Strasbourg, 28 September 2006

Restricted
CDL(2006)065
Engl. only

Opinion no. 394 / 2006

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

ON THE DRAFT LAW ON THE FINANCING OF POLITICAL PARTIES

OF CROATIA

by
Mr Hans-Heinrich Vogel (Member, Sweden)

I. Introduction

1. On 30 August 2006, the OSCE mission to Croatia and the Central State Administration Office of Croatia invited the Venice Commission to prepare an opinion and to attend the round table on the Draft Law on the Financing of Political Parties before its submission to Parliament for the first reading. The roundtable took place in the Croatian Parliament (Sabor) on 11 September 2006, from 9 a.m. until 2.30 p.m. The Venice Commission was represented by Mr H.-H. Vogel (Member, Sweden).

2. After a fruitful exchange of views the Venice Commission was asked to finalise its opinion and to send it to the Central State Administration Office of Croatia in October 2006.

3. The Draft Law and the results of the 11 September Roundtable were discussed in the plenary meeting of the Venice Commission on 13 and 14 October 2006.

4. These comments was endorsed by the Venice Commission at its … Plenary Session (Venice, …. 2006).

II. General remarks.

5. The Draft Law on the Financing of Political Parties provides a good basis for regulation of financing of parties in Croatia and in general corresponds to the standards of the Council of Europe in this field. The Commission welcomes the initiative of the authorities to discuss the draft with representatives of political parties, NGOs and international organisations before its submission to the Sabor.

6. However, there are some issues that remain unclear from the text of the draft law and require further improvement.

III. Detailed observations.

7. Article 2, Paragraph 2, of the Draft law on financing of political parties (hereafter "the Draft") provides that political parties "for the purpose of exercising their political goals" may gain income from certain enumerated sources. According to Paragraph 4 of the same Article they may use the funds referred to earlier in the Article "for the purpose of achieving goals determined by the programme and statute of the political party." It may be noted that the legally accepted purpose when *gaining* funds is not the same as the purpose when *using* them. The differences may be substantial: the clause "exercising … political goals" may be interpreted as considerably broader than the clause "achieving goals determined by the programme and statute of the political party."

8. Article 2, Paragraph 2, of the Draft permits that political parties gain income not only from membership fees, donations, publishing activity, sale of advertising material and organisation of party manifestations, but also "*from the property that they own and from other legally permitted sources*." The handling and use of membership fees and donations is closely regulated in later articles of the Draft law, but there is no corresponding regulation on handling and use of income derived from owned property and other legally permitted sources. If there are regulations in legislation on non-profit associations, it should be clarified whether and to what extent such regulations are applicable on political parties.

9. Article 3, Paragraph 4, is not entirely clear insofar as it makes it mandatory "*to keep records on the receipts of membership fees and donations*". Does this obligation include an obligation to keep records concerning the other income gaining activities mentioned in Article 2, Paragraph 2? Is there a general obligation to keep books in compliance with international accounting standards?

10. Article 14 (together with Article 8) provides for a special tax regime for political parties which have "*at least one representative in the Croatian Parliament*". They "*have the right to tax benefits pursuant to the provisions of a special law*" and these benefits are intended to be applicable "*for the activities that are strictly related to the political activity of a party*". Does the reference to "activities" imply that a special regime is to be created only for the VAT and possibly other taxes on (business) activities, sales, etc.? Or is the intention to create a more comprehensive special tax regime which includes income taxation, social security taxes, etc.? Depending on the answers to these questions, political parties with income "*from the property that they own*" as mentioned in Article 2, Paragraph 2, may conduct considerable tax exempt activities, which may develop into business activities, which otherwise would be taxed. Further, it is not clear how this clause is related to Article 2, Paragraph 1, according to which political parties shall be non-profit organisations. If combined, Articles 14, 8 and 2 may permit the interpretation that political parties in their capacity as non-profit associations are not allowed to (*generaliter* or *ad hoc*) conduct profit achieving activities. Another possible interpretation could be that political parties under the law (without exception or, at least in principle) must be treated as non-profit associations even when conducting profit achieving activities.

11. Article 15, Paragraph 1, prohibits in quite broad terms any financing of political parties by foreign legal persons etc. This clause is so broadly written that it would make it a technical breach of the law for a political party to receive any kind of ordinary funds for any purpose whatsoever from authorities within the entire framework of the Council of Europe or the European Union. The prohibition further down in the same paragraph concerning certain "*majority stock or share holders*" should be more precise insofar as to indicate whether this clause refers to an absolute majority of more than 50 percent of individual holders of any stock or shares, of individual holders of stock or shares with voting rights, of one holder of more than 50 percent of stock or shares (any stock or shares or stock or shares with voting rights only) etc.

12. According to the two Paragraphs of Article 16 political parties may neither "*perform political or any other pressure on natural and legal persons when collecting donations for the financing of their activities*", nor may they "*promise political or any other counter-favours, privileges or personal benefits of any kind to natural and legal persons when collecting donations for the financing of their activities*."

a) These provisions do not prohibit pressure and promises generally, but only "*when collecting donations*". This leads to the question what is going to happen, if pressure is performed or promises are made *before* the technical process of collecting donations starts or *after* it has been finished.

b) Nor is it clear, who the *addressee* may be of the prohibitions in Article 16. The text indicates – quite generally – "political parties", i.e. legal persons, and the text implies – because legal persons act through their legal representatives – that the prohibition may come into effect only, if a legal representative would act in one of the prohibited ways. Maybe it is the intention of the draft to also prohibit pressure and promises by other persons acting more or less clandestinely on behalf of a political party. If that is – or is

not – the intention, it should be expressed in a way which does not leave any doubt in this respect.

c) Neither of the prohibitions in the two Paragraphs of Article 16 is mentioned in Chapter V of the Draft on Penal Provisions. There seems to be *no sanction* at all, if the prohibitions as stated in Article 16 are not observed. If a sanction is provided for in the Penal Code or other legislation it should be clarified, whether and to which extent Article 16 may be *lex specialis* in relation to the other provision.

13. According to Article 17, the first provision in Chapter IV of the Draft, "financial operations of a political party" are to be supervised by the State Audit Office and the Ministry of Finance – Tax Administration. Some details of this supervision are regulated in Articles 18 to 20, the remaining Articles of Chapter IV. The whole of Chapter IV leads to quite a number of questions, which in one way or another affect all the Articles of the Chapter.

a) The first question concerns the meaning of the term "supervision" (in Croatian "nadzor"). Is it intended to be (more or less) a synonym for "financial audit" or is it (at least to some extent) intended to include political aspects? The latter, it could be argued, may be necessary with respect to Article 2, Paragraph 4, of the Draft which permits a political party to use certain funds only to achieve "goals determined by the programme and statute of the political party"; supervision under Article 17 could therefore be said to include the task to check compliance with programme and statute. But could that under the Constitution of Croatia really be a task for the State Audit Office and the Ministry of Finance or either of these authorities? This question leads to the further question, which of the two authorities mentioned in the Draft is supposed to do what.

b) Is supervision as provided for in Chapter IV intended to include *the* financial operations of a political party, i.e. *all* the financial operations in their *entirety*, or is it intended to limit supervision? To provide for limits would not be unreasonable. Access to financial records of a political party can reveal much information about the political strategy of the party, and it can be argued that it is necessary to strike a reasonable balance between secrecy and transparency in this respect.

c) Similar questions have to be asked concerning the keeping of records and their publication in the Official Gazette and on the website of the political party.

d) According to Article 20 the findings of the State Audit Office shall be published in the Official Gazette. But what happens, if the supervised political party does not agree with the findings? Is there an appeal to a Court of Law?