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Evaluation Report on the Republic of Serbia Transparency of Party Funding

(Theme II)

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I. INTRODUCTION

1. The State Union of Serbia and Montenegro joined GRECO on 1 April 2003. Following the referendum organised in Montenegro on 21 May 2006 and the declaration of independence adopted by the National Assembly of Montenegro on 3 June 2006 and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the State Union of Serbia and Montenegro ceased to exist. Subsequently, the Republic of Serbia became the successor state to Serbia and Montenegro. GRECO adopted the Joint First and Second Round Evaluation Report on the Republic of Serbia (Greco Eval I-II Rep (2005) 1E) at its 29th Plenary Meeting (19-23 June 2006). The afore-mentioned Evaluation Report, as well as its corresponding Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

2. GRECO's current 3rd Evaluation Round (launched on 1 January 2007) deals with the following themes:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption, Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

3. The GRECO evaluation team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Serbia from 28 to 30 April 2010, was composed of Mr Christian Fredrik HORST, Deputy Director General, Ministry of Government, Administration and Reform (Norway), Mr Jurij TOPLAK, Assistant Professor, Faculty of Law Maribor (Slovenia) and the scientific expert, Mr Yves Marie DOUBLET, Deputy Director, National Assembly, Legal Department, Unit of Legal Studies (France). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 5E, Theme II), as well as copies of relevant legislation.

4. The GET met with officials from the Republic Election Commission and the Finance Committee, Ministry of Finance, Ministry for Public Administration and Local Self-Government, State Audit Institution, Anti-Corruption Agency and Misdemeanour Court. In addition, the GET met with members of political parties represented in Parliament. Finally, the GET met with Transparency International, the Centre for Free Elections and Democracy (CESID), academia and the media.

5. The present report on Theme II of GRECO's 3rd Evaluation Round on Transparency of Party Funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Serbian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to the Republic of Serbia in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2010) 3E, Theme I.

II. TRANSPARENCY OF PARTY FUNDING - GENERAL PART

Legal framework

7. Political parties are governed by the Law on Political Parties (2009) and several specific laws such as the Law on the Financing of Political Parties (2003, as amended in 2008), which includes provisions on funding sources (including during electoral campaigns), transparency, supervision and sanctions. In addition, the Law on the Election of the President of the Republic of Serbia (2007), the Law on the Election of Representatives to the National Assembly (2000, as amended) and the Law on Local Elections (2007) contain rules on technical aspects of election processes; these laws are supplemented by the Republic Electoral Commission (REC) regulations and decisions. Furthermore, the Constitution (2006) contains several provisions guaranteeing political rights and freedoms, including the freedom of opinion and expression, the right to vote and to be elected, the freedom of assembly and association, and the right to participate in the conduct of public affairs (Article 46 and Articles 52-55 of the Constitution).

Definition of political parties

8. The free establishment of political parties is guaranteed by Article 5 of the Constitution. Political parties as such are defined by Article 2 of the Law on Political Parties as "organisations of freely and voluntarily associated citizens set up for the purpose of achieving political goals through democratic shaping of the political will of citizens and through their participation in elections." This definition is complemented by Article 3 of the Law on Political Parties on minority parties, whose activity is specially aimed at representing the interests of a national minority, as well as protecting and strengthening the rights of its members in line with the Constitution, laws and international standards, as regulated by the party's foundation act, programme and statute.

9. Political parties are territorial organisations which acquire legal personality upon registration in the Register of Political Parties.

Founding and registration of political parties

10. The founding and registration of political parties are regulated by the Law on Political Parties. A political party can be established by at least 10,000 support signatures of Serbian citizens who are at least 18 years of age and capable of work; the statutory requirement in the case of a national minority party is of 1,000 signatures. The application is submitted by the authorised representative of the political party within 30 days of its founding assembly. The mandatory documents which have to be submitted with the application include: the minutes from the party's founding assembly, its founding act, a standard verification form on the setting-up of a political party duly filled in, statements of the party's founders verifying the authenticity of the signatures collected, two copies of the party programme and statute, a document verifying the election of the party's authorised representative and a proof of his/her residence.

11. The Register of Political Parties is kept by the Ministry for Public Administration and Local Self-Government. Upon submission of the application and the required documents (which have previous been certified/verified by the responsible courts and municipal authorities), the Ministry has 30 days to issue a decision for the entry of the political party into the Register. If the Ministry fails to respond within 30 days or if the application is not rejected, it is deemed that the entry has been made one day after the expiration of the 30-day period set by law. A political party becomes operational on the day of entry into the Register.

12. Given the significant changes in the registration procedure introduced by the Law on Political Parties in 2009, political parties were given six months to fulfil the new statutory requirements. A political party failing to align its statute and other governing acts with the provisions of the Law on Political Parties and which did not submit the application for entry into the Register by 23 January 2010 was to be automatically deleted from the Register and, consequently, lose its legal person status. A total of 73 political parties (42 of them are national minorities' parties) are registered in Serbia. The information contained in the Register is public.

Participation in elections

13. Serbia is a parliamentary republic with a multi-party system. The Head of State is the President, who is elected by direct suffrage for a term of five years. The 250 members of the National Assembly are elected for a four-year term through a system of proportional representation of candidate lists running in a single nationwide constituency. Mandates are allocated to candidate lists that surpassed a 5% threshold of the votes cast according to the D'Hondt method (the 5% threshold does not apply to parties and coalitions rooted in national minorities).

14. Every citizen of Serbia who has attained 18 years of age and is capable of work has the right to vote as well as the right to be elected. Suffrage is universal and equal for all; elections must be free and direct and voting is carried out by secret ballot in person (Article 52, Constitution).

15. In order to register a candidate list, a party, a coalition or a group of citizens has to submit to the Republic Electoral Commission (REC) a set of documents including a list of at least 10,000 support signatures of registered voters.

16. Elections are conducted by a two-tier administration consisting of the REC and the polling boards.

Party representation in Parliament

17. In the parliamentary elections held on 11 May 2008, seats were obtained by the following parties[1]:

Name of party	Acronym	Number of seats
SERBIAN RADICAL PARTY	SRS	77
DEMOCRATIC PARTY	DS	64
G17 PLUS	G17	21
DEMOCRATIC PARTY OF SERBIA	DSS	21
LIBERAL DEMOCRATIC PARTY	LDP	11
SOCIALIST PARTY OF SERBIA	SPS	11
NEW SERBIA	NS	9
LEAGUE OF SOCIAL-DEMOCRATS OF VOJVODINA	LSV	5
PARTY OF UNITED PENSIONERS OF SERBIA	PUPS	5
SERBIAN RENEWAL MOVEMENT	SPO	4
ALLIANCE OF VOJVODINA HUNGARIANS	SVM	4
SANDZAK DEMOCRATIC PARTY	SDP	4

[1] Several months after the constitution of the National Assembly, a new party, i.e. the Serbian Progressive Party, was formed from a splinter group which left the Serbian Radical Party, increasing the number of political parties in the National Assembly to 24. The Serbian Radical Party now has 56 seats and the newly-formed Serbian Progressive Party has 21 seats.

Name of party	Acronym	Number of seats
UNITED SERBIA	JS	3
TOGETHER FOR KRAGUJEVAC	ZZK	2
DEMOCRATIC ALLIANCE OF CROATS IN VOJVODINA	DSHV	1
CHRISTIAN DEMOCRATIC PARTY OF SERBIA	DHSS	1
NON-PARTISAN LIST	NL	1
ROMA DEMOCRATIC LEFT	DLR	1
VETERANS' MOVEMENT OF SERBIA	PVS	1
SANDZAK SOCIAL LIBERAL PARTY	SLPS	1
PARTY FOR DEMOCRATIC ACTION	PZDD	1
BOSNIAK DEMOCRATIC PARTY OF SANDZAK	BDSS	1
SOCIAL DEMOCRATIC UNION	SDU	1

Overview of the party funding system

18. The Law on the Financing of Political Parties (hereinafter: LFPP) is the key legal instrument regulating party funding in Serbia: it includes provisions on funding sources (including during electoral campaigns), transparency, supervision and sanctions.

Public funding

Direct public funding

19. Funds from public sources may be used for covering the expenditures of regular activities of political parties, as well as costs incurred during election campaigns. Parties qualify for the funding of regular activities if they have elected representatives in Parliament. In this context, political parties must win, individually or in coalition, at least 5% of the votes cast in order to acquire parliamentary status and qualify for public funding. In the case of a national minority party, it qualifies for public funding when it has at least one seat in Parliament.

20. Funds from public sources, appropriated for regular activities of a political party whose candidates have been elected representatives and/or councillors, are set at the level of 0.15% of the budget of the Republic of Serbia (generally ranging from 6,000,000 to 9,000,000 EUR; in 2010, these funds amounted to 6,600,000 EUR), at 0.1% of the territorial autonomy unit's budget, and/or 0.1% of the local self-government unit's budget, respectively. Of these funds, 30% is allocated in equal amounts to political parties whose candidates have been elected MPs or councillors, whilst the remaining 70% is distributed in proportion to the number of seats won by each party (Article 4 LFPP).

21. Budget appropriations for election campaign costs are set at 0.1% of the budget of the Republic of Serbia (generally ranging from 4,000,000 to 5,000,000 EUR), at 0.05% of the territorial autonomy unit's budget and at 0.05% of the local self-government unit's budget, respectively. Of these funds, 20% is allocated in equal portions to submitters of electoral lists and/or nominators of election candidates within ten days of electoral list registration and/or confirmation of the candidates list, whilst the remaining 80% is distributed to electoral list submitters whose candidates have won seats in the election within ten days of the publishing of election results, proportionately to the number of seats won. If the funds obtained in this manner exceed the cost of the election campaign by the election day, the difference has to be returned to the budget of the Republic of Serbia and/or the respective territorial autonomy unit or/and local self-government unit not later than ten days from the day of receipt. Expenditures at elections are

related to the activities performed during the campaign period, i.e. posters, advertisements, radio, television and other media shows, commercials, publications and similar activities undertaken during the period from the calling of elections and until the polling day.

Indirect public funding

22. Parties are entitled, at election time, to free space and airtime in the media on an equal basis (Articles 78(6) and 106, Broadcasting Act). Commercial broadcasters may broadcast paid political announcements and advertisements, but without discriminating political parties, collations and candidates, and on equal financial terms (Article 109, Broadcasting Act). Advertising of political organisations outside election campaigns is prohibited (Article 106, Broadcasting Act); fines between 50,000 and 200,000 dinars (500 and 2,000 EUR) for legal persons infringing this ban (Article 113(19), Broadcasting Act).

Private funding

23. Financing from private sources comprises membership fees, donations from physical and legal persons, income from party promotional activities (e.g. proceeds from sale of publications, party symbols and other tokens) and income from party property and legacies.

24. As regards private donations, they not only comprise financial contributions, but also gifts and services rendered free of charge or for a price that deviates from the market price. Every legal or physical person rendering a service or selling a good to a political party has to issue an invoice to this effect, irrespective of who will be debited for the payment for such services or goods and whether they were provided for free. Insofar as donations from legal entities are concerned, the latter are bound to inform their shareholders' assembly (in the case of a joint-stock company) or their management body about any contribution made to a political party (Article 5, paragraph 2 LFPP).

25. A number of restrictions apply to the sources of private funding (Article 6 LFPP). In particular, political parties are not permitted to accept the following types of contributions:
    - donations from anonymous sources;
    - donations from foreign States, foreign legal entities or physical persons;
    - public institutions and public enterprises;
    - institutions and companies with Government capital share, regardless of size of share;
    - private companies performing public services pursuant to contracts awarded by Government bodies and public offices, for the duration of such contract;
    - enterprises and other organisations exercising public authority;
    - trade unions;
    - humanitarian organisations;
    - religious communities;
    - organisers of games of chance;
    - importers, exporters, merchandisers and manufacturers of excise goods and legal entities with due but unsettled payments to public revenue.

    Any money or pecuniary value acquired from the afore-mentioned sources is to be transferred to the State budget within 10 days of its receipt.

26. In addition, donations by legal persons for the financing of regular activities of a political party cannot exceed, in a calendar year, the amount of 100 average monthly salaries[2] (i.e. 44,400 EUR) in Serbia calculated for the previous year by the official statistics body; the threshold is set at 10 average monthly salaries (i.e. 4,400 EUR) if the donor is a physical person (Article 5, paragraph 4 LFPP).

27. Finally, there is no statutory ceiling on the funds collected from membership fees. However, as per individual membership quotas, a membership fee exceeding the amount fixed by the party statute, is considered as a donation which is to be detailed (in its origin and amount) in the party financial records (Article 5 LFPP).

Collection and expenditure limits

28. Income from private donations, and thus expenditure limits, is strictly tied to public funding.

29. The amount collected from private sources during election campaigns may note exceed 20% of the public funds granted to the relevant political party. A donation by a physical person during election campaigns must not exceed 0.5% of the amount that the submitter of a registered electoral list or the nominator of a candidate collects from private sources for election campaigning; the threshold is set at 2% if the donor is a legal person (Article 11 LFPP). If the public funds granted exceed the funds spent for the election campaign up to the election day, the difference is to be returned to the public budget (Article 10 LFPP).

30. Moreover, private donations for the financing of regular party activities, irrespective of whether these donations are obtained from a physical or legal person, cannot exceed the total amount (100%) that a party has received from the State budget. In the case of political parties which do not have a seat in Parliament, and hence do not receive public funding, the ceiling on private donations, in a single calendar year, is set at 5% of the total amount of the funds designated by the State for the financing of parliamentary parties (Article 5 LFPP).

Taxation regime

31. Contributions to political parties, electoral lists or candidates for election are not tax deductible.

III. TRANSPARENCY OF PARTY FUNDING - SPECIFIC PART

(i) Transparency (Articles 11, 12 and 13b of Recommendation Rec(2003)4)

Books and accounts

Routine activities

32. The Law on the Financing of Political Parties (Chapter 5) sets out specific rules for keeping financial records and financial statements of political parties. In addition, the general rules on book-keeping and accounting for legal entities contained in the Law on Accounting and Auditing, and its implementing regulations, also apply.

33. Political parties are to open a bank account for the purpose of income collection and expenditure disbursement. Organisational entities of a political party are to open a sub-account under the

[2] The average monthly salary in the Republic of Serbia, as of 2010, is 440 EUR.

main account of the political party (they cannot open separate bank accounts). Political parties are to regulate the financial relations among their organisational units through internal regulatory acts. Possible debts incurred by the organisational entities of a political party are to be paid off from the main party account.

34. Political parties must keep accounting records of all income and expenditure. Detailed regulations on how these records are to be kept and displayed are contained in the Rulebook on the Contents of Records and Compilation of Reports on Contributions to Political Parties and their Property issued by the Ministry of Finance (2006). In particular, accounting records must track the origin, amount and structure of income and expenditure in compliance with accounting regulations (Article 16, paragraph 1 LFPP). In that respect, there is no difference between political parties and other legal entities. That said, a specific feature of the accounting regime imposed on political parties is the obligation to maintain separate records of private donations received (listing each donor and each contribution by type – e.g. gift, free services, etc.) and of party assets (by category – e.g. buildings, land, office space, equipment, financial assets, etc. and by origin – e.g. purchase, contribution, legacy). Political parties are also required to record any change related to the increase and decrease of the value of their assets, as well as changes arising from the revaluation of party property. The records maintained for buildings, equipment and other fixed assets should also contain data on the purchase price, written off and present value, for each asset. In the case of buildings and office space, it is also necessary to specify the exact location. The records on cash are to display present information on the daily turnover (inflows and outflows of funds) and the balance of funds on a specific date.

Election campaigns

35. The law does not provide for specific rules concerning financial records on election campaigns. That said, election campaign financing is to be reported on a form specifically designed for this purpose. Submitters of electoral lists and nominators of electoral candidates must open a dedicated campaign account (Article 12 LFPP). All funds allocated for election campaigns have to be paid into this account and all payments are to be made from the same account. The funds received in cash must be deposited in the account within three days of their receipt. There is an obligation for submitters of electoral lists and nominators of election candidates to appoint two persons who will be responsible for the lawful raising and spending of election campaign funds and the submission of reports on the financing of election campaigns (Article 13 LFPP).

Reporting obligations

Annual reports

36. A political party is required to submit to the Director of the Anti-Corruption Agency three types of financial reports (Article 16(5) LFPP):

(1) Annual statement and certificate of a certified auditor. The contents of the annual statement are defined by the Rulebook on the Contents and Format of Financial Statement Forms for Business Associations, Cooperatives, other Legal Entities and Entrepreneurs[3]. They comprise a balance sheet, income sheet statement, cash flow statement, statement of changes in capital and statistical annex.

(2) Report on all contributions exceeding 6,000 dinars (60 EUR). It should state the name of the donor, as well as the amount and type of contribution.

[3] Official Gazette of the Republic of Serbia No. 114/2006, 5/2007 – correction and 119/2008.

(3) Report on assets, which include detailed data on the type of property, its origin, gross value, value adjustment and net value.

All of the aforementioned reports are public.

Campaign reports

37. Political parties, submitters of registered electoral lists and nominators of election candidates must, within 10 days of polling day, submit to the Anti-Corruption Agency:

(1) Complete report on the origin, amount and structure of the funds raised and spent for the election campaign (Article 14, paragraph 1 LFPP). This obligation applies to both regular and ad hoc/early elections, but not to referenda.

(2) Report on all contributions exceeding 6,000 dinars (60 EUR) stating the name of the donor, as well as the amount and type of contribution.

38. The Rulebook on the Contents of Records and Compilation of Reports on Contributions to Political Parties and their Property lays out the format of campaign reports. Details on the types and amounts collected and spent from private sources are to be specified by category, i.e. public funding, membership dues, contributions from legal entities and physical persons, income from promotional activities of a political party, income from property of a political party and legacies.

39. Political parties are to keep their financial (annual/campaign) reports for a minimum of six years after submission (Article 17, paragraph 4 LFPP).

Access to accounting records and publication requirements

40. There are four different means to access political accounts:
(1) financial reports are to be published in the Official Gazette of the Republic of Serbia at the expense of political parties (Article 14, paragraph 4 and Article 16, paragraph 6 LFPP);
(2) the Anti-Corruption Agency is under the obligation to ensure that all financial reports are open to the public and is to take appropriate measures to ensure free access to information in the reports to all citizens (Article 17, paragraphs 5 and 6 LFPP);. The Agency maintains a special registry of financial statements of political parties which is publicly available on the Agency's website (www.korupcija.gov.rs); the registry reportedly comprises records on annual accounts of political parties with reports on property and contributions above 6,000 dinars (60 EUR);
(3) by virtue of the Law on Free Access to Information of Public Importance, individuals have the right to review and to obtain a copy of any document held by a public authority body;
(4) annual accounts can be accessed through the Solvency Centre of the National Bank of Serbia.

41. Law enforcement authorities have access to accounting records of political parties, in case of suspicion of a criminal offence, as do tax authorities for tax inspection purposes.

(ii) Supervision (Article 14 of Recommendation Rec(2003)4)

Internal control

42. Accounting records of a political party are subject to annual audits (Article 16, paragraph 3 LFPP). In this connection, political parties are to regulate in their statutes the internal audit of

financial operations and the right of party members to be informed of income and expenditures of the party (Article 17, paragraph 1 LFPP). The Rulebook on Common Criteria for Organisation, Standards and Methodological Instructions for Public Sector Internal Audits, as well as the Law on Accounting and Auditing are applicable in this regard. In particular, the professional title of certified internal auditor may be acquired by a person with a university degree, three years of work experience in external audits of financial statements or internal audit, or five years of work experience in accounting, who has passed an exam for the acquisition of this professional title and who does not have a criminal record.

43. Political parties are to designate a person responsible for financial operations, presentation of reports, maintenance of books, and contacts with the Anti-Corruption Agency. Political parties are to inform the Anti-Corruption Agency on the appointment of the aforementioned responsible officer within three days of his/her designation. The responsible officer signs all financial reports and is to keep accurate records on party accounts. The Anti-Corruption Agency may request, at any time, that the responsible person submits reports for review.

External control

Anti-Corruption Agency

44. Following the last amendments to the Law on the Financing of Political Parties, the Anti-Corruption Agency has been entrusted with the monitoring of party funding (regular activities of political parties and electoral campaigns).

45. The Anti-Corruption Agency was established by the Law on the Anti-Corruption Agency as an autonomous and independent public body reporting to the National Assembly. The aforementioned Law was passed in October 2008; it establishes that the Anti-Corruption Agency becomes operative on 1 January 2010.

46. The managing bodies of the Anti-Corruption Agency include the Board and the Director. The Board of the Agency has nine members who are elected by the National Assembly following the nomination by the Administrative Committee of the National Assembly, the President of the Republic, the Government, the Supreme Court of Cassation, the State Audit Institution, the Protector of Citizens and Commissioner for Information of Public Importance (through joint agreement), the Social and Economic Council, the Bar Association of Serbia and the Associations of Journalists of the Republic of Serbia (by mutual agreement). Board members are elected for a period of four years. The Director of the Agency and his/her Deputy are selected via a public competition announced by the Board; his/her term of office is five years. Members of the Board and the Director of the Agency cannot be members of a political party (Articles 8 and 16, Law on the Anti-Corruption Agency).

47. The Anti-Corruption Agency consists of two departments for preventive and operative activities, respectively. There are a total of 60 employees working in the Anti-Corruption Agency. As regards the performance of monitoring of party/campaign funding, a separate division is set up within the operative department. This division is staffed by four employees with university degrees in either economics (and 5 years' work experience) or finance (and 3 years' work experience).

48. In addition to its monitoring role, the Anti-Corruption Agency is to keep and publish, via its website, a register on financial reports of political parties, as well as to develop the corresponding templates for the information to be gathered in financial reports. The Anti-Corruption Agency has

inspection powers to verify the data contained in the relevant campaign reports within 90 days of their submission; for this purpose the Agency can also outsource certified auditors. Moreover, the Agency is vested with inquisitorial/inquiry powers, i.e. the power to cooperate with other Government agencies in the verification procedure (all Government agencies and organisations are bound to cooperate with the Agency under Article 25 of the Law on the Anti-Corruption Agency), particularly, the State Audit Institution, police authorities, prosecutorial services, the Administration for the Prevention of Money Laundering, etc.

State Audit Institution

49. The control of the financial operations of political parties in Serbia is also performed by the State Audit Institution (Article 10, Law on the State Audit Institution).

50. The State Audit Institution is an autonomous and independent public body which reports to the National Assembly. The audits performed by the State Audit Institution comprise examination of receipts and expenses in line with the regulations on the budget system and regulations on public revenue and expenditure, financial statements, transactions, accounts, analysis and other records and information of audited entities, regularity of business operations of audited entities and appropriate use of public funds in whole or in particular part, as well as the system of internal controls, internal audits, accounting and financial procedures of audited entities; acts and actions of audited entities that have or may have financial effects on the receipts and expenses of the beneficiaries of public funds, state property, borrowing and issuance of guarantees, and the appropriate use of the funds at the disposal of audited entities; the regularity of operation of the managing and governing bodies and other responsible persons in charge of planning, execution and supervision of business operations of the beneficiaries of public funds. The State Audit Institution has full access to all the documents, including those of a confidential nature, of the audited entity.

51. The Anti-Corruption Agency and the State Audit Institution are to submitted annual reports to the National Assembly highlighting the problems found when performing the monitoring of political finances; they are also to include proposals for improvements, as adequate.

(iii) Sanctions (Article 16 of Recommendation Rec(2003)4)

Sanctions

52. Sanctions for misdemeanours are imposed by the Misdemeanour Courts – at the request of the Anti-Corruption Agency or the State Audit Institution. Decisions of the misdemeanour courts may be appealed to the High Misdemeanour Court.

53. If a political party is punished for a misdemeanour, it will lose the right to public funds in the subsequent calendar year (Article 18, paragraph 2 LFPP). The decision to withhold public funding is taken by the Director of the Anti-Corruption Agency.

54. In addition, fines of between 200,000 and 1,000,000 dinars (2,000 to 10,000 EUR) apply if the political party, submitter or a registered electoral list or nominator of a candidate, raises funds contrary to the rules contained in Articles 5, 6, 7 and 11 LFPP, as well as if they do not abide by their bookkeeping and reporting obligations. Responsible officials may be punished with fines of between 10,000 and 50,000 dinars (100 to 500 EUR) for the aforementioned offences (Article 19, paragraph 2 LFPP).

55. Political parties which do not respect expenditure limits during election campaigns are to be fined in an amount which is double the amount spent at the election in question (Article 20, paragraph 1 LFPP). Responsible officials may be subject to fines of between 10,000 and 50,000 dinars (100 to 500 EUR) in such cases (Article 20, paragraph 2 LFPP).

56. Sanctions are cumulatively imposed against the political party which has infringed the rules, as well as the responsible person in that political party.

57. Following enactment of the Law on the Financing of Political Parties, on 1 January 2004, reports for misdemeanour have been filed with the competent misdemeanour courts against 268 political parties for infringements of Article 16 LFPP, i.e. failure to submit their respective financial reports.

Immunities and time limits

58. The President of the Republic, members of the Government and members of the National Assembly benefit from immunities for opinions expressed or votes cast in the exercise of their functions (non-liability), as well as inviolability on the basis of which criminal proceedings cannot be initiated against them without prior approval by the Parliament.

59. Judges and public prosecutors enjoy immunity for opinions expressed in the performance of their duty and only in relation to detention and not in regard to criminal prosecution. However, it is to be noted that, pursuant to Articles 152 and 163 of the Constitution, judges and prosecutors may not be members of political parties for incompatibility reasons.

60. There are no deadlines stipulated for the criminal and or other proceedings in which the immunity is established (Article 103, Constitution). This means in practice that the relevant proceedings will be continued against the person benefiting from immunity upon cessation of his/her term of office.

61. The Law on Misdemeanours (Article 76) provides for the statute of limitations on the institution and conduct of misdemeanour proceedings. In particular, prosecution of misdemeanours cannot be initiated if a year elapses from the day on which a misdemeanour was committed (relative statute of limitation), and in any case the limitation of prosecution comes into force two years after the commitment (absolute statute of limitation). Notwithstanding the above, Article 76(5) and (6) of the Law on Misdemeanours provides for the possibility of extending the statute of limitation concerning offences dealing with public revenue, customs, foreign trade and foreign exchange transactions; the time limit in such cases cannot be longer than 5 years.

III. ANALYSIS

62. The legal framework for the financing of political parties and election campaigns in Serbia, i.e. the Law on the Financing of Political Parties (hereinafter LFPP) is recent and is still being developed (although the LFPP dates from 2003, it was last amended in 2008). A number of provisions are to the legislation's credit and show the intention of the legislator to enhance the transparency and accountability of political financing concerning notably: detailed lists of permitted and prohibited funding sources, including a ban on donations from anonymous and foreign sources; disclosure thresholds for donations over 6,000 dinars (60 EUR); requirements to keep accounting records and to appoint responsible officials in charge of financial and reporting tasks; opening of dedicated accounts (and sub-accounts for organisational entities/local branches of political parties), etc. That said, the system in place is affected by two major weaknesses: the many gaps in the law which can only give rise to circumvention of the relevant transparency goals and

principles pursued by the legislator, and the failure of the authorities to apply this system effectively. Until 2010, supervision of compliance fell to two bodies, i.e. the Election Commission and the Finance Committee of Parliament. This situation changed with the last amendments of the LFPP, by virtue of which monitoring of party funding was transferred, in 2009, to the Anti-Corruption Agency, in cooperation with the State Audit Institution (the latter sharing control responsibilities as regards the use of public funds).

63. At the outset, the GET wishes to stress that both the political parties and the persons now involved in monitoring the legislation's application are fully aware of its imperfections and wish to remedy them by proposing legislative changes. A Working Group, composed of governmental and non-governmental actors with experience in this area, has been created to this effect. Moreover, the GET wishes to highlight the spirit of cooperation and willingness to adjust to new challenges which were conveyed by the interlocutors met during the on-site visit, and in particular, the very proactive approach and leading role displayed by the Anti-Corruption Agency in this field. The GET was provided with a fairly detailed set of principles, which the Working Group had prepared; it was anticipated that a fully-fledged new legal text would be presented to Parliament sometime during the last quarter of 2010 for adoption. The GET trusts that the issues raised and the recommendations made in this report will be received as a timely contribution to the ongoing reform process.

Transparency

64. In Serbia, State aid is provided to political parties for routine activities and for election campaigns. The LFPP attributes a central role to public funding in the financing of the political parties with representation in Parliament, some of which estimated that the public funds received amounted to around 70-80% of their income. Private donations for the regular activities of political parties are capped, in a calendar year, at 100 average monthly salaries (i.e. 44,400 EUR) if the donor is a legal person, and 10 average monthly salaries (i.e. 4,400 EUR) if the donor is a physical person. During the election period, a donation by a physical person must not exceed 0.5% of the total amount collected from private sources; the threshold is set at 2% if the donor is a legal person. Moreover, private donations in Serbia are strictly tied to the amount that political parties receive from public sources. In particular, the amount collected from private sources during election campaigns must not exceed 20% of the public funds granted to the relevant political party. Private donations (with the exception of membership fees) for the financing of regular party activities cannot exceed the total amount that a party has received from the State budget. For parties not receiving public funding, the latter threshold is set at 5% of the total amount of public funding available for all political parties in a given year. It was clear to the GET that the threshold system described above is not only discriminatory (vis-à-vis smaller parties and those with no seats in Parliament), but also extremely complex, and leads in practice to significant implementation challenges. The authorities agreed that in the future law, the emphasis should be shifted from the establishment of caps on private donations to more detailed transparency requirements concerning the different ways by which these donations can be collected and subsequently presented to the public.

65. There is a general perception in Serbia that political parties receive and spend much more money than appears in their accounts and records. This situation acquires significant importance during the campaign period. In particular, the GET was told that campaign costs in Serbia had increased in recent years and that the official figures on income and expenditure presented by political parties represented only a fraction of the real spending. The general mistrust, expressed by both governmental and non-governmental interlocutors met on-site, is rooted in three important flaws of existing legislation, namely the definition of the campaign period, the caps on

income/expenditure, and the reporting deadline of income/expenditure at the crucial time of campaigning, as described below.

66. First, the LFPP does not provide for a fixed time frame for the campaign period. It starts from the call for the election and ends on the polling day. The GET was told that, in practice, this period lasts for some 1-2 months. The lack of a fixed election campaign period makes it difficult to distinguish campaign financing from the routine operations of the parties, as required by Article 2 LFPP.

67. Secondly, the possibility to collect private funding during election campaigns is subject to caps and dependent on the amount of public funds that a party receives: pursuant to Article 11 LFPP the amount of funds obtained from private sources cannot exceed 20% of the funds collected from public sources. This is a clear disadvantage for smaller parties, which receive lower sums of public money (public funding during election campaigns is distributed as follows: advance of 20% for all electoral lists and payment of 80% for those electoral lists which won seats in Parliament to be disbursed 10 days after publication of the election results). The situation is particularly critical at local level, especially in municipalities with modest budgets. In such cases, interlocutors highlighted that public funds could amount (in a worst case – but rather common – scenario) to no more than 10,000 EUR, which means that private funding would be capped at the same level. This state of affairs significantly limits the activities that the parties concerned may be able to perform during the campaign period. Furthermore, the bulk of public funds (80%) is distributed after the election and on the basis of the number of seats won. This, in turn, means in practice, that since private funding is linked to public funding and the latter is determined after elections, political parties may need to resort to all kinds of adjustments to comply with Article 11 LFPP. In other words, private funding is not fixed beforehand in relation to the campaign budget, but is calculated subsequently so that it matches exactly the 20% threshold.

68. Thirdly, the deadline for supplying financial records of electoral campaigns is set at 10 days after the polling day. This deadline is extremely short. Moreover, the GET was told that the Ministry of Finance was rarely in a position to make the payment of the remaining 80% balance within that period (although it is required to do so). The GET was told that, as a result, many political parties were underreporting; in many instances, parties were reporting "zero" income/expenses.

69. The GET also learned that, under the current rules, political parties felt trapped in a situation where either they had to file a proper report or organise a proper campaign. All interlocutors agreed that currently the question was not so much whether political parties reported less than they received/spent, but how much they actually overspent as compared to the declared amounts. In the GET's view, the establishment of unrealistic income/expenditure ceilings can only reduce the reliability of financial reports on election campaigns and hide the full picture of campaign financing from the supervision authorities as well as the public. In the GET's view, this state of affairs not only seriously hampers the transparency and credibility of the system vis-à-vis the general public, but also makes it very difficult for political parties to comply with the rules. It is necessary to connect the legal requirements to the real situation. Therefore, and in the light of what has been described above, the GET recommends **to (i) establish a fixed election campaign period; (ii) review the existing collection/expenditure ceilings, including by considering disconnecting the maximum amount which can be collected from private sources for campaigning from the total public funding granted for this purpose; (iii) extend the deadline for reporting campaign finances, beyond the current 10 days period after polling day, in order to ensure proper accounting for income and expenditure during election campaigns.**

70. With respect to accounting and reporting on routine finances, the LFPP requires political parties to keep accounting records of all income and expenditure. In addition, the general rules on book-keeping and accounting for legal entities contained in the Law on Accounting and Auditing apply. In this connection, it is to be welcomed that the Anti-Corruption Agency recently established, in March 2010, rules and templates for the presentation of party accounts, which were hitherto lacking, a situation that prevented useful comparisons in space and time. As per reporting duties, political parties are to submit annual financial reports to the Anti-Corruption Agency, along with a certified auditor's opinion, a report on all contributions exceeding 6,000 dinars (60 EUR) and a report on party property. A submission deadline is not fixed by law. It has been customary to send these reports by the 15th of April for the previous financial year, but the authorities reported that the lack of a clear deadline in the LFPP has led to an ambiguous situation in which some parties report, others do not. The Anti-Corruption Agency also expressed concerns at this problem, since in the absence of a reporting deadline, it was difficult to launch infringement procedures in the event of non-reporting. This state of affairs needs to be promptly addressed; consequently, the GET recommends **to fix a statutory deadline for the submission of annual financial reports of political parties to the Anti-Corruption Agency**.

71. The LFPP provides with a fairly detailed list of permitted and prohibited sources of private income. However, the GET found a number of shortcomings in the existing legislation, which make it possible to circumvent its provisions, in particular, those relating to donation ceilings. Although the LFPP establishes that in-kind contributions deviating from market conditions are to be treated as donations (Article 5, LFPP), the existing provisions do not expressly establish how to account for in-kind donations. The GET heard that frequent irregularities were occurring in this connection, with respect for example to advertising of political parties in private media and the grating of discounted prices, deviating from market conditions, for certain political parties. Moreover, the current regulations do not clearly address the use of public facilities during election periods. The GET was told that in practice candidates, who are already elected officials, do use the administrative resources at their disposal (official cars, communication equipment, secretariat services, etc.) for political purposes, especially in the context of campaign activities. In addition, the LFPP does not specify what may constitute an important source of private income for political parties, i.e. loans. The GET did, however, hear that there were situations where parties had been given loans under more favourable conditions than those applicable on the market. In this connection, the GET wishes to stress that loans granted under particularly advantageous or preferential terms deviating from general market conditions, as well as written-off loans which are not reimbursed, do in fact amount to donations. Moreover, the lack of references to loans in parties' financial reports gives an incomplete picture of their financial situation. The GET recommends **to (i) establish precise rules for the evaluation and declaration of in-kind donations (other than voluntary work by non-professionals); (ii) provide clear criteria on the use of public facilities for party activity and election campaign purposes; (iii) include in the Law on the Financing of Political Parties specific provisions on loans, in particular, by requiring their proper identification in financial reports and by subjecting them to the relevant rules/limits on private donations, whenever loan terms and conditions deviate from customary market conditions.**

72. The GET also shared the concern expressed by most interlocutors as to a widespread practice of giving donations in cash: in practice, large sums of money were reportedly not circulating through bank accounts but in cash, and were not, therefore, subject to bookkeeping and supervision. The GET was told of the important role still played by the cash economy in Serbia and its impact in practice. For this reason, efforts had been made to specifically target cash donations in the LFPP, notably by requiring that, during election campaigns, cash donations be recorded and deposited in a dedicated campaign account within three days of their receipt (Article 12 LFPP).

Little is said concerning cash donations made outside the electoral period, other than, as any other type of contribution, they need to be recorded and that the responsible officer of the political party is to issue a receipt. The GET, nevertheless, heard credible allegations that cash donations were not always being recorded and that there were ways for donors to make such donations without necessarily identifying themselves. This latter practice represents a clear circumvention of the ban on anonymous donations. The GET was informed that in order to curb these practices, the Working Group on party funding is proposing that the new law includes a requirement for compulsory bank transactions for all donations to political parties. The GET welcomes this move, which, if effected in practice, should assist in reducing the occurrence of unverifiable flows of money into party coffers. In line with the reported intention of the authorities, the GET recommends **to introduce a requirement that all donations above a certain threshold to, and expenditures of, political parties, be made by bank transfer.**

73. The LFPP introduces the prohibition for parties to receive donations from public companies (or with Government capital), as well as from private companies performing public services pursuant to contracts with public authorities, for the duration of such contracts (Article 6 LFPP). The GET understands that the latter provision was introduced to avoid money-for-power deals, i.e. concealed or selective means of public funding by awarding service contracts as a payback for campaign contributors. However, by restricting the time-limit on the prohibition to current contracts, Article 6 LFPP leaves the door wide open to donations made by private enterprises with a view to being awarded a public service contract once the election is over or to show their gratitude for the awarding of a contract by making a donation to the party's next election campaign. These are certainly challenging matters that would need to be addressed by the authorities, for example, by extending the current ban of Article 6 LFPP beyond the duration of ongoing contracts through the introduction of appropriate safeguard periods. In this connection, the GET is pleased to note that the Working Group entrusted with the drafting of new party funding legislation is looking into this matter.

74. With respect to party membership fees, these account for a relatively small proportion of party revenues (5-15%). The statutory thresholds for private donations, under Article 5, paragraph 7 LFPP, do not apply to membership fees (see paragraph 64). Since there is no upper limit to membership fees set by law (this limit can be set at a different level by each political party), there is a theoretical risk that the legal limits on donations be circumvented by means of unlimited membership fees. However, there is no evidence that this has ever occurred in practice. The GET further understands that the determination of membership fees falls under the freedom of political parties enshrined in Article 5 of the Serbian Constitution. That said, the GET was told that the Working Group was planning to further regulate this area, notably, by fixing an upper limit for membership fees in legislation in order to reinforce guarantees that the maximum amount of payments by individuals to political parties is not exceeded through membership fees.

75. Political parties are allowed to establish associations, which are entitled to receive public funding. These associations fall under the recently adopted Law on Associations (2009). When approaching the issue of entities connected to political parties with the different interlocutors, they were of the opinion that this does not constitute a problem at present in Serbia. But the GET was also told that one political party had recently established 40 associations. It is recalled that Article 11 of Recommendation Rec(2003)4 requires party accounts to be consolidated so as to include the accounts of entities related, directly or indirectly, to political parties, or otherwise under their control. The GET is concerned that, as regulations on party funding are tightened (as per the reported intention of the authorities), new ways of circumventing the existing rules may emerge, for example, by using connected entities, as mentioned above, to receive donations or incur expenditure for the benefit of political parties. As such, they may also play a role in political

activities, for instance by raising funds for political parties, polling voters, or disseminating the parties' programmes and ideas. These entities – legally separated from the parties, but, in reality, closely connected to them and their activities – may receive donations including, for example, anonymous donations or foreign donations, without being subject to the same restrictions and disclosure rules as the parties themselves. The authorities must remain alert and anticipate such developments. Even leaving aside those risks, taking merely into account the fact that the entities concerned are financed by political parties and that, as such, the possible final recipients of public funding allocated to the parties, the public has the right to know the use of public funds. In light of the experience of other countries in this particular field, the GET recommends **to seek ways of increasing the transparency of the accounts and activities of entities which are related, directly or indirectly to political parties, or otherwise under their control.**

76. As regards publication of financial reports (on campaign and routine activities, as well as on donations exceeding 60 EUR and assets), the LFPP requires that they be published in the Official Gazette of Serbia at the expense of the political parties (Articles 14, paragraph 4 and 16, paragraph 6 LFPP). Some interlocutors indicated that the existing legal provisions could be improved, if it were clearly spelled out who is responsible for publication: while the legislation provides for publication to be made at the expense of political parties, it does not conspicuously impose an obligation on the parties to publish the relevant information themselves. Moreover, the LFPP does not provide for specific timeframes for publication. As the GET found out during the on-site visit, this information is difficult to find in practice if the public does not know the exact date and issue of the Official Journal in which the financial reports are published. The GET notes that some progress has been achieved in this area, since, pursuant to the latest amendments of the LFPP in 2008, the Anti-Corruption Agency is under an obligation to see to it that all financial reports are open to the public and is to take appropriate measures to ensure free access to information in the reports to all citizens (Article 17, paragraph 5). This is a step in the right direction; however, the GET is convinced that the applicable legislation needs to clarify in an unequivocal manner who is responsible for publishing financial reports and by when. Publicity is key in ensuring transparency of party funding; public access to reported information on political finances is therefore essential to an effective system of disclosure. It is also crucial that the information be released in a timely fashion. Consequently, the GET recommends **to provide in a consistent manner for the publication of financial reports of political parties, in particular, by spelling out clearly who is responsible for publishing the financial reports in connection with both routine activities and election campaigns and the applicable deadlines.**

Supervision

Internal control and auditing

77. Political parties are free as to how to organise their internal control systems. This matter must be regulated in their respective statutes, along with the right of party members to be informed of party income and expenditure (Article 17, paragraph 1 LFPP). The LFPP also introduces a number of requirements to enhance financial discipline of political parties, including through the appointment of officials responsible for financial operations (Article 17, paragraphs 2 to 4 LFPP) and the obligation for all political parties to subject their accounts to annual audits (Article 16, paragraph 3 LFPP). Concerning this latter point, the audit obligation is established by reference to the Law on Accounting and Auditing (another key legislative instrument governing political finances), which however, only requires auditing for companies having over 70 employees. These contradictory rules on auditing, have led, in practice, to most parties not subjecting their accounts to verification by external auditors. In theory, it could also be possible for major parties

to have recourse to volunteers in order to evade application of the 70 employee threshold. This confusing situation certainly calls for the establishment of clear and consistent auditing requirements. Moreover, the GET strongly believes that it is essential that auditors remain independent – and are seen to be independent – of the political parties they audit. In this connection, it is crucial that auditors are not faced with a conflict of interest due to a direct or indirect relationship with the party. The GET notes that the LFPP does not contain any provision to this effect. In view of the deficiencies identified above, the GET recommends **to (i) introduce clear and consistent rules on the audit requirements applicable to political parties; (ii) ensure the necessary independence of auditors who are to certify the accounts of political parties.** The GET acknowledges that audit requirements need to be combined with flexibility in relation to the different means and needs of the various parties, in particular, to avoid overly cumbersome procedures in respect of small parties with little or no administrative means.

Monitoring

78. A significant advance was made in 2010[4] with the effective transfer to the Anti-Corruption Agency of responsibility for supervising the application of the Law on Financing of Political Organisations, which had until then been exercised theoretically by the Election Commission and the Finance Committee of Parliament. The latter's supervision was ineffective since the Committee, as a parliamentary body, has no autonomous legal personality enabling it to initiate proceedings against political parties, nor any real political will to do so, as it is composed of members of Parliament.

79. The GET was able to assess on-site, in the course of the interviews performed with different interlocutors, that both the statutory and functional autonomy and independence of the Anti-Corruption Agency were beyond doubt. As to the concrete responsibilities of the Agency in the party funding field, the Anti-Corruption Agency Act refers, in its Article 5, to the relevant rules laid down in the LFPP. In this respect, the GET considers that the scattered provisions of the LFPP dealing with the Agency's responsibilities – notably, Articles 14, 16, 17 and 18 LFPP – are of a too general nature. The Agency is entrusted with verification, enquiry/inspection, information/publication and forfeiture powers (in the event that a sanction consisting of the withholding of public funds is enforced). None of these powers is clearly articulated in the LFPP. While political parties are under an obligation to submit financial reports to the Agency, there is no indication as to how the verification (formal/material) of such reports is to be carried out. Moreover, while there is a deadline for the Agency to check campaign reports within 90 days of their submission, nothing is said concerning the Agency's deadline to complete verification of regular accounts; this is probably very much linked to the fact that the LFPP obviates establishing a deadline for political parties to report on their routine finances (see paragraph 70). Likewise, the Agency is to facilitate access to financial reports; however, nothing is said on how or by when this access is to be put into effect in practice. The enquiry/inspection powers of the Agency could also be better detailed, and so could its obligation to file charges with competent authorities in the event that irregularities are found. Very little is laid down as to how the procedure of withholding public funds is to be effected. Lastly, there are no provisions concerning the possibility to appeal the Agency's decisions in this area. The Agency clarified on-site that the aforementioned powers are to be understood in conjunction with the Law on General Administrative Procedure. Nevertheless, the GET is of the firm opinion that for the sake of legal certainty, it would be best to clearly spell out the exact powers of the Anti-Corruption Agency in the LFPP. This would also provide the Agency with greater legitimacy to perform its important tasks in this field.

[4] The Law on the Financing Political Parties was amended in 2008. Its provisions entered into force on 1 October 2009; however, the effective transfer of monitoring of political finances to the Anti-Corruption Agency took place on 1 January 2010.

80. The Anti-Corruption Agency is currently staffed with a total of 60 employees; the staffing process is not yet completed. As regards the performance of monitoring of party/campaign finances, a separate division has been set up; it is resourced with 4 employees with university degrees in economics and finance. The GET was positively impressed by the pro-active role taken by the Agency in the party funding field. Since the Agency's establishment and effective operability in early 2010, it has undertaken a number of valuable initiatives in this area, including the development of reporting formats, the setting-up of a Working Group on party funding legislative reform (to which it provides competent leadership), the carrying-out of enquiry work in respect of local elections, etc. At the time of the on-site visit, the Agency was in the process of checking financial reports (in respect of local elections and 2009 regular activities reports). The GET certainly values the initial steps taken by the Anti-Corruption Agency so far, but it has concerns (which were shared by most interlocutors) as to the sufficiency of its resources to properly control political finances, even if, by virtue of Article 14 LFPP, it is possible to engage external certified auditors to perform the occasional task of checking campaign accounts.

81. Political parties are subject to the supervision of the State Audit Institution (SAI) in the same way as other legal entities receiving public funds. However, since the SAI has only nine auditors and has focused its control activities on the State budget[5], it has so far performed no verifications of the use of public funds by political parties. There is no legal obligation for the SAI (either under the LFPP or the Law on the State Audit Institution) to include party funding in its annual audit. When interviewed on-site on its intention to do so in the future, the SAI was uncertain, in particular, in view of its shortage of resources and the need to prioritise auditing subjects accordingly. The insufficient number of staff performing audit functions within the SAI and the existence of a second supervisory body – the Anti-Corruption Agency – plead in favour of a rationalisation of the system of supervision.

82. In light of the aforementioned considerations, the GET recommends **to (i) clarify the mandate and the powers of the Anti-Corruption Agency with regard to supervision of the funding of political parties and electoral campaigns; (ii) entrust the Anti-Corruption Agency, in an unequivocal manner, with the leading role in this respect; (iii) increase its financial and personnel resources, so that it is better equipped to ensure substantial, pro-active and swift monitoring of political finances.**

83. As mentioned before, the Anti-Corruption Agency has issued a standardised form for the reporting of party and campaign finances, accompanied by written guidance. It also has a help desk to provide technical advice to political parties, as needed. Political parties highlighted that, in the context of the recent local elections, they were given new reporting forms and they felt that more information and support regarding their completion could have been provided. This is even more problematic with respect to local branches of political parties (as well as smaller parties), lacking the necessary resources and expertise to properly cope with cumbersome accounting/reporting obligations in an evolving regulatory regime. In a context of frequent changes in legislation, involving a complex set of obligations, the GET takes the view that additional efforts may well be needed in order to raise awareness of the existing and yet-to-be adopted legal duties by which political parties and donors will be bound.

[5] The first audit of the State budget performed by the State Audit Institution was carried out in 2010 with respect of the 2009 financial exercise.

Enforcement and sanctions

84. The existing sanctions, as ensuing from Articles 18, 19 and 20 LFPP, are financial and penal in nature. A political party that breaches the law loses its entitlement to public funding the following year. Moreover, fines of 200,000 to 1,000,000 dinars (2,000 to 10,000 EUR) apply for various violations of the LFPP, and the official responsible for the party's accounts is individually liable to incur a fine. In addition, a party exceeding the electoral expenditure limit can be fined twice the amount by which it has overrun the limit, and the official liable for the party's accounts would also incur a fine.

85. All interlocutors concurred that a major weakness of the system was the lack of real enforcement of party funding and campaign rules. The former oversight mechanisms, the Election Commission and the Finance Committee of Parliament, conceded that they had indeed identified discrepancies in the financial reports submitted by political parties at the time (e.g. discordance of income and expenditure, unrecorded donations, media time, etc.). Moreover, the GET heard that, prior to the new registration process of political parties which was completed in 2010, out of the 500 parties registered in the past, only 30 of them filed reports. Following enactment of the LFPP in 2004, reports for misdemeanours were filed against 268 political parties for failure to submit their respective financial reports. Despite the irregularities identified, no single sanction has ever been applied. The effective use of sanctions is essential for strengthening public confidence and maintaining the integrity of the political process.

86. Apart from the fact that penalties have not been applied so far, the existing sanctions of the LFPP do not sufficiently meet the criteria of Article 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. In particular, there is no list of breaches penalised by a loss of public funding. Likewise, nothing is said in the LFPP as to the concrete procedure for initiating and imposing the aforementioned sanction. Furthermore, the fines applicable to the official responsible for a party's accounts are too small (between 10,000 and 50,000 dinars, i.e. 100 to 500 EUR) and hence have little deterrent effect. No sanction involving a deprivation of liberty or ineligibility is provided for; experience in other countries, has shown that such sanctions can be a powerful tool, including from a preventive point of view. Finally, donors incur no penalties for breaching the law. Consequently, the GET recommends **to (i) review the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive; (ii) clearly define the infringements of political finance rules that can trigger the loss of public funds, as well as the exact procedure for initiating and imposing such sanctions; and (iii) ensure that donors are also held liable for breaches of the law, as appropriate.**

87. Sanctions for misdemeanours are imposed by the Misdemeanour Courts at the request of the Anti-Corruption Agency or the State Audit Institution; appeal channels are provided by law. Pursuant to Article 76 of the Law on Misdemeanours, prosecution of such offences cannot take place if one year has elapsed from the day on which the offence was committed (relative statute of limitation), and in any case the limitation of prosecution comes into force two years after the commission (absolute statute of limitation). The authorities indicated on-site that it was understood that, in the case of party funding and pursuant to a legal opinion adopted by the High Misdemeanour Court, the limitation period was counted from the day on which the irregularities were detected rather than committed. Even if the limitation period starts to run when the irregularity is detected, the GET must stress that this is a very short lapse of time, considering in particular the complexity of some of these offences and the difficulties in investigating them. Moreover, sometimes information about financing irregularities does not come to light until the

next election, which is, generally, held four years later. Infringements of legislation can thus go unpunished because of the expiry of the relevant time limit specified in the statute of limitations. Therefore, the GET recommends **to increase the limitation period for violations of the Law on the Financing of Political Parties.**

88. Another factor which may hamper the effective application of sanctions are the rules on immunity. The President of the Republic, members of the Government and members of Parliament benefit from inviolability on the basis of which criminal proceedings cannot be initiated against them without prior approval by the Parliament. The GET was told that "responsible officials" under the LFPP are very often members of Parliament. The GET explored this issue on-site and understood that it was possible, in principle, to resort to immunity provisions to escape liability for infringements of the LFPP; resorting to immunity for this type of infringements was, under the present sanctioning regime of the LFPP, considered to be a "political suicide". However, if sanctions were to be strengthened, the theoretical risk could prove to turn into a rather practical one. The GET understands that the immunity provisions are not absolute in nature and that Parliament is to decide on its lifting. However, the GET wonders whether it is fully justified to maintain immunity in the context of infringements of party funding and campaign rules. Immunities do not strictly fall within the scope of the current evaluation; this topic was addressed in the context of GRECO's First Evaluation Round and immunity of parliamentarians was not raised as an issue at that time. That said, the GET urges the Serbian authorities to keep this aspect in mind in the context of future reform of the LFPP.

IV. CONCLUSIONS

89. With the adoption of the Law on the Financing of Political Parties, Serbia made an important step forward in strengthening transparency of political finances and self-discipline among the parties; however, for legislation to be effective, it needs to be implemented in practice. Up to 2009, the supervisory arrangements represented the weakest feature of the system. Not a single sanction has ever been applied in practice for violations of the rules on political financing. In 2009, the law was amended to provide the Anti-Corruption Agency with a key monitoring role in party and campaign funding. In addition, the State Audit Institution is also vested with control powers in respect of the use of public funds by political parties. Entrusting independent institutions with the supervision of political finances, as is now the case in Serbia, is no doubt praiseworthy. It remains of pivotal importance to further develop supervisory arrangements so that the verification process of party accounts is properly carried out and, thereby, permits the detection, at an early stage and in a swift manner, of possible instances of improper influence in political financing and the effective punishment of illegal practice. This challenge must be tackled as a matter of priority. In addition, much more needs to be done to improve the current rules on transparency, including by better regulating donations in cash and in-kind (in particular, the use of public facilities), as well as loans, especially at the critical time of election campaigns. Likewise, the current complex, and often discriminatory, ceilings on donations need to be reviewed, in a realistic manner, in order to enhance the reliability and credibility of political accounts. Moreover, as public access to information is one of the cornerstones of an effective system of supervision, it must be ensured that all political parties report on their financial situation and that these reports are made available to the public in a timely manner. The authorities, fully aware of the issues at stake and the deficiencies of existing legislation, have launched a reform process. A Working Group, composed of both governmental and non-governmental sources and led by the Anti-Corruption Agency, has been established to this effect. The recommendations made in this report should be seen as a timely contribution to the ongoing reform.

90. In view of the above, GRECO addresses the following recommendations to the Republic of Serbia:

i. **to (i) establish a fixed election campaign period; (ii) review the existing collection/expenditure ceilings, including by considering disconnecting the maximum amount which can be collected from private sources for campaigning from the total public funding granted for this purpose; (iii) extend the deadline for reporting campaign finances, beyond the current 10 days period after polling day, in order to ensure proper accounting for income and expenditure during election campaigns** (paragraph 69);

ii. **to fix a statutory deadline for the submission of annual financial reports of political parties to the Anti-Corruption Agency** (paragraph 70);

iii. **to (i) establish precise rules for the evaluation and declaration of in-kind donations (other than voluntary work by non-professionals); (ii) provide clear criteria on the use of public facilities for party activity and election campaign purposes; (iii) include in the Law on the Financing of Political Parties specific provisions on loans, in particular, by requiring their proper identification in financial reports and by subjecting them to the relevant rules/limits on private donations, whenever loan terms and conditions deviate from customary market conditions** (paragraph 71);

iv. **to introduce a requirement that all donations above a certain threshold to, and expenditures of, political parties, be made by bank transfer** (paragraph 72);

v. **to seek ways of increasing the transparency of the accounts and activities of entities which are related, directly or indirectly to political parties, or otherwise under their control** (paragraph 75);

vi. **to provide in a consistent manner for the publication of financial reports of political parties, in particular, by spelling out clearly who is responsible for publishing the financial reports in connection with both routine activities and election campaigns and the applicable deadlines** (paragraph 76);

vii. **to (i) introduce clear and consistent rules on the audit requirements applicable to political parties; (ii) ensure the necessary independence of auditors who are to certify the accounts of political parties** (paragraph 77);

viii. **to (i) clarify the mandate and the powers of the Anti-Corruption Agency with regard to supervision of the funding of political parties and electoral campaigns; (ii) entrust the Anti-Corruption Agency, in an unequivocal manner, with the leading role in this respect; (iii) increase its financial and personnel resources, so that it is better equipped to ensure substantial, pro-active and swift monitoring of political finances** (paragraph 82);

ix. **to (i) review the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive; (ii) clearly define the infringements of political finance rules that can trigger the loss of public funds, as well as the exact procedure for initiating and imposing such sanctions; and (iii) ensure that donors are also held liable for breaches of the law, as appropriate** (paragraph 86);

x. **to increase the limitation period for violations of the Law on the Financing of Political Parties** (paragraph 87).

91. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Serbian authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2012.

92. Finally, GRECO invites the authorities of Serbia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.