



Transparency and Accountability of Institutions Responsible for the Oversight of Campaign Financing in North Macedonia

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INTRODUCTION



Campaign financing, in its most broad and universal meaning, is often defined as the “raising and spending of money intended to influence a political vote, such as the election of a candidate, or a referendum”.¹ Regardless of whether it occurs in developed western democracies or countries going through a democratic transition, this part of the electoral process is almost always located in the “grey zone”.

In the Republic of North Macedonia, campaign financing has an important role in the electoral process. All of the relevant rules and regulations are located in the country’s Electoral Code (EC), which allocates several distinct sections to detailed aspects of campaign financing. As amendments to the EC are adopted frequently, very often on the eve of elections, campaign financing rules tend to change and develop rapidly. Three institutions are pivotal to the system of campaign financing: The State Election Commission (SEC), the State Commission for Prevention of Corruption (SCPC) and the State Audit Office (SAO). All three play a specific role in the different phases of campaign financing oversight and reporting.

This paper is structured as follows. The first section addresses the work and competences of the SEC in relation to campaign financing. The second section presents an in-depth analysis of the scope of the SCPC’s work in providing oversight

of campaign financing. The third section focuses on the activities of the SAO, while the final section outlines the conclusions and a set of recommendations that the state institutions responsible for campaign financing in North Macedonia should implement to improve oversight of the flow of money during elections.

With respect to data collection and methodology, the paper is mainly based on secondary data: namely the EC and other relevant legislation, as well as selected bylaws which influence the dynamics of campaign financing. Furthermore, the main findings and conclusions deriving from the OSCE/ODIHR report missions are presented, as well as conclusions from reports on the electoral process produced by relevant national NGOs. The time period which this paper covers is 2016–2019, spanning three election cycles: the early parliamentary elections in 2016, the local elections in 2017, and the presidential elections held in 2019.



The SEC and Campaign Financing

Using the legislative provisions as a point of departure, it should be noted that “for the purpose of collecting funds for election campaign financing, the political party, coalition, the head of the independent list of a group of voters or the persons who plan to run for candidates are all obliged to obtain from the competent authority a unique tax number designated ‘for election campaign’ and to open a bank account designated ‘for election campaign’, which may not be used for any other purpose.”²

Furthermore, these entities are obliged to perform these activities no later than 48 hours “after the confirmation of the lists of candidates, and not earlier than 48 hours after the announcement of the elections.

1 See: Andre Munro “Campaign Finance”, in Politics, Encyclopedia Britannica, <https://www.britannica.com/topic/campaign-finance>

2 Electoral Code of the Republic of Macedonia, September 2017, Art. 71, Par. 1, https://www.legislationline.org/download/id/7798/file/FYROM_electoral_code_as_of_2017_en.pdf

During the 48-hours deadline, proof of the registered unique tax number and the opened bank account shall be submitted to the SEC.³ The same provisions also apply when a coalition, a political party, or a group of independent voters decide to run for candidates filing a coalition agreement, or a statement of intent.⁴ “When the bank account is opened by the submitter of an independent list of a group of voters, i.e. persons planning to run as candidates, the authorized signatory of the bank account shall be the head of the independent list or a person authorized by the head of the list.”⁵

One of the preventive competences of the SEC is positioned in the same article (Article 71) of the EC. If a political party, coalition, or head of independent candidates fails to register a unique tax number and open a bank account within 48 hours, the candidates’ list will be rejected, while any list confirmed prior to the deadline will be annulled by a decision of the SEC.⁶

Moreover, all funds transferred by legal entities or private persons for the purpose of campaign financing should be deposited in the bank account described previously. These funds cannot be transferred later than the deadline determined for submitting the financial report for campaign financing prescribed in Article 85 of the EC.⁷ This deadline is no later than 30 days from the day of the closure of the bank account.⁸

One of the novelties regarding campaign financing introduced prior to the 2019 presidential elections is the possibility for political parties to transfer funds from their main political party bank account to the one designated for campaign financing. Furthermore, funds procured via loans can also be deposited into this bank account.⁹ Although this possibility

was introduced only recently, the practice dates back through several electoral cycles. For example, in 2011, on the eve of early parliamentary elections, the SDSM took out a loan worth 1.6 million euros from *Komercijalna Banka AD Skopje* to finance its election campaign.¹⁰ The SCPC reacted by stating that the EC does not foresee campaign financing contributions of this kind. Still, similar funds used by the VMRO–DPMNE were never discussed by the former composition of the SCPC.

Another rule which is rather common and almost universal, is that all funds for the purposes of campaign financing should be transferred to the newly opened bank account, and all costs for the purposes of the election campaign should be covered exclusively by the funds in this account.¹¹ Although in general all political parties follow this rule, in almost every election cycle the submitted financial reports do not strictly correspond to the reality on the ground. Thus, one can often witness large-scale campaign activities which are later reported as costing only a few thousand euros. This raises a number of issues, but also prompts potential investigate efforts by the state institutions dealing with the oversight of campaign financing.

The last general obligation which election participants should abide by during elections is the closure of these unique bank accounts. All designated bank accounts should be closed within three months of the day of the announcement of the final election results.¹²

The elections of 2016 were rather challenging for the SEC, mainly due to the fragile political situation and tense protracted political crises. Still, in terms of campaign financing, the SEC managed to secure proper conduct by the frontrunners.

3 Ibid, Par. 2

4 Ibid, Par. 3

5 Ibid, Par. 5

6 Ibid, Par. 4

7 Ibid, Par. 6

8 Ibid, Art. 85, Par. 1

9 Ibid, Art. 71, Par. 7

10 Vladimir Kostić, “Party Games: Hide and Seek with Election Cash”, *Balkan Insight*, October 2017, <https://balkaninsight.com/2017/10/17/party-games-hide-and-seek-with-election-cash-10-12-2017/>

11 EC, Art. 71, Par. 10

12 Ibid, Par. 11 and Par. 12

Regarding the rules, individuals could donate up to 3,000 euros, while legal entities could donate up to 30,000 euros. Furthermore, participants could spend a maximum of 1.8 euros per registered voter in each of the six electoral districts. Lastly, the lists were reimbursed with 0.25 euros per vote if they had obtained at least 1.5% of the votes cast in the district.¹³

Regarding compliance with the existing legislation on behalf of the participants in the elections, the expenditures in 9 reports exceeded the contributions, with VMRO-DPMNE having the highest discrepancy amounting to more than 600,000 euros in the first report, and 1 million euros in the second report. Other reports with discrepancies included those from BESA, the Liberal Party, PDP, DUI, DPA and Levica. The OSCE/ODIHR Election Observation Mission was not informed of any campaign finance related sanctions.¹⁴ One of the more interesting points is why none of the three competent institutions took any action to investigate the discrepancies noted in the 9 financial reports. This indicates a lack of clarity as far as the rules and competences are concerned, as well as a failure of the crucial state institutions to closely monitor and react to violations in the realm of campaign financing.

In 2017, the campaign finance regulations were once again labeled as satisfactory, with improvements being made in line with prior comments and recommendations from the OSCE/ODIHR and the Council of Europe. Although the campaign finance provisions generally provided a level playing field for all electoral participants, the degree of transparency was nevertheless criticized. This was closely linked to the untimely submission of reports by some of the participants, a lack of auditing requirements for interim campaign finance reports and a lack of enforcement of certain provisions, as well as limited oversight authority on the part of the SAO. All of these shortcomings reduced voters' ability to make an informed choice.¹⁵

Many participants either failed to submit interim finance reports or missed the deadlines stipulated in the EC. This resulted in limited access to campaign finance data for voters prior to casting their ballots. Many participants sent their reports via mail, which subsequently arrived after Election Day. For example, VMRO-DPMNE provided late financial reports in both rounds. "By the deadline, the SEC had received only 28 and 15 (out of 84) first and second interim reports, respectively, and only 5 (out of 10) interim reports in the second round. The SEC stamped VMRO-DPMNE's last interim report as received on the deadline date, although it was received by post days after the deadline."¹⁶

One of the biggest shortcomings of the SEC, as well as the other state institutions, is that there were no fines issued following the failure of participants to submit interim reports. Furthermore, some of the participants, including the governing SDSM, did not follow the reporting template issued by the Ministry of Finance and did not break down advertising expenses in detail. Additionally, discrepancies between the reported expenditure and the received invoices for TV advertising were noted. As highlighted previously, during the 2016 early parliamentary elections some parties spent more than the reported income, taking out bank loans to fund excess spending. This was deemed to be incompatible with the law in 2017. The VMRO-DPMNE, AA, BESA, DPA, DUI, Levica and several independent candidates reported more expenditures than income.¹⁷

Based on the presented arguments, the OSCE/ODIHR mission crafted the following recommendation for the SEC: "The EC should require interim campaign finance reports be submitted electronically and establish suitable penalties for late or non-submission. The template should include a breakdown of expenses by municipality and require reporting of incurred expenses. In

¹³ "OSCE/ODIHR Election Observation Mission Final Report", Warsaw, February 2017, p. 14, <https://www.osce.org/odihr/elections/fyrom/302136?download=true>

¹⁴ Ibid, p. 14

¹⁵ "OSCE/ODIHR Election Observation Mission Final Report", January 2018, Warsaw, p. 2, <https://www.osce.org/odihr/elections/fyrom/367246?download=true>

¹⁶ Ibid, pp. 14-5

¹⁷ Ibid, p. 16

addition, the law should require the publishing of interim and final reports on the day of submission.”¹⁸ In this manner, a repeat of the violations that had occurred in the past might be prevented.¹⁹



State Commission for Prevention of Corruption (SCPC)

In accordance with the EC, the SCPC is required “to examine any allegations” if a complaint is filed in relation to violations of the electoral process.²⁰ The categories of violations, as well as the scope and timeframe for the SCPC’s handling of complaints, are envisaged in the EC.²¹ If there is use of extraordinary “budget funds, public funds, funds for public enterprises, or other legal entities that have state capital at their disposal” in the period from the announcement of the election until the day the election is completed, regardless of whether it occurs at the local or state level, then the SCPC, after receiving a complaint, has to act within “five days from the day when the complaint was filed”.²² This also goes for “initiating a procedure for employment of new persons or a procedure for termination of employment with state and public institutions, [...] with the exception of cases of urgent and immediate matters.”

The Ministry of Finance also has a number of obligations during this period which are

directly linked to the election campaign. The Ministry “shall make public all budget payments, except the regular salaries, pensions and utilities, by publishing them on the website in a special data basis for budget costs in the election period”.²³ Furthermore, “two weeks following the announcement of the elections, the Government is obliged to submit pre-election financial reports [...] for the period from the beginning of the fiscal year until the day of the publishing of the report on the website of the Ministry of Finance.”

Complaints can also be processed in cases where office premises, office equipment and official vehicles of the state bodies have been used for the purpose of election campaigning.²⁴ Once the complaint procedure has been initiated, the SCPC must reach a decision within 24 hours via a public session which the complainant has the right to attend.²⁵ The decision must later be published on their website.²⁶ If the complainant is not satisfied with the decision made by the SCPC, they have the right to lodge an appeal in the Administrative Court. This can be done “within 24 hours of receipt of the decision”,²⁷ while the Court has “48 hours to pass a decision.”²⁸

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18 Ibid, p. 16

19 Saška Cvetkovska, Meri Jordanovska “Farmers and teachers gave 1000 euros for VM-RO-DPMNE”, Fokus, Maj 2017, <https://fokus.mk/zemjodeltsi-redari-i-uchitelki-dale-po-1-000-evra-za-vmro-dpmne>

20 EC, Art. 74, Par. 1

21 Ibid, Art. 8-a and Art. 8-b

22 Ibid, Art. 74

23 Ibid, Art. 8-a, Par. 3

24 Ibid, Art. 8-b, Par. 1

25 Ibid, Art. 74, Par. 2

26 Ibid

27 Ibid, Art. 74, Par. 3

28 Ibid, Art. 74, Par. 4

State Audit Office (SAO)

The State Audit Office is responsible for campaign finance oversight and managing complaints related to the campaign financing provisions set out in the EC. The procedures and deadlines for filing complaints and reaching decisions are similar to those for the cases handled by the SCPC. Therefore, the SAO has to “decide upon the filed complaint within five days of the filing of the complaint”²⁹ thereby “notifying the SEC and SCPC within 24 hours”.³⁰ As is the case with the SCPC, the complainant has the right to appeal a decision made by the SAO in the Administrative Court.³¹ The deadline for filing an appeal is 24 hours, while the Administrative Court is obliged to issue a decision within 48 hours.³²

In terms of ensuring transparency and accountability, it has already been noted in various reports by the OSCE/ODIHR that the SAO’s hands are effectively tied due to a lack of clarity in the laws and regulations governing campaign financing, as well as the institution’s limited mandate and resources. This is not in accordance with international standards and good practice for transparency and accountability, which significantly diminishes the effectiveness of the oversight provided.

The oversight conducted by the SAO is limited in terms of 1) the actors eligible to submit information; 2) procedural deficiencies; and 3) a lack of adequate human resources. The SAO’s oversight activities are limited to auditing information submitted by electoral participants. The legislation did not foresee a requirement to support reports

with bank statements and receipts, and there is an absence of itemized reports that could provide more transparency and accountability. Finally, the SAO does not have the human resources required to investigate whether information provided by electoral participants is accurate or complete.

Another issue of concern in relation to financial reporting is that electoral participants are only required to submit a complete financial report covering the election campaign.³³ There is a specific timeline attached to this requirement, namely that it should be no later than 30 days from the closure of the designated election bank account.³⁴ The SAO has a maximum of 60 days to submit the audit report including all transactions conducted from the day of the opening of the election account until its closure.³⁵ If any irregularities are detected, the SAO has an obligation to initiate a misdemeanour procedure or report the irregularities to the respective public prosecutor.³⁶ In this sense, the anomaly is that the SAO only verifies income and expenses without the aim of detecting violations. The timeframe for these activities is set at a maximum of 30 days from the day of its detection, which, in reality, means a protracted deadline for detection and initiation of a procedure before the judicial authorities of more than four months.

29 Ibid, Art. 74-a, Par. 1

30 Ibid, Art. 74-a, Par. 2

31 Ibid, Art. 74-a, Par. 3

32 Ibid, Art. 74-a, Par. 4

33 Ibid, Art. 85, Par. 1

34 Ibid

35 Art. 85, Par. 6

36 Art. 85, Par. 7



Recommendations

The Electoral Code should explicitly define all possible sources for the financing of political and electoral campaigns. Furthermore, these rules should apply equally to everyone, and all actors should receive equal treatment from the state institutions.

The State Commission for Prevention of Corruption should be equipped with an auxiliary body during elections. In this manner, SCPS employees would be able to follow larger campaign events in the field, reporting to the office if it identifies abuses and misrepresentation of spent funds by electoral participants.

All campaign finance regulatory bodies should effectuate their competences in order to sanction election participants which fail to comply with the rules concerning campaign finance. Impunity is the main pillar on which a lack of transparency and accountability in elections is based. These changes should take effect immediately.

The Electoral Code should require interim campaign finance reports to be submitted electronically and establish suitable penalties for late or non-submission. The template should include a breakdown of expenses by municipality and require reporting of incurred expenses. In addition, the law should require the publishing of interim and final reports on the day of submission.

The competences of the SAO in terms of campaign finance oversight need to be further clarified. Current legislation limits the mandate and the resources of this institution. The SAO's resources need to be vastly increased during elections. Consideration could be given to granting the SAO ex officio powers to undertake full campaign finance audits, including requesting further documentation and information from participants, to ensure a comprehensive review which can uncover any possible infringements.

The SAO should be mandated to conduct a review of interim reports, and to publish its findings and refer possible violations to the appropriate authorities prior to Election Day. The deadline for filing final reports should be no later than 30 days after the election. The law should establish the scope of audits so as to establish effective safeguards against any possible infringement, and the SAO should be granted sufficient investigatory powers. The established penalties for all violations should be imposed.

The State Audit Office is the primary supervisory body, but its oversight is limited to auditing information submitted by electoral participants and it does not have the capacity to investigate whether this information is accurate or complete. There is no uniform reporting of candidate expenditure, no explicit regulation of third-party campaigning, and no requirement for reporting expenses incurred by political parties supporting candidates. Taken together, this diminishes the transparency of campaign financing and the effectiveness of oversight.

Candidates and relevant institutions have different understandings of the reporting requirements. This lack of clarity and insufficient enforcement of reporting rules undermines the transparency and oversight of campaign financing.

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With a vision of Serbia as a state whose citizens believe that they can bring changes, CRTA develops mechanisms that: inform, educate, influence policies and strengthen institutions. CRTA efforts aim at supporting democracy, empowering citizens to engage and raising demand for an open, accountable and inclusive government by involving different approaches:

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CRTA received the OSCE 2018 Democracy Defender Award for contribution to the promotion of democracy and the defense of human rights, as well as the international recognition for innovation, commitment and contribution to democracy through the W. Averell Harriman Democracy Award, awarded by the National Democratic Institute in 2013. CRTA also received the 2018 award of the Commissioner for Information of Public Importance for its strong contribution in the area of free access to information in Serbia.

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The European Fund for the Balkans is a joint initiative of European foundations that envisions, runs and supports initiatives aimed at strengthening democracy, fostering European integration and affirming the role of the Western Balkans in addressing Europe's emerging challenges.

The Think and Link Regional Policy Programme fosters inclusive and evidence-based policy making in the Balkans through support of regional research projects. The programme's goal is to encourage citizen participation in decision-making processes by enabling policy-oriented civil society organisations to formulate and advocate public policies influencing the political and social transformation of the region in its European integration process.

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Politikon Network (PIN) is a research organisation that was founded in November 2016, with the goal to promote open dialogue and advocacy of sustainable solutions for improving public policies. Politikon combines various innovative methods that are typical for social sciences with the aim to formulate proposals for the improvement of the rule of law and good governance. A vital segment of our work includes research of processes and amends at the European Union level, i.e. what kind of consequences are these changes projecting on the Western Balkans and especially Montenegro. Politikon Network is a non-governmental, non-profit and non-partisan organisation which strives to influence the democratisation of society through an analytical approach.