

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

MEASURES RELATED TO POLITICAL PARTIES AND ELECTION CANDIDATES

SERBIA (FIFTH SESSION)

Public sector legislative and administrative measures, including measures to enhance transparency in the funding of candidatures for elected public office and the funding of political parties (arts. 5 and 7)

The Law on Financing of Political Activities

The sources and method of financing, the records and control of financing of political activities of political parties, coalitions and citizens' groups, i.e. political entities, is regulated by the provisions of the Law on the Financing of Political Activities, adopted in June 2011 (*Official Gazette of RS*, no. 43/11, hereinafter: "the Law").

The provisions of the Law have attempted to introduce important rules into the legal framework, which should ensure transparent and unimpeded fund-raising for the regular operation and election campaigns of political parties, as well as the rules that provide for the method and control over the spending of these funds.

In addition to political parties, the Law regulates the activities of other political entities - coalitions and groups of citizens. All political entities have been given an equal opportunity to raise funds to finance their activities, on the one hand, while, on the other hand, they have been made equal in terms of obligations imposed by the Law.

As for funds from public sources for covering the costs of the election campaign, the earmarked budgetary funds in the amount of 20% are allocated in equal amounts to submitters of proclaimed electoral lists who gave a statement when submitting the electoral list that they would use the public funds to cover the costs of the election campaign. In the case of elections held under the majority voting system, the earmarked budgetary funds amounting to 50% are allocated in equal amounts to nominators of candidates who gave a statement when submitting the nomination that they would use the public funds. Political entities that do not win a minimum percentage of valid votes cast shall be required to return the amount of funds received. Thus the electoral process is raised to a more serious level. Public funds secured in the budget for financing the regular operation are allocated to political entities that have won seats in representative bodies, therefore in proportion to the achieved results.

Apart from cash, the state authorities can provide political entities with goods and services, whose provision is governed by special regulations, and these goods or services must be provided under equal conditions so as to be equally available to all political entities. When laying down the requirements for the provision of goods and services, the provision of the Law on the Anti-Corruption Agency that explicitly prohibits officials from using public resources to promote a political party, should be borne in mind.

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

MEASURES RELATED TO POLITICAL PARTIES AND ELECTION CANDIDATES

As regards the funds collected from private sources to cover the costs of regular activities and electoral campaigns, their amount is not limited and is not dependent on the amount of public funds, but rather depends on the support and the trust that each political entity enjoys with the voters. The Law poses restrictions on contribution donors, relating to the amount of individual donations. Thus, a natural person may give a total of 20 average salaries to all political entities at the annual level, while the annual limit for legal persons is 200 average monthly salaries. Although these are not small amounts, especially in a situation where the legal or natural person opts to pay the maximum legally permissible amount to only one political entity, it can still not be claimed that by paying that amount a natural or legal person can achieve absolute influence on a particular political party.

The Law allows political entities to take credits and loans for financing their regular activities and election campaigns, but in case the credits and loans were given under the conditions deviating from market conditions, they shall be treated as a contribution, given that the conditions under which the funds were obtained were more favourable than those available to other beneficiaries of such funds.

In order to ensure greater transparency of cash flow, the Law firstly prescribes that any cash contribution to a political entity, as well as the membership fee exceeding the total amount of RSD 1,000.00 per annum, must be paid from the account of the contribution donor, or the membership fee payer. Furthermore, the political entity is required to record each contribution received, and to publish the donations whose annualised value exceeds one average monthly salary, on its website. Finally, public accessibility of data on revenues and expenditures of political entities is also ensured through the publication of annual financial statements on the website of political entities and the publication of reports on the costs of the election campaign on the Agency's website.

A specific provision of the Law prescribes a prohibition on financing, stating, *inter alia*, that financing of political entities by foreign and anonymous donors, public institutions, companies and entrepreneurs engaged in services of general interest or having due, and unsettled, public revenue obligations, institutions and companies with public capital share, trade unions, associations, churches, organisers of games of chance, exporters and importers, and endowments and foundations, shall be prohibited.

International political associations are allowed to give contributions to political entities, but the contributions cannot be made in cash. This means that political entities are allowed to actively participate in the work of international political associations and that these associations may assist them in the form of trainings, seminars or providing expertise.

Revenues from commercial activities are explicitly forbidden, given that political entities are established to pursue political goals, not to generate revenue. Thus, political parties are not allowed to acquire shares or stocks in a legal entity because companies are founded for the purpose of performing profit-making economic activity.

Control of financing of political activities of political entities

Specific provisions of the Law prescribe a system of appropriate measures and sanctions, the application of which should achieve the purpose of punishment.

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

MEASURES RELATED TO POLITICAL PARTIES AND ELECTION CANDIDATES

Control of financing of political activities of political entities is carried out by an independent state authority - the Anti-Corruption Agency. The Agency controls annual financial statements of political entities, as well as the reports on contributions and assets that political entities submit having obtained the opinion of the authorised auditor, by 15 April of the current year for the previous year, and the reports on the costs of the election campaign that the political entities are to submit within 30 days from the date of announcement of final election results. When conducting the control procedure, the Agency has the right of direct and unimpeded access to bookkeeping records and documentation of political entities and endowments or foundations established by political parties, and to financial statements of political entities, as well as the right to engage relevant experts and institutions in the control procedure. Political entities are required to submit, at the request of the Agency, all documents and information within a period that may not exceed 15 days, provided that during the election campaign this period may not exceed 3 days. Furthermore, state authorities, banks, and legal and natural persons financing political entities are also required to submit all requested information to the Agency. It should be noted here that the obligation to submit these data is not subjected to the prohibitions and restrictions established by other regulations.

A special form of the Agency's activities during the election campaign, namely in the period between the date of scheduling of the elections and the announcement of the final election results, is organisation and conduct of independent monitoring of election campaigns, which consists of direct observation and recording of activities of political entities during election campaigns in the entire territory of the Republic of Serbia.

The funds for performing the election campaign costs control activities, when the Agency occasionally has an increased workload, are allocated from the budget of the Republic of Serbia. The amount of these funds is not lower than 1% in the case of elections for the President of the Republic of Serbia and Members of Parliament, 0.5% in the case of elections for deputies and councillors in the city hall, and 0.25% in the case of elections for councillors in municipal assemblies. The baseline for the calculation is the total amount of funds allocated from the national budget for the parliamentary elections campaign. Provision of special funds for the control of election campaigns protects the status of the Agency as an independent state authority that performs control of election campaigns without the influence of the will of the ruling political majority.

After carrying out the control of the political entity's financial statements, the Agency may submit a request to the State Audit Institution to conduct an audit of those statements.

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES**

A caution is a measure that is imposed only if the shortcomings identified in the control procedure can be remedied. It implies that, if the political entity fails to remedy the identified shortcomings, a request for the institution of misdemeanor proceedings shall be filed against it. The administrative measure of suspension of transfer of funds from public sources after the initiation of misdemeanor or criminal proceedings on suspicion of violation of the Law may also be imposed against the political entity. This measure is aimed at impacting the efficiency of the proceedings until the adoption of the final decision and preventing delays in the proceedings caused by the defendants' actions. This measure is imposed by the authority responsible for the transfer of funds, at the request of the Agency.

Finally, the measure of loss of entitlement to public funds tier the calendar year following the year in which the political entity was convicted by a final decision for a misdemeanor or a crime is imposed by the Agency. The amount of funds to which entitlement is lost depends on the severity of the offence committed and the degree of accountability, and can range between 10% and 100% of the funds.

As regards other penal provisions, the Law prescribes a criminal offense and the accountability of whoever gives and/or provides for and on behalf of the political entity, funds for financing of the political entity contrary to the provisions of the Law with intent to conceal the source of financing and the amount of collected funds, as well as the aggravated form of the criminal offence if the funds received exceed the amount of RSD 1.5 million. Likewise, the person who commits violence or threatens to commit violence against the contribution donor shall be punished for a criminal offence. As regards misdemeanor accountability, the Law prescribes the accountability of a political party, the responsible person of a political party, the responsible person of another political entity, and the responsibility of fund donors, which implies the accountability of legal persons, responsible persons of the legal person, entrepreneurs and natural persons.

And last but not least, initiation of misdemeanor proceedings for misdemeanors prescribed by the Law is subject to a limitation period of five years from the date when the offence was committed, thus reducing the likelihood that it would not be possible to prosecute the offence due to the expiration of the limitation period.

The Agency took the first step towards ensuring financial transparency in politics by organising the monitoring process in 2012, whereby it monitored the activities of political entities during election campaigns for presidential elections, parliamentary elections, elections for deputies to the assembly of the Autonomous Province of Vojvodina and councillors, and through the control of costs of political activities during election

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES**

campaigns. After carrying out the control, the Agency presented to the public the First Report on Control of Political Entities' 2012 Election Campaign Costs.

After receiving the report on the costs of the election campaign and the annual financial statement of a political entity, the Agency shall perform their verification, post them on its website and commence their control. Should the control process reveal shortcomings that can be remedied, the Agency shall pronounce a caution measure against the political entity, calling it to remedy the shortcomings within a specified time period, under threat of filing a request for the institution of misdemeanour proceedings otherwise.

Content control of the reports is performed by comparing the data provided in the reports of political entities with the data collected during the election campaign monitoring (in terms of control of reports on the election campaign costs), and with the data obtained from state authorities, banks and legal and natural persons that finance the political entities or that have provided a certain service in their name and on their behalf.

Based on the data obtained from the state authorities in charge of financial affairs, the Agency learns about the budget funds earmarked and paid to political entities, funds returned to the budget, the election deposit, and the data on dues paid on the grounds of public revenues of contribution donors.

Electoral commissions submit the data on proclaimed electoral lists, as well as the data on the submitters of electoral lists and the candidate nominators.

By examining the turnover in the accounts of political entities, cash transactions are monitored, and by examining the data of the Pension and Disability Insurance Fund of the Republic of Serbia and the Ministry of Labour and Social Policy, conclusions are drawn on the amount of salaries and other types of income and financial support from natural persons, donors of political entities.

The Ministry of Interior submits to the Agency the data on the location, date and time of holding the notified rallies of political entities, as well as the personal information on authorised persons.

In the control procedure, the data of the Republic Geodetic Institute, the Business Registers Agency, the Ministry of Justice and Public Administration and the Republic Broadcasting Agency are also used.

An important control segment is based on the data submitted by providers of services to political entities, such as the data of renters of outdoor advertising space, transport companies

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES**

and the media. In case of a need for certain clarification, the Agency shall also address the political entity, requesting that it deliver certain documents and information. At the same time, the Law authorises the Agency to have direct and unimpeded access to bookkeeping records and documentation of the political entity and the endowment or foundation established by a political party. Upon completing the control procedure, the Agency shall file a criminal complaint or the request for institution of misdemeanour proceedings before the competent authority in case the established facts indicate a violation of the Law.

After the process of reviewing the financial reports of political entities after the elections (held in 2012 at all levels) in May 2013 ACA organized international conference where presented its first Report on oversight of political entities- 2012 election campaign costs. In December 2013, ACA presented the findings of the Report on oversight of the annual reports of political entities. Both reports are published and presented at the ACA website.

Epilogue of the Control of financing of political entities

ACA has controlled annual reports of political entities for 2012 and reports on electoral campaign funding for 2013. In total they cover data from 240 political entities, 91 parties and 149 citizens groups out of which 63 political parties and 13 citizens groups submitted the reports.

ACA started misdemeanor proceedings in 18 cases against political parties regarding the reports on annual funding.

The activity of ACA in the area of political entity funding and electoral campaign funding for 2012-2013 consisted of 390 requests to initiate of misdemeanor proceedings as follows:

344 requests concerning elections campaign in 2012;
10 requests concerning local elections in 2013;
13 requests concerning failure to submit Annual Financial Statements for 2011; 18 requests concerning failure to submit Annual Financial Statements for 2012; 4 requests for failure to submit opinions by certified auditor;
1 request for misuse of funds.

In case of conviction for a criminal offense or if a political party or responsible person of a political entity is fined for misdemeanor specified in the Law on Financing political activities, the political entity shall lose the right to funds from public sources allocated for financing of regular work of the political entity for the coming calendar year in the amount

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES**

set forth pursuant to this Law. In that regard, the ACA issued two decisions pertaining to the loss of funds from public sources.

Misdemeanor court rendered 28 judgments, out of which 25 pertaining to fine, in the range of 10,000-80,000 RSD for responsible person and 100,000-500,000 RSD for political subject and 3 of them pertaining to admonition.

Discounts and in-kind donations are still a problematic area in terms of reporting and law enforcement. ACA and the NGOs try to collect as much information as possible on these issues, but it is difficult to keep track of a practice that has been used for many years by politicians who take advantage of their public office to promote their electoral agenda.

Practical constraints based on the ACA experience

The prerequisite for substantial control of reports, i. e. efficient monitoring of cash flow in politics is the existence of a comprehensive legislative framework that complies with international standards, efficient cooperation of competent institutions as well as appropriate staff and IT infrastructure.

The current Law on the Financing of Political Activities was adopted in June 2011 and all pertinent GRECO recommendations were implemented in a satisfactory manner. At the beginning of October 2011, the Agency adopted the pertinent by-law, i. e. Rules on Donations and Assets Record, on Annual Financial Statement and on the Report on Election Campaign Costs of Political Entities (regulating the form, content and manner of keeping donations and assets records, as well as the form, content and manner of submitting of annual financial reports as well as reports on election campaign costs), meaning that legal solutions could be checked for the first time from that moment and shortcomings entailed in the existing law could only be identified through practice. The Agency made a significant effort so as to improve, uniform and facilitate the reporting process for political subjects through online reporting, supported by donors, but technical deficiencies of the web application for submitting reports could also be identified only within the process of practical implementation.

In March 2013 the Agency submitted initiative for amending the Law on Agency to the competent ministry, Government and National Assembly and, inter alia, proposed introduction of new criminal offense "failure to report or false report of election campaign costs", sanctioning a responsible person in a political entity due to failure to report or submitting a false report. Apart from that, in its reports the first Report on electoral

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES**

campaign costs and Report on political subjects' regular operation, having been publicly presented in May and December 2013, respectively, the Agency indicated deficiencies of the current law. The Agency also participates in working group for drafting legislation amending the Law on the Financing of Political Activities and has submitted a note to the Ministry of Finance, as a body proposing a piece of legislation, indicating necessary amendments with the aim of ensuring more efficient control of financing political subjects and precising the current law.

Significant constraint pertains to the fact that not only that the Agency is not directly electronically networked with competent institutions, being obliged to submit relevant information to the Agency but the respective communication is written, which further slows down the whole process. Criminal liability is prescribed by the Law for illegal giving, i. e. collecting of funds for financing a political entity, with the intention of hiding the sources of financing or amounts of the collected funds.

I however, since the Anti-Corruption Agency has been entrusted by the Law with the oversight, but not investigative authorities, willingness of other competent state authorities to cooperate is needed in order to collect evidence necessary for conducting criminal proceedings. Substantial control of reports means primarily that they are submitted in due form.

Asset declaration reports (of public officials)

Declarations of assets of public officials are public, with the exception of identification information which is not publicly available. In the Register of Officials kept by the Agency is registered approximately 36600 public officials, out of which 25199 are active.

ACA keeps two registers and allows access to citizens to most of the information contained in them: Register of Officials and Register of Asset and Income. In addition to the respective Registers, the ACA also uses the information from the following records (also being kept by the ACA): a list of legal entities in which an official owns over 20% of shares of interests as well as a catalogue of gifts.

ACA adopts annual control plan at the beginning of the year for particular categories of officials but may also perform extraordinary checks when it becomes aware that a particular official has not reported corrected his/her property. ACA has signed agreements that allow for direct access to the respective databases with the Business Registers Agency, Republic Geodetic Authority and Central Securities Depository and Clearing

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES**

House. Other institutions are contacted on a case-by-case basis through individual requests: Ministry of Interior and the Tax Administration. While it is important that ACA performs as many checks as possible using the existing capacities, it is clear that it would benefit from a good informational system that would allow it to access other databases and to automatically analyze information from the statements.

ACA has competence to not only check that the statements were submitted, but also their accuracy, including by cross-checking data with the tax administration. What is not yet covered by the law is the possibility to confiscate unjustified wealth — wealth increases that cannot be explained through the income obtained during a given period of time while in public office. Sanctions are confined to monetary fines and remain modest.

In 2013 ACA filed 9 criminal charges due to reasonable suspicion that a public official did not report property to the ACA or gave false information about the property, with an intention of concealing facts about the property (Article 72).

The ACA also filed 20 reports (detailed case analysis with fact findings) on other identified irregularities or due to reasonable suspicion that other offense (money laundering, trading in influence, bribery, tax evasion etc), specified by the Criminal Code or other regulation. The reports were submitted to the Republic Public Prosecutor's Office, Tax Administration, Anti-Money Laundering Administration, Ministry of Interior (Criminal Police Directorate and Financial Intelligence Unit) and to the Budget inspectorate.

In 2013 it made 142 requests for starting misdemeanor proceedings pertaining to failure to report assets and income within the prescribed time limit. Misdemeanor court rendered 20 judgments, out of which 15 sanctioning decisions (imposing fine between 10,000 and 50,000 RSD); 4 decisions suspending the procedure and 1 decision on termination of procedure.

Technical assistance

Technical assistance is needed in terms of the IT networking/software with other state institutions that would allow cross-cut data obtaining but also thorough analysis. Such software would contribute to the efficient control of asset declarations of public officials, detection of conflict of interests and party funding control.

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION**

ARTICLE 7 UNCAC

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION
CANDIDATES**