

FINANCING ELECTORAL CAMPAIGNS

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Abstract

On 21 May 2015 entered into force Law no. 113 regarding amendments and completions to Law no. 334 of 2006 on financing the activity of political parties and electoral campaigns.

By the normative act in force, namely Law no. 113 of 2015, a number of Greco recommendations have been implemented and some measures have been regulated to reimburse from the state budget the expenditures for the electoral campaign belonging to political parties and independent candidates that meet a number of criteria of representativeness established by law.

Keywords: *electoral campaign, financing, activity, reimbursement, candidate, independent, criterion*

JEL Classification: [K10]

1. Introduction

Today, most European states have adopted normative acts on the funding of political parties and electoral campaigns, as well as on the control of abuses resulting from public funding of electoral campaigns.

These rules regulate different types of funding who can intervene and various other aspects of limiting campaign spending.

Thus, are taken into consideration: a) public subsidies (from the state budget); b) grants in nature (free allocation of antenna times, election campaign by post, and so on); c) limitation of expenditure (capping campaign expenditure of candidates); d) limiting the contributions (restrictions on individual donations); e) transparency of funds (trustees declaration on donor names and publication of donated funds); f) prohibition of certain types of contributions (those made by corporations, trade unions, persons or foreign bodies, state institutions); g) prohibition of certain types of expenses (prizes "in money and in kind "offered to voters); h) prohibition of certain types of electoral advertising on television; i) measures to encourage donations (granting tax incentives, tax reductions or exemptions); j) controlling the different sources of financing of the political parties by the institutions empowered in this respect; k) hardening of the sanctions regime.

From the point of view of the source of money, the financing of electoral campaigns knows two major systems: a) public financing (governmental); b) private financing (non-governmental). Public funding supports very much political

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pluralism, pluripartidism and the competition of ideas at a political level. It gives to the small political actors and political parties, new formations and extra-parliamentary parties the opportunity to express themselves on the political stage.

Indirect public funding can take many forms, including: a) allocation of antenna times; b) electoral correspondence or c) reductions or exemptions from taxes (VAT, postage taxes, and so on).

Private funding (non-governmental) concerns the scheme of contributions and donations coming from individuals and legal entities. It refers in particular to: a) establishing the legal ceiling for donations; b) prohibiting certain categories of donors from inside and outside of the respective countries, as well as c) prohibition of certain types of expenses. The limitation of contributions is made in order to reduce the possibility of a candidate or political party to be influenced by a taxpayer (Deaconu, 2005:93)

2. General considerations

On 21 May 2015 entered into force Law no. 113/2015¹ regarding the modification and completion of the Law no. 334/2006² on the financing of the activity of political parties and electoral campaigns.

By the normative act in force, namely Law no. 113/2015 regarding the amendment and completion of the Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns, a series of GRECO³ recommendations have been implemented and some measures have been regulated for the reimbursement from the state budget of expenses for the campaign belonging to political parties and independent candidates which respect a series of representation criteria established by law (Roș, 2015:92).

According to art. 63 par. (2) of the Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns, the methodological norms regulate, obligatory:

a) the modalities and format for recording, accounts and advertising of donations, contributions, loans and own revenues, as well as the expenses of political parties;

b) the granting and use of subsidies from the state budget;

c) the specific modalities and format of registration, recording and advertising of the revenues and expenses in the electoral campaign;

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² Republished in the Official Gazette of Romania no. 446 / 06.23.2015.

³ GRECO is the acronym of the Group of States against Corruption. It was set up in 1999 by the Council of Europe and aims to improve the capacity of its members [currently comprises 49 Member States (48 European and US States)], to fight against corruption and to ensure the implementation of commitments who have taken them in this area through a dynamic evaluation process. With regard to the funding of political parties and electoral campaigns, GRECO assesses the degree of compliance of Member States' legislation with Recommendation Rec (2003) 4 of the Committee of Ministers, of Member States of the Council of Europe.

- d) registration of financial mandate and his attributions;
- e) procedure and methodology of control;
- f) the categories of supporting documents and the methodology for reimbursement of the amounts spent for the electoral campaign.

Thus, by the Government Decision no. 10 of 13 January 2016 for the approval of the Methodological Norms for the application of Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns¹ mainly are regulated the following:

- Regulation of the main rules aimed at financing the activity of political parties and electoral campaigns based on the principle of equal opportunities;
- Establish measures to increase the transparency of revenues and expenditures for political party activity and electoral campaigns;
- Regulating the sources of private financing of political party activity: contributions, donations, loans, own income and other sources of income provided by law;
- Establishing the procedure of granting subsidies from the state budget and the use of subsidies from the state budget;
- Identifying the sources from which electoral campaigns and referendum campaigns can be funded: candidates' contributions to the electoral campaign, political party contributions to the electoral campaign;
- Regulating electoral expenses; the appointment, registration and attributions of the coordinating financial officer, as well as of the appointed representative at the county level, at the level of the municipality of Bucharest or at the level of the Bucharest sector;
- The acquisition and use of electoral propaganda materials;
- Establishing measures aimed at controlling the financing of the current work of political parties;
- Regulating the procedure for controlling the financing of electoral campaigns;
- Establishment of the methodology for reimbursement of expenses from the electoral campaign;
- Establishing contraventions and sanctions applicable to non-compliance of legal provisions.

Also, the political parties have the obligation to submit to the Permanent Electoral Authority² the annual financial statements in at most 15 days from the date of registration at the competent fiscal body. The Permanent Electoral

¹ Published in the Official Gazette of Romania no. 55 / 26.01.2016

² Law no. 208/2015 regarding the election of the Senate and the Chamber of Deputies, as well as for the organization and functioning of the Permanent Electoral Authority, published in the Official Gazette of Romania no. 553 / 24.07.2015

Authority will publish on its website the annual financial statements as well as their summarized version within 5 days from the date of their submission.

3. Notions, principles, rules

Chapter I of the abovementioned law includes in detail the notions of "legal persons directly or indirectly controlled by another person or by a group of natural or legal persons" as well as "persons directly or indirectly connected with the political party"; and are defined terms such as "treasurer", "bank account", "electoral expenses", "electoral campaign", "controller", "political party", and so on.

Based on the principle of equal opportunities, the funding of the activity of political parties and electoral campaigns must comply a number of rules, namely:

a) the donations, contributions and loans for the activity of political parties are capped, according to the law;

b) the loans and donations received for the electoral campaign by the candidates of the same political party from a person can not exceed the limits established by the law for the loans and donations for the activity of the political parties;

c) the expenses for the electoral campaign of the political parties and of the independent candidates can not be higher than contributions for the electoral campaign received by them;

d) obtaining income of any kind for the current activity of political parties from public institutions, autonomous regies, national companies, commercial companies or banking companies to which they are majority shareholders the state or administrative-territorial units, trade unions, religious cults as well as commercial companies whose activity have been financed by public funds is forbidden except as provided by law;

e) financing in any way, directly or indirectly, the electoral campaign of a political party, an alliance or an independent candidate by a public authority, public institution, autonomous administration, national company, company governed by Law no. 31/1990¹, republished, as subsequently amended or supplemented, or credit institution, to which the state or administrative-territorial units are majority shareholders, or by companies governed by the Law no. 31/1990, republished, with the subsequent modifications and completions, which with 12 months before the start of the electoral campaign, have been carried out activities funded by public funds, is prohibited;

f) the receipt of loans or donations for electoral campaign by candidates from natural persons who do not have Romanian citizenship or legal persons of a non-Romanian nationality is prohibited, except for those received from citizens of EU Member States have their domicile in Romania and are members of the political party whose electoral campaign contributes financially;

¹ Republished in the Official Gazette of Romania no. 1066 / 17.11.2004

g) financing in any way, directly or indirectly, of a party's electoral campaign, an alliance of them or an independent candidate by trade unions, religious cults, associations or foundations of a nationality other than Romanian is forbidden.

Destination of expenses for the current activity and expenses for the electoral campaign of the political parties will be established respecting the gender equality.

The methodological norms ¹ provide measures to increase the transparency of revenues and expenditures for the activity of political parties and electoral campaigns, as well as to inform about the legal provisions in the field, such as publication on the website of the Permanent Electoral Authority on the websites of the political parties and in the Official Gazette of Romania Part I, detailed reports of electoral revenues and expenses.

The same normative act establishes that ² the Permanent Electoral Authority keeps a fiscal register of political parties as well as a tax register of independent candidates in which are found the identification data, namely those related to the financial activity carried out in the electoral campaigns and the sanctions applied.

3.1. Maximum limits on contributions for election campaigns and the right to reimbursement of expenses

Regarding the financing of electoral campaigns, we show that the provisions of Law no. 334/2006, republished, establishes a new mechanism which entitles political parties and independent candidates who obtain a certain number of votes to obtain reimbursement of the sums spent in the electoral campaign.

The financial mandatory opens a bank account and the above-mentioned law sets the maximum limits for the electoral campaign contributions that can be deposited by the candidates or by the financial mandatory, respectively:

- a) a minimum basic salary gross per country for each list of candidates at the commune's local council;
- b) 3 minimum basic salary gross per country for each list of candidates at the local city council;
- c) 5 minimum basic salary gross per country for each list of candidates at the local city council;

¹ Government Decision no. 10 of 13 January 2016 for the approval of the Methodological Norms for the application of Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns, published in the Official Gazette of Romania no. 55 / 26.01. 2016.

² See Art. 62 of the Government Decision no. 10 of 13 January 2016 for the approval of the Methodological Norms for the application of Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns, published in the Official Gazette of Romania no. 55 / 01.26.2016.

- d) 30 minimum basic salary gross per country for each list of candidates for the local council, residence;
- e) 100 minimum basic salary gross per country for each list of candidates at the county council;
- f) 5 minimum basic salary gross per country for each candidate for the mayor of the commune;
- g) 7 minimum basic salary gross per country for each candidate for the mayor of the city;
- h) 10 minimum basic salary gross per country for each candidate for the mayor of the municipality;
- i) 50 minimum basic salary gross per country for each list of candidates for the mayor of the municipality, residence¹.

3.2. Destination of contributions in the election campaign

The provisions of art. 31, para. (2) of the abovementioned law expressly determines the purposes of the contributions for the electoral campaign, as follows:

- a) expenses for the production and dissemination of electoral propaganda materials on radio, television and in print media up to 40% of the total expenses that can be made during the electoral campaign;
- b) expenses for the production and dissemination of online electoral propaganda material, up to 30% of the total expenses that can be made during the electoral campaign;
- c) expenses for sociological research, up to 30% of the total expenses that can be made during the electoral campaign;
- d) expenses for electoral posters, up to 20% of the total expenses that can be made during the electoral campaign;
- e) expenses for printed brochures, leaflets and other printed propaganda materials, up to 50% of the total expenses that can be made during the electoral campaign;
- f) expenses for the renting of spaces and equipment and protocol expenses for organizing events on political, economic, cultural or social themes, for transport and accommodation, for legal assistance and other types of consultancy, as well as for paying the services of financial agents, in up to 30% of the total expenses that can be made in the election campaign;
- g) bank charges.

Within 90 days of the date of local elections, the Permanent Electoral Authority shall reimburse political parties, political alliances, citizens' organizations belonging to national minorities on the basis of the supporting documents provided by the financial officer but no later than 30 days after the

¹ For details, see art. 28 paragraph (6) of Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns, republished in the Official Gazette of Romania no. 446 / 06.23.2015

date of the elections, the sums related to the expenditures made in all constituencies, as well as those made at central level, if the political party, the political alliance, the electoral alliance or the organization of citizens belonging to national minorities obtained at least 3% of the valid votes expressed.

If the political party, the political alliance, the organization of the citizens belonging to the national minorities participating in the local elections did not obtain at least 3% of the validly expressed votes provided in art. 384, para. (4) of the previously mentioned national law, the Permanent Electoral Authority shall reimburse, on the basis of the supporting documents provided by the financial agent, only the sums related to the expenditures made at the level of the county, sector or Bucharest electoral constituency, in which he obtained at least 3% of the votes, as appropriate.

Amounts additionally spent at the central level, by the political party, political alliance, and national minority national citizens' organization are reimbursed only if they have received at least 3% of the votes validly expressed at national level.

In the case of local elections, expenditures made in an electoral constituency by an independent candidate shall be reimbursed only if he has obtained at least 3% of the votes validly cast for the fuction he has been candidate.

Political parties, through financial agents, have the obligation to return to the candidates, within 120 days of the date of the election, the amounts reimbursed and/or unspent amounts according to the contributions they have submitted.

At the same time, Law no. 334/2006, republished, contains express regulations regarding the referendum campaign, as well as the attributions of the financial representatives designated at the county level, at the level of the Bucharest Municipality or at the level of the sector of Bucharest Municipality, respectively of the coordinating financial representative.

4. Monitoring the funding of political parties and Electoral Campaigns by the permanent electoral authority

Also, the provisions of Law no. 334/2006, republished, strengthens the role of the Permanent Electoral Authority in the monitoring of the application of the legal provisions regarding the financing of the activity of political parties and electoral campaigns. Thus, the Permanent Electoral Authority is explicitly empowered to control, besides the legality of political party income also the expenses. In addition, the reports of political party towards to the Permanent Electoral Authority are exponentially multiplied, Permanent Electoral Authority now having access to the political parties' annual financial statements, the detailed annual political party reports and the election campaign reports, any other documents related to party activities revenue or expenditure policies, audit reports on the annual financial statements of political parties, supporting documents of the campaign expenses of political parties and independent candidates. In addition, the law indirectly gives responsibility to the persons with

powers of administration of the political party funds at national and county level, as well as the persons entitled to represent political parties at central and county level, and these are found in the records of the Permanent Electoral Authority.

According to the provisions of art., 36 para. (5) of the same law, if the Permanent Election Authority finds there are suspicions of criminal acts during the control made regarding the compliance with the legal provisions on the funding of political parties and electoral campaigns notifies the prosecution authorities.

Unlike the previous legislation on electoral offenses, legislation that was not consolidated in a single normative act, but was, on the contrary, spread in several special laws (Law no. 67/2004, Law no. 33/2007, Law no. 3/2000, Law 35/2008 and Law 370/2004), starting with 1 February 2014, the electoral offenses are contained in a single normative act, respectively in the New Criminal Code¹, in Title IX, art. 385, art. 392.

We mention that electoral offenses benefited from special regulation for the first time in Title II of the Criminal Code of 1936, period in which electoral offenses were treated as infractions against the exercise of political and citizen's rights and provided in articles 232 and 235, articles referring to in particular to the acts of violence or threat, which impede the exercise of political or civil rights, as well as electoral fraud (Pantea, 1998:65).

As a consequence, we endorse the view expressed in the specialized literature (Grecu, 2015:74) that the Law on the Financing of Political Parties and Electoral Campaigns obliges the political parties to financial transparency, respectively, to declare the revenues and expenses incurred.

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