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FORMER YUGOSLAV REPUBLIC OF MACEDONIA: OVERVIEW OF POLITICAL CORRUPTION

QUERY

Please provide an overview of and background to recent measures taken to address political corruption in the Former Yugoslav Republic of Macedonia? We are particularly interested in elections, political party financing, codes of conduct, asset declaration, immunity, conflict of interest and lobbying.

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SUMMARY

Every government that has been in power in the Former Yugoslav Republic of Macedonia (FYROM) since independence has declared the fight against corruption a priority. However, according to observers, the actions of the government have been rather superficial. Although progress has been made in establishing the legal and institutional framework for fighting corruption, implementation of anti-corruption laws and independent handling of corruption cases by the relevant supervisory bodies and courts remains a major challenge.

Political corruption manifested through instances of abuse of power, conflict of interest and dubious practices of financing political parties and election campaigns is widespread, while political interference in all spheres of governance seriously hampers the implementation of anti-corruption reforms.

This answer considers challenges and progress in the area of elections, party financing, immunity, codes of conduct, conflict of interest, asset declarations and lobbying.

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1 OVERVIEW OF POLITICAL CORRUPTION IN FYROM

Extent of corruption

Corruption is a prevalent problem in the Former Yugoslav Republic of Macedonia (FYROM), affecting many aspects of social, political and economic life. Studies indicate that petty corruption has a significant impact on the interaction of private citizens with public officials. Reflecting this trend, 71 per cent of households pointed out that personal contacts and/or relationships are important in getting things done in the public sector. At the sector level, almost one out of five respondents who had contact with the police in 2012/2013 claim to have paid a bribe (Transparency International 2013). Investors and businesspeople also report being solicited for bribes, particularly when participating in public procurement and government projects (US Department of State 2013).

The fight against corruption has been one of the priorities of the government, and it remains a highly important condition for the European Union accession process. However, despite establishing the legislative and institutional framework, the lack of political will has hampered anti-corruption efforts (Transparency International 2011). FYROM ranks 67 out of 177 countries surveyed in Transparency International's 2013 Corruption Perceptions Index, with a score of 44 out of 100, a score almost identical to the one in 2012, suggesting stagnation in the fight against corruption. This is further supported by public opinion surveys where a significant majority of people believe that the situation has not improved. Of people surveyed in 2013, 41 per cent said that corruption in the country has increased, while 29 per cent thought that it has stayed the same (Transparency International 2013).

Deficiencies in the rule of law and lack of enforcement of anti-corruption legislation are cited amongst the major reasons hindering the effective fight against corruption in the country. While relevant anti-corruption legislation is in place, its implementation is weak and, at times, selective. Only a handful of cases have been brought before the court and instances of selective prosecution have led to public mistrust in the judiciary (Bertelsmann Foundation 2014).

Political corruption in FYROM

Corruption has been an aspect of political culture in the Former Yugoslav Republic of Macedonia and is not exclusive to any particular group or political party. Over the last years, the governing parties have strengthened their control over many important democratic institutions, while the government has increased the number of employees in public administration, seeking to create a large constituency of politically loyal supporters in the public service (Bertelsmann Foundation 2014). Political interference is not limited to the executive branch of power. There are cases of judges being pressured into making certain decisions and being removed from their positions for not taking orders from the executive branch or political parties (TI Macedonia 2011). An OSCE survey from 2011 shows that almost half of Macedonian judges felt confronted with external influences and pressures, with political parties accounting for the second largest number of attempts to influence judges (OSCE 2011).

Allegations related to conflict of interest and abuse of power by public officials are frequent (Bertelsmann Foundation 2013). There is a general lack of transparency regarding political parties' funds, and parties regularly appear to spend higher amounts than officially reported figures suggest. Experts note that companies closely associated with the political parties and their leaders often engage in direct transactions with businesses providing services to political parties, thus avoiding public disclosure of actual income and the identity of funders (TI Macedonia 2010).

While the conduct of elections is deemed satisfactory by international standards, the election campaigns remain characterised by allegations of voter intimidation and misuse of state resources. During the pre-election period, the distinction between state and political party is blurred and media coverage is often unbalanced, hindering the establishment of a genuine level playing field for all candidates (OSCE/ODIHR 2013).

The institutional framework for supervising conflicts of interest and declarations of income and assets has yet to demonstrate effectiveness in preventing corruption. As shown in the sections below, low levels of public trust in public supervisory institutions,

combined with the lack of capacity to effectively fulfil their mandate, hampers effective control of political corruption risks.

2 ELECTIONS

Overview

Most elections held in FYROM since its independence in 1991 have been deemed satisfactory by international standards. The last two elections for parliamentary and municipal bodies were found to have been efficiently administered. Candidates were able to campaign freely and the voters were able to freely express their choice. In the run-up to the local elections in 2013, all parties signed a Code of Conduct agreeing to follow the ground rules for conduct during the campaign (OSCE/ODIHR 2013).

However, observers have continuously reported allegations of voter intimidation and misuse of state resources that persisted throughout the election campaign in 2013. During the campaign period, the distinction between state and political party was blurred and remains problematic, along with the unbalanced media coverage (OSCE/ODIHR 2013). Such circumstances give advantageous treatment to the ruling party and do not provide a level playing field for all candidates to contest the elections. In addition, as described below, a number of recommendations made by international observers to close the loopholes in the legal framework remain unaddressed.

FYROM held the elections for the president of the republic on 13 April 2014. Since none of the candidates received the required support of majority of registered voters, a second round was held on April 27, together with the parliamentary elections. This was the third early general election in a row since 2006.

Legal framework

The country holds three types of elections, for president, parliament and municipalities. Members of the unicameral *Sobranie* (Assembly) are elected to four-year terms by proportional representation. The president is elected to a five-year term through a direct popular vote, but the prime minister holds most executive power.

The parliamentary vote takes place on a closed type of electoral list, and seats are distributed on a proportional basis. The nomination lists may be submitted by parties, coalitions of parties, or groups of at least 500 voters. Mayoral and municipal council elections are held every four years in the second half of March. Each of the 80 municipalities and the city of Skopje elects a mayor and a council. Mayors are elected through a majoritarian system consisting of two rounds. To be elected mayor in the first round, a candidate must receive more than 50 per cent of the vote. Similar to the parliament, municipal councillors are elected by a proportional representation system with closed lists.. There is no turnout requirement for municipal council elections.

Although there have been several amendments to the Electoral Code in recent years, responding to previous recommendations from the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission), several gaps and ambiguities remain. This includes detailed provisions for candidate registration, campaign finance and the complaints and appeals process. In addition, the question of how and when independent candidates and party lists can withdraw is not regulated in the Electoral Code.

Management and oversight

The State Election Commission (SEC) is a permanent body responsible for the overall conduct of elections. It is composed of seven members appointed by the parliament with a two-thirds majority for a four-year term. According to the Electoral Code, the SEC president and two members are nominated by opposition parties, and the vice-president and three members by the governing parties.

SEC generally functions efficiently, its sessions are open to election observers and media, and generally the minutes of the commission's sessions are published on its website. However, OSCE/ODIHR has recommended SEC to further enhance its transparency by strictly adhering to the requirement to post all minutes of meetings on the website no later than 48 hours after the session is held.

Some decisions taken during the local government

elections in 2013, particularly those relating to the withdrawal of candidate lists and election day complaints, were voted along party and ethnic lines rather than on the legal merits of the case. This negatively impacted on the impartiality and collegiality of the SEC (OSCE/ODIHR 2013).

While the confidence in the accuracy of voter lists has increased over the last years, OSCE has pointed out the need for clear, coordinated and transparent procedures that would enhance the accuracy of the voter register. The reform should be inclusive and completed well in advance of the next elections. Authorities have been recommended to show greater political will to ensure sufficient separation between state and party, properly investigate allegations of voter intimidation and take appropriate actions should any violations be proven (OSCE/ODIHR 2013).

Despite these recommendations, to date, there have been no reports of authorities having investigated allegations of voter intimidation, nor have there been any sanctions imposed.

3 POLITICAL PARTY FINANCING

Overview

Financing of political parties is often cited as one of the main channels of corruption in FYROM. The legislative framework regarding election campaign financing is relatively new. The 2006 Electoral Code has been amended several times following the recommendations from international organisations.

In spite of the existing legal provisions on the requirements for reporting political party finances, there are serious shortcomings in terms of transparency and accountability. Financing of parties remains opaque as, despite existing legal requirements, parties do not fully disclose the identity of their donors (TI Macedonia 2013) and do not provide detailed reports on incurred expenditure (OSCE/ODIHR 2013).

Another serious problem relates to the overspending by parties during election campaigns, as they often spend amounts that exceed deposits on specially opened bank accounts. There have been cases where political parties have declared overspending by several million Macedonian denars, and the bills were not paid before the closure of the special bank account (TI Macedonia 2013). The oversight bodies responsible for the supervision have been criticized for their inability to act in a nonselective and independent manner (TI Macedonia 2013).

Legal framework

The legal framework that regulates political party election campaign funding is considered to be sound. The main laws regulating this area are the Electoral Code and the Law on Political Party Financing. The code was adopted in 2006 and last amended in January 2014.

According to the law, election campaigns cannot be financed by foreign and public institution sources. Financing from the state or local budgets is banned, apart from remunerations in the form of defined subsidies to political parties. The majority of funding for election campaigns comes from private sources. Political parties may receive private funding from individual donations up to the equivalent of €5,000 in Macedonian denars, or up to €50,000 from legal entities. The organisers of the election campaigns receive reimbursement from the state budget after the elections if they win at least 1.5 per cent of the total number of votes. This reimbursement amounts to 15 Macedonian denars for each vote and the payment of these allowances is only made within three months after the elections are over.

All electoral contestants are required to open a special bank account where all campaign contributions are to be deposited and all expenditures made. All parties contesting in elections are obliged to report on both their income and expenditure and submit the relevant reports to three bodies: the Supreme Audit Office (SAO), the State Commission for Preventing Corruption (SCPC) and the State Election Commission (SEC). These supervising bodies are obliged to publish the reports on their respective websites.

The law establishes financial penalties for violating the established rules. These forms of financial penalties vary depending on the offence. Sanctions may include loss of reimbursement for the election campaign expenses, fines for abuse of budget funds and misdemeanours by a political party or coalition if they fail to return funds to the donors in the prescribed period. Although the law establishes the obligation for political parties to submit campaign financing reports prior to the election day, there are

no sanctions envisaged for non-submission of such reports.

The Electoral Code has been amended several times to accommodate the recommendations made by international observers. The last amendments to the law were passed on 23 January 2014 in which the nature of the threshold for donations from legal entities was changed, and instead of 5 per cent of the total income it is now set to the fixed amount of €50,000. The initial proposal from the working group to limit donations from legal entities to €30,000 was turned down by the Ministry of Justice and the parties reached a consensus on the final limit.

Oversight

There are several bodies with the responsibilities to supervise the financing of political parties, with the central oversight function falling to the Supreme Audit Office. Political parties running in elections are obliged to submit reports to the three bodies which then publish these reports on their websites. Although political parties are also obliged to publish these reports on their own websites, so far only a few of them have done so (TI Macedonia 2013).

Supreme Audit Office

The institutional framework for the supervision of political campaign financing was created in 2012 by giving responsibility to the SAO to become the main supervisory body in charge. After it has received reports from political parties, the SAO is obliged to publish this information on its website. If SAO finds irregularities in an election campaign financial report, in violation of the Electoral Code provisions, it has the right to request the initiation of misdemeanour proceedings or charges by a competent public prosecutor within 30 days from the date of the establishment of irregularities.

However, the SAO lacks sufficient capacity for performing its duties efficiently, especially when it comes to supervising political party financing (TI Macedonia 2013).

State Commission for Prevention of Corruption

The SCPC is authorised to monitor both the election campaign funding of political parties and their annual funding activities in order to ensure that political parties are not using illegal sources for financing. If the SCPC notes irregularities based on the submitted financial reports, such as the use of public funds and assets of public enterprises and other legal entities managing state capital, a report shall be submitted to the Assembly within three months, detailing the violations of specific legal provisions.

According to civil society reports, SCPC has not demonstrated a sufficient level of independence and impartiality in supervising funding of political parties. Despite a proactive approach to taking on potential cases of corruption in the first years of its functioning, the SCPC has not shown necessary leadership to serve as an effective supervisor. Lack of capacity adds to the problems preventing its effective functioning (TI Macedonia 2013).

Other bodies

Other bodies that have some responsibility in relation to the election campaign funding are the State Election Commission and the Broadcasting Council. The SEC is responsible for organising and monitoring elections. This institution receives financial reports from political parties that run in elections and it has the obligation to publish those reports on its website. The Broadcasting Council has an obligation to monitor the political parties' advertising campaigns in the media during an election campaign.

The members of the Broadcasting Council (BC) are appointed by Parliament on the proposal of various, mainly non-media related institutions, a process that has raised concerns over the professional capacity of the BC members to carry out their duties sufficiently (OSCE/ODIHR 2013). To facilitate the effective functioning of the Broadcasting Council, OSCE/ODIHR has recommended giving consideration to establishing requirements for the appointment of members of the council, giving priority to professional criteria and impartiality rather than political affiliation (OSCE/ODIHR 2013).

Implementation

The legal framework regarding political party funding is considered to be well developed, but with serious shortcomings in its implementation (TI Macedonia 2013).

To facilitate implementation of provisions on reporting, the Ministry of Finance has provided the reporting template and trained political parties on how to complete the reports; however, the new forms did not require itemisation of expenditure in detail (OSCE/ODIHR 2013). Without such detail it is difficult to audit the report.

The reports by political parties submitted to the state oversight agencies do not contain clear specification of income and expenditure. Donations, which form a significant part of election campaign funding for parties, are not clearly presented, making it very difficult to identify who the funders are (TI Macedonia 2013). A study undertaken by Transparency International Macedonia has found that one of the factors hindering disclosure of donors is perceived to be the fear that there might be negative consequences for those donors that support opposition parties and coalitions (TI Macedonia, 2013). There has not been a case of a political party or a campaign organiser being punished for not following the legal provisions on financing of political parties (TI Macedonia 2013).

To further improve the legislation on political party financing and enhance supervision, it is recommended that more detailed reporting templates for campaign finance are developed that require contestants to itemize expenditures, to consider introducing proportional and dissuasive sanctions for non-submission of pre-election campaign finance reports and to amend the law to clearly specify campaign finance requirements should a second round of elections be held (OSCE/ODIHR 2013).

4 IMMUNITY

Overview

The scope of immunities from criminal prosecution covering members of government and Parliament is rather wide in FYROM. The Group of States against Corruption (GRECO) has pointed out that the scope of immunity in FYROM could lead to widespread impunity for offences committed in the exercise of public functions and have a negative impact on the fight against corruption. GRECO has noted that it is necessary to strike a fair balance between the interests at stake and, accordingly, to reduce the list of categories of officials covered by immunity to a minimum and to introduce guidance on reviewing requests to invoke immunity by the relevant parliamentary committee (GRECO 2002). However, the legislation in this area remains unchanged.

Legal framework

The constitution contains clauses defining the immunity of the president of the republic, members of parliament and the government.

The president is granted immunity. The president may be held accountable for any violation of the constitution in the exercise of his/her duties by initiating a procedure in Pparliament by a two-thirds majority vote of all MPs. The president may be subject to liability by a decision taken by the Constitutional Court by a two-thirds majority vote of all judges. If the court takes a decision, the president's mandate is withdrawn.

The legislation provides for two sorts of immunity for members of parliament, members of government, judges and prosecutors: firstly, "non-liability" in proceedings concerning votes cast, opinions expressed and decisions made during their parliamentary term or their office, and secondly, "inviolability" (immunity from arrest) for not being arrested, detained or prosecuted without the agreement of the relevant body.

Members of parliament can be arrested (and criminal investigations can be started against them) without the authorisation of the Assembly only if they are caught in *flagrante delicto* and when the offence in question is punishable by at least five years' imprisonment. In all other cases, it is necessary to have the authorisation of Parliament to lift the immunity by a two-thirds majority. GRECO has held the opinion that the preconditions of a penalty of more than five years' imprisonment together with the requirement of being caught while committing the act, are quite high and make it in practice almost impossible to arrest a person – or to start an investigation against him/her – for corruption offences without the authorisation of the Assembly. Moreover, the two-thirds majority votes required for lifting immunity is quite a high threshold. Therefore, GRECO has recommended that the authorities consider the possibility of amending national legislation in order to reduce the scope of immunities

for members of parliament, and/or simplify the procedure for lifting their immunity (GRECO 2002).

When it comes to the members of the overnment, the government itself decides whether or not to lift immunities of its members. Moreover, no member of the government can be detained without the authorisation of the government. GRECO considers that this procedure hinders the natural course of justice insofar as investigations and prosecutions with regard to members of government can be initiated only upon a decision of the executive. GRECO recommended amending the national legislation to ensure that the procedure for deciding on immunity for members of government is not carried out by the government itself.

Another major shortcoming is the lack of clear guidelines for people deciding whether or not to lift the immunity, in particular members of Parliamentary Committee on Immunities. Such guidelines could be part of the rules of procedure and be a useful tool to prevent clauses of invoking immunity from being politically abused. Such guidelines should take into consideration that immunity should be an exception and should not be maintained if there is evidence that the suspect used his official position to gain an undue advantage. Accordingly, GRECO has recommended that guidelines be established for members of the Assembly and especially its Committee on Immunities, containing criteria to be applied when deciding on requests to lift immunity (GRECO 2020).

Implementation

MPs' immunities have been invoked so far in two cases (GRECO 2014). One case which was widely covered in the media involved invoking parliamentary immunity of the former prime minister and opposition MP, Vlado Buckovski, in 2007. Parliament's Immunity Committee voted to revoke the immunity of Buckovski who was charged with abuse of power during his tenure as minister of defence. However, this act has been condemned by opposition MPs for not following the prescribed procedure for invoking immunity (the Immunity Committee has not submitted a report to the Assembly for a final decision, but has made the decision with a majority vote of committee members) (Balkan Insight 2007). The former prime minister has dismissed the process and the ultimate sentence as "politically motivated" (Balkan Insight 2008).

The European Commission's (EC) 2010 progress report highlighted that the GRECO recommendations regarding guidelines on requests for lifting immunity for members of parliament have not been implemented (European Commission 2010). The legislation on immunities remains unchanged.

5 CONFLICT OF INTEREST

Overview

The conflict of interest legal framework is established by the constitution (1991), and further elaborated in several laws regulating the status of the president, MPs, ministers and civil servants. Although the legislative framework is considered to be sound, the enforcement of the relevant provisions aimed at preventing conflict of interest for public officials has not been satisfactory (GRECO 2014).

A significant number of officials are not fully aware of the definition and the manifestation of conflict of interest. The State Programme on Prevention and Repression of Conflict of Interests notes that given the existing challenges, efforts should be made in two directions: to strengthen the prevention of conflicts of interest by educating the officials and to develop the system of detection, addressing and sanctioning conflict of interest cases (State Commission for Prevention of Corruption 2011).

Legal framework

Besides the constitution, conflict of interest is regulated by two laws: the Law on Prevention of Conflicts of Interest (2007) and the Law on Prevention of Corruption (2004).

According to the constitution the duty of the president, prime minister, and ministers is incompatible with any other public office, profession or position. The Law on Prevention of Conflict of Interest (2007) is a uniform law applicable to all public officials and their families. The Code of Ethics for Civil Servants (2001) also provides specific conflict of interest provisions governing the behaviour of civil servants.

According to the law, conflict of interest "means a conflict between the public authorisations and duties with the private interests of the official, where the

official has a private interest which impacts or can impact on the performance of his/her public authorisations and duties". When an official discovers circumstances indicating the existence of a conflict of interest, he/she is obliged to immediately request to be exempted and to cease his/her actions.

The Law on Prevention of Conflicts of Interest describes all the possible types of conflicts of interest and contains provisions on prohibition or restriction of certain activities, gifts, incompatibilities, financial interests and contracts, post-employment restrictions, third party contacts, misuse of confidential information and public resources and declaration of assets, income, liabilities and interests.

The Law on Prevention of Corruption contains a declaration requirement for the detection of illicit enrichment and identification of conflicts of interest. For example, under the law, an official who has been offered a gift or any other benefit related to the discharge of his/her official duty should reject it, and if not able to return the gift, he/she must report it to the competent authority and submit a written report to the State Commission for Prevention of Corruption. The same law envisages administrative, financial and criminal sanctions in cases of violation of reporting requirements.

As a result of the amendments introduced to the Law on Prevention of Conflict of Interest 2012, the SCPC was tasked in 2012 to verify the content of the statement of interest of officials. The Law on Prevention of Conflicts of Interest has been assessed as quite comprehensive. It contains a number of important elements and foresees a disclosure regime. However, the law places a strong emphasis on cases of actual conflicts of interest as opposed to apparent or potential ones. More attention could be devoted to such types of conflicts in the awareness and prevention activities of the SCPC (GRECO 2014).

Oversight

The competent authority for the implementation of the relevant legislation on conflict of interest is the State Commission for Prevention of Corruption (SCPC). To some extent line managers in public institutions are also responsible for enforcing this law by being immediate supervisors to public officials and the person who should be notified first in many cases of possible conflicts of interest. According to the law, the measure of a public warning and the recommendation for dismissal of an official must be published in the media. Additionally, the same law states that the State Commission shall inform the public about the cases of conflict of interest it has acted upon.

Before the 2012 amendments to the law, the SCPC generally followed the statements for elected and appointed officials, and they were published in the Official Gazette. However, the unit within the State Commission for Preventing Corruption did not have the capacity to initiate individual investigations, and focused mostly on the cases reported in the media (TI Macedonia 2011).

A new system of verification of the content of statements of interest was introduced in 2012 and it is still too early to assess its implementation (GRECO 2014). However, the EC 2013 progress report has noted that in 2012 the State Commission for Prevention of Corruption has conducted verifications of the newly introduced systematic verification of statements of interest of appointed and elected officials, as well as checks carried out *ex officio* or on the basis of external complaints. The SCPS verified 483 statements submitted by MPs, ministers, deputy ministers and officials elected or appointed by Parliament in 2012. During the verification exercise, 123 officials were found not to have submitted statements and, as a result, misdemeanour proceedings were initiated in 26 cases in early 2013 (EC 2013).

Implementation

Despite the comprehensiveness of the legal framework, the absence of a registry of elected and appointed officials – a tool that would make it possible to know the exact number of officials who have the duty to submit declarations of interests – hampers effective control of conflicts of interest (EC 2013; GRECO 2014).

When it comes to Parliament, a culture of prevention and avoidance of conflicts of interest has yet to take root among MPs (GRECO 2014). Elected and public officials are largely unaware of the rationale behind conflict of interest legislation and how it needs to inform their choices and decisions. For example,

MPs tend to view their obligations as a formal procedure, implying mostly filing a statement with the SCPC and taking measures in case one of the situations specifically described in the law occurs (GRECO 2014).

6 CODES OF CONDUCT

Overview

Several laws contain provisions governing the conduct of civil servants and public officials in FYROM. In addition, there is the Code of Ethics for the Members of the Government and the Public Office Holders (2010) and the Code of Ethics for Civil Servants (2001).

Legislative Framework

A number of legal provisions and codes deal with the issues of ethical conduct of public officials and regulate areas such as receipt of gifts and hospitality, “revolving doors”, post-employment and involvement in the private sector.

The Law on Prevention of Corruption prohibits officials from receiving gifts or any promise of a gift, except appropriate gifts such as books, souvenirs and similar goods whose value is determined by law. In addition, according to the Law on Civil Servants, receipt of gifts by civil servants is considered a disciplinary offence.

Elected or appointed officials as well as other officials or responsible persons in public enterprise have to inform the State Commission for Prevention of Corruption within 30 days, and within three years from the date of termination of his/her official duty, if he/she founds a commercial company or engages in a profitable activity in the same field in which he/she has worked. The same law prohibits officials, during the term of the mandate or within three years after the termination of their official public duties, from acquiring right on stocks in the legal entity over which the official or the body in which he/she works or has worked, conducts or has conducted supervision, except when such rights have been acquired by means of inheritance.

There is no code of conduct for MPs. The Parliament does not show much initiative in addressing issues of integrity and corruption prevention in-house. This is a significant gap which prevents fostering a culture of prevention of conflicts of interest among MPs (GRECO 2014).

Implementation

The regulations governing gifts and hospitality to civil servants are to a certain extent applied, although exceptions exist because some civil servants are said to accept greater amounts of gifts or gifts they are not allowed to keep for private use. However, there is no mechanism to verify such instances. Moreover, when public servants start their jobs they are not presented with their rights and obligations, and are not familiarised with the existence of a code of ethics they need to follow (TI Macedonia 2011).

Due to the absence of a code of conduct, there are no specific mechanisms within Parliament to give effect to the relevant provisions on the declaration of received gifts. There is no information in Parliament on how these rules are followed in practice. In the absence of the declaration/reporting mechanism, there is no control on whether MPs follow the rules on gifts. In the absence of a code of conduct, there is little guidance available to MPs on what kinds of benefits are acceptable and under what circumstances (GRECO 2014).

Civil society has repeatedly pointed out that there are no sanctions in the cases of breaching the existing provisions on ethical conduct in public service.

It is recommended that the Parliament develops internal mechanisms and guidance on the prevention of conflicts of interests and the acceptance of gifts, hospitality and other advantages, together with the appropriate compliance monitoring mechanism (GRECO 2014).

7 ASSET DECLARATION

Overview

The system for declaration of assets and income of public officials was introduced in 2002. The coverage is comprehensive and encompasses all three branches of authority: legislative, executive and judicial. The declarations are submitted to the State Commission for Prevention of Corruption and the Public Revenue Office (tax authority). All declarations

are public except those submitted by civil servants (OECD 2012).

Legislative framework

The Law on Prevention of Corruption stipulates the obligation on reporting property. Elected or appointed officials, including MPs, judges and prosecutors are required, after their election, to fill out an asset declaration. It should be accompanied by a statement, certified by a notary, waiving the protection of bank secrecy for all accounts in domestic and foreign banks. The content and the form of the declaration are prescribed by the SCPC and made available on its website. The declaration must contain detailed descriptions of the real estate, movable property of greater value, securities, claims and debts, as well as other assets in their ownership or in the ownership of their family members. Changes to the assets of elected and appointed officials also have to be reported (TI Macedonia 2011).

Asset declaration has to be filed after the termination of function or employment. In addition, every increase in the property (regardless of whether the change refers to the person or to a member of his/her family) also has to be reported. A procedure for examination of property status may be initiated against the functionary if he/she has failed to provide data or to report changes in the property; has provided incorrect data; or in cases of disproportionate increase of assets. Officials subject to these legal provisions have to communicate their asset declarations to the SCPC and the Public Revenue Office, which are then published by the SCPC on its website (Law on Prevention of Corruption 2004).

The law describes sanctions for the violation of the relevant provisions, including non-submission, late submission, incomplete statements and false statements. However, these sanctions are not dissuasive enough (GRECO 2014).

In 2011, the SCPC introduced the verification of the content of selected asset declarations in cooperation with the Public Revenue Office, according to a memorandum of understanding between both bodies. The first stage of verification is performed by the SCPC, which compares the content of the asset declarations with information contained in other relevant sources, such as the cadastre and other central registries. If this comparison reveals unexplained differences, the Public Revenue Office performs, at the request of the SCPC, a verification of the property status of the person concerned and his/her relatives (GRECO 2014). If a case of unexplained enrichment is detected by the overseeing bodies, after an interview with the person concerned, a decision can be taken to apply 70 per cent tax on the value of the unexplained assets (GRECO 2014).

Oversight

The declarations are submitted to the State Commission for Prevention of Corruption and to the Public Revenue Office. Asset declarations are posted on the webpage of the SCPC, which provides easy access for the public. However, the quality and level of the information provided seems to vary significantly. It can be seen that notions of “family members” and “movable property of greater value” have been interpreted differently in different cases (GRECO 2014).

The SCPC has been criticised by experts and civil society groups for lacking political will and capacity to verify declarations’ veracity and for lacking the ability to sanction non-compliant officials effectively (US Department of State 2013). A report by Freedom House points to the case of the former director of the state Film Fund, Darko Bashevski, who did not report his property when he was appointed to his position in 2009. However, it took two years for the SPCP to locate his address and his personal identity number in order to file charges against him. In 2012, some members of the commission failed to declare their own property. The SCPC has been accused by some media reports of focusing on the opposition in its investigations (Freedom House 2013).

Nonetheless, the EC 2013 progress report notes the moderate progress made by the SCPC in verifying asset declarations. According to the report, charges were brought in 2012 and 2013 against a number of public officials who had failed to submit asset declarations, conflict of interest statements or to declare their income. In 2012, SCPC conducted random verification of asset declarations and in 30 cases it asked the Public Revenue Office to conduct an asset examination procedure and, as a result, six officials were charged the 70 per cent tax rate on

their undeclared income. The SCPC also initiated misdemeanour proceedings against 10 officials who had failed to submit asset declarations (EC 2013). However, this report also finds that the SCPC is insufficiently staffed and funded, and its limited powers are hampering its development into an effective anti-corruption body (EC 2013). As highlighted by the GRECO 2014 report, the department in charge of verification of asset declarations is composed of two people who spend most of their time performing formal checks, leading to conclude that understaffing prevents the SCPC from carrying outs more than a formal examination of received declarations (GRECO 2014).

Implementation

Officials do comply with the obligation to declare their assets to a large extent. The GRECO 2014 report points out that, while the formal obligation to declare assets is followed, there is a widespread lack of public trust in the effectiveness of supervision over the content of the declarations, as well as doubts about their quality and accuracy. Fines imposed by the courts in cases of provision of false or incomplete information in asset declarations seem to be significantly lower than the amount foreseen in the relevant legal provisions (GRECO 2014).

Moreover, there is no registry of elected and appointed officials, nor any other system that would enable SCPC to know how many officials have the duty to declare assets in any given year. The total number of officials having to fill in the declarations seems unknown to the SCPC, as is the number of declarations that undergo a full verification each year (GRECO 2014).

The sharing of responsibilities between the SCPC and the Public Revenue Office appears to create a degree of overlap in their review as both bodies often compare the asset declaration information with the same sources. The GRECO report notes that the "sharing of responsibilities also prevents any of these institutions from taking ownership of the process as a whole and is thus detrimental to their proactivity" (GRECO 2014).

In order to make the asset declaration verification system more efficient and effective, it is necessary to create a database of the officials subject to declaration of duties and/or replacing the current declaration system by an annual one. This would make it easier to keep track of the officials' declaration duties and of changes in their assets over a period of time. It is also recommended that the verification process be streamlined with links made to the statements of interest received by the SCPC. The commission will have to demonstrate its willingness to proactively exercise an effective supervision, and to detect and sanction violations (GRECO 2014).

8 LOBBYING

Overview

The Law on Lobbying regulates lobbying and mandates the requirement for lobbyists to register with the secretary general of the parliament and report on their activities and income on an annual basis. However, shortcomings of the law have been noted by many commentators, pointing to the need to institute reporting requirements for public officials and strengthening the oversight.

Legislative framework

The Law on Lobbying regulates lobbying within the legislature and executive at the central level, and the local level. According to the law, the lobbyist has to register in the register maintained by the secretary general of the parliament and has an obligation to prepare a written annual report that must contain information on his/her lobbying activities, including information on the officials who were lobbied, the subjects of lobbying and the financial compensation they received for their lobbying activities. The lobbyist is obliged to submit information about all meetings with officials from the legislature, executive and local authorities. Elected officials are prohibited from lobbying until one year after they have ceased to receive a salary from their public job (Law on Lobbying 2008).

Shortcomings of the Lobbying Law have been pointed out both by civil society and international organisations, as well as by the SCPC itself.

The obligation for disclosure of lobbying lies with only lobbyists and not the public officials lobbied. (TI Macedonia 2011). MPs' contacts with lobbyists or other persons trying to influence their decisions

remain unregulated (GRECO 2014).

As pointed out by the GRECO 2014 report, the Law on Lobbying is only embryonic, while the State Programme for Prevention and Reduction of Conflicts of Interest adopted by the SCPC, points to the legal gap regarding the supervision of lobbying activities. The SCPC is only mandated to supervise registered lobbyists and its power does not extend to cover the activities of various natural and legal persons which are in fact performing activities in favour of certain interests. The Programme states that the measures described in the existing law are not sufficient to control lobbying activities or get accurate information on the financial and other benefits acquired through lobbying (SPCP 2011).

The EC 2011 progress report has pointed out that implementation of the Law on Lobbying continues to create selective access by interest groups to policy making. It is problematic that lobbying can only be undertaken at the invitation of the relevant legislative body, and is permitted for civil associations but not for foundations (EC 2011).

Implementation

Despite the legal requirement for lobbyists to register and comply to the rules on reporting, currently only one lobbyist is formally registered. The SCPC and the secretary general of the parliament have no official data about unregistered lobbyists, although it is widely believed that lobbying by different interest groups and individuals is widespread in practice. The reasons for such a situation are likely to be the lack of awareness on lobbying and deficiencies of the current law that does not allow the SCPC to supervise unregistered lobbyists (GRECO 2014).

Lack of enforcement of the Lobbying Law is cited as one of the corruption risk factors in the State Programme for Prevention and Reduction of Conflicts of Interest 2011-2015. It highlights the problems in the area of lobbying and lists activities that could be undertaken to address the problems in this area.

TI Macedonia has also pointed out the gaps in the regulation and implementation of provisions on lobbying, noting that the relevant provisions need to be implemented in practice.

There is obviously a need for a better awareness on lobbying and the corruption risks it carries if its activities are not undertaken in a transparent and accountable manner. The SCPC has proposed to carry out a number of activities in this area, namely to prepare a guide and a code of ethics for lobbyists, amending the Law on Lobbying and introducing the register of lobbyists at the SCPC to strengthen its control (SCPC 2011).

GRECO recommends introducing rules on how members of parliament engage with lobbyists and other third parties who seek to influence the legislative process (GRECO 2014).

Awareness about lobbying and the requirement for MPs to disclose contacts with lobbyists can be further reinforced by the introduction of a code of ethics for MPs, something that has been strongly recommended by TI Macedonia (2011) and GRECO (2014).

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