

PROPOSAL FOR ADOPTION OF A LAW ON ADDITIONAL CRITERIA FOR EXERCISE OF PUBLIC OFFICE

I. GENERAL PROVISIONS

Article 1

This Law shall determine the additional criteria for candidate for office or public official on state and local level, in public institutions (hereinafter: candidate for office or public official); the procedure for data verification for non-cooperation or cooperation with state security institutions of a person - candidate for office or public official, and the legal consequences of that cooperation, as well as the establishment and the competences of the Data Verification Commission (hereinafter: the Commission) for the additional criteria for office related to the cooperation of national security institutions.

Article 2

(1) The candidate for office or public official which, in the period from adoption of the Declaration of the Anti-Fascist Assembly of the People's Liberation Movement of Macedonia - ASNOM for the basic citizen's rights of Democratic Macedonia, at the First Session of ASNOM on 2 August 1944, until the day of entering into force of this law, is not registered in the files of the National Security Service as a secret informer during operational collection of information that were subject to processing, storage and use by the national security institutions in an electronic or printed collections of data and files, created and collected for some persons by which basic rights and freedoms of the citizens were violated or restricted from political or ideological reasons, fulfills the additional criteria for candidacy for office.

(2) In accordance with this law, the criteria shall be considered fulfilled, if a written statement for non-cooperation of a person - candidate for office or public official with national security institutions is verified by the Commission for the period stipulated in paragraph (1) of this article.

Article 3

(1) The former National Security Service, that is the Security and Counter- Intelligence Directorate in the Ministry of Interior, the Security and Counter-Intelligence Department in the Ministry of Defense and the Intelligence Agency, shall be considered as national security institutions.

(2) Deliberate and secret cooperation with national security institutions of secret informers during operational collection of information that were subject to processing, storage and use by the national security institutions, in an electronic or printed collections of data and files, created and collected for some persons by which basic rights and freedoms of the citizens were violated

or restricted from political or ideological reasons, shall be considered as cooperation.

(3) Deliberate and secret cooperation with national security institutions in terms of this law shall exist when the person determined with this law, acted in official capacity in judicial procedure or procedure before state institution or public institution, by which other person is deprived of or restricted to some rights, or is forced to fulfill, not to fulfill or abide to some obligations, or penal or other forcible measure is issued to him/her, if the person knew or had to know that the procedure is taken exclusively due to use of political positions or measures, which explicitly or in secret were presented as legal rules or measures, .

(4) The cooperation from paragraphs (2) and (3) of this article is related to acquiring economic gains or benefits for employment or advance in career.

Article 4

The additional criteria is related to persons - office bearer candidates or office bearers, elected or appointed, and to the following in particular:

- 1) President of the Republic;
- 2) MP in the Assembly;
- 3) President or member of the Government;
- 4) Municipality Mayor and Mayor of the city of Skopje;
- 5) Chair and members of the Municipality Council and of the city of Skopje;
- 6) Secretary General and Deputies-Secretaries General of the Assembly;
- 7) State officials of the Service in the Assembly;
- 8) Secretary General and state officials in the Service of the President of the Republic;
- 9) Secretaries General and State Secretaries appointed in other institutions;
- 10) Persons elected and appointed by the Assembly of the Republic of Macedonia;
- 11) Deputy-Minister and officials of independent institutions (directorates, agencies and committees), ministerial bodies (administration, bureau, service, archive, inspectorate and captaincy), officials of administrative organizations (institutions and bureaus) and other state officials named and appointed by the Government);
- 12) Military and civil persons, officers and officials in the Army of the Republic of Macedonia, officers and uniformed officials in the Ministry of Interior, penal and correctional institutions, members of the court, forestry and financial police, persons with special authorizations and duties in the Ministry of Defense, Ministry of Interior and the Intelligence Agency, authorized state auditors and persons working in the State Auditor's Office, as well as persons from the Civil and Aerial

Traffic performing aerial and professional tasks in the field of air traffic security;

13) Municipality Secretary and Secretary of the City of Skopje;

14) State officials pursuant to the Law on Civil Servants;

15) Officials and general managers in institutions and organizations that are not encompassed with the Law on Civil Servants;

16) The Ombudsman, its deputies and head officials in this institutions;

17) Judges in the Constitutional Court of the Republic of Macedonia, in the Supreme Court of the Republic of Macedonia, courts of appeals and basic courts, members of the Judicial Council of the Republic of Macedonia, the Public Prosecutor of the Republic of Macedonia, public prosecutors and deputy -public prosecutors and members of the Council of Public Prosecutors;

18) General managers of the administrative board of a public enterprise, the founder of which is the Republic of Macedonia or the local self-government;

19) General managers and members of the governing board of a public institution, the founder of which is the Republic of Macedonia or the local self-government;

20) Members of governing boards and general managers of state funds;

21) Members of the Council and the Governing Board of the Public Broadcasting Service;

22) The Governor, Deputy-Governor and members of the Council of the National Bank;

23) Heads, i.e. Consuls, of Diplomatic Missions in foreign states and international organizations

24) Other public officials.

II. OBLIGATION FOR SUBMISSION OF A WRITTEN STATEMENT

Article 5

(1) Persons of Article 4 of this law have the duty, at the time of giving consent for candidacy and assuming public office or other public activities, to submit a certified written statement to the Commission, in which they consciously and responsibly declare that they have not cooperated with state security institutions in the period specified in Article 2 of this law.

(2) Public officials of Article 4 of this law are obliged to submit a certified written statement to the Commission by which they consciously and accountably declare that they have not cooperated with state security institutions in the period specified in Article 2 of this law, within 30 days from the day of establishment of the Commission.

(3) The text of the statement shall go as follows: "I, the undersigned, declare under full financial and criminal responsibility that I have not cooperated with state security bodies in the legally specified period as a secret informer during operational collection of information that were subject to

processing, storage and use by the national security institutions, in an electronic or printed collections of data and files, created and collected for some persons by which basic rights and freedoms of the citizens were violated or restricted, from political or ideological reasons, have neither acquired property gains, privileges for my employment, nor have I advanced in the office."

Article 6

Pursuant to the provisions of this law, the candidates for office or public officials submitting the statements, during the procedure for data verification before the Commission, are released from the duty to keep state, official, military or business secret, as well as top secret, highly confidential, confidential and internal information that have been revealed to them during the cooperation with state security institutions.

Article 7

(1) The candidate for office in Article 4 of this law, which will not submit a statement in accordance with Article 5 of this law, shall be considered ineligible for candidacy.

(2) The public official in Article 4 of this law, which will not submit a statement in accordance with Article 5 of this law, shall be considered ineligible for assuming public office.

(3) The Committee shall, without delay and without debate, determine ex officio the disobedience to submit written statement of Articles (1) and (2) of this Article and publish it in the "Official Gazette of the Republic of Macedonia".

Article 8

The candidate for office or the public official that have already submitted a statement in accordance with Article 4 of this law, are not obliged to submit a new statement, in case of his/her renewed candidacy for office.

Article 9

The Committee has a responsibility, within 15 days from the day of reception, to raise procedure to determine the truthfulness of the statement.

Article 10

The Committee has a responsibility, after the verification of the data from the statement, to reveal the name, father's name and surname of the persons that have cooperated with state security institutions in the "Official Gazette of the Republic of Macedonia".

III. DATA VERIFICATION COMMISSION

- (1) This law establishes the Data Verification Commission.
- (2) The Commission is an independent body in charge of the procedure for verification of data from the statement submitted in accordance with Article 5 of this law.
- (3) The Commission is a legal entity, with a seat in Skopje.
- (4) The finances for the work of the Commission shall be provided by the State Budget of the Republic of Macedonia.

Article 12

The Commission shall have a Chair, Deputy-Chair and seven members elected and appointed by the Assembly of the Republic of Macedonia, from among the members of the society with considerable professional and personal integrity. They shall be elected for a mandate of five years.

Article 13

(1) The Assembly of the Republic of Macedonia shall publish the announcement for appointment of members of the Commission in the "Official Gazette of the Republic of Macedonia" in the daily newspapers.

(2) The announcement of paragraph (1) of this Article shall last for 15 days from the day of its publishing in the "Official Gazette of the Republic of Macedonia."

(3) The principle of appropriate and equal representation should be taken into consideration in the election of members of the Commission.

(4) The candidates for members of the Commission shall submit written statement to the Committee on Election and Appointment Issues in the Assembly of the Republic of Macedonia, in which they will consciously and accountably declare that they have not cooperated with state security institutions.

(5) The Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia shall prepare a list of proposed candidates and shall submit it to the Assembly of the Republic of Macedonia.

Article 14

(1) The Commission shall hold sessions. A commission session shall be held if 2/3 of the members of the Commissions are present at the session.

(2) The Commission shall adopt decisions with majority of the votes of the overall number of members of the Commission.

(3) The Chairperson shall convene the meetings of the Commission on his/her initiative, or upon a written proposal from at least three members of the Commission.

(4) The internal organization of the work of the Commission, the manner of assigning the cases and of the work at the meetings of the Commission shall be regulated with the Rules of Procedure of the Commission, adopted by the Commission.

Article 15

For the performing of the professional, administrative and technical work of the Commission a Secretariat shall be established, as professional staff of the Commission, headed by a Secretary General elected and discharged by the Commission.

Article 15

(1) The office of a Commission member shall cease before the expiration of his/her term of office:

- when the Assembly accepts his/her resignation in a written form;
- upon his/her dismissal;
- upon his/her permanent loss of working ability in respect of the duties of Commission member;
- due to his/her death.

(2) The office of a Commission member shall not cease once he/she has met mandatory retirement conditions.

(3) A Commission member whose office terminated before the expiration of his/her term of office shall be replaced by a new member whose term of office shall last until the expiration of the term of office of the replaced member.

(4) The President of the Assembly shall put before the Assembly the appointment of a new Commission member within 30 days of termination of the advertisement for appointment of a Commission member.

Article 17

A Commission member may not be a person who is a member of a political party body, or a person who has served a minimum of six-month non-suspended sentence or a sentence for other criminal offence rendering him/her unworthy of the trust of the public.

Article 18

A procedure for dismissal of a Commission member who has been absent from three consecutive meetings can be initiated by the Chairperson of the Commission, or at least three Commission members.

Article 19

The Commission has the following competences, it:

- determines the truthfulness of the submitted statement;
- ex officio initiates procedures;
- confirms the non submission of a written statement;
- informs the relevant bodies on the future proceedings;

- adopts its Rules of Procedures;
- prepares an annual report on its work and submits the report to the Assembly of the Republic of Macedonia;
- adopts acts on the internal organization and systematization of the positions in the Secretariat; and
- performs other tasks that enable the verification of data, defined with this Law.

Article 20

(1) The relevant bodies, namely the Security and Counterintelligence Agency of the Ministry of Internal Affairs, the Department for Security and Counterintelligence of the Ministry of Defence, and the Intelligence Agency have an obligation to enable the Commission Panel access and inspection of all relevant data, acts and other documents (hereinafter: data).

(2) The relevant bodies have an obligation to assign official persons responsible for the cooperation concerning data from paragraph 1, and to inform about this the Commission in a written form.

(3) The assigned official persons in the relevant bodies shall act on the demands of the Committee within 30 days.

(4) Third persons can also submit data to the Commission.

(5) For reviewing certain issues the Commission can request opinion from experts, or invite the experts to participate at the meeting of the Commission.

IV. THE PROCEDURE BEFORE THE DATA VERIFICATION COMMISSION

Article 21

During the procedure for the verification of data, the Commission has an obligation to respect the dignity of the person under procedure.

Article 22

(1) The Commission shall verify the accuracy of the submitted statement from Article 4 of this Law, and informs the person who submitted the statement about its findings.

(2) The Commission shall invite the person who has submitted a statement that does not correspond with the data the Committee has access to, to give an additional statement - verbally or in a written form, within five days of the findings.

Article 23

(1) The meetings of the Commission during which a person is expressing his/her attitude shall be held behind closed doors.

(2) If the person from paragraph 1 of this Article submits a request in a written form for the meeting to be open to the public, the meeting shall be open to the public.

Article 23

(1) The person from Article 5 of this Law that shall challenge the data submitted from the relevant body to the Commission which reveal that his/her statement is not accurate, shall be instructed to initiate a procedure before an administrative court within three days.

After this period has expired and the person has not initiated the procedure, it is considered that the person agrees with the data verified by the Commission.

(2) The administrative court shall initiate an urgent procedure within three days, and shall decide on the request for determination of the truthfulness or untruthfulness of the written statement presented before the Commission.

(3) The court shall adopt a decision within eight days of the initiation of the procedure.

A legal remedy can be submitted against the decision of the court, but this shall not postpone the carrying out of the decision.

(4) During the court procedure, the procedure before the Commission shall be adjourned.

Article 25

The Commission shall confirm without debate the fact that the persons has not expressed his/her attitude with regard to the data at the disposal of the relevant state bodies, according to which the Commission has determined that his/her statement is not truthful, and shall inform the relevant state body on the subsequent procedure.

V. PUNITIVE PROVISIONS

Article 26

(1) The persons that shall hide, replace, erase, make additions, destroy or publish without authorization data concerning the cooperation of the persons with the state security bodies shall be punished by up to one year of imprisonment.

(2) If the act from paragraph 1 of this Article is performed by an official person in the execution of the duties, he/she shall be punished by up to four year of imprisonment.

Article 27

(1) The persons that shall instigate the act of hiding, replacing, erasing, making additions, destroying or publishing without authorization data concerning the cooperation of the persons with the state security bodies shall be punished by fine, or by up to one year of imprisonment.

(2) If the act from paragraph 1 of this Article is performed by an official person during the execution of the duties, he/she shall be punished by up to three year of imprisonment.

VI. TRANSITIONAL AND CONCLUDING PROVISIONS

Article 29

(1) The Commission shall adopt the acts on the internal organization and systematization of the positions in the Secretariat within 15 days of the establishing of the Commission.

(2) The Secretariat shall be established within 60 days of the adoption of the acts on the internal organization and systematization.

Article 30

(1) The Commission shall adopt the act on the content and form of the written statement from Article 5 of this Law no later than three months from the day of entering into force of this Law.

(2) The members of the Commission shall be elected no later than 70 days from the day of entering into force of this Law.

Article 31

This Law shall enter into force on the day of publishing in the Official Gazette of the Republic of Macedonia, and it shall be enforced for the duration of five years from the day of entering into force.