



AMENDMENTS TO THE BILL OF THE LAW ON MODIFICATIONS AND SUPPLEMENT TO THE ANTI-CORRUPTION AGENCY ACT

AMENDMENT I

After article 2 of the Bill of the Law on Modifications and Amendments to the Anti-Corruption Agency Act, article 3 is added and says:

“After article 29, a new article 29a is added which says:

“Article 29a

During the campaign, a public official cannot organise, implement or participate in activities that promote plans and results of the public authorities’ work, i.e. that are motivated by the commencement of construction works, reconstructions or commissioning of facilities constructed with funds from the budget or public funds, or by other legal entities that are founded or entirely or partially financed by a public body, which particularly refers to infrastructural facilities such as roads, water supply lines, transmission lines, sewage, and sports, educational or other social purpose facilities.

Within the meaning of paragraph 1 of this article, a public authority shall be considered each authority of the Republic of Serbia, authorities of the autonomous province, bodies of local self-government or an organisation entrusted with the exercise of public authority.”

The former article 3 of the Bill becomes article 4.”

Reasoning

Modifications and supplement to the Anti-Corruption Agency Act do not contain a provision that would align the legal framework with international recommendations and standards concerning the establishment of a clear boundary between party and state activities.

As a matter of fact, after observing the presidential elections in Serbia in 2017, in its Final Report on the Implementation of the Elections, the OSCE/ODIHR Mission stated the following: *“Enhanced activities of public officials in numerous social projects, especially in the campaign finale, on the eve of the elections, raised the issue of their neutrality and contributed to a vague distinction between state duties and activities within the campaign, which is contrary to the OSCE recommendations and the best international practices. In the last two days before the elections, at least 20 public events were held, attended by ministers and secretaries of state, organised on the occasion of the opening of roads, schools, nursing homes for the elderly and infirm and new companies. Nine of these events took place on the first day of the election silence.”* According to the established state, the Mission formulated one of its priority recommendations: *“In order to ensure equal possibilities to all participants in the elections, it is necessary to strictly divide activities related to the state and to the party and to adhere to such a division.”*

The OSCE/ODIHR Mission recommendation is completely in line with international standards comprised in the OSCE/ODIHR and the Venice Commission Joint Guidelines on preventing and responding to the misuse of the public resources during the election campaign, putting forward the following *“provide effective mechanisms within the legal framework that prohibit officials from making unjustified use of their*

public functions by organising public events for election campaign purposes, including charitable events or events that support or discredit any political party or candidate.”

The proposed amendment prohibits the participation of public officials at events financed through public funds, and in which the officials, as a rule, present in a positive light their own and the work of the political option that has put them in office. The purpose of the proposed amendment is to contribute to ensuring a level playing field for all campaign participants in such a way that officials, in the period immediately preceding the election day, shall not be able to use their functions to present the results of their work to voters.

AMENDMENT II

The former article 3 of the Bill of the Law on Modifications and Amendments to the Anti-Corruption Agency Act, that becomes article 4, is amended as follows:

“In article 74, paragraph 1, item 2) is deleted.

After paragraph 1, a new paragraph 2 is added and is formulated as follows:

a fine amounting from 100,000 to 150,000 dinars shall be imposed to a public official who:

- 1) performs a function in a political party, i.e. in a political entity contrary to article 29, paragraph 1 hereof;
- 2) participates in political activities of a political party, i.e. of a political entity contrary to article 29, paragraphs 2, 4. and 5 hereof;
- 3) participates in activities that promote plans and results of the public authorities’ work contrary to article 29, paragraph 1 hereof.

The former paragraphs 2 and 3 become paragraphs 3 and 4.”

R e a s o n i n g

Article 3 of the of the Bill of the Law on Modifications and Amendments to the Anti-Corruption Agency Act suggests to modify the existing article 74 of the Anti-Corruption Agency Act, in a way to add paragraph 2 after paragraph 1, which says the following: *“a fine amounting from 100,000 to 150,000 dinars shall be imposed to a public official who performs a function in a political party, i.e. in a political entity and participates in their political activities contrary to provisions of article 29, paragraphs 2, 4 and 5 hereof.”* A linguistic interpretation might lead to a conclusion that for the misdemeanour liability of a public official for violation of the aforementioned provisions of article 29, it is necessary for the public official to simultaneously exercise office in a political party, i.e. in a political entity. This would be acceptable in case of violation of the provisions of article 29, paragraph 1, but not in case of violation of the provisions of paragraphs 2, 4 and 5 of the same article, because these provisions stipulate the prohibition of acting for all public officials and not only for those who simultaneously exercise a function in a political entity.

In order to avoid possible problems with the interpretation and application of the aforementioned legal provisions, we propose to amend the said provision of the Bill.

AMENDMENT III

After article 4, a new article 5 is added, as follows:

”In article 50, a paragraph 7 is added, as follows:

”During the election campaign, in the proceedings referred to in paragraph 1 and 2 of this article when deciding whether a violation referred to in article 29, paragraph 2, 4 and 5 and article 29, paragraph 1 hereof occurred, the Anti-corruption Agency shall act within 5 days from the day of receipt of the complaint.”

The former article 5 becomes article 6.”

R e a s o n i n g

Given that the proposed amendments to the Law on Financing Political Activities provide for the Agency to act upon complaints relating to violations of this Law during the election campaign within short deadlines, it is necessary to foresee this obligation of the Agency in the Anti-Corruption Agency Act and in the Bill of the Law on Modifications and Amendments to the Anti-Corruption Agency Act. Bearing in mind the aforesaid, it is necessary to foresee that during the election campaign, in cases of violation of articles 29 and 29 a of the Anti-Corruption Agency Act by a public official, the Agency should act within 5 days from the day of receipt of the complaint, which is a deadline identical to the one proposed in the amendments to the Law on Financing Political Activities.

If this deadline is not included in the Anti-Corruption Agency Act, we will have a situation in which the Anti-Corruption Agency decides on the occurrence of misuse of public resources in the election campaign within precisely defined short deadlines when it comes to violations of the provisions of the Law on Financing Political Activities, but not when it comes to violations of the Anti-Corruption Agency Act, because the very Act does not stipulate any deadlines whatsoever.