



CAMPAIGN FINANCING UNDER THE NEW ELECTORAL
CODE OF THE REPUBLIC OF MACEDONIA

A Call for a Macedonian Buckley v. Valeo and beyond

The Center for Research and Policy Making (CRPM) is an independent, non-profit research and policy institute, created in recognition of the pressing need for independent, in-depth analysis of the complex issues involved in promoting stability and prosperity in Macedonia and South Eastern Europe. CRPM consists of experts from the country, working as researchers in the organization, as well as external consultants in close contact with the organization. It seeks to offer timely, provocative policy analysis on the most pertinent issues in the region and has no 'hidden agenda', but seeks to promote democratization and economic transformation in the country. CRPM wants to influence policy makers and public opinion to accept certain solutions as to how to resolve the key issues in the country. It has no party, political or any other organizational affiliation.

The Organization aims at filling an important gap in the regional civil society environment, which lacks institutions directed at monitoring and critically viewing the policy-making process and its output from an informed and educated point of view, while at the same time offering a forum for discussion and publishing of works dealing with this subject matter. The standpoint from which it approaches certain issues is principled. The organization considers peace and stability as the first principles that should reign in the Balkan countries, and believes that the major political goal of Macedonia is the integration with the European Union.

CRPM's experienced and multidisciplinary team is committed to provide policy makers with relevant and timely analysis anchored in political and institutional realities. CRPM's research and analysis is directed towards ensuring that international strategy is based on a sound understanding of the complex political, economic and social environment in Macedonia, and the real impact of international programs. The practicality of the organization's recommendations is guaranteed by its close attention to empirical research. CRPM's think-tank's research is undertaken in the field by analysts with experience in participatory research and knowledge of the local languages. (Albanian, Macedonian, Serbian) Focusing on local research, its policy recommendations will be equally directed at international and domestic political actors. Seeking to develop a common vocabulary, CRPM promotes discussion and debate among the policy community. CRPM's efforts depend on the contributions of governments, corporations and private individuals to fund its activities.

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a. Introduction

1. The Electoral Code regulates the campaign financing primarily through two of its articles - 83 and 84.
 - 1.1. Article 83 envisages election campaign financing by means of monetary contributions made by private and legal entities, amounting up to 5000, that is, 20 000 Euro respectively, in Denar counter-value.
 - 1.2. Article 84 limits the campaign spending to 1 Euro per registered voter in the electoral district for which the campaign organizer has submitted a list of candidates.
2. Implicit in this regulation are three state interests:
 - 2.1. Moderating the corruptive impact of large campaign contributions.
 - 2.2. Ensuring equality among all election contenders through balancing their campaign funds.
 - 2.3. Reducing the enormous campaign costs.
3. The Parliament's competence to regulate elections is beyond any doubt and it is not an object of this analytical brief.

4. Instead, the critical question is whether the regulation in Articles 83 and 84 infringes to a disproportionate extent on the right to free speech, acknowledged in Article 16 of the Constitution.

4.1. Namely, since Article 83 and 84 limit the funds that the political parties can obtain and spend during the election campaign, they have a bearing on the quantity of political speech uttered in the pre-election period, i.e., they implicate reduction of the number of raised issues, the depth of their discussion and the width of audience that the political parties can address to.

4.1.1. This stems from the fact that use of any communication means nowadays involves financial costs.

4.1.1.1. For instance, distribution of even the most straightforward leaflet presupposes costs for paper, printing and circulation. Organizing political speeches and gatherings presupposes renting halls and advertising the event.

4.1.1.2. The electorate's reliance on television, radio and other mass media, makes these expensive means of communication indispensable for effectuating meaningful political speech.

4.2. The problem gains gravity in light of the fact that it is precisely the political speech that enjoys the broadest protection under Article 16 of the Constitution, as it stands for a sine qua non for good functioning of the democratic system of government.

- 4.2.1. Namely, democracy cannot survive without an open debate of the public interest issues, discussion of the political candidates' credentials and unconstrained interchange of ideas and proposals for bringing about political and societal changes.
- 4.2.2. Therefore, it is safe to conclude that the constitutional guarantee for free expression finds its most complete and urgent application precisely in the process of electoral campaigning.
5. In cases like this one, when what is at hand is attendance of state interests, whose realization inevitably leads to intrusion in the sphere of fundamental rights and freedoms, accounted for must be two inquiries.
- 5.1. Whether the state interests are indeed legitimate and compelling, and if so, then
- 5.2. Whether their realization is brought about in the least intrusive manner, that is, through means that curtail the fundamental rights and freedoms to the least extent possible.

b. Analysis of Article 83

The election campaign may be financed by:

Private persons, with a monetary contribution not exceeding 5000 Euro in Denar counter-value and

Legal entities, with a monetary contribution not exceeding 20 000 Euro in Denar counter-value.

1. It is needless to proceed further than the first state interest mentioned above - namely, to lessen the corruptive effect of large monetary contributions that political parties receive for promotion of their election platforms - to conclude that this interest is indeed legitimate and compelling and that through Article 83 it finds full realization in a manner least intrusive to the right to free speech, acknowledged in Article 16 of the Constitution.

2. In a system of predominantly private financing of elections, such as the Macedonian one, the political parties and their candidates depend considerably on the monetary contributions of private and legal persons, in their strive to secure the necessary means for successful performance of the election campaigns.
 - 2.1. The ever increasing role of media and mass communication in the electoral process makes the procurement of large sums of financial assets an indispensable and important aspect of any election campaign that tends to be successful.
 - 2.2. To the extent that these large campaign contributions are given with the object of extorting *quid pro quo* (favor for favor) from the incumbent or prospective people's representatives and their political parties, the integrity of the electoral system and representative democracy gets undermined.

- 2.2.1. Although it is hard to determine with full precision the scope of this kind of a corruptive impact, the past election practices suggest that the problem is not hypothetical.
3. Almost as disquieting as the real *quid pro quo* arrangements is the mere appearance of corruption that arises from the public awareness about the potential for abuse inherent in the election regime that allows for large campaign contributions.
- 3.1. Therefore, legitimate is the conclusion that by adopting the legal solutions of Article 83, the state, among other things, has been guided by the necessity to avoid the mere appearance of corruption, which is as important for maintaining the public trust in the system of representative democracy as the imperative to hinder real *quid pro quo* arrangements.
4. By its design, Article 83 aims precisely at solving the problem with the huge election donations - an aspect of the political association in which the state has clearly identified a danger from real or potential corruption. At the same time, however, Article 83 leaves ample room for citizens to express their political stance independently, to support certain political options through voluntary activities as well as to aid financially, in a limited but nevertheless substantial fashion, the political parties and their candidates.

4.1. As such, Article 83 does not frustrate political parties' efforts to collect a sufficient sum of monetary contributions which will enable them to convey their messages during the election campaign in an effective and meaningful way, as long as the political parties themselves enjoy popular support.

4.1.1. As a result, Article 83, in and of itself, does not stand for an extensive restriction of the potential for a robust and eloquent discussion of the election issues on the part of the citizens, their associations, the media, the candidates and their political parties.

5. In light of the forgoing, CRPM holds that the state interest in curbing the corruptive impact of large monetary contributions on the political parties and their candidates justifies the proportional interference with the right to free speech, caused by the limit that Article 83 sets on the size of monetary contributions that the political parties can get for promotion of their election programs.

c. Analysis of Article 84

In the course of electioneering, the campaign organizer may spend no more than 60 Denars per registered voter in the electoral district i.e. municipality for which (s)he has submitted a list of candidates.

1. Contrary to Article 83, none of the three state interests mentioned above is able to justify the quantitative reduction of political speech in the election campaign which come as a necessary concomitant of the expenditure limitation set by Article 84.

2. The gravest evil that may spring from the rapid upsurge of campaign costs is the danger of having the political parties and their candidates become hostages of the large campaign contributions and the corruptive *quid pro quo* arrangements that such contributions may embroil.
 - 2.1. The interest in curbing the corruptive impact of large campaign contributions is sufficiently accounted for through confining the contributions' size.
 - 2.2. Any attempt at justifying the expenditure limitation in Article 84 on the ground that it is only a loophole-closing provision necessary to prevent dodging the contribution limitation in Article 83 is unconvincing.
 - 2.2.1. First, there is no indication that the criminal penalties of Article 189, which aim at sanctioning any transgression of Article 83 contribution limitation, coupled with the political repercussions, which will inevitably follow from such transgression, are insufficient to police Article 83 contribution limitation.
 - 2.2.2. Second, the detailed reports, which are mandatory under Article 85 and stipulate disclosure of the full amount of funds obtained, their source as well as the totality of costs incurred in the course of

the campaign, are suitable vehicles that facilitate the discovery of illicit contributions.

3. Ensuring equality among all election contenders through balancing their campaign funds is also unconvincing a justification for the expenditure limitation in Article 84.

3.1. Such a limitation may serve more as an impediment to those political parties and candidates who are deficient in public affirmation and appreciation rather than a means that bestows the election contenders with an equal opportunity at the outset of the election campaign.

4. In its conception, the expenditure limitation makes the most immediate reference to the state interest in reducing the enormous campaign costs.

4.1. However, even assuming that the campaign costs are high and keep rising - a proposition itself of dubious posture - the very fact of having enormous campaign costs cannot be a legitimate basis for setting an expenditure limitation by the state.

4.1.1. According to CRPM, Article 16 of the Constitution of the Republic of Macedonia disavows even the most benevolent state's attempts at making a determination that the campaign costs made for promotion of certain political viewpoints are excessive, wasteful or unwise.

4.1.1.1. In a society inclined to call itself free and democratic, the quantity of political speech during the election campaign ought not to be controlled by the state but by the very people - individually, in the role of voters and candidates, and collectively, as civic associations and political parties.

5. Because of all these reasons, CPRM holds that Article 84 of the Election Code is unconstitutional.

d. Conclusion

1. Article 83 of the Election Code, which envisages campaign financing through monetary contributions by private persons and legal entities, not exceeding 5000, that is 20 000 Euro, is an appropriate means for realizing the legitimate state interest in safeguarding the integrity of the electoral process, that is, moderating the corruptive impact of large campaign contributions. By its design, it does not interfere substantially with the right of citizens and political parties, acknowledged in Article 16 of the Constitution, to engage freely and meaningfully into the election debate.
2. On the contrary, Article 16 of the Constitution ordains nullifying and voiding of Article 84 of the Election Code, because the expenditure limitation laid down in this latter article, has a direct and substantial bearing on the

quantity of political speech in the election campaign, in a direction of its diminution - a consequence that Article 16 cannot tolerate.

3. In accordance with these conclusions, CRPM holds that:

3.1. Article 84 is unconstitutional

3.2. Article 83, in conjunction with Articles 85 and 189, stands for a principled and democratic basis for regulation of the campaign financing.

These conclusions notwithstanding, CRPM proposes and will wholeheartedly support a more liberal solution to the problem of campaign financing.

e. Proposal for deregulation and mandatory, complete, and timely disclosure of monetary contributions

One such solution, according to CRPM, could be a full removal of contribution limitation of Article 83 and insistence on mandatory and complete disclosure of the donations received for election campaign, however, not like in paragraph 3 of Article 85 - up to 30 days after the verification of representatives' mandates - but rather, several days prior to the Election Day.

According to this simple proposal, all campaign contributions and communications would be registered with an independent state body and publicized through the mass media, and thereby - made open to voters'

scrutiny. As a result, the campaign financing will be disciplined by the people themselves and their right to vote, not through a pile of unintelligible rules and overzealous statutes.

Today, democracies over the world achieve remarkable results through deregulation of transport, energy and financial services. There is no reason to believe that the election regulations will protect the electorate better than the past economic regulations used to protect the consumers. So long as the law demands mandatory, complete and timely disclosure of the campaign contributions, the voters can decide on their own whether the fact that a certain political party or list of candidates is strongly supported financially by individuals or groups is to be taken into account when making the last choice of whether to vote for such candidates or not; the evil influence of rich corporations and individuals will be sufficiently defused by the politicians' fear of being perceived as puppets of powerful business-interests.

And that is actually the working premise of Article 16 of the Constitution of the Republic of Macedonia - that Macedonian citizens are neither sheep nor fools, but are fully able to decipher the essence of any message served to them, its source and aim. If this premise fails to be right, then the Macedonian democracy has much bigger a problem to solve than the problem with the corruptive impact of large campaign contributions.