

Presentations from Session 4

Political Corruption

Monitoring Compliance with Council of Europe's Standards

Ms Liubov Samokhina, Administrator, GRECO Secretariat, Council of Europe

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Council of Europe
A pan-European organisation
46 member states

- To defend democracy
- To protect human rights
- To promote the rule of law
- To guarantee the social and economic development of European societies
- To consolidate democratic stability in Europe

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Milestones

1996	Programme of Action against Corruption
1997	Twenty Guiding Principles for the Fight against Corruption
2001	Parliamentary Assembly - Resolution on the «Financing of Political Parties»
2001	Venice Commission - «Guidelines & Report on Financing Political Parties»
2003	Committee of Ministers - Recommendation on «Common Rules against Corruption in the Financing of Political Parties and Electoral Campaigns»

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Recommendation on "Common Rules against Corruption in the Financing of Political Parties and Electoral Campaigns":

a compromise approach

- Does not propose an ideal system of regulation
- Contains flexible rules that can be adjusted to specific national contexts

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Recommendation on "Common Rules against Corruption..."

- Reasonable balance between public and private funding (Article 1)
 - No ideal ratio between the two sources
 - Balance must be sought individually in each country

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Recommendation on "Common Rules against Corruption..."

- Objective and fair criteria for the distribution of state support (Article 1)
 - Principle of «strict proportionality»
 - Principle of «equality»

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Recommendation on "Common Rules against Corruption..."

- **Strict rules concerning private donations (Article 5)**
 - Limit, prohibit or strictly regulate donations from legal entities which provide goods or services for any public administration
 - Prohibit legal entities under the control of the State or of other public authorities from making donations to political parties

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Recommendation on "Common Rules against Corruption..."

- **Limits on electoral campaigns expenditure (Articles 9 & 10)**
 - To avoid excessive cost of party politics;
 - To control inequalities between political parties; and
 - To restrict the scope of improper influence and corruption

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Recommendation on "Common Rules against Corruption..."

- **Transparency of accounts (Articles 11- 13)**
 - Specify all donations received by political party, including nature and value of each donation;
 - Donors to be identified in case of donations over certain value;
 - Accounts to be regularly presented to independent authority
 - Accounts (or their summaries) be made public

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Recommendation on "Common Rules against Corruption..."

- **Independent Monitoring (Article 14)**
 - Supervision over the accounts of political parties and the expenses involved in election campaigns, as well as their presentation and publication

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Recommendation on "Common Rules against Corruption..."

- **Sanctions (Article 16)**
 - Effective, proportionate and dissuasive

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Recommendation on "Common Rules against Corruption..."

Technical Assistance:

Georgia	2003 Strasbourg Memorandum
Moldova	2005 «Support for the National Anti-Corruption Strategy»
Russia	2005 «Harmonisation of Russian anti-corruption legislation with international standards»
Ukraine	2005-2008 «Good governance: project against corruption»

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Law on Political Party Financing and its Enforcement in Latvia

Mr Alvis Vilks, Corruption Prevention and Combating Bureau, Latvia

Let me start by reminding that political party financing is a comparatively new issue in Latvia. The state of Latvia was founded in 1918 and regained its independence in 1991 after dissolution of the USSR. Starting with this moment development of multi-party system as well as regulation of party financing began in Latvia. So we cannot be proud of a long tradition of democracy and a party system of a long standing. That is why the example of Latvia probably would be more interesting to post-Soviet countries as well as those countries, which until now have not systematically paid attention to financing of political parties and its control.

The Law “On Political Organizations (Parties) Financing” was adopted in July 1995. The Law defines possible financing sources and limitations and introduces the procedure for submitting declarations of party financing. The Law foresees how political organizations can be financed from the membership fees, how donations can be made from physical and legal persons. The Law prohibits financing of parties from donations from overseas physical and legal persons, using resources of state and local authorities, and to finance anonymously or using intermediation. The maximal limit of donation from a person during a year was defined to be, initially, 25 thousand Lats (approximately 36 thousand Euro), but later, 10 thousand Lats (14 thousand Euro). The Law prescribed that illegally received donations should be transferred to the state.

Initially the control of its implementation was assigned to the State Revenue Service of Latvia, an institution subordinated to the Ministry of Finance. Perhaps this was the reason why the Law in fact did not work. State Revenue Service was more interested in collecting taxes and filling the state budget than in exercising control over political organizations. The check-ups were rare and actually reaped no results.

In fall 2002 Corruption Prevention and Combating Bureau was established, and it was tasked with controlling parties’ financing that became a separate and permanent function of the Bureau. The Bureau is an institution subordinated to the Cabinet of Ministers. Its operations are supervised by the Prime Minister. The actual work on checking party financing the Bureau began from February 2003.

The functioning of the Bureau is regulated by the law “On Corruption Prevention and Combating Bureau”. The Law establishes that the Bureau controls the implementation of the Law on Political Organizations (Parties) Financing; it carries out investigations in order to detect violations of the rules on political parties financing, centralises and analyses information gained about parties’ financing and respective violations and makes this information available to the public. Comparatively wide powers are given to the Director of the Bureau – he has the rights to make the parties pay back illegally gained donations, and, in some cases, according to the law, to file a petition to the court to suspend or terminate permanently activity of a party.

The results of inspections carried out by the Bureau were shocking for many politicians and party leaders already in the first year of its work. Initial inspections showed that parties do not follow the provisions of the Law – they do not submit declarations required by the legislation, do not declare names of private donors, and do not keep adequate accountancy. Taking into account provisions of the Law, a number of appeals were submitted to the court asking to suspend activity of political organizations.

Further inspections revealed even more shocking results. They revealed that several parties received donations using illegal intermediation and the sources of financing were not transparent. In some cases bank transfer falsifications and facts of exceeding the allowed limits of donations were discovered as well as cases of donations from persons, whose material conditions would not allow them to make such donations.

In the aforementioned cases the Bureau according to the provisions of law required from the parties to pay back the income that was received illegally. But in cases, when falsifications of documentation were discovered, the criminal cases were initiated.

These measures of the Bureau shook the leaders of political organizations. Some of them were members of the leading political parties and hold high positions in the Parliament and the Government. These politicians blamed the Bureau and tried to mire the work by claiming that the Bureau operated in the interests of particular parties.

Despite of this, the Parliament began to work on elaboration of amendments to the Law “On Political Organizations (Parties) Financing” in order to improve the regulation. The most important improvements were the following: prohibition for the legal person to make donations; definition of illegal intermediation; definition of the limits for spending on pre-election campaigning; specification of liability for violation of the provisions of this law. For the most serious violations related to the use of illegal intermediation criminal liability was determined.

What conclusions can one draw from this brief experience?

Firstly, in a democratic and open society the question of party financing undoubtedly is essential, because society must know the sources of party financing as in some cases party donors have much influence on the leaders of respective parties and thereby on decisions these parties make. This issue is particularly relevant in connection with the parties which make up the Government.

Secondly, the control over political party financing varies in different countries depending on the internal structure of the state, democratic traditions, and party financing model. In other words, in countries where parties are financed from the state budget, the control over parties’ financing will be different from that of countries where there is no money coming from the state budget for parties’ financing.

Thirdly, the institution, which monitors the financing of political organizations, should be independent from the influence of politicians. To secure the independence of this institution from the influence of political organizations and politicians, a special status should be assigned to it.

Fourthly, it is important to promote the involvement of non-governmental sector, informing the public and encouraging its participation in controlling the political parties.

Fifthly, this issue is connected to other matters, such as regulation of activities of political parties, regulation of pre-election campaigning and regulation of lobbying.

Ensuring Efficient Prosecution of High Level Corruption in Romania

Mr Alexandru Catalin Macovei, Prosecutor, National Anti-Corruption Prosecutor's Office, Romania

I will try to synthesize the principal aspects that governed the performance and the activity of the National Anticorruption Prosecutor's Office from Romania from its establishment to the present, taking into account the short period of time allocated on this presentation.

The National Anticorruption Prosecutor's Office from Romania is a relatively young institution, established on the 1st September 2002. Its function is settled by the Government Emergency Ordinance no. 43/2002, the institution having as matter the performing of penal pursuance for the causes in which are committed the crimes stipulated by the Law no. 78/2000 regarding the prevention, finding and penalization of the corruption actions.

Within the National Anticorruption Prosecutor's Office operate 110 prosecutors, 152 police officers and 43 experts (from economic, financial, banking, custom-house etc. fields).

By the functioning law, the National Anticorruption Prosecutor's Office represents a structure destined to fight against corruption at the middle and high level. In this way, our institution performs the penal pursuance for cases with damages bigger than 100,000 euro or a very serious disturbance concerning the activity of a public authority, public institutions or to any other legal entity or if the value of the sum or of the goods that formed the matter of crime is bigger than 5,000 euro and, also, regardless of the matter of sum or goods which form the matter of the offence concerning the Government members, state secretaries, judges of High Court of Cassation and Justice, the president of the Legislative Council, the Ombudsman, presidential counsellors, state counsellors of the Prime-Minister, judges, prosecutors, admirals, generals, marshals, questors, commissary of the Financial Guard, presidents and vice-presidents of the Local Councils, prefects, public notaries and persons with managing and control duties within the central public authorities etc.

Law no. 78/2000 makes the difference between the corruption crimes, as follows:

Crimes: (bribery) taking bribe, giving bribe, traffic of influence, purchasing of influence.

Crimes assimilated to the corruption offences: granting of loans or subsidies with law violation, performing financial deeds incompatible with the carried out position, use of information that is not addressed to the publicity or permission of some not authorised persons to this information, if these are committed for getting money, goods or inadequate profits, use of influence or authority in order to get money, goods or other inadequate profits (concerning the persons that carry out a leadership position within a party, trade-union or paternal or within a legal entity without a patrimonial interest), blackmail and abuse in office.

Offences in direct connection with corruption crimes: keeping back of goods resulted from the committing of a crime above-mentioned, association for committing of some crimes above-mentioned, forgery, use of forgery, blackmail, traffic of drugs and toxic substances, traffic of persons, all these regarding the crimes above-mentioned.

The National Anticorruption Prosecutor's Office, as an institution charged with performing of penal pursuance in cases regarding the middle and high corruption, cooperates with other institutions with duties in prevention and finding of corruption crimes, Romanian intelligence services, Control Board of Government, Ministry of European Integration, Ministry of Finance, non-governmental organisations. The information sent by these institutions was highly valuable, leading to solve successfully many corruption crimes.

During September the 1st 2002 – May the 1st 2005, the prosecutors of the National Anticorruption Prosecutor's Office solved over 3806 cases. In a number of 387 cases, 1483 defendants were sent to trial.

The damage caused to the state through the crimes for which the sending to trial was disposed, represents the approximate amount of 900 million EURO.

More than 585 of the persons sent to trial, had leading, controlling or other important positions:

- 1 former Minister of the Ministry of Agriculture, Forests, Water and Environment;
- 1 deputy general secretary within the Ministry of Agriculture;
- 2 counsellors within the General Secretariat of the Government;
- 1 counsellor of EU integration affairs within the Ministry of Public Finances;
- 1 director of the SAPARD Agency;
- 4 directors, 1 president of the Administration Council and 1 chief of the Legal Department of the State Domains Agency
- 4 general directors within other ministries;
- Petronim Constanta, general director and economic director of CNM;
- 131 directors and inspectors;
- 1 general of brigade;
- 2 generals of the Ministry of National Defence;
- 28 employees within the Ministry of National Defence;
- 1 assistant magistrate within the High Court of Cassation and Justice;
- 1 court clerk within the High Court of Cassation and Justice;
- 8 judges (out of which one was a court chief);
- 2 prosecutors;
- 1 executor;
- 2 accounting experts (as legal administrators)
- 1 technical expert;
- 5 lawyers;
- 9 legal counsellors;
- 11 majors (out of which 3 were municipality majors);
- 3 local counsellors and 2 local council chiefs of services;
- 1 president of an Employee Association;
- 1 chief of service within the Bucharest General Council and 1 chief of the control service;
- 2 inspectors within the Bucharest City Hall;
- 1 director of the Social Assistance Public Service within the Bucharest City Hall;
- 2 University professors;
- 95 directors, chiefs of credit services and other bank officials;
- 1 bank vice president and 1 president;
- 11 public servants within General Directions of Public Finances;
- 189 police employees and 6 gendarmes;
- 1 Officer of the Romanian Intelligence Service;
- 26 customs officials;
- 8 commissaries of the Financial Guard;
- Over 300 businessmen;

Regarding the activity of the Office for Fighting Crimes against the financial interests of the European Community, created within the central structure of NAPO, the situation is as it follows: during January the 1st 2004 – May the 1st 2005, as a result of 7 indictments, 12 defendants were sent to trial for committing crimes regarding the usage of PHARE funds.

The value of the total damage caused by committing these crimes represents the approximate amount of 420,000 EURO, out of which 100,000 EURO have already been recovered. In order to recover the rest of the amount, sequestrators were set up.

Presently, the Office has 3 pending cases, the estimated damage representing the approximate amount of 535,000 EURO. Sequestrators were set up with a view to recover 210,000 EURO.

Since May 2005, there is no longer the pursuance of corruption crimes committed by the Parliament members, within the National Anticorruption Prosecutor's Office's competence, in conformity with the Decision of the Constitutional Court of Romania. These cases are undertaken by the Prosecutor's Office of the High Court of Cassation and Justice. Therefore, our institution can not investigate anymore an important category of statesmen, but the other active subjects of the corruption crimes, as they were mentioned above, are still in the National Anticorruption Prosecutor's Office's competence.

Another obstacle in the National Anticorruption Prosecutor's Office's activity is the lack of information on the specialization services, especially the General Department of Information and Internal Protection within the Ministry of Administration and Internal Affairs, that sent to us many times unchecked dates and information, inclusive notes concerning crimes committed long time ago and that were with difficulty examined. Even owing to these situations, the management of the Ministry of Administration and Internal Affairs and the actual political power from Romania have established a specialised structure (led by a prosecutor having as a deputy the former chief of the Juridical Police Brigade of the National Anticorruption Prosecutor's Office). In order to connect to this structure, our institution founds an on time connection department in order to become more efficient in our relation with informative departments of the Ministry of Administration and Internal Affairs.

Another problem is a logistical one. Since our establishment till present, the National Anticorruption Prosecutor's Office has solved 40 actions of caught in the act of some corrupted persons using its own means from the endowment of the Technical Department of the institution. The used equipment is morally thread and over fulfilled from the technical point of view, making risky some actions of caught in the act.

Important Cases Sent to Trial by the NAPO

1. Teodorescu Virgil Gheorghe, counsellor within the General Secretariat of Romania's Government, was sent to trial for committing the crime of traffic of influence. The prosecutors established that in April 2001, the defendant claimed 2 million USD from a Romanian citizen, resident in Switzerland, implying the fact that he could influence some officials with control and leading attributions within the Ministry of Finances and the Local Public Administration of Prahova County, in order to draw up documents, so the denouncer could obtain a loan of over 58 million USD. The prosecutors established that the loan was to be contracted by the companies administrated by the denouncer from two banking units in Switzerland and Germany, and the money were to be used for financing an investment in Busteni town (important tourist centre in Romania).

The prosecutors established that the defendant owns assets of over 5 billion ROL (125,000 EURO) which cannot be justified. The assets control and sequester procedures have been initiated.

Presently, the file is in front of the judges in Bucharest Court.

2. Jiga Dan, former general director of the Economic and Budget General Directorate within the Ministry of Agriculture, and Florica Dinculescu, director of the SAPARD Agency within the Ministry of Agriculture were sent to trial, under temporary custody, for committing crimes of corruption and abuse in office against the private and public interests.

It was established that the two defendants claimed 200.000 USD from some Italian investors to favour them becoming main shareholders at the Agricultural Company Jimtim, Jimbolia. Subsequently, Jiga Dan sold the share of the above mentioned company in a fraudulent manner, causing a damage of over 13 billion ROL (317,000 EURO) to the Ministry of Agriculture.

The court convicted the defendant Jiga Dan to 5 years of prison and Florica Dinculescu to 3 years of prison for committing the above mentioned crimes (final decision).

3. Marineata Georgeta, Governmental official, EU integration affairs counsellor within the Ministry of European Integration, was sent to trial for committing the crime of traffic of influence. It was established that the defendant claimed 11,000 EURO from some persons in exchange for their project

proposal for PHARE 2001 Program for small and medium enterprises to be selected, approved and financed. The defendant promised that it will be achieved through direct intervention to some persons with leading positions within the ministry. It was also established that the defendant asked some colleagues of hers to consider some audit expenses as being consultancy expenses, in order to favour the persons from whom she had claimed the bribe. Despite of the defendant's demands, the officials within the ministry had a correct behaviour.

The defendant was sentenced to 5 years of prison (final decision).

4. Fănel Păvălache, counsellor within the General Secretariat of the Government. At the ending of 2005, he claimed the sum of 1000,000 USD, after that he reduced his pretensions to 200,000 USD in order to influence the magistrates from the Law-court of Bucharest to give out from bankruptcy a private bank. He was caught in the act receiving a first part of 20,000 USD; the rest follows to be given until the 25 October 2002, when it was to be pronouncing the solution by the court.

An important case, investigated by the prosecutors of the Office for fighting crimes against the financial interests of the European Community, is the one in which a representative of the Commerce Chamber of North-East Region 1 Romania, with the headquarters in Iasi, is investigated for committing the crime of changing the destination of some funds obtained from the general budget of the European Community.

The defendant changed the destination of 200,000 EURO, obtained within a PHARE Program regarding grants, using the money in personal purposes.

Monitoring Election Campaign Finance: a Handbook for NGOs

Mr Quentin Reed, Independent anticorruption monitoring and policy consultant,
Represents the Open Society Institute

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JUSTICE INITIATIVE
www.justiceinitiative.org

***Monitoring Election Campaign
Finance: A Handbook for NGOs***

Quentin Reed
OECD ACN Meeting, Istanbul
31 May 2005

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Why monitor campaign finance?

- Contribute to an environment in which corruption less likely to occur
 - Identify shortcomings in regulation and enforcement
 - Seek evidence of corruption
 - Promote transparency
- Categories of monitoring
 - Income
 - Expenditure
 - Misuse of state/public resources (administrative resources)

Slide 3

The Justice Initiative Approach

- Handbook: published January 2005
- Based on synthesis of wide range of experiences
 - 4 case studies of monitoring: Latvia (OSF/TI Latvia), Romania (APD), Slovakia (Fair Play Alliance), Ukraine (Freedom of Choice Coalition)
 - Other monitoring experiences (Argentina, Armenia, Brazil, Russia, Zimbabwe, USA)
 - Academic research (Costa Rica, Poland, Uruguay)
- FOUNDATION OF MONITORING APPROACH: Monitor what is relevant to local context and objectives of monitoring
 - Role of Scoping Study

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Implementation/other projects

- Projects completed
 - Russia (2003 parliamentary elections, misuse of administrative resources)
 - Mongolia (2004 parliamentary elections, media advertising, misuse of administrative resources)
- Projects running/under preparation
 - Africa: Mozambique/Zimbabwe (EISA), Ghana (CDD)
 - Poland: Batory Foundation - 2005 Presidential elections
 - Romania: APD - 2005 elections, IPP - 2004, misuse of public funds
 - Serbia: TI - 2004 Presidential elections, CeSID - 2005 local elections
 - Slovakia: Fair Play Alliance - tracking donations

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The future of monitoring

- Handbook: culmination of 2 years' work
- JI exit strategy:
 - Identifying partners who are interested in pursuing issues identified in work on misuse of administrative resources
 - Assistance projects