

Group of States against corruption, European standards and the reform of the financing of political parties and election campaigns

PhD. candidate Cristian-Alexandru LEAHU

Titu Maiorescu University of Bucharest, Faculty of Law (ROMANIA)

leahu.cristian.alexandru@gmail.com

Abstract

The recommendations on political financing made to Romania by the Group of States against corruption (GRECO) refer to the necessity of clarifying the modality used to account for the financial activity of the various types of structures related to political parties in the accounts of political parties (i.e. women organizations and youth organizations), the clarification of the legal situation of loans as a source of income for political parties, the increase of the transparency of contributions made by third parties (i.e. separate entities, interest groups) to political parties and candidates, the obligation of registering donations in the accounting documents at their market value, the obligation to make donations above a certain threshold through the banking system, the necessity to follow up on election campaign debts, the increase of sanctions and of their statute of limitation, as well as to the need to further enhance and consolidate the institutional capacity of the Permanent Electoral Authority as the only authority responsible of monitoring political financing.

The present paper evaluates the status of the implementation of GRECO recommendations after Law no. 113/2015 which amends and supplements the Law no. 334/2006 on the financing of the activity of political parties and election campaigns entered into force.

Keywords: *political party, financing, election campaign, European standards, donations, loan, expenditure*

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013

Group of States against Corruption and European standards on political funding

Group of States against Corruption (GRECO), established in 1999 by the Council of Europe is meant to improve the capacity of its members to fight corruption by ensuring the implementation of the commitments that they have taken in this area, through a dynamic process of mutual evaluation and pressure. [1]

In the matter of financing political parties and electoral campaigns, GRECO evaluates the compliance of the laws of the Member States with Recommendation (2003) 4 of the Committee of Ministers to member states of the Council of Europe on common rules against corruption in financing political parties and electoral campaigns

and 15 guiding principle regarding the enabling rules on financing political parties and election campaigns which deter corruption resolution of the Committee of Ministers to member states of the Council of Europe (97) 24 on the twenty guiding principles for the fight against corruption. [1]

Recommendation (2003) 4 contains provisions regarding the concept of donation, the general principles on donations, such as the principle of avoiding conflicts of interest, the principle of transparency, the principle of independence and the principle of limiting donations to political parties, rules on accounting donations from businesses and individuals, rules on transparency in relation to election campaign expenditure ceilings. In addition, this recommendation seeks the transparency of the revenue and expenditure of political parties as well as their independent monitoring by specialized staff. [2]

From 1 January 2007, when it started the third round of evaluation and funding of the policy so far, GRECO examined the legislation of 46 member states, including Romania. These assessments regard all aspects of financing political activities, including transparency of resources used by political parties and candidates, how to monitor the regulations and penalties. The analytical approach used is standard, based on answers to written questionnaires and discussions on the spot. [1]

The assessment procedure is followed, 18 months after the adoption of assessment report (if recommendations are necessary) for a conformity assessment procedure which shall review their implementation. In cases where recommendations were not respected, GRECO will review their implementation in an identical term. To this date 46 states, including Romania entered this procedure. For some countries, this procedure was repeated several times. [1]

After an evaluation carried out in 2010, GRECO has recommended Romania to:

- i. i) to clarify how financial activity of various types of structures related to political parties must be registered in the accounts of political parties; ii) to examine how to increase the transparency of contributions "third parties" (i.e. separate entities, interest groups) to political parties and to candidates;
- ii. to ensure that all entities under the control of political parties and county branches (including Bucharest districts) of political parties keep proper accounting records;

- iii. to require political parties to submit financial statements centralized by Permanent Electoral Authority (PEA) and to publish appropriate summaries variants;
- iv. take appropriate measures to i) ensure the identification and registration as donations, the market value of donations in kind to political parties and election campaigns by participants (other than voluntary work to non-professionals); ii) clarify the legal status of loans;
- v. i) establish the legal requirement that all donations are, as a rule, recorded and included in the accounts of political parties and participants in election campaigns; ii) introduce legal requirement that all donations above a certain threshold have to be made through the banking system
- vi. to provide clarification on the admitted funding generated by "internal services" and by organizing events in the manner of recording in the accounts of the revenues generated in this way;
- vii. to amend the rules on submission of financial reports on election campaigns to the PEA so that PEA adequately pursue all legitimate claims and liabilities;
- viii. require that the annual accounts of political parties, which will be presented to PEA as recommended above, to be independently audited prior to their submission;
- ix. i) confer to PEA the entire responsibility for monitoring compliance with the Law. 334/2006 on the financing of political parties and election campaigns; ii) strengthen the efficiency of supervision PEA on financing political parties and elections, including the granting of PEA additional control tasks regarding the expenditures of political parties and other entities than these, and sufficient human and other resources to meet this task;
- x. to strengthen cooperation and coordination at operational and executive level between PEA, the Court of Accounts, Tax Administration Office and the National Integrity Agency;
- xi. to provide within the Law no. 334/2006 on financing political parties and electoral campaigns the PEA obligation to report suspicions of offenses to law enforcement authorities;

xii. to increase penalties according to Law no. 334/2006 on financing of political parties and election campaigns and thus ensure that all infringements are effectively punishable;

xiii. to extend the limitation period applicable to infringements of the Law no. 334/2006 on financing political parties and electoral campaigns. [3]

In the first compliance report, adopted on 7 December 2012, GRECO noted with satisfaction the modification process of the law on financing political parties and electoral campaigns, and the support expressed by Parliament for this process. However, GRECO considered that only recommendations ii, vi and x were implemented satisfactorily, a series of measures being adopted for their implementation. The other 10 recommendations (i, iii-v, vii-viii, xi-xii) were considered as partially implemented as the draft law amending Law no. 334/2006 on the financing of political parties and electoral campaigns initiated by the PEA was being approved, prior to its approval by the Government and adoption by Parliament. At the time, GRECO appreciated that if adopted, the amendments would remedy some gaps identified in the Evaluation Report. [4]

In the second compliance report, adopted in 2014, GRECO summarized the overall performance of Romania with less laudatory noting. It assessed that the evolution remained modest, without any substantial and tangible progress in comparison to the first report examined under two years ago (four years after the adoption of the Evaluation Report. [5]

On 21 May 2015, the Law no. 113/2015 amending and supplementing Law no. 334/2006 on financing of political parties and electoral campaigns targeting mainly the implementation of GRECO recommendations and the establishment of measures for the repayment of election campaign expenses from the state budget for political parties and independent candidates fulfilling a series of representativeness criteria established by law. [6] The transposition of each recommendation within the Romanian legal framework is analyzed below.

Clarifying the registering of revenues and expenses of structures related to political parties in accounting documents

Political parties and their territorial organizations, including those created in Bucharest districts, are obligated to organize their own accounts, according to the applicable accounting regulations. Political parties shall submit annual detailed reports on the PEA regarding revenue and expenditure from the previous year, which will include details on revenue and expenditure of their internal structures, of the persons having a direct or indirect link with political parties and of all forms of association covered by law. [6]

As the law does not clearly define the persons directly or indirectly connected with political parties we consider that, in the absence of further legislative clarification, this provision is applicable only in so far as it relates to people developing joint activities with political parties, respectively to details linked only to such joint activities.

Increasing transparency of contributions made by third parties to political parties and candidates

The bill drafted by the PEA which was the starting point of the current law contained a section on the election campaign carried out by third parties that has been completely eliminated. This section contained provisions on: the definition of third parties; definition of persons who were directly or indirectly connected with political parties (distinction between natural and legal persons); rules on donations to political parties and candidates made by third parties; rules on costs that third parties can make in election campaigns for different elections; a third party registration mechanism. [4]

Now it can be argued that the law establishes a true ban on campaigning for persons other than political parties and independent candidates in elections. This conclusion follows from article 29 paragraph (4) of the Law, according to which expenses relating to propaganda materials shall be borne solely by their beneficiaries - independent candidates, political parties or political alliances. Also, provisions of article 29 paragraph (5) of the same law established that the production and dissemination of propaganda materials under conditions other than those stipulated by law is prohibited.

In addition, the law establishes a new mechanism dedicated to financing election campaigns which entitles political parties and independent candidates who obtain a certain number of votes to be reimbursed the campaign expenditure. We consider that these subsidies will be a true factor of indirect pressure to reduce hidden costs of political parties, made through third parties.

Presentation of the consolidated annual financial statements to the PEA and their publicity

Political parties are required to submit to the PEA annual financial statements within 15 days of registration to the tax authorities. The PEA will publish on its website the annual financial statements and summaries variants within 5 days from the submission date.

Identification and market value accounting of in kind donations to political parties and electoral participants

Donations of goods and services provided free of charge will be reflected in the accounts of political parties at the market value of the time of donation. The market value of movable and immovable assets donated to the party and its provided services free of charge will be included in the value of donations. Evaluation of goods and services will be authorized by the evaluators according to Government Ordinance no. 24/2011 regarding certain measures in assessing goods, approved with amendments by Law no. 99/2013, as amended and supplemented.

The assessment, according to Government Ordinance no. 24/2011 regarding certain measures in assessing goods, means that the value estimation activity, registered in a document called evaluation report, is carried out in accordance with specific¹ standards and professional conduct of that activity by an authorized appraiser.

[7]

¹ Judgment of the National Union of Certified Appraisers Romania no. 3 of 19 May 2012 approving the assessment standards mandatory for members of the National Association of Certified Appraisers in Romania. International Valuation Standards IVS (International Valuation Standards) approved in art. 1 letter a) are based on the concept of market value.

Clarifying the legal status of loans

The current regulation has a completely different approach from the previous one, in which the loans were not allowed as a source of financing for political parties. Political parties will be able to borrow money, using only authentic notarial acts, under penalty of nullity, accompanied by documents proving handover, the agreement providing the manner and timeframe of repayment. The maximum repayment period is 3 years. Cash loans and their repayment may be made only via bank transfer. Cash loans that are not repaid within the period of 3 years can become donations only with the agreement of parties unless that year's ceiling for donations which is 0.025% of the state budget is reached, up to this ceiling. List of loans with a value greater than 100 minimum gross salaries per country will be published in the Official Gazette of Romania, Part I.

At the same time, lending by political parties, political or electoral alliances and independent candidates to natural or legal persons is prohibited. [6]

The current wording is such as to prevent natural or legal persons to make a loan for political parties exceeding the maximum set by this article through successive annual loans. For example, if an individual borrows in a year a political party with an amount of 200 minimum gross salaries per country, he is not allowed to give loans to the same political party until the original loan's repayment. We consider that such a limitation resulting from a systematic interpretation of the law can be stated in the methodological norms.

The possibility of replacing loans by consent donations will be certainly one way that political parties will try to circumvent the legal provisions concerning limits on donations, in electoral years.

The text of the law also contains provisions on loans in the chapter on campaign financing. The campaign contributions that may be submitted by candidates or the financial agent may derive from loans from individuals or contracted with banking institutions. In this case, the methodological norms will require further details in order implement the principles of financing of political parties and electoral campaigns, respectively the principle of legality, the principle of equality, the principle of transparency of revenue and expenditure, the principle of independence of political

parties and candidates from the contributors and the principle of political and electoral competition integrity. One possible approach is provided by article 31 paragraph (4) of the Law, which states that the amounts received from candidates by a political party are considered donations and shall follow accordingly the rules established by law in this respect. Therefore, provisions of article 8 paragraph (1) of the same Law will become applicable, under which, all donations, including confidential donations, will be recorded and properly highlighted in the accounts, specifying the information that allows for the identification of financing source, or loan source in this case.

Registration of all donations in the accounts of political parties and participants in election campaigns

The new legal text establishes in a derogating manner from the general norms, that all donations, including confidential ones, will be recorded and properly highlighted in the accounts, indicating the date on which they were made and other information enabling the identification of funding sources and donors. Campaign financing will be done exclusively by using contributions from candidates and transfers of funds from the current accounts of political parties. Contributions made by candidates will be considered donations to political parties and, therefore, will have to observe the same rules on the registration in the accounting documents.

Making donations above a certain ceiling through the bank system

Donations over 10 minimum gross country salaries earmarked for the current activity of political parties shall be made only through bank accounts. Contributions from candidates will be considered donations to political parties and, therefore, will have to respect the same rule.

PEA's following up on election campaign debts

Financial agents will submit to PEA detailed reports on income and expenditure of political parties, political alliances and electoral alliances, organizations of Romanian citizens belonging to national minorities and independent candidates within 15 days from the day of the election. At the same time, political parties and independent

candidates shall submit a list of their creditors regarding campaign financing and the amount of these debts. However, political parties and independent candidates will report quarterly to the PEA on the debt payment stage until it is fully paid.

In addition, to check the status of debt paying made by political parties, the PEA may request documents and information from natural and legal persons who have provided services, free or paid for political parties as well as from any public institution, which have the obligation to provide to the PEA the requested documents and information within 15 days of the request.

Independent auditing of the accounts of political parties

The annual financial statements drawn up by political parties that receive subsidies from the state budget will be subject to statutory audit, which is carried out by statutory auditors, natural or legal persons authorized by law. Also, within 60 days from the date of the audit, the political parties will transmit the PEA a copy of the audit report.

The need to increase and strengthen the capacity of the PEA as the sole authority responsible of controlling financing of political parties and electoral campaigns

Article 35 paragraph (2) of the law retains the previous overlapping competencies of the Court of Accounts and PEA, although according to article 41 of the same law, any penalties for violations of the law can only be imposed by PEA. The elimination of the Court of Accounts from Law no. 334/2006, republished, as amended and supplemented, would not have eliminated de plano its power to verify, according to its own law, the use of public subsidies allocated to political parties. Such a measure would have been likely to bring the overlap at a reasonable level without compromising efficiency or financing of political parties' management oversight done by PEA.

Unlike the previous form of the law, the PEA is explicitly empowered to control, in addition to the legality of the income of political parties, their expenditure. In addition, reports of political parties submitted to the PEA are multiplied exponentially, PEA now has access to the annual financial statements of political parties, annual detailed reports of political parties and campaign reports, other documents related to the activities of parties policy on generation of revenue or performance of expenses, audit reports on

the annual financial statements of political parties supporting documentation for the expenditure of election campaign of political parties and independent candidates.

Also, the new wording of the law indirectly makes accountable persons responsible of managing the funds of the political party at national and county level, as well as persons entitled to represent the political parties at national and county level, who will appear in a register held by PEA.

However, PEA still needs financial and human resources to both overcome a formal control that only concerns documents held by the political competitors and to address the financing done "under the counter" that benefits some of them.

Notification of criminal prosecution authorities by PEA

If during a control undertaken by PEA, there are suspicions on the commission of criminal acts regarding the financing of political parties and electoral campaigns, the PEA is obligated to notify the criminal prosecution authorities.

Enforcing effective, proportionate and dissuasive sanctions

Unlike the previous legal framework under which all violations were punishable by a fine of 5,000 up to 25,000 lei, the new regulation proposes a division into three categories of offenses, depending on their gravity, which will be sanctioned with fines between 10.000 and 25.0000 lei, 50.000 lei and 15,000 lei and 100,000-200,000 lei. Also, the new law prescribed more contraventions than before. [6]

However non-compliance with some legal provisions is not punishable. Based on article 2 paragraph (1) of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved by Law no. 180/2002, as amended and supplemented, the Government will be able to determine and punish offenses in the matter of political funding additional to those already provided by law. This solution will be used in case of violation of article 29 paragraph (5) of the law according to which the production and dissemination of propaganda materials under conditions other than those stipulated by law is prohibited, as well as in the case of non-compliance by the financial agent with the obligations stated in article 26.

The extension of the statute of limitation of fines

The statute of limitation provided by the law for fines imposed by PEA increased from 6 months to 3 years from the date of the violation. In case of continues contraventions, the limitation period of 3 years will flow from the date of cessation of the deed. [6] This extension of the limitation period gives the PEA sufficient time to carry out checks on political parties, while addressing both the financial activity of their central organizations and county organizations.

Conclusions

Law no. 113/2015 amending and supplementing Law no. 334/2006 on the financing of political parties and election campaigns is the most ambitious element of election reform developed by the Joint Commission of the Chamber of Deputies and Senate for drafting legislative proposals on electoral laws, legislative proposals on amending the Law on Political Parties and the Law on financing political and electoral campaigns.

We estimate that the degree of transposition within the Romanian legal framework of the GRECO recommendations is a satisfactory one that generally complies with European standards pursued in the initial evaluation report. On the other hand, the manner some recommendations were implemented, such as the clarification of the legal statute of loans or the increase of the transparency of contributions made by third parties to political parties and candidates does not follow the meaning of the GRECO recommendation.

Also, we consider that the implementation of the legal text and the realization of its principles depend on the content of the methodological norms to be adopted by the Government on the proposal of the PEA (mainly on how the discipline, rigor and transparency of financial operations of political competitors will be realized), as well as on the human and financial resources to be allocated to the PEA to perform the incumbent tasks.

References

- [1] http://www.coe.int/t/dghl/monitoring/greco/default_en.asp (last time accessed at 19 mai 2015).
- [2] [http://www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)4_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf) (last time accessed at 19 mai 2015).

[3] Evaluation Report on Romania on Transparency of Party Funding (Theme II) adopted by GRECO at its 49th Plenary Meeting (Strasbourg, 29 November – 3 December 2010).

[4] Third Evaluation Round Compliance Report on Romania adopted by GRECO at its 58th Plenary Meeting (Strasbourg, 3-7 December 2012).

[5] Second Compliance Report on Romania, adopted by GRECO at its 66th Plenary Meeting (Strasbourg, 8-12 December 2014)