



Strasbourg, 14 December 2021

CDL-AD(2021)052

Opinion No. 1062 / 2021

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SERBIA

URGENT OPINION

**ON THE REVISED DRAFT LAW ON THE REFERENDUM
AND THE PEOPLE'S INITIATIVE**

**Issued on 9 November 2021, pursuant to Article 14a
of the Venice Commission's Rules of Procedure**

**Endorsed by the Venice Commission
at its 129th Plenary Session
(Venice and online, 10-11 December 2021)**

on the basis of comments by

**Mr Josep Maria CASTELLÀ ANDREU (Member, Spain)
Mr Oliver KASK (Member, Estonia)
Ms Regina KIENER (Member, Switzerland)**

Opinion co-funded
by the European Union



Contents

| | | |
|------|---|----|
| I. | Introduction | 3 |
| II. | Analysis..... | 3 |
| A. | General remarks..... | 3 |
| B. | Specific remarks..... | 4 |
| 1. | Types of referendums..... | 4 |
| 2. | Right to vote in referendums and right to participate in people's initiatives | 4 |
| 3. | Deadlines for calling a referendum | 5 |
| 4. | Issues on which the referendum cannot be called | 5 |
| 5. | Electoral administration | 5 |
| 6. | Question submitted to the voters and information provided to them..... | 5 |
| 7. | Campaign, media and finances | 6 |
| 8. | Parallelism of procedures | 7 |
| 9. | Complaints and appeals | 7 |
| 10. | Other issues (referendums)..... | 8 |
| 11. | People's initiatives..... | 9 |
| III. | Conclusion | 10 |

I. Introduction

1. On 2 August 2021, Ms Marija Obradović, Minister of Public Administration and Local Self-Government of Serbia requested an urgent opinion on the draft law on the referendum and the people's initiative.¹ This urgent opinion was issued on 24 September 2021 pursuant to the Venice Commission's Protocol on the preparation of urgent opinions ([CDL-AD\(2018\)019](#)) and endorsed by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021).
2. By letter of 8 October 2021, the Minister requested an urgent opinion of the Venice Commission on the revised draft law on the referendum and the people's initiative as of 7 October 2021 ([CDL-REF\(2021\)078](#), hereinafter: "the revised draft law").
3. On 14 October 2021, the Venice Commission authorised the preparation of an urgent opinion on this matter, the reason for the urgency being that the constitutional amendments on the judiciary in preparation would have to be submitted to referendum in the next months.
4. Mr Josep Maria Castellà Andreu (member, Spain), Mr Oliver Kask (member, Estonia) and Ms Regina Kiener (member, Switzerland) acted as rapporteurs for this opinion.
5. Due to the COVID-19 crisis and the time constraint, the rapporteurs were not able to travel to Belgrade. Instead, assisted by Mr Garrone and Mr Pashuk from the Secretariat of the Venice Commission, they held a series of video meetings on 21 October 2021 with the Ministry of Public Administration and Local Self-Government, the Ministry of Justice, the Republic Electoral Commission, political groups in the National Assembly, as well as representatives of international partners of Serbia and representatives of the civil society working in the field of elections. The Venice Commission is grateful to the office of the Council of Europe in Serbia for the excellent organisation of these virtual meetings.
6. This opinion was prepared in reliance on the English translation of the revised draft law. The translation may not accurately reflect the original version on all points.
7. This opinion was drafted on the basis of comments by the rapporteurs and the results of the virtual meetings, including the written comments submitted by the authorities on 22 October 2021, following these meetings. It was issued on 9 November 2021, pursuant to the Venice Commission's Protocol on the preparation of urgent opinions ([CDL-AD\(2018\)019](#)) and endorsed by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021).

II. Analysis

A. General remarks

8. The initiative of the Serbian authorities to adopt a new Law on the Referendum and the People's Initiative in order to bring the legislation in line with international standards is to be welcomed, as is their wish to revise the previous draft law submitted to the Venice Commission on the basis of the latter's recommendations. The authorities are aware of the shortcomings of the current law and its possible unconstitutionality. The Venice Commission would like to underline the good co-operation with these authorities.
9. In its previous opinion, the Venice Commission referred to established principles: any successful changes to electoral legislation, included the referendums, should be built on at least the following three essential elements: 1) a clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) the adoption of legislation by

¹ [CDL-AD\(2021\)033](#); see the previous draft law on the Referendum and the People's Initiative, [CDL-REF\(2021\)059](#).

broad consensus after extensive public consultations with all relevant stakeholders;² and 3) the political commitment to fully implement such legislation in good faith. An open and transparent process of consultation and preparation of such amendments increases confidence and trust in the adopted legislation and in the state institutions in general.

10. Furthermore, the Venice Commission regretted that the revision of the law on referendums had started only when a constitutional referendum was imminent. It recalled that pursuant to the principle of electoral stability, amendments to the fundamental provisions on elections or referendums should be applied less than one year after their adoption only if they ensure conformity with the standards of the European electoral heritage or implement recommendations by international organisations. Moreover, changes need to be “really implementable” before the actual election or referendum. The Venice Commission therefore recommended holding the next referendum only when the revised law could be “really applicable” to it. The Venice Commission cannot but repeat these comments and recommendations and reiterate the need to follow the principles outlined in paragraph 9.

11. Since the present opinion is a follow-up to the previous urgent opinion, it will mainly focus on the recommendations made in the latter³ and examine to what extent they have been followed. It does not constitute a full and comprehensive review of the entire legal and institutional framework governing referendums in Serbia. It should not be inferred from this that the Venice Commission is of the opinion that the provisions not expressly dealt with here are unproblematic. Provisions in other pieces of legislation going against the present new law should be explicitly amended to ensure legal certainty.⁴

B. Specific remarks

1. Types of referendums

12. Previous recommendation: *To clearly define the various types of referendums and the provisions applicable to them by addressing in detail the following issues in the law: the questions subject to referendum; the hierarchical rank of the provisions submitted to referendum (constitutional or statutory provisions); the nature of the proposal submitted to referendum (e.g., a generally-worded or a concrete proposal); the effect of the request for a referendum on the current legislation; and to clearly define the issues which cannot be submitted to referendum.*

13. The revised draft law provides, as per the Constitution, for different kinds of referendums and people’s initiatives. The revised draft law generally sets out these differences with enough clarity and conciseness (see Articles 10 to 15). The main concern which had been raised in the previous urgent opinion is therefore not relevant anymore. Article 13 on mandatory referendums could however benefit from further clarification, in particular concerning the nature of the proposal submitted to referendum (e.g. a generally worded or a concrete proposal).

2. Right to vote in referendums and right to participate in people’s initiatives

14. Previous recommendation: *To reconsider the extension of the right to vote to owners of real estate, or at least to provide this extension in a detailed manner.*

15. This extension, which concerned local referendums, has been suppressed. The recommendation has therefore been fully followed. Besides, the new article simplifies the definition of the subjects of the right to vote, which represents an improvement.

² Venice Commission, Revised Guidelines on the Holding of Referendums, [CDL-AD\(2020\)031](#), II.3.c.

³ CDL-AD(2021)033, in particular paras 92 and 93 in the conclusions.

⁴ For instance, the composition of the Republic electoral Commission, see below para 21.

3. Deadlines for calling a referendum

16. Previous recommendation: *To extend the deadline between the decision of calling a referendum and the vote, and to restrict the discretionary use by the Assembly of the possibility to reduce this deadline, in particular for constitutional referendums.*

17. This recommendation has been at least partially followed, since the minimum deadline has been extended to 45 days, see Article 18 (3-4). The maximum deadline of 60 days (which stems from Article 203 (8) of the Constitution for constitutional referendums) still remains rather short. Should a constitutional revision take place, this deadline should be reconsidered.

4. Issues on which the referendum cannot be called

18. Previous recommendation: *to clearly define the issues which cannot be submitted to referendum.*

19. The list of issues in respect of which a referendum may not be called (Article 48 (1)) is now more precise than in the former Article 45. Indeed, it repeats Article 108 of the Constitution.

20. However, the Venice Commission recommends extending literally the requirement to ensure the conformity of the subject of referendums with the Constitution (Article 48 (2)) to all infra-constitutional referendums, in conformity with the principle of the Rule of Law.⁵ The decision on the issue - to be taken before submitting the question to referendum - should be open to judicial review.

5. Electoral administration

21. Previous recommendation: *to reconsider the composition of the electoral administration in order to ensure its independence by revising the relevant legal texts.*

22. According to Article 80 of the revised draft law, “[T]he first next National referendum to be conducted under the provisions of this Law shall be conducted by the Republic Electoral Commission appointed in accordance with the provisions of the law governing the election of MPs *whose composition shall be expanded by six more members and deputy members appointed by the National Assembly at the proposal of the Speaker of the National Assembly, from among the ranks of experts in electoral law and the electoral process*” (Italics added).

23. The Commission’s recommendation has therefore been at least partly taken into consideration. Since Article 80 is a transitional provision, and only refers to the “next national referendum”, the Venice Commission recommends considering a broader and long-term reform of the composition of the electoral administration to be applicable after the next constitutional referendum and elections.

6. Question submitted to the voters and information provided to them

24. Previous recommendation: *To extend the deadline for providing objective information to voters, to be received well in advance of the vote.*

25. According to Article 26 (1) of the revised draft law, the deadline for providing information has been extended from eight days to 15 days; although this is an improvement, the deadline still seems rather short. The Venice Commission recommends considering a further extension, taking into account that voters should receive the information well in advance of the vote.

⁵ Venice Commission, [Revised Guidelines on the Holding of Referendums](#), II.1.

26. Previous recommendations: *To give to the electoral commissions the power to check the question submitted to voters as well as signatures, and to provide objective information to voters*

27. The first recommendation has been followed. Article 36 (3) provides that a positive opinion of the competent (electoral) commission on the referendum question proposal is needed to submit a question to the referendum. The revised draft law does not foresee the consequences of a negative opinion, but the Serbian authorities informed the rapporteurs that it would be binding. Moreover, the scrutiny would take place after the collection of signatures if the referendum is requested by voters. In order to avoid a useless collection of signatures, the Venice Commission recommends giving the opinion on the question before such collection; it also recommends making the consequences of a negative opinion clear.

28. Article 26 of the revised draft law states that the Government provides citizens with objective information on the issue submitted to referendum which “should faithfully and equally reflect the view of the parties advocating different answers to the referendum question” (Article 26 (3)). Referring to its Guidelines on Referendums, the Venice Commission in its first urgent opinion recommended that this competence should belong to an election commission or another impartial authority.⁶

29. What is essential is that the voters are provided with objective, that is neutrally reasoned, neutrally worded as well as comprehensive and comprehensible information. However, ensuring the appearance of neutrality is also important, so the Venice Commission reiterates its recommendation to give the power to provide objective information to the electoral commissions, unless another impartial commission is set up for this aim. If necessary, the electoral commissions should be given supplementary budgetary and human resources to be in a position to deal with this task.

7. Campaign, media and finances

30. Previous recommendation: *Not to subject private media to a requirement of neutrality, but only require that equal conditions for radio and television advertising be ensured.*

31. This recommendation has been complied with (see Article 26 (4) of the revised draft law). All media are obliged to ensure equal advertising conditions to parties that advocate different answers to the question.

32. Previous recommendation: *To reconsider the restrictions on electoral campaigns, in particular by providing a narrower definition of such campaigns, and not excluding automatically unions, churches, religious communities, and foundations.*

33. This recommendation has been followed as the exclusion has been suppressed (see Article 29 (3) of the revised draft law).

34. Previous recommendation: *To reconsider provisions on the financing of campaigns, e.g. by allowing financing the costs of the referendum campaign with funds obtained from public sources that political subjects receive for financing regular work or election campaigns.*

35. This recommendation has been taken into consideration by the Serbian authorities, see Article 29 of the revised draft law.

36. Previous recommendation: *To reconsider the exclusion of foreign nationals who are legal residents in Serbia from the financing of campaigns.*

⁶ [CDL-AD\(2021\)033](#), para. 47.

37. This recommendation has not been followed (Article 29 (3)).

38. The Venice Commission would like to still address another phrase of Article 29 (3), which – like Article 26 (3) of the former draft - foresees that legal entities and entrepreneurs who have outstanding dues related to public revenues may not finance the campaign. This prohibition has to be stipulated in a clear manner without leaving discretionary power to the implementing authority. Use of financial resources in campaigning has to be regulated in the law. The law should state which are the public revenues meant in the paragraph and the notion “outstanding” should be defined. Otherwise, the campaign activities cannot be financed with legal certainty and doubts on the impartiality of the treatment of campaigners may arise.

39. Previous recommendation: *To reconsider the inclusion of public opinion research in the referendum campaign activities.*

40. This recommendation has been followed (see Article 27 (1) of the draft law).

8. Parallelism of procedures

41. Previous recommendation: *To extend the deadline before adopting an act contrary to a decision taken by a referendum.*

42. Article 43 of the revised draft law makes it possible to adopt an act contrary to the decision made in a referendum or “change its substance by amendment to the act” only after the expiration of two years from the day of the referendum, and subject to re-holding a referendum on the related issue. The deadline of one year of the previous draft seemed very short. Despite the fact that a deadline of two years is more respectful of the will of the people, it would be suitable to wait until the next legislature, with a new mandate of the citizens for the Assembly. Moreover, this provision should not be interpreted too restrictively and should extend to any substantive changes (even of other acts) affecting the decision taken in a referendum.

43. Article 44 keeps a deadline of one-year before a new vote in case the citizens have not endorsed an act in a referendum. The Venice Commission recommends making this provision consistent with Article 43 and therefore to extend this deadline.

44. On the other side, after a certain period, the parliament should be authorised to decide on the matter, if the modification of this decision responds to an obvious necessity. The requirement to amend such law only by referendum may lead to a deadlock, while the organisation of a referendum would, in this new context, be difficult. As stated in the previous urgent opinion, an intermediate way could be to submit such revision to an optional referendum at the request of voters.

45. The Venice Commission also reiterates that the revised draft law would benefit from norms regulating a situation where multiple proceedings for the collection of signatures with contradictory proposals are carried out simultaneously.

9. Complaints and appeals

46. Previous recommendation: *to reasonably extend the deadlines for lodging and deciding on complaints and appeals.*

47. In Article 71 of the revised draft law, the 24-hour complaint deadlines have been expanded to 48 hours. These deadlines are still rather short. It would be suitable to extend them to 72 hours

(three days) at least.⁷ The 48 hours deadlines to decide have been extended to 96 hours (Articles 71 (5) and 73 (1)), which is positive.

48. Although in many cases the consequences of the situation where the complaint is left unattended are stipulated with more clarity, Article 71 (7) (former Article 67 (7)) has not been amended. It would be suitable to make the kind of requests the complaint may contain clearer.

49. Previous recommendations:

- *To extend the right to appeal to all voters - a reasonable quorum might be imposed for appeals by voters against the results of a referendum.*
- *To provide for hearings in the case of complaints and appeals.*
- *To reconsider the provision foreseeing that, if the competent electoral commission does not decide on the complaint within the deadline (48 hours), the complaint will be “considered as adopted”.*
- *To address the decision-making power of the bodies dealing with proposed referenda, complaints and appeals in a more precise way*

50. These recommendations have not been addressed. The Venice Commission reiterates them.

10. Other issues (referendums)

51. Previous recommendation: *Not to require a fee, or at most a very small one, for signature authentication.*

52. Signature authentication serves the integrity of the referendum process – as well as the citizen’s initiative’s - and helps to prevent abuse. It should therefore be upheld. The problem regarding voter’s rights is not authentication, but the fact that a fee for authentication is imposed.

53. According to the new version of the draft, the fee is RSD 50, which corresponds to 0,42€ per signature (see Article 7 (2)). This corresponds to current practice. This may look like a small amount of money. On the other hand, 30’000 signatures are required for a referendum at the request of the citizens (Article 15(2)). Since a certain percentage of the signatures tend to be invalid, in the end, a higher number of signatures must be collected and authenticated. That would mean that in the case of Serbia, the fee for signature authentication will reach the sum of about 14’000 €. These are very high costs, which might discourage citizens from exercising their political rights. The state must ensure the exercise of political rights, which entail the right to initiate a referendum. If there is a fee for the authentication it should be calculated in a way that *all* political parties, civil society organisations and citizens movements are able to pay it, and that there is no chilling effect for the submission of a referendum. The Venice Commission therefore recommends that the fee be significantly lowered – or, better, abolished. An alternative could be the reimbursement of the fees as soon as the draft is submitted to Parliament.

54. Previous recommendation: *To provide in the law for more detailed rules applicable in the case of emergency.*

55. This recommendation refers to Article 39, which has not been changed. The Venice Commission therefore reiterates its recommendation, which is particularly topical in the present time of COVID-19 pandemics. In particular, any restrictions of fundamental freedoms – including

⁷ Cf. Code of Good Practice in Electoral Matters ([CDL-AD\(2002\)023rev-cor](#)), II.3.3.g.

the right to vote and to campaign – should have a legal basis, be in the public interest and respect the principle of proportionality.⁸

56. Previous recommendation: *To request unity of content of the text submitted for referendums (except for total revisions).*

57. This issue has not been addressed in the revised draft law. While it does not look like a problem for the upcoming referendum on the constitutional amendments regarding the judiciary, the Venice Commission recommends addressing it in the law to be adopted.

58. Article 15 uses different criteria regarding the number of signatures requested for Autonomous Province referendum and for local referendum: 30.000 voters in the first case and 10% of voters in the second one. Due to the different population of the various territorial entities, the second criterion seems more adequate, and the provision could be reconsidered.

59. Article 40 (4) of the first draft regulated the invalidity of ballot papers. The revised draft law does not consider a ballot paper with a correct sign of “yes” or “no” invalid if the ballot paper has other marks clearly showing who has submitted the ballot paper. The Venice Commission recommends providing that the ballot paper is invalid in such cases.

60. Article 41 foresees different deadlines for establishing voting results. Although this provision is to be welcome as far as it leads to speedy decision-making, it would be suitable to provide that in case the deadline is exceeded, the competent commissions have still to fulfil their tasks as speedily as possible and the violation of this provision does not lead to the invalidity of the decision made later.

11. People’s initiatives

61. Previous recommendation: *To provide for less restrictive rules concerning the collection of signatures for people’s initiatives.*

62. This recommendation can be considered as followed (Article 62 of the draft law).

63. Previous recommendation: *To assign the task of checking signatures to the Electoral Commission (or another independent body)*

64. This recommendation has not been followed as such, but the amended version of the draft law provides for the signature check by a competent authority which can fulfil its tasks impartially. The amendment can be considered as positive.

65. Previous recommendation: *To enable an independent body (such as an election commission) to verify the initiative, with a possible judicial remedy in case the proposal is rejected.*

66. This recommendation has not been addressed. The Venice Commission reiterates it, since giving this power to the President of the Assembly could lead to proposals being submitted to the Assembly just to hamper its work.

67. The following previous recommendation should also be addressed: to extend the deadlines for the Assembly to examine the people’s initiative and, if appropriate, to implement it, since it would be better to have a thorough discussion in the Parliament with an obligation deriving from the law to have the proposal in the Assembly’s agenda within a short deadline.

⁸ On elections under states of emergency, see Venice Commission, Report – Respect for democracy, human rights and the Rule of Law during states of emergency: reflections, [CDL-AD\(2020\)014](#), paras 92ff.

III. Conclusion

68. The Venice Commission reiterates that:

- The initiative of the Serbian authorities to adopt a new Law on the Referendum and the People's Initiative in order to bring the legislation in line with international standards is to be welcomed.
- It regrets that the revision of the law on referendums started only when a constitutional referendum was imminent. For the sake of stability of the electoral law, amendments to the fundamental provisions on referendums should be applied less than one year after their adoption only if they ensure conformity with the standards of the European electoral heritage or implement recommendations by international organisations. Moreover, changes need to be really implementable before the actual referendum takes place. The Venice Commission therefore recommends holding the next referendum only when the revised law will be "really applicable" to it. Furthermore, the amendments should be adopted by broad consensus and by taking account of the public consultations with all relevant stakeholders.

69. The revised draft law has followed, totally or partially, most of the substantive recommendations of the previous urgent opinion, aimed at ensuring its conformity with international standards. This is a positive development which is welcomed. In particular:

- The different types of referendums have been defined more clearly.
- The extension of the right to vote in certain local referendums to owners of real estate has not been retained.
- The minimum deadline between the decision of calling a referendum and the vote has been extended.
- The composition of the electoral administration has been reconsidered – but just for the coming referendum on the amendment of the Constitution.
- The deadline for providing objective information to voters has been extended. The Venice Commission however recommends a further extension.
- The power to check the question submitted to voters has been given to the electoral commissions.
- Private media are not any more submitted to a requirement of neutrality, and all media are obliged to ensure equal advertising conditions to parties that advocate different answers to the question.
- Financing the costs of the referendums campaign with funds obtained from public sources received for financing regular work has been authorised.
- Public opinion research is not anymore included in the referendum campaign activities.
- The 24-hour complaint deadlines have been expanded to 48 hours.
- The rules concerning the collection of signatures for people's initiatives are less restrictive.

70. However, some issues remain to be addressed.

71. The Venice Commission therefore makes the following key recommendations:

- A. To abolish, or at least significantly lower the fees for signature authentication;
- B. To extend the right to appeal to all voters;
- C. To consider a broader and long-term reform of the composition of the electoral administration to be applicable after the next constitutional referendum and elections;
- D. To give to the electoral commissions the power to check signatures, and to provide objective information to voters.

72. Furthermore, the Venice Commission recommends, *inter alia*:

- A. To make the provisions on mandatory referendums even more precise;
- B. To provide that the extended deadlines before a new referendum can be organised on a given issue after a positive result applies in case of negative result too;
- C. To address the decision-making power of the bodies dealing with proposed referendums, complaints and appeals in a more precise way;
- D. To request unity of content of the text submitted for referendums (except for total revisions);
- E. To provide in the law for more detailed rules applicable in the case of emergency;
- F. To consider reasonably extending the deadlines for lodging and deciding on complaints and appeals.

73. The Venice Commission stands ready to assist the Serbian authorities to further review the legislation on referendums and people's initiatives, to bring it closer in line with international standards and good practice.