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IMPLEMENTATION OF ANTI-CORRUPTION PLANS IN SOUTH-EASTERN EUROPE (PACO IMPACT)

Expert Opinion
on
Political Finance System in
“the former Yugoslav Republic of Macedonia”

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1 INTRODUCTION

To prepare this Legal Framework Diagnosis Paper, the author carried out the following activities: 1) Reviewed literature related to financing of political parties and anti-corruption activities in Macedonia,¹ 2) Analysed legal acts with respect to anti-corruption, financing of political parties, campaign finance², 3) Elaborated guidelines for development and introduction of a methodology for control of financing of political parties and election campaigns. This report is primarily based on the above research, comparative analyses with neighbouring countries, and other established democracies. In addition to some minor observations it provides detailed analyses of the following fundamental issues:

- The role of Enforcement Agencies
- Professional Audit
- Public Funding

2 THE ROLE OF ENFORCEMENT AGENCIES

The recent recommendations made by the Council of Europe “On common rules against corruption in the funding of political entities and electoral campaigns”³ clearly stipulate that monitoring with respect to the funding of political parties and electoral campaigns should be done by an independent body. Such independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns, as well as their submission and publication. In addition, the Council of Europe recommends that its member-states should promote the specialization of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns. The special tasks exercised by the above agencies can include, among others:

- a) designing reporting forms and reporting procedures;
- b) receiving audited or non-audited reports;
- c) reviewing and auditing financial reports;
- d) publishing financial reports and auditors’ reports;
- d) initiating inspection and public inquiries; and
- e) executing sanctions.

The current legal framework suggests that the responsibility for administration and enforcement of political finance system should be shared among different bodies. Thus, there are 6 agencies dealing directly or in-directly with the supervision of campaign finance and funding of political parties the Ministry of Finance, the State Audit Bureau⁴, the

¹ See in particular the ‘Venice Commission Opinion on the Draft Electoral Code’, February 2006

² See Law on Prevention of Corruption (amended in 2004), Law on Political Party Financing (October 2004), Electoral Code (9 November 2005 Version)

³ See 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

⁴ See article 26 of the Law on Political Parties Financing. Furthermore, the article 36 of this law states that, “The Ministry of Justice shall be responsible to oversee the implementation of the provisions of this Law”.

State Commission for Prevention of Corruption and the Poll Commission⁵, the State Election Commission, and the Parliament⁶. All above agencies have overlapping, if not conflicting, responsibilities.

The effective implementation of political finance legislation is made more difficult when different bodies are dealing with various (or the same) aspects of the subject. Evidence from established democracies indicates that only the approach where there is a one primary agency to implement the law is likely to work well.⁷ The existence of a variety of separate laws and a lack of harmonization among enforcement agencies could complicate the task of the regulated community (compliance) and bodies responsible for enforcing the laws. Thus, the stakeholders should designate one independent agency (e.g. State Audit Bureau) to impose strict control over the major aspects of party financing. The cooperation with other agencies should also be institutionalized in the form of Memorandum of Understanding between the State Audit Bureau and the State Commission for Prevention of Corruption⁸.

In the law on Political Parties financing and the Electoral Code there are different provisions dealing with the control of campaign finance, party financing, and the role of the State Audit Bureau. However, with the current legal framework this agency would benefit from additional policy decisions which would specify how such a control should be exercised; policy is required in terms of: 1) authority to audit any political entity, if necessary; 2) the agency should be allowed to investigate all cases of non-compliance; 3) State Audit Bureau should be allowed to recommend in its report to the Parliament which cases might require the suspension of state funding.

3 AUDIT

In addition to the current provisions dealing with reporting and disclosure the article 85 (par. 7) of the Electoral Code states that:

If the State Audit Office determines irregularities in the financial report of the organiser of election campaign connected to exceeding of the limit for election campaign or determines financing of the election campaign that is contrary to the provisions of this Code it shall inform the competent bodies in order to initiate adequate procedure.

Unfortunately, the law does not specify how the State Audit Office should verify the financial reports in order to determine irregularities. One of the options would be to conduct professional audit. According to one of the leading scholars a minimum professional standard should be applied when political parties

⁵ See articles 12, 14 and 18 of the Law on Prevention of Corruption

⁶ See article 85 of the Electoral Code

⁷ For more details see NASSMACHER, K. H., (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance* (Baden-Baden: Nomos, 2001)

⁸ Particularly that the law obliges each person to notify about all the irregularities the State Anti-Corruption Commission; which shall further continue the procedure by filing charges to the competent bodies, if it finds that there is a criminal or misdemeanour liability.

prepare their financial reports, “but far-reaching effects cannot be expected since none of these regulations includes cross-checking of details by an independent enforcing agency.”⁹

This post-election audit should be directed at determining whether the political party accurately accounted for contributions received and expenditures made, and whether the candidate complied with the expenditure limitations provided for by law. A strong and professional audit function will have a number of benefits. The most obvious is the uncovering of inaccurate and incomplete disclosure. It also encourages others to be more careful about the disclosure reports that they file. Audits also serve an educational function. The organization that is audited should be able to do better in the future, but if the results of the audits are published, others can learn of pitfalls to be avoided. Finally, illegal activity uncovered during an audit can form the basis for penalties, either civil or criminal. When such penalties are assessed not only does the wrong doer feel the discomfort, but others who are tempted to commit similar acts may be deterred. All of this has one central goal, enhancing the accuracy and reliability of the information presented to the voters and control agencies.

However, to ensure that the State Audit Bureau acts independently, the steps in the audit (audit program and audit selection criteria) should be well defined and written so that audits are consistent. Audit steps and tests will need to be tailored to situation, but should be built on a standardized foundation which would be applied equally whichever the party is chosen for audit.

4 STATE FUNDING

State funding for political parties is a dominant feature of most established democracies and it is increasingly utilized in many transition countries. One of the key benefits of public financing is the increased level of institutionalization of political parties that results from public financing being made available to political parties. Furthermore, public financing for political parties has long been thought to foster increased political competition among political parties by channelling resources to parties for essential political activities, thereby increasing the institutionalization of political parties, and promoting a pluralistic party system that can effectively channel diverse demands on the state. However, the effectiveness of a public financing system in promoting the development of a pluralistic party environment is dependent on multiple factors, not the least of which is the design of the public financing mechanism employed.

The particular configuration of these design factors has a significant impact on the effectiveness of a public finance system, including the impact the public financing system may have in institutionalization of political parties. Unfortunately, the current Electoral Code does not give precise answers to many difficult and policy-relevant questions. As the implementation of public subsidies is far more complex than often assumed, particularly if the regulations do not properly address some important issues:

⁹ Nassmacher (2001), p. 29.

Eligibility criteria:

As rightly pointed out by the experts of the Venice Commission “according to Article 86-3 the reimbursement of the election expenses is determined by a decision of the Parliament, of the municipal council and the City of Skopje. At the same time, Article 86-1 provides the right to reimbursement in concrete cases and amounts. It seems to be contradictory or at least unnecessary to decide it by the Parliament.” It would be difficult for the Parliament to decide on this matter particularly when most of the funding should be going to parliamentary parties – as a result the parliamentary parties might become a judge in their own case. Furthermore, any partisan decision by the majority of the Parliament not to reimburse the opposition campaign organisers might also undermine the trust in the whole system of public funding.

Suspension or cessation of public funding:

One of the most effective ways to secure compliance with different political finance regulations is to limit or withdraw public funding from parties and candidates that do not take their obligations seriously. The Article 87 (par. 1) does not specify detailed procedures for suspending state funding (what are the criteria for making such a decision and would the party be allowed to appeal) and does not allow other enforcement agencies to participate in this process.

5 ADDITIONAL OBSERVATIONS

It is necessary to introduce and define certain terms in order to clarify the rules and ensure their enforcement. Ideally, the stakeholders should come up with guidelines in order to define and clarify the following issues:

In-kind contributions, loans, and debts – Article 83 of the law states that “The election campaigns may not be financed from (...)”. However, it is not clear if this provision also applies to other forms of supporting campaigns such as in-kind contributions, loans, and cancelling debts. By comparison, the Law on Financing of Political Parties in the article 15 partially addresses this problem.¹⁰

¹⁰ The article states that, “Political parties may receive donations in a form of money, assets or services. Political parties may receive in-kind donations, if they are used for their activities in accordance with their Statute. Providing free services to the political parties or providing services to the political parties paid by a third party shall be regarded as donation in accordance with this Law. The provider of the service is obliged to notify the political party of the value of the service provided. Selling goods or providing services to the political parties at a rate lower than market price shall be regarded as donation in accordance with this Law. The vendor of goods and provider of services shall be obliged to notify the political party on the market value of the goods or services. The difference in prices between the market value and the paid price shall be regarded as donation. Terms and limitations stated in this Law apply to all kinds of donations (funds, equipment and services).”

Furthermore, the Electoral Code could be more specific about the disclosure provisions and should leave no room for discretion in terms of reporting obligations. One would be critical of the following regulations:

- Art. 85 (2) – should require political parties and candidates to disclose all specific items of income and expenditure. In particular, the report should include information providing the SEC and the SAB with the name, address, occupation and employer (if any) of the contributor, the date of the contribution, and the amount of the contribution. Entities should be obliged to provide a full accounting of all income and expenditures, including itemized donations (in-kind or cash); received loans/credits (with the specification of conditions), and debts; and all assets and liabilities. All in-kind contributions, i.e. goods and services offered free of charge should be also included in the expenditures of an election committee. These must be valued at their prevailing net prices (no higher than the normal purchase price or the cost of production reduced by an amortisation quota);
- Art. 85 (4) - The article does not provide a clear deadline for the publication of a financial report by the SEC (e.g. 5 days after receiving the report). There should be an additional policy decision obliging the SEC to make all the financial information available to the public via its central office. The SEC should provide suitable facilities for public examination of reports and permit copying/photocopying at a reasonable cost and in a convenient manner.
- Article 85 (3) does not specify what should be the format of the report used by the political entities. Ideally, the forms should be approved before the beginning of election campaign by the SEC as a result of consultations with the State Audit Bureau.

6 FINAL REMARKS AND SUGGESTED ACTIONS

Finally, the following steps should be considered by the stakeholders in order to secure a successful implementation of the existing provisions and to build a foundation for effective monitoring mechanisms:

6.1 Advisory opinions

The current legal framework is very general, and some provisions are vague enough to create serious obstacles when it comes to the implementation and enforcement of the law. As there is no one law in any democracy which would successfully address all the details related to funding of political parties and election campaigns thus, the stakeholders should come up with the mechanism for issuing advisory opinions about how the agencies (e.g. State Audit Office, State Commission for Prevention of Corruption, and State Election Commission) interpret the current regulations to give political entities necessary guidelines and galvanize certain desirable behaviour. In any democracy, the political

finance system will expand as a result of legal amendments to the law, agency's own actions and policies, courts rulings, etc. Having said that, the current enforcement agencies, should be proactive in meeting new challenges (e.g. setting up guidelines and standards), rather than allow political entities to interpret the law to their own benefit or wait for the scandals to galvanize the necessary reforms.

6.2 Real time enforcement

Meaningful enforcement for many aspects of political finance must take place during the campaign season. If the State Commission for Prevention of Corruption does not take actions against certain kinds of potential violations (abuse of state resources and vote buying) happening during the campaign, the public might not accept the fairness of political and electoral process. Furthermore, penalties for substantial violations of the law can come late, if not too late, to ensure the integrity of the election process.

6.3 Education

There are at least three reasons for organizing training program: decreasing number of minor offences resulting from a lack of experience and understanding, ability to promote desirable behaviour and communicate the SEC and the SAB approach to certain issue (teaching entities how the agencies would interpret more general provisions of the law), promoting transparency and accountability of the institution (external training promotes customer approach and openness). The agencies should also devote some attention to the development of the guidelines and training materials – manuals and handbooks for parties and candidates. The expectation that the norms of law be obeyed is premised on knowledge of the law. However, political entities and individual candidates find it difficult to comply with laws and standards if they are not fully aware of them. Known and understood laws and procedures are self-executing for the vast majority of actors. Thus, public education and awareness are particularly critical elements of any serious enforcement strategy. The experience of other countries shows that many violations of the political finance rules are committed as a result of ignorance, negligence, misunderstanding or mistake.

6.4 Consensus

Any successful implementation of a law governing funding of political parties and election campaigns requires a close cooperation between regulators and regulated community. One positive example of such a consensus building exercise can be the UK Parliamentary Parties' Panel. It meets quarterly and it is made up of the main party treasurers. It focuses on very practical issues and it allows all sides to discuss some serious and detailed problems related to implementation of a general legislation. Such a panel can be a good vehicle of consultation for the SEC and the State Audit Bureau with practitioners.