



Legislation and control mechanisms of political parties' funding

Czech
Republic
Poland
Romania
Ukraine



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October 2005

Auhors

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Bucharest, October 2005

Note

The report *Legislation and control mechanisms of political parties' funding. The Czech Republic, Poland, Romania, Ukraine*, is part of the project *Strengthening of democracy in South-East Europe through responsible control of political parties funding* and is made by the Institute for Public Policies (IPP) in Bucharest with the financial support of Open Society Institute (OSI), through the assistance program for institutes and associations of public policies members of the Policy Association for an Open Society network (PASOS) and of Open Society Foundation (OSF), through the East-East Partnership Beyond Borders Program.

The achievement of the report would not have been possible without the contribution of IPP's foreign partners whom we thank hereby: Mr. Michel Perrotino, PhD., expert on behalf of the Institute for European Policies (EUROPEUM) in the Czech Republic, Mr. Marek Chmaj, Mr. Marcin Walecki and Mr. Jaroslaw Zbieranek, experts on behalf of the Institute of Public Affairs (IPA) in Poland and Mr. Ihor Shevliakov, expert on behalf of the International Centre for Policy Studies (ICPS) from Ukraine.

National reports were made with the purpose of highlighting the similarities and also the differences in the legislation and practices in the field of political parties' funding, respectively in the control of these funds. Results aim at supporting national and international debates at experts' level and at the same time at offering political leaders solid arguments to adopt decisions on this topic.

The section in the report dedicated to the particularities of legislation and control mechanisms of parties' funding in Romania benefited from the contribution of specialists in the field, to whom IPP wishes to thank: Prof. Dan Drosu Şaguna, PhD., President of Romania's Court of Accounts, Mr. Paul Miercan, Conselor of Accounts and Mr. Iulian Dumitrescu, Director, Division VI, Subsequent Financial Control Section.

We also would like to thank Conf. Univ. Corneliu Liviu Popescu, PhD., for the valuable suggestions offered throughout the implementation of the project.

At the same time, IPP wishes to thank all participants in the seminar: *Institutions and control mechanisms of political parties' funding in Europe*, organized in Sinaia in June, this year and especially to Mr. Ovidiu Voicu from the Open Society Foundation (OSF) in Bucharest for the financial support in organizing the event. Special thanks for the contributions to the debates are owed to Ms. Barta K. Margit, Economic Director UDMR, Mr. Jeff Lovitt, Executive Director PASOS, Mr. Ionel Pârjoloiu, Chief Accountant PSD, Mr. Jozef Ploskonka, Counselor of the President, Supreme Chamber of Control in Poland, Mr. Dobromir Popov, Senior Auditor, National Audit Bureau in Bulgaria, Mr. Gheorghe Rădulescu, specialist in parties' funding, Director of the Central Electoral Department of PNL, Ms. Mioara Urs, Chief Accountant PD and Ms. Zuzana Wienk, Director, Fair - Play Alliance, Slovakia.

We thank the directors of the Chambers of Accounts with whom IPP cooperated for the duration of the project, as well as to the journalists who provided us in time important information to achieve this report.

Finally we would like to thank Mrs. Mihaela Paraschivescu for facilitating the translations of the texts and to Mrs. Luci del Aguila for reviewing of the final version of this report.

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Methodology

The idea of this project was generated within the network of public policies centers - PASOS, that tried through this initiative to put together their own expertise in order to achieve a transnational research, offering a series of alternative models of organizing the financial life of political parties, useful for each of the countries involved in this study. The research provided equally an opportunity to consolidate cooperation relations between the member-organizations of the network, this way opening the road to new joint initiatives.

The present report was conceived as a comparative study made in cooperation with experts from 3 countries (the Czech Republic, Poland and Ukraine), that should offer the interested readers the possibility to analyze in parallel the evolution of the most important aspects related to the issue of political parties' funding in the Central and South-Eastern European space. The stress was laid on a few major coordinates, established by the Institute for Public Policy (IPP)'s team from Bucharest that coordinated the project for the whole duration of the implementation, between February and October 2005.

Thus, for the coherence of the data collected, respectively in order to be able to provide comparison between states, the information has been presented in conformity with a previously established structures aimed at:

- A comparative analysis of legislation in the field of the funding of political parties in each of the four countries studied in the project;
- A comparative study of the mechanisms and practices existing in each country, respectively;
- The institutional analysis of bodies in charge with the control of parties' funding and the particularities of their operation in each of the studied countries.

The research methodology and the proposed structure for the report have been agreed by the partners in the project, the IPP study coordinator having made a documentation visit on issues of methodological nature.

Also, there have been consultations in Romania with specialists in the field, representatives of the Court of Accounts, of NGOs interested in monitoring the funding of political parties and journalists concerned with a transparent financial life of political parties. These consultations have had a double role: on the one hand, they were used to extract those dimensions in the research that present the highest degree of interest to specialists and to the media, respectively, and on the other hand, in order to define in clear terms the methodological principles at the base of the monitoring of parties' funding with a view to obtain objective and verifiable results. Thus, the main methods used by IPP, that has consolidated in time its expertise in the field, which are recommended to all institutions/persons in the country and abroad that are interested in monitoring the funding of political parties are:

- Monitoring the political publicity in printed press and audio-visual press (radio and TV), based on data provided by a specialized company in the field;
- Compiling and administering a searchable database of the sums spent by parties on electoral and non-electoral publicity, according to the algorithm for the calculation of these sums¹;
- Checking parties' financial reports;
- Notifying the court of cases of violations of the legal provisions that regulate parties' funding.

Participants' observations - experts and representatives of control institutions in the countries that are part of the study - in the debate

¹ The monitored sums represent gross investments. The calculation of gross investments in publicity is done according to the list of fees (rate-card) that do not include potential discounts, barter, etc. that may make the difference between the sums calculated and the ones effectively invested.

Institutions and control mechanisms of political parties' funding in Europe organized by the Institute for Public Policies (IPP) in Sinaia in June 2005, with financial support from Open Society Foundation (OSF) in Bucharest, through the East-East Partnership Beyond Borders Program and from the Open society Institute (OSI) in Budapest, constituted also a source of documentation in the preparation of the report.

The articles prepared by the foreign experts are based on their own sources of documentation, specialized papers in the field, reports and studies previously prepared on this topic. Some methodology has been used by all experts, at national levels.

Introduction

If the utility of preparing comparative studies on the topic of political parties' funding cannot be questionable, it matters a lot the manner in which certain aspects are approached that to money transparency in politics.

The work on parties' funding in Europe prepared with the generous support of the Open Society Institute (OSI) in Budapest presents practices and imperfections in the political funding system in Romania and in countries like Ukraine, Poland and the Czech Republic, and from reading them we have to analyze at least a few aspects:

- a. Related to the increase of subsidies from the state budget for parties that obtain a good electoral score but which, at the same time, practice legal mechanisms to register used funds and declare them consequently to the control bodies;
- b. Related to achieving control by the institution in charge with control in Romania, the Court of Accounts (together with its county branches in the counties) and to the efficiency with which it is administered due to the impossibility for cross-checking data provided by political parties;
- c. Regarding the policy of state institutions toward the funding of political parties.

As the countries presented face, in their turn, problems in the area of rigorous political party checking, Romanians should be inspired for more serious regulations that should allow indeed the Court of Accounts to exercise real control on parties and its protection from any political pressure that might be exercised. Since tension exists in all control institutions in this field, Romanians may notice how many efforts are being made to ensure maximum transparency of the funds used by parties and how civil society has obtained, by persevering, access to financial data submitted by the political parties with the control institution.

The work presents a series of difficulties and implications in the area of parties' funding in Europe, wherefrom a possible conclusion of readers in Romania would be to avoid as much as possible potential tensions with political parties and to rest themselves at the thought that never could there be a relation of total satisfaction to the press and to civil society in the sense of public access to financial data and the political parties'. We believe this approach is of a real danger to Romania, where, through the contribution of specialists in the Court of Accounts and especially of civil society, a decoding has been achieved in the last years of a dimension of the political system in Romania that years ago we had not even dared speak of: money from politics (political parties' funding).

Czech Republic

Author

Michel Perottino, PhD.

1.

Legislative framework and other remarks

The general rules concerning political parties and political movements in the Czech Republic are the articles No. 5 of the Constitution and the articles No. 20, 21 and 22 of the Charter of Fundamental Rights and Freedoms (see annexes).

The first law to regulate political parties and political movements and their finance was adopted in 1991 (Law No. 424/1991 Sb., October 2. 1991, § 17-20b). It is not a specific law: this law regulates all the aspects of a political party life from its the creation to the end and among all the rules this law enacts the principles of the political party's finances. This law, as we will see, was amended several times.

Other laws define the State's financial contribution in order to cover part of the electoral campaign expenses (today: Law No. 247/1995 Sb. specifies electoral rules, also amended several times, § 85). This type of income was first introduced by Law No. 47/1990 Sb. which regulates the first free elections of June, 1990, i.e. at a time when no legislative act regulated political parties' finances (Law No. 15/1990 Sb. enables free creation of political parties, but do not specify any rule concerning financing). Another specific law also regulates political parties' finances in the case of elections in the European Parliament (62/2003 Sb.).

General principles are the following:

- The state financially supports political parties and political movements on the basis of their electoral results (law on political parties). There are two possibilities that may be combined: first, each political party that received a certain percent of votes in parliamentary election should receive an amount corresponding to the electoral support. The only condition is that the party obtains more than a minimum percent (the concrete limit has fluctuated over times, as we will see). This type of contribution is called permanent contribution (*stálý příspěvek*). It is paid each semester during the four

years of each legislature. The maximum amount is prescribed by law.

- Secondly, every national (i.e. parliamentary) or regional mandate is also remunerated for the party. It is called mandatory contribution (*příspěvek na mandát*).
- The state should also pay a contribution in order to cover electoral campaign expenses (electoral laws) also on the basis of the electoral results of each party. There is no maximum amount: the amount is not related to the real expenses (it is an amount per vote).
- The parties may also receive private financing (donations, membership fees, inheritance) or have commercial activities and other profit-making activities (indirectly, the party has to create a society except in the case of the sale of books and other goods directly related to their political activities).

The practice shows that the greatest problem arise from donations where the origin is not clear. Over a certain value (currently 50,000 CZK²), donors have to be known (their name published). This system proves to be insufficient.

Inspection of the regularity in the financing of a political party is handled by the Chamber of Deputies on the basis of the financial reports delivered by the parties. Sanction of irregularities is the non payment by the Ministry of Finance of the monthly account and the eventual payment by the party of double of the irregular sum. In case of uncertainties, the Ministry of Finance suspends payment. If the situation is corrected or shows to be right, the Ministry of Finance pays the entire amount retroactively.

To a general extent, the Czech system is very liberal indeed. The only real problem which occurred was the temptation of limiting the public financing in 2000. The limiting amendments adopted by the Chamber of Deputies were cancelled by the Constitutional Court in order to protect smaller parties and their access to public financing.

² 1 Euro = approx. 30 CZK (Czech Crowns)

Another general problem is the level of corruption, especially corruption of the political elites at the time they decided to privatize the Czech economy (i.e. mainly the first half of the 1990's and the beginning of 2000's). Corruption problems of the leading party ODS were revealed by the media after the split of the party (as inner opponents discovered suspicious donations and the party elite did not react to their demand of correction, they went out the party and published the facts), but did not really encourage a modification of the system of political party financing. The only real step forward in that area was censored by the Constitutional Court in 2000 (the Supreme Audit Office, which receives the power of controlling the political parties finances was not allowed to do so due to the terms of the Constitution, which was not modified in order to allow this new role).

Nevertheless, the actual system is functioning without real problems mainly because of public access to the annual finance reports.

a) Incomes related to political parties finances: law on political parties

The rules regulating political parties finances contained in the frame law on the political parties and political movements (424/1991 Sb.) were amended several times:

- January 27, 1993 (68/1993 Sb.). This law brings only formal corrections after the split of Czechoslovakia (change of the political institutions' names).
- June 15, 1993 (189/1993 Sb.). Prolongation of the rule that political parties represented in Parliament will receive in 1993, 1994 and 1995 a financial contribution proportional (a quarter) to their expenditure in the elections of June 1992 (i.e. elections in the former Czech National Council).
- April 29, 1994 (117/1994 Sb.). In order to control the political parties' finances, this law specifies the obligation to produce by the 1st of April each year, at the Chamber of Deputies and the Supreme Audit Office (Nejvyšší kontrolní úřad - NKU) their annual financial report. The NKU should control the documents and finances of each party. The information is further given to

the Chamber of Deputies, President of the Republic and the Government. The Constitutional Court cancelled the paragraphs concerning control by the NKU of this law.

Correction of the amount of public financing (amount per % in the last elections, amount per mandate in the Chamber of Deputies and the Senate, also corrected by the Constitutional Court).

In case of uncertainties about a political party's finances, the Ministry of Finance does not pay the due amount until the problem is corrected (eventually after the decision of the Supreme Court).

Correction of the rules of donation (transparency: over 100,000 CZK, donors have to be made public).

Constitutional Court decision was published as 296/1995 Sb.

- December 17, 1996 (322/1996 Sb.). This law brings only formal corrections. Correction of the rules of inheritance (transparency over 100,000 CZK).

The annual financial report is public (it can be seen or requested at the Office of the Chamber of Deputies).

- July 7, 2000 (340/2000 Sb.). Correction of the rules of donation reinforcing transparency over a level of 50,000 CZK, donations are made public. The foreign citizens should not donate any contribution to the party (with the exception of those who permanently live in the Czech Republic). Note that the laws that regulate taxes and donations (586/1992 Sb. and 357/1992 Sb.) were also amended by this law.

The Constitutional Court has partially cancelled this law and has given an interpretation of equality of opportunity in public financing (reinforcing the jurisprudence of the Court of 1995).

While it is not the most important in the decisions of the Constitutional Court, note that this institution highlights foreign examples and the report of the Venice Commission.

- April 4, 2001 (170/2001 Sb.). This amendment precises how to evaluate the amount of the states' contribution (the "permanent contribution") per year: over a threshold of 3% of voices in the elections of Deputies, the party should receive 6 millions of CZK, and from 3 up to 5% the party receives 200,000 CZK for each 0.1% obtained.

This law also specifies the new amount of the contribution for a mandate of deputy or senator (900,000 CZK per mandate) and regional deputy (250,000 CZK).

- September 24, 2004 (556/2004 Sb.). This last amendment specifies that in case the membership fee is over 50,000 CZK, it has to be precised who is the contributor (name, birth date and address).

b) Incomes related to elections: electoral law and its amendments

The electoral law adopted in 1995 mention that political parties should receive a contribution in order to cover electoral campaign expenses. This principle concerns only national elections since 1990, regional elections since 2000 and European elections since 2003 (i.e. local elections are not concerned by this rule).

The frame law is the law No. 247/1995 Sb. (September 27. 1995)³. The last official version of this law amended had been published under No. 121/2002 Sb.

The common principle is that parties that received more than a certain percent of the vote (the percentage has changed over time, fluctuating between 1 and 3%), should receive a certain contribution for each vote gained in the elections (from 30 to 100 CZK per vote). That means this contribution is not related to the real electoral campaign expenses.

This law was amended several times by the legislator. Three times the Constitutional Court controlled the law and its amendments as mentioned above. In all the cases the Constitutional Court was asked to control - and ensure - the equality of opportunities for the

³ The first adopted electoral law has the No. 54/1990 Sb.

different political parties and movements on the basis of both frame laws of 1991 (political parties and movements) and 1995 (elections). The Constitutional Court's decisions were published as 243/1999 Sb. (threshold of 3% censored), 64/2001 Sb. (rule concerning the deposit in order to candidate and some other rules) and 98/2001 Sb.

The actual rule was adopted on January 17, 2002 (37/2002 Sb.). This law determined that every party which received more than 1.5% of votes will receive 100 CZK for each vote.

On February 18, 2003 the electoral law was adopted for the elections of the Czech deputies in the European Parliament (62/2003 Sb.); every party which receive more than 1% of votes would receive 30 CZK for each vote.

Note that these rules were strictly controlled and defined by the Constitutional Court (Ústavní soud) in 1995 and 2000 on the basis of the principles introduced by the Constitution and the Charter of Fundamental Rights and Freedoms⁴.

The Constitutional Court controlled the laws so strictly in order to ensure equality of opportunities for the different political parties and movements, especially in 2000, when the two largest parties (ODS and CSSD) intended to cut public financing for the smaller and medium-size political parties. The Constitutional Court shows that the political elite can transform a proportional electoral system with the introduction of some restricting rules (for instance a higher number of electoral districts) but cannot limit the public financing by applying a high threshold above which the party will receive contribution per vote.

⁴ The last decision of the Court in matter of political parties finances was adopted on January 19. 2005. This decision concerned the Law No. 424/1991 Sb. as it was amended by the Law No. 170/2001 Sb.

Other laws (i.e. for accounting), which indirectly affect the financial activity of a political party in the Czech Republic.

Some laws indirectly affect the financial activities of the political parties⁵: if the specific laws do not specify, the political parties applies the common rules of accounting and bookkeeping (563/1991 Sb.), tenders and bankruptcy (328/1991 Sb.), succession tax (357/1992 Sb.).

What is covered by the legislation?

Any of the laws named above is applying on the political parties finances. The frame law No. 424/1991 Sb. does not apply exclusively to electoral campaigns: its aim are the political parties and their financial ability, so in principle every relevant political party (i.e. mainly parliamentary parties) have to receive public financing firstly on the basis of their electoral weight and secondly on the basis of the number of deputies, senators and regional deputies. The laws 247/1995 Sb. and 62/2003 Sb. on elections specify the reimbursement of electoral expenses.

As we mentioned above, other legislative acts apply exclusively to electoral campaign and especially specify how the State should participate in campaign expenses through funding. The principle is that above a threshold (a certain percentage of votes which depend on the type of election), the political parties will receive an amount per vote. That means that there is no automatic relation between the expenses and the public contribution and that some parties can benefit on this basis.

Parties should also have private financing of their activities, as we will see further. The principle is that parties have to publish their income (especially donations) in order to prevent any possibility of corruption. This principle was specified in 1991, but had to be corrected after some scandals showing the rules were too weak.

⁵ Another law have to be evoked: the Law No. 238/1992 Sb. modified several times on conflicts of interest which stipulate, that politicians who have an important function have to publish all their incomes.

Other legal entities, besides parties and political movements, are not mentioned in the law. Foundations, organizations, lobby companies, trade unions are not concerned by the acts that regulate political parties' finances. Nevertheless, for instance foundations are concerned indirectly in the sense that they cannot finance a party.

2. Sources of income

Provisions related to incomes of a party, following the next categories:

Public subsidy

A large majority of incomes for political parties (especially for the small parties or not parliamentary parties) originate with the State. As mentioned above, parties receive public finance on the basis of their electoral results, i.e. per votes and per mandate and a contribution in order to cover electoral expenses. All of these possibilities are not bound by the actual expenses of the political party.

A step forward was made in the sense that political parties can receive public funds on the basis of their good results in regional elections. In this type of elections (middle level), parliamentary parties compete with the smallest parties and movements that are not able to succeed in national elections.

Annual public subsidy for political parties (legislative and European elections)

On the basis of the Law No. 424/1991 Sb. modified, the parliamentary political parties, each party will receive annually for each mandate of deputy or senator 900,000 CZK.

Annual public subsidy for regional parliamentary parties, political parties receive for each mandate of regional deputy and deputy of Prague 250,000 CZK.

In both cases, the condition is that the deputy was elected on the candidate list of the party.

Over a threshold of 3% of the vote in the elections of the deputies (and only this type of election), the political party receives 6 million CZK and for each 0.1% 200,000 CZK up to 5%. Even if the party receives more than 5% in the legislative election, it will receive a maximum of 10 million CZK.

In the case of the European elections, parties that receive more than 1% will receive 30 CZK per vote.

Membership fees

Membership fees are one of the classic mode of income for each political party. The problem is that nowadays only a small number of parties have a relevant number of members. This fact is one of the reasons why a system of public subsidy has been adopted. On the other hand, today the members of mass parties are among the social classes with the lowest incomes. In the Czech Republic it is the case of the Communist party (KSCM), the Christian-democrat party (KDU-CSL) or the Social-democratic party (CSSD) of which the majority of their members are retired people. So this type of income is not very important.

Donations and inheritance

Donations appear to be one of the biggest problems of political parties and political movements' finances: the scandal that hit ODS in the middle of the 1990's show that the legislation was insufficient in order to prevent "interested" financing (at the moment, ODS was the leading party, controlling the government which controlled a large part of the privatization process). More precisely, it appears that some of the official donors were long dead or had never sent any donation and that the true donors were interested in the privatization of the economy. From that time, the system has changed, but in fact, it seems that the real control is from fiscal authorities and media. The only case of illegal donation was nevertheless discovered after the split of the party, when part of the old members criticized the party's finances.

Even if the situation is not so simple, one can suppose that the governmental parties will obtain more donations than the other. In the Czech case, during the period of 1995-2001, only ODS received substantial donations (more during the period between 1995 and 1997, when it was in power, especially in 1996, i.e. the year of elections).

Over 50,000 CZK, every donation has to be proved with a contract. Donors have to be known (their name published): the party has to complete a specific printed form (bought from the Ministry of Finance) and to sign a contract with the donor (the signature has to be certified). Practice shows that it is not only a problem of threshold, and that an intense examination of all the information has to be done by the fiscal or judicial authorities.

We can note that in certain cases (the Communist one at least), the deputies and senators transfer a large part of their own incomes to the party.

Donations are forbidden in the case that they come from the State (with the exception of above mentioned public subsidies), local governments, States' enterprises or enterprises with participation of the State, enterprises belonging to local governments, foreign organizations (with the exception of donations of foreign political parties or foundations), foreign citizens (of those who permanently live in the Czech Republic⁶). Czechs living in a foreign country can donate to a party.

Inheritances are also possible, but if the value of inheritance is higher than 100,000 CZK the party has to verify the origin (who has bequeathed it).

Tax cuts

No tax cut is mentioned.

⁶ The case of illegal financing of ODS during 1995 was precisely a case of donation made by a Czech citizen interested in the privatization of a steel company, but camouflaged by ODS as a donation by a foreign citizens (a Hungarian, that was at that time already dead and a citizen of Mauritius, who never paid anything to ODS).

Other contributions

Some other contributions are authorized by Czech law since 1990 (with the intervention of the Constitutional Court), because it encourages profit-making activities, such as real hiring for instance. Parties can also sell buildings. Political parties, as legal entities, also have the right to hold accounts in banks, and so they receive interest. Parties have the ability of receive bank credit and loans.

We finally have to mention other possibilities, which are not directly forms of political party financing.

Every parliamentary party can indirectly receive some contribution. We understand these possibilities as a sort of income in the sense that these parties will have no expenditure with the functioning of the political groups of the Chamber of Deputies (the political group of the opposition will receive a slightly more than incumbent one). For instance, each political group of the Chamber of Deputies⁷ will receive approximately 6,000 CZK per deputy monthly. But parties will also have indirectly the possibility of access to other parliamentary facilities (for instance room in the Chamber of Deputies for conferences).

3. Spending

Provisions related to spending, precisely related to:

The period in-between elections

All the parliamentary parties are financed during the period between elections on the basis of their electoral result in the last elections in order to provide for the expenses of the party and enable the party to function. These annual provisions are contractual, i.e. they are not bound by the effective spending of the party and are limited only by law (10 million CZK).

⁷ Law No. 90/1995 Sb.

In order to supply political parties' electoral campaign spending they receives a contribution as mentioned above, on the condition of a minimal electoral result in terms of mandate (for each mandate, the party receive a contribution). As in the case of annual provisions, this contribution is not bound by the effective cost.

These contributions are paid to the party every year (the party has to officially ask the Ministry in order to receive it twice a year, in June and December).

During the electoral campaign

During the electoral campaign, the party must pay their own expenses. The State pays a financial contribution on the basis of the results only in the case of elections of the Chamber of Deputies and the European Parliament, i.e. after the elections.

Note that following the original terms of Law No. 247/1995 Sb., the parties had to pay a deposit (200,000 Crowns until 2000, 40,000 since 2000) in each electoral district (8 districts until 2000, 35 in 2000, 14 since 2000, that means that all fourteen administrative regions are electoral districts), but the Constitutional Court cancelled the obligation of deposit (64/2001 Sb.).

Even if it is not a law that directly affects the finances of political parties, we have to mention the law on broadcasting, that allows to political parties access in the media free of charge during the electoral campaign (231/2001 Sb.), so the parties do not to pay for it.

4.

Reporting and transparency measures

Until 1995, transparency measures were very weak. After 1995, the situation has improved slightly, but must still be evaluated as weak, especially in terms of checks. Maybe paradoxically, the law that introduces transparency and control measures in the system of political parties' finances was examined by the Constitutional Court

and the disposition about inspection of the political parties' finances by the Supreme Audit Office were cancelled.

The transparency is quite good, but the problem is if the reports are realistic.

The control authority

The system introduced in the Czech Republic is based on auto-inspection by the party's organs. It means that a sort of first level of control is rather private in the sense that each party has to choose an audit company that should check its finances and certify it (by the law, the report that has to be given to the Chamber of Deputies have to be certified "without reservation" by the representatives of the audit company).

A second level of practical examination is the fiscal one (it should be an automatic control or an examination requested by the Chamber of Deputies).

Nevertheless, the official inspection authority is the Chamber of Deputies. As we have seen above, the initiative to set up a non political control was censored by the Constitutional Court.

Every year the Chamber of Deputies must receive from each party a complete financial report for the last year (the report with annexes has to be received on the 1st of April). All the information mentioned by the Law No. 424/1991 Sb. modified has to be joined to the report (i.e. mainly the financial report itself, an audit report and the information about the donors).

The Budget committee is in charge of the inspection (subcommittee for the control). In fact the Committee inspects only formal aspects, i.e. the reception of all the documents in time. The Committee then proposes to the Chamber of Deputies a resolution that notes parties who have fulfilled the legal obligation and those who have not.

The Chamber of Deputies then adopts a resolution in which it verifies if the parties⁸ that receive public financing and the parties that do not receive such contribution have fulfilled the legal obligations. In the case that they do not fulfilled it or have not sent the required information on time, the Chamber of Deputies asks the Government to address the Supreme Court (Nejvyšší Soud) to terminate their activities.

It seems that the situation is not so automatic, and first that parties who have problems with fulfilling the legal obligations are those which did not receive any significant income. Secondly, it seems that the Government has never asked the Supreme Court to terminate the activities of any party.

The fiscal authorities

Fiscal authorities are not specifically competent to control political parties' finances. Political parties nevertheless have to fulfil their fiscal obligations, and in this sense, they inspect political parties' finances. The law authorizes the Chamber of Deputies to pass information about illegal financial operations leading to tax evasion. But this check itself cannot be seen as a regular inspection of political parties' finances.

The party is responsible for its finances and therefore should be sentenced to pay penalty. Nevertheless, as shown in the case of ODS, the representatives of the party (and the donor) should be sentenced on the base of their fraudulent financing activities.

The Official Gazette

The Official Gazette (Sbírka zákonů) does not publish any information about concrete political party finances, only official reports on the political parties' finances (i.e. if they fulfill the legal obligation of sending a report) of the Chamber of Deputies are published.

⁸ All the parties have to register at the Ministry of the Interior when they are created.

The public

Everyone can ask the party to give information about its finances. Nevertheless the parties have no obligations to give it, because all the requested information are to be given by the Office of the Chambers of Deputies.

The media

The media have no specific right in order to control the political parties' finances. But in fact, the media are the most active in examining public and private financing of the political parties and politicians.

All the cases of problematic financing were discovered by the media. The last case in the winter 2005 led the Prime Minister S. Gross to resign.

5. Financial management

General descriptions concerning provisions related to:

Accounting system

The parties have to have their accountancy controlled by professionals: the law oblige parties to give their financial annual report signed and certified "without reservation" by the representatives of an audit company. This is maybe the deepest control of political parties' finances even if in practice the audit company has to work with documents given by the party and they have no mean to control.

Reporting to fiscal authorities

The political parties' finances have to be controlled by fiscal authorities that mean they are controlled as any other organization, following the same rules.

Description of the relationship between central headquarter and territorial party branches as well as the one with the specialized/issue oriented structures (i.e. women branch, youth branch).

Each party has developed a specific relationship between its central headquarter and its territorial party branches. In general, since at least 2000, political parties have especially developed the regional level. The financial management is centralized, even if levels of autonomy should be diversified. This is a consequence of the political parties' finances system, which is built on the principle of accountability for the head of the parties.

The finance of the party is mainly centralized. That means that, according to the law, only parties should receive contributions: the law did not distinguish headquarter and territorial party branches, especially in terms of finance.

6. Control institutions

General issues

The body in charge of inspection is the Chamber of Deputies. The control is rather formal in the sense that the controller (in reality the Chamber of Deputies) primarily examines the transmission by the party of the documents specified in the law. This type of formal auto-check is problematic indeed but there seems to be no chance of evolution in terms of strengthening it. The only way of real control is firstly the scrutiny of the public or the media which could find some problems or errors. The second way is the jurisdictional way, after the parliamentary control and the intervention of the Government who has to formally ask the Supreme Court to intervene. We haven't found any case of judicial treatment of problematic finances.

The staff directly involved in controlling the parties' finances

- This staff is a parliamentary one and so is appointed by the Chamber of Deputies. It is primarily an administration of the

subcommittee for the control and then the Budget committee. They have no particular staff.

- The professional background of this staff is not specified. The Committee nevertheless specializes in economics.
- The mandate of the Deputies in charge is four years;
- The number of people involved in control activities related to parties' finances at the national level are not specified;
- We have found no people (nor any institution) involved in control activities related to party finances at the local level.

Responsibilities (powers)

Description of the *powers* of the control institutions as stipulated in the specific legislation (the jurisdiction of their control, the authority to approach any third party's client such as a supplier of goods or services purchased by parties).

- Their control activity indirectly covers all aspects regarding control of campaign finance. The State's inspection is not specific to electoral campaign and covers all aspects of political parties' finances. Nevertheless, in order to allow a better examination of campaign finance, these expenses and eventual specific incomes have to be mentioned in a specific report. Note that the electoral law did not establish a maximum limit of the electoral expenses.
- As secondary institutions involved in examining the political parties' finances we should only speak of the fiscal authorities;
- The Chamber of Deputies has not the power to issue binding rules to be applied together with the other legal provisions. The Chamber has of course the authority to initiate changes to the current legal framework. The evident problem lies in the fact that the parties control the Chamber of Deputies.

Control

- Control of political parties' finances is a yearly routine in the sense that every year political parties have to send to the Chamber of Deputies documents and relevant information in order to allow eventual control;
- The responsibilities set in the law that a party shall submit regular financial reports to the control authority are weak. Reports have to be submitted at least by the 1st of April each year. The Chamber of Deputies controls the formal reception of all required documents on time and adopts a decision noting this fact. The law did not identify who has to send the report, it must be sent by the "party". The report shall not be copied and published in the Official Gazette, but any interested person should ask the Office of the Chamber of Deputies to have a copy or access to it at the Chamber.
- There is no official written internal rule for operating controls at the level of parties except that the parties have to have their finances administrated by an audit company which is therefore partly responsible for it;
- These reports submitted by parties are usually checked by the control institution without any specific rule (i.e. they just have to submit the report on time with all the information specified by law). They should access no specific secondary information to cross check the data submitted by the parties.
- There is no specified rule to file a complaint. This means that only the State (through its competent bodies) should fill a complaint or somebody who has been directly affecteded by illegal operations of a party.
- The precedent of starting investigations were precisely started on the basis of credible information revealed by a third party (i.e. opponents through media);
- As we wrote, the Chamber of Deputies, which is the mandated control body, issue a strictly formal national report, which only

notes that the parties have fulfilled their legal obligations. This report is available to the public;

- The overall control activity of the Chamber of Deputies is very weak because it is limited to yearly report for the entire party, without control of its local activities as well. In fact, we cannot really speak of control institution because it is a formal control, which supposes the legality of the financial operations of the political parties and is de facto based on a presumption of innocence. The only real official check is, as shown in practice, the fiscal one.

Sanctions

The forms of sanctions the control institution may apply to a party

In terms of sanction, the Chamber of Deputies has very small possibilities. There are mainly two possibilities of sanction.

- First, in case the party did not respect the obligation of sending the report on time. The Chamber of Deputies asks the Ministry of Finance not to pay the contribution until the party sends the report. As we mentioned above, the parties who have not fulfill this obligation were small or irrelevant ones, and the sanctions had no consequence. In certain extreme cases, the Chamber of Deputies should ask the Government to begin procedure in order to suspend the activities of incriminated party. Only the Supreme Court is competent to decide wether to suspend or to dissolve a party.
- Secondly, the fiscal authorities, in case the rules on donation have not been respected in a time of one year, should ask the party to reimburse the amount to the donator (with all the interest on the base of the rate defined by the Czech National Bank) or, if it is not possible, to pay this amount to the State. In the case the party did not reimburse this amount, fiscal authorities should decide of a penalty representing the double of the value of the original donation.

Litigation for punishments

There are two possibilities:

- First, a judicial process in order to suspend the political party's activities because the party has not sent the financial report. In practice, the Chamber of Deputies is not very severe. The competent judge is the Supreme Court.
- The second possibility is a judicial process in the case the party has been illegally financed (in the case of an illegal donation) and the Fiscal authorities have decided of a penalty (the process is possible if, for instance, the party has not paid the penalty or the penalty was irregular). In this case the litigation process is the common one.

No sanction has been applied in the last two years (rough estimation).

No sanction has been applied in the last two years. All the relevant parties have fulfilled the legal obligation without problem and it seems that no other (small) parties have been sanctioned for their eventual illegal financing activities.

Only one case should be mentioned here: the illegal donations to ODS in 1995. Two persons were judged guilty of tax evasion (the person responsible for ODS' finances who falsified the name of donors and the one who supported the party. This affair was certainly in relation with the privatization of a steel company).

Were those sanctions considered fair by the independent analysts' community?

The political scientists and lawyers mainly focus on the question of equality of opportunity in public financing, the question of the deposit and so on. The problematic question of control and sanctions is not invoked so often. The only general critic we noticed came from associations who analyze corruption, but without pointing to the problem of sanctions on illegal finances of political parties.

7. Independence, transparency, neutrality

- We have not noticed any administrative pressure that has been made public in the last years. Political pressure was encountered in 2000, when the winner of the elections, the Social Democratic Party signed an agreement (called the Opposition Agreement) with its rival (and the second party in the elections), the ODS. They tried to reform the law in order to use it against smaller parties. This aim was blocked by the Constitutional Court. Because there is no real possibility for them to dissolve the independence and neutrality of the control institutions (from the Chamber of Deputies to the fiscal authorities), no problem has been noticed. The question of transparency is also well insured, because the more problematic income (donations) is unequally dispatched in the sense that, as we wrote, just one party has had important donations (the ODS) and there is no intention and no chance to change the rule of transparency. This party has left an important audit cabinet (Deloitte & Touche) to control its finances. It shows many irregularities, but overall the private controller pointed out that the question of eventual foreign bank accounts of this party could not be resolved because the controller found just some evidence of it but no substantial proof.
- No inclination from the institution of a biased attitude has been encountered in the last years;
- The audit documents of all parties are accessible to the public: every person who wants them can ask the Office of the Chamber of Deputies;
- In our opinion, the overall level of the transparency of the institution is primarily good, the problem is much more the question of control in-depth by an independent and qualified authority. The solution which had been found (control by Supreme Audit Office) was censored by the Constitutional Court.

Promoting changes, dialogue and good practices

- We have not found any mention of the eventuality of the control institution being involved in any training activity for the parties' financial officers/persons in charge. It is an internal problem.
- As we know, the control institutions have not drafted and distributed practical guides or standardized forms to the parties, in order to help parties comply with the control institution procedures;
- We have not discovered in practice any meetings a fortiori regular organized between parties and the control institution in order to prevent misunderstandings or lack of compliance. Some courses should be organized by NGOs or political parties itself, but we do not find any public case of State systemic meetings.

8.

Role of NGOs, Media, Academics

As we wrote above, academics⁹ have focused on problems of income, analyzing the actual system with its inadequacy in order to preserve equality of opportunity in public financing or access to the political scene for newcomers (analyzing, for instance, the problem of electoral deposit).

NGOs are only weakly involved in the question of monitoring political parties' finances, but we can point out, for instance, Transparency International. In a general way, the eventual questioning of the political parties finances should come through the general analysis of corruption, which is more a problem of individuals. Some NGOs play an important role in monitoring (especially those which are

⁹ Especially jurists and politicians from Prague, Olomouc or Brno. See bibliography.

specialized in studying corruption as Transparency International or Bez Korupce¹⁰).

Short comments about the media general attitude

Journalists are normally involved in investigative work. In a large way, they are a much more effective check than the political one. In no way can we say that media in the Czech Republic are *captive-media* (in the sense that it is one of the main beneficiaries of the money in electoral campaigns). If we can say that media are politically or ideologically involved, their investigative work is objective indeed and no party should be protected.

Nevertheless, the problem may be somewhere else. As we saw in the last crisis, (winter-spring 2005) the media could play a role that is problematic in the sense that they should criticise politicians in a very demagogic way, arguing against corruption even if corruption is not really proved. In that sense, the media play an important role, but they are not a sufficient and adequate mechanism in order to control and, above all, sanction corruption of a political party.

8. Conclusions

Even if the Czech system of political parties' and political movements' finances are functioning well in general terms, in fact the system is has to be criticised at least for some reasons:

- Advantaging bigger parties which are already in Parliament, and the smaller have therefore less possibilities of regular public finances (the private financing is also weak, because they do not have access to power). A little step forward was made thanks the public finance of the regional mandates. The possibility of renewal of the political scene is so very small. In fact, the political parties' finances system has been utilised by the bigger political parties in order to evince the smaller from the competition: these rules should be changed without

¹⁰ See: www.transparency.cz, www.bezkorupce.cz.

problem on being contrary to the principles specified by the Constitution¹¹;

- The electoral expenses should be limited by the law. For the moment it is not the case, and some of the parties should have more electoral incomes than they have expenses;
- As shown by the Constitutional Court, the question of threshold specified in order to receive public finance is crucial (and in fact the Constitutional Court seems to have interpretation problems, because from one case to another the Court has changed its point of view);
- The overview of the control system is very weak and does not preserve the system from corruption. The fact is that, for the moment only one big case of problematic financing was found, but the check system is so weak that this statistic reveals;
- The sanctions of illegal political parties' financing are not sufficient.

This situation is mainly due to the fact that the control depends mostly on politicians themselves and no independent alternative (with the exception of the Fiscal administration, but it's not its responsibility to monitor the political parties' finances) was found.

¹¹ It is the problem of the proportional system mentioned since 1990 in the Constitution for the election of the Chamber of Deputies. The rules concerning the political parties' finances were used in order to correct (to "majoritarize") the proportional electoral system.

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Laws and Decisions of the Constitutional Court can be found on <http://www.mvcr.cz/sbirka/index.html>

10. List of abbreviations

CZK	Czech Koruna
ČSSD	Social Democratic Party of the Czech Republic
KDU - ČSL	Christian Democratic Party of the Czech Republic
KSCM	Czech Communist Party
ODS	Civic Democratic Party
NGO	Non-governmental Organization
US-DeU	Liberty Union - Democratic Union

11. Annexes

Table 1. Part of State's contribution in political parties' finances

	1995-2000	2001
US-DeU	56.7%	85.3%
ODS	53.9%	64.1%
CSSD	52.3%	77.9%
KSCM	39.1%	58.7%
KDU-CSL	38.2%	80.9%

Source: Outlý J. (2003)

Table 2. Electoral expenses and State's contribution in order to cover electoral expenses. Legislative 2002 (A total of 29 political parties participate in these elections.)

	Electoral results	Expenses*	State's contribution (approx.)*
CSSD	30.2%	75	144
ODS	24.47%	60	117
KSCM	18.51%	15	88
Coalition KDU-CSL and US-DeU	14.27%	72	68

* In million of CZK.

Source: Outlý J. (2003), Czech Office of Statistics (www.volby.cz)

Constitutional Act No. 1/1993 Sb. of the Czech National Council of 16th December 1992 as amended by Acts No. 347/1997 Sb., 300/2000 Sb., 448/2001 Sb., 395/2001 Sb. and 515/2002 Sb. (extract)

Article 5

The political system is based on free and voluntary formation of and free competition between political parties respecting the basic democratic precepts and rejecting violence as a means of asserting their interests.

Charter of Fundamental Rights and Freedoms (extract)

Article 20

(1) The right to associate freely is guaranteed. Everybody has the right to associate with others in clubs, societies and other associations.

(2) Citizens also have the right to form political parties and political movements and to associate therein.

(3) The exercise of these rights may be limited only in cases specified by law, if measures are involved, which are essential in a democratic society for the security of the State, protection of public security and public order, prevention of crime, or for protection of the rights and freedoms of others.

(4) Political parties and political movements, as well as other associations, are separated from the State.

Article 21

(1) Citizens have the right to participate in the administration of public affairs either directly or through free election of their representatives.

(2) Elections shall be held within terms not exceeding statutory electoral terms.

(3) The right to vote is universal and equal, and shall be exercised by secret ballot. The conditions under which the right to vote are exercised are set by law.

(4) Citizens shall have access to any elective and other public office under equal conditions.

Article 22

The legal provisions governing all political rights and freedoms, their interpretation, and their application shall make possible and shall protect free competition between political forces in a democratic society.

Law No. 424/1991 Sb. (extracts from current version)

§ 17

(1) Political parties and movements are responsible with all their wealth. Members are not responsible and do not guarantee for party's debts.

(2) Political parties and movements should not carry business on their own¹².

(3) Political parties and movements should create a commercial company or a cooperative or participate as associate or member in a commercial company or cooperative if the object of activity is:

a) Pursuit of activities such as editing, publishing, printing or television or radio broadcasting;

b) Publishing and publicity activities;

c) Organization of cultural, social, sports, recreational, educational or political actions or;

d) Manufacturing and sale of things giving publicity for program and activities of the party or movement.

¹² Law No. 513/1991 Sb.

4) Incomes of a party or movement should be:

a) Contribution from the Czech Republic budget in order to cover electoral expenses;

b) Contribution from the Czech Republic budget in order to ensure the ability to function as political party or movement (further only „contribution for functioning”);

c) Membership fees;

d) Donations and inheritances;

e) Income of letting or selling unmovable and movable property;

f) Interests of deposits;

g) Income originating in the participation on business of other legal entity in accordance with subparagraph 3;

h) Incomes from organization of contests, cultural, social, sportive, recreational, educational and political activities;

i) Loan and credit.

(5) Party and movement fulfill the obligation of bookkeeping as mentioned in specific law¹³.

(6) Party and movement have not the right to possess properties outside Czech Republic.

§ 18

(1) Party and movement must deposit every year until the first of April at the Chamber of Deputies for information annual financial report which contain:

a) Annual account sheet in accordance with specific rules;

¹³ Law No. 563/1991 Sb.

b) Report from an auditor on the annual account sheet with the mention "without reservation";

c) Overview of the global incomes structured in accordance with art. 17-4a on expenses structured in functional costs and wages, tax and charges and electoral expenses;

d) Overview of donations and gifts with mention of the amount of monetary donations, name and surname, citizen ID number, and address of the donor, if it is a legal entity, mention of commercial name or appellation, place of business and identity number;

e) Overview of the value of wealth acquired by inheritance if the value is over 100,000 CZK, mention of the testator;

f) Overview of the members that give yearly to the party over than 50,000 CZK, with mention of the amount, their name, surname, date of birth or citizen ID number and address where they live.

(2) The deadline mentioned in the paragraph 1 is hold if the annual report is given on time to a licensed delivery postal service eventually special licensed delivery service at least the 1st of April.

(3) If the total amount of a donation is over 50,000 CZK, deposit the overview of donations and gifts in accordance with the paragraph 1 d) with certified copies of the donations contracts, which have to contain identical indications with those in the overview.

(4) Annual financial report is submitted by the party or movement on a printed form with appendices. The Ministry of Finance determines by implementing regulations the model of form.

(5) Annual financial report is complete if it contains all the required information in accordance with paragraphs 1 and 3 and if is submitted on specified printed form with appendices in accordance with paragraph 4.

(6) Annual financial report of political party or movement is public, it is possible to see it and make abstract, transcription or copy at the Office of the Chamber of Deputies.

§ 19

Party or movement cannot receive any free performance or donation from:

- a) State, if the law did not specify differently;
- b) Allowance organizations;
- c) Municipalities, city's districts and regions, except in case of leasing a non-accommodation space;
- d) State's enterprises and legal entities partly possessed by the state, which means legal entities possessed by the state at a minimum of 10%;
- e) Legal entities partly possessed by municipalities, city's districts and regions, which means legal entities possessed by the municipality or the region at a minimum of 10%;
- f) Non-profit organizations;
- g) Other legal entities, if it is precised by another legal enactment;
- h) Foreign legal entity except political parties and foundations;
- i) Persons who are not citizens of the Czech Republic, except those foreign citizens long living in the Czech Republic.

§ 19a

(1) If the party or the movement receives a donation in contrariety with this law, they have to refund it with interest charges accordingly to the rates of the Czech National Bank valid at the time of refunding until the 1st of April of the next year. If it is not possible, they pay the same amount to the State. If the donation is not refunded, the competent fiscal office lay on the party a penalty in an amount equal to the double of the value of the donation.

(2) Penalties in accordance with the paragraph 1 are an income of the state's budget. Penalty should be fixed during the year following

the day when the fiscal authority have discovered that the party or movement have not refunded the donation acquired in contrariety with this law or they have not paid it to state's budget. Penalty should be layed on during three years after the reception of the donation.

(3) If the Chamber of Deputies discovers that the data mentioned in the annual financial report are not in accordance with the § 19 of this law or are not attested in accordance with the § 18-3, the Chamber of Deputies informs the competent fiscal office.

§ 20

(1) Party or movement has the right to perceive State's contributions in accordance with the law.

(2) Contribution for the functioning comprises permanent contribution and contribution per mandate.

(3) The claim to the permanent contribution or to the contribution per mandate rise for the party or movement which have in time (§ 18) deposited complete annual financial report (§ 18-5).

(4) The claim to the permanent contribution rise for the party or movement which obtained in the elections in the Chamber of Deputies more than 3% of the voices.

(5) The claim to the contribution per mandate rise for the party or movement which have at least one deputy, one senator, one regional deputy or one deputy in the Prague's local parliament elected on its list.

(6) Permanent contribution amount to 6,000,000 CZK for the party or the movement that received more than 3% of voices in the elections of the Chamber of Deputies. For each 0.1% more the party or movement receives 200,000 CZK more. If the party or movement receives more than 5%, the contribution will not increase over.

(7) Contribution per mandate amount to 900,000 CZK for a mandate of deputy or senator, 250,000 CZK for a regional mandate or a mandate of Prague's deputy.

(8) Contribution per mandate of the party or movement on which list deputy, senator or regional deputy or Prague's deputy has been elected. If the deputy, senator, regional deputy or Prague's deputy has been elected on a coalition list, contribution per mandate of party or movement on which name he has been elected. If the mandate is freed and there is no alternate member or if the mandate is abolished, the contribution per mandate of not the party or movement.

(9) For the snapping of the claim of permanent contribution and determination of its amount between parties or movements in the case of electoral coalition is decisive the coalition agreement, but if this agreement is not send on time to the Ministry of Finance, the electoral result is equally shared. The paragraph 3 holds still. Party or movement transmits to the Ministry of Finance the agreement on the share of the parties until the last delay for registration of candidates' lists.

(10) If the agreements that have been send to the Ministry of Finance in accordance to the paragraph 9 disagree and if the parties or movement have to receive a permanent contribution, the Ministry of Finance blocks the payment until the situation is not corrected and then pay retroactively.

(11) In the year of the elections of the Chambers of Deputies, of the Senate, of the regional chamber or Prague's Parliament, the annual contribution is calculated on the basis of the electoral result that is for the party the more attractive. If the Chamber of Deputies is dissolved, or in the case of regional elections, the contribution is calculated proportionally to the complete month during which were organized elections. If the mandate of deputy, senator or regional deputy is freed, and if there is no alternate member, the party or movement will receive a proportional contribution including the month within this fact occurs.

§ 20a

(1) The contribution for functioning is paid by the Ministry of Finance for the whole electoral period in two semi-annual payments. Payment for the first semi-annual is paid on the 30th of June and the second on the 1st of December. The demand is made for each payment apart.

(2) The payment of the contribution for functioning is suspended if:

a) The annual financial report was not send on time to the Chamber of Deputies;

b) The annual financial report is found to be incomplete by the Chamber of Deputies or;

c) A plaint was lodge in accordance to the 15%.

(3) The contribution for functioning which is not paid in accordance to the paragraph 2 should be paid retroactively by the Ministry of Finance if:

a) The annual financial report was send consequently and is complete;

b) The judicial decision of disapproval of the suspension of the activities of a party or the dissolution of the party becomes definitive or;

c) The activity of the party or movement is renewed (§ 14-3).

(4) The Chamber of Deputies controls one time during the year the completion:

a) of the deposited annual financial report for the last year deposited in the delay according to the § 18-1 and 2;

b) of the annual financial report of the foregoing years that were shown to be incomplete or not deposited. The Chamber of Deputies informs the Ministry of Finance at least on the 7th of June.

(5) The Ministry of Finance corrects the amount of the contribution for functioning in case the situation has changed.

§ 20b

(1) If the mandate of Deputy, of regional deputy or member of Prague's parliament has been freed or if the Senators mandate has expired (§ 20-8), Ministry of Finance do not pay the semi-annual that came after the drop of mandate.

(2) Facts mentioned in the § 20-8 are published by the Chamber of Deputies, the Senate, the Regional Office or the municipal authorities of Prague to the Ministry of Finance at least 20 days before the due date.

(3) If the alternate candidate was elected on another party's list than the former deputy, senator, regional deputy or Prague's deputy, the Chamber of Deputies inform the Ministry of Finance within at least 20 days before the coming of the alternate candidate.

Law No. 247/1995 Sb (extracts from the current version)

§ 85

Contribution for the reimbursement of electoral expenses

Contribution for the reimbursement of electoral expenses is afforded on the base of the elections of the Chamber of Deputies only. The Chamber of Deputies informs, after the control of the elections, the Ministry of Finance on the facts about the valid votes given to each political party, movement or coalition. If the political party, movement or coalition receives more than 2% of the votes, it will receive for each vote 30 CZK from the State's budget.

Poland

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Introduction

Poland's experience with political parties' finances shows that most irregularities result from:

- The dispersion of regulations concerning political sponsorship in multiple normative acts (hence the postulate of passing one single legal act on financing political parties);
- The possibility of financing political parties through public funds and allowing parties to undertake commercial activities;
- The direct payment of funds in cash, instead of easily controllable bank transfers;
- Insufficient requirement regarding the annual financial reports;
- Lack of the public scrutiny mechanisms over finances of political parties. The public scrutiny is often limited to the publishing of the parties' financial reports on the Internet. (most of all to low range of publishing the political parties and the committees reports on the internet).
- Insufficient supervision by the National Election Commission (NEC) and the Supreme Chamber of Control (NIK) as regards political parties' expenses during election campaigns.

As for the positive achievements, the one that should be emphasized is the introduction of a mechanism of budget subsidies for the parties. However, the scope of subsidies and the detailed reports that needed to be provided by parties with regards to these subsidies still need further legislative debates.

1. Legislative framework and other remarks

Legislation

Rising costs of election campaigns, cases of corruption and an overall growth of the role played by money in politics have compelled the legislator to step in. An intensive process of cleaning up the financial side of elections has been going on in Poland since 1997.

Firstly, the new Act on Political Parties was adopted on 27th June 1997 (*Dziennik Ustaw* No. 98, Pos. 604, as amended). It made a great deal of progress over previous legislation in terms of putting order in the system of financing political parties. In addition, the principle of public party-financing scrutiny was written into the Polish Constitution adopted on 2nd April 1997 (Art. 11, Sec. 2). By placing it in the first chapter of the Constitution entitled "The Republic", the legislator recognized it as a fundamental principle, vital to the functioning of the Polish State.

The next step in cleaning up election financing was taken in the year 2000 when the Law on Presidential Elections was overhauled (*Dziennik Ustaw* No. 47, Pos. 544), mainly by way of guaranteeing public scrutiny of election campaign spending. In turn, on 12th April 2001, the legislature passed a new Law on Parliamentary Elections and, at the same time, thoroughly revised Chapter IV of the Law on Political Parties, which deals with their financing. All these legislative measures were elements of the process of cleaning up the issue of money in politics. On 20th April 2004, the Law on Local Elections was amended to reflect the same type of changes (*Dziennik Ustaw* No. 102, Pos. 1055).

Ultimately, several normative acts have ended up regulating the issue of political party finances, but the core of these regulations is provided in the Act on Political Parties of 27th June 1997 (*Dziennik Ustaw* 2001, No. 79, Pos. 857, as amended).

That law was amended five times since its adoption. The most important amendment took place on 21st December 2001. It changed the system according to which political parties are financed by way of

introducing large-scale State financing. At the same time, it was expanded by numerous regulations and procedures meant to prevent political parties from being financed by illegal sources.

In addition to legislation, party financing issues are regulated by finance minister's ordinances, such as:

- Ordinance of 18th February 2003 on reporting financing sources (*Dziennik Ustaw* 2003, No. 269, Pos. 33);
- Ordinance of 18th February 2003 on financial information concerning subsidies and expenditures incurred thereunder (*Dziennik Ustaw* 2003, No. 268, Pos. 33);
- Ordinance of 18th February 2003 on State budget subsidies to political parties (*Dziennik Ustaw* 2003, No. 267, Pos. 33);
- Ordinance of 23rd January 2003 on political party financial reporting (*Dziennik Ustaw* No. 118, Pos. 11).

What is covered by the legislation?

Under the current Polish legal system, regulations which indirectly influence the finances of political parties, particularly in how they spend and account for their money, are provided in the following election laws:

- Law on the Election of the President of the Republic of Poland dated 27th September 1990 (*Dziennik Ustaw* 2000, No. 47, Pos. 544, as amended);
- Law on Elections to Local Self-Governments dated 16th July 1998 (*Dziennik Ustaw* 2003, No. 159, Pos. 1547, as amended);
- Law on Elections to the Lower and Upper House dated 12th April 2001 (*Dziennik Ustaw* 2001, No. 46, Pos. 499, as amended);
- Law on the Direct Election of the Village, Town and City Administrator dated 20th June 2002 (*Dziennik Ustaw* 2002, No. 113, Pos. 984, as amended);

- Law on Elections to the European Parliament dated 23rd January 2004 (*Dziennik Ustaw* No. 25, Pos. 219).

These laws regulate in detail the issues of election campaigns, financing sources and expenditures incurred by electoral committees. In principle, only political parties and voters can submit candidatures to the Lower and Upper House and to the European Parliament. In the case of elections to local self-governments, the pool of entities eligible for submitting candidatures is more diversified. Here electoral committees can be created by political parties and their coalitions, voters as well as associations and community organizations. The terms of their financial management during the time of elections are specified in electoral laws.

As concerns political parties, regulations provided in electoral laws should be treated as *lex specialis*, whereas the Act on Political Parties as *lex generalis*.

2. Sources of income

The Act on Political Parties lists the following acceptable sources of political party assets (Art. 24, Sec. 1 and 7):

- Membership fees;
- Donations;
- Inheritances;
- Bequests;
- Income from assets;
- Bank loans;
- Grants and subsidies specified in regulations.

The law states that political party assets can be used only for statutory or charitable purposes (Art. 24, Sec. 2). Consequently, they cannot be used for investment purposes or to finance activities not specified in the statute.

As concerns membership fees, the law does not specify if they must be paid simply because one is a member of the party or because one has been recommended by the party to hold a specific position. Neither is there anything in the law about the voluntary nature of paying a membership fees. All these issues have been left to be dealt with in the party statute, which is expected among other things to define the rights and responsibilities of members, and the manner of acquiring financial resources by the party (Art. 9, Sec. 1, Items 3 and 6). Such freedom of regulatory decision creates a hazard to internal party democracy. Indeed, the phenomenon of "taxing" party members and sympathizers for various functions and positions they hold by party recommendation (such as that of a deputy to the local self-government, manager in central or regional administration, member of the management or supervisory board of the State Treasury, etc.) has grown to a relatively large proportion in the Polish political practice of the past few years. Parties tax the income derived from holding such positions at the rate ranging between 5% and 15%. As a result, many positions have become increasingly politicized since the deciding criteria in filling them is often based not on how competent is the candidate but how loyal he is to the party and how much he would earn in the job. Consequently, this solution promotes a drastic growth of party *nomenklatura* in State administration.

In order to prevent corruption and criminal practices associated with donations, inheritances and bequests, the law contains a provision (Art. 25) whereby political parties can receive money and other values only from individuals. This excludes the possibility of political parties acquiring funds coming in various forms from the State or self-government budget, foundation or another legal person entity or organization without legal status. The law also narrows the circle of individuals entitled to sponsor a political party by excluding individuals who do not have a registered address in Poland (except for Polish citizens living abroad) and foreign residents.

The possibility of earning income from party assets is limited to strictly specified cases (Art. 24, Sec. 4). Such income can come from:

- Interest on funds kept in bank accounts and deposits;
- Trade of State Treasury securities and bonds;
- Sale of property items owned by the party;
- Own commercial activities derived from sales of the party statute, program or promotional publications, and remunerations deriving from small services to third parties using own office equipment.

The legislator decided to ban the practice of subrenting out party-owned premises to "familiar" corporations, including banks, which had been very profitable to some parties. The law stipulates (Art. 24, Sec. 5) that a party can make its property or premises available only for an office to a parliamentarian or councilor. That rule prevents renting party premises to any other entity, even if only for a single time and free of charge. Any manner of making the real property or premises available to other entities is fined. The fine is imposed on the person who actually makes the premises available. The party itself is not subject to penalty.

Bank loans are an important source of financing politics, yet the Polish legislator did not specify the terms of granting loans to political parties. This is important because some banks are very closely connected to political parties and may thus have the opportunity to grant them loans on very preferential terms.

Since 2001, Polish political parties can no longer draw earnings from public fundraising campaigns and business activities. This rule constitutes a logical consequence of the overhaul of the entire Polish political party financing system.

The amendment of April 12th 2001, which introduced the principle of political parties being obligated to keep their financial resources in bank accounts (Art. 24, Sec. 8), is an important element of public scrutiny of party finances. Non-compliance with this provision is subject to a fine (Art. 49b).

Under the new system of financing political parties, the legislator took away a significant portion of their traditional sources of financing and replaced it with a large State budget subsidy earmarked for statutory activities (Art. 28). This subsidy is available to parties which in the elections to the Lower House get at least 3% of valid votes across the country, or to party coalitions which get at least 6% of all valid votes across the country. The amount of the subsidy is proportional to the election result obtained by the party.

The amount of subsidy established in such manner is paid annually throughout the term in office in the Lower House in four equal quarterly installments. The first installment must not be paid later than 30 days after publication of information of the accepted or rejected electoral committee election reports in *Monitor Polski* by the National Electoral Commission. The legislator decided that the time frame for collecting the subsidy would not exactly match the Lower House term in office but rather follow calendar years. Therefore, the subsidy is available as of January 1st of the year following the elections and is paid until the end of the year in which the next election takes place. Art. 32 of the Act on Political Parties introduced the possibility of losing the right to the subsidy under specific circumstances. In such case, the right to the subsidy expires at the end of the quarter in which the Lower House completes its term in office. Therefore, the legislator did not treat the right to the subsidy as a rightfully acquired right but linked it to the term in office of the Lower House.

The change of the political party financing system greatly benefited all parties that crossed the 3% threshold in the election to the Lower House and retained the right to the subsidy. In 2004, the total subsidy paid out to political parties from the State budget amounted to nearly PLN 60 million (almost 14.5 million Euro).

The Law on Elections to the Lower and Upper House dated April 12th 2001 introduced the so-called *subject grant* available to every political party which participates in elections on its own or in coalition with other parties. The grant is given for every member the party places in the Parliament (Art. 128). In the latest parliamentary elections of 2001, the total amount of these grants came up to the equivalent of 10 million Euros.

It is noteworthy that, contrary to the subsidy for statutory activities, the right to the *subject grant* is vested not only in political parties but also in electoral committees (Art. 128, Sec. 1). This seems a correct solution, particularly within the context of recognizing the *subject grant* as a sort of reimbursement of costs incurred during the election campaign. The grant may contribute to activating local communities and unaffiliated candidates, especially in elections to the Senate. Moreover, political groups that for some reason do not wish to receive subsidies available to political parties may participate in elections as electoral committees and, on that basis, subsequently receive a grant for each member that wins a mandate.

3. Provisions related to spending

The Act on Political Parties instructs them to create two types of funds: Expert Fund (Art. 30) and Election Fund (Art. 35). Resources accumulated in the Expert Fund can only come from party contributions and serve the purpose of financing all kinds of expert studies and publication/education activities associated with statutory objectives. Parties that receive the subsidy must transfer 5% to 15% of it into the Expert Fund. The legislator did not specify who can become a political party expert and, consequently, who can get paid for preparing studies. This is a significant loophole considering that Expert Fund resources can be also used to pay members of the given party and even its leadership. In this manner, money received from the public budget can serve to enrich individuals closely linked to the party management or leadership. In addition, the party leadership can use the Expert Fund to reinforce its position with respect to opponents, which certainly does not contribute to strengthening internal party democracy.

The Election Fund is created for the purpose of financing party participation in parliamentary, presidential or local elections, and in referenda. As of the outset of the election campaign, parties must pay for their election expenditures only via the Election Fund. The act includes a list of sources which can contribute into the Election Fund, which are (Art. 36, Sec. 1): own party contributions, donations, inheritances and bequests. The list is closed. The annual maximum that an individual can contribute to the Election Fund must not

exceed 15 times the lowest salary paid to employees, taking effect on the day preceding the payment. When there is more than one national election or referendum in the given calendar year, the maximum that an individual can contribute must not exceed 25 times the lowest salary. Concurrently, the legislator stipulated that Election Fund resources must be deposited in a separate bank account and that payments thereto can be only made by check, bank transfer or payment card.

The financial management of the Election Fund lies in the hands of the financial trustee. The group of individuals who may hold that function was defined in a restrictive manner and excludes candidates for the position of President of Poland, deputy to the Lower House, senator or councilor, and public administration officials. The legislator did not provide any particular penalties imposed on the Election Fund trustee. He only stated (in Art. 49e) that whoever directs financial resources accumulated in the Election Fund toward purposes other than electoral shall be subject to a fine between PLN 1,000 and PLN 100,000. Therefore, that liability does not only refer to trustees but to a wider category of people. There are no penalties in the law for an incorrect or illegitimate manner of managing the finances of the Election Fund.

Provisions of Chapter 6a of the Act on Political Parties (Criminal Provisions) show that a breach of political party financing regulations carries a relatively small penalty in the form of a fine. Only in one case did the legislator introduce more severe penalties by restricting freedom or deprivation of freedom for up to two years (Art. 49f). They apply to anyone who spends political party resources to finance election or referendum campaigns without going through the Election Fund and who fails to comply or causes to fail to comply with the obligation to prepare and file the report referred to in Art. 38, or who provides false information therein. It is not clear why these specific illegal acts merit more severe penalties. After all, there are many more acts that strike at the constitutionally guaranteed public scrutiny of political party financing sources.

4. Reporting and transparency measures

Financial information filed by political parties

Art. 11 of the Polish Constitution of April 2nd 1997 guarantee political parties the "freedom for the creation and functioning" and at the same time introduce the principle of "public scrutiny of political party financing". This is one of the fundamental principles, hence vital to the functioning of the State. It should be understood broadly as public scrutiny of political financing linked to citizens' constitutionally guaranteed right to access information regarding activities of public authorities' and individuals holding public positions (Art. 61, Sec. 1).

In the spirit of the principle of public scrutiny of party finances, the Law on Political Parties obligates them to provide financial information and reports to various institutions. First of all, the legislator imposed thereon the obligation to prepare annual financial information to the National Electoral Commission (NEC) on the received subsidy and expenditures incurred hereunder (art. 34). Such information covering every calendar year must be filed up to March 31st of the following year, jointly with the opinion and report of a NEC-selected auditor. NEC will publish that information in the *Monitor Polski* Official Journal of the Republic of Poland. The legislator introduced certain control procedures. Before anything else, NEC can either accept that information within four months of its filing or, if the auditor finds irregularities therein, reject it. In addition, if there is doubt as to the correctness or reliability of the filed information, NEC may request the party to eliminate the errors or provide clarifications within a specific time frame. If NEC decides to reject that information, the party can appeal to the Supreme Court. The Act on Political Parties stipulates (Art. 34c) that a party loses its right to the subsidy in the next calendar year when it fails to file financial information on time, when NEC rejects that information and when the Supreme Court disallows the appeal of the NEC decision to reject that information.

A party also must notify NEC of establishing or closing an Election Fund, but does not need to specify the form and time frame in which that will happen. The fact that the law does not specify what will be

the penalty for failing to comply with that requirement is a significant omission made by the legislator.

Moreover, parties must file with NEC (not later than by March 31st of every year) a report on their financial sources, including bank loans and their terms, and on expenditures incurred out of the Election Fund in the preceding calendar year (Art. 38). Checking procedures are similar as in the case of financial information described earlier. Should a party fail to file a report within the specific time frame, NEC will apply to the court for crossing that party off from the register and, after a trial, the court has to issue its decision to that effect. In turn, if the party report is rejected by NEC or - in case of an appeal regarding the rejection decision and if the Supreme Court disallows the appeal, the party loses its eligibility for the subsidy for three years in which it would be otherwise entitled to receive it.

Table 3. Financial information filed by political parties

Legal Act	Entity informed	Type of information	Penalty for non-compliance
Art. 34, Sec. 1 of the Law on Political Parties	NEC	About the received subsidy and expenditures incurred hereunder	Loss of eligibility to receive the subsidy in the next calendar year
Art. 35, Sec. 3 of the Law on Political Parties	NEC	About establishing or closing the Election Fund	None
Art. 38, Sec. 1 of the Law on Political Parties	NEC	About financing sources, including bank loans and terms of getting them by the party and the Election Fund, and about expenditures incurred out of the Election Fund in the preceding calendar year	SEC applies to the court for crossing the party off the register and the court, after a trial, issues a decision to that effect

Elections to the Lower and Upper House

In the case of elections to the Lower and Upper House, all expenditures incurred by individual electoral committees in connection with the elections are covered solely and exclusively by their own resources (Election Fund). The financial trustee is responsible for and manages the finances of the electoral committee.

If there is a surplus of resources obtained for electoral purposes over expenditures, the electoral committee of the given political party transfers it to the Election Fund. The financial trustee must publish information about the transfer in a national daily newspaper not later than within 30 days after NEC accepts the election report.

After the end of the election campaign, the financial trustee must file with NEC, within three months of the Election Day, a report on revenues, expenditures and financial liabilities of the electoral committee. In particular, the report must contain information on bank loans and their terms, jointly with an auditor's opinion and report.

NEC publishes election reports received from electoral committees in *Monitor Polski* Official Journal of the Republic of Poland within a month of the deadline for their filing.

Within four months of the day of filing the election report, NEC may accept it without reservations, accept it while pointing out shortcomings therein, or reject it when it is clear that the electoral committee has acquired or spent election resources in violation of Art. 110 or above the limit specified in Art.114, Sec. 1 and 2, in case of a transmittal to or acceptance by a coalition or voters' electoral committee of financial resources or non-material values in violation of Art. 114, Sec. 2-4, conduct of fundraising campaigns despite the ban referred to in Art. 112, Sec. 2, or acceptance by a political party electoral committee of financial resources coming from a source other than the Election Fund of that party.

NEC publishes information on accepted and rejected electoral committee election reports in the *Monitor Polski* Official Journal of the Republic of Poland and issues a press release to that effect.

Local elections

Expenditures of electoral committees incurred in connection with elections are covered by their own resources. The financial trustee is responsible for and manages the finances of the electoral committee.

Financial resources transmitted to a political party electoral committee can come solely from the Electoral Fund of that party, established on the basis of the provisions of the Act on Political Parties of June 27th 1997 (in case of a party coalition - from the common coalition fund).

The financial trustee of an electoral committee must file, within three months of the election, with the authority which the committee notified of its establishment, a financial report on revenues, expenditures and financial liabilities of the committee.

The National Electoral Commission makes financial reports filed public via their publication in *Biuletyn Informacji Publicznej*.

Financial reports filed with the electoral commissioner are made publicly accessible thereby on request by interested parties. The electoral commissioner makes public, in the form of a press release published in a newspaper with regional or national, information on the place, time and manner of making these reports available for viewing. *Report acceptance procedure (approval options) is identical to that in effect during elections to the Lower and Upper House.*

Elections to the European Parliament

The electoral committee financial trustee is responsible for and manages committee finances.

An electoral committee may acquire and spend resources solely for purposes associated with the elections. A political party electoral committee can acquire and spend resources from the date of the NEC receiving a notification of the intention to submit candidates for election to the European Parliament.

Financial resources of a political party electoral committee can come solely from the Election Fund of that party created pursuant to the Act on Political Parties of June 27th 1997.

Within four months of the Election Day, the financial trustee must file with the National Electoral Commission a report on revenues, expenditures and financial liabilities of the committee, including information on granted bank loans and their terms, jointly with an auditor's opinion and report.

The National Electoral Commission publishes electoral committee election reports in the *Monitor Polski* Official Journal of the Republic of Poland within a month of the time limit referred to in Art. 93, Sec. 1 (Report Filing).

Report acceptance procedure (approval options) is identical to that in effect during the Lower and Upper House and local elections.

NEC publishes information on accepted and rejected electoral committee election reports in the *Monitor Polski* Official Journal of the Republic of Poland and makes it public in the form of a press release.

5. Financial management

Political parties are taxed pursuant to the Corporate Income Tax Law (Art. 40 of the Law on Political Parties). In Poland, legal persons pay a tax in the amount of 19% of the taxable base.

Political party financial accounting is done pursuant to particular terms specified by the Finance Minister in the form of an ordinance. First and foremost, political parties must keep the following accounting books:

- Chronological journal of revenues and expenses;
- Main ledger (synthetic records);

- Auxiliary ledgers (analytical records);
- List of assets and liabilities;
- Statement of turnover and balance of main and auxiliary ledgers.

Accounting books serve the purpose of preparing a compulsory annual financial statement. The following data must be provided in the statement: book value of the party (balance sheet), obtained financial results and bookkeeping methods.

6. Control institutions

It took almost a decade to determine the form of enforcement mechanisms in Poland. Currently the agency responsible for the enforcement of campaign rules is **the National Electoral Commission** which plays a significant role in electoral administration and in the system of campaign finance. The Committee has **three major responsibilities**:

- Ensuring all political parties and independent candidates comply with the legal requirements concerning limitations, prohibitions, disclosure and reporting;
- Providing public disclosure of funds raised and spent during parliamentary and presidential elections;
- Acting as an advisory body about matters under its jurisdiction regarding political parties and candidates.

By the mid-1990s, the National Electoral Commission appeared to have enough expertise, yet concerns were raised as to whether it had sufficient organisational resources to seriously control political party finance.

NEC's Independence

The Polish National Electoral Commission consists of independent judges rather than party representatives.¹⁴ The National Electoral Commission is a permanent, supreme institution, competent in the conduct of elections. The National Electoral Commission is composed of:

- 3 judges of the Constitutional Tribunal, designated by the President of the Constitutional Tribunal;
- 3 judges of the Supreme Court, designated by the President of the Supreme Court;
- 3 judges of the High Administrative Court, designated by the President of the High Administrative Court.

In terms of its formal duties scrutiny of an election report conducted by the National Electoral Commission may lead to:

- An acceptance of the report;
- An acceptance of the report with indications of its minor deficiencies, or;
- Rejection of the report over significant infringements of the law.¹⁵

¹⁴ The President of the Republic of Poland appoints recommended judges to the National Electoral Commission.

¹⁵ Originally, in the Law on Parliamentary Elections of April 12th 2001, Article 122 introduced a rigorous rule, according to which the National Electoral Commission could only accept or reject the financial report. Such was the problem of the NEC with financial reports in the 2000 Presidential Elections. In consequence, all the financial reports of the electoral committees were rejected, even though irregularities in each case were of different nature. In practice, the decision of rejecting a report had no significant legal or financial consequences, neither for the electoral committee, nor for the political party financially supporting the electoral committee. Yet the case could have been different for the electoral committees participating in the 2001 Parliamentary Elections. If

The National Electoral Commission (PKW) accepts or rejects the report if it is found that the committee has violated the related provisions.¹⁶ Where there are doubts as to the correctness of an election report, the PKW may request that a given committee remove the inaccuracies or submit explanations for them within a specified time limit. Further, the National Electoral Commission can request experts to be brought in. During the examination of election reports, the National Electoral Commission can also request that necessary assistance be given by state authorities.

Most important cases concerning violations of political party finance laws

Important examples of enforcement practices can be seen in the aftermath of the 2001 Parliamentary Elections. Following the elections, the National Electoral Commission scrutinized a total of 93 election reports.¹⁷ It accepted 35 financial reports, including those from the two major parties: the Law and Justice Party (PIS)¹⁸, and

the National Electoral Commission rejected the financial report of the electoral committee, regardless of the extent of the irregularity, this political party would not obtain state subsidy and the committee would not have the right to allocation. However, on December 21st 2001, Parliament managed to amend the Law adding the following premise: "an acceptance of the report with indication of its minor deficiencies".

¹⁶ If the National Electoral Commission turns down the election report, a committee may, within 7 days following delivery of the decision to reject a report, issue a complaint to the Supreme Court opposing the decision of the National Electoral Commission. The Supreme Court examines the complaint and issues a ruling in a case within 60 days following the delivery of a complaint. The ruling of the Supreme Court is submitted to the financial agent and to the National Electoral Commission. The Supreme Court, a bench of 7 judges, examines the complaint in a civil procedure. If the Supreme Court admits the complaint submitted by a financial agent, the National Electoral Commission immediately decides on acceptance of the election report.

¹⁷ Komunikat Państwowej Komisji Wyborczej z dnia 3 czerwca 2002 r. o przyjętych i odrzuconych sprawozdaniach wyborczych uczestniczących w wyborach do Sejmu i do Senatu, see www.pkw.gov.pl.

¹⁸ Uchwała Państwowej Komisji Wyborczej z dnia 11 marca 2002 r., see www.pkw.gov.pl.

the Freedom Union Party (UW)¹⁹. The National Electoral Commission also accepted 39 reports with indication of minor deficiencies, including reports from the Democratic Left Alliance - Labor Union coalition (SLD-UP)²⁰, the Electoral Committee "Bloc Senate 2001"²¹, and the Citizens' Platform (PO)²². However, it rejected certain campaign finance statements including those of the Polish Peasants' Party (PSL), the League of Polish Families (LPR), the Self-Defense²³ Party and the Solidarity Electoral Action of the Right Party (AWSP). In total, PKW rejected 19 financial reports (out of 93 submitted), including 3 submitted by those parties which had obtained parliamentary seats. For this reason, the parties lost from 65% to 75% of subsidies from the State Budget to which they were entitled.

Auditors - Independence and Neutrality

To enforce public control of political money, an **independent and professional audit** has been made for review of the campaign and the party's financial reports. The auditor has a right of access to all the financial documents and he/she is required to issue a written opinion. The auditor's duty in preparing the opinion is to ensure that the information contained in the accounting records of the financial report is accurate.²⁴ But the auditor is not capable of determining

¹⁹ Uchwała Państwowej Komisji Wyborczej z dnia 18 lutego 2002 r. w sprawie przyjęcia sprawozdania wyborczego Komitetu Wyborczego Unii Wolności, see www.pkw.gov.pl.

²⁰ Uchwała Państwowej Komisji Wyborczej z dnia 25 lutego 2002 r. w sprawie sprawozdania wyborczego Koalicyjnego Komitetu Wyborczego Sojuszu Lewicy Demokratycznej - Unii Pracy, see www.pkw.gov.pl.

²¹ Uchwała Państwowej Komisji Wyborczej z dnia 28 lutego 2002 r. w sprawie sprawozdania wyborczego Komitetu Wyborczego Wyborców "Blok Senat 2001", see www.pkw.gov.pl.

²² Uchwała Państwowej Komisji Wyborczej z dnia 28 lutego 2002 r. w sprawie sprawozdania wyborczego Komitetu Wyborczego Polskiego Stronnictwa Ludowego, see www.pkw.gov.pl.

²³ Uchwała Państwowej Komisji Wyborczej z dnia 22 kwietnia 2002 r. w sprawie sprawozdania wyborczego Komitetu Wyborczego Samoobrona Rzeczypospolitej Polskiej, see www.pkw.gov.pl.

²⁴ Within 3 months following polling day, the financial agent submits to the National Electoral Commission a financial report, later called the "election report". Receipts, disbursements and financial liabilities of the

whether or not any transaction is legal. However, the auditor may inform the National Electoral Commission that he/she has not received all the necessary information or explanations required. In addition, whoever prevents an auditor from preparing an opinion or report or in any way impedes its progress is liable to a fine, to limitation of liberty, or imprisonment for a term not exceeding two years.

It should be pointed out that to secure maximum independence, the National Electoral Commission **appoints the auditors through random selection** from candidates submitted by the National Council of Auditors.²⁵ And, rather than have auditors paid by each electoral committee, the cost of preparing an opinion is covered by the State budget. Additionally, the Polish Law on Political Parties provides for an examination of the party's annual financial report covering the received state subvention and all expenses. The submitted reports also have to carry an auditor's certificate. Yet for parties' annual reports, each party pays auditors individually. As a result, most are sketchily done, with less effort than when conducting a professional review.

Yet, the Polish regulations are not clear about auditor-liability. After the 2000 Presidential Elections, the auditor was charged with falsely approving the financial report of Marian Krzaklewski's presidential campaign. The auditor stated that in his opinion - prepared for the National Electoral Commission - Krzaklewski's electoral committee did not break the law while collecting financial contributions. In fact, according to the general prosecutor's office, 180 donations from individual contributors greatly exceeded the permissible limit, i.e. the two lowest monthly salaries (about \$360). Moreover, neither the

committee, including bank loans and specifying conditions set forth by the lending institution, along with the written opinion of a competent auditor concerning the report, are included in the document.

²⁵ To secure even greater independence and prevent a possible conflict of interest, the German Law on Political Parties, in Article 31 Section (1), explicitly provides that "a person appointed as auditor must not be a member of the executive committee, a member of a general party committee, an appointed accountant or employee of the party to be audited or of one of its regional branches or has been such during the last three years prior to his appointment".

check, wire transfer or credit card legally required, were used to pay the money; it was deposited in cash in banks or at post offices in the name of the candidate himself.²⁶ Leading national newspaper, *Gazeta Wyborcza*, found out in a private investigation that the auditor did not verify money transfers from fictitious people and that 7,308,000 PLN (US \$1.78 million) were donated to the candidate - in many instances, after the elections.²⁷

Legal proceedings concerning political party finance violations

In 2001, the National Electoral Commission (NEC) submitted to the District Court in Warsaw a motion of forfeiture for the money that was raised illegally by the presidential committees in the previous election. Twenty-one candidates were on the ballot in the October 2000 Presidential Elections and each one infringed the campaign finance provisions. The committees had violated several provisions governing political party finance regulations.²⁸ As a result, the NEC refused to accept any of the presidential candidates' financial reports. Fifteen committees appealed against this decision in the Supreme Court, which dismissed their motions and confirmed the National Electoral Commission ruling. The National Electoral Commission

²⁶ As a result, the auditor nearly faced a sentence of three years in jail following a lawsuit brought against him by the Prosecutor's Office in Tarnów. However, the defendant did not plead guilty; he claimed that he had evaluated only a part of the financial documentation of Krzaklewski's electoral committee.

²⁷ Ireneusz Dańko, 'Prokuratura oskarża biegłego Państwowej Komisji Wyborczej', *Gazeta Wyborcza* 01.01.2002.

The Prosecutor's Office in Tarnów has further established that the contributors were seven anonymous persons.

²⁸ In most instances, the committees:

- a) Accepted cash donations, although payments should only be made by wire transfer, check or credit card into a committee's bank account;
- b) Accepted sums larger than the permitted 10,400 PLN per donor (an individual);
- c) Accepted money from corporations which were subsidized by the State Treasury (i.e. businesses which employ people with disabilities);
- d) Accepted money from corporations whose donations did not originate in the company's revenues;
- e) Kept money outside of a bank account or in an inappropriate account;
- f) Were guilty of irregularities in their book-keeping.

calculations showed that Marian Krzaklewski's committee should pay about 1,700,000 PLN (US \$425,000), while Bogusław Rybicki's committee should pay at least- 358 PLN. Andrzej Olechowski's committee should transfer to the state budget 597,000 PLN (US \$149,250), Aleksander Kwaśniewski's committee - 312,000 PLN (US \$78,000), Jan Łopuszański's- 217,000 PLN (US \$54,250) and Dariusz Grabowski's- 59,000 PLN (US \$14,750).

Those financial assets, which had been accepted by the committees in violation of the relevant regulations, must be transferred to the state budget. Almost three years later (January 2004) the Ministry of Finance has not managed to confiscate the above amounts.

Allocation of enforcement responsibilities and reporting

The effectiveness of the new Polish regulations on disclosure and reporting was partly restricted as the NEC did not have a clear responsibility for providing education and training. Certainly, a general lack of knowledge among candidates and sponsors can limit the scope of any reform. According to one of the Polish experts, „People were 100 per cent unprepared for the new system of campaign finance”²⁹. Internal documents and consultations did not prevent many supporters and candidates from making contributions in an illegal form (by check, wire transfer, or credit card).

In addition, as the reform was introduced only half a year before the beginning of the campaign the National Electoral Commission was not able to respond promptly to electoral committees' requests concerning improper contributions, which created confusion among donors and financial agents. Secondly, as the new regulations came into force relatively late, so did the description of how the election report should be written (published by the Ministry of Finance). In fact, the ordinance of the Finance Minister, containing a description of the financial report form, was issued as late as August (month before the Election Day); the rules of the game were set after it had already begun.

²⁹ Interviews with the senior auditor working with political parties, Warsaw June 2002.

Furthermore, regulations about disclosure and reporting were not described in one place; rather, they were scattered across a number of legislative acts. Different reporting obligations existed and reports were not assembled in a single document. Thus, the outside observer did not have a full access to information as money transfers between campaign and party coffers often went unnoticed. Party annual reports were not only **published separately** from campaign reports, they were **published only after significant delay**. As a result, reports did not produce a complete picture covering all levels of a party's organization (national and local) and its activity (campaign and routine).

The role of State Treasury - limiting the amount of public funding

After the 2001 Parliamentary Elections, as a consequence of the National Electoral Commission ruling, certain committees were forced to return those illegally received sums to the state treasury. In addition, the League of Polish Families' subsidy decreased from about PLN 6.7 million (US \$1.675 million) to around 5.8 million (US \$1.45 million), and the party's matching funds amounted to PLN 125,000 (US \$31,250) rather than PLN 500,000 (US \$125,000). Similarly, the Self-Defence Party lost part of its matching funds and a portion of its subsidy.

Funding for administration and enforcement

In terms of its financial independence, the NEC is relatively well protected. Its budget is prepared by the organization and is presented to and approved by the Parliament. The government does not have to be consulted on this process and even the Supreme Audit Office, in general, can not control the Commission's budget and its finances.

The NEC received in the 2002 fiscal year (FY) appropriation of PLN 40,801,000 (\$10,500,000). The NEC has a total staff of 38 people and 6 people assigned specifically to the political party finance unit. According to the rough estimates the unit's annual budget amounts to no more than 1,000,000 PLN (\$250,000). The funding of the political party finance monitoring unit seems to be very modest in comparison with the total subsidy paid by the state budget, as a result of the recently introduced political finance reform, to all the

parties. During a four-year term of the parliament, this subsidy would amount to 301,916,374 PLN (US \$75,479,093). Thus, as system of considerable public funding has been introduced without securing necessary resources for a proper public control.

As described earlier, the National Electoral Commission of Poland has to transfer on the one hand every investigation and criminal prosecution to the Ministry of Justice and on the other administrative sanctions to the Ministry of Finance. In both cases the NEC, the Ministry of Finance and the Ministry of Justice do not have any memorandum of understanding. Certainly, the weakness that undermines the working of a more effective political party finance system is the lack of fully independent enforcement mechanisms, like the police and the Ministry of Justice. According to one of the respondents, „Prosecutors are working under political pressure. The effectiveness and independence of the prosecutor’s office is limited as long as the General Prosecutor is a member of the Cabinet.”³⁰ This problem is very similar to that of the American enforcement, described by Adamany and Agree:

The overall enforcement mechanisms had serious shortcomings, including the role of the Justice Department. Recent attorneys general not only have been partisan appointees of the presidents, they have also been chief political officers. Under such leadership the Justice Department is unlikely to be considered neutral in enforcing electoral laws. In campaign finance cases less visible than Watergate, where media and political pressures are not so intense, the discretion and potential partisanship of the Department of Justice is almost unlimited. That fewer than a dozen non-Watergate prosecutions have followed the supervisory officers’ certification of more than 10,000 apparent violations may be taken as an indication that the Justice Department is, at the very least, an unenthusiastic agent of enforcement.³¹

³⁰ Interview with the representative of the Ministry of Justice, Warsaw June 2002.

³¹ Adamany and Agree (1975), p. 100.

Moreover, there is another fundamental question - how can we have an independent process if the independent body (PFR) is excluded and the political body (e.g. the Ministry of Justice) takes over?

Evaluating the 1993-2001 cases, suggests that the main reasons why the control system failed were that enforcement of legislation was weak and that police and prosecution authors did not co-operate with the National Electoral Commission. According to leading anti-corruption MP, Ludwik Dorn, „The condition of state apparatus, and particularly of the police, poses a significant barrier against anti-corruption reform of political finance, not at the stage at which the law is made, but at its implementation and enforcement.”³² Even when reporting requirements were not enforced, this was never an issue for political debate.³³

General comments about the effectiveness of political party finance enforcement

1. More effective enforcement results comes more from higher financial fines and from **the possibility of limiting the amount of public funding** rather than from severe criminal penalties; in fact, as some experts argue, „Some of the penalties are too severe for the present circumstances and might discourage enforcement.”³⁴
2. The difficulty of using criminal sanctions effectively also follows from the fact that a large number of **prosecutors are**

³² Dorn (2000), p. 168.

³³ Leading American researchers describing the pre-Watergate political finance system concluded, 'The tacit understanding of politicians was that no one would kick open the lid of the Pandora's box of financing practices. Individuals and groups were discouraged by the long, tedious, and costly litigation necessary for enforcement. And prosecution often appeared useless because in reality it seldom could be concluded in time to affect the election in which the alleged violations occurred.' See Adamany and Agree (1975), p. 86. See also Ewing (1992), p. 40.

³⁴ Interview with representatives of the National Electoral Commission, Warsaw June 2002.

reluctant to regard many of the political party finance offences as being suitable for criminal law.³⁵

3. The **growing role of the courts** - Poland provides a variety of examples of the ways in which courts are influencing the development and application of political finance regulations.
4. **Independent audit** - the cost of independent auditors can consume a substantial part of inadequate resources devoted to enforcement. Professional auditors are usually offering a relatively expensive service. The case of Poland raises the issue of compulsory audit. Should the EMB conduct audits with all the political parties and independent candidates or only if they spend more than certain amount of money (like in the case of companies)? We believe the political finance regulator needs the statutory authority to conduct random audits whenever necessary. The audit procedure can ensure that „a minimum professional standard is applied when political parties 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.”³⁶ Moreover, the interviews conducted after the 2001 Elections in Poland showed that: „Some auditors were not always prepared to perform their functions properly as they did not read the regulations carefully”³⁷. In addition, the auditors were not given access to all the committee’s documents within a reasonable time frame (they had less than a month) and were not always given the information or necessary explanations.³⁸

³⁵ Interview with representatives of the Ministry of Justice, Warsaw June 2002.

³⁶ Nassmacher (2001), p. 29.

³⁷ Interview with the representative of the Auditor’s Association, Warsaw June 2002. The need for organizing future trainings/ consultations for auditors was also emphasized during the interview. It was suggested that the National Council of Auditors, together with the National Electoral Commission, should provide representatives with expertise, essential for professional audit.

³⁸ In one case, it was said that politicians had exerted “pressure” on the auditor.

5. Discussions about the supervision and enforcement of political finance regulations often focused on the question as to **where such responsibilities should be placed**. Alternatives have been suggested for political party finance controls; these included such bodies as: the Supreme Control Office (NIK), the Ministry of Justice, and the General Financial Inspector³⁹. The Supreme Control Office was recommended as a non-partisan, independent body, yet its representatives were very reluctant to consider putting it forward as the body is in charge of financial control, arguing that: „we are not supporters of this as a solution. The NIK already has a lot of work to do and many other responsibilities. There is much to be controlled in Poland (...). Additional tasks would overload the Office. (...) It is obvious that such control could only further accusations that the Office is partisan.”⁴⁰

Not surprisingly, over a decade after the NEC became the main Political Finance Regulator, there are still critical voices inside its leadership arguing that there should be a different body dealing with political party finance. There are at least three reasons for that:

- The EMBs are usually worried with technical organization of elections and they do not always perceive political party finance as an election related issue;
- In Poland, control and enforcement of political party finance regulations, if done properly, in most cases would lead to confrontation with political parties and candidates. Polish system does not promote voluntary compliance - the NEC is only now slowly beginning with information and assistance.
- The NEC does not have the necessary financial and technical resources, or human capacity to train individuals and educate the parties on how to obey the rules.

There is a fundamental question - is the system of control as strong as the sanctions introduced by the legislation? The Polish case shows

³⁹ See *Gazeta Wyborcza*, 'Ucieczka od przekupstwa', 08.12.1999.

⁴⁰ *Życie Warszawy*, 'Partia poza kontrolą - wywiad z rzecznikiem prasowym NIK', 08.12.1999.

that severe sanctions can weaken the ability of the system to meet its objectives and can undermine the dialogue between the PFR and the political parties. The Polish case contradicts the rule that **prevention is better than prosecution**.

7. Public scrutiny of political party funding in Poland

The ability of the public to scrutinize the political party funding system is an extremely important element of its functioning. The media and non-governmental organizations play a very significant role in this area: they ensure an objective and constructive assessment of the system and an effective reaction towards its deficiencies.

The Institute of Public Affairs is an independent non-governmental institution concerned with political funding issues in Poland. It studies them since 1997 and thus greatly contributes to practically oriented debates on the need to reform the terms of political parties and election funding. Among other initiatives, the Institute organized in 1997 a large conferences devoted entirely to that topic: *Funding of the political parties: how it is done now and how it should be done* and *Funding political parties in Poland* in 1999, the conclusions of which exerted a great deal of influence on the new model of State funding of political parties adopted in 2001.

In 2001 and 2002, the Institute of Public Affairs conducted a project entitled *Legal regulations of funding political parties and preventing conflict of interest*, in which Poland, Ukraine and the United Kingdom exchanged their experience in funding political parties and preventing conflict of interest. The project was headed by an expert - Dr. Marcin Walecki. It compared British model with solutions adopted in the field of political funding by post-communist countries. Next to theoretical considerations, the project included an analysis of the practical application of these regulations and their impact on individual elements of the political system. It also involved workshops and two large conferences conducted in Warsaw and Kiev (Ukraine). Project

findings were published in the book *Behind the scenes of funding politics*, published in Polish and Ukrainian.

In 2002 and 2003, the Institute ran a project entitled *Assessment of the political party funding reform in Poland in 1999-2002*. It focused on a comprehensive study of the Polish political party funding system and its assessment, particularly in the context of preventing corruption in public life. The project was headed by Prof. Stanisław Gebethner and Dr. Marcin Walecki. Studies carried out within its framework involved an analysis of the current legislation and several dozen in-depth interviews conducted by experts with politicians, individuals responsible for party finances, National Electoral Commission and NGO representatives, and journalists. Their conclusions were published in a report which contained a series of recommendations and suggestions regarding new systemic solutions.

Another important achievement of the Institute of Public Affairs consisted in initiating amendments at the level of the local elections' funding principles. Legal regulations that governed these issues in the past were largely incoherent and contained many loopholes, thus giving room for serious abuses in accounting for election campaign spending. Institute experts prepared a report proposing a comprehensive amendment of the defective legislation. The report was presented at a press conference and met with a great deal of media interest. It also reached parliamentarians, who recognized the extraordinary significance of the suggestions presented by the Institute and quickly introduced an amendment to the legislation, which included most of the recommendations provided in the report. No other NGO has been as successful to date in contributing to the transparency of political funding in Poland.

There are other non-governmental organizations in Poland besides the Institute of Public Affairs that are concerned with the issue of funding political parties and election campaigns. Studies in this area, aimed at preparing a set of recommendations and legislative amendment proposals, are currently conducted by experts from Instytut Sobieskiego in collaboration with a few other organizations (such as Fundacja Odpowiedzialność Obywatelska).

It is a noteworthy fact that the activities described above are only transitory, aimed mainly at a theoretical assessment of the entire

political party funding system and elaboration of indispensable legislative changes. Indeed, Polish NGOs are not engaged in a permanent monitoring of actual revenues and expenditures of political parties, or in comparing the outcome of such monitoring against party annual reports and information filed with the National Electoral Commission. The Polish section of Transparency International attempted in 2002 an analysis of these reports at the source, i.e. in the National Electoral Commission (but the analysis only covered the parliamentary election campaign of 2001). This research brought to light the gamut of procedural and technical difficulties that non-governmental organizations face when trying to access full documentation kept by the National Electoral Commission. Researchers pointed out various hindrances associated with inaccessibility to full documentation provided by election committees, ban on copying available documents and necessity to view them only within the premises of the National Electoral Commission.

In 2005, the Stefan Batory Foundation and the Institute of Public Affairs began for the first time in Poland a large-scale comprehensive campaign of monitoring expenditures incurred by election committees backing candidates in the presidential election. It will be conducted at two levels, central and local, and will use groups of volunteers and local NGOs tasked with monitoring election committee expenditures "in the field". Their observations will be subsequently compared against reports filed by election committees with the National Electoral Commission. The project will be completed with publication of a report in spring 2006. It is likely that this undertaking will largely open the way to similar future actions aimed at ensuring an effective and permanent monitoring of political party funding.

The task of scrutinizing political party funding in Poland is supported by the media. In the past few years, there have been dozens thematic articles published in the largest national periodicals and programs broadcasted by public and commercial television channels. However, the extent of media interest in political party funding issues fluctuates greatly. It reached a peak in 2001 and 2002 when the new law on State funding of political parties was enacted. There is no doubt that the increased media interest at that time was caused by the novelty of the issue, because interest in annual reports and information filed by political parties in subsequent years was only moderate. Noteworthy news came public only when the National

Electoral Commission rejected a report or information filed by a party and as a result decided to deprive it of State funding. Sometimes journalists are interested in a party having been crossed off the register as a penalty for failing to file a report on time (as in the case of the party founded by former Polish President Lech Wałęsa).

Next to purely informative publications, the media occasionally produces investigative reports showing the pathology of the political party funding system. Some reporters specialize in this area: they focus on particular party account settlements and as a result often disclose major embezzlements and fraud. Similarly to NGOs, reporters complain about the difficult access to materials kept by the National Electoral Commission, which they try to overcome with a varied rate of success. Investigative reporting is characterized by a relatively high level of substance and reliability, which cannot be said for other types of media items based on a rather superficial familiarity with the rules of political party funding and on hearsay. Tabloids in particular very often formulate catchy but groundless and superficial charges against the principle of State funding of political parties. Consequently, it is justified to say that the media play an ambiguous role by assisting in scrutiny of party funding on one hand and replicating untrue opinions on the other.

The presumed unbiased nature of the media is a very important issue in the political party funding field. Unfortunately, one must agree with the opinion that some members of the Polish media "specialize" in describing the funding mechanism operating in selected political parties while ignoring signals of irregularities present in others. There is no doubt that such conduct is reprehensible, but it is also difficult to prove it and censure it. Major reservations can be expressed especially with respect to the neutrality of materials produced by local media, which are still quite susceptible to political influence.

To sum it up, NGO and media scrutiny of the functioning of the political party funding system in Poland can be classified in two categories. The first category covers research characterized by a large amount of theoretical rumination over the political party funding system as a whole, comparisons with other European and foreign systems, and an attempt to work out recommendations of legislative amendments. This is typical of projects executed by the

Institute of Public Affairs rare articles written by experts and published mainly in specialized periodicals such as *Przegląd Sejmowy* (Lower House Review). The other category of research focuses on direct scrutiny of political party funding and covers comparisons between comparing the actual cash flow and amounts declared in reports filed with the State Electoral Commission. This is done by investigative reporters and, to a limited extent, by a few non-governmental organizations.

In an ideal model of public political-party funding scrutiny, both categories should complement each other and present a full picture of the issue to the population. In practical terms, scrutiny of political party funding carried out by NGOs and journalists in Poland is inadequate, as reflected in the fragmentary nature of relevant theoretical research. The law must be changed to ensure a broad access to documentation kept by the National Electoral Commission. There is merit to the suggestion that it should be made available on the internet for everyone who is interested to see.

8. List of abbreviations

AWSP	Self-Defense Party and the Solidarity Electoral Action of the Right
FY	Fiscal year
IPA	Institute for Public Affairs
LPR	League of Polish Families
NIK	Supreme Control Office
NGO	Non-governmental Organization
NEC (PKW)	National Electoral Commission
PFR	Independent body of control
PIS	Law and Justice Party
PLN	Polish Zloty
PO	Citizens' Platform
PSL	Polish Peasant Party
SLD - UP	Democratic Left Alliance - Labor Union coalition
USD	US Dollars
UW	Freedom Union

9. Annexes

The act of 27th June 1997 on political parties⁴¹

Dziennik Ustaw of the Republic of Poland No. 98, item 604 (unified text: Dziennik Ustaw of 2001, No. 79, item 857) amended: Dziennik Ustaw of 2001, No. 154, item 1802; of 2002, No. 127, item 1089; of 2003, No 57, item 507 and of 2004, No. 25, item 219).

Chapter 1 **General provisions**

Article 1. 1. A political party shall be a voluntary organization acting under a definite name, whose aim is to participate in public life through exerting, by democratic means, an influence on creating of the State policy or to exercise public power.

2. The political party may enjoy the rights coming out of acts of law if it has got an entry to the evidence of political parties.

Article 2. 1. Citizens of the Republic of Poland who have reached the age of 18 years may join a political party as its members.

2. The ban on belonging to political parties may be determined by separate acts of law.

Article 3. A political party shall found its activities upon the social work of their members; a political party may engage employers to settle its business.

Article 4. Organs of public authorities shall be obliged to deal with political parties on a basis of equality.

Article 5. Political parties shall have an access to public radio and television channels on the basis of separate acts of law.

⁴¹ Unofficial translation.

Article 6. Political parties shall not realize any duties, reserved by law to the organs of public authorities nor supersede those organs in realization of their duties.

Article 7. A political party may not organize or posses any units on the terrain of workshops.

Chapter 2.

Structure of political parties and principles of their activity

Article 8. Political parties shall create their structures and basic activities in accordance to democracy objectives, especially they have to ensure openness of structures, party organs have to be formed in elections and their resolutions have to be adopted by majority of the votes cast by its members.

Article 9. 1. The charter of a political party have to determine its aims, structure and principles of activity, especially:

1. Name or short name and address of party's headquarters;
2. Way to acquire and to loose the membership;
3. Rights and duties of the members;
4. Political party's organs, especially organs which represent political party outside and entitled to undertake financial obligations, their competencies as well as the time of duration of their office;
5. System of elections of political party's organs and system of filling vacancies in those organs;
6. Method of contracting financial obligations and collecting financial means as well as the manners of creation and acceptance of a report concerning financial activities of a political party;
7. Methods of creation and liquidation of territorial units of a political party;

8. Methods of introducing changes to the political party's charter;
 9. Methods of dissolution of a political party as well as the way of joining another political party or parties.
2. The charter of a political party shall be resolved by general assembly of political party members or a meeting of representatives, elected according to democratic rules.

Article 10. The member of a political party shall have the right to withdrawal.

Chapter 3

Register of political parties

Article 11. 1. Political party may apply for inclusion in the register of political parties, later called "register", maintained by the District Court in Warsaw, later called "Court".

2. An application must give the name, short name and description of the address of party's headquarters, as well as the names, surnames and addresses of persons, being members of organs entitled in the political party's charter to represent the party outside and to undertake financial obligations. The application may also give a graphic symbol of an emblem used by the political party.

3. The application must include:

- 1) A charter of political party;
- 2) A list containing names, surnames, home addresses, identity card (PESEL) numbers and at least 1,000 signatures of citizens of the Republic of Poland, who have reached the age of 18 years, and are legally qualified; each page of the list must be unnoted by the name of the political party that apply for inclusion into register.

4. The provisions of the Act of 5th July 1990 - on meetings (Dziennik Ustaw No. 51, item 297) shall apply to the collection of signatures, referred to in paragraph 3 above.

5. The name, short name and emblem of a political party should not to be confused with names, shortened names and emblems of already existing parties.

6. The application shall be made by 3 persons out of persons, referred to in paragraph 2, who shall take responsibility and certify the data included in it.

Article 12. 1. The court shall include, with no delay, a political party in an entry in the register if an application has been made pursuant to the binding law.

2. The "entry" means also an alteration and removing registration.

3. The court hearings concerning an entry in the register shall be examined in non-litigious proceedings; the court may determine the date of the hearing.

4. The court shall give opinion thereon in the form of a decision.

5. A protest may be lodged in the case of an entry in the register, unless the provisions of this Act determine differently.

Article 13. 1. Where the application made for inclusion in the register of political parties has violated the provisions of Article 11, paragraphs 2 - 6. the court shall call the submitters of an application to delete the defects found, in a granted time-limit, in 3 months at the latest.

2. In the event such defects has not been removed within the time limit and pursuant to the directions of the court, the court, in a decision, shall refuse the entry of a political party in the register.

3. An appeal against the decision of the court may be submitted within 14 days following its delivery or announcement on an open hearing.

Article 14. 1 Are there any doubts as to the compatibility with the Constitution of the tasks or methods of activities of a political party, described in its charter, pursuant to the Article 9, paragraph 1, or in the party's program, the court shall suspend the prosecution, referred to in Article 12, and shall submit to the Constitutional Tribunal a

motion to examine the compatibility of the aims of the political party with the Constitution.

2. There shall be no legal recourse against the decision of the Constitutional Tribunal, referred to in paragraph 1.

3. If the Constitutional Tribunal shall decide the discrepancy of party's aims with the Constitution, the court shall refuse the entry of political party in the register.

4. There shall be no legal recourse against the decision of the court, referred to in paragraph 3.

Article 15. The final decision of the court concerning the entry in the register shall be published, cost free, in "Monitor Sądowy i Gospodarczy" and shall be delivered to the National Electoral Commission.

Article 16. The political party shall acquire legal capacity on confirmation of the registration.

Article 17. The name, short name and emblem of a political party inserted in an application made pursuant to Article 11, shall acquire legal protection provided for personal property.

Article 18. 1. The register, along with charters of political parties shall be open to inspection.

2. Anyone shall be allowed to obtain, from the court, of the certified copies of the register and of excerpts from the registers and charters of political parties.

3. Copies and excerpts shall be paid for.

4. Revenues coming derived from payments, referred to in paragraph 3, shall be provided for current expenses of the court and for capital expenditures.

Article 19. 1. Political party shall be obliged to notify the court on:

1. Amendments in the party's charter;

2. Changes of the party's headquarter address;
3. Changes in the composition of organs empowered to represent political party outside and to contract financial obligations.

2. Political party shall notify immediately the court on changes, referred to in paragraph 1, no later than 14 days following the day of introducing such changes.

Article 20. 1. If a political party fails to realize duties, referred to in paragraph 19, the court shall call the respective organ of the political party to submit explanations or to fill up any deficient data in a time limit established by the court, no shorter than 3 months. If there are any doubts, the court shall examine the correctness of the method of election of the party organs as well as the course of completion of the composition of the organs, referred to in Article 9, paragraph 1, subparagraph 5.

2. The court shall remove a party's entry from the register if it lapses to realize the court's decision in the assigned time.

Article 21. 1. If a political party makes amendments to the charter that do not comply with provisions of Article 8, the court may enter a motion with the Constitutional Tribunal to examine the correspondence with the Constitution of the aims or methods of activities of such political party.

2. The provisions of Article 14, paragraph 2 - 4 shall apply.

Article 22. The provisions of the Code of Civil procedure on non-litigious proceedings and provisions of this Act shall apply to the cases on entry of a political party to the register, and the cassation may be applied only in decisions on entry or removal from the register made by the court of second instance.

Article 23. The Minister of Justice shall determine, in an order:

1. The specimen and methods of maintenance of the evidence of political parties and shall specify the rules of providing copies or any parts of it, as referred to in Article 18;

2. The fee prescribed in an agreement with the Minister of Finance as well as condition of immunities from fees due for copies and excerpts made by the court that maintains the evidence.

Chapter 4

Finances and financing of political parties

Article 23a. The sources of a political party finance are public.

Article 24. 1. The funds of a political party arise from membership fees, donations, and legacies, endowments, interest on funds, as well as allowances and subventions described by acts of law.

2. The funds of a political party may be used for statutory or charitable purposes only.

3. A political party is prohibited from engaging in any economic activities.

4. A political party is allowed to draw income from its funds that arise exclusively from:

1. An interest on investments and funds deposited in bank accounts;
2. Trading of State Treasury obligations and of Treasury bills;
3. Sale of any assets belonging to the political party;
4. Activities, referred to in Article 27.

5. A political party may hand over its property and premises for exclusive use as offices for deputies, senators, and councilors of a commune, a county or a voivodeship (*province*).

6. A political party may not organise public collections.

7. A political party may contract loans for statutory purposes.

8. A political party may accrue its financial resources only in bank accounts, with reservation to Article 26a.

Article 25. 1. A political party may collect financial resources exclusively from individuals, with regard to the provisions of paragraph 2 below, and Article 24, paragraph 4 and 7, and Article 28, paragraph 1, and to the provisions of Acts relating to elections to the Sejm and to the Senate of the Republic of Poland and also to the European Parliament, regarding subject allocations.

2. A political party may not receive any financial resources from:

- 1) Individuals with no place of residence on the territory of the Republic of Poland, excluding citizens of Poland living abroad;
- 2) Foreign nationals resident on the territory of the Republic of Poland.

3. The provisions of paragraphs 1 and 2 shall apply to non-cash values.

4. Total value of contributions made by an individual to a political party, excluding membership fees which do not exceed in the year a minimum monthly wage of a worker, established according to separate provisions, acting on the day preceding transfer, and contributions transferred to the Election Campaign Fund of a political party, may not, in a year, exceed 15-times the minimum monthly wage of a worker, established according to separate provisions, acting on the day preceding transfer.

5. A single transfer that exceeds the minimum monthly wage of a worker, established according to separate provisions, may be paid to a political party by cheque, bank transfer or bank card only.

Article 26a. The obligation of collecting financial resources on bank accounts shall not apply to values of membership fees, that does not exceed in the year, for one member of a political party, a minimum monthly wage of a worker, established according to separate provisions on the day preceding transfer, which have been left in territorial units of a political party - to cover their current activities.

Article 27. Such activities as: sale of statutes and party programs or small items symbolizing political party, or publications informing of its aims and activities, petty paid services for third parties using a party's

office fittings - do not constitute economic activity within the meaning of separate Acts of law.

Article 28. 1. A political party which:

- 1) Forms its own election committee in elections to the Sejm and has gained in that elections at least three (3) per cent of valid votes given for its constituency lists of candidates for deputies;
or;
- 2) Is a member of an election committee in elections to the Sejm and such committee has gained in that elections at least six (6) per cent of valid votes given for its constituency lists of candidates-shall have the right to receive, during the term of office of the Sejm, a subvention for its statutory activities paid by the State budget, later called "a subvention", in the manner and on the basis described by this Act.

2. The subvention vested in an election coalition of political parties shall be divided among the parties that are members of such coalition, in proportions determined in the coalition agreement concluded. The agreed proportions shall not be changed.

3. An agreement establishing an election coalition have to be submitted to the National Electoral Commission for registration, under penalty of invalidation.

4. If political parties, which created an election coalition, have not determined the proportions, referred to paragraph 2 above, in the agreement on establishment of the coalition, they are not entitled to the above subvention.

5. In the event of dissolution of an election coalition after the right to subvention has been vested, the political parties of such a coalition shall retain their right to subvention in proportions determined in the agreement on creation of the election coalition.

6. The right to obtain a subvention, referred to in paragraph 1, shall enter into force on the 1st January of the year following the election year. The subvention shall be paid up to the end of the year, in which the next elections is held, with reservation to Article 32.

Article 29. 1. The amount of yearly subvention, referred to in Article 28 vested to given political party or an election coalition shall be determined pursuant to the principle of gradual reduction, in proportion to the quota of valid votes gained by constituency lists of candidates for deputies of that political party or election coalition.

The subvention shall be determined respectively for each of intervals, determined by percent, and summed up, pursuant to the Formula:

$$S = W1 \times M1 + W2 \times M2 + W3 \times Ms + W4 \times M4 + W5 \times M5$$

Where:

S = the amount of the yearly subvention

W1-5 = the number of valid votes, established separately for each line of the table shown below, as a result of dividing of the total amount of valid votes gained in the whole country by constituency lists of candidates for deputies of given political party or an election coalition, respectively to the interval, determined by percent;

M1-5 = the amount valued in PLN given for consecutive lines of the table:

Line	Valid votes gained in the whole country by constituency lists of candidates for deputies of a given political party or an election coalition, divided respectively into each interval		Amount (M) in PLN
	Percent (%)	Number of votes (W)	
1	to 5%		10
2	above 5% to 10%		8
3	above 10% to 20%		7
4	above 20% to 30%		4
5	above 30%		1.50

2. The amount of yearly subvention shall be established pursuant to the provisions of the paragraph 1 above and of Article 28, and shall be paid to a given political party each year, during the term of office of the Sejm, in four equal quarterly installments, with reservation to Article 32.

3. The basis for payment of subvention creates "a motion for payment of the subvention in a given year", submitted no later than 31 March each year by an organ of a political party that is authorized to represent a party in its external contacts. The motion shall be drawn up on an official form and confirmed by the National Electoral Commission as to the possessed rights and the amount of the subvention.

4. The financial resources of the subvention shall be deposited in a separate bank sub-account of the political party. The transfer of the subvention to the bank account indicated by the political party shall be realized by the Minister responsible for public finance.

5. The first installment of subvention due to a political party in the year of elections to the Sejm shall be paid no later than on 30 day following the publication in the Official Gazette of the Republic of Poland "Monitor Polski" of an information of the National Electoral Commission on accepted and rejected election reports submitted by election committees.

6. The Minister responsible for public finance, in a directive, shall raise the value of the subvention mentioned in paragraph 1 above in an amount equal to the index of price increases if the index of prices of consumer goods and services rises above five (5) per cent.

7. The index, referred to in paragraph 6, shall be fixed by the Central Statistical Office and published as a communiqué of the President of the Office, in the Official Gazette of the Republic of Poland "Monitor Polski", no later than the 20th day of the first month of a quarter of the year.

Article 30. 1. A political party shall create an Expert Fund.

2. Financial resources collected in the Expert Fund may be derived solely from payments from their own party.

3. A political party that receives subvention shall transfer from five per cent to fifteen per cent of the subvention to the Expert Fund.

4. Financial resources collected in the Expert Fund may be used to finance expertise in the field of law, politics, sociology, social-economic matters, as well as for financing education publications connected with the statutory activity of the political party.

5. The financial resources of the Expert Fund shall accrue in a bank in a separate sub-account of the political party.

Article 31. 1. In event of a merger of a political party with another party or parties the subvention referred to in Article 28 above shall be granted to the new political party in an amount equal to the subventions for the parties that are merging.

2. The subvention shall be paid on the basis of a request, submitted by the proper body of the new political party, beginning from the month in which the Court registered it.

3. In the case referred to in Article 45 the subvention granted to such a political party shall not be paid, beginning from the month following the month of dissolution or decision of the Court on the liquidation of such party.

Article 32. If the term of office of the Sejm is shortened, the rights to the subvention granted to political parties shall expire at the end of the quarter of the year in which the term of office of the Sejm expires.

Article 33. 1. The expenses connected with subvention shall be covered by the State budget's section on the Budget, public finances and financial institutions.

2. The Minister responsible for public finance shall, by order:

- 1) Specify the method of submission of the request referred to in Article 29, paragraph 3, as well as detailed rules for transferring the subvention;

- 2) Determine a specimen of the form of the request referred to in Article 29, paragraph 3, after seeking the opinion of the National Electoral Commission.

Article 34. 1. Political parties shall prepare a yearly financial statement of the subvention received and the expenditures covered by this subvention, later called "information".

2. Political parties shall submit information covering a calendar year no later than 31 March of the following year.

3. The Minister responsible for public finances, after seeking an opinion of the National Electoral Commission, shall determine by order, a specimen, with necessary explanations, that enumerates detailed scope of the information to be included therein to enable especially the honest verification of all the data concerning the expenses covered by subvention, including expenses covered by Expert Fund.

4. The information shall be submitted together with the opinion and report of an auditor appointed by the National Electoral Commission. The National Electoral Office shall cover the cost of the preparation of the above opinion and report.

4a. The information shall be submitted in a written form as well as in a form of electronic document, made in database application programming language, described in an order, referred to in paragraph 3, by the Minister responsible for public finances.

5. The information shall be published by the National Electoral Commission in the Official Gazette of the Republic of Poland "Monitor Polski" within 14 days following its submission to the National Electoral Commission.

Article 34a. 1. The National Electoral Commission shall, within four (4) months following the day of submitting information:

- a. Accept the information with no reservation;

- b. Accept the information with reservations specified;
- c. Reject the information.

1a. The information is rejected, if it is found that the political party has spent resources of the subvention for purposes not connected with its statutory activity.

2. In the event of doubts concerning the accuracy of the information, the National Electoral Commission may ask the political party concerned to remove defects or submit explanation within a specified time limit.

3. In its examination of election reports, the National Electoral Commission may order to prepare opinions or expertise.

4. In its examination of election reports, the National Electoral Commission may request necessary assistance to be given by the State organs.

5. Within 14 days following the publication of the information referred to in Article 34, paragraph 5:

- 1) Political parties;
- 2) Associations and foundations which in their statutes include tasks connecting with the analysis of political party finance may submit to the National Electoral Commission their written reservations on committees' election information, specifying reasons.

6. The National Electoral Commission shall, within 60 days following the submission of the reservations referred in paragraph 5 above, respond in writing.

Article 34b. 1. In the event, the National Electoral Commission rejects the information submitted by a political party, within 7 days following the delivery of the decision rejecting a report, a complaint may be issued by a political party to the Supreme Court against the decision of the National Electoral Commission in that case.

2. The Supreme Court, by bench of 7 judges, shall examine the complaint. The complaint shall be examined pursuant to the provisions of the Code of Civil Procedure in a non - litigious procedure.

3. The Supreme Court shall examine the complaint and shall issue a ruling within 60 days following the delivery of a complaint. There shall be no legal recourse against the ruling of the Supreme Court.

4. If the Supreme Court upholds the complaint referred to in paragraph 1, the National Electoral Commission shall immediately issue a resolution accepting the information in question.

Article 34c. 1. A political party shall forfeit the right to subvention in the following year, if:

- 1) It does not submit the information within the time limit referred to in Article 34, paragraph 2; or
- 2) The information submitted is rejected by the National Electoral Commission; or
- 3) The Supreme Court has decided to reject the complaint referred to in Article 34b, paragraph 1.

2. The forfeiture of the right to subvention by a political party shall have an effect in the calendar year following the year, in which occurs the fact, referred to in paragraph 1.

Article 35. 1. A political party shall create a permanent Election Fund to finance the participation of such political party in elections to the Sejm, Senate, to the office of the President of the Republic of Poland as well as in local elections.

2. The expenditures of a political party connected with the tasks referred to in paragraph 1 shall be covered, from the day that begins election campaign, exclusively by the Election Fund. To this effect, the financial resources shall be transferred to the separate bank account of a respective election committee or referendum committee.

3. A political party shall notify the National Electoral Commission on the establishment or liquidation of the Election Fund.

4. An Election Fund shall bear the name: "The Election Fund of:(name of the political party)".

Article 35a. 1. The financial agent realizes and is responsible for the administration of the Election Fund.

2. The following person shall not be a financial agent:

- 1) A candidate for: the office of the President of the Republic of Poland, a deputy or a councilor;
- 2) A public functionary, within the meaning of Article 115 paragraph 13 of the Criminal Code.

3. A person may be a financial agent of one Election Fund only.

Article 36. 1. Financial resources collected for the Election Fund may be derived from transfers of political party's own resources, donations, legacies, and instruments of donations.

2. Financial resources of the Election Fund shall be deposited in a separate bank account.

Article 36a. 1. Total amount of the sum contributed by an individual for one election committee of a coalition or an election committee of electors cannot exceed 15-times the minimum monthly wage of a worker, established according to separate provisions, acting on the day preceding the day of the announcement of elections.

2. If in a given year more than one election or national referendum is held, the total amount of contributions for the Election Fund referred to in paragraph 1 shall be increased up to 25-times the minimum monthly wage of a worker, established according to separate provisions, acting on the day preceding the day of payment. The provision of the first sentence does not apply to by-elections to the Senate or generally to by-elections, re-elections or premature elections, or to new elections to the organs of the legislatures of territorial self-government units, held during the term of office.

3. The contribution shall be made by check, bank transfer, or credit card only.

Article 37. Financial resources of the Election Fund of a political party:

1. In the event of a merger with another party or parties, shall be transferred to the Election Fund of the new party;
2. In the event of the division of a party, shall be transferred to the newly created parties in equal parts, unless the dividing parties fix another proportion;
3. In the event of dissolution of a party, its financial resources shall be transferred to a charitable institution.

Article 37a. All appeals and written information submitted by a political party to gain financial means:

- a. For elections - shall bear an information of the provisions of Article 25, Article 36a, Article 49c, paragraph 3 and Article 49g, paragraph 2 - in full extent;
- b. For referendum - shall bear information of the provisions of Article 25, and Article 49g, paragraph 3 - in full extent.

Article 38. 1. No later than 31 March each year, a political party must submit to the National Electoral Commission a report, later called "report", covering the sources of financial funds gained, including bank loans and specification of conditions set forth, and on expenditures paid from the Election Fund in the previous calendar year.

2. The Minister responsible for public finance, after seeking an opinion of the National Electoral Commission, shall specify, in a decision, the form of the report as well as necessary explanations concerning its preparation and a list of documents annexed. The form shall describe, in particular, the method of separately accounting the resources of the Election Fund of a political party.

3. An opinion and an auditor's report on funds raised by an Election Fund of a political party shall be annexed to the report. The National Electoral Commission shall appoint the competent auditor and the

National Electoral Office is obliged to cover the cost of preparing of such opinion and report.

3a. The report shall be submitted in a written form as well as in a form of electronic document, made in database application programming language, described in a decision, referred to in paragraph 2, by the Minister responsible for public finances.

4. The report, together with an opinion, shall be published by the National Electoral Commission in the Official Gazette of the Republic of Poland "Monitor Polski" within 14 days following its submission to the National Electoral Commission.

Article 38a. 1. The National Electoral Commission shall, within four (4) months following the day of submitting a report:

- a. Accept the report with no reservation;
- b. Accept the report with reservations specified;
- c. Reject the report.

The provisions of Article 34a, paragraphs 2 to 6 shall apply respectively.

2. The report shall be rejected, if it is found that:

- 1) The political party has conducted business activity;
- 2) The political party has organized public collections;
- 3) Financial resources of a political party has been deposited apart from the bank account in violation of the provisions of Article 28, paragraph 8;
- 4) Financial resources of the party has been received from individuals, referred to in Article 25, paragraph 2, or from other illicit sources;
- 5) Financial resources of a party has been collected or spent for election campaigns apart from Election Fund;

- 6) Financial resources of an Election Fund have been deposited apart from separate bank account, with violation of Article 36, paragraph 3.

Article 38b. In the event that the National Electoral Commission shall reject the report, a political party may lodge, within seven (7) days following delivery of the decision rejecting the report, a complaint to the Supreme Court against that decision. The provisions of Article 34b, paragraph 2-4 shall apply accordingly.

Article 38c. 1. In the event that the report is not provided within the time limit referred to in Article 38, paragraph 1, the National Electoral Commission shall notify the Court of its motion to remove that political party from the register.

2. The Court after hearing the case, referred to in paragraph 1 above, shall decide whether to remove the political party from the register.

Article 38d. If the National Electoral Commission rejects a report or - if the appeal against a decision to reject report is refused by the Supreme Court - the political party is deprived of the rights to obtain subvention for the next three years during which it has such entitlement. The beginning of that term starts from the quarter of the year following the quarter, in which the report was rejected, and if a complaint on decision on rejecting the report has been lodged, this term shall begin from the quarter of the year following the quarter, in which the Supreme Court has refused the above-mentioned complaint.

Article 39a. 1. Material benefits transferred or accepted by a political party or by an Election Fund in violation of the prohibitions referred to in Article 24, paragraphs 3, 6, and 8, Article 25, Article 36, paragraphs 1 and 3, or Article 36a - shall be forfeited to the State treasury.

2. Provisions of paragraph 1, shall not apply to the material benefits transferred to a political party or Election Fund with violation of his Act, if those benefits has not been accepted by a political party or has been returned to the donor within the latest term of 30 days following the day of transfer of such donation.

3. If, that benefit has been accepted, utilized or lost, its equivalent shall forfeit. The acceptance of material benefit in violation of the provisions of this Act shall be decided by the National Electoral Commission in a decision concerning the report on sources of financial funds gained, including bank loans and specification of conditions set forth and also on expenditures paid from the Election Fund in the previous year.

4. A political party may, within 60 days following the decision of the National Electoral Commission, referred to in paragraph 3, voluntarily transfer the material benefit, gained in violation of the law, to an account of a Finance Office (Branch Office of the Ministry of Finance), respective to its location. Political party shall submit to the National Electoral Commission the document confirming transfer of benefits to the State treasury.

5. In event, the material benefits have not been returned voluntarily to the State treasury within the time limit referred to in paragraph 4, the Minister responsible for public finances shall, on the motion of the National Electoral Commission, enter a request with the District Court in Warsaw to decide forfeit of material benefits.

6. The provisions of the Code of Civil Procedure shall apply to the forfeit of material benefits.

7. The State treasury shall be represented in court's proceedings and in execution of judgments by a Finance Office, respective to the location of a political party.

Article 40. The provisions on income tax shall apply to political party taxation.

Article 41. The Minister responsible for public finances shall, after seeking the opinion of the National Electoral Commission, shall determine by order, the rules on keeping financial records by a political party, especially records of receipts, disbursements, reckonings and property items as well as filling of financial reports, including evidence and clearance of public resources received.

Chapter 5

Proceedings in the cases of discrepancy in the aims or activities of a political party with the Constitution

Article 42. The hearings of cases of discrepancy in the aims or activities of a political party with the Constitution shall lay with the competence of the Constitutional Tribunal.

Article 43. The judicial proceedings at the Constitutional Tribunal in the cases, referred to in Article 42 determine an Act of 29th of April 1985, on the Constitutional Tribunal.

Article 44. 1. If the Constitutional Tribunal shall give opinion stating discrepancy of the aims and activities of a political party with the Constitution, the court shall immediately decide to remove the political party from the register.

2. The decision of the court, referred to in paragraph 1, is conclusive.

Chapter 6

Liquidation of a political party

Article 45. A political party shall go into liquidation in result of:

- 1) Dissolution on the basis of a resolution of the respective organ of the party;
- 2) Resolution of the court on removal of the party from the register out of reasons, referred to in Articles 20, 21, 39 and 44.

Article 46. 1. In the event, where the political party has been dissolved on the basis of its own resolution, the respective organ of a party shall immediately submit to the court the resolution on auto dissolution of the party and on nominating of the liquidator.

2. Where the party fails to nominate a liquidator, the liquidator shall be nominated by the court.

3. When the act of liquidation is finished, the court shall give a decision on removal of the political party from the register. The ruling of the court is conclusive.

Article 47. When the decision of the court, referred to in Article 45, paragraph 2, become valid, the court shall order the liquidation of a political party and shall nominate the liquidator of such party.

Article 48. The expenses connected with the act of liquidation shall be covered out of the property of the political party. If the property of a party covers a part of liabilities only, the State treasure shall cover the rest of those liabilities.

Article 49. In the cases of liquidation of a political party not settled in this Act, the provisions of Chapter 5 of the Act of 7th April 1989 on Associations (Dziennik Ustaw of 2001, No. 79, item 885) shall apply.

Chapter 6a

Punitive provisions

Article 49a. Any person who organizes public collections in violation of the interdicts referred to in Article 24, paragraph 6 shall be punished by a fine.

Article 49b. Any person who:

- 1) Acting on behalf of a political party hands over its property or premises for other purposes than for use as offices for deputies, senators, and counselors of a commune, a district or a voivodeship;
- 2) Violates the rules described in Article 24, paragraph 8, concerning methods of collecting financial resources of a political party,

shall be punished by a fine.

Article 49c. Any person who:

- 1) Provides funds of a political party for other purposes than determined by Article 24, paragraph 2;
- 2) Conducts economic activity on behalf of a political party in violation of Article 24, paragraph 3;

- 3) Transfers to a political party or receives on behalf of a political party financial resources or non-cash assets in violation of the interdicts referred to in Article 25,

shall be punished by a fine of between 1,000 and 100,000 PLN.

Article 49d. Any person who fails to realize or obstructs the performance and submission of the information referred to in Article 34, paragraph 1, or who gives untrue information in such a report - shall be punished by a fine, or limitation of liberty, or deprivation of liberty for up to 2 years.

Article 49e. Any person who provides financial resources accrued in the Election Fund for other purposes than determined by Article 35, paragraph 1 shall be punished by a fine of between 1,000 and 100,000 PLN.

Article 49f. Any person who:

- 1) Spends funds belonging to a political party for financing election campaigning apart from the Election Fund;
- 2) Fails to realize or obstructs the preparation or submission of the report referred to in Article 38 or who gives false information in such a report - shall be punished by a fine, or limitation of liberty, or deprivation of liberty for up to two years.

Article 49g. Any person who:

- 1) Violates the rules described in Article 36, paragraph 3, concerning methods of collecting the financial resources of an Election Fund,
- 2) Contribute funds to an Election Fund in an amount that exceeds the limitation specified in Article 36a, paragraphs 1 or 2;
- 3) Fails to specify in an agreement concluded on behalf of the Election Fund with the bank holding the account that contributions to the Election Fund may be realised pursuant to the rules specified in Article 36a, paragraph 3 - shall be punished by a fine.

Article 49h. The appropriate provisions on procedure in cases of misdemeanour shall apply to proceedings in the matters referred to in Articles 49b and 49g.

Chapter 7.

Amendments to the provisions in force

Article 50. In the Act of 6 June, 1972 on the constitution of army courts (Dziennik Ustaw No. 23, item 166, of 1989, of 1989, No. 73, item 436, Of 1991, No. 113, item 491, of 1995, No. 89, item 443 and of 1996, No. 7, item 44), in Article 20:

1). In paragraph 3 the second sentence shall be deleted;

2). The paragraph 4 shall be added as follows:

“§ 4. a judge who candidates to the mandate of a deputy or senator, an unpaid vacancies is given for the time limit of election agitation, and if he gets a mandate - for the time of fulfilling such an office.”

Article 51. In the Act of 16 September 1982 on the personnel of State offices (Dziennik Ustaw No. 31, item 214; of 19984 No. 35, item 187; of 1988 No 19, item 132; of 1989, No. 4, item 24, No. 34, item 178 and 182; of 190, No. 20, item 121; of 1991, No. 55, item 234, No. 88, item 400 and No. 95, item 425; of 1992, No. 54, item 254 and No. 90, item 451; of 1994, No. 136, item 704; of 1995, No. 132, item 640 and of 1996, No. 89, item 402 and No. 106, item 496) an Article 45¹ shall be added as follows:

Article 45¹. 1. State officials of Chancellery of Sejm, Chancellery of Senate, Chancellery of the President of the Republic of Poland and in the Office of the National Council of Radio and Television are prohibited to manifest openly their political believes.

2. The prohibition, referred to in paragraph 1, shall not obey workers, engaged on the basis of Article 47¹, paragraph 1 as well as persons holding managerial position in the Chancellery of the President of the Republic of Poland, specified in Article 2 of the Act of 31 July 1981 on salary of persons holding managerial position in State offices (Dziennik Ustaw No. 20, item 101; of 1982, No. 31, item 214; of 1985, No. 22, item 98 and No. 50, item 262; of 1987, No. 21, item

123; of 1989, No. 34, item 1788; of 1991, No. 100, item 443; of 1993, No. 1, item 1; of 1995, No 34, item 163 and No. 142, item 701; of 1996, No. 73, item 350, No. 89, item 402, No. 106, item 496 and No. 139, item 647 and of 1997, No. 75, item 469)".

Article 52. In the Act of 20 September 1984 on the Supreme Court (Dziennik Ustaw of 1994, No. 13, item 48; of 1995, No 34, item 163; of 1996, No. 77, item 367 and of 1997, No. 75, item 471) there shall be deleted second sentence in Article 38, paragraph 3.

Article 53. In the Act of 20 June 1985 - the law on the constitution of common courts (Dziennik Ustaw of 1994, No. 7, item 25, No. 77, item 355, No. 91, item 421 and No. 105, item 509; of 1995, No. 34, item 163 and No. 81, item 406; of 1996, No. &&, item 367 and of 1997, No. 75, item 247), in Article 64:

1) The paragraph 4 shall be added as follows:

"§ 4. a judge who candidates to the mandate of a deputy or senator, an unpaid vacancies is given for the time limit of election agitation, and if he gets a mandate - for the time of fulfilling such office."

Article 54. . In the Act of 20 June 1985 - the law on prosecutors (Dziennik Ustaw of 1994, No. 19, item 70 and No. 105, item 509, of 1995, No. 34, item 163; of 1996, No. 77, item 367 and of 1997, No. 90, item 557), in Article 44:

1). The paragraph 4 shall be added as follows:

"§ 4. a prosecutor who candidates to the mandate of a deputy or senator, an unpaid vacancies for the time limit of election agitation, and if he gets a mandate - for the time of fulfilling such office."

Article 55. In the Act of 29 April 1995 - on the Constitutional Tribunal (Dziennik Ustaw of 1991, No. 109, item 470 and No.47, item 213, of 1994, No. 122, item 593; of 1995, No. 13, item 59 and of 1996, No. 77, item 367) the following amendments shall be made (omitted).

Article 56. In the Act of 10 May 1991 - on elections to the Senate of the Republic of Poland (Dziennik Ustaw of 1994, No 54, item 224 and

of 1997, No. 70, item 443) the Article 20, paragraph 6 shall read as follows: **-(out of date: the above Act expired in 2001** - the binding rules forms the Act of 12 April 2001 - on elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland - Dziennik Ustaw No. 46, item 499 and No. 154, item 1802)

Article 57. In the Act of 28 May 1993 - on elections to the Sejm of the Republic of Poland (Dziennik Ustaw of 1994, No 45, item 205, of 1995, No. 132, item 640, of 1997, No. 47, item 297, No. 70, item 443 and No. 88, item 554) the following amendments shall be made: - **(out of date: the above Act expired in 2001** - the binding rules forms the Act of 12 April 2001 - on elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland - (Dziennik Ustaw No. 46, item 499 and No. 154, item 1802)

Article 58. In the Act of 12 October 1994 on local government repeal colleges (Dziennik Ustaw No. 122, item 593 and of 1995, No. 74, item 368) there shall be paragraph 8 added to the Article 7 as follows:

"8. Neither the chairman nor permanent members of the college may not belong to any political party nor perform any political activities."

Article 59. In the Act of 9 May 1996 on performing the mandate of a deputy or senator (Dziennik Ustaw No. 73, item 350 and No. 137, item 638 and No. 28, item 153) the following amendments shall be made:

(Omitted)

Chapter 8

Transitional and final provisions

Article 60. 1. Up to 31 December 1997 political parties that present the motion or entered into register maintained by the Voivodeship Court in Warsaw on the day when this Act enters into force shall submit to the Court all the data that need to be enclosed to the motion on entering into the register pursuant to the requirements of this Act, with reservation to paragraph 2 below.

2. Political parties referred to in paragraph 1, shall submit to the Court, up to 31 December 1998 the amendments in the party charters made to adjust them to the requirements of this Act.

3. Where the duties referred to in paragraphs 1 and 2 are not executed, it shall make the basis to removal the political party out the register and to put such party into liquidation.

Article 61. 1. The first yearly subventions from State budget due to the political party shall be formulated in the Act of budget for 1998.

2. The provisions of Articles 28 - 34 shall apply to political parties that shall take part in elections to the Sejm and to the Senate held after expiration of a term of office of the Sejm elected on 19 September 1993.

Article 62. Hitherto valid provisions shall apply to the applications on entry to the register of political parties adjudicated before this Act comes into effect.

Article 63. The Act of 28 June 1990 - on political parties (Dziennik Ustaw No. 54, item 312) - shall expire.

Article 64. This Act shall enter into force 30 days after its promulgation, with the exception of Article 58 that shall enter into force at the end of the period of 4 month after its promulgation.

Romania

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1. Legislative Framework

Introduction

In Romania, as in many countries in the region, the funding of political parties is a new subject that doesn't have a long history. The subject appeared at the same time with the reintroduction, 15 years ago, of the democratic system and of free elections. These, doubled by the development of party abilities to disseminate information through media that changed the way electoral campaigns are held, has led to a permanent and in some cases exponential increase of costs involved in carrying out such communication campaigns through modern means of the information society.

The history of legislative changes

The first provisions were introduced with the adoption of the Law on the election of the Chamber of Deputies and Senate in 1992⁴². An article⁴³ of this law provided the possibility that the electoral activity may be supported through income sources outside the party: donations and subsidies from the State Budget. Also, the first interdictions appeared (i.e. donations from public institutions), although in the sanctions chapter of the law there was no explicit sanction except in the case of an operation of minor importance⁴⁴.

It is worth mentioning that the Law on the election of the President of Romania⁴⁵ of the same year had also a series of references⁴⁶ to the procedures described by Law No. 68/1992 on the election of the Chamber of Deputies and Senate.

⁴² Law No. 68 on the election of the Chamber of Deputies and Senate, of July 15th 1992, published in the Official Gazette No. 164 of July 16th 1992

⁴³ Art. 45, Law No. 68/1992

⁴⁴ Art. 72, letter m. Law No. 68/1992

⁴⁵ Law No. 69 on the election of the President of Romania, of July 15th 1992, published in the Official Gazette No. 164 of July 16th 1992

⁴⁶ Art. 28, paragraphs 2 and 3, Law No. 69/1992

The need for the introduction of a series of legal provisions in the area of political parties funding appeared immediately after the first two rounds of post-communist elections. Although at the time the main intention was not to try to moderate and control the phenomenon of parties' funding, when the first rules took shape, a series of classical regulations were introduced, amongst which donation ceilings, interdiction on receiving donations from certain categories of people, as well as a body to control the financial activity of parties: Romania's Court of Accounts. The provisions did not appear in a distinctive law, they were included at the time, the year 1996, as a section in the law on political parties.

At the time, the provisions regarding party's finances of Law No. 27/1996⁴⁷ on political parties, placed in a distinctive chapter⁴⁸, had as main purpose the introduction of minimal norms on parties' financial management. This law was the first articulated provision of the framework of political parties functioning in Romania. Until then, parties had functioned based on the Decree - Law No. 8 of December 31st 1989 regarding the registration and functioning of political parties and community organizations in Romania⁴⁹ issued by the Council of the National Salvation Front, only 10 days after the upturn of the communist regime.

A second topic approached in the respective chapter concerned the subsidies that political parties entering the Parliament were to receive.

Around these two major topics, there were provisions related to reporting and transparency that succeeded to provide a certain consistence to the general issue of regulating the funding of political parties at the time. The law was passed at the beginning of the year, and considering there were elections in the winter of that year, the regulation had to be in effect both for the electoral period and

⁴⁷ Law No. 27, Law on political parties, of April 26th 1996, published in the Official Gazette No. 87 of April 29th 1996

⁴⁸ Chapter VI, Funding of political parties; art. 32 - art. 45

⁴⁹ Decree - Law No. 8 on the registration and functioning of political parties and of public organizations in Romania published in the Official Gazette No. 9 of December 31st 1989

especially for the subsidies to be allocated to parties that entered the new legislature.

In parallel to this, in order to complete the series of electoral laws for the three types of elections in Romania (the election of local authorities, of representatives of the Chamber of Deputies and of the Senate as well as of the President of Romania), legal provisions concerning the funding of political parties during the electoral campaigns for local elections were introduced⁵⁰.

During the electoral campaign of 2000, at the initiative of Mr. Valeriu Stoica, Deputy of National Liberal Party and at the same time Minister of Justice, a legislative initiative⁵¹ was submitted with the Chamber of Deputies which, for the first time, brought the concept of a distinctive law on political parties' funding, and, most importantly, on electoral campaigns. Mr. Stoica made a first gesture of publicly recognizing the existence of a real problem in connection to parties' funding. He stated at the time that 80% of parties' funds were black money, in the sense that these funds either did not comply with the existing legal provisions, or from a moral point view, their use is arbitrary. This initiative was somehow late, as the legislature was ending, the parliamentarians had already started being involved in the electoral campaign. Also the draft law could no longer be debated, or adopted and the initiative could no longer start to enter effect beginning with that electoral campaign because it would have changed the rule of the game while playing.

Considering that by the end of the 1996 - 2000 legislatures, the respective initiative did not succeed to be included on the agenda, the legislative procedure ceased by not meeting the provisions of art. 60 paragraph 5 in Romania's Constitution⁵².

⁵⁰ Law No. 25 on the modification and completion of Law No. 70/1991 on local elections, of April 12th 1996, published in the Official Gazette No. 77 of April 13th 1996.

⁵¹ Legislative proposal on the funding of the activity of political parties and of electoral campaigns No. 513, of October 9th 2000, initiated by Valeriu Stoica.

⁵² Art. 60 [...] (5) The drafts of laws or the legislative proposals registered on the agenda of the previous Parliament continue the

Thus, in the beginning of the new legislature, a group of seven Liberal Deputies⁵³ resubmitted the initiative formulated one year before by Valeriu Stoica with the Chamber of Deputies⁵⁴. It was put on the agenda, debated in the two chambers of the Parliament and adopted after mediation of the two forms voted by the Chamber of Deputies and the Senate on the December 12th 2002. On January 20th, 2003 it was promulgated by Decree No. 57/2003 by the President of Romania, and published under No. 43 in the Official Gazette (*Monitorul Oficial*) No. 54 of January 30th 2003.

With the introduction of the current legislation on the funding of political parties and of electoral campaigns, the existing provisions regarding party's finances the field, from the three laws on elections in Romania⁵⁵ and from Chapter VI of Law No. 27/1996, were abrogated.

A series of provisions in the laws on the three types of elections modified before the elections of 2004 also brought a series of consequences of financial nature to the parties. This concerns the new law on the election of local authorities⁵⁶, the law on the election of the Chamber of Deputies and the Senate⁵⁷ as well as the law on the election of the President of Romania⁵⁸.

procedure in the new Parliament. The Constitution of Romania, in 1991 published in the Official Gazette No. 233 of November 21st 1991.

⁵³ Andrei Ioan Chiliman , Titu Nicolae Gheorghiof , Puiu Haşotti , Ion Mogoş , Valeriu Stoica , Radu Stroe , Cornel Ştirbeţ.

⁵⁴ Legislative proposal on funding the activity of political parties and electoral campaigns no. 491, of September 10th 2001.

⁵⁵ Law No. 70/1991, Law No. 68/1992, Law No. 69/1992.

⁵⁶ Law No. 67/2004, on the election of the elected officials from local administration

⁵⁷ Law No. 373 on the election of the Chamber of Deputies and Senate, of September 24th 2004, published in the Official Gazette No. 887 of September 29th 2004.

⁵⁸ Law No. 370 on the election of the President of Romania, of September 20th 2004, published in the Official Gazette No. 887 of September 29th 2004.

Other provisions

Besides these, there is today a whole series of norms regulating the financial aspects of parties, as listed below:

- a. Order of the Minister of Public Finance No. 1,850 on financial-accounting registers and forms, of December 14th 2004, published in the Official Gazette No. 23 of January 7th 2005;
- b. Order of the Minister of Public Finance No. 117 to approve Methodological Norms on closing accounts, on the preparation and submission of financial statements on the fiscal year on December 31st 2003, of January 16th 2004, published in the Official Gazette No. 67 of January 27th 2004;
- c. Order of the Minister of Public Finance No. 1,829 to approve Accounting Regulations for legal entities with no patrimonial purpose, of December 22nd 2003, published in the Official Gazette No. 66 of January 27th 2004;
- d. Law No. 571 on the Fiscal Code, of December 22nd 2003, published in the Official Gazette No. 927 of December 23rd 2003;
- e. Order of the Minister of Public Finance no. 1,487 to approve Methodological Norms on the reevaluation and liquidation of fixed assets in public institutions' patrimony and of legal entities with no patrimonial purpose, of October 30th 2003, published in the Official Gazette No. 788 of November 7th 2003;
- f. The Government's Emergency Ordinance No. 117 on taking over the jurisdiction activity and personnel of the Court of Accounts by judicial courts, of October 24th 2003, published in the Official Gazette No. 752 of October 27th 2003;
- g. The Government Ordinance No. 81 on the reevaluation and liquidation of fixed assets in the patrimony of public institutions, of August 28th 2003, published in the Official Gazette No. 624 of August 31st 2003;

- h. The Government Decision No. 927 on the approval of Methodological Norms to enforce Law No. 90/2003 on selling space under the private property of state or territorial administrative units designated headquarters of political parties, of August 14th 2003, published in the Official Gazette no. 599 of August 22nd 2003;
- i. Law No. 90 on selling space under the private property of state or territorial administrative units, designated as headquarters of political parties, of March 18th 2003, published in the Official Gazette No. 200 of March 27th 2003;
- j. Law No. 54 of trade-unions, of January 24th 2003, published in the Official Gazette No. 73 of February 5th 2003;
- k. The Government Decision No. 22 on the abrogation of certain legal dispositions and modifying and completion of certain accounting and fiscal methodologies, of January 16th 2003, published in the Official Gazette No. 44 of January 27th 2003;
- l. Law No. 14 of political parties, of January 9th 2003, published in the Official Gazette No. 25 of January 17th 2003;
- m. Law No. 212 approving the Government Emergency Ordinance No. 60/2001 on public acquisitions, of April 19th 2002, published in the Official Gazette No. 331 of May 17th 2002;
- n. Order of the Minister of Public Finances No. 306 approving simplified accounting regulations harmonized to European directives, of February 26th 2002, published in the Official Gazette No. 279 of April 25th 2002;
- o. Law No. 77 on modifying and completing Law No. 94/1992 on the organization and function of the Court of Accounts, of January 31st 2002, published in the Official Gazette No. 104 of February 7th 2002;
- p. The Government Emergency Ordinance No. 60 on public acquisitions, of April 25th 2001, published in the Official Gazette No. 241 of May 11th 2001;

- q. Law No. 215 of local public administration, of April 23rd 2001, published in the Official Gazette No. 204 of April 23rd 2001;
- r. Law No. 195 on volunteering, of April 20th 2001, published in the Official Gazette No. 206 of April 24th 2001;
- s. The Government Decision No. 831 to approve models of common forms on financial and accounting activity and of methodological norms on their preparation and utilization, of December 2nd 1997, published in the Official Gazette No. 368 of December 19th 1997;
- t. The Government Decision No. 756 approving Methodological Norms on funding from the state budget, in the year 1996, of political parties, of September 3rd 1996, published in the Official Gazette No. 213 of September 9th 1996;
- u. Law No. 41 on the organization and function of the Romanian Radio Company and of the Romanian Television Company, of June 17th 1994, republished in the Official Gazette No. 636 of December 27th 1999;
- v. Law No. 94 on the organization and function of the Court of Accounts, of September 8th 1992, republished in the Official Gazette No. 116 of March 16th 2000;
- w. Law No. 82 of accounting, of December 24th 1991, republished in the Official Gazette No. 629 of August 27th 2002.

What periods of time does the legislation cover?

As one can be noticed from title - Law on funding the activity of political parties and electoral campaigns - Law No. 43/2003 concerns both electoral periods and current activities of parties.

As regards the electoral campaigns, the law regulates aspects of parties' financial activity in the following types of elections:

- a. Local elections - for election of mayors, local counselors as well as county counselors;

- b. Parliamentary elections - for the election of members of the Chamber of Deputies and of the Senate;
- c. Presidential elections - for the election of the President of Romania.

Romania has not yet adopted a law on electing its representatives in the European Parliament, consequently there are no financial provisions for such type of elections.

Another type of public consultation, the referendum, is also not covered by the provisions of the political funding. This is due to the fact that in Romania, the referendum has only been used once in 14 years, on the adoption of the Constitution produced by the Constituting Assembly, in 1991. However, in 2003, Romania was in the situation of adjusting a series of constitutional provisions with respect to integration into the European Union. This time, the campaign clearly had two "sides", although uneven. The side in favour of changing the Constitution joined together most of the parliamentary parties, the Government, the Presidency as well as a series of groups of civil society. This side was supported by a campaign funded with public money, which affected to a great extent the equity of the campaign⁵⁹. Therefore it can be argued that the lack of provisions covering the activity during the referendum in terms of political parties' funding was not beneficial.

Still we must mention that the absence of explicit provisions on the campaigns for the approval/rejection of a referendum does not mean the existence of a legislative void. As long as parties incur expenditures on this occasion, these are to be found in the current spendings for the referendum of the political parties.

As regards the period of time covered, the legislation on funding political parties contains a series of specific provisions related to the electoral campaign. The law on the political parties' funding and

⁵⁹ See IPP position on the fairness of the process of ratification of the new Constitution. <http://www.ipp.ro/altmateriale/PozitiaIPPasuprarevizuriiConstitutiei2003.pdf>, as well as the report Constitution. Debate and referendum 2003 <http://www.ipp.ro/altmateriale/Constitutia%20Dezbatere%20si%20referendum%202003.pdf>.

electoral campaigns makes a clear reference to the period of the *electoral campaign*. The term of *electoral campaign* is defined in the electoral legislation (the three laws on elections). In all of them is defined as the period of time between the date of the publication of the Government Decision in the Official Gazette announcing the elections date and the voting day (or more precisely a day before voting day). This period is of 30 days. We must mention that in the case of early elections, the periods of time are reduced by half, in which case, the campaign has only 15 days.

It is common for the parties of Romania to start campaigning much earlier, thus fault starting. A series of activities that they carry out before the official period take also substantial financial aspects, concerning either the financial amounts engaged, or the sensitivity of such operations. Parties engage thus a series of expenses like payment for publicity campaign or propaganda materials, for opinion polls, for employing consultants who are not under the above-mentioned provisions. These expenses are to be recorded as any financial operations but are not to be part of the calculations regarding expenses ceilings or obligations for reporting, as we shall describe later on.

Whom does legislation address?

The legislation on the funding of political parties concerns especially the activity performed by the political parties.

However, although not strictly applied, the legislation in the area of political parties' funding applies in certain sections also to other legal entities:

- a. Citizen organizations belonging to national minorities;
- b. Independent candidates;
- c. Electoral alliances;
- d. Political alliances.

Besides these, legislation refers to a whole series of legal entities and individuals:

- a. Romanian or foreign individuals (donors);
- b. Romanian or foreign companies (donors);
- c. Non-governmental organizations;
- d. Trade-unions;
- e. International political organizations to which the party is affiliated;
- f. Political parties or formations abroad with which the party has political cooperation;
- g. Public institutions;
- h. Companies with entirely or mostly state capital;
- i. Foreign countries;
- j. Parties' financial authorized agents.

The legislation does not make any reference to other people that may be involved in the campaign without being directly connected to the party.

2. Income sources

According to the law, parties in Romania benefit from the following income sources:

- a. Subsidies from the state budget;
- b. Membership fees of party members;
- c. Donations and sources related to donations;
- d. Other income generated by own activities.

From the experience of political parties' activity in the past years, it is noted that a significant amount of officially registered funds comes from subsidies from the State Budget, followed by funds from membership fees and donations. To the extent that donations would be registered more rigorously, they would come first in the total income of a party. For example, below is the percentage of income from the state budget for a series of parties. As it may be noticed, the most important parties in Romania have a lower dependence on the subsidies offered by the state, the diversification of their income sources being obvious.

Table 4. Percentage of income from the state budget out of total income of political parties⁶⁰

Party	Total income according to 2000 balance sheet	Income from the budget (subsidy) 2000	Percentage
PRM	6,431,310,000	3,264,293,546	50.75%
PER	3,556,546,000	1,786,004,626	50.21%
PSDR	4,970,586,000	2,341,675,806	47.11%
PSM	1,498,116,000	681,818,182	45.51%
PD	19,073,200,000	5,939,282,544	31.13%
PNȚCD	24,654,892,000	7,512,494,985	30.47%
PNL	17,379,305,000	5,024,161,308	28.90%
PDSR	29,688,312,000	7,660,357,974	25.80%

The subsidy from the State Budget

Subsidies from the State Budget represent an important income for political parties. The spirit of this provision is, on one hand, to reward the political performance of those parties which obtained important electoral scores and are represented into the Parliament, or which obtained an electoral score no less than 1% under the electoral threshold. On the other hand, these sums are explained as a financial aid to parties with representatives in the Parliament, in their effort to maintain a close relationship with the voters.

⁶⁰ Data source: Ministry of Public Finance and the Government General Secretary's Office.

Benefitting from public funding through subsidies from the State Budget are the parties with parliamentary representation and those which obtained no less than 1% under the electoral threshold.

The subsidy from the State Budget is granted exclusively based on the results in the parliamentary elections, the results of local and presidential elections not being taken into account.

Citizens' organizations belonging to national minorities, that obtained parliamentary representation according to special regulations on their access to the Parliament, do not receive subsidies from the state budget through this mechanism.

Funds to be allocated annually to the political parties are included in the budget of the Government General Secretary's Office through the Law on State Budget. With this purpose, the Government General Secretary's Office submitted with the Ministry of Finance a request to open budget credits provided under position "Transfers" of Chapter 51.01 - "Public Authorities." The latter, in its quality of main credit ordinator, transfers to the parties, in monthly payments instalments, according to an algorithm listed below, the appropriate sums.

The sums for the parties' subsidies are calculated according to an algorithm provided in the Law on the funding of parties. For a clearer application of these provisions, the Government issued a decision (H.G. No. 756/1996) which describes more accurately the allocation of these funds. The Decision refers to the enforcement of the algorithm only for the year 1997. After this year, only provisions in the old law, Law No. 27/1996, were enforced, and subsequently also the provisions of Law No. 43/2003 on funding the activity of political parties and electoral campaigns. The sum resulting from the calculation based on these provisions is distributed to the parties in monthly instalments, transferred to the central organization of the party.

The algorithm determining the subsidies to be allocated to each political party

1. The annual subsidy appropriate to the political parties is within the limit of:

$$\text{State Budget income} \times 0.04\% = X \text{ billion lei}$$

2. The basic subsidy for the political parties which at the beginning of the legislature had representatives in a parliamentary group in at least one chamber is one third of the total of the annual subsidy, as follows:

$$X : 3 = Y \text{ billion lei}$$

3. Each political party that in the beginning of the legislature had representatives in a parliamentary group (N), at least in one chamber, receives a basic subsidy determined as follows:

$$Y : N \text{ parties} = \text{basic subsidy (S)}$$

4. The political parties represented in the Parliament receive also a supplementary subsidy (S1), distributed according to the number of mandates obtained:

The supplementary subsidy of a party (S1) = the Subsidy related to one mandate (S2) x number of mandates

The subsidy related to a mandate (S2) = (X - Y) : number of mandates

5. The total subsidy (S3) [basic subsidy (S) + supplementary subsidy (S1)] may not exceed 5 times the basic subsidy. Under these circumstances, the sum that exceeds the subsidy thus calculated (Z) is distributed to the non-parliamentary political parties which obtained no less than 1% under the electoral threshold.

The total subsidy (S3) = S + (S2 x number of mandates per each party) =< 5 x S

The total of supplementary subsidies (S1) allocated to each party (Q) results from the sum of individual subsidies calculated, observing the condition in the previous paragraph.

6. The non-parliamentary parties, which obtained no less than 1% under the electoral threshold, will receive equal subsidies, established as follows:

Z : number of non-parliamentary parties = K

A supplementary condition imposed is the following:

Sum K =< a basic subsidy (S)

7. The sum left unconsummed after determining the total of subsidy K (Sum K) is distributed to the political parties according to the number of mandates obtained as follows:

$X - (Y + Q + \text{Sum K}) = W$

or

$W = X - (S3 + \text{Sum K})$

W : 471 x number of parliamentary mandates = subsidy appropriate by redistribution (S4)

For example, the following is a hypothetical model of calculation:

1. The calculation of the annual subsidy appropriate for parties

* Suppose that the income from the State Budget for year X = 225,000 bil. lei

225,000 bil. lei (State Budget income for year)	x	0.04% (maximum quota provided for annual subsidy)	=	90 bil. lei
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2. The calculation of the basic subsidy for the political parties which in the beginning of the legislature had representatives in a parliamentary group at least in one chamber

$$\begin{array}{rclcl}
 90 \text{ bil. lei} & & & & \\
 \text{(total of annual} & & & & \\
 \text{subsidies appropriate} & \times & 1/3 & & = 30 \text{ bil. lei} \\
 \text{for parties)} & & \text{(1/3 represents the} & & \\
 & & \text{total of basic subsidies} & & \\
 & & \text{appropriate to parties)} & &
 \end{array}$$

3. The calculation of basic subsidy for a party with representation in a parliamentary group

* We suppose that 5 parties meet the condition

$$\begin{array}{rclcl}
 30 \text{ bil. lei} & & & & \\
 \text{(total of basic subsidy)} & \times & 1/5 & & = 6 \text{ bil. lei} \\
 & & \text{(1/number of parties with} & & \\
 & & \text{representation in a} & & \\
 & & \text{parliamentary group)} & &
 \end{array}$$

4. The calculation of sum distributed for supplementary subsidy according to number of mandates obtained

$$\begin{array}{rclcl}
 90 \text{ bil. lei} & & & & \\
 \text{(total annual subsidies} & - & 30 \text{ bil. lei} & & = 60 \text{ bil. lei} \\
 \text{appropriate to parties)} & & \text{(total basic subsidies)} & &
 \end{array}$$

*We consider the number of parliamentarians is 480

The calculation of the subsidy allocated to a party for each mandate

$$\begin{array}{rclcl}
 60 \text{ bil. lei} & & & & \\
 \text{(total supplementary} & \times & 1/480 & & = 125 \text{ mil. lei} \\
 \text{subsidies)} & & \text{(1/number of} & & \\
 & & \text{parliamentarians)} & &
 \end{array}$$

5. The calculation of the maximal subsidy a party may get

$$\begin{array}{rclcl}
 6 \text{ bil. lei} & & & & \\
 \text{(basic subsidy)} & \times & 5 & & = 30 \text{ bil. lei}
 \end{array}$$

6. The calculation of the subsidy allocated to non-parliamentary parties that obtained no less than 1% under the electoral threshold

*We consider that 2 non-parliamentary parties obtained no less than 1% under the electoral threshold

8.5 bil. lei x 1/2 = 4.25 bil. lei
 (sum of subsidies (1/number non-parliamentary
 exceeding the maximal parties that obtained no less
 subsidy for a parliamentary than 1% under the electoral
 party calculated according threshold)
 to item 5)

Table 5. Example of calculation of subsidy from the state budget

Party	Basic subsidy (bil. lei)	Subsidy according to number of mandates			Basic subsidy + subsidy according to mandates (col.2+col. 5) (bil. lei)	Maximal subsidy (basic subsidy x5) (bil. lei)	Differences to redistribute (col. 6 - 5)(bil. lei)	Subsidies for non-parliamentary parties (bil. lei)
		Subsidy for a mandate (mil. Lei)	NO. of mandates	Subsidy for total no. of mandates (bil. lei)				
1	2	3	4	5	6	7	8	9
A	2	125	260	32,5	38,5	30	8,5	
B	6	125	100	12,5	18,5	30	0	
C	6	125	60	7,5	13,5	30	0	
D	6	125	40	5	11	30	0	
E	6	125	20	2,5	8,5	30	0	
F								4,25
G								4,25
	30	480	480	60	90		8,5	8,5

In case that during the legislature there are changes concerning the parameters for the calculation of appropriate subsidy (existence of a parliamentary group in at least one chamber, number of parliamentarians also changes) this does not affect the subsidy that will continue to be granted. In all the years until the end of the

respective mandate, the calculation is made based on the initial results obtained in parliamentary elections.

As it may be noticed, parliamentary political parties have the advantage of receiving sums from the State Budget for parties, besides the basic subsidies and the ones distributed according to the number of mandates, parliamentary parties also receive, according to the number of mandates, the sums left undistributed after allocating funds to non-parliamentary parties, but only those which gained no less than 1% under the electoral threshold.

For example, below you may find the sums allocated to political parties by the Government General Secretary's Office according to the algorithm provided by the law⁶¹.

Table 6. Sums allocated to political parties by the Government General Secretary's Office SGG in 1999 și 2003

Party	1999	2003
PDSR/PSD	5,557,974,287	22,663,102,315
PNȚCD	5,408,800,685	
PD	4,495,440,402	8,120,264,990
PNL	3,899,058,705	11,250,945,588
UDMR	2,909,910,580	7,469,449,634
PRM	2,417,849,603	16363,926,165
PUNR	2,253,829,277	
PSDR	1,543,074,530	
PAR	1,324,380,762	
PER	1,269,707,320	
FER	1,051,013,566	
PL	827,293,617	
PS	470,833,333	
PSM	470,833,333	
PUR		4,432,311,308
Total	30,900,000,000	70,300,000,000

The parliamentary political parties and the ones that obtained no less than 1% under the electoral threshold present the documents

⁶¹ Source of data: The Government General Secretary's Office.

necessary for the allocation of subsidies from the Government General Secretary's Office. With this purpose, bodies that represent the political parties in relationship to public authorities will submit to the Government General Secretary's Office a request signed and stamped by the leader of the executive body of the party and by the person in charge with the administration of the party's patrimony.

The request must include the following elements to identify the party:

- a. Full and abbreviated name;
- b. Final court decision admitting the request for registration, (authentic copy), or proof from authorized court that the party has initiated the procedure provided under art. 17 of Law No. 27/1996⁶², as the case;
- c. The logo of the party and the electoral sign;
- d. The central headquarters;
- e. Bank account and name of the bank;
- f. Fiscal code.

In the cases that there are changes in the legal status of a political party (by merger, division, self-dissolving, dissolving pronounced in court or by decision of the Constitutional Court, or based on any other judicial deeds provided by the law), the leader of the executive body of the party has to notify the Government General Secretary's Office, in 3 working days after issuing the date of the respective judicial act. On this occasion, the respective political party shall communicate to the Government General Secretary's Office all data resulting from the newly-created situation which determines recalculation of subsidies provided by the law.

⁶² Law No. 27/1996 - Law of the political parties is the former law in which ground the Government Decision No. 756/1996. Section of this law, referring to party finance was canceled by the provisions in the current law, Law no. 43/2003.

In this situation, the Government General Secretary's Office shall proceed immediately to recalculate subsidies, according to the existing political parties considering all changes occurred.

Subsidies resulting from recalculation shall be granted to the political parties starting the month following the occurrence of one of the circumstances mentioned above.

Funds from the State Budget are monthly transferred by the Government General Secretary's Office according to the formula presented above.

For subsidies, parties don't have the obligation to submit reports as to the destination given to these funds. The parties however have the obligation to observe the expenses chapter provided in Law No. 43/2003 on funding the activity of political parties and electoral campaigns under art. 10 paragraph (1).

Taking into account that the subsidies have precise destinations (art. 10, letter. a-i of Law No. 43/2003 on funding the activities of political parties and electoral campaigns) it is necessary for them to be deposited into a separate bank account, including at the level of the territorial branches' where subsidy sums are transferred, and be monitored through specific analytical accounts.

The unused sums at the end of the fiscal year are carried over into the next year.

The efficiency and opportunity of spending funds coming from the state budget are decided by the leadership of the political parties, according to their bylaws and to the legal regulations on the use of public funds. As regards the regulations on the use of public funds, we must highlight the obligation to observe especially the acquisition procedures according to the Government Emergency Ordinance no. 60/2001 on public acquisitions, approved with changes by Law No. 212/2002 approving the Government Emergency Ordinance No. 60/2001 on public acquisitions. Responsibility for the legal use of subsidies received according to destinations provided expressly in Law No. 43/2003 on funding the activities of political parties and electoral campaigns art. 10 paragraph 1 belongs to the same structures.

Membership fees

For parties, the party card is as important a document as important as the identity card. A person pays a sum of money that covers a certain period of time gaining in exchange the party membership that brings a series of rights.

From the legal point of view, a member of a party may pay membership fees that summed up annually must not exceed the maximum of 100 minimal basic gross salaries per country economy⁶³. If this ceiling is exceeded, Law No. 43/2003 on funding the activity of political parties and electoral campaigns provides a sanction of 30,000,000 lei up to 300,000,000 lei, and the sums that make the object of the sanction become part of the State Budget.

The total sum that a political party may collect annually has no ceiling.

The legislation in effect does not introduce any restriction about the use of the income obtained from membership fees, both as regards the sums and the category of expenses.

As it may be noted, with respect to membership fees, the law is quite imprecise, it establishes merely general frames. Beyond them, legislation allows the party to set its own policy in establishing fee contributors, the amount of fee, the way to collect fees and the use of fees.

Still, there is some minimal information on the income from parties' membership fees, although the idea of making such information public does not come at parties' initiative, but as a result of control activities performed by the Court of Accounts. Below are the data.

⁶³ The basic minimal gross salary per country is set by government decision. Although this may be modified during the year, the reference salary is the one registered on January 1st of the respective year, and will be used as reference to the entire period of the year.

Table 7. Income from membership fees of main political parties during 1996 - 2000⁶⁴ (in bil. lei)

Party	1996	1997	1998	1999	2000	Total
UDMR	185.3	654.6	587.3	1,092.6	2,328.7	4,848.5
PNTCD	232.8	550.3	1,170.6	2,086.3	509.7	4,549.7
PDSR	93	315.8	624.6	1,546.4	0	2,579.8
PRM	34.8	149.9	251.6	395.5	690.1	1,521.9
PNL	23.2	189.3	399.8	585.8	158.5	1,356.6
PD	70.4	109.4	67.2	33.8	70.6	351.4
PSDR	1.8	31.5	31.6	76.1	164.7	305.7
PSM	27.3	107.9	65.1	97.9	0	298.2
UFD/PAR	0.6	24.5	0	87.3	0	112.4
PUNR	14.3	7.3	5.6	14	44.7	85.9
PDAR	0	11.4	25.4	0	0	36.8
PS	0.5	2.6	1.7	3.1	4.6	12.5
MER	2.5	2.1	1.4	0	0	6
FER	0	0	0	2.9	1.5	4.4

Practice has shown that the rate of fees' collection at the level of all parties in Romania is very low. It varies between 10% and 40%. A 60% collecting rate may be considered a real performance for a party. We must say that in many cases, the recognition of membership on the occasion of internal elections ought to be done based on this criterion, but, because of deficiencies related to membership fees' collection mechanism, this criterion is always abandoned.

Membership fees do not represent the main source of income for parties. However, even within the limits of reasonable membership fees applied to a number of members a little over the level imposed by the Law on the political parties (to create a new party 25,000 members are required), it may turn into an income source even bigger than the state subsidy received by the most important parties. Still, this income source remains unattractive for parties, because of a number of performance conditions that a party must meet (a consistent number of contributing members, permanent communication with them, a strategy to maintain close and constant

⁶⁴ Data source: Romania's Court of Accounts.

links with the members irrespective of their social category or geographical area, a well established party apparatus, etc.). For example, below is the report between income from membership fees and income from State Budget of a political party.

Table 8. Ratio between income obtained from membership fees and income from state budget subsidy⁶⁵

Party/year	1999	2000
UDMR	375/1000	597/1000
PNTCD	386/1000	68/1000
PRM	164/1000	211/1000
PDSR	278/1000	0
PSM	208/1000	0
PNL	150/1000	32/1000
PSDR	49/1000	70/1000
UFD/PAR	66/1000	0
PUNR	6/1000	15/1000
PD	8/1000	12/1000
PS	7/1000	10/1000
FER	3/1000	1/1000

The oponents of the idea related to state subsidies to parties insisted that more often such support would have the effect to remove any motivation for parties' fee collecting.

Donations

We want to mention that beyond the common meaning of donation as consisting in a sum of money (the object of donation is not only money, it may be especially mobile or fixed goods, or services) offered to another legal entity or individual, through Romanian legislation on the funding of parties, the meaning of donation is much broader. We want to mention that in the case of parties, donations vary, as regards their object, much more than in the common practice.

⁶⁵ Data source: Romania's Court of Accounts and the Government General Secretary's Office.

Thus, parties may benefit from the following donations:

a. Money donations:

- Cash;
- Wire transfer.

b. Service donations:

- Accommodation;
- Transportation;
- Conference halls and related facilities;
- Advertisement;
- Providing services that are unpaid and not registered as voluntary services (labor).

c. Donations of mobile and fixed goods:

- Posters or other propaganda materials;
- Computers;
- Headquarters;
- Land;
- Means of transportation.

This list contains only a few significant examples of forms by which a donation to a political party may be performed.

All income obtained from donations are tax exempt.

According to the legislation, political parties may receive donations from the following types of entities:

- a. Romanian individuals in the country and abroad;
- b. Romanian legal entities:
 - Companies;
 - Non-governmental organizations;
 - Trade unions (no money donations, however).
- c. International political organizations to which the respective party is affiliated (only donations of goods that are necessary to the political activity but no electoral propaganda materials);
- d. Political parties that are from abroad with which the Romanian party is in cooperation with (only goods donations necessary to the political party's activity, but no electoral propaganda materials).

It is worth mentioning that a Romanian citizen with double citizenship has the right to make donations. Also, it is permitted for representations of multinational/foreign companies that are registered as Romanian entities, to make donations.

Limitations on donations refer on the one hand to specific provisions for diverse types of donors or donations and, on the other, to a series of general aspects.

We must emphasize that irrespective of the donation form (services, mobile or fixed goods) these have to be estimated in terms of money value in order to be included in the calculation of ceilings stipulated in the law. Such evaluations are provided by independent evaluators.

An individual may not donate in a year a sum exceeding 200 basic gross salaries per country.

A legal entity may not donate a sum exceeding 500 basic gross salaries per country.

The donations from international political organizations to which the respective party is affiliated, as well as from political parties or with which the Romanian party has political cooperation relations, do not have a ceiling.

According to the law, a donor is restricted to a certain sum that he may donate annually to a party. The law does not forbid that the same person may donate to other parties' sums within the same maximal ceiling. For example, a person may yearly donate the equivalent of 200 basic minimal gross salaries per economy to several parties.

According to art. 5 paragraph 9 of Law no. 43/2003 on funding the activities of political parties and of electoral campaigns, upon registration of donation, both in accounting registers, as well as in the list of donors, at least the following information should be registered:

- a. Full name of individual or legal entity/s;
- b. Address of individual or headquarters' adress (in the case of legal entities);
- c. Citizenship or nationality (in the case of legal entities);
- d. Number and series of identity card and the personal number code of an individuals, or registration code of the legal entity;
- e. Value of the donation;
- f. Type of donation (money, goods, services);
- g. Date of donation.

For the donations transfered through banks, if the bank statements or other bank documents do not contain the elements provided above, those elements will be requested from the donors.

The total income of a party resulting from donations cannot exceed 0.025% of the State Budget income in the respective year. If in the respective fiscal year, there are elections, the total of income from

donations is double therefore it cannot exceed 0.05% of the State Budget's income in the respective year.

For example, the State Budget's income in the year 2004 was 288,279.8 billion lei. Consequently, the year 2004 being a year in which there were elections, a party may receive from donations a maximum sum of 144,139.9 million lei, which approximately is 4.5 million USD.

According to the law on funding activities of political parties and electoral campaigns, the following categories of donations are not acceptable:

- a. Donations from a public authority;
- b. Donations from a public institution;
- c. Donations from an autonomous state company;
- d. Donations from a national company with state capital entirely or in majority;
- e. Donations from a commercial company with state capital entirely or in majority;
- f. Donations from a banking company with state capital entirely or in majority;
- g. Money donations from trade unions;
- h. Donations from other countries (through their State Budgets);
- i. Donations from organizations abroad;
- j. Donations from foreign legal entities;
- k. Donations from foreign individuals.

Besides these categories, the law also provides two interdictions that are exceptions from the general rule:

- a. Donations from legal entities in debt to the State Budget and social securities budget;
- b. Donations with the obvious purpose to obtain an economic or political advantage.

Unlike the current activity which may be normally financially supported by a non-governmental organization (NGO - association or foundation), this type of support is forbidden for the electoral campaign. Also, by extension, the transfer of money from income obtained by these from donations is a violation of legal provisions.

During the electoral campaign, besides direct income parties' benefit from a series of facilities that constitute indirect:

- a. Display space made available free of charge by the local public administration;
- b. Time on radio and television (the national stations, but in some cases private ones too);
- c. Room for meetings with the voters, for which only utilities are paid.

The equivalent value of this indirect income of the parties is not registered as donations in goods or services; they are considered facilities granted in a non-discriminatory way to all candidates in the electoral competition.

Accepting or making donations in violation of legal provisions is a crime and is sanctioned by fine from 30,000,000 lei to 300,000,000 lei, and the sums obtained illegally are confiscated and become part of the State Budget.

The list of donors to parties and the donated sums must be made public. Still, if a donor wishes that the donation remain confidential, then the annual donated sum may not exceed 10 basic gross salaries per country.

In this respect, the donor must request that the party should keep confidentiality on the donation or donations whose sum may not exceed the legal ceiling of 10 basic gross salaries per country.

Also, it is important to note that in case a donor making a donation or several donations not exceeding 10 basic gross salaries per country does not explicitly request confidentiality on his identity, the party has the obligation to make the donor's name public.

In order to have clear proof of the donor's wish for confidentiality, the donor must confirm this under signature either on the back of the copy of the receipt for the donation (that is included in the party's accounting files), or in the technical-operational records with the party's donors.

Still, even in the case that the donor requests keeping confidentiality, the party must record the donor's identity according to the provisions mentioned above. Confidentiality shall be provided by not making the donor's name public as part of the list of donors.

It is important to note that legal provisions limit the confidential donations. The total sum of confidential donations may not exceed 15% of the maximal subsidy granted from the State Budget to a political party in the respective year. For example, for the year 2003, this amount could not exceed 15% of the maximal subsidy received in that year. The highest subsidy received by a party was the one received by PSD⁶⁶, totaling 22,663,102,315 lei, which means that the confidential donations of any party could not exceed 3,399,465,347 lei.

Other income

According to Law No. 43/2003 on funding the activity of political parties and the electoral campaigns, in addition to the sources of income listed above there is a separate chapter on the income from activities typical to commercial companies that, in the present law, are an exception to the interdiction stipulated herein, namely that commercial activities are forbidden to political parties (art. 7 of Law No. 43/2003: "The political parties may not carry out activities typical to commercial companies").

Activities that are exceptions to the above-mentioned interdiction are the following:

⁶⁶ The party with the most votes in the previous elections.

- a. Editing, preparing and disseminating publications or other propaganda materials or own political culture materials;
- b. Organizing meetings and seminars on political, economic or social topics;
- c. Cultural, sports and entertaining activities;
- d. Internal services;
- e. Renting own spaces for conferences and social-cultural activities;
- f. Bank interests;
- g. Selling own patrimony but no less than 5 years after registration as patrimony.

The incomes obtained from the activities mentioned above are tax exempted.

Under the category "other incomes" of the political parties there is the income resulting from "association with a non-political organisation", the latter contributing financially (not more than a total of 500 minimal gross salaries per economy as of January 1st of the respective year).

The association of a political party with a non-political organization is registered with Bucharest Court in the registry of other forms of association of political parties.

The possibility of parties to generate incomes from such activities is excessive. First of all, because such a possibility is somehow contrary to the judicial regime of the political parties which are considered as legally constituted not for profit political organizations. The judicial regime mentioned above results first of all from the definition of the purpose for which parties may constitute themselves and function (art. 8 of the Constitution of Romania and art. 1 and 2 of Law No. 14/2003 of political parties). It is in this sense that the provisions of the Law on accounting No. 82/1991 shall be interpreted. Nevertheless, "the non-profit purpose" of the political parties is not

mentioned in the Law of the parties, Law No. 14/2003, although this should have been elementary.

From the point of view of the “non-profit purpose” (“non-patrimonial”), the judicial regime of political parties is identical with that of the “associations and foundations”, whose creation, organization and functioning are regulated through Government Ordinance No. 26/2000 regarding associations and foundations. However, unlike the Law of the parties, Law No. 14/2003, Government Ordinance (G.O.) No. 26/2000 defines *expressis verbis* the non-patrimonial profile of “associations and foundations” (art. 1 paragraph 2: “Associations and foundations constituted according to the present ordinance are legal entities without a patrimonial purpose”).

Secondly, the possibility those parties have - even though through exceptions - to achieve income from “activities typical to commercial companies” is inadequate, given the excessively permissible and/or incomplete and inaccurate formulation of text.

Thus, editing, preparation and dissemination of publications or other political culture materials - letter a) - are activities strictly typical to publishing houses and companies having as object of activity the dissemination of press and prints. Among the activities mentioned in this chapter, the only acceptable one is the preparation and dissemination of own press and own propaganda.

It is also inadequate to place the “organizing meetings and seminars on political, economic or social topics” under the category of activities generating income. Seminars, meetings and debates are activities typically “non-lucrative”.

Organizing cultural, sports and entertaining activities is also totally inappropriate to the statute and purpose for which political parties are legally constituted. Such activities are typical for cultural institutions, sports clubs, etc., all being essentially legal entities with patrimonial purpose.

It is a recognised and entirely acceptable practice in Romania for parties to organize shows for their supporters, especially during

electoral campaigns. Yet it is elementary and well known that with such manifestations, while the motivation and rewarding of voters is intended, no funds are collected.

It is necessary that the law should be more precise with respect to "internal services" - letter d) - out of which parties may obtain income. There is a practice by which party members, especially the ones in the "staff", have access to photocopiers, internet or other equipment of the parties for fees that are lower than the ones on the open market. In a limited way, with accurate record keeping and avoiding excesses, such a practice could be acceptable. However, to turn such activities into an income-generating source by taxing the photocopying service for outsiders is not actually only contrary to the purpose of the political parties, but also to the law on their funding.

Moreover in the case of parties that receive subsidies from the State, the law establishes that the state subsidies are used for: maintenance and functioning of headquarters, staff, press and propaganda expenses, communication, acquisitions of mobile and fixed assets necessary to the party activity etc. It is obvious, though, that if in the headquarters and by use of the equipment there are "internal services", the destination of the funds is changed. Consequently, the solution is either to take this category of activities out from the law, or to describe such "internal services" in an accurate and limited way.

In this chapter it is also necessary that through regulations by the Ministry of Public Finance, the "administrators" of the parties should have the obligation to keep records on the administration of parties' resources. As this does not happen, suspicions may appear as justified, including aspects regarding the fairness of the administration of the respective resources.

Finally, "renting own space for conferences and social-cultural activities" may be acceptable only under the terms that by this parties do not sublet the space for which parties themselves pay rent on a permanent basis, or sublet the space in parties' property on a permanent basis (or more than occasionally). Renting under such circumstances would create an excessive privilege to the parties, while they benefit from tax exemption on the buildings of their headquarters.

Therefore, the only space that may be rented is parties' own space, not the space for which parties pay rent themselves to the public administration or to private individuals or legal entities.

To conclude, as regards *other income sources*, a substantial limitation of such sources is necessary and more precise regulations that should not leave room for interpretations and abuse either from political parties or from control bodies. Such activities must be fully compatible with the statute and objectives related to political parties.

Fiscal facilities

The most visible form of funding of the political parties from public funds is the State subsidy. Besides this form of direct funding there are other forms of indirect funding that represent in a way the hidden face of the the financial support that parties receive from the State.

These indirect sources of public funding are the fiscal facilities of which parties benefit:

- a. Tax exemption for all 4 sources of income mentioned by the legislation (membership fees, donations or bequests, State subsidies, income from own activities);
- b. Space rental for central and local headquarters to which parties have priority;
- c. Spaces mentioned above have the judicial regime of rented living space;
- d. Payment of all expenses related to communication, electricity, gas, water, sewerage, etc., at the price set for living spaces;
- e. Free access to the public services of the radio and television stations;
- f. Free use of display space offered by the public administration (during electoral campaign);

- g. Goods donations necessary for the political activity received from international political organizations to which the party is affiliated or from political parties or organizations the Romanian is in cooperation with are duty free.

One of the fiscal facilities provided in Law No. 27/1996 (abrogated) and taken over by Law No. 43/2003 on funding the activity of the political parties and of electoral campaigns providing that political parties are exempt from payment of the tax on buildings in their ownership, except for the buildings acquired as part of the inventory (art. 11, paragraph 3) has been recently abrogated by Law no. 90/2003 on selling space of the private property of the State or of local administrative units, designated as headquarters of political parties, by art. 12.

The categories of tax from which parties' income are exempt, as provided by Law No. 43/2003 on funding the activity of political parties and of electoral campaigns are: the income tax, the profit tax, and the value added tax (VAT).

The law does not extend tax exemption to other categories of taxes; for example, political parties pay all obligations related to salaries, similarly to all other legal entities, they pay all taxes on property (buildings, land, cars).

As regards the free time on the national radio and television stations, this is guaranteed to the participants in the electoral race by electoral law, and this time (dimension, format, type of information) is established by decisions of the National Audio-Visual Council (CNA) and possibly by own regulations of the respective public stations. The time granted is a substantial resource for parties, especially for the small parties. Although at first sight the equivalent in money of this service seems difficult to estimate, in the past period, by use of precise calculation methodology, one could estimate the equivalent of these facilities. This form has become one of the easiest to estimate value in money for.

It is worth mentioning that there have been cases when even televisions, radio stations or other media agencies offered free space to the political parties during the electoral campaign, a space that they distributed to significant candidates according to a self-imposed

algorithm in the electoral competition. It is debatable whether such an initiative should be judged as a facility or as a donation equitable to all candidates in the electoral competition. Especially since in many cases, the stations set arbitrary criteria to designate the "significant candidates".

In addition to these, however, it is worth mentioning the time that parliamentary parties weekly receive on public radio and television stations to present their political activity. This time is provided to political parties according to provisions in art. 5 of Law No. 41/1994 on the organization and function of the Romanian Radio Station and of the Romanian Television Station, provisions according to which "the Romanian Radio Station and the Romanian Television Station must reserve a part of air time to the political parties represented in the Parliament. The time dedicated to the political parties may not exceed a hundredth of the whole weekly air-time. Distribution of air time to the political parties is done according to their representation in Parliament, taking into account a time unit for each parliamentarian, including for representatives of national minorities".

We mention that this time is allocated both to national and local stations. From IPP own research, it results that the local air-time is not fully used at the local level/stations.

To give an example of the importance of this facility, below you find the report of the free publicity and of the paid publicity of political parties during the electoral campaigns of the local and parliamentary/presidential elections of 2000.

Table 9. Percentage of free electoral advertisement of total electoral advertisements in the electoral year 2000⁶⁷

Type ads	Local elections		Parliamentary and presidential elections		Total per electoral year	
	Count	Percentage	Count	Percentage	Count	Percentage
Paid ads	42,885	34.8%	355,689	98,5%	398,574	82.3%
Free ads	80,182	65.2%	5,439	1.5%	85,621	17.7%
Total	123,067		361,128		484,195	

⁶⁷ Data source: Alfa Cont Mediawatch. Figures in seconds.

Finally, below is the way air-time was located on the Romanian Radio Station (SRR) and on the Romanian Television Station (SRT).

The Romanian Radio Station - "Parliamentary parties' antenna"
 Calculation is done as follows:

time allocated to parties weekly
 7 days x 24 air hours = 168 hours
 168 hours = 10,080 minutes = 604,800 seconds
 0.9% of time = 5,440 seconds

time allocated to a parliamentarian weekly
 5,440 seconds / 486 parliamentarians = 11 seconds

The calculation to determine the time weekly allocated to a party is done multiplying the number of the party's parliamentarians by 11 seconds. This calculation is done at the beginning of the legislature and remains unchanged through the entire legislation.

Romanian Television Station (SRT) - "Tribune of parliamentary parties"

Time allocated to a parliamentarian weekly is 9 seconds and 36 thousandths.

By allocation to parties, they weekly receive the following time (cumulated time on Channel 1 and Channel 2):

Table 10. Air time weekly allocated to the parliamentary parties on public television stations⁶⁸

Party	Min/sec
PDSR	31'40"
PSDR	1'15"
PUR	1'24"
PRM	18'52"
PD	6'52"
PNL	6'42"

⁶⁸ Ibidem

UDMR	6'05"
Minorities	2'48"
Total	75'36"

Also, another substantial form of indirect funding is to offer space for outdoor advertisement. It is known that this is one of the most frequently used promotional practices in the electoral campaign. In the past period, however, this campaign method too has become increasingly costly for political parties in Romania. Just to emphasize the impact and importance of free poster display, we need to mention that this offers the parties a chance to spend less than in the case of the paid display, with a few minor inconveniences. In addition to these, there is also the tacit agreement of public authorities that allow outdoor advertisement almost everywhere and under any conditions (in Romania it is possible to stick a poster almost everywhere, without being sanctioned for illegal poster display, even though we have regulations on this but less enforcement). The costs of this facility are difficult to estimate with accuracy; if we take the costs of a campaign with street posters as reference, we discover that for an important party, this method saves billions of lei or even tens of billions of lei. We must also point out the perspective of limiting these contributions. While air time on public radio and televisions is limited (the only thing to discuss here is related to the distribution of this limited air time), in the case of outdoor advertisement, taking into account the reality of the situation as regards authorities' attitude to strategies for outdoor advertisement, the only limit is (self)imposed by the party's capacity to produce posters and hire a sufficient number of people to stick them.

The following fiscal facilities that are at the edge of the legal provisions (in the sense of an intrusion into the area of parties' funding), and could be questioned anytime would be:

- a. Facilities granted to parliamentary parties for activity in the territory. There aren't few cases when parliamentary offices are included in parties' headquarters and thus, by common operation, between parliamentarian's activity in connection with citizens and the party's own activities there is no separation. Thus, there is the situation in which logistics and human resources covered from the Parliament budget are used by the party for its own purposes.

- b. Use of public property for political purpose. There are many cases when elected politicians or politicians who hold positions in the public central and local administration, use public resources for political purposes. Examples like: use of cars or other means of transportation, use of public institutions headquarters for strictly political meetings, that have nothing in common with the activity of that institution and are not paid for, use of public officials and contract employees for political activities, use of communication systems, use of public funds for opinion polls with political purposes are merely a part of the forms by which public funds are used for electoral purpose. All these methods are forbidden and make the subject of control performed by the Court of Accounts, Police, National Anti-Corruption Prosecutor Office and other specialized institutions.
- c. Granting funds to structures of national minorities represented in the Parliament which, considering their dual nature - organizations promoting social-cultural values and identity conservation of the respective ethnic group as well as political organizations representing the political interest of the respective minorities - leads to the impossibility of distinguishing to what extent the respective funds are used or not for electoral purposes.
- d. Imposing taxes to party members who hold elected positions or public positions. It is a practice frequently encountered through which powerful parties, who hold most of the political power expressed by positions and control over public institutions, try to obtain financial advantages from the persons holding those positions. The problem is that the money claimed are obtained as result of certain advantages generated by the paid public position. The same financial advantages targeted by parties concern any of the following positions: parliamentarian, mayor, local or county counselor, public official in an important position, members in the General Assembly of Shareholders (AGA) of companies with majority state capital. If there were a need for further mentions, appointment on political criteria despite competence is still a practice generalized in our country. Parties' motivation when claiming such a tax is simple: it is considered that the party has at least some contribution, if not the decisive role, in their

obtaining of the respective public positions. At the same time, the party has the possibility to use, if needed, certain mechanisms by which they may be removed or no longer having a political support for a new mandate, if they do not "cooperate" in the sense mentioned above. The most frequent form of laundering this tax is the mechanism of particular fees created especially for this type of dignitaries.

We must mention that the practices listed above may be considered illegal funding of the political parties, attracting sanctions according to the legislation in effect.

3. Provisions on expenses

The provisions related to expenses during non-electoral period do not refer to limits on expenditures, nor on the funds obtained from public or private sources. The only restrictive provisions concern the sums obtained from the State subsidy. These have a destination limited by legal provisions on the following chapters of expenses:

- a. Material expenses for maintenance and operation of headquarters;
- b. Staff salaries related expenses;
- c. Press and propaganda expenses;
- d. Expenses related to organizing political activities;
- e. Expenses related to transportation in country and abroad;
- f. Expenses related to communication;
- g. Protocol expenses related to foreign delegations;
- h. Investments in fixed and mobile assets necessary in the activity of the respective parties;

i. Expenses for the electoral campaign.

Spending sums from the State Budget for other purposes than the ones mentioned above constitute a violation of the law and attracts sanctions.

As regards the electoral period, there are legal provisions related to the limits on expenditures per candidate. The sums that may be spent on the electoral campaign of a candidate or of a list of candidates have limits. These limits differ based on the type of elections, the position for which the candidate runs, and the type (magnitude) of the locality where the constituency is. Below are these limits, according to art. 21 and 22 of Law No. 43/2004 on funding of the activity of political parties and of electoral campaigns.

Table 11. Limits on expenses for local elections in 2004

Position	Type of locality	Equivalent of maximal sum expressed in minimal basic salaries	Maximal sum For elections in the year 2004 (salary = 2,800,000 lei)
Mayor	Commune	20	56,000,000
	Town, city or sector of Bucharest	500	1,400,000,000
	City - county residence	2,000	5,600,000,000
	Bucharest city	10,000	28,000,000,000
Local Counselor	Commune	2	5,600,000
	Town or city	10	28,000,000
	City county residence or sector of Bucharest	15	42,000,000
	Bucharest city	20	56,000,000
County Counselor	County	20	56,000,000

Table 12. Limits on expenses for parliamentary elections in 2004

Position	Equivalent of maximal sum expressed in minimal basic gross salaries per country	Maximal sum calculated for elections in the year 2004 (salary = 2,800,000 lei)
Senator	150	420,000,000
Deputy	150	420,000,000

Table 13. Limits on expenses for presidential elections in 2004

Equivalent of maximal sum expressed in minimal basic gross salaries per country	25,000
Maximal sum calculated for elections in the year 2004 (salary = 2,800,000 lei)	70,000,000,000

We must mention that in the case of indivisible lists of candidates for local councils, county councils, list of candidates for a chamber of parliament at constituency level, the maximal sum applies for the entire list not for each candidate of the list, similarly to the way accounting books are kept, which in this case, are registered for the whole list.

For example, if a party has an 8-candidate list for local counselors in a commune, then the maximal sum that may be spent for the electoral campaign is 8×2 basic minimal gross salaries per country = 16 minimal basic gross salaries per country = 16 minimal basic gross salaries per country $\times 2,800,000$ lei = 44,800,000 lei.

In the case that a person runs for several positions, the maximal sum that the person may spend in the campaign is not the sum of maximal amount for each position, but the maximal amount is the value of the highest limit of the positions the person is a candidate for.

In addition to this limitation, there is a provision that imposes a maximal limit of expenses at whole party level. This limit equals the

amount of maximal values that may be spent for each candidate of the party.

The previous provision may not be interpreted in the sense that if the limits of expenses for candidates have not been reached, what remains up to these limits may be spent (and reported as such) by the party. This is due to the fact that any generic expense made by the party must be divided proportionately among all candidates that benefit from this, and consequently, it must be found in the respective financial reports, not in the party's report in general.

In the case of elections for the position of mayor or President of Romania (and also for the other positions in exceptional cases, like a repeat of the voting), one must take into account an important aspect in candidates' financial books. The maximal limits of expenses provided in art. 21 of Law No. 42/2003 refer to the whole electoral campaign, irrespective if this is in one or several rounds. Therefore, the parties must take into account, in case they approach the limit of expenses admitted by the law, the possibility they participate in a subsequent round of elections.

4.

Reporting and transparency related provisions

According to the legal provisions, the institution that plays a central role in the parties' control and reporting process is the Romanian Court of Accounts. This keeps a Register of all the political parties, political alliances and independent candidates, in which all data referring to their financial activity will be recorded.

Among the information in this Register there is:

- The financial authorized agents designated by the parties;

To register the financial authorized agents with the Court of Accounts, the party must make this designation public in press, as an additional measure of transparency.

- Number of electoral posters printed by the parties

For increased transparency of the electoral campaign, in the sense of monitoring both the sums necessary but also identifying the authors, on all propaganda materials (for example: posters, other printed materials, banners, outdoor advertisement, electoral spots, advertisement in printed media etc.) it is mandatory to print the name of the party which edited them as well as the company name which printed them.

The number of these materials must be declared at the Court of Accounts through the financial authorized agent of the party, together with the detailed report of revenues and expenses.

In the case that the materials were produced by the party by use of own office equipment, the statement will mention that they were made by the party itself.

- Donations received during the electoral campaign and that are to be used for the party's electoral campaign;

The donations received in the electoral campaign and that are to be used for the electoral campaign must be declared at the headquarters of the Court of Accounts or the headquarters of the local County Chambers of Accounts, depending on their destination:

- a. If received by a certain candidate from the local level for, the donation is declared with the County Chamber of Accounts;
 - b. If received without specification of the candidate/list for which the donation was made, the donation is declared with Romania's Court of Accounts.
- Statements on the compliance with the expense ceilings;

Upon validation, the party's leadership submits for the candidates declared winners, a statement on own responsibility that the expense ceiling provided by the law was not exceeded.

In order to validate mandates, the candidates declared winners may be requested, by the institution authorized for their validation to

present the proof that the statement about compliance with the expense ceilings (or a copy of it) was submitted.

- Detailed reports of income and expenses of parties' candidates.

The report is submitted with the Court of Accounts within 15 days after publication of election results. While submitting the report at the Court of Accounts, the report is published in the Official Gazette of Romania "Monitorul Oficial", part III, within the same time limit.

This report is prepared and submitted by the party's coordinating financial authorized agent. The detailed report of income and expenses consists in both a general report at party level, a sum of all the reports from party's candidates, and individual reports of all candidates or indivisible lists of candidates.

The detailed report of income and expenses is mandatory for all candidates, irrespective of whether they have won the elections or not. This obligation is valid also for those candidates who withdrew from the electoral competition.

The report must cover the entire duration of the electoral campaign. In the case of the candidates who withdrew from the electoral competition, the report will reflect the period until the date the withdrawal was announced or, in the case that they were on the ballot, until the last day of the electoral campaign.

In the case that a candidate is in the situation to continue the electoral competition by participating in several electoral rounds, the report of this candidate is submitted within 15 days since the publication of the result of the last round in which the candidate participated.

For a party that still has candidates in the electoral competition, the report is submitted within 15 days after the publication of the last elections' round results that the party has candidates in.

The publication of the donations' related data received from donors, as well as on the related amounts is done on an annual basis. Publication is done by March 31st of the following year in Part II of Romania's Official Gazette "Monitorul Oficial".

On this occasion, the following information is published:

- a. The list of Romanian individuals or legal entities that made donations within a year of a cumulated value exceeding 10 basic minimal salaries;
- b. The total sum of the confidential donations;
- c. The donations coming from international political organizations to which the respective political party is affiliated;
- d. The donations coming from political parties or organizations from abroad with which the party has political cooperation.

According to legal provisions, the format in which donors' list is published must contain at least the information reflected in the model below.

Table of donors' list:

- a. Full name or legal person name (in the case of legal entities);
- b. Address or headquarters (in the case of legal entities);
- c. Citizenship or nationality (in the case of legal entities);
- d. Number and series of identity card and the personal number code, or registration code (in the case of legal entities);
- e. Value of donation;
- f. Type of donation (money, goods, services);
- g. Date of the registered donation.

Unlike the other essential income sources whose origin is clear, membership fees (from party members) and subsidies (from the State Budget), in what concerns the donations, the source is more difficult to identify by the public at large. For this reason, the Law establishes in this case special provisions on the publication of various information related to party's donations.

Also, there are cases in which the parties post financial information representing either periodical financial executions, or expenses related to the electoral campaign, on their own web site⁶⁹.

One thing that is mentioned is that the Law does not provide standardized forms through which the financial reporting should be done, as stated by the numerous transparency provisions. Also, neither is the control institution, Romania's Court of Accounts, authorized to impose such forms. It is worth mentioning that in the *Practical Guide for the organization of parties' funds and transparency in reporting*, prepared by IPP in 2004, such forms were suggested. IPP was delighted to notice that more and more parties use them in their reporting⁷⁰.

From the accounting point of view, every party must prepare its annual financial statements: the balance sheet by December 31st and the account of the fiscal year expenditures by December 31st, with their submission in time at the Financial Administration Office to which the registered party headquarter is in range of report. The annual forms for the financial statements are prepared by the Ministry of Public Finance.

⁶⁹ An example is URR: <http://www.urr.ro/ro/documente/rapoarte/financiare/rf-al-2004.06.html>

⁷⁰ For example, at the end of the year 2004, parties' reports on revenues and expenses in the parliamentary elections were published in the format proposed by IPP, by 5 parties. These forms, that introduce an increased level of detail, include distinct columns for every category of revenues possible in the campaign. Also, a distinction is made for the income, whether it was money or goods/services. The expenses include distinct chapters like: personelle, rent, maintenance, headquarters functioning, communications, protocol, transportation, trips outside the locality, prints and other promotional materials, publicity in the press/radio/tv, street publicity, services, surveys, research/consulting, other expenses (only in detail), late payment expenses.

5. Financial management

Political parties, by their complex structure, by the number of localities in which they operate, by the dynamics of their members and personnel, are legal public entities that are politically and administratively difficult enough to manage. If in these cases compromises are accepted without necessarily leading to serious blockages or violations of the laws, in the case of the financial-accounting administration of such a structure exigency is much higher. This is imposed on the one hand by the legislation in effect, and on the other, by internal constraints of the party. One may say that a party that fails the financial management at the level of its territorial branches cannot control the political relation with them either. By this, we do not mean that parties should influence the activity of their territorial branches in a centralized way, but merely they should organize and coordinate it in a way that should determine full compliance with the legislation in effect.

Especially in the past years, with political parties in Romania one could notice the presence of financial management specialists, people who know the party's financial - administrative organization, who are accustomed with the party's internal regulations in the relations between the center and territorial structures. These specialists quickly notice the fiscal problems and propose solutions.

The new law on the funding of political parties, Law No. 43/2003 on the funding of the activity of political parties and of electoral campaigns, led to reconsideration within parties of financial and reporting procedures, both at local and central levels. Even if the law, being new, has not yet succeeded to create a practice of collaboration between parties and the Court of Accounts, from the perspective of the new provisions, the experience so far and the interpretation of the new law provisions enable us a few useful conclusions regarding a better management of parties' resources.

A pressure factor to produce these changes is the fact that, according to Law no. 43/2003 on the funding of the activity of the political parties and of the electoral campaigns, the Court of Accounts runs annual control on all parties that are registered in Romania, in

order to see the compliance with the provisions on the funding of political activities and of the electoral campaigns.

As result of the registration as a not for profit public legal entity, a political party must develop its financial management according to the provisions regulating this type of institution. Among the most important legal provisions to be presented in detail below, let us mention Law No. 82/1991 on accounting, and an Order by the Ministry of Public Finance No. 1829/2003 - accounting regulations for not for profit legal entities, Order by the Ministry of Public Finance No. 2,388/1995 on organizing and executing the inventory of patrimony.

According to the Law on accounting No. 82/1991 (republished in the Official Gazette No. 629/2002) not for profit legal entities (political parties belonging to this category) have the following legal obligations related to:

1. Organizing and leading own accounting. The main aspects consist in:
 - a. Noting every financial-economic operation at the moment it is taking place. Any accounting record must be elaborated based on financial documents that engage the responsibility of the persons who prepared, stamped and approved them, and also those who registered them in the accounting files. Non-registration of goods or sums that entered the party's patrimony is sanctioned by fine from 30,000,000 lei up to 300,000,000 lei and these sums that are the object of violation become income to the State Budget. Possession and use of goods, value titles, cash and other rights and obligations, as well as performing economic operations that are not registered in accounting are forbidden. These violations are sanctioned by fine from 30,000,000 lei to 300,000,000 lei and the sums that are object of sanction become income to the State Budget.
 - b. Accounting of expenses per types, according to their nature and destination. Therefore, a series of expenses will be distinctly highlighted, as the case: the accounting of expenses in budget subsidies is done based on the destinations provided by Law No. 43/2003 on the funding of political parties' activity

and of the electoral campaigns in art. 10, and the accounting of expenses provided under other sources of income that are exceptions to the forbidden commercial activities is done per each activity.

- c. Organizing the accounting on types of expenditures, by their nature or destination. Thus, expenditures will be distinctively registered as follows: the accounting of the expenditures made from State Budget subsidies is kept according to destinations stipulated by Law No. 43/2003. Also, the accounting for the expenditures mentioned under the chapter regarding: *other incomes sources*, which are excepted from the commercial activities forbidden to parties, is separately kept for each activity.
- d. Income accounting is elaborated per types of income according to income source or nature: from membership fees, from donations, from subsidies, and from other sources - that are exceptions to the commercial activities forbidden to parties.
- e. Accounting should be elaborated per categories of clients and providers, as well as per each individual and legal entity.

2. The general inventory of items in the active and passive assets is done as follows: in the beginning of the political party's activity, at least once a year for all the duration of party's function, as well as in the case of merger or cease of activity. Documents and main registries necessary in the general inventory of patrimony are the following:

- For fixed assets:
 - a. Register of inventory numbers;
 - b. Register of fixed assets;
 - c. Fixed assets file;
 - d. Minutes of fixed assets set to function, final reception or statement of goods;

- e. Minutes and other legal acts (minutes of buying-selling, reception papers) that were the case of acquisition of fixed assets;
- f. Minutes of taking fixed assets off function or of statement of goods.
 - For inventory elements:
 - a. Storage file in case of materials, publications and items of inventory;
 - b. Inventory lists for all items of inventory;
 - c. Inventory register.

All the results of inventories (gains and losses) must be registered in the party's accounting. Failure to perform inventory of patrimony is sanctioned by fine from 4,000,000 lei to 50,000,000 lei.

3. Introducing and filling in obligatory accounting registries. These are:

- a. Journal register (for chronological registration of financial operations related to patrimony movement based on justifying documents, both for operations through the cashier and for operations through bank accounts);
- b. Inventory register (registers results of patrimony inventory and content of balance accounts);
- c. Main ledger (document for summarizing accounting of economic and financial operations: establishing monthly transactions and balance per synthetic accounts).

4. Preparing the trial balance. This operation is done monthly by checking the accuracy of accounting records of performed transactions and represents the basis of annual financial statements of the party.

5. Preparing annual financial statements: the balance sheet by December 31st and the account of closed fiscal year by December 31st, and their submission with the Financial Administration Office the party headquarters shall report to. The forms of annual financial statements are edited by the Ministry of Public Finance. Essentially, these forms are the value expression of summarizing information on intangible assets and liquid assets, liabilities (contributions, differences from reevaluation, provisions), the result of the fiscal year in the case of the balance sheet (surplus/deficit of non-patrimonial activities); in the case of the account of the fiscal year, income from non-patrimonial activities, expenses of non-patrimonial activities as well as the result of the non-patrimonial activities (surplus/deficit). Annual financial statements are published under the terms provided by the law, failure to publish them is sanctioned by fine from 5,000,000 lei to 15,000,000 lei.

Another essential regulation on the financial-accounting activity of non-profit legal entities is the Order by the Ministry of Public Finance No. 1829/2003, which establishes the plan of accounts for not for profit legal entities and the methodological norms for their use. In our opinion, the above-mentioned Order, although very detailed about the forms (balance sheet, plan of accounts, etc.), does not bring at the same time any financial-accounting specification typical for not for profit legal entities.

For an accurate internal management with respect to the standard forms per economy to be used by political parties, parties must comply with the provisions in the Order of the Ministry of Public Finance No. 425/1998 approving methodological norms for the use of standard forms and the samples. As regards the standard forms of special regime (receipt book, invoice book etc.), taking into consideration also the parties' legislative regulation tendencies, the procurement procedure must be carried out through the central unit with further distribution to territorial structures. We also mention the regulation concerning the forms for the financial-accounting activity in Government Decision No. 831/1997 approving the sample forms and the methodological norms on their preparation and use, with subsequent completions and amendments.

As regards the financial management, territorial organization of parties follows the legal logic of not for profit legal entities. One of

the frequent problems encountered by local party structures with own accounting, is that they are required to have a fiscal code for certain operations: order stamp, open bank accounts, purchase standard forms of special regime, registration as tax payer. Taking into account that legally only the headquarter structure registered in Bucharest Court is considered a legal entity (and therefore may have a fiscal code) for many times the territorial organizations fail to persuade the respective institutions that it is not necessary (even illegal) to hold their own fiscal code as a territorial structure of a political party.

A party may have territorial organizations at county level and at local level. The financial-accounting organization of these territorial structures must be provided in the party's statute and/or other internal regulations. Once a territorial organization is created (these, by statute, have various names from one party to another: county branches, county organizations, local organizations, city and town organizations, etc.) it would be important to benefit from support of the headquarter in order to organize its own financial management, in accordance with the laws in effect. First of all, let us say that territorial organizations may not be distinct legal entities. They should function using the fiscal code of the party headquarter. Local organizations, may, however, hold their own bank account, order stamp (with the name of the party and territorial organization). Local organizations that don't have their own accounting but do have income (from membership fees, donations, other sources) and expenditures (utilities and maintenance of their headquarters, travel, other expenses) must take into account registering all these income and expenses through periodical reports in the accounting of the higher organization. In this situation, local organizations without their own accounting should keep records reflecting all operations, cashing or payment and these financial operations will be registered in the accounting of the higher organization that does the accounting, at least at trial balance level. There is the possibility that this record keeping should be directed not only hierarchically up to the level where the trial balance is done, but also horizontally, to the person who keeps such registers. For example, all cashing and payment operations of a city organization of a party that only keeps such records, if the statute permits, may be found either in the records of the county organization (vertical model), or in the records of the

organization of another city/county capital (horizontal model). Both shall keep records at least at trial balance level.

Parties may open accounts in Romanian currency - lei - and foreign currency with the banks in Romania. Cashing and payment operations may be done through the bank accounts, and also through the cashier's office. Operations through the cashier's office are subject to rules provided in the Regulations of the cashier's office and in the accounting norms applicable to not for profit legal entities.

With respect to the party's patrimony, although territorial organizations currently have financial autonomy in the sense that they decide on their own income and expenditures, only the central leadership of the party, through the structure registered with Bucharest Court (whether it is called National Council, Permanent National Bureau, or Executive Presidium etc.) has the authority to engage the party's patrimony. Tangible and intangible goods owned by the party (as result of acquisitions, donations, rents) must follow the necessary and legal typical activities of a party. Political parties may not possess tangible and intangible goods for activities that are not typical to parties, for example commercial activities or other commercial services (beside internal services).

Each territorial organization that has its own accounting must periodically submit the following reports to the headquarters:

- a. Trial balance (monthly), with distinct records of:
 - Income from membership fees;
 - Income from donations;
 - Income from other sources accepted by the law;
- b. Patrimony status, including patrimony inventory (annually).

Local organizations without their own accounting, in their turn, send periodical reports to the territorial organizations that have their own accounting.

Each party must organize this mechanism based on a financial-accounting staffing pattern. It is essential to have individuals or legal entities employed by contract for accounting positions in each territorial organization that has its own primary accounting. In the absence of qualified personnel, accurate and efficient general accounting of the party is hard if not even impossible to achieve.

The efficiency of party's accounting has been facilitated lately in the case of some parties by:

- a. Periodical meetings between the persons at all party' levels in charge with the party's financial-accounting activity;
- b. Payment of the salaries of this personnel by the headquarters as well as their double subordination, both to the head of the financial-accounting department, and to the person in charge with organizing income and expenditures at local level;
- c. Proper organization and functioning of financial control bodies and internal audit;
- d. Adopting a budget of income and expenditures in the beginning of each fiscal year;
- e. Introducing a unique software organizing accounting for all organizations with own accounting that should allow for introducing efficient analytical records;
- f. Interconnecting organizations with own accounting in a computer accounting network that allows obtaining information on the financial-accounting operations of the party in real time.

6. Control institution

The decision selection to grant the Romania's Court of Accounts the authorization to control the funding of political parties was based on a several reasons:

- a. At the time of the first legal provisions, the control was on the money received by the parliamentary parties through subsidies from the State Budget;
- b. The supreme authority to control the legality of the use of public money was Romania's Court of Accounts;
- c. Romania has not have a permanent institution in charge of the management of elections (Permanent Electoral Commission) until very recently;
- d. Romania's Court of Accounts is an independent institution who reports to Parliament.

The control of political parties at the Court of Accounts' level is performed by Division VI - Control of public institutions with attributions in privatization, financial investment companies, public funds administration, and the administration of public institutions' patrimony, within the Section of Financial Control coordinated by the President of Romania's Court of Accounts, Prof. Dan Drosu Saguna, PhD.

Within the Division, the control activity is run by a team of 4-5 financial inspectors, coordinated by a director, under the direct management of the Head of Division VI, whose rank is of Counselor of Accounts.

Also, at the level of the Chambers of Accounts in each county, as well as in Bucharest city, there are 1-2 persons in charge with this matter.

The personnel in charge with controlling political parties' funding do not cover only this single responsibility. On the contrary, one may state that out of the total of the Division's control activity, the control of parties' funding represents a minor percentage.

We must add that out of the entire involved personnel, only the President of the Court of Accounts, the President of the Subsequent Financial Control Inspection Section and the Head of Division VI are appointed by the Parliament. The duration of their mandate is of 6 years. They are immovable and independent for the entire duration

of the mandate. The personnel in leadership positions is appointed by the leadership committee, except for the one appointed by the plenary session of the Court of Accounts.

The Court of Accounts is an institution that reports annually to the Parliament. It is the Parliament that sets the Court of Accounts' budget.

Persons involved in the controlling of political parties' funding have education in finance and economics. The personnel with legal background is further very needed in the control activity.

As regards the control authorization, we must say that according to Law No. 43/2003, Romania's Court of Accounts is the only institution authorized to control the funding of political parties in Romania. We want to draw attention upon the fact that abusive interpretation of this provision by some parties makes them refuse potential control from other public institutions authorized to perform financial control. Let us mention here only the General Directions of Public Finance or the Territorial Labor Inspector's Offices. There are cases when small parties or the branches of parliamentary parties do not have records of accounting and the Chambers of Accounts cannot interfere in this area to enforce sanctions.

We should emphasize that from the point of view of the type of control, this may be separate during the annual routine control (provided by the law as mandatory), control related to the electoral activity, and punctual control for the investigation of certain special situations. Annual control is part of the annual plan of control of the Court of Accounts. The parties are notified in time about the date when this control starts for each party. The control is done simultaneously at the level of headquarters and of the party's branches.

The control of funds coming from the state subsidy is only performed by the Court of Accounts at the same time with the annual control at the level of the headquarter and of the party territorial branches.

In the context of the annual control, the Court of Accounts shall control, as far as donations are concerned, the following aspects:

- a. To place the donor within the category of persons accepted by the law to perform donations;
- b. Complying with the ceilings on donations performed by each donor;
- c. Complying with the ceilings of income obtained from donations;
- d. Complying with the ceilings on confidential donations;
- e. Publication in the Official Gazette of Romania of information about donations under conditions provided by the law;
- f. Accurate registration in the lists of donors;
- g. Accounting recording of donations.

Romania's Court of Accounts has the obligation, according to Law No. 43/2003 on the funding of the activity of political parties and of electoral campaigns, to keep a register of the political parties, of political alliances, of candidates, of the independent candidates, and of citizen organizations belonging to national minorities. In this register there is all data - the data declared to Romania's Court of Accounts, according to provisions of the same law - referring to their financial activity:

- a. Registration of the financial authorized agents;
- b. Registration of contributions for the electoral campaigns received from individuals and legal entities, after the start of the electoral campaign;
- c. Registration of the number of printed electoral posters;
- d. Registration of the declaration of the political parties' leadership or of the independent candidate on the compliance with the ceilings provided by the law for electoral campaigns;

- e. Registration of the report on income and electoral expenditures.

The Court of Accounts has the obligation to control all the documents that a political party/alliance/independent candidate has the obligation to declare or submit with the Court of Accounts. These are the ones mentioned in the registry of the political parties that the Court of Accounts prepares:

- a. **Controlling the official appointment of the financial authorized agent** who prepares and signs the report of income and expenses for the candidate/indivisible list of candidates. In the case that it is noted that the signatory of the report is a different person from the financial authorized agent registered with the Court of Accounts, the Court of Accounts is to request clarifications from the leadership of the party or territorial organization on the quality of the person who prepared and submitted the income and expenses report. In addition, the respective report shall not be registered, with all the resulting consequences.
- b. Controlling the statements of the financial authorized agent on the **contributions from individuals or legal entities received after the opening of the electoral campaign**. In case it is noted that funds from contributions received from individuals or legal entities after the opening of the electoral campaign, before declaring them to the Court of Accounts, the sanction is a fine from 30,000,000 lei to 300,000,000 lei, and the sums that make the object of the fine become income to the State Budget.
- c. Controlling **the acceptance by the political parties of subsidies, donations and legacies for the electoral campaign, in a different way than through the financial authorized agent** designated by the party. The sums received in a different way than through the financial authorized agent of the party/territorial organization and used for the electoral campaign constitute an offence and are fined from 30,000,000 lei to 300,000,000 lei and become income to the State Budget.

- d. Controlling the observance of provisions of the law on **forbidding the acceptance of donations or other forms of direct and indirect support, from individuals or legal entities**. In case this irregularity is noted a fine, from 30,000,000 lei to 300,000,000 lei, is applied and the sums (or the equivalent value of goods or services) become income to the State Budget.
- e. Controlling the situations of violations of art. 6 (1) on **the acceptance of donations or free services granted by an authority or public institution, from an autonomous state company, from a national company, commercial company or bank with a majority state capital, or from a trade union**. In this case also, the party/political alliance /independent candidate must be fined with a sum between 30,000,000 lei and 300,000,000 lei, and the incomes thus obtained become income to the State Budget.
- f. Controlling **the acceptance by the political parties of donations in money, goods or services from a foundation or association**. Noting such violations leads to fines administered to the party from 30,000,000 lei to 300,000,000 lei and confiscation of sums, goods or equivalent of services that make the object of the fine.
- g. Controlling the obligation to **print the name of the party or political alliance that edited them, the name of the company that printed them on all posters and electoral propaganda materials**, as well as whether the party has declared **to the Court of Accounts, through the financial authorized agent, the number of electoral printed posters**. Violation of these two legal provisions is sanctioned by fine between 30,000,000 and 300,000,000 lei.
- h. Controlling the submission of the **statement on compliance with expense ceilings** during the electoral campaign, on the occasion of mandate validation. According to art. 21, paragraph (4) of Law no. 43/2003 on the funding of the activity of of the political parties and of the electoral campaigns, the sums exceeding maximum expense legal ceilings become income to the State Budget. As regards the

exceeding of the electoral expense ceiling for the candidates to the Presidency of Romania, this constitutes an offence (sanctioned by fine) that may not be lower than half of the exceeding sum, and may not be higher than the triple of this sum.

- i. Controlling the **submission**, for all the candidates of the respective party, through the financial authorized agents, of the **income and electoral expense reports** within 15 days since the date the result of elections is published. Failure to submit in time the income and electoral expense report with the structures of the Court of Accounts is sanctioned by fine of 30,000,000 to 300,000,000 lei.
- j. **Controlling** the accuracy of the income and electoral expense reports submitted by the parties with the Court of Accounts through their financial authorized agents. This may be cross-checked, by checking the elements already submitted with the Court of Accounts: statement of contributions after the start of the electoral campaign, statement on the number of electoral posters and propaganda materials, state subsidies received though special law. Controlling the reports submitted by the financial authorized agents with the structures of the Court of Accounts is done in the shortest time possible. In case unclear things are noted regarding the legality of attracting and using the funds by the political parties during the electoral campaign, the Court of Accounts shall request the financial authorized agents to present additional statements and documents to clarify the aspects raising questions. These additional statements and documents are attached to the reports.

In the second phase of the electoral campaign's finances control, the Court of Accounts shall verify the compliance with regulations regarding the reimbursement of funds until certain deadlines:

- a. Controlling **the return of the subsidy received from the State Budget** within two months after the publication of election results in the Official Gazette of Romania, Part I; in the case that the political parties and alliances, citizen organizations belonging to national minorities and independent candidates did not reach the electoral threshold in the elections

for the Senate and the Chamber of Deputies or in the local elections these amounts shall be returned to the State Budget.

- b. Controlling **the return of the subsidy received from the State Budget** within two months after the end of the electoral campaign, by independent candidates, political parties, political alliances or organizations of the national minorities that had candidates for the Presidency of Romania and did not meet at least 10% of the valid votes in the entire country.

Maybe the main aspect that weakens the efficiency of the control by Romania's Court of Accounts is due to the fact that the latter can not perform any cross-checking. In the absence of such ability, the control institution shall not reach a whole series of aspects not necessarily legal.

Taking into account that, at present, Romania's Court of Accounts cannot issue norms imposing additional procedures to the parties, it is up to the parties to interpret their implementation. An example is the absence in Law No. 43/2003 of certain specific provisions on the format of the report regarding the income and expenses of the candidates in elections. The only solution remains for the Court of Accounts to recommend certain procedures and never impose them.

As regards the efficiency of the control, a substantial improvement is noticed both regarding the number of law violations noted, the amount of fines applied, as well as of the funds proposed to become income to the State Budget. On the occasion of the previous elections the Court of Accounts prepared approximately 1,000 minutes noting irregularities.

We must mention that after the constitutional changes of 2003, the Judicial Section within Romania's Court of Accounts was cancelled. Thus, following the control, the Court of Accounts may not apply sanctions. The Court of Accounts sends notes about irregularities, minutes, to the Bucharest Court of Appeal. The latter is the only one authorized to judge and apply sanctions to the parties.

Let us mention that according to the data available, until present elections held last year, there are files of at least one violation for all important political formations, in process with the Court of Appeal.

The sums proposed for confiscation to the State Budget reach in the case of certain parties almost 3,000,000,000 lei.

As regards the sanctions, one may note an exponential increase of the sanctions applied. This is also a result of introducing a new legislation that is more exigent and allows a wider coverage of the various violations of the law.

Although, in time, the parties in the situation to be sanctioned protested, stating they were being discriminated, no cases are known of parties' complaining publicly, as they were aware they weren't right. Pressures from parties were also noted during control. Frequently, when controlling is performed, parliamentarians are brought before the control teams attempting to suggest to the team that the irregularities noticed are "legal".

As for notices regarding irregularities, any person who is interested, may submit a notice with Romania's Court of Accounts or with one of its county branches - the Chambers of Accounts. From IPP's own experience, the Court of Accounts has no uniform practice to address the notices, although in certain cases it is known that some investigations were launched as result of notices received from third parties (especially competing parties).

Although it does not have the obligation by law, in the last years, the Court of Accounts published a series of reports on the main findings of the process of financial control of parties, both during annual control and during control aimed at the electoral periods.

From the same point of view, we have to mention that Law No. 544/2001 on the free access to information of public interest applies also to Romania's Court of Accounts. The Court responds to requests referring to this law, although sometimes in an incomplete way and giving it sometimes refusing to make available data in electronic format, but only in hard copy or PDF format. This makes difficult processing of data in the case of higher amounts of information requested. We would like to mention that beyond the secret-like attitude of the institution, in general, raising questions about the control it performs on political parties, triggers some of the strongest reserves in communication. However, progress in the Court's openness and dialogue with civil society in this field is to appreciate.

It is to appreciate the training sessions that the Court of Accounts organized in the electoral year 2004, before each type of elections, with every interested party, both at center and in each county.

For the first time, the Court of Accounts participated together with the most important parties in a program developed by IPP in order to prepare the first *Practical Guide on the organization of parties' funds*, a material then recommended to the parties to help them improve the quality of the financial management.

Finally, we would like to mention the growing involvement of the Court of Accounts in the public debates on the topic of the funding of political parties. It is worth mentioning that up to the present the Court of Accounts has been reserved about formulating views on potential changes in the legislation on grounds that, according to the law, it has not right to have initiatives in this field.

7. The role of civil society in monitoring the funding of parties

Civil society played a key role in the steps towards a more fair and transparent funding in any country. Whether we are talking about non-governmental organizations, the press, the academia, companies, they all have a privileged position in pointing a finger at certain unnatural practices and have the credibility before parties in order to request them to comply with current provisions, or to suggest improvement of the law.

The first topic of significant importance with respect to the way parties get and spend money was the *Costea scandal*⁷¹. It is about a so-called support granted by a Romanian in the diaspora to the electoral campaign of Ion Iliescu in 1996, and to Emil Constantinescu in 2000, as well as his implication in supporting the creation and functioning of a political party (Alliance for Romania).

⁷¹ http://64.233.183.104/search?q=cache:f7zxxTaLVooJ:www.evenimentulzilei.ro/investigatii/%3Fnews_id%3D150004+scandalul+costea&hl=ro

Covered by the press for long at the time, the case brought to public attention for the first time the costs involved by an electoral campaign carried out through modern means.

After this case, in the following years, a whole series of articles and investigations were developed about the way parties are funded in Romania and about parties' relation with the business sector. In the last years, the topic of these articles was changed to reflect a growing phenomenon: the abuse of public resources for personal and implicitly, political gains. In this sense, IPP had a research in the year 2004 entitled *Politics on public money*⁷² that was an overview of the mechanisms by which funds and other public resources are used for political and electoral purposes.

Mass media has always been keen on this subject, although in certain cases, a series of publications suspected to have political affinities only reflected aspects concerning the political opponents of the groups they supported. What is important is the fact that all in all these voices completed one another, and the press in general succeeded to provide a uniform image of the phenomenon as it is reflected in the entire political spectrum.

As concerns monitoring, IPP as well as other organizations, among which Pro Democracy Association (APD), analyzed especially expenses for publicity.

In its initiative for greater transparency of the political parties in general and especially in the way they function from the financial point of view, IPP made an analysis of the publicity that parties engaged in the electoral campaigns in 2000 and 2004 (local elections, parliamentary elections, presidential elections).

In this sense, with the support of the only company monitoring publicity in the media in Romania - Alfa Cont SRL - well-known among professionals in media and publicity, IPP elaborated a database complete with publicity materials that had appeared during the two electoral cycles. Thus, an efficient and precise method to obtain information on the quality and quantity of electoral and non-electoral publicity was available to those interested. We must

⁷² <http://www.ipp.ro/altmateriale/Politica%20pe%20bani%20publici.pdf>

mention that IPP is the only organization that after the purchase of these data put at public disposal both the methodology of monitoring and the database online⁷³.

APD tried in 2004 to estimate the costs of the outdoor campaign of the main political formations in Bucharest and in a few other cities in the country. Although, like in the case of press publicity, outdoor advertisement holds a significant percentage of the electoral expenses, unfortunately estimation at the same standards of professionalism cannot be made, because there is no company on the market to do this led to the development by this organization of its own monitoring methodology implemented with the support of volunteers.

We shall mention here that at the initiative of APD both in 2000 and in 2004, most of the political parties adhered to a code of conduct in the campaign that contained also provisions aimed at determining them to use campaign funds in a transparent way.

We stress again that IPP, with the participation of the Court of Accounts and of the main parties, produced for the electoral year 2004 *"The Practical Guide for the Organization of Parties' Funds and for Transparency in Reporting"*⁷⁴ which was of a real help for the political parties. It was distributed to the parties in a first phase so, later on IPP received requests from some parties for additional copies. Even more important is the fact that a series of parties used the guide to implement the procedures it suggested.

Another aspect that IPP had considered in 2004 was the correction of some violations of the law by initiating strategic litigation. Because we had indication that the validation of elected candidates was done in certain cases without actually complying with the legal provisions that requires the filling of the campaign financial report as a condition for validation, IPP representatives documented a number of cases of mayors' validation and creation of local and county councils without complying with the law.

⁷³ www.ipp.ro/aleg.php?cod=start_rapoarte&db=presa&an=2004g

⁷⁴ <http://www.ipp.ro/altmateriale/Ghid%20FP.pdf>

On June 16th, 2004, IPP representatives noticed at Buftea Court, Ilfov county, that on June June 14th 2004 this court, through its President, Judge Florea Muha, validated all the 19 mayors elected in the county during the first round of June 6th 2004⁷⁵. The validation was done in violation of provisions of art. 25 paragraph 2 of Law No. 43/2003 on the funding of the political parties and of the electoral campaigns, according to which the validation of elected candidates depends on the submission in time, by all parties and independent candidates of the financial reports of the electoral campaign. In none of the 19 validation files was there an act that should proof that the reports had been submitted. Moreover, the president of the court was interested in the IPP representatives about the norm that imposes, as consequence of validation, the submission of financial reports as a condition for validation, which shows that the: law is not well known even at court level.

Although the decisions taken by the court were obviously illegal, IPP could not contest the ruling, due to a serious deficiency of Law No. 215/2001 on the local public administration, according to which only the decisions invalidating elected mayors may be appealed in court, even if these had been made in obvious violation of the law.

On June 23rd 2004, the IPP representatives noticed that the validation of local counselors in the commune Afumați, Ilfov County, was done as in a violation of the same legal provisions that established condition for validation the submission of the financial report. From the file examined at the local council it resulted that the validation of local elected officials had been done on June 18th,

⁷⁵ Commune Balotești - Ion Florin Dănuț (PD), Commune Ștefăneștii de Jos - Rababoc Anghel (PSD), Otopeni town- Gheorghe Constantin Silviu (PNL), Commune Bragadiru - Brînzoi Marin (PSD), Commune Cernica - Apostol Gelu (PSD), Commune Cornetu - Stoica Ghe Adrian Eduard (PSD), Commune Chiajna - Minea Mircea (PNL), Commune 1 December - Stan Ilie (PSD), Commune Gruiu - Samoilă Ghe Ion (PNL), Commune Clinceni - Budeanu Adrian (PNL), Commune Afumați - Ghețu Gheorghe (PSD), Commune Moara Vlăsiei - Radu Ion (PSD), Commune Tunari - Anica Alexandru (PD), Commune Daraști - Ticu Sorin (PSD), Commune Brănești - Tănase Florea (PSD), Commune Dragomirești Vale - Socol Gheorghe (PD), Commune Nuci - Vasile Georgel (PSD), Commune Chitila - Oprea Emilian (PNL), I Voluntari town- Pandelescu Florentin Constel (PSD).

without them having submitted the financial reports according to the law.⁷⁶ Validation had been done in this case too in violation of provisions of art. 25 paragraph 2 of Law No. 43/2003 on the funding of the political parties and of the electoral campaign, according to which validation of elected candidates is conditioned by the submission in time, by the parties and the elected candidates, of the financial reports on the electoral campaign. Although by Law No. 215/2003 of local public administration it was established that the validation or invalidation decisions of counselors' mandates could be appealed in court, through Governmental Ordinance No. 35 of January 30th 2002 approving the Framework-Regulations on the organization and functioning of local councils, it was disposed - art. 9 paragraph 4 - that the compliance with the respective decision "cannot become the object of court actions". Governmental Ordinance No. 35/2002 is unconstitutional as it was adopted in a field that is the object of an organic law, therefore contrary to art. 114 paragraph 1 of the Constitution of Romania of 1991. According to article 72, letter o) of the same Constitution, organic law regulates "the organization of local administration". However, it is obvious that regulating "the organization and functioning of local councils", Governmental Ordinance No. 35/2003 regulated contrary to the constitutional dispositions in effect at the time, in a field that made the object of organic laws.

On June 23rd 2004, IPP, assisted by the Center of Legal Resources (CRJ), appealed in court the decision on the validation of the mandates of the 15 local counselors, demanding that the Administration Solicitor Office of Bucharest Court (TB) cancel as illegal the Decision no. 18 of June 18th 2004 of the Local Council of Afumati commune. At the same time, related to this situation, the Prefect of Ilfov County was notified in consideration of the legal prerogatives that he has in the area of legality control of local councils' acts. In his response, the Prefect communicated that the parties to which the local elected counselors belonged, had submitted the financial reports with the Chamber of Accounts Ilfov.

⁷⁶ The 15 counselors belonged to PSD (Coandă Victoria, Cristescu Ion, Dobre Elena, Dogăreci Ioan Dorin, Gheorghe Stere, Ilie Gheorghe, Nica Georgeta, Stancu Natalia și State Gheorghe), respectiv PNL (Camburu Ion, Camburu Tudor, Constantin Felicia, Dumănică Gabriel, Marin Laurențiu and Niculae Costel).

IPP opines that compliance with the legal provision ought to have been checked by the validation commission, which, as results from the minutes of the validation of counselors, had not happened. In order to justify the fact that he had not appealed in court the illegal decision that validated the local counselors, the Prefect invoked Governmental Ordinance No. 35/2003, whose provisions are evidently unconstitutional, in the opinion of the initiators of the contesting action. The suit is still being in process in court.

As regards the role of non-governmental organizations in organizing debates on the topic, one may state that in Romania NGOs represented almost always the initiators of the debates. The success of these debates, of the ideas brought by these, is an evident one and constitutes a strong point in the relation that civil society has with the control institution - Romania's Court of Accounts.

8. Conclusions and recommendations

Following the research in the field of parties' funding, IPP came to a series of **conclusions** that we list below:

1. Contrary to appearances, the financial-accounting activity of parties is chaotic and often "politically" influenced by the leadership of the parties at the corresponding level. The central level keeps an apparent image of global control on its branches.
2. Local structures of parties developed a tradition to call on a parallel system of funding, by supporting financial activities in a black economy.
3. The phenomenon of political migration had serious consequences on the financial records of territorial organizations of the parties. Frequently, the leave of branch leaders led to the disappearance of any kind of records, recent or archived. Today, few parties of Romania may praise themselves for some accounting records in territorial organizations dating since the '90s.

4. The parties prove adaptability to legal provisions. Consequently, the "complaint" according to which certain provisions introduce an increased effort (sometimes bureaucratic) to observe is unjustified.

5. Inside the parties of Romania, control over financial resources is still part of a limited number of people. Decisions on expenses are less transparent, and the income seems to be the monopoly of a circle of "initiated" that decide everything. This leads to excessive control of the national leadership towards territorial structures, leaving them with no real autonomy.

6. The lack of transparency, even inside, may lead in some cases to the transformation of party's finances into a personal business. This mechanism starts by collecting "taxes" for candidates that are not reported, obtaining donations that remain undeclared, and continues with signing contracts with parties' leaders' own companies and exaggerated reimbursements. One of the "miracles" in the funding of electoral campaigns in Romania is the fact that almost all electoral budgets are spent entirely. There are still signs that make us believe it is not true.

7. The criticism about the level of expenses in political activities is in general approached unilaterally. In general, these expenses may be found as justified, to the extent in which citizens may benefit from a more accurate information on political activities and governing program.

8. The concern according to which money in politics is too much is not quite justified. This is a problem presented in a false way. An electoral campaign, during which less than 0.1% of the total budget that shall further be managed, is far from being considered an expensive campaign. However, an essential issue in this respect is the way money is used, the efficiency of its use, its efficiency grows at the same time with the imposing of restrictions. For example, interdiction of advertisement on TV will lead to an increased efficiency into the use of other means of campaigning (outdoor, print press, etc.) We must mention that we understand at the same time the suspicions about the "black money" as totally unjustified.

9. The electoral competition is an unequal one from the financial point of view. Candidates holding official positions benefit from financial advantages and more resources. The level of competence diminishes and it moves from the plan of political projects to the one of getting voters' attention from the quantitative and not qualitative point of view. IPP research shows that substantial funding is a necessary condition, although not sufficient, in order to win the elections. This thing is very difficult for those in competition against the candidate in position. From a democratic point of view, it is normal to wish for a competition in which the counter-candidates of the favorite hold at least equal financial power - or even invest proportionately in it.

10. The use of public resources by incumbent candidates during the campaign is a frequent practice. It is considered by citizens to be one of the most frequent forms of corruption, although in many cases, this is not followed by sanctions by the electorate.

11. The main political forces reached a level of financial resources mobilization beyond comparison with the rest of the parties, that seem to be incapable to ever penetrate - irrespective of their efforts - the exclusive circle of the powerful.

12. A small group made up of corporation structures, profit-organizations, professional activities, play a decisive role in parties' finance. This role may be considered out of proportion. Without an efficient control of donations, these groups may have an excessive role in influencing governmental policies.

13. Reporting measures were not used intensively by the parties in the past either, according to provisions in the former legislation. Voluntary transparency is almost non-existent. Even when the reporting is done, it is not accessible to citizens and there is no adequate coverage in the media.

14. A lot of money was spent for the purpose to manipulate and for negative publicity. If voters don't like something about parties' funding which is the fact that a lot of money is spent, we must however take into account that in reality the part that most bothers citizens is the way the money is spent on publicity in commercial style and on other such actions for the image of the party (for

example: concerts). Often, the so-called “image people” of a party try to sell them like commercial products, with a devastating effect on the campaign budget.

15. The introduction in the Romanian system of components of public funding did not have the effect of a differentiation of transparency between these sources and the private ones, as it happens in other systems. The checking of public money is as difficult to perform as the one of private money. In this case, getting close to these funds is the result of staying with a system of paternalist social protection, a help-support system.

16. Although it may appear as having no chance, a real reform in the activity of parties’ funding may change radically the attitude of the political climate towards interest groups, medium and small, and towards citizens at large.

Also, IPP formulated a series of **recommendations** related to parties’ funding, and particularly to the control on party finance.

1. The Legislative should eliminate all ambiguous forms within the law. Many provisions suffer for the absence of a sanction, enforcement and control mechanism. We recommend the introduction of a section of definitions in the law or authorizing the control body that should allow such specifications in the respective cases.

2. The mechanism of allocating the subsidy from the state budget should modify so as the subsidy granting should keep in mind also the electoral performance in local elections. These sums granted for the performance in the local elections should be directed to parties’ territorial branches, this bringing an increased financial independence from the center

3. Control must have a main role in the following period, being the introduction into parties’ accounting of the multiple parallel expenses in the present.

4. IPP believes that strengthening sanctions would not lead to an increase of law compliance, on the contrary. Therefore, for the

moment, IPP considers that the most efficient method in the fight against parties that do not comply to the provisions on the publishing of donations, on the submission and publication of reports of income and expenses, is to interrupt the subsidy from the state budget until all obligations are accomplished.

5. Legislation on the funding of parties and of electoral campaigns, should also be extended to the campaign for the organization of a referendum, as well as for drafting a law on the organization of elections to designate representatives of Romania into the European Parliament.

6. Creation of a more flexible control body - dedicated exclusively to this topic - made up of specialists in electoral and accounting-financial management. The approach according to which the inspectors in this field are accountants should be revised. The true decision to reform such independent institutions comes from the profile of the inspectors in this institution. We consider that a team made up of experts in management and electoral image, as well as a legal specialist may create a more "aggressive" and therefore a more efficient control than one made up exclusively of accounting experts. This structure may be put under the Permanent Electoral Authority, or may be a distinct structure within Romania's Court of Accounts (for example a division).

7. The introduction among the duties of this control authority of the possibility for cross-checking is essential. Cooperation with other institutions authorized for control is an imperative need. We must mention that, as long as the checking will be done only at parties' level and not extending to the legal persons (public and private) that come in contact with the party or that have indirect relations with the party, the efficiency will be somehow reduced.

8. The practice of using public resources for political interest by the politicians holding positions must be stopped by completing the legislation but first of all by stricter control measures.

9. By law, a continuous reporting and control system ought to be created in real time, through the control authority. For all the data related to reporting, as well as for the results of the checking there ought to exist an easily accessible online application.

10. The introduction of informing programs for citizens on the funding of political parties may essentially contribute to parties' change of conduct and of the way citizens understand the funding mechanism of the political parties in Romania.

9. List of abbreviations

AEP	Permanent Electoral Authority
APD	Pro Democracy Association
BEC	Central Electoral Bureau
CCR	Romania's Court of Accounts
CI	Identity Card
CJ	County Council
CL	Local Council
CNA	National Audio-Visual Council
CNP	Personal Number Code
CRJ	Center of Legal Resources
CUI	Unique Registration Code
DGFP	General Direction of Public Finances
FER	Ecological Federation in Romania Party
HG	Government Decision
MER	Ecological Movement in Romania
MFP	Ministry of Public Finance
MO	Official Gazette of Romania
OG	Government Ordinance
OMF	Ordier by the Minister of Finances
ONG	Non-Governmental Organization
OP	Order for Payment
PAR	Romania's Alternative Party
PD	The Democratic Party
PDAR	The Democratic Party of Romania
PDSR	The Party of Social Democracy in Romania
PER	The Romanian Ecological Party
PL	The Liberal Party
PNL	The National Liberal Party
PNȚCD	The National Christian-Democratic Peasant Party
PRM	Greater Romania Party
PS	The Socialist Party
PSD	The Social Democratic Party
PSDR	The Romanian Social Democratic Party
PSM	The Socialist Party of Labor
PUNR	The Romanian National Unity Party
PUR	The Humanist Party in Romania (social-liberal)

SCFU	The Section of Subsequent Financial Control - Romania's Court of Accounts
SGG	The Government General Secretary's Office
SRR	Romanian Radio Station
SRT	Romanian Television Station
TB	Bucharest Court
TVA	Value Added Tax
UDMR	Democratic Union of Hungarians in Romania
UFD	Union of Right Forces
URR	Union for the Reconstruction of Romania
USD	US Dollars

10. Annexes

The Law No. 43/January 21st, 2003 on the funding of activities of political parties and of electoral campaigns

The Romanian Parliament adopts the present law.

Chapter I

General provisions

Art. 1. - (1) The funding of the activities of political parties may be performed only in accordance with the law.

(2) Ensuring the means for funding the activities of political parties must be an expression of a free, equal, and honest political competition.

Art. 2. - The political parties may possess movable and fixed assets that are necessary for them to carry out their specific activities.

Art. 3. - (1) The sources of funding for a political party can be:

- a. Membership fees of the party members;
- b. Donations and bequests;
- c. Revenues from own activities;
- d. Subventions from the state budget.

(2) The political parties can only receive and make payments through bank accounts denominated in [Romanian] lei or foreign currency, open with banks that have their headquarters in Romania, according to the law.

(3) Revenues obtained from the activities listed at para. (1) are exempted from any dues and taxes.

Chapter II

Private funding

Section 1

Membership fees

Art. 4. - (1) The amount, distribution and use of membership fees are to be determined by decisions of the political parties, according to their statutes.

(2) There is no ceiling for the total amount of revenues from membership dues.

(3) The ceiling for the total amount that a political party member can pay in one year is 100 times the gross minimum salary at national level. The gross minimum salary at national level that is taken as a reference is the one in effect as of January 1st of the respective year.

Section 2

Donations

Art. 5. - (1) The ceiling for the donations received by a political party during a fiscal year is 0.025% of the revenues of the state budget for the respective year.

(2) The ceiling for the donations received during fiscal years when elections are held is 0.050% of the revenues of the state budget for the respective year.

(3) The ceiling for the donations received from a natural person during one year is 200 times the gross minimum salaries at national level as of the January 1st of the respective year.

(4) The ceiling for the donations received from a legal person during one year is 500 times the gross minimum salaries at national level as of the January 1st of the respective year. At the time when they make the donations, the legal persons should not have any outstanding debts to the state budget and the social insurance state budget.

(5) The value of the movable and fixed assets donated to the political party, as well as the value of the services provided to the political

party shall be included in the value of the received donations and shall observe the ceiling defined at para. (1)-(4).

(6) When a donation is received, the political party has the obligation to check and record the identity of the donor. If the donors so require, their identity may remain confidential, provided that their donations do not exceed the ceiling of 10 times the gross minimum salaries at national level. The amount that a political party may receive as confidential donations cannot exceed 15% of the largest subvention granted from the state budget to a political party during the respective year.

(7) All the donations should be recorded in the accounts of the political parties, including the date when they were made, as well as any other information allowing the identification of the sources of funding. The in-kind donations of goods and services should be recorded in the accounts of the political parties at their market value, under the conditions set by law.

(8) The list of the persons who made donations whose cumulated amount in one year exceed 10 times the gross minimum salary at the national level, as well as the total amount of the confidential donations must be published in the Official Gazette of Romania, Part III, no later than March 31st of the next year.

(9) The list of the donors and the accounting records of the political party must contain at least the following elements: the name, the address, the citizenship or the nationality of the donor, the identification number of the or the fiscal code of the donor, the amount and the type of donation, as well as the data when the donation was made.

(10) The political parties are forbidden to accept donations either directly or indirectly of material goods, amounts of money or freely provided services, which are offered with the obvious purpose of extracting an economic or political advantage.

Art. 6. - (1) The political parties are not allowed to accept donations or freely provided services from a public authority or institution, from a public utility company (*regie autonoma*), from a national company, or a commercial firm or banking society where the state is the sole or

the major shareholder; donations in cash from labor unions are also forbidden.

Any amounts so received shall be confiscated and transferred to the state budget.

(2) The donations from foreign states and organizations, as well as from foreign natural and legal persons are forbidden. The only exceptions allowed from the provisions of this paragraph are the donations consisting in material goods necessary for political activities, which are not electoral propaganda literature, received from international political organizations to which the respective political party is affiliated, or from political parties or structures with which the political party maintains relations of political collaboration. These donations must be published in the Official Gazette of Romania, Part III, no later than the March 31st of the next year.

(3) The donations mentioned at para. (2) are exempted from customs taxes.

Section 3

Other sources of revenue

Art. 7. The political parties should not engage in activities which are specific to commercial entities, with the following exceptions:

- a. Editing, printing, and distribution of publications or other materials of propaganda and political culture;
- b. Organization of meetings and seminars on political, economic, and social topics;
- c. Cultural, sport, and entertainment activities;
- d. Internal services;
- e. Renting own spaces for conferences and social and cultural activities;
- f. Interest earned from bank deposits;

- g. Selling or giving away of goods belonging to own patrimony, not earlier than five years after they have been recorded in the patrimony.

Art. 8. If a party is associated, under conditions set by law, with a nonpolitical organization, the contribution of the latter to the respective associative form cannot exceed during one year the amount of 500 times the gross minimum salary at the national level, as of the January 1st of the respective year.

Chapter III

Funding from public (governmental sources)

Subventions from the state budget

Art. 9. - (1) Political parties receive annual subventions from the state budget, under conditions set by law. The subvention is transferred to the bank account of each political party through the budget of the Secretariat General of the Government and must be distinctly recorded in the accounting evidence of the political parties.

(2) The ceiling for the annual allocation received by the political parties is 0.04% of the state budget revenues.

(3) The political parties that have representatives in the parliamentary groups in at least one Chamber at the beginning of a new legislature are entitled to receive a basic subvention. The ceiling for the total amount of the basic subventions is one third of the total amount of subventions allocated to all the political parties.

(4) The political parties represented in the Parliament receive an additional subvention that is proportional with the number of their mandates in the Parliament. The amount corresponding to a mandate is calculated by dividing the remaining two thirds from the total amount of subventions for political parties from the state budget to the total number of the members of Parliament.

(5) The ceiling for the total subvention allocated to a political party from the state budget is 5 times the basic subvention.

(6) The political parties that do not have mandates in the Parliament, but had obtained no less than 1% below the electoral threshold, are

entitled to receive equal subventions, which are calculated by dividing the remaining amount resulted according to the provisions of para. (5), to the total number of the respective political parties. The total amount transferred to the political parties which are not represented in the Parliament cannot exceed the amount of one basic subvention.

(7) The amounts remaining after the redistribution made according with the provisions of the para. (6) shall be divided among the political parties represented in the Parliament, proportionally with their respective number of mandates.

(8) The amounts unused at the end of the fiscal year shall be reported to the next year.

Art. 10. - (1) Revenues from state budget subventions may have the following destinations:

- a. Material expenses for the maintenance and operation of the headquarters;
- b. Personnel expenses;
- c. Press and propaganda expenses;
- d. Expenses for the organization of political activities;
- e. Domestic and international travel expenses;
- f. Telecommunications expenses;
- g. Expenses for delegations abroad;
- h. Investments in fixed and movable assets necessary for the activities of the political party;
- i. Expenses for the electoral campaign.

(2) The efficiency and the appropriateness of these expenses shall be determined by the leadership bodies of the political parties, in

accordance with their statutes and with the legal provisions regulating the use of public funds.

Art. 11. - (1) The local authorities shall give the political parties priority in the allocation of office space for their central and local headquarters, on the motivated requested of these parties.

(2) Renting of the office space by the local authorities for the headquarters of the political parties shall observe the legal regime applicable for the housing space.

(3) Political parties are exempted from paying taxes on buildings that they own, with the exception of those which they bought for the nominal value listed in the inventory.

(4) Political parties that cease to exist because of voluntary dissolution or of dissolution pronounced by final decision of a court of law or by any other means stipulated by law, are obliged to return no later than 60 days to the local authorities the office space they occupied on the basis of a tenancy contract with the local authorities.

The occupied spaces shall be transferred under the conditions set by law.

(5) The Tribunal of Bucharest shall communicate in 60 days to the prefects about the dissolution of the political party, in order for the spaces previously rented by the local authorities to be returned through the judicial enforcers.

Art. 12 The payment of all the expenses related to telecommunications, electricity, heating, gas, water and sewage shall be the exclusive obligation of the respective political party and shall be made for the tariffs applicable to housing.

Chapter IV

Funding during the electoral campaigns

Section 1

The state budget subvention for the electoral campaign

Art. 13. - (1) All the political parties that participate in electoral campaigns can receive a subvention from the state budget, under conditions set by special law. The categories of expenses for the electoral campaign that may be funded by this subvention shall be determined in the special law regulating the allocation of this subvention.

(2) The political parties which did not reach the threshold for the election in the Chamber of Deputies or the Senate or, in the case of the local elections, which did not reach the respective electoral threshold, shall return the subvention they have received in accordance with the provisions of para. (1), no later than two months after the final results of the elections have been published in the Official Gazette of Romania, Part I.

(3) In the case of political parties that participate in elections as part of an alliance, the subvention referred to at para. (1) shall be allocated to the alliance.

Section 2

Contributions to electoral campaigns

Art. 14. All the contributions received from Romanian natural and legal persons, after the beginning of the electoral campaign, with the exceptions provided by Art. 13, may only be used for the electoral campaign if they have been previously reported to the Court of Accounts by an authorized financial agent (*mandatar financiar*).

Art. 15. The funding of the electoral campaign, either directly or indirectly, by foreign natural and legal persons is forbidden. The amounts so received shall be confiscated and become revenues of the state budget.

Art. 16. Any funding of a political party, of an alliance of political parties, or of an independent candidate by a public authority or

institution, public utility company (*regie autonoma*), national company, commercial firm or banking society where the state is the sole or major shareholder, by a labor union or by an association or foundation is forbidden. The amounts so received shall be confiscated and become revenues of the state budget.

Section 3

The authorized financial agent

Art. 17. - (1) The receipt of the subventions for the electoral campaign from the state budget or of the donations and bequests from natural and legal persons may only be made through an authorized financial agent, specially appointed by the leadership of the political party for this purpose.

(2) The authorized financial agent has the obligation to keep the accounting record of the financial operations for each constituency, in the case of elections for the Chamber of Deputies and the Senate, or for each county and each candidate for the mayor office, in the case of local elections.

(3) The authorized financial agent has a joint responsibility together with the political party for the legality of any financial operation executed during the electoral campaign and for the compliance with the provisions of art. 14-16.

(4) The financial authorized agent may be a natural or legal person.

(5) A political party can have several authorized financial agents at the central level, for the branches, or for its candidates; in this case, the specific responsibilities of each one shall be decided and a coordinator authorized financial agent shall be appointed.

(6) The services of the same authorized financial agent may not be used by more than one political party.

(7) The position of authorized financial agent cannot be occupied until it was officially registered with the Court of Accounts and publicly advertised in the press.

Art. 18. The provisions of the art. 17 shall be correspondingly applied to the independent candidates.

Art. 19. The expenses related to the organization of the electoral operations shall be covered by the state budget or by the local and county budgets, respectively, in accordance with the electoral laws.

Art. 20. - (1) The access to the public radio and television services during the electoral campaigns, as well as to the specially designated display spaces for electoral material is guaranteed and ensured in accordance with the provisions of the electoral laws.

(2) Political parties and alliances, as well as the independent candidates have the obligation to print their name and the name of the economic agent that made the printing on all their posters and electoral propaganda materials, and to report to the Court of Accounts the total number of printed electoral posters.

Section 4

Ceilings for expenses

Art. 21. - (1) The ceiling for the expenses which can be made by a political party during each electoral campaign is calculated by adding up the allowed ceilings for each candidate proposed to run in the elections.

(2) The ceilings for each candidate are determined as a function of the gross minimum salary at the national level, as of January 1st of the electoral year, as follows:

- a. 150 times the gross minimum salary at the national level for each candidate for the position of member of the Chamber of Deputies or Senate;
- b. 20 times the gross minimum salary at the national level for each candidate for the position of county councilor or local councilor in the General Council of the Bucharest Municipality;
- c. 15 times the gross minimum salary at the national level for each candidate for the position of local councilor in the local council of the municipalities which are county capitals, or of

local councilor in the district councils of the Bucharest Municipality;

- d. 10 times the gross minimum salary at the national level for each candidate for the position of local councilor in the local council of municipalities and towns;
- e. 2 times the gross minimum salary at the national level for each candidate for the position of local councilor in the commune council;
- f. 10,000 times the gross minimum salary at the national level for each candidate for the position of general mayor of the Bucharest Municipality;
- g. 2,000 times the gross minimum salary at the national level for each candidate for the position of mayor of municipalities which are county capitals;
- h. 500 times the gross minimum salary at the national level for each candidate for the position of mayor of a district of the Bucharest Municipality, or of a municipality or town;
- i. 20 times the gross minimum salary at the national level for each candidate for the position of mayor of communes.

(3) The ceilings for the expenses provided by para. (2) are also applicable to the independent candidates.

(4) Upon the validation of their mandates, the leadership of the political party, of the county branch, or the independent candidate, respectively, shall submit to the Court of Accounts a statement regarding their compliance with the ceilings provided by para. (2). The amounts exceeding these ceilings shall be confiscated and become state budget revenues.

Art. 22. - (1) The ceiling for the expenses which a political party or alliance, or an independent candidate can make during the electoral campaign for the position of President of Romania is 25,000 times the gross minimum salary at the national level.

(2) The provisions of art. 13-20, of art. 21, para. (4), and of art. 25, 27, and 31 shall be correspondingly applied.

(3) If the elections for the President of Romania take place at the same time with the elections for the Chamber of Deputies and the Senate, the political parties which propose a presidential candidate must also appoint a special authorized financial agent for the electoral campaign of the respective candidate.

(4) The political parties which did not obtain at least 10% of the votes cast at the national level for the candidate that they had proposed, as well as the independent candidates found in the same situation, must return their subvention from the state budget no later than two months after the end of the electoral campaign.

Art. 23. When a candidate is proposed for more than one position during an electoral campaign, the ceiling for the expenses is determined by the highest amount, in accordance with the provisions of art. 21 or 22, as the case may be.

Chapter V

The control of the funding of political parties and electoral campaigns

Art. 24. - (1) The Court of Accounts is the only public authority that has the competence to control the legality of political parties funding.

(2) The Court of Accounts shall perform an annual check of all political parties, regarding their compliance with the legal provisions regulating the sources and spending of their funds.

(3) The Court of Accounts shall keep a register of political parties and alliances, and of independent candidates, which will include all the data regarding their financial activities which they must reported to the Court of Accounts, in accordance with the present law.

Art. 25. - (1) The authorized financial agent (*mandatar financiar*) of each political party and independent candidate must submit to the Court of Accounts a detailed report on their campaign revenues and expenses, no later than 15 days after the results of the elections are

officially released. The report will be published in the Official Gazette of Romania, Part III.

(2) The validation of the mandates of the candidates who have been declared as winners in the elections is conditioned by the timely submission of the report mentioned at para. (1).

Art. 26. - (1) In order to verify the legality of all the payments received or made during the electoral campaign, the Court of Accounts is entitled to request any additional statements or documents that it deems necessary.

(2) No later than 30 days from the receipt of the report, or of the requested additional documents, the Court of Accounts has the obligation to pronounce its conclusion on the correctness of the electoral accounting records and on the legality of the payments made; the Court shall pronounce its decision under the conditions of attendance stipulated by art. 56 of the Law no. 94/1992 on the organization and operation of the Court of Accounts, republished, as modified by the Law no. 77/2002. In case that the Court considers that it discovered irregularities or infringements of the legal restrictions on the electoral revenues and expenses, it may decide, in the same attendance, the partial or total return of the subvention received from the state budget by a political party or an independent candidate.

(3) A decision pronounced by the Court of Accounts under the conditions stipulated at para. (2) can be attacked at the High Court of Cassation and Justice, under conditions set by law.

Chapter VI **Sanctions**

Art. 27. - (1) The following deeds represent contraventions, which bring a sanction ranging from ROL 30,000,000 and 300,000,000:

- a. Failing to publish in the Official Gazette of Romania, Part III until the March 31st of the next year, the list of donations received as provided by art. 5 para. (8), and the list of donations received as provided by art. 6, para. (2), clause II;

- b. Receiving subventions for the electoral campaign without using the services of an authorized financial agent, or the authorized financial agents' breaking their legal obligations;
- c. Accepting membership fees or donations in noncompliance with the provisions of art. 4, para. (3), and of art. 5 and 6;
- d. Accepting or making donations or free provision of services with the obvious purpose of obtaining an economic or political advantage;
- e. Failing to record the amounts and the goods that became part of their patrimony in any manner;
- f. Failing to timely submit the electoral financial report and the related supporting documents to the Romanian Court of Accounts;
- g. Printing and distributing publications, electoral posters, and other propaganda materials in noncompliance with the provisions of art. 20, para. (2);
- h. Direct or indirect subventions to the electoral campaign from natural or legal persons from abroad;
- i. Any subvention to the electoral campaign from public authorities and institutions, public utilities companies, national companies, or companies where the state is the sole or major shareholder;
- j. Failing to return the subvention from the state budget under the circumstances and at the term stipulated by art. 13, para. (2);
- k. Failing to report the amounts, goods or services received by the political party according with art. 14;
- l. Obtaining material support for the activities of the political party through any other means than the ones specified in the present law.

(2) The sanctions can be applied, as the case may be, to the authorized financial agent, to the political party, or to the donor found in noncompliance with the legal provisions mentioned above.

Art. 28. - (1) In the situations specified at art. 27, para. (1) let. b), c), d), e), h), i), k), and l), the amounts of money or the goods which made the object of the contravention shall be confiscated and become revenues of the state budget, on the basis of decision of the Jurisdictional College of the Court of Accounts.

(2) The same applies to the donations received by a political party in the course of its dissolution, or by a political party that operates on the basis of a modified statute, even though these modifications were not submitted to the Tribunal of Bucharest Municipality, as required by law, or by a political party that submitted such modifications, but the court rejected the request for the modification of the statute.

Art. 29. - The noncompliance with the legal ceilings for the electoral expenses stipulated at art. 22 also represents a contravention and it is sanctioned with a fine which must range between the half and the triple of the amount in excess of the legal ceiling.

Art. 30. - The contraventions stipulated at art. 27 and 29 can be detected by the financial controllers of the Court of Accounts, and the sanctions are judged and determined by the Jurisdictional College of the Court of Accounts.

Art. 31. - (1) In case that one or more of the elected candidates of a political party have been convicted for an offence related to the funding of the political party or of the electoral campaign, these candidates shall become incompatible, for a determined period, by the decision of the Parliament, or of the county or local council, respectively. The respective positions of deputies, senators, or councilors shall be occupied by their substitutes on the party list.

(2) The provisions of para. (2) are also applicable to the independent candidates, in which case the vacant place is to be occupied by the substitute on the candidates list of the political party or alliance that obtained the highest number of valid cast votes.

Art. 32. The procedure stipulated at art. 31 shall be implemented by the Standing Orders of the Chambers of the Parliament, and by the internal regulations of the county and local councils.

Chapter VII

Final provisions

Art. 33. The provisions of the present law shall be applied correspondingly to the organizations of the citizens belonging to national minorities.

Art. 34. The following are abrogated at the moment when the present law enters into force:

- Ch. VI - Political Parties Finance, respectively art. 32-45 of the Political Parties Law no. 27/1996, with its subsequent modifications and completions
- Art. 45 and art. 72 let. m) of the Law no. 68/1992 on the election of the Chamber of Deputies and the Senate, with its subsequent modifications and completions
- Art. 28, para. (2) and (3) of the Law no. 69/1992 on the election of the President of Romania, with its subsequent modifications and completions
- Art. 56 and art. 85, let. m) of the Law no. 70/1991 on the local elections, republished, with its subsequent modifications and completions, as well as any other provisions contrary to the present law.

Art. 35. The present law enters into force 30 days after its publication in the Official Gazette of Romania, Part I.

This law has been passed by the Chamber of Deputies and the Senate, in their plenary session on December 19th, 2002, in accordance with the provisions of art. 74 para. (1) and of art. 76 para. (2) of the Romanian Constitution.

Ukraine

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Foreword

Ukraine introduced a multi-party political system in the early 90s and began development of its national system of laws, regulations and practices covering basic issues of political parties' establishment and activities, particularly their competition for power by participating in national and local elections.

After 14 years of independence, our country is still in the process of improving the institutional framework for the political party system. Most recently, political parties have become the main force of competition for power. Political parties and their electoral blocs will be the only official participants in the parliamentary elections coming in 2006.

The importance of finances and assets of political parties as a material basis for their activities has been underestimated in Ukrainian law. As a result, most political parties became dependent on financing from major businesses, most financial transactions are done in secret, parties' financial authorized agents are more important than their political leaders, and parties themselves do not have internal operational freedom and lack internal democracy. Most parties have very limited membership basis. What dominates public attitude towards political parties is distrust and indifference.

In these circumstances further democratic development of Ukraine appears problematic. Given the importance of the issue of political parties' finances, it is necessary to study this area in order to discover the main problems preventing democratic development, and to formulate recommendations for their resolution.

1.

Current legislative framework for political parties' finances

The legislative framework for the issue of political parties' finances in Ukraine consists in a number of laws and other legislative acts. The basic legislative acts in this area are:

1. The Law of Ukraine "On Political Parties in Ukraine" number 2365-III of April 5th, 2001. This law was amended with two respective laws dated November 27th, 2003, and July 6th, 2005.
2. The Law of Ukraine "On Associations of Citizens" number 2460-XII of June 16th, 1992. This law was amended with the respective Laws of Ukraine dated November 11th, 1993, November 18th, 1997, May 13th, 1999, December 21st, 2000, July 11th, 2001, April 3rd, 2003, May 15th, 2003, and February 4th, 2005.

These two laws formulate the main regulations regarding the establishment, state registration and activities of political parties in Ukraine, including the issues regarding their finances and assets.

Other legislative acts currently regulating the sphere of political parties' finances include:

1. The Law of Ukraine "On Elections of People's Deputies of Ukraine" number 2766-III dated October 18th, 2001. This law was amended with the respective Laws of Ukraine dated January 17th, 2002, November 27th, 2003, and February 19th, 2004.
2. The Law of Ukraine "On State Control Auditing Service in Ukraine" number 2939-XII dated January 26th, 1993. This law was amended with the respective Laws of Ukraine dated January 10th, 2002, May 15th, 2003, November 27th, 2003, and January 12th, 2005.

3. The Law of Ukraine "On Accounting Chamber" number 315/96-BP dated July 11th, 1996. It was amended in accordance with the Decision of the Constitutional Court of Ukraine number 7-zp dated December 23rd, 1997.
4. The Law of Ukraine "On Central Election Commission" number 1932-IV dated June 30th, 2004.
5. The Resolution of the Central Election Commission "On Regulation of Accounting of Revenues and Use of Financial Resources of Electoral Funds of Political Parties, Electoral Blocs of Political Parties, Candidates for People's Deputies of Ukraine, and on Reporting on These Issues" number 37 of January 10th, 2002. It was amended by a respective Resolution dated November 21st, 2002.
6. The Resolution of the Central Election Commission "On Regulation of Control of Revenues and The Use of Financial Resources of Electoral Funds of Political Parties, Electoral Blocs of Political Parties, Candidates for People's Deputies of Ukraine" number 66 of January 24th, 2002. It was amended by a respective Resolution dated February 3rd, 2003, and by a Resolution of the Board of the National Bank of Ukraine dated April 16th, 2003.

All political parties in Ukraine have the status of legal entities. They are also categorized as not for profit organizations. Therefore, general requirements related to accounting apply to them. Consequently, the area of accounting and general reporting of political parties is regulated by numerous laws of Ukraine and legislative acts of several government institutions of executive power, including the Ministry of Finance, State Tax Administration, and State Committee on Statistics.

The development of the legislative framework for political parties' finances

The legal regulation of political parties' finances in Ukraine has evolved since the Independence of Ukraine in 1991. For several years the only legislative act covering this area was the Law of Ukraine "On Associations of Citizens". This law defined political

parties as a particular kind of citizens' associations. The Law stipulates several specific provisions on assets and funds of political parties, their sources of revenue and allowed expenditures, financial reporting and economic activities of political parties. It has no specific provisions on finances of electoral campaigns of political parties.

Political parties became active players in the elections of the People's Deputies (Parliament) of Ukraine⁷⁷, only after 1997. Before that, Ukraine had a majority election system and individual candidates were competing for all 450 Parliament seats in single-mandate local electoral constituencies.

The Law of Ukraine "On Elections of People's Deputies of Ukraine" of 1997 introduced a mixed election system, thus the political parties were to compete for one half of the Parliament seats, which means 225 of them, in a multi-mandate all-state electoral constituency. With this major change, the Law included provisions on electoral funds of political parties and political parties' electoral blocs, such as their maximum size, sources of revenue, chapters of expenditure, reporting and control. This Law also provided for the in-kind contribution from the state to electoral campaigns of political parties.

Then, following the increasing importance of political parties in the country's political life, a separate Law of Ukraine "On Political Parties in Ukraine" was adopted in 2001. This Law contains a lot more elaborated regulations on political parties' assets, finances and economic activities. These regulations will be described below in details. It should also be noted that the Law "On Associations of Citizens" is still in force and still contains provisions on political parties' assets, finances and economic activities, which in some cases are not in full accordance with the respective provisions of the Law "On Political Parties in Ukraine".

Regulations of electoral funds of political parties were further developed in the Law of Ukraine "On Elections of People's Deputies of Ukraine" of 2001 that is currently in force. This Law contains a set of regulations on political parties' electoral funds that will be described below in details.

⁷⁷ Official name of the People's Deputies of Ukraine is Verhovna Rada. The Ukrainian Parliament is unicameral.

In accordance with the development of the legislative framework on political parties and their finances in particular, new legislative acts were approved by related authorities, and respective amendments were made to other legislative acts. Relevant legislative acts and amendments will be described below in details.

The role of political parties in presidential elections is currently very limited. A political party or a bloc of political parties can only nominate a candidate for President of Ukraine. Then, only a political party or a bloc that nominated a particular candidate can make contributions to his individual electoral fund.

As far as local elections are concerned, political parties officially have no role in them so far. Competition for local councils and mayoral positions of mayors is only among individual candidates.

Recent changes and an outlook on the future of the legislative framework for political parties' finances

The most radical changes were introduced to the system of political parties' finances and to its legislative framework in 2003. Those changes introduced the system of state financing of political parties' statutory activities and the system of compensation of political parties' expenditures for electoral campaigns from the state budget. The respective laws were passed in 2003, but some of them were enacted on January 1st, 2005, and the new Law "On Elections of People's Deputies of Ukraine" will also be enacted on October 1st, 2005. The new system of compensation of political parties' expenditures on elections will be applied to the next parliamentary elections that will take place in March 2006. The system of state financing of political parties' statutory activities will be applied from the year following the next elections, i.e. January 1st, 2007.

The parliamentary elections of 2006 will be held entirely on a proportional system. Political parties and electoral blocs will compete for all 450 Parliament seats. Political parties become the main force shaping the political landscape in the country, which is a good reason for introducing the state financing of the political parties.

As these new systems have not worked for a single day in Ukraine, it is obviously premature to analyze them. Generally, under the new

system new limits and restrictions will be applied to expenditures of political parties' electoral funds and also to coming from funds of the State Budget for their statutory activities. The new reporting and control provisions are much better institutionalized compared to those currently in effect.

Another major change will occur in the system of local elections. Under the new law, elections of deputies to local councils of nearly all levels, except for villages, will be held under the proportional system. Local organizations of political parties and blocs will compete in their respective constituencies. The new law contains provisions on local electoral campaigns' finances. The new law will be in effect on October 1st, 2005, and the next local elections will be held in March 2006.

2. Sources of political parties' revenues

General sources of revenues allowed for political parties are determined by the above-mentioned Law of Ukraine "On Political Parties in Ukraine" of 2001 and by the Law of Ukraine "On Associations of Citizens". Specific sources of revenues to political parties' and electoral blocs' electoral funds are stipulated by the Law of Ukraine "On Elections of People's Deputies of Ukraine" of 2001.

The Law "On Political Parties in Ukraine" and the Law "On Associations of Citizens" grant political parties in Ukraine the right to financial resources and other assets necessary for implementing their statutory goals. Thus, political parties are entitled to have their own movable property, real estate, funds, equipment, means of transportation and other assets not prohibited by Ukrainian law. Besides, political parties can rent necessary movable property and real estate.

A political party receives a title to funds and other assets transferred to it by founders, members or the state, received as membership fees, donations and contributions from individuals, companies, institutions and organizations, or acquired with the party's own revenues, as regulated by the two laws.

These Laws restrict the allowed sources of financial revenues for political parties. The sources include:

- Membership fees;
- Donations and contributions from individuals, companies, organizations and institutions;
- Income and assets from sales of literature on public and political matters, other publicity and promotional publications and materials, and items with the party’s logo; and also from conducting festivals, celebrations, exhibitions, lectures and other political and promotional events;
- Income from mass media outlets that belong to or were established by political parties.

The law does not stipulate any limits in terms of amounts or any other conditions on membership fees.

The two above-mentioned laws also include provisions on forbidden sources of revenues for political parties. These provisions are analyzed in the table below.

Table 14. Restrictions regarding income

Restrictions imposed by the Law "On Political Parties in Ukraine"	Restrictions imposed by the Law "On Associations of Citizens"	Comments
Financing political parties is forbidden from the following sources:		
Institutions of state power and local authorities	Institutions of state power	Requirements of the Law "On Political Parties in Ukraine" are more restrictive
State and communal companies, institutions and	State companies, institutions and organizations	Requirements of the Law "On Political Parties in Ukraine"

organizations		are more restrictive
Companies, institutions and organizations, in which there is a share (a stock of shares) of state or communal property, or of non-residents	Companies with mixed structure of ownership, in which a share of state or of non-residents is more than 20 per cent	Requirements of the Law "On Political Parties in Ukraine" are more restrictive
Foreign countries and their citizens, companies, institutions and organizations	Foreign countries and their organizations, international organizations, foreign citizens and persons without citizenship	Requirements of the Law "On Associations of Citizens" are more restrictive
Charitable and religious associations and organizations	N/A	Requirements of the Law "On Political Parties in Ukraine" are more restrictive
Anonymous persons or persons under a pseudonym	Anonymous persons	Requirements of the Law "On Political Parties in Ukraine" are more restrictive
Political parties that are not members of the same electoral bloc of political parties	N/A	Requirements of the Law "On Political Parties in Ukraine" are more restrictive
N/A	Associations of citizens that are not registered	Requirements of the Law "On Associations of Citizens" are more restrictive
Financial contributions	Contributions of funds and other assets	Requirements of the Law "On Associations of Citizens" are more restrictive

Therefore, regulations on sources of political parties' revenues in Ukraine are rather contradictory.

Except for the sources, the Law "On Associations of Citizens" includes a provision, under which the Parliament of Ukraine may impose general and specific limits on donations and contributions to political parties per year. However, no such limits have been imposed so far.

The Ukrainian law also contains provisions that encourage the use of private donations and contributions as the main source of political parties' revenues. The Law of Ukraine "On Enterprise Profit Tax" provides political parties with tax exemptions on the following revenues:

- Funds and assets received free of charge, in form of a non-returnable financial aid or optional donations and contributions;
- Passive income (interest, dividends, insurance payments and compensations, and royalties);
- Funds and assets received during their main activities.

On the other hand, individuals and legal entities that provide legal financing to political parties also have tax benefits:

- The amount of funds or cost of assets transferred by an individual to a political party as a donation is deducted from the individual's taxable income provided this amount represents from 2 to 5 percent of the individual's taxable income.
- The amount of funds or cost of assets transferred by a legal entity to a political party as a donation is deducted from such an entity's taxable profit provided this amount makes from 2 to 5 percent of the entity's taxable profit.

As we can see here, tax benefits are granted only for donations and contributions. No benefits are granted for membership fees.

The two laws also contain restrictions on economic activities of political parties. Accordingly, political parties are not allowed to:

- a. Receive income from shares or other securities;
- b. Own accounts in foreign banks and holds values there;
- c. Establish business enterprises, except for mass media, and engage into economic and other commercial activities.

Regulations on electoral funds

Electoral funds of political parties are separated from their general finances, and there is a specific regulation regarding this area. The issues of electoral funds were regulated by a series of laws on elections of People's Deputies of Ukraine, with the last legislation approved in 2001. The regulation of creation and the use of electoral funds are rather different from that of general parties' finances.

According to the law, financing of the preparation and carrying out of elections, as well as the electoral advertisement shall be carried out at the expense of the State Budget of Ukraine, as well as at the expense of electoral funds of political parties, electoral blocs of parties, whose candidates for deputies have been registered in a multi-mandate national constituency, and from electoral funds of individual candidates for deputies registered in single-mandate local constituencies.

In order to establish and manage electoral funds, political parties or electoral blocs must open special bank accounts in a banking institution in Kyiv, through authorized individuals of political parties or electoral blocs of parties after having registered them at the Central Election Commission. The Central Election Commission must be notified about this bank account. The Central Election Commission determines a list of banking institutions where accounts for electoral funds can be opened. Information on opened bank accounts of electoral funds shall be published in either the Government's national newspaper "Government Courier" or the Parliament's national newspaper "Voice of Ukraine". Political parties or electoral blocs of parties must appoint a manager of their electoral fund.

Electoral funds of political parties or political parties' electoral blocs can be created with contributions from a respective political party or parties that are members of a respective electoral bloc, and of

optional donations from individuals. Any person or entity making a contribution or a donation to an electoral fund must specify in a banking transfer document an extensive set of personal information.

According to the law, the following entities are prohibited from making contributions to electoral funds:

- Foreign citizens and persons without citizenship;
- Private entrepreneurs that have indebtedness to the State Budget on any level on the day of making such a donation;
- Anonymous persons (those who did not specify a complete set of personal information in a banking transfer document, as required by the law).

The electoral fund manager can refuse to accept any voluntary donation. In this case a donation must be returned to the contributor or, in case such a return is not possible, it will be transferred to the State Budget. The electoral fund manager is obliged to refuse to accept voluntary donations from persons who are not allowed to make donations under the law. Their donations must be transferred to the State Budget.

Revenues to electoral funds from any allowed source can only be in the national currency of Ukraine.

The law provides for restrictions on the maximum amount of electoral funds and on a maximum amount of a single voluntary contribution of an individual into the election fund of one political party (electoral bloc). Currently, the limits are set according by the minimum tax-deducted personal incomes. This amount has remained unchanged for several years in Ukraine, so these limits also remain constant in national currency.

Thus, the maximum amount of electoral funds of one political party (electoral bloc) is 2,550,000 Ukrainian hryvnyas, which is currently equal to approximately 505,000 US dollars. The maximum amount of a single voluntary contribution of an individual to the electoral fund of one political party (electoral bloc) is 17,000 Ukrainian hryvnyas, which is currently equal to approximately 3,400 US dollars.

As mentioned above, the state provides in-kind contribution to all political parties and electoral blocs that participate in the elections. This contribution is managed by the Central Election Commission. The Central Election Commission covers the following expenses:

- Printing of pre-election posters of political parties and electoral blocs of parties;
- Publication in newspapers of pre-election programs of political parties and electoral blocs of parties;
- Air time on radio and television.

The funds necessary to cover these expenditures are included in a general electoral budget prepared by the Central Election Commission.

The new law that will regulate parliamentary elections in 2006 includes different provisions. First, it does not restrict the total amount of electoral funds of a political party or electoral bloc. The maximum amount of a single voluntary contribution from an individual into an election fund of one political party (electoral bloc) is measured in official minimum salary, which constantly increased in recent years. Currently, this limit is equal to approximately 26,100 US dollars

3. Regulation of political parties' expenditures

According to the Law of Ukraine "On Political Parties in Ukraine" of 2001 and by the Law of Ukraine "On Associations of Citizens" of 1992, political parties have a large degree of freedom in spending their funds in between elections. They can determine their expenditures independently, in accordance with their statutes.

Existing regulations on this issue are very general. Thus, political parties cannot use their funds and assets for activities forbidden by the Ukrainian law, such as liquidation of independence of Ukraine, illegal capture of power, propaganda of war, violence, and instigation to ethnical, racial or religious hostility.

The Law "On Elections of People's Deputies of Ukraine" provides more strict regulation on political parties' expenditures related to their participation in elections. These regulations cover the way funds are used, the amount of funds that can be used, and the time and methods of using electoral funds. First, only the funds accumulated in accounts of electoral funds of political parties or electoral blocs can be used for those purposes.

Electoral funds of political parties or electoral blocs can be used for one specific purpose - election campaign advertisement. Use of the money of election funds for other purposes is prohibited. More specifically, the law envisages the following articles on expenditures of electoral funds:

- Rent of buildings and rooms for holding meetings, debates, discussions and other public events for election campaigning;
- Production of election propaganda materials;
- Payment for air time in electronic media and for advertising in printed media.

The law does not have any provisions regarding the use of electoral funds for such obviously necessary items as:

- Payments of the election campaign personnel (designers, speechwriters, editors, etc.);
- Payments for transportation services;
- Payments for communication services.

Consequently, there are several categories of necessary expenditures that are not officially accounted as election campaign expenditures.

Then, as political parties can only use their electoral funds for their election campaign needs, the maximum amount of their expenditures equals the maximum amount of electoral funds as specified above.

Political parties and electoral blocs may only open bank account for electoral funds after their candidates are registered by the Central Election Commission, and not later than 50 days before the day of elections. Total official time allowed for election campaigns according to the law is 90 days, and all advertising and expenditures of electoral funds must be stopped one full day before the day of elections. Thus, the term of the use of electoral funds is smaller than the official term of the election campaign.

Political parties and electoral blocs can appoint one or two authorized persons to manage electoral funds. Such electoral fund managers will have a signature for banking transfer documents and reporting documents, as well as several other obligations.

Payments from election funds of political parties and electoral blocs of parties can be only made by bank transfers. Bank transfer documents must be prepared in accordance with the technical requirements stipulated by the respective resolution of Central Election Commission.

Money of election funds that was not used during the election campaign can be transferred to the account of respective political party or parties - members of electoral bloc, upon their decision. Official decision must be made within seven days after the day of elections, and the transfer must be made within five days after the decision is officially made. If the money remaining in the electoral fund is not transferred to respective political parties, it will be transferred to the State Budget of Ukraine upon the decision of the Central Election Commission.

4. Financial reporting requirements of political parties

The Ukrainian law stipulates a set of financial reporting requirements particularly for political parties. Specific requirements concern both their general finances and electoral funds.

Political parties as legal entities in Ukraine are covered with general obligations of regular reporting to tax authorities. This reporting is done under common formats. Tax authorities have no obligation for public disclosure of political parties' reports.

As far as general finances of political parties are concerned, the only reporting requirement stipulated by the Law "On Political Parties in Ukraine" envisages that every political party publishes its annual financial report covering its revenues, expenditures and assets. Such reports must be published not later than April 1st of the following year in any newspaper distributed nationwide.

The law does not contain any requirements as to the particular format of such reports. Nor it provides for any sanctions for a political party's failure to fulfill this requirement. As a result, parties may publish very formal reports that give no practically valuable data, or they can avoid it at all.

Requirements on financial reporting of electoral funds are much better elaborated and specific.

Managers of electoral funds of political parties or electoral blocs are responsible for carrying out accounting of revenues and expenditures of electoral funds. For this purpose, the banking institution where the electoral fund account is opened must provide weekly information to the electoral fund managers or upon their request with data about amounts and sources of contributions to the electoral fund, as well as expenditures from it.

No later than five days after the election day, the authorized persons of the political party or electoral bloc of parties (electoral fund

managers) are obliged to prepare and submit to the Central Election Commission reports on sources and expenditures of electoral funds. The format of the reports is determined by the Central Election Commission, particularly by the Resolution of the Central Election Commission "On Regulation of Accounting of Revenues and The Use of Financial Resources of Electoral Funds of Political Parties, Electoral Blocs of Political Parties, Candidates for People's Deputies of Ukraine, and on Reporting on These Issues" of January 10th, 2002; and by the Resolution of the Central Election Commission "On Regulation of Control of Revenues and The Use of Financial Resources of Electoral Funds of Political Parties, Electoral Blocs of Political Parties, Candidates for People's Deputies of Ukraine" of January 24th, 2002.

According to these resolutions, electoral fund managers must prepare and submit the following documents:

- Financial report on revenues and expenditures of the electoral fund;
- Financial report on the flow of funds on the account of the electoral fund;
- Notice of the banking institution on the remaining balance of funds in the account of electoral fund;
- Explanatory note to the financial reports.

The resolutions include particular formats for the two financial reports and technical requirements for the explanatory note.

The Central Election Commission compiles a summary report on revenues and expenditures of electoral funds on the basis of financial reports received from individual political parties and electoral blocs.

The law does not contain any provision for public disclosure of financial information on political parties' and electoral blocs' electoral funds. However, the Central Election Commission posts individual reports on electoral funds revenues, as well as summary of financial report, on its web site.

This web site and the political parties' annual reports in newspapers are the only sources of information about political parties' finances available to the public.

5. Financial management in political parties

General regulations in terms of political parties' accounting and fiscal reporting are described above. They are mostly stipulated by the taxation law of Ukraine, and they are the same for political parties as for any other not for profit organizations. Specifics of political parties' taxation are also mentioned above. Besides them, political parties have general requirements in terms of taxation.

Tax authorities only check compliance of political parties with taxation law. Special requirements to finances of political parties are beyond their competence.

Practical issues of the political parties' financial management can be described from the point of view of structure of their revenues at the central and local level. This information was taken from several researches and monitoring exercises done recently in Ukraine.

The average estimated structure of the political party's revenues in Ukraine is represented in descending order in the table below.

Table 15. Proportions of sources of income

Source of revenues	Share in total, percent
Voluntary contributions of individuals	13.15
Voluntary contributions of legal entities	12.84
Membership fees	12.17
Compensation for a place on the party's candidates list	12.06
Income from business enterprises established by a party or transferred to it	11.97

Income from conducting festivals, lectures, exhibitions, etc.	10.27
Income from parties' own mass media	9.82
Income from sales of literature on public and political matters	9.35
Income from sales of items with the parties' logo	8.38

Another important indicator of political parties' finances is the ratio between legal and shadow finances. These ratios are different for parties' headquarters and local branches, and for in-between-the-elections and elections periods.

In the period between-the-elections, legal and shadow revenues in headquarters are equal to 5% and 95% respectively; at local branches - 36.7 % and 63.3 % respectively.

During election campaigns, legal and shadow revenues in headquarters are equal to 9% and 91 % respectively; at local branches - 23.9 % and 76.1 % respectively.

Oblast (county) branches of political parties have about 29% of revenues from their own local sources, the rest of 71% are transfers from headquarters. This structure determines a very low degree of financial and operational independence of local branches of political parties. Financial transfers are done in a strictly hierarchical way from the center to local branches.

A very limited number of people in parties' leadership both at headquarters and in local branches are aware of financial issues. Those people have real decision making power. Sometimes real decision makers are separate from and hidden behind the official leadership of the parties.

6. Control over finances of political parties

Control over finances of political parties in Ukraine, according to the law "On Political Parties in Ukraine", is currently divided between two institutions:

- Ministry of Justice is authorized to control political parties' general finances;
- Central Election Commission is authorized to control revenues and expenditures of electoral funds of political parties and electoral blocs.

The Ministry of Justice of Ukraine is the supreme authority controlling compliance of political parties with the Constitution and laws of Ukraine, as well as with provisions of their statutes. Therefore, it is the only institution currently authorized to control the sources of parties' revenues. Also, the Ministry of Justice is supposed to control compliance of political parties with the requirement of publishing annual financial reports.

The Ministry of Justice has rather extensive powers for controlling political parties' finances. It is entitled to:

- Be present at any public events held by political parties;
- Request any necessary documents from political parties;
- Receive any necessary explanations;
- Receive notices from banking institutions on deposits made to the accounts of political parties, with revenues originated from prohibited sources.

The only penalty in the case of non-compliance is that revenues received by a political party from prohibited sources should be transferred to the State Budget. Otherwise, it will be done under a court's decision.

Political parties can file complaints in general order stipulated by the law.

Activities of the Ministry of Justice of Ukraine are regulated by laws of Ukraine and the Ministry's bylaws.

It is obvious that the Ministry of Justice has not really exercised its powers of control over political parties' finances. On one hand, this issue is just not considered an important one; on the other hand, such duties are not fully relevant for the Ministry of Justice.

Control over electoral funds

Control over revenues, accounting and spending of electoral funds of political parties and electoral blocs is done by the Central Election Commission. For this purpose, it has issued two resolutions mentioned above.

The law "On Elections of People's Deputies" also stipulates that such control shall be performed by the Central Election Commission as well as the bank institutions where respective accounts are opened.

Activities of the Central Election Commission are regulated by laws of Ukraine, particularly the Law "On Central Election Commission" dated June 30th, 2004, and by its bylaws and other legislative acts.

According to the law, the Central Election Commission is a permanently operating collective state body, with jurisdiction on ensuring preparation and holding of elections and referenda in Ukraine, on exercising and protecting the constitutional suffrage of Ukrainian citizens and their right to participate in referenda, which is a sovereign right of the Ukrainian people to express their will.

This law defines the procedure of creation, legal status and basic organizational principles of the activity of the Central Election Commission (hereinafter - the Commission). One of the basic tasks of the Central Election Commission, pursuant to the Law, shall be to ensure the exercise and protection of the constitutional suffrage of Ukrainian citizens.

According to the Law, the Central Election Commission heads the system of election commissions created to organize the elections of the President of Ukraine, People's Deputies of Ukraine, deputies of local councils, villages, settlements and city heads, as well as local and all-Ukrainian referenda.

Basic principles of the activity of the Commission are supremacy of law, legality, independence, objectivity, competence, professionalism, collective nature of consideration and solution of questions, grounding of made decisions, openness and publicity.

The Law determines that members of the Commission shall be the persons whose candidatures were approved by the Parliament of Ukraine as proposed by the President of Ukraine. A member of the Commission shall perform his/her authorities for a period of 7 years. The Law establishes that a member of the Commission has to meet the following requirements:

- Does not have unspent convictions;
- Be a citizen of Ukraine;
- Be at least 25 years old;
- Speaks official language;
- Has permanently resided in Ukraine for the last 5 years;
- Physically able to perform the job.

Pursuant to the Law, a member of the Commission shall not be a People's Deputy of Ukraine or have another representative mandate, be a member of other electoral commissions and commissions on referenda, be a member of an initiative group of all-Ukrainian or local referendum, be engaged in entrepreneur activity, be an attorney of third persons on affairs of the Commission, combine several jobs (except scientific, teaching and creative activities), be member of boards or other executive bodies of organizations that aim at obtaining profit. Besides, the Law prohibits members of the Commission from participating in bodies of executive power and executive bodies of local self-government.

According to the Law, the Central Election Commission shall be chaired by the Head of Commission who is elected among its members.

The Law is also devoted to regulation of the organizational activity of the Central Election Commission. It regulates the questions of submission petitions to the Commission and procedures on their consideration, defines authorities of the Central Election Commission, establishes the legal status of its members and solves other questions. Staff of the Commission includes civil servants.

As mentioned above, the Commission is the supreme institution in charge of elections finance. It manages and controls expenditures of the State Budget for election purposes, and it controls electoral finances of political parties and electoral blocs: this includes regular control of financial data provided by banking institutions where electoral funds' accounts are opened, as well as selective audits of data on flow of funds in electoral funds' accounts.

The banking institutions where electoral funds' accounts are opened must provide the Commission with daily information about revenues and expenditures of electoral funds; and with weekly account statements certified by a bank's signature and seal. The Commission's resolutions stipulate the format and technical requirements for providing this compulsory information. The Commission must appoint persons responsible for receiving the above-mentioned information from banks, and inform banks about this appointment.

Besides, the Commission can conduct selective audits of compliance by political parties according to the provisions of law regulating sources of revenues and articles of expenditures of electoral funds. Particularly the Commission can audit:

- Existence of legal agreements (contracts) on the purchase of goods and services;
- Facts and time of funds sent from electoral funds under agreements (contracts) to a counterpart's account;

- Correct calculation of costs and tariffs for advertising in printed media or for air time in electronic media;
- Compliance with the maximum amount of the electoral fund.

Except for selective audits on its own initiative, the Commission can control the compliance of political parties with law provisions regulating sources of revenues, expenditures and accounting of electoral funds based on applications, complaints or claims from other participants of electoral campaigns.

The banking institutions where electoral funds' accounts are opened, as well as political parties and electoral blocs, must provide the Commission with any necessary information and documents for carrying out such audits and controls.

The Ukrainian law does not include any provision on publishing the current data on revenues and expenditures of electoral funds. This reduces very much effectiveness of court cases against violations of law by official participants of elections because it makes it very difficult to prove any accusations.

As a result, during the 2002 election campaign only 3% of all complaints on violations with electoral funds were taken to court. The courts rejected almost all claims against decisions made by the Central Election Commission. In some cases, civil society organizations which engaged in election monitoring activities, filed claims against violations of regulations on electoral funds. Courts rejected their claims because those organizations were not official participants of elections and their rights were not violated.

The issue of the control of electoral funds is regulated better than the control of political parties' general finances. However, responsibilities of financial audit and control are not fully relevant to the Central Election Commission.

With the introduction of new systems of state financing of political parties' statutory activities and of the system of compensation of political parties' expenditures for electoral campaigns from the state budget, new reinforced system of control over uses of funds received from the State Budget will be implemented

This control will be implemented by State Control Auditing Service of Ukraine and by the Accounting Chamber of Ukraine.

These institutions act in accordance with the laws of Ukraine, including The Law of Ukraine "On State Control Auditing Service in Ukraine" dated January 26th, 1993, and the Law of Ukraine "On Accounting Chamber" dated July 11th, 1996.

According to the law, the basic task of the State Control Auditing Service is to carry out state control over the spending of funds and tangible assets, their preservation, their condition and the reliability of accounting and book-keeping at the level of public institutions, eliciting suggestions to eliminate faults and violations and for their prevention in the future. Same responsibilities concern the private organizations which receive funds from central or local budgets.

Pursuant to the Law, state control can have the following forms:

- Inspection (a method of documentary control over the financial economic activity of the enterprise, establishment, organization, adherence to the legislation on financial issues, reliability of accounting and book-keeping, a way of revealing shortages, spending, embezzlement and stealing of funds and material values, prevention of financial abuse. Act shall be composed according to the inspection results);
- Audit (examination and study of separate areas of financial economic activity of enterprise, establishment, organization or their subdivisions. The results of audit must be registered in a certificate or report).

The State Control Auditing Service consists of the Central Control-Revision Administration of Ukraine, control auditing administrations in the Republic of Crimea, oblasts, cities Kyiv and Sevastopol, control auditing subdivisions (departments, groups) in districts, cities and city districts. The State Control Auditing Service is subordinated to the Ministry of Finance of Ukraine. The Head and deputy heads of the State Control Auditing Service are appointed by the Prime-Minister of Ukraine upon proposal by the Minister of Finance.

Under the Law of Ukraine "On Accounting Chamber", the Accounting Chamber is a permanent controlling body, set up by the Verkhovna Rada⁷⁸ of Ukraine, and to which is subordinated to and reports to it. The Accounting Chamber operates independently of any other state bodies. It exercises control over the use of finances of the State Budget of Ukraine on behalf of the Verkhovna Rada of Ukraine.

The tasks of the Accounting Chamber are as follows:

- To organize and execute control over timely execution of the expenditures of the State Budget of Ukraine, spending budget funds, including money of state purpose funds, their amounts, structure and target allocation;
- To execute control over forming and redemption of internal and external debt of Ukraine, determinate efficiency and appropriateness of spending state money, currency and credit and financial resources;
- To execute control over legal and timely circulation of money of the State Budget of Ukraine and off-budget funds in the institutions of the National Bank of Ukraine and authorized banks;
- To inform regularly the Verkhovna Rada of Ukraine and its committees about the State Budget implementation and the state of redemption of internal and external debt of Ukraine, about the results of other controlling activities and performance of other tasks envisaged for the Accounting Chamber in the current legislation of Ukraine.

The Accounting Chamber, according to its tasks shall:

- Execute control over implementation of the State Budget of Ukraine, quarterly distribution of revenues and expenditures according to the indices of this budget, including expenditures on internal and external debt servicing; spending of special purpose funds;

⁷⁸ The Ukrainian Parliament

- Control efficient management of the State Budget funds by the State Treasury of Ukraine, legal and timely flow of the State Budget money, including funds of state purpose funds at the National Bank in Ukraine, authorized banks and credit institutions of Ukraine;
- Control investment activity of bodies of the executive power, verify legality and efficiency of use of financial recourses allocated from the State Budget of Ukraine for the implementation of national programs;
- Execute control over implementation of decisions of the Verkhovna Rada of Ukraine on lending money and providing economic assistance to foreign states, international organizations envisaged in the State Budget of Ukraine, over cash execution of the State Budget of Ukraine by the National Bank of Ukraine and authorized banks;
- Draft and elaborate conclusions and answers upon applications of bodies of the executive power, prosecutor's office and the court on issues within its competence or other.

The Accounting Chamber is authorized to:

- Perform financial audits, revisions of the staff of the Verkhovna Rada of Ukraine, bodies of the executive power, the National Bank of Ukraine, the State Property Fund of Ukraine, other bodies subordinated to the Verkhovna Rada, as well of the enterprises and organizations, regardless of ownership forms within the limits defined in Article 16 of this Law;
- Organize and execute operational control over spending funds of the State Budget of Ukraine for the reported period;
- Do expert project assessments of the State Budget of Ukraine, as well as draft laws and other normative acts, international agreements of Ukraine, state programs and other documents related to the State Budget and finances of Ukraine;
- Submit petition to the Verkhovna Rada of Ukraine, the President of Ukraine, as well as to the bodies of executive

power for holding officials responsible for violation of requirements of the current Ukrainian legislation, that caused material damage to the state;

- In the case of detecting other abuse during verifications, revisions and examinations of the appropriation of money and material values, submit materials of verifications, revisions and examinations to the law enforcement bodies, simultaneously informing the Verkhovna Rada of Ukraine about these facts, etc.

The Accounting Chamber consists of the Head of the Accounting Chamber and members of the Accounting Chamber: First Deputy and Deputy Head, Chief Comptrollers and the Secretary of the Accounting Chamber. The Accounting Chamber's activities shall be supported by a staff. The structure and the staff are subject to approval by the Board of the Accounting Chamber upon the submission of the candidatures by the Head of the Accounting Chamber within the limits of budget funds allocated for its needs.

The Head of the Accounting Chamber shall be appointed by the Verkhovna Rada of Ukraine upon submission of the candidature by the Speaker of the Verkhovna Rada of Ukraine, for the term of 7 years with the right to be designated for a second term. The Head of the Accounting Chamber shall be appointed by secret ballot. A candidate to the position of the Head of the Accounting Chamber shall be deemed appointed if, according to the results of the secret ballot, he receives the majority of votes from the constitutional composition of the Verkhovna Rada of Ukraine. The Head of the Accounting Chamber must be a citizen of Ukraine, with a higher education in economics or law, professional experience in public administration, public control, economy, finance, law and has proven his professional knowledge in the process of his election according to the special procedure set up by the relevant Committee of the Verkhovna Rada, in compliance with the current legislation of Ukraine.

Chief Comptrollers - the department heads of the Accounting Chamber shall, within the limits of their competence defined by the Regulations of the Accounting Chamber, independently resolve all issues on organization of activity, within the branches assigned to

their departments and shall bear full responsibility for results of their work.

The Accounting Chamber not later than the December 1st shall submit annually to the Verkhovna Rada of Ukraine a general written report on the results of execution of instructions of the Verkhovna Rada of Ukraine, on conducted verifications, revisions and examinations, as well as on expenditures related to these activities. The report of the Accounting Chamber shall be approved by the Verkhovna Rada of Ukraine and disclosed in the printed issues of the Verkhovna Rada of Ukraine.

The law "On State Control Auditing Service in Ukraine" contains specific provisions on control of political parties' finances. Thus, most control duties will be carried out by this Service. The Account Chamber will be engaged in annual audits that will oversee the use of funds received from the State Budget by political parties.

Both institutions provide free access to their websites where they post their reports.

Sanctions for financial violations

Currently the Law "On Associations of Citizens" provides for several kinds of sanctions to political parties, in compliance with the requirements of the law:

- Warning;
- Penalty;
- Temporary suspension (prohibition) of certain kinds of activities or all activities;
- Forced dissolution (liquidation).

However, the law stipulates rather vague basis for application of particular kinds of sanctions. Penalties, suspensions and liquidation can only be applied upon a court's decision. This is why practical implementation of these sanctions is quite problematic.

After the introduction of new systems of state financing of political parties' statutory activities and of the system of compensation of political parties' expenditures for electoral campaigns from the state budget, and of the new system of control over uses of funds received from the State Budget, new sanctions for financial violations will be introduced. They will include:

- Temporary suspension of state financing of political parties' statutory activities;
- Termination of state financing of political parties' statutory activities.

Both sanctions will be applied upon a court's decision. Improved system of financial control and audit will make these sanctions a lot more practical than the current ones.

7. Public control over political parties' finances

The issues of fair and transparent elections draw increasing attention of public in Ukraine. Particularly some civil society organizations have been actively involved in monitoring activities in elections of the People's Deputies. The highest degree of monitoring activities was observed in elections of 2002. Monitoring exercises also covered the issue of revenues and expenditures of electoral funds. Different organizations pay attention to specific issues in this area and use different methods.

As mentioned above, the difficulty of financial monitoring of electoral funds is caused by a very limited availability of current financial information and unwillingness from the political parties' representatives to share or discuss this information.

Probably the most profound and inclusive monitoring of expenditures of electoral funds in the 2002 elections was done by "Freedom of Choice" Coalition of Ukrainian NGOs on transparency and legitimacy of the 2002 Parliamentary election campaign in Ukraine.

Their monitoring project was based on a methodology developed and applied by Transparency International in a number of Latin American countries and during the local elections in Latvia. This methodology has been adapted to the demands of Ukrainian legislation and the existing social and political circumstances by the experts of the Coalition and TI.

Monitoring subjects included central and regional TV channels, radio stations, and printed mass media. The group provided monitoring and evaluation of advertisements, that supported parties/blocs by using the official prices published by mass media before the election, according to legal regulations. Only products that were labeled "advertising" or "political advertising" were monitored. The advertising, that was included in special sets and sponsored by the State Budget, was not monitored.

The monitoring was held during the official agitation terms (from the February 9th till March 29th, 2002).

As a result, they came to a conclusion that a range of violations during the election process certainly had a serious impact on the election results.

Among such type of infringements:

- Violation in the field of electoral campaign financing;
- Third rate organization of Local Election Commissions and Commissions of Base Level;
- Possible impact of 'dead souls' factor on the election results;
- Imperfection of electoral law of Ukraine concerning campaign financing, votes polling, commissions formation etc;
- Reapportionment of percentage ratio between results of votes for political parties and blocs that managed to exceed 4% level.

According to the monitoring data on March 31st, 2002, four political actors, among them the Social-Democratic Party of Ukraine (United),

“Women for Future”, Green Party of Ukraine and “For United Ukraine” exceeded the election funds limited only by the expenditures on political advertising.

SDPU(U) exceeded the election funds limit by 8,846,000 UAH, “Women for Future” - by 4,082,585 UAH, Green Party of Ukraine - by 1,255,926 UAH, „For United Ukraine” - by 830,930 UAH.

SDPU(U) was the leader on expenditures on social-political advertisements, the amount of money spent on this type of advertisements by SDPU(U) was USD 1,350,023, which represented 60% from the total expenditures by parties and blocs on such type of advertising. At the same time, „Women for Future” prevailed over other political parties and blocs on expenditures on social advertisements. The amount of money spent by this bloc on political advertisements was of USD 1,235,805.

The project group created a website where they posted all their findings and monitoring data; they also issued newsletters and regular reports. In addition they organized held a number of conferences and roundtables on the issue of financial monitoring of electoral funds.

Results and conclusions of their monitoring activities were extensively published and used in practically all national mass media.

It is obvious that the coming parliamentary and local elections of 2006 will be accompanied by a number of monitoring activities. Monitoring groups can improve their performance and results if they consider the following recommendations:

- To form a nationwide coalition that will cover most of local constituencies;
- To engage more actively into monitoring local elections;
- To develop monitoring methodology in order to cover other articles of expenditures of electoral funds;

- To help official participants of elections initiate court cases and submit petitions to control institutions if they discover violations by other participants of elections.

Thus, monitoring activities will have a stronger impact not only after, but also during elections. It will largely contribute to the democratic development of Ukraine.

9. Conclusions

Based on the above, it is obvious that the regulation of political parties' finances in Ukraine has been rather restrictive. It makes more emphasis on establishing limits and providing state control and sanctions for violations. The issues of disclosure, transparency and public control are practically neglected.

Totally new systems of state financing of political parties' statutory activities and of compensation for political parties' expenditures in the electoral campaigns from the State Budget that will be introduced in Ukraine starting with the next elections, will also have these features.

The main recommendation in this area would be to make amendments to the law that will allow for better public access to financial information of political parties. People need to know whom they really elect. If parties accept the requirements of increased disclosure and transparency of their finances, it will greatly contribute to building public trust, real support and engagement and therefore, facilitate the democratic development of Ukraine.

10. List of abbreviations

NGO	Non-governmental Organization
SPDU	Social Democratic Party of Ukraine
TI	Transparency International
UAH	Ukrainian hryvnyas
USD	US Dollars

Conclusions

As it could be noted from the examples studied here, the problem of political parties' funding presents in general similar approaches at the level of formal regulations (legislation applicable to political parties and their financial activities), the differences intervening moreover in matters of enforcements and monitoring the current practices in the field of funding, respectively in the right application of legal norms.

Some of the countries analyzed - we refer here especially to Romania and Ukraine - have but recently encountered a consistent concern for the regulation of political parties' funding and continue to face serious difficulties as regards responsible application of these provisions.

A first conclusion generally valid is that of the *existence in all analyzed systems* (Ukraine⁷⁹, Poland, the Czech Republic and Romania) *of certain mechanisms of public funding of political parties' activities*, both during electoral campaigns⁸⁰, and during the periods between them, through subsidies from the State Budget⁸¹. The primary reason at the base of this type of funding is that, by their nature, political parties are fundamental entities in the democratic game, and the state is responsible to ensure equality of chances for their participation in the democratic competition. Poland stipulates even in the Fundamental Law the constitutional principle of funding political parties from the State Budget.

Reality indicates, however, that in practice such provisions do not guarantee access of all political formations to the competition

⁷⁹ In Ukraine, the new system of compensation for political parties' expenses during electoral periods will be applied in the following parliamentary elections to take place in March, 2006. Also, the system of funding state activities for statutory activities of political parties shall be applied starting January 1st, 2007.

⁸⁰ An exception here is still Ukraine, where the only expenses from public funds in the electoral campaign are those for electoral publicity. The rest of expenses in the campaign are made from the *Electoral Fund* made up of parties' own funds or from donations.

⁸¹ These subsidies are known under various names: *permanent contribution* (The Czech Republic), *grant* (Poland).

(elections), but rather favor in an obvious way the big parties, that already have won positions of power, mainly due to the fact that these subsidies from the State Budget are granted based on the results obtained in the elections. Consequently, the system of public funding seems rather to preserve an already existing status quo, than to make advantage to the new political parties/organizations to enter the competition. Still, there are situations in which progress has been made, especially as a result of awareness of the growing importance of decentralization and local development, when state subsidies are granted also for elections of "intermediary" rank, as is the case of elections for regional mandates in the Czech Republic.

In all cases, the percentage of subsidies from the state budget to the parties is, according to official data, the most important source of income for parties, the main explanation being that parties in Central and South-Eastern Europe are not as big in terms of the number of members to subsist from membership fees, and the few mass parties (the Czech Communist Party - KCSU, the Czech Social Democratic Party - CSSD or the Social Democratic Party in Romania - PSD) are made up of members belonging to low revenues social groups. In reality, however, other sources - considered secondary - are the ones that ensure the substantial contribution to parties' income, being at the same time the hardest to control. In this category there are: *donations* - although in the majority of cases there are specific regulations on the terms for donations to parties, these are more oftently masked under various forms (registered under other names, without identification data etc.), hard to find by the control authorized bodies.

An internal practice used on a large scale is the one of "marketing" positions in the parties by imposing certain minimal thresholds to fees for various levels/structures of leadership (Romania, Poland). This practice damages internal democratization of parties as only those who possess important financial resources advance in the parties. This practice is detrimental to those truly capable to represent the party's interests by nature of their political adhesions, and this is practically impossible to control/sanction as it is part of the unwritten life of the party.

Other sources of income of political parties are also of a nature that leaves room for interpretation, with respect to the full legality of the

way they operate, like *the possibility to have commercial activities or bank loans*, where the terms of loan contracts aren't clearly specified, given the fact that some banks are close to parties (a frequent practice in the Czech Republic). The same practice is encountered in Romania also, where the chapter *other income* leaves room for interpretation and abuses from political parties, taking into account the formulations in the text of the law that are excessively permissive and/or lacking and imprecise.

As regards the distribution of income within the party, the common tendency is the *centralization* of funds to the party headquarters, the percentage being around 70% of the income, the rest of 30% being distributed between the local branches, according to criteria established by parties from case to case.

With respect to *reporting to competent authorities* on the status of income and expenses political parties, one notes relatively easily the significant gaps between the examples presented. Differences focus mainly on two aspects:

I. *Standardization/clear explication in the law of reporting procedures and of types of information to be included in financial reports, with a view to ensure compatibility of data and a rigorous checking of reported data;*

II. *Public accessibility of reported data by the political parties and the transparency of information on parties' financial activity.*

I.

For the first criteria, based on which the different degrees of accuracy in the financial reports presented periodically by the parties may be classified, and through this the efficiency level of the control may be estimated, one example may be Poland that requires political parties to provide information and financial reports to several institutions, increasing thus the possibility to detect potential irregularities. Numerous categories of information must be included in these reports, stipulated explicitly in the law, as well as the obligation of an expert auditor to accompany the financial reports, makes the reporting procedure to be close to a standardized one, facilitating thus the work of the institutions authorized to check these reports.

In other countries, among which Romania, the law does not impose standard-forms for the reports. IPP has made considerable efforts in this sense, preparing for the first time in Romania (possibly, according to some opinions, the first in the region), the *Practical Guide for the organization of parties' funds and transparency in reporting*, an instrument especially important both for parties and for the institutions with control attributions. Nevertheless, as long as the practice of using such forms is not mandatory by law, and the violation of this provision is not sanctioned, there will still be problems related to the organization and verifying of parties' financial records.

II.

As regards the accessibility of the financial data reported by political parties, with one exception, financial reports of political parties are not public. The exception is the Czech Republic, where full financial reports of parties are public documents and may be consulted/requested at the Chamber of Deputies, which is the main institution in charge with the financial control of parties in the Czech Republic through a specialized commission in this sense. In the rest of cases studied in the report, the only sources of information for citizens in reference to the financial activity of parties is the information in the press, the internet pages of institutions in charge of control, (although, most of the times, these reports lack substance, being a mere formality) and the monitoring reports drafted by NGOs, especially during the electoral campaigns and after elections.

Apparently paradoxically, it seems that an increased degree of transparency is not always the guarantee for fairness as regards parties' funding, especially when legal provisions on accessibility of data are not correlated with provisions sufficiently rigorous on the organization and control of the data. Proof in this sense is the Czech system that, although stipulates that all financial data of political parties is public document easily accessible to any interested party, in reality these documents are a pure formality, as the legislative does not provide norms to match, to create the framework for such reporting, giving parties the possibility to elude the system.

In the light of what has been mentioned in this document, one may note relatively easily that the fundamental element in ensuring fair

funding of political parties is, at least in this stage, the democratic institutionalized *control*, of all stages of the funding process (fund collection, income-expense reporting, fair reporting of financial statements). It would be ideal that this control be achieved by specialized institutions, politically unbiased that should ensure the impartiality of the control and, at the same time, be authorized to take measures in case legal norms in effect have not been observed. For higher accuracy of the control, it is recommendable the possibility of cross-checking (checking documents and operations prepared by parties with those prepared by other agencies - for example: service providers, with which parties have commercial relations).

Another important aspect as regards the efficiency of the control of parties' funding is the *institutional coherence* - the correlation of attributions between institutions with control competence. In the majority of analyzed cases, systems present vulnerability in this sense, especially where the body in charge with the control of parties must submit its conclusions further to higher forum, as in the case of Poland. The lack of a special cooperation protocol between these institutions affects the celerity of the process, or, more seriously, increases the risk for political pressures that diminish the quality of control and impede results.

To summarize what has been said, the analysis of funding systems in the 4 countries that makes the object of the present report reveal a fundamental aspect for raising the efficiency of the efforts to "discipline" political parties' funding - a truly efficient control in the field implies simultaneous actions along at least three dimensions:

1. Existence of agencies/institutions specialized in control, independent, politically unbiased from the political point of view, with wide enough prerogatives so as to permit the control of multiple sources/channels through which parties' funding is accomplished;
2. Stipulation in the law of clear sanctions, correlated with the nature and seriousness of the violation of norms in effect. It is important to note in this case the fact that an exclusive focus of punitive measures does not lead to a fairer funding of political parties, on the contrary, it presents the risk for the

sanctions that appear to be disproportionate against the violated norms to not be enforced at all;

3. Promoting transparency in the relation between parties and the citizens they represent, by making public parties' financial documents and guaranteeing wider public access to this data.

Special attention deserves finally an aspect that has been mentioned in this study - namely the necessity for a permanent institution, specialized in electoral management that should administer fully the electoral processes, covering at the same time also the aspects related to parties' current funding. A potential model in this sense is the one practiced in Poland, where the National Electoral Commission - a permanent supreme institution authorized to manage the electoral process, has among its attributions those of ensuring that all parties and independent candidates comply with the provisions of the law with respect to financial ceilings, interdictions, publication and reportings; to provide information to the public about the funds collected and spent during the electoral campaigns, respectively to act as a counseling body to parties and candidates as regards topics within its responsibility.

Such an institution provides the advantage of an integrated management for the whole electoral process both during the electoral campaigns and during elections and in the periods in between. The recommendation should be interpreted in the large context highlighted here, namely of the need for the close cooperation of several institutions in a democratic system that should guarantee the efficiency of control and finally of a fair functioning of the political system from the perspective of funding of the main actors within it - the political parties. These should assume in a responsible and conscious way all attributions deriving from their statute, in conformity with their activities, and fully observe the strictness imposed to the legal category they belong to in terms of stating and controlling the financial activities. Efficient organization means at the same time, professional parties (including their branches) that should go beyond the phase in which inexperienced persons or volunteers are mandated to administer the accounting records and other financial activities, and should employ on a permanent basis specialists in the field, responsible for the nature of their work.

Essentially, the advantages of the comparative perspective that the present work offers are those that it may serve as a useful tool kit both to analysts concerned with the issue of the political parties' funding, to the mass-media and last but not least to decision-makers power who thus have the occasion to reflect upon alternative models that have proved their efficiency in the area, and may constitute reference points for a future reform in the field.

october 2005

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