

THE ISSUES OF FUNDING OF POLITICAL PARTIES IN LITHUANIA FROM THE PERSPECTIVE OF PRIVATE LAW

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Abstract

The funding of political parties is usually understood exclusively as an institution of public law. This research reveals that the relations of property acquisition by political parties gratuitously (funding) may also be attributed to the object of regulation of private law. When the funding of political parties considered not only from the perspective of public law but also from the point of view of private law, it becomes possible to apply other regulation principles than it is usual to these relations. Such principles underpin the analysis of specific practical issues related to the funding of political parties, including also the amendments to the Law on Funding of, and Control Over Funding of, Political Parties and Political Campaigns, which came into force as of 1 January 2012 and which imposed a ban on legal entities and a restriction on individuals to make donations to political parties.

Keywords: Political parties, funding of political parties, legal regulation of funding of political parties

Introduction

The specific objectives and nature of activities of political parties make them specific subjects of law. These public legal entities are distinctive by their character as they are created in order to satisfy common political interests of their members and administer public power. When lawfully established political parties carry out activities and participate in the development of the State, in addition to implementing political goals of their members, they also express the political will of other persons and represent public interests. Such political goals of political parties can be implemented only if they are ensured the real right to acquire and use property. Taking into consideration the fact that political parties are public legal entities and

the possibilities for them to engage in activities to acquire or generate property are rather limited, the main sources to acquire property for political parties are donations from private persons (including their members), budget grants and other support from the State. It is in particular these relations of property acquisition gratuitously (funding) that not only predetermine the quality of activities of political parties but also influence the possibilities for pursuing the public interest and for the functioning of the State overall, that are analysed in this article.

It is observed in contemporary law that public law is increasingly stepping into the remit of regulation of private law and that private law is becoming more active in the relations regulated by private law (Baranauskas, E. *et al.*, 2008, p. 22-24). One of the types of such public relations where public and private law rules interact is the relations of political party funding. Although the influence of private law is not highlighted either in the doctrine of law or in the case-law, the article shows how and to what extent the funding of political parties may be regulated by the provisions of private law.

The issues related to the funding of political parties keep generating controversial response in the Lithuanian public discourse. The legal acts regulating the funding of political parties underwent frequent changes, increasingly restricting the possibilities for political parties to acquire property. Eventually on 1 January 2012, legal entities were prohibited and individuals were, in principle, restricted in their right to transfer assets to political parties gratuitously. These developments have led the authors of the article to consider the relations of funding of political parties not only from the perspective of public law but also from the point of view of private law, highlighting how such twofold understanding of the legal regulation of the funding of political parties is relevant in practical terms.

The object of this research is the funding of political parties from the perspective of private law.

The purpose of the article is to reveal, on the basis of legal acts and scientific doctrine, the nature of the funding of political parties in the context of public and private law.

The data of the research were gathered using the documentary analysis method while the analysis of the data collected was based on the method of qualitative content analysis together with the systemic, teleological and comparative methods.

Legal Regulation of the Funding of Political Parties

In the legal process of institutionalisation of political parties, the legislator also has in its disposition, along with the issues of regulation of activities of these public legal entities, the regulation of their funding. Legal institutionalisation of political parties is understood as the efforts and activities of political parties defined and accordingly directed by legal norms

(Šileikis, E., 1997, p. 9). The legislator, seeking to regulate properly vulnerable property relations between political parties and private donor persons and the State, also defines by the relevant legal norms the sources for acquiring property by political parties, the procedure of their acquisition, their limits, use and control. Only expressly defined, sufficiently rigid and stable rules set out in legal provisions may ensure that lawfulness predominates in the relationships of the funding of political parties and that the public interest is implemented actually as a result of a transparent political system and law-making of the State (Ewing, K. D., Issacharoff, S. 2006, p. 7).

Although the first political formations in the UK in the 18th century had some financial needs, extensive legal regulation of the relationships of funding of political parties commenced only between the 70-ies and 80-ies (Bložė, M., p. 24, 1999). Such late origin of the legal regulation may be explained by several aspects. First of all, political parties for a long time were insignificant political groups of very limited interests, representing only a small part of the society (mostly, the richest). Besides, public authorities consisted of such members of political party clubs who were interested to have no statutory regulation over their activities. With the social reforms that took place between the end of the 19th century and the beginning of the 20th century, the number of members of political parties increased a couple of dozen times and they became important subjects in protecting and implementing the interests of various groups of the society (Katz, R., Mair, P., 1995, p. 2-28).

According to official data of the International Institute for Democracy and Electoral Assistance (IDEA) (information about regulation of property relations of political parties has been collected in 111 states of the world, see Austin, R.; Tjernström, M. (eds.). 2003, p. 187) almost 64 per cent of the states of the world have the systems of legislative rules and principles in place at present to regulate the relationships of funding of political parties. The states where there are no special laws or other legal acts are mostly from the so-called third world countries. There are also several exceptions, for example, Norway and Sweden (see Political Finance Database) regulate such property relations of political parties in a very abstract manner, while Switzerland so far does not regulate them at all (see Brändle, M.). Such phenomenon can be explained by the fact that property relations between political parties and private persons in the aforementioned states are based on high-level transparency eliminating the need for active law-making. However, the fact that there are no special acts in these states to regulate specifically the relations of funding of political parties does not mean by itself that such public relations do not originate in general or that they are unregulated. They are governed by general legal acts applicable to all

property relations. And those states where unlawful or even criminal cooperation of political parties with their donors keep coming to light set out in laws specific measures to address the financing problems of political parties in a proper manner.

In Lithuania, as in many European and North American states, the institute of funding of political parties is relatively new; its importance and social value should be recognised gradually. The first special legal act directly regulating property relations of political parties was enacted only in 1997 (Law on the Control of Funding of Political Campaigns of the Republic of Lithuania). It is also a paradox that this Law regulated not the funding of all political parties in general but the funding relations with respect to only one of its constituent parts – political campaigns. After several years this gap was eliminated with the adoption of the Law on the Funding of Political Parties and Political Organisations of the Republic of Lithuania. Eventually, following many amendments, these laws have been combined into one Law on Funding of, and Control over Funding of, Political Parties and Political Campaigns of the Republic of Lithuania (hereinafter – the Law on the Funding of Political Parties), which was adopted by the Seimas in 2004. In addition to this Law, the relations of funding of political parties are directly or in a subsidiary way regulated also by the Civil Code of the Republic of Lithuania (hereinafter – CC), adopted in 2000.

Financing Sources of Political Parties

All financing sources of political parties are, under Article 7(2) of the Law on the Funding of Political Parties¹³¹, classified into permanent¹³² and those of political campaigns. Permanent financing sources of political parties, in the most general sense, may be split into three large groups: own funds of political parties (membership fees of political parties are also assigned to this group), donations of private persons, budget grants and other state support. The first two of the above categories cover private funding of political parties and the last covers funding by the State. The relations arising when property is transferred to political parties, however, may also be classified differently: the cases when political parties acquire property from their members or activities should be held to be internal relations of the funding of political parties, while the relations between political parties and private persons and the State should be considered external (Masnevaitė, E., 2008, p. 96). "Democratic states witness a diverse concept of the status of political parties and their funding procedure, but they are characterised by adequate regulation and control issues. Despite context differences, the

¹³¹ According to the Law on the Funding of Political Parties, sources mean persons providing property to political parties free of charge or activity forms of a political party when funds are acquired.

¹³² Permanent sources are the financing sources traditional for a specific political party during the period between political campaigns and during a political campaign.

problems are similar almost everywhere: lack of publicity and transparency of funding of political parties, ineffective, insufficient or inadequate legal regulation, undesirably close relations of "large" donors and political parties, corruption" (Masnevaitė, E., 2008, p. 92). We will try to discuss below one of the financing sources of political parties and restrictions on the use of funds by political parties in relation to the goals of their activities.

The Issues of Funding of Political Parties from the Perspective of Private Law

One of the main but most controversially assessed funding sources of political parties both in Lithuania and worldwide is the property acquired from private persons. As it can be seen from the research of IDEA on the funding of political parties (Austin, R.; Tjernström, M. 2003, p. 197–204), even three fourths of the European and North American states have some bans in place for individuals and legal entities to make donations to political parties. It is believed that certain persons are likely to exert improper influence on political parties administering public power, therefore, they are restricted or banned from financing these public legal entities. Due to continuing cases of unlawful funding of political parties that come to light, regulation in the Eastern and Central Europe, including Lithuania, is in particular stringent. Many countries of this region (except Slovenia) ban donations to political parties from foreign individuals and legal entities. Such prohibition, deriving from the provisions of the Law on the Funding of Political Parties, may be explained by the legislator's aim to avoid any influence of foreign entities in domestic governance relations. However, as practice shows, the restrictions set out in legal acts are not an obstacle for individuals residing abroad and legal entities registered in foreign countries or even public authorities to implement their bad faith interests. Legal regulation is disregarded incorporating bogus legal entities in foreign states where political parties operate or transferring money or other assets directly to individuals in such states (including members of political parties) to make donations officially in their own name to political parties (Walecki, M., 2003, p. 82). Such deals could be held invalid according to Article 1.87 of the Civil Code as simulated because they are made not with the true party of the transaction (the person who truly seeks to transfer assets to political parties), but with his/her frontman (Bakanas, A., *et al.* 2002, p. 195). A simulated, i.e. made between a frontman and a political party, deal would in all cases be null and void and the true transaction, i.e. the one which is concealed by the simulated transaction, would also be invalid because it would breach the imperative provisions of law prohibiting certain foreign entities from funding political parties. The institute of invalidity of transactions, however, would hardly work in this case because, in fact, none of the above-referred parties to the deal would have an interest to seek

invalidation of the deal at court (Ruling of 11 September 2002 of the Supreme Court of Lithuania) and it is rather difficult for the entities representing the public interest to identify the fact of a simulated transaction.

In order to decrease the dependence of political parties from impermissible influence of private persons and to prevent potential corruption in the state governance, numerous drafts to the Law on the Funding of Political Parties were submitted to limit plutocratic financing. Eventually, on 6 December 2011, the Seimas adopted the draft of the amendments to the Law on Funding of, and Control over Funding of, Political Parties and Political Campaigns whereby it has been prohibited from 1 January 2012 for legal entities to fund political parties and political campaigns and individuals have retained the right to make donations to political parties only during political campaigns. Besides, one individual may donate to each individual participant of a political campaign (including a political party) the amount not higher than 10 (instead of the effective 20) published average monthly wages of the previous calendar year.

Considering these amendments to the Law on the Funding of Political Parties, it should, first of all, once again remind that property relations between political parties and their donors are of **private** nature. This means that the legislator regulating these relations must follow the principles of contractual freedom, non-interference into private relations, proportionality and other principles of legal regulation of civil relations. It is considered that restricting the right of private persons to donate property to political parties, the State has exceeded the allowable limit of non-interference into private relations and groundlessly restricted the principle of contractual freedom. Besides, such ban is also in potential breach of the rights of ownership of political parties and private persons willing to make a donation because it has been held in the case-law of the European Court of Human Rights that Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms should be applied to all ownership rights, including the right to acquire property and the right to dispose of property (*Marckx v. Belgium and Inze v. Austria*). It is beyond question that the relations of funding of political parties are important for the society, and the State, as an organisation of the whole society, has not only the right but also the obligation to set certain restrictions in order to implement the relevant goals, however, it should be done taking into consideration certain cumulative prerequisites. The Constitutional Court of the Republic of Lithuania has more than once stated in its rulings that specific restrictions are possible if the following conditions are satisfied: it is done by law; the restrictions are necessary in a democratic society in order to protect the rights, freedoms and constitutional values of other persons as well as constitutionally important goals; the restrictions do

not undermine the nature and substance of rights and freedoms; the constitutional principle of proportionality is observed (ECHR judgments in the cases *Marckx v. Belgium* and *Inze v. Austria*). These pre-requisites make it possible to presume that an absolute ban on legal entities and individuals to make donations to political parties can infringe the constitutional right of ownership (in case of individuals, their right to dispose property, and in case of political parties, their right to acquire property); besides, such prohibition is not fully proportionate because with a view to ensuring certain objectives necessary for a democratic society (for example, prevention of crimes, etc.) in the relations of funding of political parties, less stringent legal measures may be applied (setting a ceiling for donations, disclosure of information about donors, etc.). The measures of this nature are provided for in Article 25 of the German Law on Parties where efforts are made to conciliate the restrictions on the ceiling of the funds donated with publicity (e.g., if the amount donated to a political party exceeds EUR 50 000, information about the donor and the amount donated is communicated to the President of the Bundestag of Germany and is made available to the public). It should be noted that the adoption of the aforementioned amendments to the Law on the Funding of Political Parties also disregards the Recommendation Rec (2003)4 to member states on common rules against corruption in the funding of political parties and electoral campaigns of the Council of Europe where Lithuania holds membership since 1993. Article 1 of this document stipulates that the state and its citizens are both entitled to support political parties. Such approach is also upheld by representatives of international NGOs noting that it is impossible to avoid the funding of political parties by individuals and legal entities. According to them, the only reasoned way to minimise the likelihood of corruption is a proper legislative framework and an institutional mechanism to control the process of funding of political parties. And an absolute ban on private persons to donate financial support to political parties will only lead to new problems related to the funding of political parties (Walecki, M. 2004, p. 1-5).

Other financing sources that can be used in the context of private law are set out in Article 13 of the Law on the Funding of Political Parties. It is stated in the Article that political parties have the right to engage in publishing, distribution of printed matter and party symbols, management, use and disposal of the property belonging by the right of ownership, organisation of political and cultural events (lectures, exhibitions, etc.); the funds received from such activities may be used only for pursuance of the purposes of the political party as specified in the statutes of the political party. It should be noted on this account that the Law on the Funding of Political Parties treats as financing sources not all remunerated property

relations of political parties, but only those which generate specific funds that can be exchanged to new property.

Remunerated property relations of political parties that generate funds (money) could be classified into two groups:

(1) publishing, distribution of printed matter and party symbols, organisation of cultural events (lectures, exhibitions, etc.);

(2) activities related to the management, use and disposal of the property belonging to political parties by the right of ownership.

Presumably, the legislator, when defining specific activity areas of political parties as public legal entities, seeks to set aside the property relations which are not closely related to the objectives of political parties. It appears from the aforementioned provisions of the Law on the Funding of Political Parties, however, that this has not been fully achieved.

The first activity area referred to is linked with the principal activity purposes of political parties. Political parties, seeking to promote themselves and their activities as well as attract new persons, get the interest of donors and win the favour of the electorate, disseminate information by all means possible (publish newspapers, books, hold concerts and exhibitions) and in some exceptional cases may get income from such activities: for example, by publishing books of exclusive value illustrating the history of that political party, etc. Though most often political parties do not get any income from the dissemination from their ideology and, even on the contrary, they incur expenses because it is difficult to expect that any other persons except, of course, members of the political parties would be interested in acquiring symbols of a political party or taking part in paid events where propaganda about the political party would be disseminated. Thus, the above-referred provision of Article 13 of the Law on the Funding of Political Parties, instead of creating opportunities for political parties to promote themselves, makes it possible to engage in the activities which would really allow to acquire funds: distribute dallies, publish belles-lettres, organise exhibitions, concerts of well-known artists without specific reference to political parties. Otherwise stated, the Law on the Funding of Political Parties allows political parties to engage in economic–commercial activities in the area of publishing, distribution of printed matter and symbols, cultural events (lectures, exhibitions, etc.). It was possible for the legislator not to treat this activity type separately because it is, in principle, covered by Article 13 of the Law on the Funding of Political Parties stipulating that political parties may engage in activities involving the property held by them by ownership right.

Management, Use and Disposal of the Property of Political Parties

In the analysis of activities related to the management, use and disposal of the property held by political parties by ownership right, first of all, the concepts of property, object of ownership and right of ownership should be discussed. As it has been mentioned, property is understood as certain cumulative tangible and intangible valuables. In the interpretation of ownership right, both the European Court of Human Rights and the Constitutional Court of the Republic of Lithuania consider that the objects of ownership right include not only tangible items, but also property rights or property interests. The European Court of Human Rights, for example, has noted in its case-law that the objects protected by ownership right include securities, licences, claims, permissions for planning, social benefits, hunting rights, etc. (Švilpaitė, E. 2002, p. 71). The Constitutional Court, taking into account the judgments of the European Court of Human Rights on the protection of ownership right, holds that the objects of ownership right are economic interests, economic rights reflecting the firm's relations with its clients and its business relations, rights of claim of property nature, claims to cover expenses incurred in the performance of obligations under contracts, right to a pension arising out of employment, right to an old-age pension, etc. (Ruling of 4 July 2004 of the Constitutional Court Ruling of the Republic of Lithuania). In terms of the content of ownership right, the Law on the Funding of Political Parties expresses it through the so-called "triad" of rights: right to manage, use and dispose of the object of ownership right. However at present, the opinion predominates in the doctrine of law that such understanding based on the three rights is too narrow to describe the content of ownership rights, therefore, the "triad" is considered as open, non-finite list attributing to ownership rights new characteristics which were not common in the past (Staugaitienė, T., 1998, p. 73-74). Thus, even if specific ownership rights are identified, they are nevertheless interpreted broadly and the holder of ownership rights is, in principle, allowed to treat the object of ownership rights in the way he/she considers necessary, provided it does not breach the interests of other persons and the whole society.

It follows that the legislator, attempting to define specific limits for activities of political parties in Article 13 of the Law on the Funding of Political Parties, produced the opposite effect – created real legal opportunities for political parties to engage in any political activities that generate funds, which should be considered as an acceptable financing source of political parties. If the legislator sought to set stringent limits on the activities of political parties, the above-mentioned Article should not have provided for a general right of political parties to derive funds from the management, use and disposal of the property held by them under ownership right or this right had to be made more specific. It may be presumed

according to the existing legal regulation that there are opportunities for political parties to engage in any economic–commercial activities, which are understood as permanent independent (i.e. developed on his/her own risk) activities carried out by the person, related to the purchase and sale of items or provision of services to other persons for payment (Bakanas, A., *et al.* 2002, p. 24). It is likely that opponents would try to counter such statement by reference to Article 13 of the Law on the Funding of Political Parties where it is stated that the funds of political parties may be used only to pursue the purposes of the political party as specified in the statutes of the political party; they could also invoke Article 2.74 of the CC stating that public legal entities shall have a special legal capacity, making it possible for political parties to acquire and hold only such civil rights and obligations, which are not contrary to their incorporation documents or activity goals.

Use of the Funds Acquired by Political Parties

It should be noted that Article 13 of the Law on the Funding of Political Parties, imposing an obligation to political parties to use the funds obtained only to pursue their objectives, regulates the use of the funds acquired rather than the acquisition of funds, therefore, it is not relevant in the context of possibilities of political parties to engage in economic–commercial activities. Article 2.74 of the CC, on the other hand, links the objectives of political parties with the acquisition of rights and obligations by these public legal entities. As it has been mentioned, according to Article 2 of the Law on Political Parties, activity objectives of political parties shall only be of political nature: representation of the political interests of their members, expression of the political will of citizens, implementation of public authority and self-government. It is very difficult to imagine such activities of political parties which would serve only these goals. For example, if a political party leases out the premises or the vehicle it holds by ownership right, may it be considered that such operation conforms to the purposes of political parties. The above-referred activities related to the organising of events (exhibitions, concerts) or the publishing of books also raise doubts in some cases regarding their conformity to the purposes of political parties.

Thus, it appears that it would not be possible to engage in a large part of the fund-generating activities of political parties specifically referred to in legal acts because they are contrary to their special legal capacity (Šimašius, R. 2003, p. 112). Such approach would, in principle, undermine the legal regulation of the funding of political parties. Besides, even if breaches of the special legal capacity are identified in specific property relations of political parties, it would not mean that the relevant transaction is null and void and automatically invalid. As it has been mentioned, Article 1.82 of the CC attributes transactions which are contrary to the legal

capacity of legal entities to voidable transactions, therefore, the persons referred to in the CC have to apply for the invalidation of specific transactions. It is hardly likely that a political party itself or its founders or members will seek invalidation of a specific transaction, if it does not breach any interests of the political party and, even to the contrary, allow acquiring tangible gain. Besides, if a political party performs a specific transaction, it will be presumed, following Article 1.79(2)(1) of the CC, that such transaction has been ratified and it will not be possible to dispute it.

In any case, the right of political parties to engage in economic–commercial activities should not be viewed as negative. First of all, the fact that political parties will get some additional funds from their activities will mean less need for external funding (both from private persons and from the State) for political parties. Potential abuse by political parties of favourable legal regulation of economic–commercial activities is reasonably limited by the principle of no distribution (property and funds of political parties cannot be distributed to their members) as well as by the aforementioned requirement to use the obtained funds only for the purposes specified in the statutes of political parties.

Conclusions

1. There is a clear interaction of public and private law rules in the area of funding of political parties. The regulation area of private law embraces the relations between political parties and individuals and legal entities making donations to them on their own free will, while public law embraces the property relations arising when budget grants are allocated to political parties or when then State provides them with support of any other form. In case of Lithuania, all these relations are regulated by a special legal act combining the provisions of both public and private law – the Law on the Funding of Political Parties, and the regulation laid down therein is supplemented by the Civil Code of the Republic of Lithuania and by other relevant laws.

2. Both regulation of private funding relations of political parties and resolution of disputes arising in this area under the judicial procedure should follow the general principles of regulation and implementation of civil relations.

3. In the opinion of the authors, the ban on legal entities and the restriction on individuals to donate property to political parties breach the general legal regulation principles of civil relations, restrict the possibilities of private persons to dispose the property they hold by ownership right and the right to political parties to acquire the ownership of such property. The transparency of funding of political parties may be achieved by setting reasonable ceilings on the amounts of donations to political parties and by announcing information about the donations received by parties in public.

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