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Political corruption and the funding of political parties

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Abstract:

Political corruption appears under more shapes than those set out in the Criminal Law Convention on Corruption. The lack of transparency in the funding of political parties favours and generates corruption, as shown by the case law of the courts.

In order to combat political corruption, the criminal penalties are simply insufficient; instead, there is a great need for political decisions to restructure the electoral system and to finance political parties.

Keywords: *corruption, case law, political parties, funding transparency.*

1. On political corruption

It is almost bookish to argue that corruption is the cancer of democracy, but, if all the other forms of corruption can be fought against, to a lesser or greater extent, by the deterrent effect of criminal sanctions, political corruption, due to the fact that it reaches even the top of the political hierarchy, often protected by a series of immunities and inviolabilities, cannot be easily combated merely through criminal law means since it is a problem in the system and, therefore, requires political will and actions to reduce state bureaucracy and to render the administrative decision more transparent.

Political corruption erodes the confidence in public institutions and democracy, favours tax evasion and undermines the national economy, hinders foreign investments and helps the organized criminal groups to gain access to the political leadership of the state, thus jeopardizing its safety.

Corruption generalized at the top of the political and administrative leadership of the state generates the emergence of failed states,¹ unable to ensure the protection of their own citizens.

Political corruption, according to our view, does not limit itself to the deeds of active or passive bribery and trading of influence, defined by the Criminal Law Convention on Corruption,² adopted in Strasbourg, on 27.01.1999, taking also the form of the use of political influence with a view to obtaining material advantages for oneself or for the party, or the form of electoral corruption, which consists in buying the electors' votes and, why not, also that of the conflict of interest, which, although in the Romanian Criminal Code (Article 301) is seen only as an office offense, it reveals a public official just as corrupt, if not even more corrupt, as the one who accepts the receiving of undue advantages since, using the powers invested in him/her, s/he awards onerous procurement contracts to companies controlled by him/her or his/her relatives.

¹ Noam Chomski, "State esuate. Un abuz al puterii si un atac asupra democratiei", Antet Publishing House, 2007.

² Ratified by Romania by Law no. 27/2002, Official Journal of Romania no. 65 of January, 30th 2002.

The Convention against Corruption³ elaborated under the auspices of the United Nations includes, otherwise, among the offenses of corruption also the abuse of functions (Article 19) as the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity, as well as the illicit enrichment (Article 20), consisting in the deeds committed with the intention of illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income, out of which only the abuse of functions is incriminated by Law no. 78/2000 on preventing, discovering and sanctioning of corruption acts⁴ as an offense assimilated to corruption offenses.

Although the concept of political offense was abandoned in the classification of offenses in the European criminal codes, it is still functioning in the matter of extradition, Article 3 of the European Convention on Extradition allowing the refusal of extradition if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

Subjectively, the act of corruption may be politically motivated, but this does not mean that the offense is a political offense.

The Criminal Law Convention on Corruption provides the following obligation for the signatory states: "the criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them". (Article 27)

Political corruption supposes, at the same time, the diversion of the power obtained by means of the electoral process in favour of the political clientele with a view to gaining material advantages by diverting public money for private use or for that of the party to which they belong, but also the gain of political power through the diversion of the electoral process using the practises of political corruption.

Even if one avoids the recognition of the fact that the candidates' registration on the electoral lists is mainly conditioned by the financial contribution made by them during the election campaigns, this is indeed the reality, and the place of a political meritocracy is taken by a corrupt and corrupting plutocracy, which offers administrative functions to a political clientele, motivated in exercising the functions in which they were appointed by recovering and multiplying the money invested in the election campaign.

The system of legislative elections in uninominal constituencies, in a single round of voting, with proportional distribution of the seats has proved inadequate, allowing the access in Parliament particularly of MPs of the kind.

The costs of election campaigns are clearly higher than the donations received and declared by the political parties and the political or electoral alliances at the Permanent Electoral Authority, a fact which is noticeable from the multitude of electoral materials and the scale of media campaigns, or these costs can only come from undeclared, untaxed "black money".

Accompanied by the bureaucratic corruption, political corruption "is characterized by the domination of political life through a monopolist organization or group, partially

³ Published in the Official Journal of Romania no. 903 of October, 5th 2004.

⁴ Published in the Official Journal of Romania no. 219 of May, 18th 2000.

based on corruption and obtaining significant advantages from the use of corrupt practices".⁵

In recent years, Romania has taken important steps against corruption, yet their effects were limited, fragile and easily reversible, the latest charges in the matter of corruption made by the National Anticorruption Directorate being aimed at the top of the political class, emphasizing at the same time the cross-party nature of corruption networks.

The former European Commissioner for Home Affairs, Cecilia Malmstroem, stated in the presentation of the 2013 report that corruption alone is estimated to cost the EU economy EUR 120 billion per year, among the most vulnerable areas include the financing of political parties, corruption of local authorities, public procurement and health systems.⁶

In Romania, both petty and political corruption remains a significant problem. Although some positive results have been observed when it comes to prosecution of high level corruption cases, political will to address corruption and promote high standards of integrity has been inconsistent, the report said.

In this report, the European Commission suggests that Romania "ensures that all necessary guarantees remain in place to safeguard the independence and continuation of non-partisan investigations into high-level corruption cases, including with regard to elected and appointed officials".

We aim to examine to what extent the funding of political parties favours the phenomenon of political corruption, starting from the way in which the financing of political parties is currently regulated and the way in which political corruption is reflected in the case law of the courts.

2. On the financing of political parties

Law no. 334/2006 on the financing of the activity of political parties and electoral campaigns⁷ aims at ensuring equal opportunities in political competition and transparency in the financing of the activity of political parties and electoral campaigns, which, we must admit, was partially failed mostly in what concerns the transparency of the funding and the deterrent effect of the sanctions for breach of funding rules.

The funding of political parties is ensured both through subsidies from the state budget, and through the contributions of members of the party, donations and liberalities, whose quantum is quite generously set by law.

The contributions paid during a year by a party member cannot exceed 48 minimum gross salaries at the country level. The gross minimum salary at the country level taken as a reference is the one existent on the 1st of January of that year.

Political parties are required to publish in the Official Journal of Romania, Part I, the total amount of revenues from contributions by the 31st of March of the following year, as well as the list with the party members who have paid, in a year, contributions whose aggregate value exceeds 10 minimum gross salaries at the country level.

⁵ M. Johnson, A. Doig, *Puncte de vedere asupra principiilor unei bune guvernari și a strategiilor durabile de combatere a corupției*, in vol. The World Bank, *Corupția și combaterea ei. Spre un model de construire a integrității naționale*, Institutul IRECSO, Bucharest, 2003, p. 25.

⁶ Commission unveils first EU Anti-Corruption Report, europedirect.cdimm.org/...

⁷ Republished in the Official Journal of Romania no. 510, from July, 22nd 2010.

The donations received by a political party in a financial year cannot exceed 0.025% of the revenues provided in the state budget for the respective year. In the financial year in which there are elections, either local, general, parliamentary, for the European Parliament or the election of Romania's president, the ceiling will be of 0.050% of the revenues provided in the state budget for the respective year. Donations can be made both by natural and by legal persons. Donations received from an a *natural person* in a year can be of up to 200 minimum gross salaries at the country level, at the value existent upon the 1st of January of that year.

In the financial year in which there are several elections, the donations received from a natural person can be of up to 400 minimum gross salaries at the country level, at the value existent upon the 1st of January of that year, for each election or referendum campaign.

Donations received from a *legal person* in a year can be of up to 500 minimum gross salaries at the country level, at the value existent upon the 1st of January of that year. In the financial year in which there are several elections, the donations received from a legal person can be of up to 1,000 minimum gross salaries at the country level, at the value existent upon the 1st of January of that year, for each election or referendum campaign. The total amount of the donations made by legal persons directly or indirectly controlled by another person or group of natural or legal persons can not exceed the limitations stipulated by the law.

The fair value of the movable and immovable assets donated to the party, as well as of the services provided to the same free of charge shall be included in the value of the donations. Price discounts exceeding 20% of the value of the goods or services offered to political parties and independent candidates shall be deemed as donations and shall be registered separately in the accounting records of the party or independent candidate in case, according to the standards issued by the Ministry of Public Finances. Upon receiving a donation, the identity of the donor shall be mandatorily checked and registered, irrespective of the public or confidential character of the same. Upon the donor's written request, its identity remains confidential if the donation does not exceed annually 10 minimum gross salaries at the country level. All donations shall be adequately registered in accounting records, specifying the date when they were made and other information which should allow the identification of the financing sources.

Political parties shall publish in the Official Journal of Romania, Part I the list of natural and legal persons who during a financial year made donations whose cumulated value exceeds 10 minimum gross base salaries at the country level, as well as the total amount of the confidential donations received by 31 March of the following year.

Donations from other states or foreign organizations, as well as from foreign natural or legal persons are forbidden. The amounts received in breach of the provisions stipulated under paragraph (1) shall be confiscated and included in the state budget.

The Permanent Electoral Authority is the public authority authorized to check the compliance with the lawful provisions on the financing of political parties, political or electoral alliances, independent candidates and electoral campaigns.

The control of the subsidies from the state budget shall be carried out simultaneously by the Court of Audit, according to the provisions of Law no. 94/1992 on the organization and operation of the Court of Audit, as republished.

Within 15 days from the publication of the election result, the financial agent shall submit to the Permanent Electoral Authority a detailed report on the electoral income and expenses of each political party, political alliance, electoral alliance, organization of citizens belonging to national minorities or independent candidates.

The infringement of these provisions represents an offence, unless committed in such a way as to constitute a crime, according to the criminal law, and they shall be sanctioned by fines between RON 5,000 and RON 25,000. The sanctions can be applied, if case be, to the political party, independent candidate, financial agent and/or donor in breach of the provisions stipulated here above.

In case based on a final court decision, one or several candidates of a political party that have been declared elected were convicted for a crime related to the financing of the political party or, if case be, of the electoral campaign, they become incompatible with the status of MP or local representative for the mandate obtained, which shall be annulled.

According to the 2013 Report of the Permanent Electoral Authority⁸ regarding the verification of the income and expenditure made by the political parties during the election campaign for the local elections of 2012, there have been applied a total of 884 contravention sanctions, mainly for failure to file within 15 days from the date of the election, by the financial agent, of the detailed report on the electoral income and expenditure.

Deviations having a contravention nature targeted issues connected to:

- organization of the parties' accounting in accordance with accounting provisions in force;
- legality of the funding sources;
- regime of donations and legacies during election campaigns and outside electoral periods;
- non-disclosure by political parties in the Official Journal of Romania, Part I, of the mandatory data regarding the incomes from the financial year 2012.

The Permanent Electoral Authority's controls capture rather formal breaches of the legal provisions regarding the funding of political parties, without being able to reveal the aspect of the funding of each candidate with undeclared money.

The European Commission's report on corruption holds: "High-profile corruption cases show vulnerabilities in the supervision of party and electoral campaign financing, as well as in the prevention of electoral fraud. In its compliance report of December 2012, GRECO pointed out that 10 out of its 13 recommendations on party funding are still not fully implemented. Legislative amendments are being prepared and, if adopted, will fill a number of existing gaps, notably on access to annual financial statements of political parties. Moreover, existing provisions are not being properly implemented".⁹

We think that the law on the funding of political parties should provide greater financial sanctions, applicable also to the parties, not only to their representatives, for violation of the legal provisions regarding the legality of the sources of party funding, as well as in the case their representatives use, during the election campaigns, means of corrupting the electorate.

⁸ www.roaep.ro/.

⁹ Commission unveils first EU Anti-Corruption Report, europedirect.cdimm.org/...

3. Political corruption before justice

The European Commission's Report holds that, in the last seven years, 1 496 defendants were convicted in final court decisions, of which almost half held political offices (including: one former prime minister, one minister, 8 MPs, one state secretary, 26 mayors, deputy mayors and prefects, 50 directors of national companies and public institutions, 60 officials from control authorities), the tendency for the years subsequent to the report (2013-2014) being that of an increase of such cases.

From these decisions, we shall directly refer to several cases connected to the funding of political parties.

Law no. 78/2000 incriminates as an offense assimilated to corruption offenses the deed of a person who has a leading position in a party, in a trade union or employers' association or in a non-profit legal person who uses its influence or authority for the purpose of himself or herself or for another person money, goods or other undue advantages.

The High Court of Cassation and Justice found that the constitutive elements of this offense are met if the defendant used his influence and authority as president of the party in order to obtain an illegal funding of his election campaign. What is of interest in this case is whether, in fact, at the time the defendant used his influence or authority, he had at least the definite vocation for being the party's candidate in the elections, a fact that might induce him the concern to ensure funding sources for the election campaign, be it licit or illicit. The mere use of influence and authority by the defendant in order to illicitly obtain money for the election campaign is circumscribed to the analyzed incrimination, being irrelevant whether he had envisaged the funding of his own campaign (presidential or parliamentary) or that of other candidates, nominated or not, of the party, regardless of the type of elections. The fact that there was a financial representative who dealt with the management of the financial resources for the campaign not does exclude the perpetration of illegal acts by the candidate himself, through which the latter had secured additional and non-transparent funding sources for the campaign.¹⁰

The fact of the defendant who, acting as an inspector-in-chief at a regional labour inspectorate, demanded that the informer should deposit at the cashier of a party a certain sum of money in order to block the application of some sanctions against the company in which the informer was an associate, constitutes an offense of bribe taking, since the claiming of the material gain could be used for oneself or for another.¹¹

Most convictions for acts of corruption are in connection with the award of contracts financed from public funds. Local and county councillors, mayors, presidents of county councils, MPs or other public officers have unlawfully awarded such contracts or have intervened to favour certain companies. Although not all of these cases are directly related to the funding of political parties, it is evident that at least some of this money reach the treasury of the parties or represent a consequence of the sums advanced in order to accede to such positions.

¹⁰ High Court of Cassation and Justice, c. 5, criminal decision no. 160/20.06.2012; <https://cristidanilet.files.wordpress.com/2012/11/trofeulcalitatii-decizie.pdf>.

¹¹ Timis Tribunal, criminal decision no.519/21.12.2011, dismissal of the plea by the High Court of Cassation and Justice, criminal decision no. 2479/2012.

The Romanian criminal law provides the criminal liability of the legal person, but it is difficult to conceive the application of criminal penalties, especially in the case of multinationals which, in their marketing policy, accept even the use of corrupt practices.

4. Conclusion

In order to combat political corruption, the criminal law means are simply insufficient; the reform of the electoral system and a greater transparency of the funding sources for the election campaigns, coupled with financial penalties imposed upon the parties, could contribute to controlling corruption.