

Activity 9: National analysis

POLITICAL PARTY FINANCING (PPF)
Including electoral campaign financing (ECF)

Tallinn 2014

Contents

Background.....	3
Public funding.....	4
Donations	4
1. Institutional Oversight, Monitoring and Auditing.....	5
2. Sanctions.....	7
3. Guidance.....	9
4. Transparency and Public Involvement	9
Discussion.....	10
References	12

Background

The 2013 public initiative The People's Assembly created an online platform for the public to suggest changes in the law. The suggestions which were deemed to have most perspective were advocated for by volunteers and ended up as proposals to change certain laws. One of the laws which had 506 suggestions was the Political Party financing provision of the Political Party Act. The proposed changes which were discussed in the Parliament and were ratified in January 2014 are discussed below as part of the actual aspects of political party financing.

In Estonia there are three bodies that are allowed to campaign for elections - political parties, single candidates and election coalitions. There is a proportional representation system in Estonia. The types of bodies differ according to the election type. In parliamentary (Riigikogu) elections (parliament is elected for four years) only political parties and single candidates may run for office. The same applies in the case of European Parliament elections. In case of local government elections (local governments are elected for four years) there is an additional body- the election coalition. The election coalitions can be formed by Estonian citizens and citizens of the European Union who are entitled to vote at the local elections and whose permanent residence is located in the corresponding rural municipality or city. The coalitions are based on a civil law partnership contract between their members and are formed for furthering the political agenda of their members and voters. The election coalitions are not legal persons. Presidential elections are held every 5 years. Since the President of Estonia is not elected directly this will not be discussed in this report. The laws that regulate party financing and are discussed in the report are:

1. Estonian Political Parties Act
2. The Riigikogu Election Act
3. The Local Government Council Election Act

The political parties financing in Estonia is regulated by the Political Parties Act. The act states the types of funding political parties are allowed to use.

The stated types are:

- Membership fees.
- Funding from the state budget.
- Donations.
- Transactions with party property.
- Loans.

There are however considerable restrictions. Funding from the state budget is only available to political parties and not for single candidates or election coalitions. The § 12⁷ of Political Parties Act states the terms of public funding.

At the parliamentary elections Estonia has a proportional system, the elections threshold is 5% The public funding is proportional to the number of seats parties obtain in the parliament. The total amount paid is divided in to twelve parts and money is paid out monthly.

Public funding

Due to the initiative of the People's Assembly there is an amendment in the law which will take effect on April 1, 2014. One of the proposed changes concerns financing political parties from the state budget that do not receive seats in Riigikogu (the 5% of votes are not gathered). According to the proposal, the parties that receive at least 2% but less than 3% of votes, are entitled to 30 000€ per year. The parties receiving at least 3% but less than 4% of votes, are entitled to 60 000€ per year and parties that collect at least 4% but less than 5% of votes, are entitled to 100 000€ per year.

The amendment will bring more equality to the political playing field, however inequality remains. For example, if a party receives 2.9% of votes and another 3%, then the 0.1% of votes have a significant importance and determine whether the party is entitled to 30 000€ or 60 000€ per year. Furthermore, in 2013 the parties (4) in the parliament received 5 393 500€ (at least over a 1 000 000€ each) as state funding, while only 2 parties outside the parliament received funding from the state in the amount of 19 174€ (9 587€ each). The system for dividing funds should thus be more proportional since the current change means un-proportional funding.

Donations

Allowed donations are regulated by § 12³ of the same act. The law explicitly states that the following donations are prohibited: anonymous donations and donations from legal persons. Providing political parties free services, goods or legal rights for using such resources that would not be available to other entities at the same conditions, is also considered an illegal donation. The aim of this provision is to avoid trading political influence for "free" services or goods. This also includes providing goods or services at a discount which is only available for the relevant party and no-one else. Voluntary work for parties is allowed and not considered to be a donation.

In addition to the previously mentioned restrictions, there is a legal ban on abolishing legitimate financial claims against political parties. For example, if a party owes a company for services or goods provided, and that company goes bankrupt, the debt can't be abolished and has to be paid to the state budget instead. Abolishing claims is considered an illegal donation.

It should be also mentioned, that in Estonia there are no limits for donations, a person can donate as much as he or she wishes and as often as he or she wants. There is also no limit on the amount of money parties can receive from donations in total or for elections. However, from April 1, 2014, only donors who have Estonian citizenship or residency are entitled to make donations. Therefore, foreigners are no longer allowed to donate to political parties

From April 1, 2014 parties are allowed to accept cash donations up to 1200 € per donor per year. Previously, there was no limit on cash donations. . The provision was conducted to avoid the incorporation of anonymous funds (see S. Meikar's case study below).. However, since there is no limit to electronically transferred donations for donors, this only means that the cash can still be delivered to a person who is willing to transfer the money to his/her account and then transfer the money as his/her donation to the party's account.

According to the Political Parties Act § 12³ all donations made in cash are to be immediately registered, and prohibited donations (both monetary and non-monetary) must be returned to the donor. In case the donation can't be returned to the donor, a monetary donation has to be

transferred to the state budget instead. The non-monetary donation that can't be returned has to be sold at a market price (the validity of the selling price which shall be reflected in the party's annual fiscal report will be later evaluated by an auditor in order to determine whether the value of the commodity was evaluated correctly) and the money received from the sale transferred to the state budget as well. If it is impossible to sell the donation, its ownership must be relinquished and it cannot be forwarded to a member of the political party or a party affiliated organisation. The requirement to try to sell the donation at a market price does not however apply when the value of the object is less than 64 €, all the rest of the provisions are still in place.

§ 12² sets the conditions for borrowing - political parties can only take loans from official credit companies and under market conditions. The loans can be backed up only with party property or by a contract of suretyship signed by its members. The strict loan conditions do not apply in case of simple everyday economic activities (such as purchase of office appliances) that are conducted under market conditions.

Another source of legal income for political parties is their property. Parties can earn from transactions with their property (for example selling the real estate they own).

1. Institutional Oversight, Monitoring and Auditing

The financing of political parties and election campaigns in Estonia is overseen by the Supervisory Committee on Party Financing (The Committee) which is financed from the state budget and its members have an office term of five years.¹ The Committee is situated in Tallinn, the capital of Estonia, in the Parliament building. The Committee consists of seven members, three of whom are named by the following institutions - Chancellor of Justice, National Audit Office and Electoral Management Body (in addition to the official member, a substitute is appointed by each institution) and four (number depends on the number of political parties in the parliament) of whom by parties in the Parliament (one member per parliament party). Members appointed by the parties cannot be members of the Parliament or government.

A crucial aspect in regard to transparency and honesty of financing and campaign financing is the work of the Committee. There are several concerns related to the Committee. Firstly, there is the issue of its possible bias. The Committee consists of seven members, four of whom are members of the ruling parties. The Committee requires a majority vote to pass resolutions, and therefore it is questionable whether the obligation to conduct thorough oversight is always respected.

Another Committee-related issue is its rather low administrative capacity. The Committee has limited personnel (one adviser and one consultant) and therefore can't always scrutinize the reports thoroughly or conduct background checks on the validity of information presented to them. There has been some public dialogue though as opposing party, who considered the reported media costs to be smaller than the campaigns exposure would predict, rose concerns. The discussion was bought up in the media and the accused party defended itself also via public channels. Therefore, one might say that some soft measures of third party monitoring

¹ The committee's budget can be found on the official site of Riigikogu:

<http://www.riigikogu.ee/index.php?id=87902>

via publicizing the campaign finances, exists². The same applies to the donation reports. There is no control over the origin of the money donated by donors and if the donation is in accordance with the income of the donor. A typical answer to the media questioning the donation, would be something like a grandmother selling some property to support the offspring's party cause, which of course, is more than dubious.

Political parties are required to regularly report the donations they have received to the Committee and can only have and use bank accounts that the Committee has been informed of (in case of campaign financing this requirement also applies to election coalitions and single candidates). Quarterly reports have to be made publicly available on the website of the parties. The reports are also available on the website of the Committee.

The reports are quite thorough when it comes to donor information. The Political Parties Act § 12¹ states that the donation reports have to contain the name of the donor, the personal ID number of the donor, the sum donated, the date of the donation, and also have to clearly state that the sum received was a donation.³ In addition to the donation reports, parties have to present their annual fiscal reports. These reports are presented to the court's registration department and later published on a designated registry website and the party website.

From April 1, 2014, in addition to reporting on the incomes, the parties must also report the expenses. Furthermore, the expenses must be presented in a detailed form. The expenses must be divided into 3 groups: political costs, labour costs, or management costs, which all have additional sub-categories.. All expenses must be labelled according to the type of expense.

The political costs must be categorized as advertising costs (TV, radio, internet, outdoor and journalistic advertising, and advertisement publications); public relations expenses; costs for publications; costs for public events; and other costs of political activity.

Management costs are seen as spending on rent and utilities; expenses for transport and fuel; communications costs; fixed assets; depreciation and insurance.

In case the party has received funding from the state budget the annual fiscal reports have to be audited by a sworn auditor prior to handing over to the registration department. The annual fiscal reports also contain information on the party's affiliated organizations⁴ and costs spent by them for the purposes of attainment of party's objectives.

The third type of reports that parties have to present, are election campaign expenditure reports. There is no difference in reporting concerning parliamentary, European Parliament and local government elections. **These reports have to be presented by single candidates and election coalitions (except for the European Parliament elections, where election coalitions do not take part in) as well.** The campaign reports are presented (reporting deadline is one month after the elections day) to the Committee and have to contain all campaign related costs. The technical requirements are the same for all the bodies that can run for office during different elections and are contained in the Political Parties Act under § 12⁸.

² Though media agencies and channels have a fixed price list, tailor-made offers and discounts are a norm, making prediction of the average media cost impossible

³ Quarterly reports also include the money received from membership fees, but donations and membership fees have to be clearly separated in the report.

⁴ For reference see Political Parties Act (RT I 1994, 40, 654) § 12⁹

In addition to previously mentioned information, the campaign reports by **single candidates and election coalitions** have to contain detailed information on donations made for their campaign. The relevant donor and payment information (the same requirements as in the case of donation reports that political parties have to present to the Committee) must be included.

2. Sanctions

The sanctions are contained in the Political Parties Act and they apply to political parties, single candidates, and election coalitions alike. Pre-trial investigation of these breaches rests with the Police and Border Guard Board and is adjudicated at the courts of first instance

The Committee can make precepts if a political party, an election coalition or a single candidate has not abided by the law.

Precepts can be made if:

1. The obligation to submit the campaign report has not been fulfilled or there are shortcomings in the report.
2. A prohibited donation has not been returned.
3. A received donation has not been documented
4. A prohibited donation that could not be returned has not been transferred to the state budget
5. The required documents have not been submitted.

These precepts obligate the concerned party to eliminate the shortcomings. The Committee can also issue precepts concerning third parties that obligate them to provide explanations or submit relevant documents. If the committee precepts are not abided by, the committee can assign penalty payments and late fees. In case the concerned party has not abided by precepts concerning points 1 – 3, the committee can assign a penalty payment up to 15 000 €. In case the concerned party has not abided by precept 5 the committee can apply a late fee which is 0.85% per each day delayed.

Other breaches of the Political Parties Act are adjudicated by the courts of first instance and they are investigated by the Police and Border Guard Board. There are different types of administrative sanctions for both legal and natural persons. The Political Parties Act says the following:

§ 12¹⁴- Failure to notify the about a party's bank account(s) can punished with a pecuniary punishment up to 300 fine units⁵ in case of a natural persons and up to 6400 € in case of a legal persons.

§ 12¹⁵- Failure to notify the committee about the bank account(s) of an election coalition or a single candidate can be punished with a pecuniary punishment up to 300 fine units (equals 1200 €).

⁵ One fine unit equals 4 €. See Penal Code (RT I 2001, 61, 364) §47.

§ 12¹⁶- Failure to notify the committee about the bank account(s) of an affiliated organisation can be punished with a pecuniary punishment up to 300 fine units in case of a natural persons and up to 6400 € in case of a legal persons.

§ 12¹⁷- Failure to submit the campaign expenditure report of a party, single candidate or an election union to the committee can be punished with a pecuniary punishment up to 300 fine units in case of a natural persons and up to 20 000 € in case of a legal persons.

From April 1, 2014, those who make or accept an illegal donation and notify the Committee in writing in 30 days will be exempted from the sanctions in § 12¹⁸ which states the fines for such activities (up to 15 000 €). Since such measures have proved to be successful in revealing misconduct in other fields (mainly in competition law), incorporating it to the Political Party Act and party financing can be considered a positive development with possible preventive effect.

In addition to sanctions that concern the party and campaign financing there are also important sanctions in the Penal Code paragraphs 161 to 168 that concern freedom of election related violations.⁶

Vote buying is a criminal offence and according to the Estonian Penal Code § 164 is punishable with a pecuniary punishment or imprisonment up to one year. Selling ones vote is not sanctioned.

In case a party has provided insufficient information a penalty payment may be issued. A penalty payment is not a punishment but rather a method of enforcing the wrongdoer to correct one's mistake.

Another important aspect concerns the decriminalisation of forbidden donations. On 01.04.11 the amendment to the Political Parties Act entered into force and prohibited donations were decriminalised, prior to this law amendment such cases could be investigated by the Police Board. Now the oversight is under the jurisdiction of the Supervisory Committee on Party Financing which also was created with the aforementioned law amendment.⁷

Komentaar [HJ1]: eespool oli see lõik juba olemas.

The Committee has issued 54 precepts and warnings for penalty payments from May 19, 2011.⁸ According to the Committee's minutes the precepts and warnings are taken into account by parties, single candidates and coalitions. The requested information is either additionally released or an appeal is presented to the Committee who must review its decision.

It is possible to issue an appeal against the precept the Committee has issued. According to the Political Party Act § 12¹³, if a political party, a person running as a candidate in the list of a political party, an election coalition, a person running as a candidate in the list of an election coalition, or a single candidate finds that a precept of the Committee violates their rights, the person may turn to the court pursuant to the procedure established in the Code of Administrative Court Procedure.

⁶ For details see Penal Code (RT I 2001, 61, 364) §161 - §168.

⁷ This law amendment received the title of the worst law from a group of legal experts. The article can be found here: <http://arvamus.postimees.ee/659050/parim-ja-halvim-seadus-miks-selline-valik/>

⁸ The Official Webpage of the Committee <http://www.erjk.ee/et/dokumendiregister/otsused-ja-ettekiritused>

3. Guidance

There are no detailed guidelines concerning regulations on party financing. The Committee's webpage contains four technical guidelines concerning the use of the newly opened system for reporting. There are guidelines for compiling and presenting the electoral report.⁹ Since the online platform is a recent development (July 2013) and because only the elections for local government councils have been held since then, only the guidelines for electoral campaign reporting have been created. It is plausible that there will be other guidelines in the nearer future as further elections will be held.

Furthermore, from April 1, 2014, the Committee has the responsibility to give guidance to political parties which have faced serious financial difficulties for 3 years. According to § 12¹⁰ the Committee is obligated to present proposals to the political party that has presented the relevant application to the Committee. The proposals should include solutions for overcoming financial difficulties, restoring the party's liquidity, improving the party's solvency and ensuring sustainable management of the party. While it is valuable that political parties should receive counselling concerning sustainable financing, it is doubtful that the Committee should be appointed to fulfil this task. In all probability, auditors have the capacity to provide more adequate advice concerning liquidity etc. The Committee itself has suggested that such duties would best be left with the auditors. Additionally, the Committee has stated that they will face a conflict of roles since as an oversight body they will have to oversee their own responsibilities as financial advisors.¹⁰

The Committee has a goal of organizing prevention and educational work. The Committee's correspondence (including memos) and the Committee's decisions on different party financing cases are found on the website and have important informational value.

4. Transparency and Public Involvement

As of the end of the quarter, a political party shall draw up a quarterly report on the revenues earned, loans obtained and expenses, and submit it to the political party funding supervision committee in the required form by the tenth day of the month following the quarter. The report shall be published on the website of the Committee.

A political party shall maintain a website for publication of information and communicate the address of the website to the registration department of the court.

In the event of a change in the published data, the change and the date thereof shall be indicated. The political party shall inform the Committee of the changes.

The Committee has an online platform, which is used by the parties to upload their reports and the reports are published. Nevertheless, the online platform cannot be seen as an accounting program because it only displays the data and does not process it. The platform is

⁹ http://www.erjk.ee/sites/default/files/valimiskampaania_aruande_esitamise_meelespea.pdf

¹⁰ For reference see the Committee's opinion on the changes to the Political Parties Act at:
<http://www.riigikogu.ee/?op=ems&page=eelnou&eid=21b6338a-f8fd-4330-9db0-8e9898fbf1f7&>

to be used for reporting and making comparisons. Nevertheless, the parties are required to present their costs for campaigns and enter the data on the oversight body's website for future possible analysis.

The reports are published on the oversight body's webpage.¹¹ The specific content is explained above (under Institutional oversight, monitoring and auditing). To view the reports no password or specific permission is necessary and everyone with an internet access has the possibility to inspect the reports.

The public oversight is taken into account as far as the body can issue precepts, penalty payments and warnings. The Committee has the right to demand further documentation from political parties, single candidates and coalitions, when in doubt. From April 1, 2014, in order to carry out its responsibilities, the Committee has the right to demand that a political party, election coalition or a single candidate to order a special concerning the fulfillment of the Committee's duties as specified in Political Party Act § 12¹⁰ section 1. It is related to the general guidelines for political party financing and publishing of the relevant information..

It is possible to notify the Central Criminal Police, the Security Police, media and the oversight body.

Discussion

The aforementioned amendment of the Political Parties Act is the 27th in 20 years. It proves that the party and campaign financing has been a constant issue of debate in Estonia. The act has been changed unorthodoxly often and still has room for improvement.

Before the latest amendment, it was proposed that there should be a limit to campaign expenses. At the moment, vast sums of money are poured into election campaigns and naturally, the parties who sit in the parliament have the upper hand due to state funding. Unfortunately, despite of recommendations presented by civil society members and one parliamentary party, limits to campaign expenses were not included in the final version of the amendment and it is safe to say that the most of the present parties in power cemented the position and with the unproportionally distributed public funding and guidelines for donations, effectively ensured that it would be very hard for newcomers to be successful in elections.

Furthermore, the reason for not setting limits for campaign expenses was the impossible task of defining political campaign and advertising.¹² At the same time, several other countries in the world have managed this task (e.g. Lithuania).

No thorough campaign monitoring has been conducted in Estonia and therefore it is hard to say for sure whether political parties, single candidates and election coalitions report their campaign expenses accurately. Despite the fact that no such monitoring has been conducted it

¹¹ For reference see the Committees webpage for reports: <http://www.erjk.ee/et/aruanded/erakondade-tulud-ja-laekumised>

¹² For reference see an interview with the head of the constitutional commission: <http://www.postimees.ee/2634244/maruste-parlament-ei-saa-olla-rahvakogu-taitevorgan>

can be said with reasonable certainty that there are many shortcomings in the enforcement of the party financing legislation and election campaign reporting. The shortcomings are the combined result of incomplete laws that allow bypassing their intended purpose and occasional unethical behaviour of Estonian political parties.

The second important problem that concerns the campaign expenditure reports is the vagueness of their content. The Political Parties Act only obligates to declare lump sums and no unit costs and therefore it is difficult, if not impossible, to assess whether the reported expenses correspond to the market prices or not. The amendment will somewhat improve the situation by requiring more detailed presentation of costs in the quarterly reports.

There has been a certain amount of progress concerning the support to smaller parties, election coalitions and single candidates. Estonian Public Broadcasting (state owned company) offers every election candidate a possibility to have his or her election agenda recorded and broadcasted. The Estonian Public Broadcasting also arranges public debates both on TV and on the radio (in Estonian and Russian). The company manages a webpage during elections and the parties, election coalitions and single candidates have the opportunity to upload their election messages and other election-related materials.

In addition to the previously described shortcomings, there is a serious issue of allowing cash donations which raise the risk of illegal donations and money laundering. Recently a major scandal emerged when a former member of the Riigikogu and a member of the Reform Party (the main coalition party) Silver Meikar came forth in the media and announced that he had been donating money coming from unknown sources to the party. He claimed that the former Secretary of the Reform Party Kristen Michal (then the Minister of Justice) had made him a proposal to support the party and asked whether he was willing to donate money to the party under his name. The newspaper article¹³ by Mr Meikar on May 22, 2012 resulted in a criminal investigation (based on the Penal Code § 402¹ violation of restrictions established on economic activities and assets of political party). After the initial article and the launch of the investigation, other politicians came forward and admitted that they had been asked to do the same and the problem is much more widespread and more political parties are involved. The amendment has addressed this issue and there now is a limit of 1200€ per year per donor for cash donations, but as explained above, this does not solve the problem of money laundering since there are no limits to electronically made donations.

Misuse of local government funds during election campaigns has become evident during the most recent local and parliamentary elections, e.g. candidates from one of Tallinn's city districts used the district's funds for erecting posters which communicated political promises and the candidates' portraits were the most dominating elements. The Committee ruled that the posters were a form of political advertising. However, since political advertising is not defined in the Estonian legislation, it is difficult to sanction such cases.

On the positive side it has to be said that despite all the aforementioned shortcomings, the legally guaranteed public availability of the campaign and donation reports is a powerful tool for the media and the NGO-s. The availability of information can be used for scrutiny and public pressure which should eventually result in a better political culture.

¹³ The article can be found here: <http://arvamus.postimees.ee/849254/silver-meikar-erakondade-rahastamisest-ausalt/>

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