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**Support to Good Governance: Project against Corruption in Ukraine**  
**(UPAC)**

**TECHNICAL PAPER - EXPERT OPINION ON FUNDING OF THE POLITICAL PARTIES IN UKRAINE**

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## 1. GENERAL CONSIDERATIONS

Ukraine has in recent years taken positive steps towards ensuring transparency of political financing. Ukraine's legislation is relatively new and complete in terms of party funding. The normative density of this legislation is relatively high.

An excellent general overview (descriptive part) can be found at the beginning of the document entitled "Funding of political parties and electoral campaigns in Ukraine: proposals for further reforms", June 2008, prepared by experts from the Agency for Legislative Initiatives. I will refer to this document where necessary. My paper is mainly focused on the compliance of Ukrainian legislation on party funding with the standards set out in Recommendation (2003)<sup>4</sup> of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, particularly in the context of GRECO's Third Evaluation Round. This contribution can only provide a summary, and is merely intended to underline the main points which, in the opinion of the author, should be taken into consideration.

The contribution takes into account the first Evaluation Reports already adopted by GRECO as part of the Third Evaluation Round (UK, Luxembourg, Slovakia, Slovenia, Estonia, Finland, Iceland)<sup>1</sup>. With these first reports, GRECO seeks to specify the minimum requirements set out in the recommendation (2003)<sup>4</sup>, and define "standards" in this area.

Ukraine's legislation on political financing covers a range of core issues and fulfils some of the requirements contained in Recommendation (2003)<sup>4</sup>. However, it is possible to identify three main areas in which Ukraine could improve its legislation:

aspects of a formal and methodological nature (legislative technique);  
 aspects of a material nature (choice of measures);  
 application of legislation (supervision).

Problems of a formal and methodological nature

Regardless of whether party funding is regulated through a general law on political parties, an electoral law, a specific law on the funding of political parties, or a combination thereof, certain principles are fundamental: the legal framework should be objective, clear, transparent and accessible to the public<sup>2</sup>.

## 2. DISPERSION OF REGULATIONS

The dispersion of regulations on party funding over a number of laws is particularly pronounced in Ukraine (Law on Political Parties, Law on Elections of President of Ukraine, Law on Election of People's Deputies of Ukraine, Criminal Code, Law of Ukraine on Election of Deputies of Crimea, Local councils and villages, Town, City Heads, Law on National and Local Referenda, Law on Civil Associations, Law on the Corporate Income Taxation, etc.).

Problems of legislative coherence

This dispersion of legislation is a hindrance to a coherent concept for legislation in this field. It is difficult to see, for example, why the funds of presidential candidates shall not exceed 50'000 minimal salaries for the first round (and 15'000 minimal salaries for the second round), but no limits are established by the Parliamentary Election Law in terms of election funds. In local elections, no

<sup>1</sup> Cf. [http://www.coe.int/t/dg1/greco/evaluations/round3/ReportsRound3\\_en.asp](http://www.coe.int/t/dg1/greco/evaluations/round3/ReportsRound3_en.asp)

<sup>2</sup> Cf. "Financing political parties and election campaigns – guidelines", Ingrid van Biezen, Council of Europe Publishing, 2003.

restrictions are established on the formation of election funds, but the expenses from such funds are limited<sup>3</sup>. There are therefore three different legislative solutions depending on the level of elections, which is not particularly satisfactory. A further example: unlike laws on national elections, the Law on Local Elections (art. 48) envisages stricter sanctions in case of violations of the financing rules. On a terminological level, there are also different notions referring to the same phenomenon. For example, the Law on Corporate Income Taxation employs terms such as “business activities”, “main activities of a non-profit organisation”, “incomes from the main activities”, while the Law on Political Parties uses the notion of “the charter activities of a political party”<sup>4</sup>.

Specifically, a comparison of regulations governing elections at local and national level and for the presidency should be undertaken in order to identify the differences and examine their validity and justification. It is clear, for example, that the limits on electoral spending will be different for local and national elections. However, the mechanisms for their calculation, control and publication should be similar. It is also the case that the choice of measures should be identical: spending limits, donation limits, rules on the type of donor, tax breaks, etc. To conclude, it would be worthwhile conducting a global appraisal of legislation with a view to making the legislation more coherent at a material and terminological level.

### **3. ACCESSIBILITY OF REGULATIONS**

It is difficult to assess the extent to which this legislation is readily accessible, and above all to what extent the people most concerned (candidates, political parties, NGOs active in the field, etc..) are able to have easy access (via internet) to these regulations, and to commentaries or guides to their application. It would doubtless be desirable if there were a website setting out the regulations in a clear and concise manner. The website of the UK’s Electoral Commission<sup>5</sup> which provides access to regulations by type of user (candidate, party, voter; see homepage) could serve as a model. It is essential that the persons concerned are familiar with the regulations.

### **4. PROBLEMS OF A MATERIAL NATURE**

#### **4.1 Importance of the state funding**

In many former communist countries, the most important resource for political parties is state (or public) funding. In Poland, for example, about 80% to 90% of the budget of the main political parties comes from public funding. In Ukraine, in 2003, Parliament amended a number of legislative acts in order to introduce state funding for political parties. But the State Budget Law of 2007 (for the Budget 2008) cancelled the provisions that were introduced into the Law on Political Parties in 2003. On 22.05.2008, the Constitutional Court recognised the unconstitutionality of that suppression, and restored the validity of the Law on Political Parties<sup>6</sup>.

Even if GRECO generally refrains from making recommendations on the extent and modalities of public funding, the legal uncertainty which stems from such a situation is not conducive to the political balance of a state. Political parties and the candidates should be able to know whether or not they can count on public funding. Moreover, the existence of public funding make it easier to justify measures limiting private donations and electoral spending ceilings. It is therefore essential that the Ukrainian authorities adopt a coherent attitude on the matter. The basis of regulations on party funding should be defined sufficiently clearly.

3 Cf. “Funding of political parties and electoral campaigns in Ukraine: proposals for further reforms”, June 2008, prepared by experts of the Agency for Legislative Initiatives, p. 5.

4 Cf. “Funding of political parties and electoral campaigns in Ukraine: proposals for further reforms”, June 2008, prepared by experts of the Agency for Legislative Initiatives, p. 16. Other examples can be found in the same document, p. 18 ch. 62, p. 19 ch. 63, p. 21 ch. 69.

5 <http://www.electoralcommission.org.uk/>

6 Cf. “Funding of political parties and electoral campaigns in Ukraine: proposals for further reforms”, p. 4.

## 4.2 Definition of the notion of “donation” to a political party

Article 2 of Recommendation (2003)<sup>4</sup> defines a donation to a political party as “any deliberate act to bestow advantage, economic or otherwise, on a political party”. Ukrainian legislation offers no definition of a donation to a political party.

## 4.3 Rules limiting the value of donations

The Law on Civil Associations and the Law on Political Parties in Ukraine set no limit to the value of donations provided by individuals and legal entities to political parties. This is certainly one of the main flaws in Ukrainian legislation.

## 4.4 Entities related to political parties

Organisations affiliated to political parties, such as research institutes or political party foundations, are usually, at least formally, autonomous institutions and are in principle independent of the political party. In practice, however, it can safely be assumed that financial transactions between political parties and their affiliated organisations occur frequently<sup>7</sup>. Entities connected with political parties should be required to keep proper accounts in order to facilitate public monitoring of their financial activities (art. 6 Rec(2003)<sup>4</sup>).

It is difficult for me to judge how widespread this phenomenon is in Ukraine. Nevertheless, the complete lack of rules on the subject is a shortcoming that needs to be rectified.

## 4.5 Independence and oversight of the authorities

In Ukraine, several authorities oversee the activities of political parties<sup>8</sup>:

the Ministry of Justice (MoJ)

the Central Election Commission (CEC)

the Accounting Chamber (AC) and the Main Control and Audit Office (MCAO)

the State Tax Administration of Ukraine (as concerns the observation of the requirements established by the tax legislation).

For obvious reasons, the Ministry of Justice and the State Tax Administration cannot be considered as “independent”.

An independent control authority has a key function in the implementation of the legislation. It must have sufficient resources and adequate means of inquiry. It can be positively noted that the current procedure for cooperation between the CEC and the banks enables the CEC to exercise active on-going supervision of all transactions in election fund accounts<sup>9</sup>. In addition, the CEC should have the necessary staff. The staff of the Central Electoral Commission seems to be insufficient. The role of the CEC should not only be one of supervision, but the CEC ought to serve as a kind of centre of expertise to provide information to citizens, political parties, the media and NGOs, particularly in the very complex and specialized field of party funding.

Auditing is “outsourced” to expert auditors of the AC and MCAO. The supervision and control of the auditors and the specific competences of the auditors in the field of party funding are not assured. The control of the auditors is too formal. A specialisation would be necessary. The staff of the CEC should be increased. An effort could also be made at the level of the prosecuting authorities to raise awareness of legislation on political parties and their obligations to report (any breaches) through in-

<sup>7</sup> Cf. Ingrid van Biezen, p. 60/61.

<sup>8</sup> Cf. “Funding of political parties and electoral campaigns in Ukraine: proposals for further reforms” p. 9.

<sup>9</sup> Cf. “Funding of political parties and electoral campaigns in Ukraine: proposals for further reforms”, p. 10.

service training programmes. The provisions of the legislation on political parties should be strengthened to include the duties of the auditors and the State Electoral Commission and in relation to civil and criminal offences. The independence of the expert auditors does not seem to be a problem.

#### **4.6 Publication of Accounts**

The publication of accounts is a key element in the process of overseeing party funding and electoral campaigns. States should require political parties to make their full accounts publicly available at regular intervals, at least annually<sup>10</sup>. At the very least, parties should present a summary of their accounts including records of donations and expenditures. Ukrainian legislation does not fulfil the minimum standards in this regard.

#### **4.7 Sanctions**

Ukraine should deal with the question of the adequacy and proportionality of these sanctions. Because of the very formal control of the CEC and of the auditors, some minor irregularities can affect the political parties with disproportionate severity.

##### **Enforcement of legislation**

The level of enforcement of the legislation may be a problem, and not only in terms of the legislation itself. It seems that the nature of the control of the CEC is very formal: it consists of a mere check on whether the report is complete and submitted on time.

Effective enforcement of the legislation requires a more material analysis. In the course of its work, the CEC and other bodies come across prima facie evidence of breaches of regulations. The CEC should be under a statutory duty to investigate breaches which seem to be systemic or serious. The CEC ought to be in a position to mount effective investigations; but that in itself is not enough. The CEC must obtain the organisational capacity to discharge this responsibility. The CEC must develop the core expertise needed to launch and run investigations, to determine whether breaches have been committed and to learn lessons for the future. At the very least it should have access to trained investigators and specialised lawyers. For example, if companies were mostly to make donations to political parties in-kind, for example by employing people who then go to work for the party, or by directly paying the party's bills, it would not necessarily come to light in an audit (and certainly not in a review of the financial report of a political party).

Specific training of the various entities involved in investigations (prosecution authorities, representatives of the Ministry of Justice) should be organised.

### **5. SPECIFIC RECOMMENDATIONS**

The following recommendations could be addressed to Ukraine:

- to proceed to a general revision of legislation ensuring the transparency of campaign finances and the coherence of this legislation in line with legislation applicable to other candidates for election;
- to clarify the importance and the modalities of public funding;
- to set limits on the value of donations provided by individuals and legal entities to political parties;
- to introduce a definition of a 'donation' to a political party;
- to introduce a definition and regulation of the entities related to a political party;
- to increase and specialise the staff of the Central Electoral Commission, so that the Central Electoral Commission can adopt a pro-active approach to the investigation of financing irregularities;

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<sup>10</sup> Cf. Article 13 of the Recommendation (2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.

to give to the Central Electoral Commission the mandate and the authority as well as the financial and staffing resources to effectively supervise the funding of political parties, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions;

to introduce more flexible sanctions in respect of less serious violations of political financing rules and to provide the Central Electoral Commission with the necessary powers to investigate such cases and to apply the appropriate sanctions

to establish clear rules ensuring the specialisation of auditors called upon to audit the accounts of political parties and candidates;

to provide the Central Electoral Commission with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates;

to review the sanctions available for the infringement of rules concerning the funding of political parties and election candidates and to ensure that these sanctions are proportionate;

to unify parties' reporting forms, in particular regarding content, periodicity of their submission and publication; to determine the procedure for monitoring of established standards;

To introduce compulsory periodic publication of political parties' reports .