



British Embassy  
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# Substantive control of campaign financing: A step yet to be made

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# Substantive control of campaign financing: A step yet to be made

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# Introduction

Center for Democratic Transition (CDT) makes recommendations to the concerned public and the Anti-Corruption Agency (the Agency) to improve its work in the area of implementation of the Law on Financing of Political Entities and Election Campaigns, that is, the control of financing of political entities and use of state resources.

Our assessments and recommendations stem from taking part in the work of the Agency's working group for monitoring the election campaign, the analysis of the Agency Report on the supervision during the election campaign and the results of our monitoring of compliance with the Law.

The general conclusion is that the Agency is marking slow progress on the path to building institutional integrity. Despite some progress, the Agency struggles with taking any step towards a broader interpretation of its powers and full transparency.

In this election cycle, the Agency has better prepared a methodology for controlling campaign funding and has improved its administrative transparency. However, the control process itself is not sufficiently transparent and comprehensive. The outcome of individual controls is generally unknown, the lawbreakers often hide behind statistical data, and individual decisions, explanations, or records on the conducted control of taxpayers are not publicly available. It seems as if the effects of the control process are not proportional to the effort. Also, the public does not have enough information about the outcomes of the proceedings initiated by the Agency.

As in all previous election cycles, the existing legal framework has been shown to require a number of changes in order to exercise substantive control. Prohibitions and restrictions defined by law often serve to overburden and thus stop up the Agency with excessive documents, while the effects of control are lacking.

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Civil sector representatives also took part in the work of Election campaign monitoring working group. During the work of the Working group specific fields that needed improvement of the control process and legal norms were identified. Transparency of the Agency has been improved due to publication of more content on their website, however, there has been no reference to lawbreakers nor the conclusions on abuses were disclosed.

During the campaign, citizens' reports of possible abuses were mainly filed through the civil sector. This indicates that the Agency activities aimed at educating and motivating citizens to file reports require further improvement. In the pre-election period, under a public campaign and through an online application CDT collected citizens' reports of possible abuses which were further processed by the Agency. Six proceedings were instituted against 19 entities.

Reviewing of the Agency reports is hampered by the fact that they are not published in a machine-readable, searchable format.

We remain open to further elaborate our recommendations to all interested actors, provide explanations and further information, but also to contribute to the improvement of the current situation through joint work.

Herby we thank the Anti-Corruption Agency for their openness, cooperation and for providing information necessary for the preparation of this document, and to thank to the British Embassy in Podgorica for their confidence and financial support.

## Agency taking responsibility for its own competencies is prerequisite for better results

Narrow interpretation of competencies in addition to shortcomings in the methodology, since the very establishment of the Agency, have served as a solid excuse for the narrowed scope of control. It is obvious that the ruling parties gained an illegal advantage in this election cycle by using state resources and public functions; moreover, there have been many doubts concerning instances of financing from illegal foreign sources, hidden funds and funds traced back to dubious capital. These cases, other than occasional rumours and media releases, were not subjected to thorough the Agency scrutiny.

The Agency cannot excuse themselves for not carrying out the control of financing of political entities in a more proactive and efficient manner due to the fact that certain issues are not closely defined by law. In order to respond to key challenges. The Agency needs to develop a control methodology as opposed to simple administrative and technical checks. Control procedures require full transparency and there are have not been any notable developments in this field. The Agency must regularly publish detailed information on the controls carried out, including data on the subject of control, the basis for initiating the procedure and analytical reports on the outcome of individual control.

## Control of political entities remains major challenge

Law on Financing of Political Entities and Election Campaigns was adopted less than a year ago, but substantial improvements in the financing of political entities and the control of the Agency were not considered during its preparation; thus, this will be the challenge for the new Parliament in the period ahead. This Law lays down the rules of financing political entities, including the manner of acquiring

funds, prohibitions and restrictions. There are also provisions on the misuse of public resources during the election campaign, rules on control, supervision and audit of the operations of political entities.

In order to improve financial transparency and accessibility of information, the Agency has prepared a database of financial statements of political entities, transparent and easily searchable by political entity and by election cycle. The Agency methodology for verifying the financial activities of campaign participants has also been improved, but it is still not comprehensive and leaves room for incomplete reporting. The reports of political entities themselves are not sufficiently clear, and contain information that is illogical and of different quality.

Some of the examples of the above, observed through our monitoring, call into question the credibility of the report. The Coalition for the Future of Montenegro and the Social Democratic Party did not report on costs of pre-election rallies in their reports, although the time and place of rallies could easily be verified. Also, the Democratic Party of Socialists, the Coalition “For the Future of Montenegro”, the coalition “In Black and White” failed to report on the transportation or fuel costs, despite the active field campaign. The Agency does not provide an explanation of these or similar examples in its report.

Credibility of the reported non-financial contributions is extremely questionable. The law stipulates that the non-financial contributions are to be presented at market value and reported as income. Non-financial contributions also include suppliers’ discounts to political entities, so the very fact that none of the political entities disclosed any benefits for any campaign—related cost, in terms of approving lower-than-market prices, raises doubts. From the reports of political entities, it remains unclear whether there were no non-financial contributions during the campaign, or the parties failed to report them.

In its report on the control of non-monetary contributions - the provision of services or delivery of products to political entities free of charge, the Agency states that a check of accounting and reporting has been performed. Based on the verification of the 12 non-monetary contributions<sup>1</sup>, no irregularities were identified.

In addition to the amounts reported, the verification of non-financial contributions must include other sources of information to enable cross-checking of the authenticity of the report. This would prevent possible abuses and the practice of failing to report numerous free-of-charge products or services used by political entities in the campaign. An example would be transportation and fuel costs that undoubtedly occurred; however, a number of entities did not disclose such items in their reports, neither as a cost nor as a non-monetary grant.

Control of media advertising was performed by cross-checking the data submitted by parties, suppliers and specialized media monitoring agency on one hand, and by the Agency’s media monitoring on the other. During the control the

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1 Total value of the reported non-monetary contributions is EUR 9,091.21.

Agency determined that specific media advertising costs were not reported. As a justification for the failure to disclose these costs, political entities stated that advertising costs were related to their regular work and paid from the entity's main and not the campaign account. In the absence of specific data on costs, the Agency could not assess whether these were indeed regular operating costs; thus in this case it established room for manipulation and miss-presented reporting and recommended that the party's regular operating costs be clearly separated in the campaign from election campaign expenses.

A separate problem in the monitoring of actual costs of the campaign is the cost of on-line marketing, which is not comprehensively verified by the Agency.

The very control of reports of political entities is described in detail, in terms of statistics on the number of reports, amounts and deadlines. The Agency pointed out 74 irregularities to political entities. Four misdemeanour proceedings were initiated for violation of the obligation to publish reports on contributions and for falling behind the deadlines for reporting on the funds spent in the election campaign. However, even in this case, the Agency did not specify which political entities violated the law. Irregularities concerning incomplete documents and incomplete reporting were also noted. However, the outcome of the 17 requests for clarification and/or amendments addressed to political entities is not identifiable in the Agency report.

The method of control and supervision of campaigns needs significant improvement, in terms of in-depth verification of data provided by political entities.

Also, the financial reports of political entities need to be improved to contain more complete overview of financial transactions during the election campaign, with an emphasis on more precise categorization of costs. The cost categories that are an integral part of the candidate reporting forms must be sufficiently clear and precisely classified, so that political entities do not report the same type of cost in different categories. In order to strengthen the accountability of political entities in terms of more diligent preparation of reports, the legislator should consider introducing sanctions for submitting incomplete and misstated reports.

## Selective approach in process of controlling grants of individuals and legal entities

The law stipulates that contributions to political entities made by persons that performed activities of public interest or have concluded a contract throughout the public procurement procedure are not allowed. The period to which the prohibition applies entails two years preceding the conclusion of the contract, for the duration of the business relationship, as well as two years after the termination

of the business relationship. Having in mind the wide time span and given that the prohibition applies to all legal entities, companies and entrepreneurs, but also to related legal and natural persons, in this election cycle it turned out that the Agency is not able to perform this check independently.

At the initiative of the CDT, the Agency initiated a procedure to control entities making financial contributions in accordance with the Law. However, the verification and analysis covered only contracts concluded during 2020, not the entire period stipulated in the Law<sup>2</sup>.

The disadvantage of the legislative framework is that institutional cooperation in the control process is not explicitly prescribed. In the absence of a legal obligation, administrative bodies do not demonstrate any readiness for inter-institutional cooperation. Instead of acting upon the request for verification of campaign donors and answering to the question of whether there were election campaign donors that were authorized representatives of contractors, the Public Procurement Administration (PPA) furnished the Agency with 2,200 public procurement contracts for their own independent review.

As a consequence of this approach, despite the fact that it was to cover only a period of a single year, the control in subject has not been carried out to the date of publishing the oversight report; thus, the public was deprived of information about the possible violations of this proscription.

Moreover, the public was also deprived of information on whether persons that in any form of contractual relations with the state had performed activities of public interest were checked and in what way. Campaign donors were persons who, as beneficiaries of concessions, had a contractual relationship with the state.<sup>3</sup> However, in this case, although the media and the civil sector<sup>4</sup> pointed out to such violations during the campaign, the Agency did not recognize any violations of a kind in its report. An imprecise legal provision, with no clear reference to state concessions, left room for these abuses. However, the definition of concessions clearly indicates that they are extended for the use of natural resources, general-use goods and other goods of general interest, and for the performance of activities of public interest.<sup>5</sup>

The Agency checked whether the campaign donors had the right to vote<sup>6</sup>,

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2 Law on Financing of Political Entities and Election Campaigns ("Official Gazette of Mn", No. 3/2020 and 38/2020) Article 33 para. 5

3 Igor Masovic, Tamara Kokic and Milic Novovic donated a total of Euro 13,000 to the Democratic Social Party, although they were authorized representatives/owners of companies using concessions under contracts for construction of mini hydro plants.

4 <https://www.vijesti.me/vijesti/politika/459177/biznismeni-siroke-ruke-kada-je-u-pitanju-dps>

5 Concession Act, "Official Gazette of Mn", No 8/2009 and 73/2019, Art 2, para. 1

6 Law on Financing of Political Entities and Election Campaigns ("Official Gazette of Mn", No. 3/2020 and 38/2020) Article 33 para. 1



and in two instances determined that individuals were not on the voter list. Due to the violation of this prohibition, proceedings were initiated against one political entity, and the Agency recognized the importance of introducing misdemeanour liability for the contributing entities in the future. It remains unclear why the Agency missed providing information on these individuals and the political entity in its report, when it provided the media with precise information on the case during the campaign.

The Agency checked whether campaign donors had the right to vote, and in two cases determined that individuals were not on the voters list. Due to the violation of this prohibition, proceedings were initiated against one political entity, and the Agency recognized the importance of introducing misdemeanour liability for contributors in the future. It remains unclear why the Agency failed to provide information on these individuals and the political entity in its report, given that it had provided the media with precise information on the case during the campaign.<sup>7</sup>

Among the campaign donors, 15 beneficiaries of social welfare were identified based on the Ministry of Labour and Social Welfare's records, however, the Agency did not specify which political entity they paid contributions to. This practice of individuals in a state of social need donating money to political entities year in, year out brings into question the justification of the allocation of social benefits. This raises suspicion that either social welfare benefits were received by persons who were not in a state of social need, or that someone else's money was injected into party finances using those individuals.

In its report, the Agency did not address the numerous suspicions and public accusations of financing political entities from abroad, despite the legal prohibition, but stated that there were no contributions from other countries. This refers primarily to the donation of the Government of Serbia to Serbian associations prior to the parliamentary elections in 2020 that was suspected to be in the support of campaign of a certain political entity<sup>8</sup>.

Also, the Agency found that there were no contributions from religious communities. The participation of third parties in the campaign does not necessarily imply making direct contributions to the political entity, but may entail a broader support. Although the public witnessed that the Serbian Orthodox Church conducted a long and expensive campaign that helped one side in the elections, this was not officially recognized anywhere. The fact that our Law does not whatsoever recognize nor regulate the participation of third parties in the elections does not prevent the Agency from pointing out to it and making recommendations for improving the legal framework.

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7 <https://www.vijesti.me/vijesti/politika/467557/ask-pokrenula-postupak-protiv-dps-a>

8 Pobjeda, "Serbian government is helping Serbian associations in Montenegro with 1.64 million", 21.05.2020, [https://www.pobjeda.me/clanak/vlada-srbijesa-164-miliona-pomazerspska-udruzenja-u-crnojgori?preview\\_mode=true](https://www.pobjeda.me/clanak/vlada-srbijesa-164-miliona-pomazerspska-udruzenja-u-crnojgori?preview_mode=true)

In order to implement the campaign donor verification process in practice, a comprehensive and searchable database of legal entities, companies and entrepreneurs who, on the basis of a contract with the competent authorities, performed activities of public interest or entered a contract throughout the public procurement procedure.

Moreover, the Agency must carry out the control of contributing entities on all legal grounds, not by using the selective approach. In this field, if there are challenges as for the capacity and/or scope of work, institutional cooperation should be strengthened. Those that violate the law must not go unpunished, under the pretext of the impossibility of verification. In addition, the Agency must not disregard information coming from the media and the civil sector regarding violations of the law, but must use it as reference for initiating the control procedure.

## Control of possible pressure requires more detailed checks

During this election campaign, the Agency also controlled the prohibition on exerting pressure in such a way that during the field control, employees in the public administration were asked at their workplace about possible pressures or influence on the electoral will. In this election campaign, the said methodology was particularly insufficient given the limitations of the scope of field control due to the pandemic, and given that a large number of employees were not in their workplaces due to working from home or using annual leave. After such a check, the Agency found that there was no influence of political activists or pressure on employees, and this conclusion is pervading every Agency report.

Changing the way of controlling the pressure to include checking a larger number of people while respecting the principle of anonymity should be considered. This issue is directly related to the credibility and trust in the work of the Agency, which should establish a secure line for reporting possible pressures. Otherwise, the legal norm becomes pointless, since this control mechanism has proven to be insufficient for reliable fact-finding. It is hard to imagine that an employee would, at work, publicly admit that any pressure was exerted.

# Misuse of resources in election campaign

Concerning the misuse of state resources in the campaign, excessive spending of public funds, use of public premises for campaign activities, use of public machinery without compensation, payment of social benefits, employment without prior approval, use of official vehicles for the campaign, write-off of debts for electricity, water and/or utilities is prohibited.

Out of the 125 complaints, 88 related to possible misuse of state resources in the campaign. The agency sent 888 warnings to taxpayers and conducted 477 ex officio proceedings.

## Numerous violations of prohibition of employment

In the previous period, we stressed out that the amendments to the Law enabling employment during the campaign in companies owned in major part or partly by the state leave room for abuse of employment. We have sent an initiative to the Agency to, despite lacking legal prohibition, check employment in the 13 largest companies owned in major part or partly by the state. The control revealed that 38 employment contracts were concluded in these companies during the campaign, which indicates the need to urgently re-impose the legal prohibition of employment in the campaign over these companies.

Although the institutions are obliged to submit data on employment during the campaign, the Agency by checking the data from the records of the Tax Administration, found that in 92 cases the institutions violated the Law and failed to submit required documents. There are no details in the Agency report on the outcome of the further verification procedure.

## Public machinery is left beyond the scope of control

Agency has not adopted a methodology for controlling the prohibition on the use of public machinery and equipment. The conclusion of the Report is that no objections were raised to the violation of this prohibition. There is also no information on how many law enforcement officers are in possession of public machinery that could be misused in the campaign, or whether some of them were subjected to field control or were asked to report on the use of machinery or equipment.

Agency cannot rely solely on the receipt of requests for the control of legal prohibitions. The methodology for conducting this control must be designed so that the legal prohibition itself does not become meaningless.

## Existing normative framework does not contribute to substantive control

During this election campaign, 452 budget spending units at the central and local level were required to publish analytical records on spending on a seven-day basis and submit them to the Agency. Ministries and municipalities are obliged to publish data on the distribution of all forms of social welfare benefits and data on the spending of the current budget reserve once every seven days. Also, all institutions, as well as companies founded and/or owned in major part or partially by the state or local self-government units were obliged to disclose all issued travel orders for the use of official cars every seven days.

On a representative sample, the CDT monitored compliance with these obligations on two occasions:

- In the period 20-26 July, we searched the websites on July 28, 2020, the day after the obligation to publish data expired;
- In the period 10-16 August, we searched websites on August 18, 2020, the day after the obligation to publish data expired.

Monitoring has shown that most entities subject to the law publish mandatory data on the spending of public funds in the pre-election period, but many of them hide travel orders, analytical records and information on social benefits, which is the direct violation of the Law. On the other hand, the Agency ignores these omissions and a general conclusion assesses that the authorities have transparently disclosed the use of public resources in the election campaign.

In the first round of our control, we found that almost a fifth of the institutions that were subject to compulsory publishing of analytical cards, travel orders and data on social benefits failed to meet this requirement.

The second round of monitoring showed poorer results, with a quarter of institutions failing to meet the legal obligation to publish analytical records and travel orders. Data on social benefits and the use of budget reserve were not published by 10% of entities subject to the Law.

Agency initiated four misdemeanour proceedings for violating the prohibition of the payment of social benefits during the campaign, and as a rare example, named municipalities that had violated the Law<sup>9</sup>

The monitoring showed that certain companies owned in major part or partially by the state or local self-government unit did not have websites at all, thus avoiding the legal obligation to publish information.

As in previous elections, there have been instances of differing formats of

analytical reports, which in some institutions are drawn for the institution as a whole, and not disaggregated by budget spending units.

Also, in some cases, travel orders are published on a monthly basis, although the Law clearly states that entities subject to the Law must publish information on the use of official vehicles on a seven-day basis.

Agency has established good practice of weekly publishing a list of institutions that (do not) comply with legal obligations, however the database is not regularly updated. Thus, the public is deprived of the list of institutions that failed to publish data on the use of public funds in the pre-election period and/or travel orders; municipalities that do not disclose information on the payment of social benefits; entities subject to the Law who do not even have websites, etc. By acting this way, once again in this election cycle the Agency missed the opportunity to take actions that would promote the integrity of the election process and with its public appearances prevent the recurrence of these phenomena.

The legal obligation to publish data on consumption and the use of official vehicles aims to strengthen transparency and prevent misuse of public finances. However, the practice has shown that such excessive documentation, for as many as 973 entities subject to the Law, actually blocks the Agency's work on conducting control, so the results are missing.

It is necessary to consider changes to the Law with this regard and to step up the efficiency of the Agency's control in this area, in terms of verification. Transparency of public finances must be a standard followed regardless of whether an election campaign is underway or not. A way to improve transparency would be to adopt provisions obliging entities subject to the Law to publish data on spending regularly, not just during the campaign. Also, the form and manner of publishing data must be uniform for all bodies.

## Above-average spending of current budget reserve requires better transparency

Decisions on the use of the current budget reserve have been published, but as there are 810 special documents, the search is literally impossible. The table contains data on the number of decisions and amounts, but not data on the recipients of payments. Given that the amount in question of over 46 million euro is extremely large, over a short period of time, the Agency must make additional efforts to explain to the public the structure of these costs and lift the suspicions of possible abuses during the election campaign.

## Communication with the public needs further improvement

Communication with the public and planning of PR activities during the campaign have improved compared to the previous period. PR Action Plan which was an integral part of the Control and Supervision Plan during this election cycle is itself a positive step forward. However, further improvements are needed in this area, in order to increase public confidence in the work of the Agency. It would be of importance for the Agency to strategically plan public relations through the adoption of a special PR strategy to improve its communication, but also to plan the activities of educating voters about their rights in the election process. These activities of the Agency must be carried out continuously, and they must not be limited



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