mandate, and in case of termination of an MP's mandate allocated by the submitter of the list, the mandate shall be

allocated on proposal of the submitter of the list, minding that 25% of mandates won are allocated to the members of the under-represented sex on the list”

The existing Paragraphs 3, 4 and 5 shall become Paragraphs 4, 5 and 6 accordingly.

#### Article 4

This Bill shall enter into force on the eight day following its publication in the “Official Gazette of the Republic of Serbia” and provisions of Article 1 and Article 3 of this Bill shall be applied with the following elections for the election of Members of Parliament of the Republic of Serbia, and provisions of Article 2 of this Bill shall be applied from the day this Law enters into force.”

**ANNEX 1**

Pursuant to Article 8 Paragraph 1 and Article 15 Paragraph 1 Item 7 of the Law on the National Assembly ("Official Gazette of the RS" Number 9/10), the National Assembly of the Republic of Serbia, at a sitting of \_\_\_\_\_ session, held on \_\_\_\_\_ 2011, has adopted the following

**DECISION ON ALTERING AND AMENDING  
THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY**

## Article 1

In Article 22 of the Rules of Procedure of the National Assembly ("Official Gazette of the RS" Number 52/10), after Paragraph 4, insert Paragraph 5 to read as follows:

"An MP that leaves a Parliamentary Group may not become a member of another Parliamentary Group"

## Article 2

In Article 198, Paragraph 2 is amended to read as follows:

"An MP shall tender his/her resignation to the Speaker of the National Assembly by personally submitting a resignation letter verified by the authority competent for verification of signatures to the National Assembly not later than three days from the date of verification. The Speaker of the National Assembly shall immediately submit the tendered resignation to the Members of Parliament and the competent committee. An MP shall be invited to the sitting of the competent committee considering his/her resignation."

## Article 3

This decision shall enter into force on the eight day following its publication in the "Official Gazette of the Republic of Serbia".

## ANNEX 2

### EXPLANATION OF PROPOSED SOLUTION

In the best case scenario, Serbia is in the pre-election year.

In order to be able to amend the electoral legislation and electoral rules on the eve of regular elections one would need to achieve political consensus on solutions and the widest possible support of the opposition parties, which is absolutely impossible, despite all possible efforts being made.

Amendments of electoral legislation with the sole support of the ruling majority could objectively imply that the rules are being changed in the interests of the parties in power and it would cast a considerable shadow over the election results.

Objectively speaking, in circumstances like these, it is possible only to perform necessary corrections within the existing electoral regulations.

Serbia has a clear proportional system, which means that Serbia is a single constituency.

Under such conditions it is difficult to achieve desired degree of personalized elections and the establishment of clear relation between the candidate and the support he enjoys.

A political party presents the list of 250 candidates and the voters vote for the list.

The list includes the candidates from the whole territory of Serbia.

The voters shall vote for the electoral list, without the possibility to vote for individuals, for example, the citizens of Belgrade shall not vote only for the candidates from Belgrade.

Being aware of the conditions determined by these electoral rules, a strictly defined electoral list, that is, allocation of seats in accordance with pre-determined order has the following consequences:

Those who are to win the mandate are known in advance, which means that neither those whose position on the list is safe, nor those who do not stand a chance of entering the parliament since they are lower than 150<sup>th</sup> place on list are losing every possible motivation to fight for better results in elections;

Voters whose local candidate does not stand a chance to be elected to the parliament because of his/her position on the list, are not motivated to go to the polls;

There is no possibility to win the seat by achieving exceptional electoral results;

There is no possibility to provide for more optimal regional representation in the parliament;

In case of termination of an mp's mandate, a strict rule that states that the first following candidate shall attain the seat, means that an mp from Užice, for example, could be replaced by a candidate from Belgrade, which could leave one whole region without representation in the parliament.

According to the mentioned electoral rules, higher degree of certainty about who shall enter the parliament could be achieved by combination of rules stipulating the observance of the order on the list and the right of the submitter of the list to allocate the part of the mandates to the candidates while taking into account achieved results and regional representation.

#### Remarks on resignations

During the past two years the National Assembly of the republic of Serbia has been following the practice of not accepting the blank resignation letters, i.e. The administrative committee has not accepted blank resignation letters as grounds for termination of mp's mandates.

#### Proposed solution

- An mp can tender his/her resignation only in person
- Resignation letter has to be verified by an authority competent for verification of signatures
- The resignation letter has to be submitted not later than three days from the date of verification
- The mp resigning shall be present at the committee sitting considering his/her resignation