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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

JOINT OPINION

**ON DRAFT AMENDMENTS TO THE LAW
ON THE FINANCING OF POLITICAL ACTIVITIES**

OF SERBIA

**adopted by the Venice Commission
at its 100th plenary session
(Rome, 10-11 October 2014)**

on the basis of comments by

**Mr Nicolae ESANU (Member, Moldova)
Mr Manuel GONZALEZ OROPEZA (Substitute Member, Mexico)
Mr Ömer GENÇKAYA (OSCE/ODIHR Core Group of Experts
on Political Parties)**

I. Introduction

1. On 29 August 2014, the State Secretary of Finance of Serbia sent letters to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "OSCE/ODIHR") and the Venice Commission requesting assistance from both institutions in reviewing the draft Law on Amendments to the Law on Financing of Political Activities of Serbia (hereinafter "the draft amendments"; CDL-REF(2014)036) to assess their compliance with OSCE commitments and international human rights standards.
2. On 11 September 2014, both OSCE/ODIHR and the Venice Commission confirmed their willingness to review the draft amendments.
3. In 2010 and 2011, OSCE/ODIHR and the Venice Commission had already issued two joint opinions on draft legislation pertaining to financing political parties.¹
4. The present joint opinion was adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014).

II. Scope of the opinion

5. The scope of this Joint Opinion covers only the draft amendments, submitted for review, and the law that they are amending. Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the financing of political parties and election campaigns in Serbia.
6. The Joint Opinion raises key issues and provides indications of areas of concern. In the interests of concision, the Joint Opinion focuses more on problematic areas rather than on the positive aspects of the draft amendments. The ensuing recommendations are based on relevant international human rights and rule of law standards and OSCE commitments, Council of Europe standards, as well as good practices from other OSCE participating States and Council of Europe member states. Where appropriate, they also refer to the relevant recommendations made in previous OSCE/ODIHR-Venice Commission opinions.
7. This Joint Opinion is based on unofficial English translations of the draft amendments and the Law on the financing of political activities. Errors from translation may result.
8. In view of the above, OSCE/ODIHR and the Venice Commission would like to make mention that this Joint Opinion is without prejudice to any written or oral recommendations or comments on the respective legal acts or related legislation that OSCE/ODIHR and the Venice Commission may deliver in the future.

III. Executive summary

9. At the outset, OSCE/ODIHR and the Venice Commission welcome the draft amendments, which largely improve the quality of the Law on the financing of political activities.

¹ See the OSCE/ODIHR-Venice Commission Joint Opinion on the draft law on financing political activities of the Republic of Serbia (CDL-AD(2010)048, 20 December 2010), and the OSCE/ODIHR-Venice Commission Joint Opinion on the revised draft law on financing political activities of the Republic of Serbia (CDL-AD(2011)006, 30 March 2011).

Available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)048-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)048-e); and [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)006-e).

10. At the same time, the draft amendments could benefit from certain revisions and additions, to ensure the effectiveness of the provisions as well as their full compliance with international standards. In particular, the level of public funding and the threshold for private funding should both be reduced, and limits to total campaign expenditure should be considered. Provisions on sanctions for violations and on loans should be tightened. The proposed amendments to provisions on audits and tax inspections could be clarified further. Membership fees should be included in the definition of donations. As to reporting, interim reports on campaign finance should be published ahead of election day, and the Anti-Corruption Agency should be required to publish campaign expenditure reports and its analyses thereof on its website.

11. Following recommendations made in the 2011 Joint Opinion, the provisions on the keeping of accounts (itemisation and listing of contributions) and on the content of all reports required from political actors have been clarified and are now more detailed.

12. The OSCE/ODIHR and Venice Commission suggest the following improvements to the draft amendments and the Law, which may include still unaddressed key recommendations from the previous OSCE/ODIHR-Venice Commission opinions:

1. Key recommendations

- A. To include provisions and guidelines in the Law on the autonomous mandate of the Anti-Corruption Agency, in particular on its competences to apply a range of measures against illegal behaviours, while adding provisions that ensure proportionate sanctions;
- B. To reconsider the level of public funding;
- C. To consider introducing an overall campaign expenditure limit and a party financing limit;
- D. To lower the limits on private funding for both private individuals and companies.

2. Additional recommendations

- E. To adequately regulate loan guarantees and payment in instalments, as well as non-monetary contributions;
- F. To clarify what is meant by “the relevant number of political entities which have representatives in the National Assembly” in the proposed amendments to Article 34 of the Law, and to keep the power for the Anti-Corruption Agency to request audits at its own initiative, while applying clear criteria;
- G. To clarify how political parties are selected for tax control;
- H. To treat membership fees as donations;
- I. To more narrowly define the range of specific individuals “exercising public authority” which shall be banned from donating to political parties under amended Article 12 of the Law;
- J. To reconsider the proposed delay in the payment of public funding ahead of the elections;
- K. To consider rephrasing, rather than deleting, the provision on “professional upgrading and training, acquiring practical skills, international cooperation and work with the membership” in Article 19, chapter 3 of the Law;
- L. To specify, if necessary, whether data “on origin, amount and structure of all collected and spent funds from public and private sources” (Article 29 of the Law) includes loans;
- M. To require political parties to report on campaign financing in a transparent manner, already during the election campaign;
- N. To consider introducing additional and dissuasive fines for the failure to report;
- O. To introduce proportionate punishment for all violations of the activities banned by Article 12;

- P. To address in-kind services through detailed provisions;
- Q. To set a deadline within which the Anti-Corruption Agency must publish parties' campaign financing reports on its website, and to require the Agency, within a reasonable deadline, to also publish its conclusions on those reports.

13. The OSCE/ODIHR and the Venice Commission remain at the disposal of the Serbian authorities for any further assistance in these legal reform efforts that they may consider beneficial.

IV. Analysis and recommendations

A. International standards

B.

14. This Joint Opinion analyses the draft amendments from the viewpoint of their compatibility with international standards on political party and campaign financing and OSCE commitments as well as Council of Europe standards. International standards relevant to the financing of political parties and election campaigns are found principally in the United Nations (UN) Convention Against Corruption² and, since the regulation of the financing of political parties affects the freedom of association of political parties and their members, in Article 22 of the International Covenant on Civil and Political Rights,³ and Article 11 of the European Convention on Human Rights (ECHR),⁴ which both protect the freedom of association. The right to free elections guaranteed by Article 3 of the First Protocol to the ECHR is also of relevance. This Joint Opinion further takes into consideration OSCE commitments, in particular on the protection of the freedom of association (1990 Copenhagen Document, par 9.3) and free and periodic elections (Copenhagen Document, pars 5, 6, 7 and 8).

15. In addition, soft-law standards in this area can be found in the recommendations of UN, Council of Europe and OSCE bodies and institutions. These include General Comment 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service,⁵ Council of Europe Committee of Ministers Recommendation 2003 (4) on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,⁶ as well as the Joint Guidelines on Political Party Regulation issued by OSCE/ODIHR and the Venice Commission (hereinafter "the Guidelines").⁷ Reference will also be made in this Joint Opinion to reports by the Council of Europe's Group of States against Corruption (GRECO),⁸ previous opinions issued by the

² UN Convention Against Corruption, adopted on 31 October 2003, ratified by Serbia on 20 December 2005, available at:

http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

³ The International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966). This Covenant was succeeded to by Serbia on 12 March 2001.

<https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

⁴ The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. The Convention was ratified by Serbia on 3 March 2004.

<http://www.conventions.coe.int/Treaty/en/Treaties/Html/005.htm>.

⁵ UN Human Rights Committee General Comment 25, *The right to participate in public affairs, voting rights and the right of equal access to public service*, UN Doc. CCPR/C/21/Rev.1/Add.7.

Available at: <http://www.refworld.org/docid/453883fc22.html>.

⁶ Council of Europe Committee of Ministers Recommendation 2003 (4) on *Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns*, available at:

[http://www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)94_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)94_EN.pdf).

⁷ OSCE/ODIHR and Venice Commission *Guidelines on Political Party Regulation*, available at: <http://www.osce.org/odihr/77812>; and [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e).

⁸ Available at: http://www.coe.int/t/dghl/monitoring/greco/default_en.asp. See in particular the 2012 GRECO Compliance Report on Serbia, which can be found at:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)16_Serbia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)16_Serbia_EN.pdf).

OSCE/ODIHR (individually or jointly with the Venice Commission), as well as reports from previous OSCE/ODIHR election observation missions in Serbia.⁹

B. General remarks

16. This Joint Opinion focuses on the wording of the proposed amendments, but has also used this opportunity to review and reiterate relevant aspects of the 2011 Law on Financing Political Parties (hereinafter “the Law”).

17. The first chapter of the Law contains introductory provisions, which focus on the scope of the Law and key definitions. In this context, it is noted that the definition of election campaigns appears somewhat circular, as political activity is defined in Article 2 as covering both “regular work” and “election campaigns”, and “election campaigns” are defined as the “political body of activities” from the day of the calling of elections to the day of the proclamation of final election results.

C. Loans

18. Chapter II of the Law focuses on “Sources and Manner of Financing”. The draft amendments propose to add, in Article 3 para 3 (on sources of financing of political entities), that political entities may borrow ‘exclusively’ from banks and other financial organisations in Serbia. It is noted that Article 7 (on private sources) already provides what appears to be a closed list of sources of financing of political parties, and mentions only “borrowing from banks and other financial organizations in the Republic of Serbia” (not borrowing from others, such as private individuals). Any financing by other (private) actors thus already does not appear to be in line with the concept of the Law, which arguably means that the proposed amendment is obsolete.

19. On the issue of loans more generally, the OSCE/ODIHR has noted in the past that the Law lacks sufficient provisions regarding loans.¹⁰ For example, there is no mention of loan guarantees. It would appear legally possible for a loan by a political party to be guaranteed by someone who, after the political party defaults, then pays the creditor directly, which would amount to a donation. Although Article 9 on donations does ban write-offs of loans, it is not clear whether a default on a loan guarantee would be considered a ‘write-off’. It is recommended to clarify the Law accordingly, to ensure that such situations are covered as well.

20. It is also noted here that loans are not the only means of giving advantages or privileges to political parties. Other means of doing so include offering payment in instalments, which is not covered by the Law. It is recommended that cases of debts, instalments or liabilities be regulated in the Law as well; namely, they should be considered in-kind contributions to a party, in case they are not repaid by the end of the reporting period. Overall, as already stated previously by OSCE/ODIHR and the Venice Commission, the Law should qualify and quantify in-kind services in detail.¹¹

⁹ All OSCE/ODIHR election observation mission reports can be found at:

<http://www.osce.org/odihr/elections/serbia>.

¹⁰ OSCE/ODIHR *Final Report of the Limited Election Observation Mission to the Parliamentary and Early Presidential Elections of Serbia, 6 and 20 May 2012*, p. 12.

¹¹ OSCE/ODIHR Venice Commission Joint Opinion on the Revised Draft Law on Financing Political Activities of the Republic of Serbia, recommendations b and i.

Available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)006-e).

21. Financing of political parties can also be done through non-monetary contributions, which is not an issue dealt with in the draft amendments. In a previous Election Observation Report, OSCE/ODIHR has pointed out that the Law does not provide a clear mechanism or reference to other legislation for evaluating such non-monetary contributions.¹² It is recommended that this issue be addressed in the draft amendments as well. In this context, it is noted that all rules regarding funding of political parties should apply *mutatis mutandis* to the funding of electoral campaigns for candidates and to the funding of political activities for elected representatives, as stated in Article 8 of the Council of Europe Committee of Ministers Recommendation 2003 (4).¹³

D. Audits and tax inspections

22. The proposed amendment to Article 34 (regulating audit by the State Audit Institution), which removes the discretion of the Anti-corruption Agency (hereinafter “the Agency”) to decide which political parties are audited, is in principle welcome, as by doing so it has the potential to increase the foreseeability of the Law. However, the proposed amendment, introducing the obligation for the State Audit Institution to audit “the relevant number of political entities which have representatives in the National Assembly”, lacks clarity. It is not apparent what “the relevant number” means, or what criteria are used to determine this. It also appears that it will not be possible for the financial reports of parties not represented in the National Assembly to be audited. Especially since these parties would (in most cases) have spent public funds, it seems necessary to be able to check their accounts to see how this money was spent, or to see if other provisions of the Law were violated.

23. In addition, under the proposed amendment, it appears that the Agency is no longer mandated to ask for an audit, even where very serious grounds for doubting the veracity of a financial report by a political party exist. This would appear to be counter-productive, as it would unnecessarily limit the Agency’s oversight functions. It is recommended to clarify what is meant by “the relevant number of political entities which have representatives in the National Assembly” in Article 34, and to keep the power for the Agency to request audits at its own initiative, while setting out clear criteria.

24. In a new Article 34a, the draft amendments propose to select political parties for tax control “primarily on the basis of reports of the [Agency] on financing political entities”. Although this provides some additional transparency with regard to how this selection should be done, the wording is not very clear. The word ‘primarily’ seems to assume that there are other criteria, but they are not mentioned. Also, it is not clear what is meant by “on the basis of reports of the [Agency]”. Would this mean that the gravity of possible violations highlighted in its reports would be the key issue, or would other factors also play a role? It is recommended to clarify this.

E. Donations and membership fees

25. It is welcome that the draft amendments propose that pecuniary donations may only be effected from current accounts (Article 9 on donations). In another useful change, the draft amendments also envision specifying that contributions received through means other than the donor’s current account (Article 9 para 5 in the amended version) should be returned within 15 days (Article 15 para 3 on remittance of unlawfully acquired funds). At the same time, although Article 10 sets a maximum value for donations, it does not set any maximum value for membership fees, which are not included in the definition of donations in Article 9.

¹² OSCE/ODIHR *Final Report of the Limited Election Observation Mission to the Parliamentary and Early Presidential Elections of Serbia, 6 and 20 May 2012*, p. 12.

¹³ Council of Europe Committee of Ministers Recommendation 2003 (4) on *Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns*.

This would allow political parties to circumvent the Law by asking for very high membership fees.¹⁴ It is therefore recommended, as suggested in the OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*,¹⁵ to treat membership fees as donations.

26. The draft amendments propose to add “individuals exercising public authority” to the list of individuals and entities banned from financing political parties specified in Article 12. This would be in addition to its current ban on financing by “organizations” exercising such authority.

27. In principle, this change is welcome as well, as it reduces the risk of undue influence on political parties by certain individuals exercising public authority. However, the formulation chosen risks being over-inclusive. After all, civil servants all exercise (some part of) public authority. Depending on what is meant by “individuals exercising public authority”, this could arguably mean that the draft amendments would make it illegal for all civil servants to contribute to political parties. Making donations to political parties is a form of political participation and also forms part of the freedom of association and limitations need therefore to be necessary in a democratic society as well as proportionate.¹⁶ Although so-called ‘party taxes’, i.e. donations made by civil servants to political parties under pressure, should be banned, the ban as currently phrased may be disproportionate as it may inadvertently cover too many individuals. It is suggested to consider re-wording this amendment, so that only a narrow range of specific individuals exercising public authority is prohibited from donating to political parties, in cases where this is justifiable to prevent undue influence.

28. As previously noted by the OSCE/ODIHR, the limits on private funding set by the Law appear to be too high to be effective.¹⁷ The donation limit by a private individual in an election year is 40 average monthly salaries (approximately EUR 21,000 at a monthly salary, rate of September 2014), while for a company the donation can be up to 400 average monthly salaries in an election year (i.e. approximately EUR 210,000).¹⁸ As noted in para 175 of the Guidelines, limitations on private contributions “have been shown to be effective in minimizing the possibility of corruption or the purchasing of political influence”.¹⁹ It is therefore recommended to lower the limits on private funding in the Law for both private individuals and companies. Also here, the same should be applied to the funding of electoral campaigns for candidates and the funding of political activities for elected representatives (see para 21 *supra*).

F. Public funding

29. As stated in the Guidelines, public subsidies should be set at a meaningful level to fulfil the objective of providing support, but should not be the only source of income or create the conditions for over-dependency on state support.²⁰ The OSCE/ODIHR and the Venice Commission have previously expressed concern at the amount of funding provided from public sources to political parties in Serbia.²¹ It was noted that although public funding must be set at a meaningful level, this should not create an over-dependence of political parties

¹⁴ Cf. OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*, para 163.

¹⁵ *Ibid.*

¹⁶ OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*, paras 14-15, 159 & 170.

¹⁷ OSCE/ODIHR *Final Report of the Limited Election Observation Mission to the Parliamentary and Early Presidential Elections of Serbia, 6 and 20 May 2012*, p. 12.

¹⁸ This would occur if the maximum donation amount for regular work (Article 10) and the maximum additional amount for donations to election campaigns are added together (Article 22).

¹⁹ OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*; see also Council of Europe Committee of Ministers Recommendation 2003 (4), Article 3 a.

²⁰ OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*, para 177.

²¹ OSCE/ODIHR-Venice Commission 2010 Joint Opinion on the draft law on financing political activities of the Republic of Serbia, para 36; OSCE/ODIHR-Venice Commission 2011 Joint Opinion on the revised draft law on financing political activities of the Republic of Serbia, para 10.

and actors on state support. It was therefore recommended that the amounts in question be reconsidered.²² There were some changes in the various levels of public support offered in the final 2011 version of the Law, but the OSCE/ODIHR has since reiterated its concern at the risk that the system created by the Law may still create an overdependence of parties on state subsidies, also based on findings from practice, as observed during OSCE/ODIHR election observation missions.²³ The recommendation to reconsider the level of public funding is therefore reiterated.

30. A proposed change to Article 21 (on allocation of funds from public sources) would delay payment of the part of public funding available ahead of the elections (20%) by an extra five days to ten days from the date of proclamation of elections lists. It is not entirely clear why the provision of these funds should be delayed in this manner. This delay could, in the relatively short election campaign season in Serbia, have a significant impact on the campaigns of parties more dependent on public funding, i.e. usually smaller parties, and could therefore have an indirect discriminatory effect. It is recommended that this provision be reconsidered.

31. The proposed deletion of Article 19 para 2 of the Law (on the use of funds for financing regular work), earmarking 5 % of public funds for “professional upgrading and training, acquiring practical skills, international cooperation and work with the membership” may be worth reconsidering, as such activities have a positive impact on the quality of political representation. It is recommended to see if rephrasing, rather than deleting the provision might be possible, possibly by looking at how such provisions have been implemented in other countries.

32. It is noted that although no specific provisions on enhancing gender equality in parties (e.g. through financial incentives) are contained in this Law, Article 40a of the Election Law does require parties to have at least one-third of the candidates from each gender. Parties which do not comply with this provision cannot participate in election processes at all and consequently cannot obtain state funding.²⁴

G. Reporting

33. The draft amendments to Articles 28 and 29 of the Law specify reporting rules and are therefore welcome. These draft amendments demonstrate an effort to make income and expenditure reports comparable and more structured. It is moreover important to develop specific rules and standard formats for reporting, in order to make the process more transparent (see draft amendment to Article 29).

34. The consolidation of reporting on financing of political entities into annual financial reports containing data “on origin, amount and structure of all collected and spent funds from public and private sources” (Article 28) and the fact that the Director of the Agency will be able to determine the manner of submission of both these annual reports (Article 28) and reports on election campaign costs (Article 29) are to be welcomed. It is assumed that the data to be provided to the Agency in Article 28 will include loans. If this is not the case, then it is recommended to specify this.

²² Ibid.

²³ OSCE/ODIHR *Final Report of the Limited Election Observation Mission to the Parliamentary and Early Presidential Elections of Serbia, 6 and 20 May 2012*, p. 12, where it is also noted that a number of OSCE/ODIHR interlocutors estimated that parties depend on public funding at levels between 70% and 90% of their resources.

²⁴ International IDEA, Political Finance data for Serbia, available at <http://www.idea.int/political-finance/country.cfm?id=190>.

35. The OSCE/ODIHR has pointed out in the past that political parties are required to report to the Agency only 30 days after the announcement of election results and are not obliged to provide information on campaign expenditures during the election process.²⁵ This reduces the transparency of party funding to voters in the run-up to the elections and runs counter to electoral good practice.²⁶ It is therefore recommended to require political parties to report on campaign financing in a transparent manner during the election campaign.

36. Article 29 of the Law (on reporting on election campaign costs) does not require the Agency to publish its conclusions on parties' campaign financing reports, nor does it set a deadline for publishing such reports on the Agency's website.²⁷ The OSCE/ODIHR has noted on a previous occasion that taken together, these factors may undermine the effectiveness of the control mechanisms introduced by the Law and can potentially decrease the public's trust in the way electoral campaigns are financed.²⁸ It is therefore recommended to set a deadline within which the Agency must publish parties' campaign financing reports on its website, and to require the Agency, within a reasonable deadline, to also publish its conclusions on those reports.

H. Limits to campaign expenditure

37. The OSCE/ODIHR has called on the Serbian authorities in the past to consider establishing by law reasonable and justifiable limits to campaign expenditures.²⁹ This would ensure that the free choice of voters is not undermined or the democratic process distorted by disproportionate expenditure on behalf of any party or candidate.³⁰ It would thus enhance the level playing field among contestants during the campaign, in line with good electoral practice.³¹ This recommendation is not addressed by the draft amendments and it is recommended that such a campaign expenditure limit be considered.

I. Sanctions for violations

38. Chapter VI of the Law deals with actions and decisions taken in violation of law, while Chapter VII deals with penal provisions. Within Chapter VII, Article 39 regulates misdemeanours of a political party. Under para 1, number 4 of this provision, sanctions are foreseen for receiving funding from prohibited sources listed in Paragraph 3 of Article 12 of the law but not for violating other paragraphs of the same article.³² There does not, therefore, appear to be any sanction for such key violations of the Law as those mentioned in paragraph 1, which includes financing by foreign natural persons and legal entities (except international political associations), anonymous donors, public institutions, public enterprises, companies and entrepreneurs engaged in services of general interest, institutions and companies with state capital share, etc. This would render these bans essentially ineffective. It is also noted that in the absence of a misdemeanour provision in Article 39, such funds cannot be confiscated (as they are not mentioned in the relevant

²⁵ OSCE/ODIHR *Final Report of the Limited Election Observation Mission to the Parliamentary and Early Presidential Elections of Serbia, 6 and 20 May 2012*, p. 13

²⁶ Cf. also the OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*, para 198.

²⁷ OSCE/ODIHR *Final Report of the Limited Election Observation Mission to the Parliamentary and Early Presidential Elections of Serbia, 6 and 20 May 2012*, p. 13.

²⁸ Ibid.

²⁹ OSCE/ODIHR *Final Report of the Limited Election Observation Mission to the Early Parliamentary Elections of Serbia, 16 March 2014*, p. 13.

³⁰ UN Human Rights Committee General Comment 25, *The right to participate in public affairs, voting rights and the right of equal access to public service*, para 19.

³¹ Ibid.; see also OSCE/ODIHR-Venice Commission *Guidelines on Political Party Regulation*, paras 176-177, and Council of Europe Committee of Ministers Recommendation 2003 (4), Article 9. For more details on what such systems could look like, see the Guidelines at paras 196-197.

³² *Final Report of the Limited Election Observation Mission to the Parliamentary and Early Presidential Elections of Serbia, 6 and 20 May 2012*, p. 12.

Article 39 para 3). To close this gap, it is recommended that a proportionate punishment be introduced for all violations of the activities banned by Article 12. Similarly, violations of other requirements, e.g. regarding donations under Article 9 paras 4-8, should also be sanctioned. In cases involving pressure, threats or violence (Article 9 paras 7-8), this should also lead to criminal liability.

39. It may be questioned whether the level of sanctions provided by Article 39 for not filing a report is dissuasive enough. The level of the fine for not filing reports on political party finances and election finances (set out in Article 39, para 1, numbers 13 and 14 respectively) is 200,000 to 2,000,000 RSD, with additional fines for the responsible person of a political party or other political entity set at 50,000 to 150,000 RSD. The total maximum fine thus amounts to roughly EUR 17000 for the party and roughly EUR 1300 for the responsible person, which may be less than amounts actually received, but not reported on. It is thus recommended to consider increasing the level of sanctions for not filing a report accordingly.

40. At the same time, this lack of dissuasive sanctions may, in cases where parties are also entitled to receive public funding, be compensated by the fact that Article 42 of the Law provides that in addition to criminal convictions and fines for misdemeanours, these political parties shall also partially lose the right to funds from public sources. This provision will, however, only have the intended effect if criminal and misdemeanour proceedings are resolved within a reasonable amount of time.

41. Regarding proportionality, Article 37 (under Chapter VI of the Law) appears to enable the Agency to give warnings only when a deficiency may be corrected, and does not allow for this option in other cases. It also appears to be mandatory for the Agency to initiate proceedings when a violation is found in all cases in which a deficiency is not corrected, as Article 37 provides that "[i]f the political entity fails to act upon the measure before the deadline specified in the Agency's decision expires, the Agency *shall* initiate misdemeanour proceedings" (emphasis added).

42. Although this has the advantage of ensuring equal treatment of all parties, since misdemeanour proceedings will always be opened in such cases, the absence of any discretion on the part of the Agency on whether or not to open misdemeanour proceedings carries with it the risk of violating the principle of proportionality. The principle of proportionality does not merely cover the range of punishment, but also relates to the question of whether proceedings should be initiated at all for very minor violations, also considering the significant effect that opening such proceedings will have on public opinion in the context of political party financing. Although there should be clear criteria for the decision not to proceed with misdemeanour charges or to give a warning, it is recommended that a reasonable degree of discretion is given to the Agency on whether or not to proceed with misdemeanour charges, or to give a warning instead of proceeding with such charges.