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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE STATE ELECTION COMMISSION
OF SERBIA

Establishment and Activities of the State Election Commission

Article 1

This Law shall establish the State Election Commission (hereinafter: Commission), regulate its composition, authority and other issues important for the work of the Commission.

The Commission shall be an autonomous and independent state body which organizes and conducts elections, monitors and analyzes the state of the voter registry, monitors the situation with the existing and initiates amendments of election laws, organizes training of members of bodies in charge of conducting elections and performs other activities, in line with this law and laws which regulate the election of members of the National Parliament and President of the Republic, as well as in line with other laws which mandate its authority.

Composition of the Commission, Main Office

Article 2

The Commission shall have nine members.

The Main Office of the Commission shall be in Belgrade.

Election of members of the Commission, duration of their term of office

Article 3

The members of the Commission shall be elected by the National Assembly, in accordance with this Law.

The members of the Commission shall be elected for the period of seven years with the possibility to be reelected.

The term of their office shall begin the day they assume their responsibilities, as defined by the formal decision on their election and appointment.

Election of President and Vice-President of the Commission, duration of their term of office

Article 4

The members of the Commission shall elect the president and vice-president of the Commission for the period of one year, in accordance with the Rules of Procedure of the Commission.

A member of the Commission may be elected president, or vice-president, of the Commission twice consecutively.

Election requirements

Article 5

A person may be elected a member of the Commission who, in addition to the requirements for employment in the state bodies, complies with the following requirements:

1) has attained a university post graduate degree (Master's degree in academic studies, specialized academic studies, specialized vocational studies), or a graduate degree acquired for at least four-year studies;

2) nine years of relevant work experience; and

3) not a member of any political party.

Not less than five members of the Commission shall be graduated attorneys at law (with a Master Degree in Law).

Election Procedure

Article 6

Election procedure shall be conducted by the Ministry in charge of State Administration (hereinafter: Ministry).

The Minister in charge of State Administration shall form an Appointments Commission from the ranks of prominent experts who shall directly conduct the election procedure.

The Appointments Commission shall have 11 members.

Members of the Appointments Commission shall be appointed by the Minister in charge of State Administration in the following manner:

- 1) one member proposed by the Ombudsman;
- 2) three members proposed by the High Judicial Council;
- 3) one member proposed by the Commissioner for Public Interest Information and Protection of Personal Information;
- 4) three members proposed by a joint session of the deans of the schools of law, the political science faculties and the schools of economy of the Universities of Belgrade, Novi Sad, Nis, Kragujevac and Pristina, where the proposal is defined in a document which shall be adopted the joint session;
- 5) three members proposed by associations for the protection and exercise of human rights and civil freedoms and exercise of election rights.

The Appointments Commission shall adopt a decision on the procedure for election of candidates of the Election Commission and shall publish it in the "Official Gazette of the Republic of Serbia" and through public information means.

Candidates may run for election independently or through professional organizations and associations.

The decision referred to in Paragraph 5 of this Article shall include the time limit for candidates to apply for running for office.

The Appointments Commission may decide to hold a session to enable candidates, who are in compliance with the election requirements prescribed by law, to present arguments in favor of their candidacy. The Appointments Commission shall regulate its work in more detail by means of its Rules of Procedure.

Based on consideration of applications it receives, the Appointments Commission shall formulate a list of proposed candidates for members of the Commission and shall forward it to the Minister in charge of State Administration.

The Minister in charge of State Administration shall submit the list to the Government which will forward it to the National Assembly.

The National Assembly shall elect members of the Commission by a majority of the total number of its members.

Incongruity of functions

Article 7

The function of a Commission member shall not be incongruous with his or her other public functions or professional activities, nor have other duties or jobs that might impact the Commission member's independence and autonomy, with the exception of teaching at a faculty in the Republic of Serbia.

Commission members shall be considered officials in terms of the law which regulates prevention of the conflict of interest pertinent to performance of public functions and the provisions of the law shall fully apply to them.

All public, professional and other functions, or duties and activities a Commission member has performed until then, which are incongruous with the function of a Commission member, shall stop on the day when the individual begins his/her term of office.

Other limitations

Article 8

Commission members may not participate in party activities and election campaigns, or conduct a campaign on behalf of, or against, a candidate or party lists, or a campaign for or against adoption of a certain decision made by citizens by referendum.

End of mandate

Article 9

The mandate of a Commission member shall be ended in the following circumstances:

- 1) end of term of office;
- 2) death;
- 3) resignation;

- 4) loss of citizenship status, determined based on a document issued by a relevant state body;
- 5) loss of right to vote;
- 6) retirement, in line with law;
- 7) permanent physical or mental incapability to perform the duties, determined based on documents issued by a relevant medical institution;
- 8) recall

Recall **Article 10**

Members of the Commission shall be recalled by the National Assembly by a majority of votes of the total number of its members.

A Commission member may be recalled based on the following circumstances:

- 1) When a Commission member performs his/her duty unconscientiously;
- 2) When a Commission member has another public function or professional activity, if he/she performs other duties or has another job which could impact his/her independence and autonomy, or if he/she acts contrary to the law which regulates prevention of the conflict of interest pertinent to public functions;
- 3) Conviction of criminal act which makes it inappropriate for him/her to perform his/her duties;
- 4) When a Commission member becomes a member of a political party.

The proposal for recall shall be adopted by the Commission by a majority of votes of the total number of its members.

A proposal for recall due to circumstance referred to in Paragraph 2 Items 2) to 4) of this Article may be brought forward by the National Parliament Committee for Administration and the Government.

End of Mandate to Run in Elections **Article 11**

Should a Commission member run for elections, his/her duties shall come to an end in line accordance with law on the day he/she applies as a candidate.

Until a new Commission member is elected his/her duties shall be performed by a judge of the Supreme Cassation Court appointed by the president of the Supreme Cassation Court.

President and Vice-president of the Commission **Article 12**

The President of the Commission shall represent and act on behalf of the Commission, manage its activities and undertake measures for enabling the Commission to do its work regularly and without obstruction.

The Vice-president of the Commission shall serve as a substitute for the president of the Commission should he/she be absent or incapacity.

Working and Decision-Making **Article 13**

The Commission shall adopt decisions on its sessions.

The Commission's sessions shall be public.

The Commission's sessions shall be called and presided over by its president.

In the event of absence or incapacity, the president of the Commission shall substitute the vice-president of the Commission.

The Commission shall pass decisions by a majority of votes of the total number of its members.

Rules of Procedure

Article 14

The manner of the Commission's work and decision-making shall be defined by its Rules of Procedure which shall be adopted by a majority of votes of the total number of its members.

The Rules of Procedure shall include special provisions about how the president and vice-president of the Commission shall be elected.

The Rules of Procedure shall be published in the "Official Gazette of the Republic of Serbia".

Right to salary

Article 15

The President of the Commission shall have the right to salary equal to that of a minister in the Government, whereas the vice-president and members of the Commission shall have the right to salary equal to that of a state secretary in a ministry.

Funding for the Commission

Article 16

Funding for the Commission shall be provided from the budget of the Republic.

The Commission shall prepare its budget proposal for funding in the following year and shall send it to the Government so as to be included in the Republic Budget Proposal.

Commission's Relations with Other State Organs and Other Organs and Organs in Charge of Conducting Elections

Article 17

State organs, organs of the autonomous provinces and local government units shall provide technical and other assistance to the Commission within their responsibilities.

While conducting an election procedure, as prescribed by law, the organs responsible to conduct elections are obliged to execute decisions made by the Commission, in accordance with law.

Training

Article 18

The Commission shall organize training for the members of organs responsible to conduct elections.

The Commission shall adopt training programs which shall be published in the „Official Gazette of the Republic of Serbia“.

Technical Office of the Commission

Article 19

The Commission shall establish a Technical Office for performing technical activities pertinent to the responsibilities of the Commission and administrative and technical activities which shall enable the regular and unobstructed work of the Commission.

Technical Office Management

Article 20

The Technical Office shall be managed by the Technical Office Director.

The Technical Office Director shall be a state official.

The Technical Office Director shall have a deputy who shall be a state official.

The Director and Deputy Director of the Technical Office shall be selected by the Commission by majority votes of the total number of its members.

Special Limitations

Article 21

The Director and Deputy Director of the Technical Office may not be members of any political party.

Transitional Provisions

Article 22

As of the day this law goes into force, all provisions of the Law on Election of National Assembly Members („Official Gazette of the RoS”, No 35/00, 69/02, 57/03, 72/03, 18/04, 85/05 and 101/05) which regulated the manner of selection, decision-making and composition of the Republic Election Commission shall cease to be valid.

As of the day the implementation of this law begins, the Republic Election Commission shall be closed.

The rights and responsibilities, files, equipment, means for work and archive of the Republic Election Commission shall be taken over by the Commission formed by this law.

The first election procedure for the members of the Commission shall be conducted in such way as to enable them to take over their duties on the day when the implementation of this law begins.

A joint session of the deans of the faculties referred to in Article 6 Paragraph 4 Item 4) of this law shall be convened by the dean of the oldest faculty among the deans who are attending the session.

Commission members shall hold their first session, adopt the Rules of Procedure and elect the President and Vice-president of the Commission not later than a month following the day of their election.

Entry into Force

Article 23

This law shall enter into force on the eighth day after its publication in the „Official Gazette of the Republic of Serbia”, and its implementation shall begin on December 31, 2009.

EXPLANATION

I. CONSTITUTIONAL BASIS FOR ADOPTION OF THE LAW

The constitutional basis for adoption of the bill is included in Article 97 Item 16 of the Constitution of the Republic of Serbia which stipulates that the Republic of Serbia regulates and secures the organization, authority and work of the republic organs.

II. REASONS FOR ADOPTION OF THE LAW AND EXPLANATION OF PARTICULAR SOLUTIONS

One of the key elements of the impending election legislation reform in the Republic of Serbia shall be establishment of an independent and autonomous state organ – the State Election Commission.

Namely, in order to secure more democratic elections and to conduct the entire process by the central body in a professional, skilled and competent manner which will not be susceptible to political or other influences it is necessary to:

- clearly define the legal position of the State Election Commission;
- include in the composition of the State Election Commission experts for election processes who will not be susceptible to political and other influences during their work.

The draft Law on the State Election Commission is, in the sense of its content, an organizational regulation which, primarily, regulates the legal position of the State Election Commission, its composition and the manner of work. According to this Law, the Commission has been clearly defined as a state organ which performs the duties of a central election body defined, first of all, by the laws on election of the National Parliament members and the President of the Republic. In addition to this it will have significant authority during the election of members of assemblies of local government units (Article 1 of the Draft Law).

Adoption of a separate law which will, primarily, regulate the legal position, composition and the manner of work of the State Election Commission, is, in some sense, a legal reaction to the current situation in the legal system of the Republic where, at the moment, the Republic Election Commission has no clearly defined legal position and organizational structure without a separate office which would work on very important, complex and comprehensive activities under the Commission's purview (The Draft Law anticipates formation of such an office – Articles 19 and 20 of the Draft Law).

Further on, the Draft Law contains clear rules on the procedure of election and recall of members of the State Commission. The basic goal of such proposed rules is to provide election of Commission members in a manner, which will not be based on the political will of parties, like it has been so far, but rather based on professional criteria. Namely, the existing legal concept, according to which participants in elections directly create, through their political will, the composition of the central election organ, also carries certain contradictions.

For this reason the Draft Law prescribes that the Appointments Commission, composed of prominent experts, has a central role in selection of candidates for the State Commission, and will directly conduct the selection procedure. In order to provide necessary expert knowledge in the process of selection of candidates for the State Election Commission, the members of the Appointments Commission shall be appointed by the Minister in charge of State Administration in the following manner: one member proposed by the Ombudsman; three members proposed by the High Judicial Council; one member proposed by the Commissioner for Public Interest Information and Protection of Personal Information; three members proposed by the joint session of the deans of all law schools, political science faculties and schools of economy of the Universities of Belgrade, Novi Sad, Nis, Kragujevac, and Pristina, where the proposal is defined and adopted at the joint session and three members, as proposed by associations for human and voting rights. The central role of the Appointments Commission lies in the fact that their proposals are sent by the Minister in charge of State Administration to the Government and to the National Assembly from there. Members of the State Election Commission are elected by the National Assembly by a majority of the votes of the total number of its members (Article 6 of the Draft Law).

Political or any other influence on the work of Commission members will be prevented by rules about the incongruity of their duties (Article 7 of the Draft Law) and in particular with Article 8 of the Draft Law which anticipates that Commission members may not participate in party activities or election campaigns, or conduct campaigns for or against candidates or party lists, for or against certain decisions about which citizens decide by referendum.

Indirectly, political and any other influence on the State Election Commission members will be prevented by the rule on duration of the term of office (seven years – Article 3 Paragraph 2 of the Draft Law), which rules out tying a term of office to a certain election cycle. The same goal is achieved by precise rules on ending the mandates of the members of the State Election Commission (Articles 9 and 10 of the Draft Law), by the rule on salaries (Article 15 of the Draft Law), and by defining the very terms and conditions of election of members (Article 5 of the Draft Law). The same applies to the rule according to which not even the National Assembly has to right to define the manner of management of the State Election Commission, rather, it is left to the Commission members to elect their president and vice-president which additionally contribute to the independent work of the Commission (Article 4 of the Draft Law).

An important novelty, which will contribute to more professional work of other organs in charge of conducting elections, is a solution according to which the Commission will organize trainings for members of organs in charge of conducting elections (Article 18 of the Draft Law).

III. ANALYSIS OF THE EFFECTS OF THIS LAW

This Draft Law does not require analysis of its effects, considering the fact that it does not create any new obligations for business or any other entities.

IV. FINANCIAL MEANS OF IMPLEMENTING THIS LAW

Implementation of this law requires additional funding from the budget of the Republic of Serbia.