

NEW MECHANISMS FOR PREVENTING CORRUPTION IN FINANCING POLITICAL PARTIES FOR A STRONGER DEMOCRATIC SOCIETY

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Прегледен труд

Assoc. Prof. Gjorgji Slamkov¹, Assoc. Prof. Vasko Stamevski²

European University, Skopje¹

ISU "Gavrilo Romanovich Derzhavin", Sveti Nikole²

Abstract

Within the paper, the issue of preventing corruption in the financing of political parties is addressed, both during the election process and between two election cycles.

Namely, political parties are a fundamental element in democratic systems and a necessary tool for expressing the political will of the citizens. Funding for political parties and election campaigns should be based on unified standards to prevent and combat corruption.

Corruption poses a serious threat to the rule of law, democracy, human rights, equality and social justice, endangers the stability of democratic institutions, impedes economic development and poses a security threat to democratic society.

There are several international legal acts that regulate the operation and financing of political parties, as well as specialized acts to prevent corruption in their work. The text emphasizes the aforementioned regulation, as well as GRECO's experiences in evaluating transparency in the financing of political parties.

Financing political parties should be from legal sources and transparent, because the secret financing of political parties is an entry into corruption, that is, investing in future greater illicit profits.

There are various modes of financing political parties with a different balance between public and private funding. In this regard, special attention should be paid to donations and their origin. The whole process must be under the supervision of the competent state institutions. Their structure may be different, but independence, objectivity, expertise and transparency must be fundamental principles in their operation.

Keywords: *corruption, political parties, financing, transparency, international acts.*

Introduction

An indispensable condition for a stable and secure society in which citizens will exercise their rights and have the prerequisites for economic development is a society based on the rule of law. It signifies legal certainty, equality of rights and obligations, effective fight against corruption, state administration based on quality and expertise, quality and functional security system.

In a pluralistic society, political parties, as civic associations, play a key role. In their functioning, they should abide by national laws and international standards. Corruption in the financing of political parties is a factor that devalues the values of the whole system, therefore the process of financing the political parties needs to be strictly defined, and effective controls established.

International rules and standards are the basis for building a national legal framework for financing political parties, whether regular funding or funding during the electoral process.

The legality of financing is a prerequisite for the legitimacy of decision makers. Any form of corruption in the financing of political parties is the entry into legal uncertainty, which creates the assumptions for the creation of a dysfunctional society, endangering the security and rights of citizens.

1. International standards

The end of the 20th and the beginning of the 21st century is the moment when the problem of corruption becomes a top topic in international law. At the 1994 Malta Conference of European Ministers of Justice, the Council of Europe launched its initiative against corruption. The Ministers considered that corruption was a serious threat to democracy, the rule of law and human rights, core values of the Council of Europe (Administrative, civil and penal aspects, including the role of the judiciary, of the fight against corruption, Council of Europe, 1994). It is about a period of great geostrategic changes, transition states, and extreme changes in economic systems, the introduction of democracy and political pluralism in the former communist states.

Political parties are the leading force in pluralistic society, they express the will of the citizens, influence the processes in the society. In order to successfully play their role as carriers of progress in society, they must be resistant to corruption.

The source of the danger of corruption in the operation of political parties is their financing, whether it is regular financing or financing of election campaigns. The best counterbalance to this danger is transparency, i.e. accountability in financing. This is what is highlighted in Article 7 paragraph 3 of UNCAC (United Nations Convention against corruption, United Nations, Office on drugs and crime, 2004) which states: "Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties."

Transparency is crucial in the fight against corruption in all segments of social life, including the activities of political parties. Namely, the more the public has access to the financial operations of an entity, the smaller is the space for corruptive behaviour. With regard to political parties it is particularly important to know exactly where they are financed, who are donors, the amount of donations, etc., thus reducing the scope for corruption, at the moment or in the future.

A very important document in the prevention of corruption in the financing of political parties is Recommendation Rec (2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns (Recommendation Rec (2003)4, Council of

Europe, 2003) adopted by the Committee of Ministers on 8 April 2003. The recommendation covers a number of essential issues: external sources of political party funding (with a particular emphasis on donations), election campaign costs, transparency of political party financing, control of funding, and sanctions for violating legal norms.

It is a fact that in order to fulfil their role in the development of democratic society, political parties need to have financial resources. The costs can be very high and it is difficult to believe that only with the contributions of members will the necessary funds be provided. For this reason political parties need to be funded from a variety of sources, including public funding.

In terms of funding sources it should be taken into account that if private funding is predominant it can open up space for influence, making political parties quite vulnerable and thus susceptible to corruption. Corruption in political parties goes directly to the heart of the democratic political process, undermining equality between parties and the legitimacy of the decision-making process. In this way parties act in favour of interest groups, and not in favour of the citizens.

The financing of political parties is closely linked to the transparency and trust that citizens have in them. Namely, if there is a high degree of transparency in the financing of political parties, the more citizens will trust them.

The prevention of corruption in the financing of political parties is also highlighted in Resolution (97)24 on the twenty guiding principles for the fight against corruption, adopted by the Committee of Ministers on 6 November 1997, Council of Europe (Resolution (97) 24 Council of Europe, 1997). Namely, Rule 15 states: "... and promote rules for the financing of political parties and election campaigns which deter corruption." This means that the Council of Europe has identified the financing of political parties as one of the 20 essential rules for combating corruption.

In 2011, the OSCE / ODIHR and the Venice Commission, at the Council of Europe, developed „Guidelines on Political Party Regulation“, an essential act for the establishment and operation of political parties (Guidelines on Political Party Regulation, OSCE/ODIHR, Venice Commission – Council of Europe, 2011).

According to this legal act, political parties need to be properly funded to fulfil their basic goals, both during and between the election processes. Regulating the financing of political parties is essential in order to guarantee independence from donor influence and to ensure transparency in political financing.

This legal act defines a few basic guidelines for political financing, including restrictions and limits on private contributions, balance between private and public funding, restrictions on the use of state resources, fair criteria for the allocation of the public financial support, spending limits for campaigns, increasing the transparency of the party funding and credibility of the financial reporting, independent regulatory mechanisms and appropriate sanctions for legal violations.

- The role of GRECO in controlling the financing of political parties

Financing of political parties is also a matter of interest to GRECO. Namely, the Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor States' compliance with the organisation's anti-corruption standards.

The third evaluation round, conducted by GRECO, (launched in January 2007) addresses (a) the incriminations provided for in the Criminal Law Convention on Corruption and (b) the transparency of party funding. Specifically, the incriminations prescribed in the Criminal Law Convention on Corruption of the Council of Europe, and Transparency in Political Party Financing in accordance with the Recommendation of the Committee of Ministers on common rules against corruption in the financing of political parties and election campaigns (Rec (2003) 4).

Following GRECO's evaluation, the following weaknesses were identified (Evaluation and Compliance Reports, Third evaluation round, GRECO, Council of Europe, 2016): unregulated or inadequate regulation of all sources of funding, incomplete and indefinite financial reports, non-application of sanctions for violation of legal norms, in some countries anonymous donations are allowed, in other countries, the oversight body has limited powers.

GRECO's recommendations from the third round of evaluation, in particular the second topic "Transparency of Party Funding with reference to the Recommendation of the Committee of Ministers to member states on common rules against corruption in the financing of political parties and electoral campaigns" Rec (2003) 4 "are specific to each of the 49 Member States. Although they differ in quantity and quality, they are directed towards several common goals, such as: legality in financing political parties, functioning of institutions in accordance with democratic principles, rule of law, supervision and control over political party financing, sanctions for violation of legal norms.

2. Public Funding

Public funding has been designed and adopted in many countries as an effective tool for preventing corruption, supporting political parties in fulfilling the important role they play in society and reducing the reliance on private donors. Such funding systems aim to ensure that all parties are able to compete in elections in accordance with the principle of equal opportunities, thereby reinforcing political pluralism and helping to ensure the proper functioning of democratic institutions. In general, legislation should try to strike a balance between public and private contributions as sources of funding for political parties. Under no circumstances should the distribution of public funding be restricted or interfered with the independence of the political party.

According to Art. 177 from Guidelines on Political Party Regulation (Guidelines, OSCE/ODIHR, Venice Commission – Council of Europe 2011), public funding should not eliminate private funding, there should be a balance between public and private funding, i.e. parties should not rely solely on state funding.

Public funding comes in two forms: direct and indirect financing. Direct public financing is the allocation of funds from the state budget. Indirect public funding comes in different variants, such as: tax exemption, subsidies, free access to the media.

With public funding it is possible to create the conditions for each political entity's voice to be heard, then to reduce the advantage of those parties with larger funds, and to reduce dependence on private donors. Public funding creates conditions for greater transparency, thereby narrowing the space for corruption.

The disadvantages of public funding stemming from the fact that voters do not want to see budget funds go to political parties, in addition, the limit for receiving state funds must not be too high as the smaller parties will not reach the funds, thereby further weakening them.

State financial support to political parties should be transparent, with precisely defined rules and equal treatment of all political entities.

Legislation should ensure that the formula for the allocation of public funding does not provide one political party with a monopoly on or disproportionate amount of funding. Some systems allocate money prior to an election, based on the results of the previous election or proof of minimum levels of support. Others provide payment after an election, based on the final results. Generally, a pre-election disbursement of funds, or at least some percentage of funding to be provided, best ensures the ability of parties to compete on the basis of equal opportunity.

Article 188 of the Guidelines on Political Party Regulation extends the scope of public funding, including political parties not represented in Parliament, so, to promote political pluralism, some funding should also be extended beyond those parties represented in Parliament to, include all parties putting candidates for an election and enjoying a minimum level of citizen support. This is particularly important in the case of new parties, which must be given a fair opportunity to compete with existing parties. However, the receipt of public funds is not unconditional, namely, in article 192 is prescribed minimum requirements that must be met before receiving public funding, such as: registration as a political party; proof of a minimum level of support; gender-balanced representation, proper completion of financial reports as required (including for the previous election); and compliance with relevant accounting and auditing standards.

3. Private Financing (Donations)

Private financing of political parties can be in many forms. Thus, membership fees are one of the ways of financing, should be reasonable amounts and it is a legitimate way of financing political parties. Such financing must not be extorted, it must be voluntary and in accordance with the financial capabilities of the party member, and there should be a certain financial maximum.

Parties can also generate income through the production and sale of party-related materials or goods. The funds received on this basis should be disclosed and the manner of their spending should be presented.

Candidate's Personal Resources is another form of private financing. It is about the personal assets of the candidate participating in the election campaign. However, this form of financing must be fully disclosed, the maximum amount of funds allowed should be determined, and the origin of the funds defined.

Financing political parties through donations is a form of participation in political life. The donations express support for a particular political party. It is very important for donations to be transparent, to have a donor list and to make it public.

On the other hand, secrecy in the financing of political parties is an entry into corruption and other illegal activities. This creates the risk that the donation will cross in investment for future gain by violating the rules.

Pursuant to article 12 of the Recommendation of the Council of Europe, Committee of Ministers (2003) 4 on common rules against corruption in the financing of political parties and election campaigns (Recommendation Rec (2003)4, Council of Europe, 2003) donations should be limited and all donors in excess of the specified amount should be identified.

The amount of donations should be reasonable, not too high, because this will create a dependency on donors. According to article 170 of the Guidelines on Political Party Regulation, OSCE ODIHR, Council of Europe (Guidelines, OSCE/ODIHR, Venice Commission – Council of Europe 2011), there should be a legal maximum of donations. Companies can be donors, but their donations should be limited, and the donation procedure should be fully transparent.

Anonymous donations, donations from state-owned companies as well as donations from abroad are generally prohibited, in accordance with common rules against corruption in the funding of political parties and electoral campaigns.

4. State Supervision

State supervision of the financing of political parties is needed for protection of the democratic process. Thus, UN Committee on Human Rights, General Comment 25 of July 1996, emphasized that reasonable limits on the financial costs of election campaigns should protect the electoral process by ensuring equality between candidates in financial resources when presenting themselves to citizens (International Standards of Elections, UN Committee on Human Rights, General Comment 25, "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," 1996).

Setting the maximum spending limit for parties in elections (upper limit for maximum allowable costs) is to achieve the legitimate aim of ensuring equality between candidates. This restriction must not be an obstacle to the exercise of other rights, such as the right to freedom of association and the right to expression. When determining the maximum spending limit, it is necessary to take into account the economic situation in the country and the type of electoral model. The restriction should be realistic, ie to allow all political parties to participate in the electoral process.

Transparency is a key component in the financing of political parties. Namely, transparency prevents corruption, protects citizens' right to vote, and provides objective information to voters. Citizens must know who is behind the funding of candidates and political parties, thereby strengthening the accountability of political entities. Therefore, political parties should keep track of all incomes, donations, especially during the electoral

process. This data must be publicly disclosed, as well as data about the person who is responsible for party funding.

According to article 202 of the Guidelines on Political Party Regulation, political parties have to submit two types of financial reports, the first refers to ongoing annual funding, and the second is to the electoral process. Namely, the central part of the control over the financing of political parties is the financial report (whether it is ongoing funding or during the election campaign) and these reports should be publicly disclosed in order to gain public confidence in legality in the financial operations of political parties.

These reports should be submitted to an independent state oversight institution that oversees the financing of political parties, and can be an election body, anticorruption body, court, audit body or other institution.

The above emphasizes the Recommendation of the Council of Europe, Committee of Ministers (2003)4 on common rules against corruption in the financing of political parties and election campaigns, which states: "States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication."

Oversight institutions should have sufficient material and financial resources, be adequately staffed, be professional, objective and independent in their operations.

Abuse of state resources is one of the most sensitive problems in financing political parties. It is about abusing state facilities for party purposes (i.e., materials, work contracts, transportation, employees, etc.) and constitutes a violation of Paragraph 5.4 from Document of the Copenhagen meeting of the conference on the human dimension of the CSCE, (<https://www.osce.org/odihr/elections/14304?download=true>). According to this paragraph it is required „... a clear separation between the State and political parties; in particular, political parties will not be merged with the State. “

Abuse of state resources can involve manipulation or intimidation of public sector employees. If public officials act in accordance with political party guidelines, violating the legal norms prescribed for the institutions in which they are employed, then the point of their existence has been shifted and in such a case there is no division between the State and the party / parties.

Conclusion

The third round of GRECO's evaluation, which addressed, among other things, transparency in the financing of political parties, has shown serious weaknesses and has even created recommendations for countries that are best ranked by Transparency International on the Corruption Perceptions Index. Corruption in the financing of political parties is the displacement of the sense of democratic process, of political pluralism and the formation of national authorities in line with election results. If there is corruption, in this segment, then corruption is very likely to infiltrate all institutions, throughout society, to create malfunctioning institutions or distorted, illegal operation, i.e., functioning by some set of rules, which in a rule of law are incomprehensible.

The final result is total anarchy, corruption in all social relations, a breakdown of the economic and security sectors.

With regard to the above, if there is corruption in the financing of political parties then there is a serious threat to the rule of law, democracy and respect for human rights.

At the global and European level, there is quality regulation on the prevention of corruption in the financing of political parties, including UN and Council of Europe documents. Their proper implementation in national legislation narrows the scope for corruption, but it also depends on the existence of independent and objective implementing institutions.

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