



Political Party Financing in BiH

**Report by Transparency International Bosnia and
Herzegovina**



**CENTRI CIVILNIH INICIJATIVA
ЦЕНТРИ ЦИВИЛНИХ ИНИЦИЈАТИВА**



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Introduction

In parallel with the development of democracy in the country, there developed an election system according to which political parties emerged as an important and indispensable factor for the functioning of democracy. In this context, the strengthening of political parties and institutionalisation of party systems, which will represent the wishes and interests of citizens, becomes an inevitable priority. At the same time, the daily operation of political parties and their participation in elections requires significant funds, thus creating a link between money, political parties and election campaigns. However, this link calls for an ever closer monitoring of cash flows in all countries in the world, including Bosnia and Herzegovina, given the obvious fact that money from private sources often threatens the autonomy of political parties and influences their operation. At the same time, the issue of public financing, i.e. the financing of political parties from the state budget, is becoming the subject of a growing debate due to its advantages and disadvantages.

The issue of political party financing is increasingly attracting the attention of politicians, election officials and commissions, academia, and civil society around the globe, under the supposition that equal and fair access to resources by political parties and transparent distribution and spending of these resources constitute one of the basic prerequisites for the successful functioning of a democratic system.

Running for office, including the organisation of ever more expensive election campaigns, creates a need for increasing amounts of money, which renders the political system increasingly susceptible to illegal financing, trading in influence and, in extreme cases, the influx of the so-called “dirty” money into political processes.

No donor gives donations to political parties out of benevolence and there are hardly any who give it because they share the ideological views of the given party. The majority of donors simply act out of self-interest, giving money so that, in case the recipient party gets to participate in the government, they can have allies that will represent their interests in public politics. It is for that reason that political party financing is often viewed as trading in influence or favours. The higher the donations given and the favours returned, the more parties become dissociated from regular financing and enter the realm of corruption. The risk increases insofar as the legislation in any given country allows non-transparent financing and tolerates failure to report donations.

Traditional approach to political party financing, which used to entirely rely on membership fees, is not applicable any more in most of the modern democracies. However, the introduction of private sources of financing brings about additional problems. Contributions of parliamentarians to the funds for regular operation of MP clubs may constitute a covert form of political party financing from the public budget, which affects the independence of mandates in situations in which parties require that these contributions should be mandatory.

Other private sources, such as donations, carry a risk of inappropriate links and influences of the donated money on political decision making. Placing an emphasis on financing from the budget may circumscribe inappropriate influences by private donors. On the other hand, however, this leads to an increased dependence of parties on the state, which may encourage parties to rely too much on public funds, at a cost to citizens that they are supposed to represent. Also, as far as budget funds are concerned, special attention must be paid to equal opportunities for both experienced and developed parties as well as newly-founded ones.

It is clear that all types of political party financing carry certain risks of so-called political corruption, which leads not only to the alienation of resources, but also to the distortion of decision-making processes. It is political corruption that has the most devastating consequences for society at the highest economic price, and at the same time it is the form of corruption that is hardest to fight against.

In genuine democracies as well as in the countries with developing democracy political parties are often viewed as an integral part of the problem of political corruption. Still, the problem of political corruption and deviant roles of political parties is far more widespread and complex in fledgling democracies in which political and economic institutions and practices have not yet taken root in full.

The manifest forms of corruption in which political parties play a role are related to basic functions of political parties and can be divided into the forms of corruption which occur in the following processes:

1) Political party financing;

The basic function of political parties in modern democracies is to mobilise voters to support their political programmes, select candidates to stand for election as well as run and organise election campaigns. Therefore, as stated above, in order to perform their functions, parties need to secure financial resources on an ongoing basis. Generally, there are two approaches to raising funds for the operation of political parties. The first approach is based on political party financing from private sources, and the other one is based on the financing of political parties from public budgets. In most countries parties are financed from both types of sources. The first approach rests on the idea that parties are private organisations and, as such, should be financed from private sources (Goati, 2004). The second approach, i.e. political party financing

from public budgets, occurs primarily due to a dramatic rise in the operating costs of political parties and also contributes to a fairer election contest and increased transparency in political party financing.

Due to a high risk of corruption occurring in the process of financing political parties, there is a global trend towards an increased and more comprehensive legal regulation of this area. Michael Pinto-Duschinski lists the following forms of party corruptive financing:

- a) illegal gifts,
- b) using the funds obtained in corruptive ways for party campaigns or for party purposes,
- c) application of state resources (employees, premises) for party purposes,
- d) accepting funds in order to provide or promise certain advantages (benefits),
- e) accepting funds from dishonest sources, primarily from criminal circles, and
- f) spending money for forbidden purposes (such as buying votes, etc.).

2) Parliamentary activities of parties;

The parliamentary activities of political parties related to making and defining laws and policies presupposes the representation of the general or public interest. The risk of giving precedence to individual interests over the proper functioning of the parliament is correlated with the existence of active opposition and critical public opinion.

Clandestine party financing has multiple impacts: first of all, it stifles competition because the companies that act as donors to political parties are placed in a favourable position in relation to others through repayment of favours; on the other hand, it affects democratic

processes, decision making and competition between parties on account of the unequal access to funds.

As a consequence of widespread prevalence and pervasiveness of political corruption at highest levels, there arises the captured state phenomenon. “While most types of corruption are directed toward changing how existing laws, rules, or regulations are implemented with respect to the bribe payer, state capture refers to corrupt efforts to influence how those laws, rules and regulations are formed” (Hellman, Kaufmann 2001, p. 2).

Ergo, what separates the state capture phenomenon from “ordinary” corruption is the fact that actors in corruption attempt to circumvent the rules, whereas those in captured state try to ensure the creation of rules that are in the interest of a select group of individuals or corporate entities.

Not only do political parties create the political agenda, they also shape the institutional, economic and overall social development of a country as well as oversee administration and control the distribution and management of public resources. The higher the degree of control political parties assert over state institutions and society, the higher the risk of emergence of corrupt practices. The most common forms of corruption in this segment include corruption in privatisation, concession-awarding and public procurement processes.

The risks of the aforementioned forms of corruption may be prevented, if not altogether eliminated, to a significant extent by increasing transparency and accountability within political parties. A very important segment of eliminating the risk of corruption in connection with political parties is ensuring maximum possible transparency in the process of political party financing. The lack of well-regulated and transparent

framework for political party financing not only leaves vast room for political corruption, but may also threaten the functioning of democratic and other processes in society. This has resulted in numerous attempts to regulate this area at the international level. Most European countries have instituted significant legal measures in order to regulate political party financing, often in response to corruption scandals and affairs related to inappropriate influences on political decisions through donations to parties. The fact that Great Britain, as a liberal democracy in which political party financing was largely unregulated, has adopted a stricter approach to this issue is the most obvious example of the new approach being taken by European countries.

However, although considerable efforts have been invested in the regulation of political party financing by enacting laws which introduce restrictions on certain types of contributions, impose a ceiling on contributions and provide for the mandatory reporting on transactions, no significant progress has been made in terms of increasing transparency in political party financing, and this area remains among the most susceptible ones to the risk of corruption.

International standards

The key international legal instruments related to anticorruption combat contain provisions on political party financing, taking into account the differences between individual countries. Thus, Article 7 of the United Nations Convention against Corruption (UNCAC) provides that each State Party should take legislative and administrative measures, in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of political parties. The Council of Europe

Recommendation¹ underlines the need for independent monitoring in respect of the funding of political parties and election campaigns, including supervision over the accounts of political parties and their presentation and publication. Further, one of the recommendations of the Council of Europe² emphasises the necessity of keeping strict accounts of all income and expenditure, which must be submitted, at least once a year, to an independent auditing authority and be made public. According to these recommendations, the rules on financing political parties and election campaigns must be based on the following principles:

- a reasonable balance between public and private funding;
- fair criteria for the distribution of state contributions to parties;
- strict rules concerning private donations;
- a threshold on parties expenditures linked to election campaigns,
- complete transparency of accounts;
- the establishment of an independent audit authority; and
- meaningful sanctions for the parties and candidates that violate the rules.

¹ Council of Europe (2003) Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, Adopted 8 April 2003. Available online at:

<https://wcd.coe.int/ViewDoc.jsp?id=2183&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

² Parliamentary Assembly of the Council of Europe, Recommendation 1516 (2001), para 8 C (i)

Legislative framework

In Bosnia and Herzegovina, the financing of political parties and election campaigns is governed by the Election Law of Bosnia and Herzegovina³, acts passed by the Central Election Commission of BiH (regulations, guidelines, forms and other implementing regulations), laws on political party financing (at the state, Republic of Srpska and Brčko District levels), laws on conflict of interest (at the state, entity and Brčko District levels) as well as laws on registration of political parties and those related to the operation of all legal entities in BiH, including political parties.

In Bosnia and Herzegovina there is no specific piece of legislation to exclusively govern, for instance, presidential or parliamentary elections. Instead, there is an all-embracing piece of legislation which governs: a) elections at all levels of the executive (state level, entity level, cantonal level as well as local-government elections – cities and municipalities), and b) presidential elections, i.e. elections for the members of the BiH Presidency, President and Vice-presidents of the Republic of Srpska, President and Vice-presidents of the Federation of Bosnia and Herzegovina, and municipal mayors.

The purpose of the aforementioned laws is to ensure monitoring of the regular annual financing of political parties as well as the financing of their election campaigns. They also define and impose limits to allowed sources of financing, allowed amounts and limits of financing from private sources as well as introduce mandatory reporting of donations and financial reporting in order to ensure transparency in the financing

³ “Official Gazette of BiH” , Nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, and 32/10

process, as well as rules for allocation of funds for the operation of political parties from the budgets of political communities and, of course, provide for sanctions for failure to comply with legal provisions. Each of these aspects will be analysed in the following chapters, with special focus on the quality of the existing legislative framework and the scope of its application.

Financing through private donations

The Law on Political Party Financing of BiH⁴ provides that legal entities and individual persons may give contributions to the political parties or members acting on behalf of political party. A contribution includes gifts, free service or rendering of a service to a political party under the conditions which provide a preferential treatment for the party in relation to others.

The total amount of a single contribution may not exceed eight average worker's salaries (currently around KM 6,400) in BiH in a calendar year (according to the official data of the BiH Agency for Statistics) and may not be cumulated more than once a year.

In March 2010, the Inter-ministerial Working Group for Drafting Amendments to the Law on Political Party Financing put forward, *inter alia*, a proposal that the contribution limit for legal entities should be raised to 15 average net worker's salaries in one calendar year (currently around KM 12,000). However, the new bill is still in the parliamentary procedure.

The Law on Political Party Financing also provides that state, entity and cantonal bodies, municipal and local community bodies, public institutions, public companies, humanitarian organisations, businesses which are exclusively non-profit in nature, religious communities as well as economic associations in which public capital has been invested to the amount of a minimum of 25 percent may not finance parties. This also applies to private enterprises which are contracted by the government

⁴ "Official Gazette of BiH", Nos. 22/00 and 102/09

to perform public services. The said financing rules apply to both political parties and members acting on behalf of political parties.

However, one of the shortcomings of the Law on Political Party Financing is that it does not regulate the relationship between public and private party financing, which results in budget funds being the only or the major source of funding for most parties.

Also, the area of private financing of political parties is a lot less controlled than budget funding because the amounts of public funds allocated to political parties are always subject to a more careful scrutiny. Donations from other sources, on the other hand, come under less scrutiny because the information about private donations is not publicly available, which gives parties more scope for manipulation and allows them to evade the responsibility to report donations, especially when in-kind donations are concerned.

One of the particularly problematic areas is the donations from public companies or from those in which public capital has been invested to the amount of a minimum of 25 percent. Such donations are prohibited; however, there is no registry of companies with 25 percent of public capital and, what is more, it is even difficult to identify all public companies in BiH. Also, it is a well-known fact that appointments to managerial positions in public companies are given to party personnel, who are thus in a position to use public funds for the purposes of their political parties as well as employ fellow party members. Even bigger problem is the companies contracted by the government to perform public services, which are even more difficult to track, thus making it almost impossible to determine whether parties violate the law by accepting donations from these sources.

As concerns the application of the legal provisions regarding private donations (i.e. those coming from individual persons and legal entities), it is evident that these provisions are not respected in full. Analysis of the reports on the audit of political parties' financial reports for year 2008⁵ (the 2009 audit has not been conducted yet), which are prepared by the Central Election Commission Department for Audit of Financial Transactions, reveals numerous breaches of Articles 3 and 8 of the Law on Political Party Financing, which regulate the sources of funding and prohibited donations, respectively.

The report shows that, although they report donations from individual persons and legal entities which are seemingly within the prescribed limits, political parties, on the other hand, receive in-kind donations which greatly exceed the legal limits. This primarily refers to utilisation of business offices without having to pay rent. Almost all of the surveyed parties use municipal offices (mainly in the municipalities in which they constitute the majority in local government) and offices of public companies without paying any rent. This practice has been observed in as many as 9 of the total number of 10 parties involved in the survey.

These actions are a direct contravention of two provisions of the Law – Article 5, which governs the contribution limits, and Article 8, which defines prohibited donations. If one is to calculate the annual rent for use of the office premises, one would certainly come up with an amount that greatly exceeds the prescribed limit of eight average net salaries. Also, the municipalities and public companies whose premises are used by political parties constitute prohibited sources of income. Furthermore, this practice is a flagrant abuse of power on the part of political parties and is, expectedly, not reported in parties' financial

⁵ <http://www.izbori.ba/default.asp?col=revID2008>

reports, in clear breach of the provisions concerning the reporting of income and expenditure.

However, as will be shown in other segments, regardless of the irregularities identified by the Department for Audit of Financial Transactions, penalties are imposed very rarely and political parties continue with the same practice without ever acting on auditor's recommendations.

Another problem is the provision stipulating that the income generated by property owned by the political party may not exceed 20 percent of the amount of the total annual income of the party, which adversely affects the "transparency" of certain parties. The amounts parties report to that respect never exceed 20 percent of total income, while a review of the budget of the FBiH indicates that a lot more is allocated for the lease of premises of certain parties (e.g. SDP BiH). At the same time, the fact that the income of a political party generated from the profit of a company owned by the party cannot exceed 20 percent prompts establishment of business entities which are registered as being owned by individuals close to political parties.

There is also the issue of valuation of the state property used by some political parties (direct successors of the former League of Communists) as the *de facto* inheritance from the time before 1990s, but whose value is not calculated at market price, while at the same time the government cannot lease it out. This practice is particularly common at the local level of government. In that respect, the value of property admitted in the balance sheets of political parties is unrealistic and hugely understated.

Also, according to the Law, if the income generated by property owned by a political party exceeds 20 percent of the overall income, the party is required to donate this "surplus" to charitable purposes. It is, however,

difficult to determine who the parties pay these surpluses to, which allows them to circumvent the rules by paying these funds to certain associations or organisations that are close to them, especially having in mind the situation in BiH, where a number of nongovernmental organisations and associations of citizens are merely “extended arms” of political parties. By doing so, parties act in accordance with the law, but at the same time violate its principles.

Appropriations from the budget

As has been mentioned above, political parties in BiH are also financed from the budgets at various levels in BiH. The distribution of these funds and models of financing are regulated by the Law on Political Party Financing of BiH and RS as well as the Election Law. The right to funds from the budgets is exercised by political parties, independent candidates, lists and coalitions who have their representatives in the parliaments. These funds are used partly for covering the operating costs of parties, independent candidates, lists and coalitions and partly for financing election campaigns.

The Law on Political Party Financing of BiH regulates the issues of budget donations to political parties, i.e. groups that participate in the Parliament of Bosnia and Herzegovina (the House of Representatives and the House of Peoples). The Law provides that the budgetary financing of the political parties represented in the Parliamentary Assembly of Bosnia and Herzegovina is to be distributed so that 30 percent of the total amount dedicated to the parliamentary groups will be distributed equally, 70 percent will be distributed proportionally according to the number of seats each parliamentary group holds at the time of distribution, while 10 percent will be distributed to the parliamentary groups according to the number of seats belonging to the less represented gender. Which gender is less represented is determined by the Election Commission of Bosnia and Herzegovina according to election results.

A big problem in relation to this regulation and financing parties from the budgets at different administrative levels is the fact that the entities have not adopted in a very long time satisfactory laws dealing with the issues of financing political parties which operate at levels lower than

the state level, while the Law on Political Party Financing of BiH regulates appropriations of funds to parties represented at the level of joint state institutions. For very long time this left vast room for malversations at lower administrative levels. The problem was partly solved by adopting the appropriate Law in RS in July 2008, while the Law on Financing Political Parties from the Budget of the Federation of BiH has not been adopted even after two years of parliamentary procedure, which is a clear indication of a lack of political will in FBIH to solve this issue in an effective way.

At the level of the Republic of Srpska, the Law on Political Party Financing from the Budgets of the Republic, Cities and Municipalities⁶ governs part of the financing of political parties and coalitions that have MPs or councillors in parliaments, independent MPs and councillors (including MP/councillors' clubs and groups) as well as parties, coalitions and independent candidates with confirmed electoral lists. The Law makes a distinction between regular financing and financing for the duration of election campaign. Regular financing is effected by allocating 0.2 percent of budget funds, which are distributed in the following way: 20 percent goes to all parties having MPs in the parliament/boards and independent MPs, while the remaining 80 percent is distributed according to the number of seats won in the parliament/board. On the other hand, funds for election campaign amount to min. 0.05 percent of the budget and are distributed "in accordance with the election regulations". The distribution of these funds is handled by the Ministry of Finance of RS or the competent service department in local administration units.

⁶ "Official Gazette of RS", No. 65/08

However, the provision stipulating a **minimum** of 0.2 and 0.05 percent of funds appropriated from the budget has been controversial since the very beginning as it opens up the possibility of appropriating funds in amounts higher than the stipulated minimum. The fact that the ruling parties constitute the majority in the parliament, which allows them to vote on the amount of funds to be appropriated, leaves room for manipulations. Thus, parties can, theoretically, vote to significantly increase the amounts apportioned to them, as they see fit.

Further to the point, the RS Law fails to define the specific categories of costs that may be covered by the funds appropriated for the financing of the day-to-day operation of political parties, which gives parties plenty of leeway to categorise at will virtually any type of expenditure under operating costs. Although it governs the matters of distribution, this Law fails to regulate the issues of monitoring the expenditure of funds appropriated from the budget, while the state-level law only deals with the spending of funds for election campaigns. This gives political parties complete freedom to spend taxpayers' money arbitrarily and as they please.

As far as the Brčko District of BiH is concerned, the Law on Political Party Financing from the Budget of the Brčko District of BiH⁷, which has been in force since 2004, makes a distinction between regular financing from the budget in the amount of 0.1 percent or KM 200,000, depending on which of the two amounts is lower, with the following distribution: 30 percent is distributed equally to all parties represented in the Assembly and 70 percent is distributed according to the number of parliamentary seats won, and financing during election campaign in the amount of 0.03 percent or KM 60,000 from the budget, depending which of the two

⁷ "Official Gazette of the Brčko District of BiH", Nos. 29/04, 14/07, and 19/07

amounts is lower, following the principle that each party will be entitled to the coverage of costs in the amount of KM 4,000. The amendments to the said Law, which were adopted in 2008, stipulate that the distribution of these funds shall be handled by the Directorate for Finances of the Brčko District of BiH in accordance with the data submitted by the Central Election Commission of BiH (CEC BiH).

The Law on Political Party Financing of BiH provides only for the financing of parliamentary groups in the Parliament of BiH as well as in the Brčko District of BiH (because the Mayor of the BD BiH is elected indirectly by the Assembly of the BD) and does not mention the financing of election campaigns whatsoever, while the Law on Political Party Financing from the Budget of RS and Municipal Budgets states that the apportioned budget funds serve to finance the election campaign but only for parliamentary election, and not the presidential election.

It should also be noted that the political parties participating in the Parliamentary Assembly of BiH receive funds for their work from the budget of BiH, those at the level of entities receive funds from the entity budgets, those in the Brčko District of BiH receive funds from the budget of the Brčko District BiH, and those at the municipal level from municipal budgets.

In the period 2004-2009, a total of KM 110 million was apportioned for political party financing from budgets at various administrative levels.

The data of the Central Election Commission indicate that the vast majority of income of political parties in BiH comes from the budget. According to the data contained in financial reports of political parties for year 2009, the total reported amount of financing of all parties was

KM 22,598,063.65, of which 81.9 percent⁸ or KM 18,512,682.84 were apportioned from the budget. The aforementioned total reported amount of finances of all parties in BiH is somewhat lower than 0.1 percent of the gross domestic product of BiH in 2009.

As stated in the 2009 Annual Report of the CEC BiH⁹, “every year there is an evident rise in the amount of funds apportioned from the budget to political parties, as shown in the following summary: as compared with 2004, the funds apportioned in 2005 were higher by 16.59 percent, in 2006 they were 26.11 percent higher than in 2005, in 2007 they were 7.25 percent higher than in 2006, and in 2008 they were 12.49 percent higher than in 2007.”

It is important to note that certain parties have received as much as 3 to 4 million KM from the budget. For that reason, it is particularly important to review the expenditures of political parties as it is obvious that the budgets available to some of them are really high.

As far as the structure of finances from the budget is concerned, the majority of funds (37.89 percent) came from the municipal budgets, followed by cantonal (23.36 percent) and entity budgets – RS (17.72 percent) and FBiH (12.16 percent), and city budgets (5.75 percent), while, with the exception of the Brčko District of BiH (1.06 percent), the lowest proportion of funds (only 2.06 percent) comes from the budget of BiH, i.e. the state budget.

⁸ Central Election Commission of BiH: Information on Submitted Annual Financial Reports of Political Parties for 2009. No. 03-S-1/10. Sarajevo, 12 May 2010.

⁹ http://www.izbori.ba/documents/2010/Izvjestaj_2009/Izvjestaj_cik_za_2009-BOS.pdf

It is clear that the vast majority of public finances come from the lower administrative levels, where the financing and distribution of funds for political parties is less regulated.

It is for that reason that situations occur (which is especially evident in the Federation of BiH where there is no law to regulate political party financing) in which parties are apportioned more funds from certain administrative levels than envisaged in the budgets. A striking example is the apportionment of funds to political parties from the budgets of cities in FBiH in 2009, which reached **as high as 231.81 percent of the envisaged funds**.¹⁰ It would be necessary to find out on which grounds the envisaged funds were more than doubled and what the criteria for the distribution of these funds at the level of cities in FBiH were, when there is neither the law nor the rules for the distribution at the entity level. Given the complex three-tier setup of the Federation of BiH (entity, cantonal and city levels), any further delays in adopting the Law to regulate political party financing will lead to even more serious cases of misuse of public funds in the form of arbitrary apportionment of funds to political parties and exceeding the envisaged budgets for the benefit of political parties.

Having in mind the aforementioned data and the fact that the budget funds are almost the only and in percentage terms the largest source of political party finance, it is necessary to impose a legal ceiling on the funds apportioned from the budget by stipulating that the amount of annual apportionment from the budget cannot exceed a certain percentage of the total annual income of the political party.

¹⁰ Central Election Commission of BiH: Information on Funds Apportioned to Political Parties in 2009 from the Budgets at all Administrative Levels in Bosnia and Herzegovina. No. 03-S-2/10. Sarajevo, 12 May 2010.

Political party accounting

Political parties have a legal obligation to keep accounting records, record all transactions to and from their bank accounts, report all donations exceeding KM 100, and keep record of their movable and immovable property and all expenditures.

The Law on Political Party Financing and the Rules on Annual Financial Reports of Political Parties¹¹ stipulate that every political party must appoint a competent person who will be in charge of filing reports with the Central Election Commission of Bosnia and Herzegovina, and who will be responsible for their contents. The practice has shown that in some cases this responsibility rests with a member of staff of the political party, in some cases it is outsourced to an external firm, while in some it rests with a volunteer. The Law does not stipulate that the president of the party or a member of the board must sign the financial reports as this is the exclusive obligation of the person appointed by the party to sign and submit all financial reports to the Election Commission of BiH. Although the Law on Political Party Financing and the Rules on Annual Financial Reports of Political Parties stipulate that all transactions conducted on behalf of the party must be expressed in cash equivalent, the political parties hiring volunteers for this job are often in breach of these rules.

Political parties have an obligation to retain their complete financial reports for at least last six years after filing. Independent candidates, if they stand for presidential/mayoral election, also have an obligation to submit financial reports to CEC BiH.

¹¹ "Official Gazette of BiH", No. 61/06

Analysis of the Reports on Audit and Review of Financial Reports of Political Parties (for years 2004, 2005, 2006 and 2007)¹² shows that political parties do keep accounting records in accordance with positive regulations. However, the practice has shown that certain parties do not keep adequate record of their income and expenditure and that there are violations of the prescribed rules.

Political parties have an obligation to keep accounting records in accordance with the existing rules, i.e. on a day-to-day basis. However, this rule is often disregarded. The reports prepared by CEC BiH thus document numerous violations of the rule on cash operations which require keeping daily records of changes to the cash balance. The practice differs from one party to another. Thus, the parties with better infrastructure or even better developed party boards are more compliant with the rules. Political parties usually update their accounting books on a monthly or quarterly basis.

Surveys of practices show that the information on the income and expenditure of a party is available only to the senior management of the party, but primarily to the person in charge of submitting annual financial reports. A review of the websites of the largest ruling and opposition parties and analysis of the contents of their conventions show that there is no practice of annual submission of data to the members or delegates. Nor is this an obligation stipulated in the law. It is standard practice in political parties to present the data on the income and expenditure of the party in the sessions of the main board.

Political parties do not have an obligation to conduct external audit of their finances, so no party conducts it. Audit is conducted by the Central Election Commission Department for Audit of Financial Transactions in

¹² <http://www.izbori.ba/default.asp?col=Revizija>

line with the provisions of the Law on Political Party Financing and the Rules on Administrative Procedures of Inspection, Control and Audit of Financial Reports of Political Parties¹³.

A political party has an obligation to file with the Central Election Commission of Bosnia and Herzegovina a financial report for each calendar year (accounting year). A political party is treated as a single legal entity regardless of whether it has its regional or local boards, so the obligation to file reports refers exclusively to the headquarters of political parties, including the obligation to file reports for all boards and units.

¹³ "Official Gazette of BiH", No. 103/08

Financial reports of political parties

As has been mentioned earlier, political parties have an obligation to file with the Central Election Commission of Bosnia and Herzegovina a financial report for each calendar year (accounting year). All political parties that are required to file reports must also file such additional reports as the Central Election Commission of Bosnia and Herzegovina may require.

The Law on Political Party Financing and the Rules on Annual Financial Reports of Political Parties provide that the financial reports of political parties are prepared in a predetermined format, which requires updated records of all items, as follows:

- List of all transactions on the business account of the political party,
- Total income of the political parties – membership fees,
- Contributions from individual persons in excess of KM 100 as well as contributions of legal entities in excess of KM 100,
- Income of the political party generated by property,
- Profit of legal entities owned by the political party,
- Non-pecuniary donations and bills that the political party was not obliged to pay,
- Funds apportioned from the budget,
- Other incomes,
- Expenditures of the political party,
- Loans, credits and debts.

Article 15.1 of the Election Law regulates the submission of special reports to the Central Election Commission by political parties,

coalitions, lists of independent candidates and independent candidates participating in the elections. This includes two types of reports: 1) financial report for the period beginning three months prior to the date of submission of the application for certification to participate in the elections, and 2) report for the period beginning on the day of submission of the application for certification until the certification of the election results. These reports contain the following: all cash at hand, all income and disbursements from the country and abroad, including in-kind contributions, identification of the persons who made donations in excess of KM 100, costs of political campaign as well as all outstanding debts and obligations owed by or to the person filing the report.

The Rules on Pre-election and Post-election Financial Reports of Political Subjects¹⁴ take a rather more relaxed approach to creating pre-election and post-election reports of political subjects that do not represent political parties or are not in them. What is characteristic of independent political subjects and candidates is the fact that they do not have accounting reports that may serve as a basis for checking information contained in submitted reports.

However, the experience and reports on audit of financial reports have shown numerous breaches of the rules: failure to admit in-kind contributions, failure to record the rent, failure to record the release of debt, overheads and other costs, release of the obligation to pay rent, etc.

One of the main legal shortcomings is the obligation of political parties to report only the contributions in excess of KM 100. In practice, however, this provision is circumvented by “fragmentising” larger

¹⁴ “Official Gazette of BiH”, No. 61/06

individual contributions into several smaller ones, none of which exceeds the amount of KM 100. Thus, a large number of contributions that would otherwise be subject to financial reporting remain unreported. This threatens the principle of transparency of political party financing, with consequences such as allowing large donors to exert significant influence on the work of the party. What is even more dangerous is the risk that this influence might remain undetected and can be contrary to the public interest, especially when the ruling parties are concerned. Furthermore, it is the ruling parties that have a lower public-to-private financing ratio, which only goes to prove the above thesis.

At the same time, the existing laws and implementing regulations do not regulate the activities of directors of public companies and institutions, as well as elected representatives and appointees, thus making it impossible to determine when these persons are doing their job and when they are acting as representatives of their political parties.

Finally, it is important to note the lack of obligation to create a list of all private companies contracted to perform public services to governments (i.e. those that participate in public procurement) which are prohibited from giving donations. Also, the reports of CEC BiH do not identify the companies giving donations to political parties, thus making it impossible to detect violations under Article 8 of the Law on Political Party Financing, which defines prohibited donations.

The practice has shown that parties **mainly** do file reports, though some of them with certain delays. According to the data of the Central Election Commission, in 2009 annual financial reports were submitted by 79 political parties, while 28 parties failed to submit them (6 of which had failed to submit the reports the previous year, thus forfeiting the right to

stand for the next election)¹⁵. Political parties that fail to submit the report are sent a reminder by CEC BiH, which gives them an opportunity to voluntarily submit their financial reports before imposition of a penalty or administrative measure.

Although political parties have an obligation to document the donations and report on them to CEC BiH, legal entities and individual persons giving donations to political parties or independent candidates are under no obligation to submit reports to CEC BiH on their donations. In the financial reports that they submit to tax authorities, legal entities are bound to report that they had donated a certain amount of funds or services to political parties. The Law on Political Party Financing provides that a legal entity or individual person that renders a service to the party or sells it a product must deliver a receipt to the party, irrespective of who pays the service or the product, or, irrespective of whether the service has been rendered or the product given free of charge. However, what keeps recurring in almost every Report on Audit of Financial Reports of Political Parties is the lack of record on services rendered or products given free of charge (including the already mentioned use of business premises) and very frequent failure to issue a receipt on such transactions.

¹⁵ Central Election Commission of BiH: Information on Submitted Annual Financial Reports of Political Parties for 2009, No. 03-S-1/10, Sarajevo, 12 May 2010.

Supervision and revision of political party financing

The Law on Political Party Financing stipulates that the Central Election Commission of Bosnia and Herzegovina (CEC BiH), i.e. its Department for Audit of Financial Transactions, has the exclusive authority to control political party financing both during election and during the period when there is no election. Hence, CEC BiH and its Audit Department have the authority to control annual as well as pre-election and post-election reports.

The Election Law of Bosnia and Herzegovina spells out the responsibilities of the Central Election Commission of BiH as well as the responsibilities of municipal election commissions. The operation of CEC BiH is also regulated in implementing regulations such as the Rules on Conducting Procedures, the Rules on Administrative Procedures of Inspection, Control and Audit of Financial Reports of Political Parties¹⁶, which are the new rules of procedure adopted after the 2008 local election, the Rules on Annual Financial Reports of Political Parties¹⁷, the Rules on Pre-election and Post-election Financial Reports of Political Subjects¹⁸ and various types of forms which facilitate reporting in connection with political party financing.

¹⁶ "Official Gazette of BiH", No. 103/08

¹⁷ "Official Gazette of BiH", No. 61/06

¹⁸ "Official Gazette of BiH", No. 61/06

Composition of the Central Election Commission of BiH

Members of CEC BiH are elected in a process in which members of the Commission for the Appointment of Members of CEC BiH nominate candidates. The appointment commission is composed of seven members, two of whom are appointed by the Chair of the High Judicial and Prosecutorial Council of BiH from amongst the members of the Council, three are appointed by the Administrative Service of the Parliamentary Assembly of BiH from amongst the members of the Commission of the House of Representatives of BiH, and two are appointed by the President of CEC BiH from amongst the members of CEC BiH. Of these seven members of the Commission for the Appointment of Members of CEC BiH, two must be Bosniacs, two Croats, two Serbs and one other member. Following the nomination of candidates, the House of Representatives of the Parliamentary Assembly of BiH elects members of CEC BiH.

As far as municipal election commissions are concerned (which are composed of three, five or seven members, depending on the size of the electorate, as determined by CEC BiH), the candidates apply for membership in an open competition procedure, whereupon members are appointed by the Municipal Assembly/Council subject to the approval of CEC BiH.

The CEC BiH nominees must be legal experts with experience in the administration of elections and cannot perform a function in political parties, associations or foundations which are financially and organisationally linked with parties, nor can they in any way participate in any party activity. Additionally, in line with the constitutional setup of BiH, CEC BiH, which has seven members, is composed of two Bosniac members, two Croat members, two Serb members and one member from amongst Others (national minorities).

The member of the Municipal Election Commission can be: the president of the municipal/basic court, the Secretary of the Municipal Council/Municipal Assembly, and persons professionally employed in Municipal administration, with the proviso that the municipal election commission must be multiethnic and have at least one third of female members.

The members of CEC BiH as well as those of municipal election commissions are elected for a period of seven years. According to Article 2.6 of the Election Law of BiH, the President of the Central Election Commission of BiH is appointed from amongst its members. One Croat, one Bosniac, one Serb and the other member of the Election Commission of Bosnia and Herzegovina each serve as the President for one fifteen (15) month rotation in a five (5) year period.

As has been mentioned earlier, CEC BiH has its Audit Department which has the exclusive authority to receive, review and confirm financial reports submitted by political parties.

CEC BiH has the authority to investigate instances of noncompliance with the obligation to submit financial reports, may order individuals to answer written questions, and may collect evidence. CEC BiH may initiate investigation, on its own initiative or in response to a complaint filed by a person.

Audit of financial reports

Following the receipt of annual financial reports (the legally prescribed deadline for all political parties is 31 March for reports for the previous calendar year), the Audit Department analyses the reports and determines the following:

- a. whether the financial reports were prepared using the forms prescribed by the Central Election Commission of BiH;
- b. whether the financial report was submitted before the prescribed deadline;
- c. whether the financial report is appropriate, and
- d. whether the financial report was signed by the competent person in charge of filing financial reports and whether each form has a stamp of the political party.

The Audit Department then inspects the financial reports to determine their accuracy and validity, based on the following criteria:

- a) whether the transactions and money balance of the political party were presented accurately;
- b) whether the income of the political party was reported and presented accurately,
- c) whether the expenditure of the political party was presented accurately,
- d) whether the liabilities of the political party were presented accurately, and

- e) whether the income and expenditure presented by organisational units of the party correspond to the data presented at the level of the party.¹⁹

As stated in every report on audit of financial reports of political parties, the scope of audit “covers the control and conduct of analytical procedures for the purpose of determining whether the data the party presented in its financial report are in compliance with the provisions of the Law on Political Party Financing in terms of sources of financing and methods of expenditure, with special focus on membership fees, donations from individual persons, donations from legal entities, income generated by the property owned by the party, apportionments from the budget and campaign costs.”

The audit of financial reports is conducted outside the offices of political parties. It is only after the audit is completed, if any irregularities have been found and if deemed necessary, that the audit is conducted in parties’ offices. When financial reports for 2008 are concerned, there were a total of 11 audits conducted in the offices of political parties. CEC BiH sent requests to eight parties which had failed to submit reports for 2008; however, these parties did not allow audit in their offices.²⁰

The Audit Department first prepares a preliminary report, which is then submitted to political parties for consideration. Parties have the right to respond to it and file any complaints they may have as well as clarify any arguable conclusions. It is only after the complaints procedure has been

¹⁹ Rules on Administrative Procedures of Inspection, Control and Audit of Financial Reports of Political Parties, “Official Gazette of BiH”, No. 103/08

²⁰ 2009 CEC BiH Annual Report. Available at:
http://www.izbori.ba/documents/2010/izvjestaj_2009/izvjestaj_cik_za_2009-BOS.pdf

completed and any necessary corrections have been made that the Audit Department prepares the final Report on Audit of the Financial Reports of the given political party.

However, one of the shortcomings of this type of audit is the fact that, due to the understaffed Audit Department, it is conducted **on a sample basis**. For that reason CEC BiH reports include a disclaimer saying that, given the sample and due to “the limitations in the account-keeping and internal control systems, there is a possibility that certain material errors might remain undetected.” This is particularly important when large parties are concerned, i.e. those with a large number of regional and municipal boards.

By way of example, we can mention two ruling parties in BiH – the Party of Democratic Action (SDA) and the Alliance of Independent Social Democrats (SNSD). The Report on Audit of the Financial Report of SDA for 2008²¹ states that the organisational structure of the party is made up of: the Party Headquarters, 9 cantonal boards, 6 regional boards, 118 municipal boards and the SDA Brčko District of BiH. However, based on the sample, the subject of audit were the SDA annual financial report for 2008 and the SDA post-election financial report for the 2008 Local Election but only from the following organisational units: SDA Headquarters, Sarajevo Cantonal Board, Una-Sana Cantonal Board and Tuzla Municipal Board.

As concerns SNSD, whose organisational structure consists of the main board, two city boards, 13 regional boards, 92 municipal boards and young social-democrats, the subject of audit were the reports of: the

²¹ http://www.izbori.ba/documents/revizija/2008/lzvjestaj_revizija/SDA/lzvjestaj.pdf

Main Board Banja Luka, Gradiška Municipal Board and Bijeljina Municipal Board.²²

The aforementioned data clearly show that the selected sample does not give a complete picture of the financial transactions of political parties, leaving ample room for irregularities and omissions in records to remain undetected by the Audit Department, making it possible for political parties to go unpunished.

Further, the provisions stipulating that only donations in excess of KM 100 are subject to reporting and the fact that this allows for the “fragmentation” of donations into smaller amounts which are not reported make it impossible to get a complete picture of the amounts available to political parties. These provisions should therefore be changed in such a way to prohibit donations from anonymous sources and stipulate that pre-election financial reports must contain information on all donations of legal entities and individual persons, regardless of their amounts.

In its annual report, CEC BiH lists a number of shortcomings of the existing Law on Political Party Financing that hinder the effective application of the Law, and makes the following recommendations:

- “Change the provisions regulating the sources of financing of political parties by specifying and clearly defining the sources from which political parties can obtain funds.
- Change the provisions regulating the financing of political parties or MP clubs from the budget of Bosnia and Herzegovina by harmonising the entity-level regulations, regulations at the sub-entity levels and regulations of the Brčko District of BiH;

²² http://www.izbori.ba/documents/revizija/2008/lzvjestaj_revizija/SNSD/lzvjestaj.pdf

- Change the limit on contributions to political parties from legal entities and individual persons;
- Specify the provisions defining the prohibited contributions to political parties;
- Review the harmonisation of the existing provisions of the Law on Political Party Financing with other existing laws that were adopted after the Law on Political Party Financing as well as its harmonisation with the recommendations of the Council of Europe.”²³

Further, financial reports are insufficiently transparent and it is very difficult to verify their validity. The spending of funds of MP clubs is problematic enough. Likewise, the financing of parties from the budgets of public and state-owned companies is almost impossible to check, and the existing auditing capacities cannot encompass such illegal transactions. For example, rigging the procurement procedures of state-owned companies to private companies from within the same party circle, though not belonging to direct source of party financing, still provides financing, which is, according to the existing laws, at the borderline between legal and illegal operation.

Another shortcoming is the Audit Department’s focus on the **income** of political parties, which is the consequence of the legislation itself as it deals significantly more with the income side than the expenditure side of the financial operation of political parties. Of course, monitoring of the revenues of political parties is very important in order to prevent illegal donations and inappropriate donor influence on the operation of political parties and their decisions. However, given the fact that the vast

²³ 2009 CEC BiH Annual Report. Available at:
http://www.izbori.ba/documents/2010/Izvjestaj_2009/Izvjestaj_cik_za_2009-BOS.pdf

majority of income of political parties comes from the budget, it is necessary to pay more attention to the ways in which parties distribute these funds and the purposes for which they are used in order to prevent misuse and spending of funds for purposes other than those designated.

As far as the independence of work of CEC BiH is concerned, it is guaranteed by the law. However, although there is not a single provision allowing for removal from office of a CEC BiH member for political reasons, in practice CEC BiH often gives in to political pressure.

The term in office of a CEC BiH member is terminated after the expiration of a term of seven years, following a resignation, death or a situation in which the CEC BiH member is prevented from performing his/her duties for a longer period of time. Also, the formal independence of CEC BiH is defined in Chapter 2 of the Election Law of BiH. According to Article 2.6 of the Election Law of BiH, CEC BiH is an independent body, which derives its authority from and reports directly to the Parliamentary Assembly of Bosnia and Herzegovina. Further, according to Article 12 of the Rules of Procedure of CEC BiH, the members of CEC BiH are bound to adhere to the principle of independence and impartiality in their work. No member of CEC BiH can participate in the decision of a case in which the member and/or a close family member has a personal or financial interest or other conflict of interest, which may raise doubt as to the ability of the member to act impartially.

However, when the monitoring of political party financing and efficiency of audit of financial reports is concerned, the work of CEC BiH has been seriously hindered from the very beginning by certain legal provisions. One of the most serious obstacles is the fact that Chapter 15 of the Election Law, which governs campaign finance and submission of financial reports, still contains the principle of “voluntary” compliance

with the law. Before imposing a penalty or administrative measure for failure to submit these very important reports, CEC BiH attempts to prompt political parties, coalitions and candidates to act on these provisions voluntarily. These formulations may have had sense when the rules of party financing and submitting transparent financial reports was a new thing for political subjects, which is why it took a lot of time to get trained on how to apply and comply with these provisions in practice. However, after being in force for so many years, the provision requiring political parties, which are found in all relevant surveys to be the most corrupt institution in the country, to comply with the law on a voluntary basis is just inappropriate and, as such, should be removed. Even CEC BiH encountered difficulties in the application of this provision and was puzzled by it, which resulted in a significant delay in the implementation of the Law and made additional room for the already existing political influences which reduced an institutionally important process to a politically motivated one, and thus marginalised it.

Another problem is the fact that CEC BiH is understaffed when it comes to conducting efficient audit of political party finance. The reports on audit of financial reports of political parties are always produced and signed by the same auditors and assistant auditors, which indicates a need for a more in-depth analysis of whether this institution has the capacity to conduct detail audits of political parties. This becomes particularly important given the ever growing number of parties whose reports are audited, while, on the other hand, the staff are leaving the Audit Department despite attempts to increase their number. It is for that reason, as has been mentioned earlier, that the Audit Department conducts audits of financial reports of political parties on a sample basis. When it comes to large parties with a lot of municipal and regional boards, this sample is very small and cannot be considered representative.

All the aforementioned limitations of the existing audit in CEC BiH indicate that the number of auditors involved in audits of financial reports should be increased as a matter of priority.

All the aforementioned shortcomings of the existing CEC BiH audit indicate the need for increasing the number of auditors involved in audits of financial reports. A justified question is raised as to whether audits which would be conducted by the Supreme Audit Institution would better serve the purpose than those conducted now, which, as both audit services believe, leave most illegal transfers undetected. In any case, relevant audit standards must be enforced, which means that in future low-quality reports on political party financing should not be published as they only give an appearance of regularity, where, in fact, there is no grounds for it.

Poor legal and institutional solution to the issue of audit of political party financing by CEC BiH makes it unclear whether this *status quo*, in fact, suits those who do not want quality audits and whether there is enough political motivation to bring the financing segment up to the standard. Non-institutionalised cooperation with quality supreme audit services also indicates poor legislative solutions, which no public institution, except for corrupt political leaders, benefits from.

Election campaigns

The Election Law of BiH sets out the maximum allowed amount of finances for election campaigns. The main criterion is the number of voters registered in a particular electoral constituency (this information is published by CEC BiH). Political subjects are allowed to spend a maximum of 30 pfenings per voter in municipal election, 20 pfenings per voter in cantonal election and 30 pfenings per voter in elections for other administrative levels (entity parliaments, Parliamentary Assembly of BiH, members of the BiH Presidency, President and Vice-presidents of the Republic of Srpska).

As has been mentioned earlier, political parties are bound to submit to CEC BiH pre-election and post-election financial reports, i.e. one for the period prior to the date of submission of the application for certification to participate in the elections and one for the period beginning on the day of submission of the application for certification until the certification of the election results. In these reports, in addition to the income that is also presented in annual financial reports, political parties are bound to report on the campaign costs. This includes:

- a) costs for printing of posters,
- b) costs for distribution of posters,
- c) printing costs for pre-election announcements, statements etc. in the mass media,
- d) organisational and operational costs for organising rallies,
- e) costs for printing, reproducing and delivering pre-election materials directly to voters,
- f) other advertising costs.

Thus, for example, according to the data of the Central Election Commission of BiH, the Party of Democratic Action was allowed to spend KM 1,213,665.60 for election campaign, while the upper limit for the Alliance of Independent Social Democrats was KM 938,715.38.²⁴

The post-election financial reports of political parties and candidates who submitted their post-election financial reports show that the total amount of funds used for the purposes of election campaign for the 2008 Local Election was KM 8,230,841.65. It is necessary to note that of 414 political subjects participating in the Local Election (including political parties, independent candidates and coalitions), post-election financial reports were delivered by 68 parties, 134 independent candidates and three coalitions.²⁵

The report on audit of pre-election and post-election reports is published along with the report on the annual financing of political parties. The Overview of Reports for 2008²⁶, the year when the Local Election was held, shows that the closest attention was paid to determining whether the parties exceeded the allowed limit of campaign costs, while, on the other hand, there is very little information on the (ir)regularity of funds spent.

Thus, for instance, the Audit Department found out that SNSD spent almost 2 million KM for the 2008 election campaign, exceeding the limit by nearly half the allowable amount. However, the Report fails to specify

²⁴ Reports on Audit of Financial Reports of SDA and SNSD for 2008. Available at: <http://www.izbori.ba/default.asp?col=revID2008>

²⁵ Central Election Commission of BiH: Information on Submitted Post-election Financial Reports – 2008 Local Election. By 23 December 2008. No. 03-S-9/08-1. Sarajevo, 23 December 2008.

²⁶ <http://www.izbori.ba/default.asp?col=revID2008>

how this substantial amount was spent.²⁷ This is a result of the already mentioned fact that CEC BiH lays greater emphasis on the income, paying very little attention to the expenditures of political parties.

The SNSD case is the only case of exceeding allowable limit of campaign costs noticed in the 2008 Local Election. However, an additional problem is posed by the fact that political parties rarely reveal all campaign costs in their reports, which was also noted in the audit reports. Hence, it is reasonable to assume that the allowable limit is exceeded more often than it is admitted in the reports, especially given the fact that election campaigns and advertising in the media are becoming ever more expensive, with the price of one second of advertising steadily increasing every year (e.g. **one second** of advertising on national TV broadcasters in BiH costs over 100 KM). In addition, during election campaigns the media are simply too saturated with political parties' promotional messages.

This is further corroborated by the analysis and comparison of audit reports for 2007²⁸, when neither general nor local election was held, and 2008, when local election was held accompanied by election campaigns. Two ruling parties, namely SDA and SNSD, are again taken as examples, assuming that, due to the highest number of votes in general elections, they have the largest amounts of funds at their disposal.

The income-expenditure ratio of political parties during the non-election year shows that the income was significantly higher, leaving a "surplus" of funds at the end of the year, while in the election year, the situation

²⁷ Report on Audit of Annual Financial Report for 2008 and Post-election Financial Report – 2008 Local Election, SNSD. Available at:

http://www.izbori.ba/documents/revizija/2008/Izvjestaj_revizija/SNSD/Izvjestaj.pdf

²⁸ <http://www.izbori.ba/default.asp?col=revID5>

was reversed. Thus, for example, in 2007 SDA reported income in the amount close to KM 4.5 million, while the reported expenditure was KM 3,850,000, leaving a positive balance of around KM 600,000. When SNSD is concerned, the difference was almost double as the amount of the reported income was around KM 3,350,000 and expenditure only 2,100,000, leaving a positive balance of KM 1,250,000.

In local election year 2008, the situation was totally opposite. Both parties had a negative balance in the amount of around KM 300,000.

Based on this, it can be concluded that for covering their campaign costs political parties use the funds accumulated from the previous year, and thus have at their disposal more than what has been allocated to them from the budget or donated for the purposes of election campaign. In a way, this further hinders the review and analysis of regularity, justification and clarification of campaign costs.

Review of the distribution of campaign costs by political parties for the 2008 Local Election (sample comprised of 10 political parties)

Naziv političke stranke	Ukupno ostvareni troškovi predizborne kampanje	Troškovi štamparija plakata	Troškovi plakatiranja	Troškovi štamparija predizbornih oglasa, proglašenja, saopštenja i sl. u javnim glasilima	Troškovi organizacije i održavanja predizbornih skupova	Troškovi štamparija, umnožavanja i slanja predizbornog materijala biračima	Ostali troškovi propagande
Stranka za BiH	873.325,26	188.659,50	130.871,98	177.675,67	233.713,39	51.885,42	90.519,30
SDP – Socijaldemokratska partija BiH	790.027,70	56.168,55	190,43	323.998,14	29.368,53	120.875,53	259.426,52
Srpska radikalna stranka RS	136.888,89	0,00	0,00	0,00	0,00	0,00	136.888,89
Srpska demokratska stranka - SDS	619.053,24	72.840,85	188.639,10	254.725,54	18.338,24	0,00	84.509,51
HDZ – Hrvatska demokratska zajednica BiH	491.364,14	42.575,27	117.895,13	128.081,08	76.706,41	40.348,10	85.758,15
SDA – Stranka demokratske akcije	860.078,64	241.180,00	57.191,47	210.665,73	98.297,76	169.179,30	83.564,38
Partija demokratskog progresa RS	434.951,35	163.294,26	0,00	126.110,27	9.072,07	422,10	136.052,65
Savez nezavisnih socijaldemokrata - SNSD	1.481.755,67	110.292,17	0,00	525.716,97	218.858,33	137.143,50	489.744,70
Hrvatska demokratska zajednica 1990	288.724,13	30.265,11	46.994,98	47.462,64	71.836,77	16.968,09	75.196,54
Naša stranka	68.927,73	24.694,22	150,00	6.698,61	29.992,78	5.668,32	1.723,80

What poses a special problem in election campaigns, particularly in terms of the behaviour of political subjects during campaigns, is inadequate demarcation of officeholders' official/public functions and their roles in the political party. Although Chapter 16 of the Election Law of BiH stipulates that "officeholders at all administrative levels standing for election cannot be placed in a favourable position in relation to other participants in the election process" in terms of media presentation, no piece of legislation regulates the misuse of power for the purpose of personal promotion or the promotion of a political party. Thus, it often happens that officeholders misuse their position and appearance in the media as an opportunity for the promotion of their party. The officeholders who are invited to appear in the media or in public gatherings in their official capacity very often take advantage of these appearances and turn them into election or campaign rallies. By doing so, they indirectly, and in a legal way, misuse their power and sometimes even public funds, in cases when they appear in paid presentations of their function or institution. In BiH the managements of political parties hold the most important national offices – prime ministers, ministers, etc. It is therefore very difficult to tell, especially during elections, whether these persons, when they appear in the media, act as officeholders or as candidates standing for some future office. There are no clear rules regulating this kind of behaviour. The problem is further compounded by the fact that high-ranking officeholders often use the resources and infrastructure of public institutions for their own benefit or the benefit of their political parties, a practice that goes totally unpunished due to a lack of adequate rules.

One of the recent examples of such a practice is a documentary about the Prime Minister of the Republic of Srpska, Milorad Dodik, made by Pero Simić, advisor to Mr Dodik, entitled "Proud of Srpska". The shooting and production of the documentary, as well as purchase of advertising time for its airing on the Public Broadcast Service of the Republic of

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Srpska and subsequently on other TV stations, was financed from the budget of the Republic of Srpska. When watching the film, it immediately becomes clear that it is a promotion of SNSD and the functionaries of this party as well as boasting about the achievements of SNSD over the last four years since they came to power. In view of the already mentioned high prices of advertisements and given the fact that the aforementioned promotional film is almost one hour long and was aired in primetime hours on several occasions and on several TV stations, it is clear that really huge amounts were spent for this type of promotion.

However, the Central Election Commission cannot react since this promotion was not funded by a political party but by the Government of RS. This film thus constitutes a perfectly legal way of circumventing the rules by misusing the governmental institutions of RS for personal ends, especially in view of the fact that it was produced in an election year, aired as a commercial, and paid from the budget, and all that during a period when party political broadcasts were forbidden.

Regulation of the media and election campaign

The Election Law of Bosnia and Herzegovina governs the conduct of the media in election campaigns. Electronic media have an obligation to ensure the covering of pre-election activities of political subjects based on the principles of equitability, fairness and impartiality. No political subject can be given preferential treatment at the expense of other political subjects and no officeholder standing for future election can be given preferential treatment at the expense of other persons standing for office. In broadcasts, journalists cannot express their political views or liking for a particular candidate or party. The sequence of appearances for candidates' direct address to the public via the electronic media is determined by drawing lots.

According to the Rules on Media Representation of Political Subjects in the Period between the Day of Announcement of Elections and the Election Day²⁹, in the period from the announcement of election to the official beginning of campaigns (30 days before the election day), any paid political advertising in broadcasting media or any other form of paid advertising of political subjects is prohibited. The only exception to this rule is the information notifying the members of political subjects' bodies and statutory bodies of the schedule of internal meetings of political subjects' bodies and statutory bodies. Before this rule was introduced in 2008 as an amendment to the Election Law, the advertising of political parties had been totally forbidden in the period prior to the official beginning of the election campaign, except in the aforementioned exceptional cases.

²⁹ "Official Gazette of BiH", No. 37/10

The Rules also govern the direct addressing of political candidates by stipulating that each political subject must be given a minimum of three minutes of direct address, with a proviso that the same amount of time must be provided to all candidates standing for election, and the schedule of direct addressing is determined by drawing lots. Broadcasting direct addresses is mandatory for all public broadcast media. This applies to them at all times, and to private media only if they decide to broadcast the addresses. Also, the media are obliged to schedule the broadcast period for direct addressing in the period “when it is most likely to reach the largest audience”.

As far as paid political advertising is concerned, the Rules stipulate that the prices of advertising must be the same for all political subjects. There are also rules for the media governing how the schedule and time of broadcasts are determined.

These rules were set out in order to ensure equal access of political subjects to the media and, consequently, to the public so that no political party gets preferential treatment at the expense of others. However, it is obvious that some political parties have more funds than others with which to pay more advertising time in the media, so the election race is unfair from the beginning, at least when advertising in the media is concerned.

The body in charge of monitoring the implementation of the aforementioned rules is the Communications Regulatory Agency of BiH (CRA). This agency only monitors the work of broadcast media, especially in terms of whether they meet their obligation to provide coverage of the activities of political subjects during the campaign, whether they submit plans and pricelists for paid political advertising, and whether they submit regular weekly reports on all election programmes broadcasted during the campaign. CRA also receives complaints and

enquiries from media outlets and investigates any violations of the rules that may have occurred.

For violations of provisions on the media representation during elections, which are contained in the Election Law of Bosnia and Herzegovina and implementing regulations of the Central Election Commission of Bosnia and Herzegovina, CRA BiH imposes fines ranging between KM 1,000 and 50,000, depending on the type of violation and the coverage of the media being fined.³⁰

On the other hand, the Central Election Commission monitors the conduct of political subjects during election campaigns, as regulated in the Election Law. The Report on Media Coverage of the Local Election in BiH³¹, which was prepared by CRA, states that “a comparatively high number of complaints have been received with regard to election broadcasts and political representations in these broadcasts, which were filed mainly by political subjects and handled *ex officio* in a regular procedure”. However, as shown in the Report, CRA was focused on submission of plans and reports by the media, giving it most attention, while there is no mention of the representation of candidates and compliance with the rules by the media. As far as open and processed cases related to the contents of broadcasted election programmes are concerned, the majority of them mainly refer to unequal and unfair representation of political subjects in certain media outlets, failure to broadcast their statements, or abridgment of their statements. However, CRA dismisses most of such reports for lack of proof.

³⁰ Overview of Violations and Appropriate Penalties Imposed by CRA BiH. Available at: <http://www.rak.ba/bs/legal/?cid=5281>

³¹ Available at: <http://www.rak.ba/en/public-affairs/pressr/default.aspx?cid=5142>

A concerns the imposition of sanctions against the media, the Election Law of BiH and the CRA Rules on Media Representation of Political Subjects in the Period between the Day of Announcement of Elections and the Election Day establish the procedures for penalising media in the event of failure to comply with provisions of the Election Law and provisions of the CRA Rules. The authority for imposing fines is vested in CRA BiH. Thus, in connection with the 2008 Local Election, CRA BiH fined a number of media outlets in BiH and sent written and verbal warnings for violations of the Election Law, Rules on Media Representation of Political Subjects in the Period between the Day of Announcement of Elections and the Election Day, Advertising and Sponsorship Code, and Broadcasting Code of Practice.

Transparency of the financing of political subjects

Political Parties do not have an obligation to make their annual, pre-election and post-election financial reports publicly available, but they, as has been mentioned earlier, submit them to CEC BiH, which then reveals on its website which parties submitted reports and publishes aggregate reports for individual parties.

Thus, available on the CEC BiH webpage are only the data on aggregate revenues (Form 3) and they reveal only aggregate amounts: paid membership fees, donations from individual persons and members, donations from legal entities, income generated by party's property, income generated by companies owned by the party, income from the gifts or services that the party did not have to pay for, appropriations from the budget, and finally the total income of the party. However, the data on donors' identity, individual amounts, types of individual amounts etc. are not available. This is regulated in the Rules on Annual Financial Reports of Political Parties³², in the section dealing with public availability of data contained in the report in connection with audit and financial reports of political parties.

Thus, political parties' donors remain unknown to the public. Furthermore, no legislation requires private donors to make their donations to political parties publicly available. Legal entities' sole obligation is to reveal the amounts of donations in the annual financial reports they send to tax authorities. However, these reports are not publicly available as they are based on the principle of confidentiality of information shared between business entities and tax authorities. Apart

³² "Official Gazette of BiH", No. 61/06

from this obligation, legislation does not provide for any incentives to stimulate political parties' donors to report their donations.

The information on individual amounts of funds that political parties are apportioned from the budget can be obtained as these are public funds that public institutions are bound to make publicly available. In BiH, budgets are published in the form of laws and are available to all citizens. Reports on budget execution are likewise made publicly available.

Furthermore, by invoking the Freedom of Access to Information Act³³, any interested person is entitled to seek from public bodies data on the amounts of funds each political party was apportioned from the budget of a particular administrative level (municipality, canton, Brčko District of BiH, entity, State of BiH).

As concerns the funds political parties get as donations from legal entities and individual persons (i.e. non-budget funds), interested citizens cannot obtain this information from political parties as the Freedom of Access to Information Act does not apply to political parties, since they are not considered public bodies, i.e. bodies subject to the Freedom of Access to Information Act. By invoking the aforementioned Law, interested citizens can get from competent public bodies (in this case CEC BiH) information they have in their possession, i.e. aggregate financial reports of political parties. However, if they want full access to financial reports, CEC BiH cannot submit them because they contain personal data. Instead, it can only allow access to them in the CEC BiH offices.

³³ "Official Gazette of BiH", Nos. 28/00, 45/06 and 102/09

Basically, this information (on private donations, available on the CEC BiH website) is available only when provisions contained in the Law are violated. In these cases, the CEC BiH Audit Department reveals the amounts of donations and names of individual persons and legal entities that are found to have been in breach of the rules and this information can then be found in the Report on Audit of Political Party Financing. However, this is only a portion of all funds and donations which cannot give a complete picture.

As is the case with the audit of financial reports, which is mostly focused on income, so is the availability of data greater when it comes to the incomes of political parties, while at the same time it is almost impossible to find out about the revenues and ways in which funds are spent. This is especially important given the already mentioned fact that the majority of income of political parties comes from the budget. This is public money, so taxpayers have the right to know where this money goes in order to be able to call political parties to account if needed.

The “susceptibility” of political party financing to corruption is enormous given the huge amounts of funds involved and the fact that donors expect political parties to “return the favour” if they come to power. This results in trade in influence, which leaves ample space for various kinds of misuse. It is for that reason that it is very important for parties to submit reports not only to CEC BiH, which will review them formally, but also to the entire public that votes in elections.

As part of one of its projects, Transparency International BiH conducted a series of transparency tests of political parties with the aim of assessing their willingness to submit upon request the data on their income and expenditure, regardless of the fact that they are not bound to do so by virtue of the Freedom of Access to Information Act. For the purposes of this survey, a sample of 10 political parties was selected:

Alliance of Independent Social Democrats (SNSD), Serb Democratic Party (SDS), Party of Democratic Progress (PDP), Serb Radical Party of the Republic of Srpska (SRS RS), Party of Democratic Action (SDA), Party for BiH (SBiH), Social-democratic Party (SDP), Croatian Democratic Union of BiH (HDZ BiH), Croatian Democratic Union 1990 (HDZ 1990) and Our Party (NS).

The test was conducted in the following way: TI BiH sent request for access to information to the aforementioned parties, seeking the disclosure of the following information:

- Financial report for election campaign for the 2008 Local Election;
- Total amount of funds spent for advertising in the media during the campaign (TV, radio, print media, and electronic media).

Only three parties responded to this request (HDZ, SDA and PDP), of which only PDP submitted the full financial report, while HDZ and SDP only submitted the aggregate report that is also available on CEC BiH's website.

Given the fact that the first request was sent before 31 March (i.e. the date by which political parties are bound to submit their annual financial reports to CEC BiH), an additional request was sent to the parties after this date, asking them to send a copy of their official annual financial report for 2009.

This time again, only three parties (PDP, SDA and NS) sent their annual reports, but this time all the reports were complete and contained all the forms that parties submit to CEC BiH.

In order to find out how transparent political parties are towards citizens, not only to Transparency International Bosnia and Herzegovina,

this survey also included citizens, students and journalists. A sample of 15 citizens, 10 students and 5 journalists was selected, who were invited to participate in the survey aimed at assessing the transparency of political parties. They all sent requests for access to information to two ruling (SNSD and SDA) and two opposition parties (SDP and SDS). The requests sent to the ruling parties sought the following information:

- Total amount of funds received in the form of donations for the 2006 General Election campaign;
- The names of donors and the amounts of the largest donations for the 2006 General Election campaign;
- Total amount of TV and radio time (in minutes) bought and allocated in the form of direct addressing on the Public Broadcasting Service of BiH for the 2006 General Election campaign;
- Total amount of media time bought (in minutes) and the amount of funds spent for advertising in 2009;

On the other hand, opposition parties were asked to disclose the following information:

- Total amount of funds received in the form of donations in 2009;
- Total amount of media time bought (in minutes) and the amount of funds spent for advertising in 2009.

What is absolutely discouraging is the fact that none of the four parties replied to citizens, not even sending an explanation as to why they were unable to send the requested information. As has been mentioned earlier, political parties do not have the obligation to disclose information as the Freedom of Access to Information Act does not apply to them, and even CEC BiH does not disclose the majority of information

requested. However, rather than ignoring the request altogether, the parties could have at least informed the citizens why they were unable to make the information available to them or why they are not bound to grant access to the information requested.

As concerns the transparency of financial reports filed with CEC BiH by political parties, it has already been mentioned that they contain information about cash in hand, all income and expenditure from the country and abroad, including in-kind contributions, identity of persons who gave a donation in excess of KM 100, costs of political campaign, and debts and liabilities of both the reporting party and all the third parties with whom the reporting party entered into transactions. However, these reports lack transparency and it is very difficult to verify their accuracy.

Apart from the fact that the reports often lack transparency, another problem is the fact that CEC BiH does not have the authority to check bank accounts of political parties as this action constitutes the so-called special investigative measure which can be employed only by the competent prosecutor with prior approval of the preliminary proceedings judge. It is therefore very difficult to verify the accuracy of reports. CEC BiH cannot use the reports to check the details of transactions, so its audits often boil down to detecting donations in excess of the allowable amount, donations from prohibited sources or omissions in filling out the forms, while no investigation is carried out to check the essence and nature of transactions and whether the funds were spent for designated purposes.

Another problem is the spending of funds allocated to MP clubs, where it is virtually impossible to track the expenditure. MP clubs at all levels of the legislature are apportioned funds from the budget for covering their operating costs. Thus, for instance, at the level of the Republic of Srpska,

the Law on Political Party Financing from the Budgets of the Republic, Cities and Municipalities defines *inter alia* the financing of certain costs of MP groups and clubs. Also, in 2008 the Administrative Commission issued the Decision on the Criteria for the Distribution of Funds to MP Clubs and Groups, which stipulates that the funds for the operation of MP clubs and groups are also apportioned for the costs not listed in the Law on Political Party Financing of RS, i.e. travel costs in the country as well as costs of consumables, use of mobile phones and use of private cars. Due to the fact that the expenditures of MP clubs are almost never checked, it has become common for MP clubs and groups to redirect, on their own initiative, a certain proportion of funds to the current accounts of MPs and political parties.

According to the Report on Audit of Financial Reports of the National Assembly of RS³⁴, the funds earmarked for the operation of MP groups and clubs in 2009 amounted to KM 1,199,612. Of that amount, KM 435,314 was paid to MPs' personal current accounts.

The distribution of costs, according to the Audit Report, is shown in the table below.

³⁴ http://www.gsr-rs.org/izvjestaji/2010/Budz_kor/RI022-10%20.pdf

Club / group	Material costs	Transfers to transfer accounts	Transfers to current accounts	Taxes and contributions	Total
SNSD	108,497	94,375	231,896	157,984	592,753
SDS	71,629	-	88,650	56,568	216,846
PDP	63,606	14,000	25,735	5,088	108,432
DNS	19,921	15,500	12,495	9,912	57,828
SDA-SDP	23,096	450	21,092	13,116	57,754
SBiH	14,767	-	27,173	15,659	57,599
SPRS	32,641	-	8,550	2,181	43,372
CPC	28,884	-	-	-	28,885
Independent MPs (2)	992	-	17,827	10,093	28,914
Independent MP	4,258	-	1,896	1,074	7,228
TOTAL	368,295	124,325	435,314	271,676	1,199,612

Material costs include: internal consumables/entertainment costs (KM 73,357), landline phone bills (KM 14,652) and mobile phone bills (KM 45,095). Other material costs include external consumables/entertainment costs, use of one's own private car, fuel, individual transfers as per decisions of MP clubs and groups, business trips and

other costs. The most problematic group of costs are the individual transfers as per decisions of MP clubs, which opens the door to misuse and spending of funds for purposes other than those designated. This has led to MPs adopting a practice of using taxpayers' money for membership fees in their party, sports and cultural events, dinners on the occasion of International Women's Day (8 March), etc. While doing so, MPs justify such spending of the funds by classifying it as "field work", although they never specify what it means.³⁵

The situation is similar at the state level, i.e. in the Parliamentary Assembly of BiH. However, according to the Audit Report for 2008,³⁶ the funds allocated for the work of parliamentary groups represented in the Parliamentary Assembly of BiH are much lower, at KM 495.000. These funds are distributed so that 30 percent of the total amount dedicated to the parliamentary groups is distributed equally, while 70 percent is distributed proportionally according to the number of seats each parliamentary group holds at the time of distribution. The 2008 audit showed a series of irregularities in keeping records of costs of parliamentary groups, where the presidents of parliamentary groups issued travel orders within the country which were largely justified through travel allowances and use of one's own car for the purposes of the parliamentary group. It has also been noticed that a proportion of funds allocated for the work of parliamentary groups was spent and justified as operating costs of parliamentary groups represented in the Parliamentary Assembly of BiH.

What is most important and especially worrying is the lack of consolidated cost records. The audit also found that parliamentary groups failed to produce and submit to the competent commission of

³⁵ <http://www.blic.rs/Vesti/Republika-Srpska/187047/Humanisti-na-tudj-racun>

³⁶ http://www.revizija.gov.ba/hr/audit-rep/doc08/IZV_PSBIH_08_HR.pdf

the Parliamentary Assembly reports on the expenditure and purposes of funds apportioned from the budget, although the Administrative Commission issued a decision, based on the recommendation of the Audit Office of BiH, that MP clubs are bound to file reports on the expenditure of funds once a year. This clearly indicates that the operating costs of MPs are virtually unsupervised, resulting in total absence of transparency in the distribution and expenditure of funds, which opens the door to misuse of taxpayers' money.

In order to determine how accountable and transparent MP clubs are in terms of the expenditure of funds, TI BiH sent requests to MP clubs in the Parliament of BiH seeking access to the reports on the expenditure of funds by MP clubs for 2009 and cost budget for 2010. As in the previous case, MP clubs were unwilling to disclose any information and did **not** send a **single** reply or piece of information. This is hardly surprising given the fact they did not submit the reports to the competent parliamentary commission either, which is an indicator enough of their lack of sense of responsibility towards the competent institutions and the public at large.

Penalties

CEC BiH has the authority to impose the following penalties if political parties, coalitions and independent candidates violate the rules of conduct set out in Chapter 7 of the Election Law of BiH or the rules of election campaign financing set out in Chapter 15 of the Election Law of BiH:

- fine up to KM 10,000;
- removal of a candidate from a candidates list;
- de-certification of a political party, coalition, list of independent candidates or independent candidate(s);
- prohibition of an individual from working in a polling station, voter registration centre, or municipal election commission or other election commission.

The Appellate Division of the Court of Bosnia and Herzegovina is competent to hear appeals against the decisions of the Election Commission of Bosnia and Herzegovina.

The Law on Political Party Financing provides for similar penalties as those set out in the Election Law when it comes to the expenditure of funds for the purposes of election campaign. If a political party is found to have violated the provisions of the Law limiting the amount of allowable contributions, the Election Commission has the right to fine the political parties in an amount not exceeding the amount of three times the unlawfully received sum.³⁷ Penalties can also be imposed when political parties are found to have violated the provisions

³⁷ Article 15.2 of the Law on Political party Financing

governing the submission of financial reports under the Law on Political Party Financing and Election Law. As the implementation of the Law on Political Party Financing started as recently as 2005, the largest number of penalties imposed concerned untimely submission of financial reports rather than irregularities in the financing of parties which were detected by the CEC BiH Department for Audit of Financial Transactions of Political Parties.

Analysis of the reports on audit of political party financing shows that CEC BiH pursues a relatively liberal policy towards political parties. As has been mentioned earlier, year after year their reports have been consistently indicating numerous violations of the Law on Political Party Financing. Thus, in one of its annual reports, CEC BiH states the following:

- “Political parties were found to have violated the provisions contained in Article 3 of the Law by generating income from property that is not owned by the party and from companies whose line of business is not related to publishing and culture;
- Political parties were found to have violated the provisions contained in Article 5, Paragraph (1) of the Law by receiving donations from individual persons and legal entities in excess of eight average net salaries [...];
- In contravention of the provisions contained in Article 6 of the Law, political parties did not report all contributions of individual persons and legal entities in excess of KM 100;
- Political parties were found to have violated the provisions contained in Article 8, Paragraph (1) of the Law mainly by using free of charge business offices given to them by entity, cantonal and municipal organs and non-profit organisations, while a certain number of parties were found to have received contributions from public companies;

- Political parties were found to have violated the provisions contained in Article 11 of the Law by submitting financial reports in an untimely fashion, by not keeping an adequate record of their income and expenditure, by failing to submit financial reports in the forms established by the Rules on Annual Financial Reports of Political Parties. In addition, a number of political parties failed to submit additional financial documentation at the request of the Central Election Commission of BiH”.³⁸

As shown above, the aforementioned violations are diverse and numerous, encompassing virtually everything that is prohibited by the Law on Political Party Financing. However, although CEC BiH keeps pointing to violations of the Law in both its annual reports and reports on audit of political parties, these violations remain largely unpunished. It all comes down to recommendations for improvement and reporting on whether the recommendations from the previous period have been acted upon. In very rare cases, penalties are imposed in the form of very small fines.

Due to the aforementioned shortcomings of the audit and the *ad hoc* approach which is defined in the rules on pre-election and post-election financial reports, there is no in-depth review of financial reports, especially in connection with election campaigns, and consequently no adequate penalties for violations of the law.

As has been mentioned earlier, CEC BiH has the authority to impose fines as well as other, stricter penalties. However, it all comes down to very

³⁸ 2009 CEC BiH Annual Report. Available at:
http://www.izbori.ba/documents/2010/Izvjestaj_2009/Izvjestaj_cik_za_2009-BOS.pdf

small fines, while the only situation in which a person is, for instance, barred from standing for election is when a political party or an independent candidate intending to stand for election fails to file with CEC BiH the pre-election financial report for the period beginning three months prior to the date of submission of the application for certification to participate in the election. If a party or an independent candidate fails to file this financial report, their application for participation in the election will not be certified and they will not be allowed to stand for and participate in the election.

As concerns the penalties for irregularities in the expenditure of budget funds, no penalties in the form of suspension of appropriations from the budget have been imposed so far. Neither the Election Law nor the Law on Political Party Financing provide for the suspension of budget appropriations to political parties for failure to comply with the financing and reporting rules.

As can be concluded from the aforementioned, the approach to the penalisation of political parties differs from case to case. Political parties are not called to account because the problem of transparency and political party financing is viewed too narrowly, without taking into account long-term consequences. Such an approach has become standard practice in BiH, which results in violations of the law becoming a rule rather than an exception and political parties being considered the most corrupt segment of society whose leaders are very often involved in the most corrupt financial dealings. Even when these shady dealings are publicly disclosed, the leaders of political parties are not called to account, but they continue performing their function and representing their political parties without obstruction.

The laws governing elections do not provide for criminal liability of political party leaders for failure to comply with the financing and

reporting rules. Criminal codes applied in BiH contain a chapter on criminal acts related to elections, but there is no mention of a specific criminal act that would entail criminal liability of responsible persons in the political party for failure to comply with the provisions of the Election Law.³⁹ The rules applied in such cases are those contained in the Criminal Code that apply to other responsible persons in other legal entities – criminal acts such as abuse of power or authority, fraud, embezzlement, etc.

As concerns the application of the law on donors giving donations to political parties, as has been mentioned earlier, they do not have an obligation to report on their donations (this responsibility rests with political parties), and consequently CEC BiH does not have the authority to impose any penalties on them.

As has been mentioned earlier, the reports on audit of political parties indicate numerous violations of the law, but these findings rarely result in penalties. The reports mainly boil down to giving recommendations and stating whether the recommendations have been implemented or not. If in some rare cases penalty is imposed, it is invariably in the form of a fine and after an enormous delay. Thus, for instance, penalties for violations of the law detected in audit reports for 2007 and even 2006 were imposed as late as 2009. This is partly due to the delays in preparation of audit reports, i.e. the time it takes to conduct the audit, which are in turn caused by lack of staff and other capacities on the part of the Audit Department.

³⁹ Criminal Code of BiH, Articles 150-155. "Official Gazette of BiH", Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10

Analysis of CEC BiH's decisions to impose fines on political parties in 2009⁴⁰ for violating the provisions on annual financial reports contained in the Law on Political Party Financing and Election Law shows the following:

- Violations of the provisions differ in type, ranging from exceeding the contribution limit, receiving prohibited contributions, incomplete financial reports, failure to reveal transaction accounts in the reports, failure to submit additional documentation, failure to disclose all liabilities of the party, exceeding the limit of funds political parties can spend for the purpose of election campaign, absence of cash desk operations, to failure to keep an account of income and expenditure, etc.
- Fines are very small and incommensurate with the severity of the violations committed, as shown by the following examples:
 - Social-democratic Union of BiH failed to disclose the transactions in as many as eight transaction accounts of organisational boards of the party in 2007. The fine imposed in that case was a mere KM 1,000;
 - In early mayoral election for the municipality of Donji Vakuf, the Party for BiH exceeded the allowed amount of funds for election campaign by over KM 9,000. The fine imposed was only KM 1,000;
 - Croatian Democratic Union of BiH received a prohibited contribution from a public company in the amount of KM 3,159 and was fined KM 3,200, which is only KM 41 more than the amount received.

⁴⁰ CEC BiH Press Releases, available at: <http://www.izbori.ba/default.asp?col=Saopstenja>

- Incomplete financial reports, i.e. failure to disclose all items, carry a KM 500 fine. The same fine is imposed for failure to disclose contributions;
 - For failure to disclose contributions from individual persons in the amount of KM 4,500, the Party for BiH was fined only KM 700;
 - HSS – NHI failed to report the in-kind contributions in goods and services in the amount of KM 40,565 and was fined only KM 1,000;
 - Overall, in 2009 there were 61 decisions penalising political parties with fines in the total amount of KM 179,670.00 for violating the Law on Political Party Financing, as follows: three fines in the total amount of KM 11,600.00 were imposed for violations of the Law committed in 2005, 30 fines in the total amount of KM 98,800.00 were imposed for violations of the Law committed in 2006, and 28 fines in the total amount of KM 69,270.00 were imposed for violations of the Law committed in 2007.⁴¹
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- Given the fact that fines are very small in comparison to the benefits derived by political parties, it is logical to conclude that parties are not motivated to play by the rules. Also, given the time it takes for CEC BiH to issue decisions imposing fines, political parties find that it “pays” to break the rules, especially when it comes to the financing of election campaigns. By the time CEC BiH hands out penalties, the election has already finished and the money obtained for the election campaign has served its purpose. The most obvious example of this is

⁴¹ 2009 CEC BiH Annual Report. Available at:
http://www.izbori.ba/documents/2010/Izvjestaj_2009/Izvjestaj_cik_za_2009-BOS.pdf

penalties for exceeding the limit of the allowed amount of funds that political parties can spend for the purpose of the election campaign or exceeding the limit on contributions from legal entities. For example, as has been mentioned earlier, SNSD exceeded the limit for the 2008 Local Election campaign by almost KM 550,000. It is still not known whether a penalty has been imposed for this violation of the law or not. If it ever gets imposed, it will not make much sense because the Local Election is long gone, and the funds in question had allowed SNSD to have a successful campaign and win the election, thus giving the party an opportunity to gain even larger amounts of funds.

- A review of penalised parties and the amounts of fines imposed in 2009 indicates that the parties were penalised for rather minor violations, while much more serious breaches found in audit reports remained unpunished, allowing parties to continue committing the same violations year after year. Thus, for instance, certain political parties which own companies whose line of business is not related to publishing and culture have been receiving prohibited contributions from these companies for years. This is pointed out in audit reports, yet the political parties found to have been in breach of the law remain unpunished because each time they are warned, they promise to rectify the situation by transferring the ownership of the said companies [to new owners].

Prevention

The legislative framework offers a rather solid basis for preventing misuse in political party financing, but, like in the majority of segments in BiH society, the problem lies in inadequate implementation of the laws. We have already mentioned some of the legal obstacles such as a lack of monitoring and application of the law; however, it is necessary to note some other aspects affecting the prevention of violations of the provisions regulating political financing in order to offer recommendations that would improve and enhance the implementation of the law and prevention of misuse.

For example, accounting laws contain the same rules for all legal entities, including political parties. However, problems occur in the application of the existing regulations on political subjects by control bodies such as tax authorities, inspectorates, etc. as audit findings have revealed numerous omissions in connection with cash desk operations, disclosure of income, etc. This requires a closer cooperation between the CEC BiH Audit Department and bodies in charge of controlling the accuracy of accounting records. It is necessary to note here that, when conducting audit of financial reports, the CEC BiH Audit Department primarily communicates with the representatives of the political subjects who submitted the reports, but not with the representatives of tax authorities, inspectorates and other control bodies. It is obvious that there is no will to cooperate on this, given that a proposal for amendments to the Law on Political Party Financing, which contained the provisions requiring the Audit Office of BiH Institutions, entity tax administrations and other bodies to assist the Audit Department, was not adopted.

Lack of transparency in political party financing, i.e. absence of a legal obligation to publish financial reports (except for the aggregate ones which are available at the CEC BiH webpage, but which do not offer any information), limits public access to information and obstructs the control of the public and society over the process of party financing. Thus, knowing that the information and data on their malversations cannot be made public and reach the voters, political parties are more likely to have no qualms about circumventing the law, especially having in mind the light penalties and how “lucrative” it is to violate the laws governing political party financing.

However, as far as the public perception of political parties is concerned, for years now in Bosnia and Herzegovina there has been a phenomenon which can partly be explained by the practice in which violations of the law have become a rule rather than an exception. The corruption perception surveys, which are conducted by TI BiH almost every year, show that citizens have been consistently singling out political parties as the most corrupt segment of the BiH society. However, according to the survey conducted before the 2008 Local Election⁴², it is the parties which were cited as the most corrupt ones by the majority of citizens that subsequently won the majority of votes in the election.

This, along with other results of the surveys, shows that citizens have grown accustomed to corrupt behaviour of political parties and simply stopped expecting anything from them. This public perception is detrimental to any democratic system, having in mind that the original purpose of political parties is to represent the interests of citizens, who themselves, in this case, obviously do not believe in this idea.

⁴² Transparency International BiH: *Corruption Perception Study – 2008 Election*. Available at: http://ti-bih.org/documents/16-02-2009/izbori_2008.pdf

For all the aforementioned reasons, it is of utmost importance to make the political party financing process publicly accessible, so that voters and competent institutions can call political parties to account for illegal behaviour. Otherwise, if parties do not fear the consequences for having violated the law, either in the form of penalties or loss of public trust, nothing will prevent them from continuing to violate the law or make them behave in a more transparent and accountable way towards the public.

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