

Political corruption – Montenegro story

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INTRODUCTION

The problem of corruption is highlighted as one of the major problems that Montenegrin society faces on its European path. For a long period of time, from the major international addresses Montenegro has been constantly receiving messages whose content is similar and substance almost always the same and it comes down to the fact that corruption in Montenegro is present and concrete effects to the institutional fight against corruption in all segments of social life are missing or are not visible. These messages have been always interpreted in Montenegro in different ways, which is not a coincidence, considering the political circumstances in which Montenegro is rising from the renewal of independence to the present. On one hand, representatives of the governing elite always use the opportunity to present themselves "in the eyes of the international public," as social actors which have been constant, persistent and committed in "fight against this negative social phenomenon". On the other hand, representatives of the other - opposition political "half", they are just as constant, persistent and committed in claiming that the "governing elite is responsible for why the corruption in Montenegro, once and forever is not being stopped." If we compare both attitudes, except the essential difference that is obvious, we could notice one similarity among them: they don't have a solution to overcome the problems that undoubtedly exist. Condition of things remains unchanged. Corruption is still a part of everyday life of average citizen of Montenegro, and even worse, the tendency to corrupt behaviour in the system of values of the citizen is something that lasts and over time it has been identified with him and gets a social and moral justification. Therefore, the approach to this problem in Montenegro must be much more serious and thorough from what the politicians are offering to us today.

One of the segments of the society where corruption produces its unwanted effects is politics. Theoretically speaking, political corruption is the abuse of entrusted power for private or partisan purposes that political leaders or political parties perform in order to increase the power, wealth or influence. Thus understood, the political corruption in Montenegro is dominantly manifested in the sphere of financing of political parties and the abuse of state resources during the election process. In the last few years thanks to the activities of The Monitoring center CEMI, the significant progress has been made when it comes to the fight against political corruption in Montenegro. Certainly, the most significant effects of activities are present in the legislative sphere, because the laws that regulate funding of political parties which were just adopted on the initiative of CEMI. However, despite these results, there remains a need to strengthen the efficiency of law enforcement in various aspects (which will be discussed in subsequent sections of this paper) that can ultimately result in significantly reduced levels of political corruption in Montenegro.

1. SYSTEM OF FINANCING OF POLITICAL PARTIES IN MONTENEGRO

1.1. Legal Framework

Three years after first activities of CEMI in the field of financing of political parties, in March 2004. The Parliament of Montenegro adopted on the proposal of CEMI, the Law on financing of political parties. Thanks to CEMI's initiatives international standards in the area of financing of political parties in Montenegro were implemented for the first time. However, despite the high quality of solutions that it contained, this law was only a year after its adoption amended by the members of Parliament, introducing solutions that were contrary to international standards and have significantly collapsed the effects of application of the same. After that, CEMI, in cooperation with experts of the Council of Europe, did an analysis of the legal framework and recommendations on how to improve the area of financing of political parties in Montenegro. As a result of these activities, we created a new draft Law on financing of political parties, which was in conformity with the recommendations and international standards. CEMI, in collaboration with the Ministry of Finance of the Government of Montenegro formed a working group which discussed the decision of the CEMIs draft law, and with the minor changes government adopted it, after what it was submitted to Parliament for approval in the end of 2007. At the parliamentary session held on 29 July 2008. year new **Law on financing of political parties** was adopted, and it entered into force in August 2008. year.

A few months later, on CEMIs initiative, in the session of the Parliament of Montenegro held on 26th January 2009. another law in this area was adopted - the Law on financing of campaigns for the election of the President of Montenegro, the Mayor and President of municipality which regulated methods of acquiring and providing financial resources for the electoral campaign and the way of controlling the financing of candidates for the election of the President of Montenegro, the Mayor and President of municipalities, in order to ensure implementation and publicity of the Law. The law on financing campaign for the election of the President of Montenegro, the Mayor and the President of the municipality has its own principles and characteristics that separate it from the Law on financing political of parties. Primarily, this relates to the subject of regulation - which in itself is a separate entity in the financing of political parties and election campaigns - **financials and control of campaign financing in elections for the President of Montenegro, the Mayor and President of municipality**. Therefore, the adoption of this law imposed as a necessity - and its consistent and effective implementation as one of the conditions of legitimacy and democratic electoral processes that are subject to its regulation.

1.2. The effects of the Law on financing of political parties from its adoption until now

The provisions of the newly adopted Law on financing political of parties were applied in the parliamentary elections held in March 2009. year for the first time. Considering that CEMI had a very important role in the process of enactment of this Act, monitoring the implementation of its provisions in the electoral process has imposed itself as one of the program priorities of the organization. The subject of monitoring was primarily to collect and monitor the expenditure of funds that participants of the electoral process collected and spent for the purpose of financing the activities of election campaigns. Through monitoring of the election campaign, CEMI, using statutory mechanisms and procedures, provided continuous availability of information to public related to the implementation of the Law on financing of political parties in Montenegro.

1.2.1. Monitoring of campaign financing during the Parliamentary elections in 2009.

Ministry of Finance opted approximately 1.36 million Euros (0.2% of the budget of Montenegro) for the financing of election campaigns in Parliamentary elections. Election campaign itself, in terms of its financing, was from the start marked by an **irregular implementation of the Law on financing of political parties by the Ministry of Finance of Montenegro**. Namely, the Ministry has not properly applied the provisions of Art. 11 and Art. 12 of the Law according to which the total budget funds to cover campaign expenses is up to amount of 0.20% of the current budget which is divided into: 0.15% foreseen for the allocation of budget funds (Article 11 of the Law) and 0.05% provided on the basis of allocation of funds related to the budget (Article 12 of the Law).

In accordance with the funds provided (1.02 million Euros), all political parties and coalitions which were certified by the State Election Commission, should have to share 20% (**204,000 Euros**) of that amount in equal parts. Considering that State Electoral Commission confirmed 16 candidate lists, a simple calculation is required to come up with data that at the beginning of the campaign they should each share equal part of 204,000 Euros, so that each

list should get around 13,000 Euros. However, **with disputed decision of the Ministry of Finance, 16 confirmed candidate lists, received amount of 17000 Euro, which is 4000 Euros more than the funds provided for each confirmed list, which in total value is than 64000 Euros.**

CEMI duly informed the Ministry of Finance of Montenegro and the public about these flaws that were made during distribution of the first tranche of funds to political parties. With this failure Ministry of Finance damaged only those political parties which gained parliamentary election status, and as they have not found necessary to initiate a question about the decision of the Ministry of Finance, CEMI has decided not to further prosecute the matter, because the citizens of Montenegro were not affected by the distribution of the remaining funds provided for the campaign - allocation of these funds was carried from the rest of the sum provided for financing activities of the election campaign - which was due to the aforementioned failure greatly reduced.

In the final stage of the electoral process CEMI paid special attention to respect of the obligation of submission of reports on the financing of election campaigns by the electoral lists that were involved in the electoral process, which is derived from Art. 23 of the Law on financing of political parties. According to official information received by the State Election Commission of Montenegro, of the total number of political parties and candidate lists that were participating in the elections 2009, **only nine of them submitted complete reports on the origin, amount and structure of the money collected and spent for campaign. Other participants of electoral process flagrantly violated the provisions of the Law on financing of political parties that are related to the obligation of submitting a complete report on the financing of election campaigns.** In this way requirements from Art. 30 of the Law on financing of political parties were fulfilled. They predict that the political party as a legal person should be punished by a fine of hundred up to two hundred amounts of the lowest wage in Montenegro if it fails to submit reports on the origin, amount and structure of the funds collected and spent for campaign.

Ministry of Finance, as the executive in charge for implementation of the Law on financing of political parties was required to initiate infringement proceedings against all parties, i.e. the electoral lists, people responsible for violation of the Law on financing of political parties. Punishment would have the primary goal to adequately punish participants in the electoral process for contempt and breach of statutory duties prescribed. As the Ministry of Finance has not acted in accordance with their powers, CEMI as a representative of civil society and initiator of adoption of this law, submitted to the **Ministry Requests for commencement of court proceedings** against unethical political actors of the electoral process, which, in due time have not submitted complete financial reports of origin , amount and structure of the obtained and expended funds to finance the election campaign in the parliamentary elections held on 29 March 2009. year. **Six months after CEMI filed Requests for commencement of court proceedings in February 2010. year, against the political parties that have not submitted reports on campaign financing, the Ministry of Finance has filed eight misdemeanor charges. In that way, for the first time in Montenegro, political parties were held responsible for violation of the Law on financing of political parties.**

1.3. The institutional framework for the implementation of the Law on financing of political parties - shortcomings and challenges

Pursuant to the provisions of Art. 7 of the Law on financing of political parties, for monitoring of the implementation of this law is government authority is the Ministry of Finance. This provision, which specifies obligations in terms of monitoring implementation of the Law on financing of political parties, grew out of the problems in the implementation of previously existing laws, which are primarily related to the absence of state authority that is

explicitly in charge of the application of the provisions thereof. If we want to talk about specific problems faced by an administrative body in charge of law enforcement in this area, we must mention one of the key factors that caused the dominant existence of the problem, which concerns the **basic professional interest and commitment of this body to exercise its basic functions - monitoring of the implementation of the Law on financing of political parties.** Through direct contacts of representatives of CEMI and the Ministry of Finance, it was confirmed that this administrative body is rather reserved and professionally unmotivated for supervision over the implementation of the Law. This is primarily caused by lack of department that would, at the level of the Ministry, deal with issues of importance in the field of financing of political parties and electoral campaigns, as well as the lack of human resources and experts in this field that would adequately oversee all aspects of the implementation of this Law. With this in mind, the Ministry itself also supports relocation of responsibilities for monitoring the implementation of the Law on financing of political parties from the Ministry of Finance to institution which would have the capacity to commit itself to implementing of these responsibilities.

From the highlighted problem which is, in relation to the others on a higher level of abstraction, other problems are deriving – specific problems in the implementation of this law, which are dominantly concerned to institutional aspect of the implementation of the provisions thereof. These are: **incomplete or incorrect implementation of the Law on financing of political parties** concerning the allocation of funds to political parties or electoral lists that participate in the electoral process, **failure to act in accordance with legal procedures in case of non-compliance with provisions of law related to the submission of financial reports of political parties** (filling Requests for commencement of court proceedings , and prescribing sanctions for violation of the law ...); **non-fulfillment of obligations concerning development of forms and other documents which are necessary for technical implementation of certain provisions of the Law on financing of political parties** (making patterns for reports on the property of political parties for example.)¹ etc.

Through analysis of the current situation and institutional capacity for implementation of the Law on financing of political parties, it is easy to conclude that it is necessary to relocate supervision over the implementation of the Law on financing of political parties from the Ministry of Finance. CEMI, in accordance with long-standing practice, did comparative analysis of legal framework of EU countries and countries from region, and created a model² according to which **the State Electoral Commission of Montenegro** would be one of institutions which could, in due course after the adoption of new Law on State Election Commission, assume overall authority over the implementation of the Law on financing of political parties. Certainly, CEMI is committed to plan that in accordance with new Law on State Election Commission, this institution should be **professionalized** and to form a special service - **Department for review and control of financing of political parties (Department for audit)** which will be composed of specially trained officers who will monitor the funding of political parties In accordance with the Law on Financing of political parties. Audit Service should take care of consisted implementation of the provisions of the law in terms of allocation of funds to political parties on an annual basis and through the electoral process. A special segment of its work should be control of submission of reports on the financing of political parties and the authorization for filing Requests for commencement of court proceedings for misdemeanor charges against those political parties that are in violating Law on Financing of political parties. Jurisdictions that auditor of the Ministry of Finance had so far which are related to the obligations arising from the Law on Financing of political parties and the Law on financing of campaigns for the election of the President of Montenegro, the Mayor and President of the municipality, according to the CEMI's solutions, should convey to the State Election Commission or its Department for the audit.

1 Through project "Improving the system of financing of election campaigns" supported by the FOSI - CEMI o has prepared reporting forms for political parties on the property on an annual basis and forwarded them to the Ministry of Finance.

2 For more details look into CEMI's policy study, "State Electoral Commission of Montenegro - Models for improvement" – available at: www.cemi.org.me

2. ABUSE OF THE STATE RESOURCES DURING THE ELECTORAL PROCESS

Pre-electoral period represents a time when political parties are trying hardest to influence the will of the voters. In the name of that goal they use all available means, including the ones that are prohibited by the legal provisions of several laws. Primarily, this relates to the abuse of the state resources, including both state-owned property governed by the Government and the property of local authorities which is often controlled by the opposition parties at the level of the Republic. Abuse of the administrative resources in electoral campaign is defined as use of **state or public powers and capacities** (including repressive bodies, human, financial and other resources) **by the politicians or political parties in power, aiming to increase their chances for victory at the elections, throughout breaches of legal and other principles, avoiding of entrusted responsibilities in conducting public services.** Politicians and leading political structures have at their disposal wide spectrum of resources through which they can benefit in electoral process in the manner that goes beyond the frame of fair political behavior. During electoral campaigns, mostly are being abused **legal, institutional, financial and media resources.** In this way, besides harmful effects that occur as a consequence of the corruption presence, entire principle of democratic elections is being brought into the question.

This phenomenon is for the first time marked at the elections in the Russian Federation and Ukraine, but today it is characteristic of many electoral systems. In similar way, abuse of the state resources is present in our state. **This occurrence is apparent at almost every elections since introduction of multiparty system in Montenegro, until today.**

2.1. Analysis of the existing legislative framework

In Montenegro there is no legislative that would directly regulate area of the state resources abuse during the electoral campaign. Still, individual laws through some provisions indirectly mention this issue, remaining at the surface of the problem, without detailed explanation of the principles and forms of this phenomenon. Therefore, in order to efficiently suppress this form of political corruption, **it is necessary to improve the measures for prevention of state resources abuse in electoral purposes and include them into strategic anti-corruption documents of Montenegrin Government (National Strategy and Action Plan for the Fight against the Corruption and Organized Crime 2010- 2013)³ and create a specialized legislative to regulate this issue.**

Current Law on Election of Members of Parliament and Committees, through multiple provisions sets obligation for the state bodies to restrain of any involvement in the electoral process and to prevent use of public property by the electoral list holders. In Chapter VII of the Law (article 50 – article 64), is regulated the presentation of the electoral lists and candidates. Significant part of this Chapter is dedicated to the issue of **public property use during the electoral process.**

In addition to this Law, only the **Law on Financing of Campaign for the Election for President of Montenegro and Meyers (adopted on the initiative of CEMI)**, in its article 11 bans candidates from use of resources of Montenegro or municipalities, except if it is allowed by a special permission.

By the **Law on Public Officials and Employees**, it is set that public officials and employees should perform their duties **impartially and neutrally in accordance with public interests.** This obligation is more precisely set by the **Code of Conduct of Public Officials and Employees**, based on this Law. According to this Code: „*Public*

³ Representatives of CEMI in the inter sectoral Working group for creation of the strategic documents for the fight against corruption and organized crime, formed by the Government of Montenegro, have proposed a set of very significant measures that are aiming to create legal framework and institutional mechanisms for the fight against state resources abuse during electoral process .

employee should perform his duties regardless to his political function. Official will not allow that his eventual political activity influence his duties, or used in political purposes. Due to the specific character of certain duties, official respects existing limitations of his political activism“.

When it comes to the **media legislative**, possible abuse of the public resources is recognized both in the media laws and in the Code of Ethics for the journalists, as well as in Law on the Election of the Members of Parliament and Committees. With provisions of these laws and the Code, are regulated duties and responsibilities of media, above all state-financed media. Exactly in the Chapter VII of current Law on Election of Members of Parliament and Committees are established articles that are defining the rules of electoral lists presentation, which provide equity for all political parties and candidates with accentuation of state-owned media which are obliged to uniformly inform citizens on all electoral lists through their shows.

2.2. Property of ex socio-political organizations- (un)resolved problem

One of the problems that Montenegrin society is facing since introduction of the multiparty system until today is unlawful appropriation, use and disposing with the property of the ex- socio-political institutions and organizations, by some political structures in Montenegro. Subject of the abuse is the property of former Communist Union, Socialist Union of Working People and Socialist Youth Union. Numerous irregularities are connected to the issue of **property continuity, appropriation and disposition of profits through partial use of listed property**.

As an example of abuse we can point out that one of the disputable objects is also the building where offices of Government of Montenegro were situated are the property of ruling party in Montenegro- Democratic Party of Socialists. From 1992 until the end of 2009, the Government of Montenegro is paying significant amounts to the ruling party. Through this case, are clearly identified two problems that are directly or indirectly caused by this situation. First problem could be marked as **identifying of ruling party with the Government i.e. the State**, because functioning of the Government and the ruling party functioning „under the same roof“ is one of the reasons for which ordinary citizen cannot make a distinction between state and political property, between state and political function. Second important problem is **unequal position of participants in the political life** of Montenegro, i.e. in electoral process as one of most significant parts of that life.

Financial resources and other benefits that ruling party obtains through use and disposing with the property of the ex social organizations are significant in that degree, that it provides means for functioning of the party at the level of the whole state, which most certainly encourages functioning of the ruling party infrastructure- whereas other parties must rely their functioning on the budgetary resources allocated to them on the basis of the Law on Financing of Political Parties. Certainly, this occurrence is most visible during the electoral process, because only then financial power of the ruling party becomes obvious. These are the reasons for which citizens of Montenegro, in some way accepted the fact that the State is- the ruling party. Phenomenon that was probably present in many states, but in Montenegro for sure it has longest term and it still lasts.

2.3. Abuse of the state resources during the electoral campaign- Parliamentary elections 2009

Center for Monitoring CEMI has followed occurrences that could be characterized as the abuse of state resources during the electoral campaign, in the framework of the electoral campaign monitoring during the elections held 29th March 2009. **Monitoring of the administrative resources abuse, which CEMI realized, was the first monitoring of that type that an organization has conducted in Montenegro.** Methodology used in the monitoring is prepared on basis of the methodology created by the Open Society Justice Initiative i Transparency Russia, and which gave expected results at the elections held in Russia and Ukraine. Most significant conclusions that CEMI has

reached through monitoring of this electoral process were:

- ❖ Abuse of state/administrative resources during electoral campaign exists and endangers legitimacy of elections in Montenegro;
- ❖ Active participation of Public officials in the electoral process, especially Ministers in the Government of Montenegro is detected;
- ❖ Public employees promoted political programs of their parties, using projects that will be financed from the state Budget or budgets of municipalities;
- ❖ Existing legal framework is not regulating adequately area of the abuse of the state resources during electoral process in Montenegro;
- ❖ Problem of the use and disposing with the property of ex socio-political organizations in the high degree provokes the occurrence of unequal position of political actors in the electoral processes in Montenegro;

3. Recommendations of CEMI for improvement of existing policy for the fight against corruption in Montenegro

1. In order to improve **transparency of the financing political parties and electoral campaigns system** in Montenegro, it is necessary:

- ❖ **To continuously work on the effective implementation and respect of this Law's provisions, primarily those related to the reporting obligations of political parties regarding the funds allocated from the Budget of Montenegro, for the regular activities as well as for the activities of political campaigns.** These measures will significantly increase the citizens' trust in political subjects in Montenegro, and by that, it will increase legitimacy of electoral process – one of the main postulates of the democratic society.

2. In order to improve **institutional fight against political corruption in Montenegro**, it is necessary to:

- ❖ **Transfer control mechanisms for the implementation of Law on financing of political parties from the Ministry of Finances into the jurisdiction of State Electoral Commission of Montenegro**, which should be reformed into institution based on the principles of professionalism, independence and transparency in the work; This measure will be hard to implement, due to the tendency of political parties to influence electoral process, and to keep functions of State Electoral Commissioners primarily political. However, these mechanisms should be placed within the independent and competent institution. In the policy paper "Reform of anti-corruption institutions in Montenegro", CEMI proposed creation of the new independent anti-corruption institution which would take over all tasks related to the fight against political corruption. This institution could take over control mechanisms for party financing and its audit.⁴
- ❖ It is necessary to form **special sector for audit control of the political parties financing**, within SEC, which will take care of the implementation of the provisions of this Law on the annual level and within electoral processes. Special segment of the Sector's work should be regular controlling of financial reports and initiation of procedures against political parties and individuals that are breaching provisions of this Law ;

3. In order to act more efficiently in prevention of state resources during electoral process, it is necessary to:

- ❖ **Create specific legislative frame that will regulate all the aspects of the abuse of**

⁴ Policy paper „Reform of the anti-corruption institutions in Montenegro“ is available at www.cemi.org.me

administrative resources, which will be based on the sustainable and applicable solutions. CEMI will, within the frame of their regular program activities prepare the draft **»Law on prevention of State Resources Abuse during Electoral Process«** and advocate its adoption in the Parliament in the shortest possible period.

- ❖ Within the **»Draft Law on prevention of State Resources Abuse during Electoral Process«**, special segment will be dedicated to the issue of **equal allocation of property of ex socio-political organizations to the political subjects in Montenegro**. After list of inventory and valuation of the property is made in every municipality in Montenegro, it is necessary to make a **just allocation of the property to all political parties that have their representatives at local or level of the republic, trough new laws and regulations**. Mentioned property will not be permanently owned by these political parties, but it will be at their disposal during their mandate. With these solutions, financial position of political parties, especially those that are currently paying significant amounts for their offices, will be improved, in the manner that they will be able to invest more in the development of the party resources, which will result with improvement of their position in political life Montenegro.