

Elected bodies: transparency of functioning and accountability

Report of the seminar

organised by the Parliamentary Assembly of the Council of Europe (PACE), with the participation of the Parliamentary Assembly of Turkic-Speaking Countries (TURKPA), hosted by the Grand National Assembly of Turkey) (Istanbul, 26-27 March 2015)

Mr Haluk Koç, Chairperson of the PACE Committee on Rules of Procedure, Immunities and Institutional Affairs, member of the Parliament of Turkey, opened the Seminar. The Parliamentary Assembly resolutely encouraged the development of a new culture of political responsibility conceived in terms of responsiveness and accountability, as well as transparency. It had actively involved itself in promoting this message at a twofold level: vis-à-vis parliamentarians through its reflection on standards of professional conduct and ethics, and more generally in respect of the parliamentary institution and the role which it should perform in fighting every facet of corruption. In adopting Resolution 1943 (2013) on corruption as a threat to the rule of law, the Assembly showed its determination to strengthen the parliamentary dimension of the fight against corruption by calling upon the national parliaments to contribute actively to this struggle.

Ms Ülker Güzel, member of Turkish Parliament, member of the Parliamentary Assembly of Turkic Speaking Countries, made a thorough presentation of TURKPA and its activities.

Session 1: Codes of Conduct for parliamentarians

Mr Quentin Reed, Council of Europe anti-corruption expert and general rapporteur of the Seminar, provided an introductory overview of codes of conduct and their specificities in the parliamentary context. The presentation underlined the “quasi-enforceable” nature of codes, and that they were a natural form of ‘self-regulation’ in parliaments. The main components of codes relevant to corruption were mentioned, namely independence, transparency, disclosure of assets, and disclosure and resolution of conflicts of interest. The requirements that might be imposed on elected officials (such as to withdraw from proceedings in situations of conflict of interest), as well as the sanctions that might be imposed for violations of them were likely to be less in the case of MPs than permanent officials due to MPs’ constitutionally elected status.

Ms Heather Wood, Registrar of Members’ Financial Interests at the Office of the UK Parliamentary Commissioner for Standards, House of Commons, presented the ethics framework for British members of Parliament, namely the Code of Conduct and the system of declaration of interests by MPs. The UK system, devised in response to specific corruption scandals in the 1990s, was based on a Code setting out and elaborating to some extent seven principles of public life. Ms Wood underlined the dual nature of the system of declaration of interests – i.e. that MPs had to declare certain interests (defined in detail in 10 categories) to a Register of Interests, and that they had also to declare any interest that was relevant to a particular parliamentary proceeding in which they were participating, whether it was in the Register or not. Ms Wood also noted the interesting system of sanctions, under which MPs could be suspended for limited periods. Amendments to the law just being passed would allow the initiation of a

by-election by a petition of at least 10% of the electorate of the MPs constituency, in cases where an MP was suspended for more than 21 days or had been sentenced to one year or more in prison.

Mr Tudor-Alexandru Chiuariu, former Chairperson of the Committee on Legal Affairs, Appointments, Discipline, Immunities and Validations of the Senate of Romania and member of the Romanian national delegation to the Parliamentary Assembly, then presented the Romanian experience of managing an extensive system of declaration of assets by all public officials, elected and non-elected. Mr Chiuariu underlined a key challenge of financial declarations – namely, ensuring the independence of the body responsible for oversight and enforcement while at the same time ensuring effective oversight of that body's activities, especially where it had extensive powers as in the case of the Romanian National Agency for Integrity (ANI). In the Romanian case such oversight was essentially ensured by the fact that all decisions of the ANI were subject to judicial review; indeed, certain of the most serious sanctions had actually to be imposed by courts, on proposal of the ANI. Mr Chiuariu and several other participants noted instances in several countries where alleged violations of declaration requirements had been publicised at a time to serve certain political interests, for example. A specificity of the Romanian system compared to the UK was the level of detail that declarations go to, including for example the requirement to declare watches, jewellery, paintings and the like. Mr Chiuariu described the enforcement record, both from the point of view of administrative findings but also the political impact, for example the fact that 3 MPs lost their mandates following ANI's findings.

Finally, **Mr Jandos Asanov**, Secretary General of Parliamentary Assembly of Turkic Speaking Countries, outlined the commitments of the organisation to good governance.

During the discussion following the presentation, several issues were highlighted by participants, including **Mr Xuclà**, **Ms Taktakishvili**, **Mr Gross** and **Mr Díaz Tejera**. These included:

- the fact that systems for declaration of interest might be vulnerable to circumvention asset declaration difficulties, particularly in political systems that were less consolidated or where interests such as oligarchs exercised de facto control over political actors – raising the paradox that the systems that needed disclosure most might be the ones in which disclosure functions least well;
- the fact that MPs should not be subject to stricter obligations than senior executive branch functionaries;
- and that the dangers of abuse were exacerbated by the fact that oversight authorities needed extensive access to databases on obliged officials in order to perform their role.

Based on the presentations and discussions, the following points were highlighted:

- It was vital to be clear about the purpose of regulation – for example, whether it was to prevent the influence of interests on the performance of function, to protect MPs/officials from wrongful accusations, underpin integrity, or detect corruption.
- The obligations established by declaration systems had to be crystal clear in legal terms.
- Regulations establishing codes of conduct and interest declaration systems were naturally country specific. While the general objectives of regulation were common, variation within these broad boundaries was legitimate – for example in the types of assets that were required to be declared.
- Regulations should be balanced and apply to senior executive branch officials as well as elected officials, notwithstanding differences in the detail of regulations between such categories (for example in the external activities that were prohibited to officials and MPs).
- It was vital to distinguish between “general” declarations of interests (for example those provided on a periodic basis) on the one hand, and obligations to declare interests on a case-by-case basis. In particular:
 - Systems of general declaration might establish a record of MPs interests and assets. However, it was impossible to taxatively define in advance all possible interests – not least because of the efforts that would be made to circumvent the system, and oversight of the

system created its own risks of abuse. A key point was that the circle of persons that needed to be included in declarations (such as family members) needed to be wide to ensure coverage, but this raised legitimate privacy concerns, especially if interests were made public.

- Obligations to declare interests in particular proceedings, on the other hand, should be more extensive, requiring the declaration of *any* interest that might be affected by the proceeding. Such an obligation could be a powerful one, especially if declarations were public and sanctions for failing to declare such interests were sufficiently stringent.
- Oversight of declaration systems needed to be designed bearing in mind the need to balance strength of oversight against the risk of abuse. In order to minimise such risks:
 - Appointment processes for the leadership of oversight bodies should be transparent and, with the selection procedure involving the participation of a wide range of stakeholders, including non-governmental.
 - Decisions to appoint and dismiss should be designed to minimise the risk of political influence on the activities of the oversight body (for example by limiting the terms of office to one), and at the same time mechanisms to ensure oversight of the oversight body itself needed to be in place (for example a detailed procedure for reporting to parliament and the public, judicial review of decisions etc.)
- Sanctions needed to be proportionate but dissuasive. While the sanctions that could be applied to elected officials would usually be less stringent than those that could be applied to permanent officials, severe sanctions might be also applied to elected officials if well designed.
- Codes of conduct and systems of declarations of interests should not be expected to ensure integrity and prevent corruption on their own, and had to be seen in the context of other regulation – including regulation of political party/election campaign finance, but also for example mechanisms to regulate lobbying.

Session 2: Funding of political parties and electoral campaigns

Mr Ali Huseynli, Chair of the Committee on Legal Policy and State Building Issues of the Parliament of Azerbaijan, member of the Azerbaijan delegation to PACE, introduced the issue, presenting a detailed overview of the main achievements of the Azerbaijani parliament in the field.

Mr Reed provided introductory remarks on the financing of political parties and election campaigns, stressing that politics required money but that money created obvious risks. Three areas of corruption were distinguished: the classic exchange of donations/contributions to parties or candidates in return for undue advantages; corruption within political parties, an issue that had received too little attention; and the misuse of state (administrative resources), which in some countries might be a more serious problem than classic corruption. Mr Reed pointed out that the risks of classic corruption might be mitigated not only by political finance regulation, but also by well-designed parliamentary procedures and regulation of MPs conduct – including codes of conduct and declarations of interest as discussed in the first session. The Council of Europe standards on political financing were outlined (Committee of Ministers Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns). Mr Reed highlighted the importance of distinguishing between formal regulation (the focus of CoE standards and GRECO evaluations, for example) on the one hand, and actual practice/reality on the other.

Mr Yves-Marie Doublet, Deputy Director of the General Secretariat of the French National Assembly and Expert for the Group of States against Corruption (GRECO), described the GRECO evaluation process, which *inter alia* had monitored member states' compliance with the Committee of Ministers' Recommendation on political financing. Mr Doublet provided numerous examples of how evaluated states had failed to meet the standards, as well as stories of good compliance. He stressed the results of the GRECO 3rd Evaluation Round, following which around half of recommendations to member countries had been implemented, and attributed the limited extent of implementation to the fact that implementation was under the control of parliaments not governments. Mr Doublet also pointed out that larger older EU member states had been more resistant to the implementation of GRECO

recommendations that smaller countries and newer member states. He concluded by underlining the fact that transparency, monitoring and sanctioning were interconnected.

Mr Ömer Faruk Gençkaya, Professor at Marmara University (Istanbul), member of the OSCE/ODIHR Core Group of Experts on Political Parties, expert to the Venice Commission and GRECO country evaluator, described the history of regulation of political finance in Turkey. His account underlined the risks of misuse or arbitrary changes in regulation by incumbent political forces (for example concerning state assistance to parties); the problem (not specific to Turkey) of laws that were not observed, and the consequent importance of proper enforcement. Professor Gençkaya highlighted in addition the importance of finding the optimum balance between international standards/obligations on the one hand, and local needs and customs/traditions on the other. He concluded that transparency was the lynchpin without which no regulation could function effectively.

The participants – **Mr Oral, Ms Taktakishvili, Mr Loukaides, Mr Díaz Tejera, Mr Nikoloski and Mr Xuclà** – raised a number of issues and questions in the discussion, including:

- whether bans on donations from corporate entities were advisable given the ease with which they could be circumvented;
- the extent to which countries should have flexibility/space for regulatory deviance (the example of a GRECO recommendation that Cyprus should ban the owning of foreign assets by political parties was raised);
- that direct bans on certain campaigning activities might be an effective way of decreasing spending on elections and therefore the pressure on parties/candidates to raise money;
- and that political finance regulation might have limited relevance if powerful corporate interests could use media they owned to influence or determine election results.

Based on the presentations and discussions, the following points were highlighted:

- Transparency – i.e. the public disclosure of political parties/candidates' sources of income and spending - was of fundamental importance as a condition for all other regulation to work.
- While political finance regulation should have common essential aims – establishing a fair/equal playing field, transparency of political finance, etc. there had to be room for flexibility in the way in which individual countries pursue these aims. Above all, the establishment of legal frameworks that were compliant with international standards, while desirable, should not be seen as a sufficient guarantee that the financing of political parties and election campaigns was well regulated. There might be countries in which formal frameworks were highly compliant but practice was very poor, and on the other hand countries that were non-compliant but practice was good.
- Regulations should be established on the basis of full regulatory impact assessment – meaning defining clearly the problem that regulation was expected to address, determining what the alternative were for regulation, and assessing the costs, benefits and other impacts of such regulation. Regulation should be seen as an integrated system, and the temptation to adopt 'silver bullet' solutions should be avoided. All aspects of regulation and its implementation were linked together, and all types of regulation had consequences that were both intended and unintended.
- Regulations should be kept simple as far as is possible.
- Preference should be given to regulations for which compliance was observable – for example, banning TV and radio advertising rather than imposing financial limits on spending.
- In general, an aim of regulation should be to encourage a balanced system of financing in which parties/politician were not over-dependent on any single source of funding. A system based predominantly on private donations might lead to excessive dependence on donors, while a system based on state financing only might lead to dependence on the state and specific forms of corruption.
- Special attention should be paid to in-kind donations and assistance, both state and private.

- Regulation of political finance should be designed with special attention paid to the links between/overlapping of ordinary (non-election) party finance and election campaign finance.
- Regulation should be designed where possible to motivate compliance – for example by providing state assistance in the form of donations matching those secured from private sources (up to a certain amount), and conditional on full disclosure of all donations.
- Oversight and enforcement of political finance regulation was usually weak. Independence, sufficient powers and resources were conditions for effective oversight but – as with asset declaration systems – abuse of regulatory power was an accompanying risk.
- Political finance regulation should not be viewed as a self-contained system. The context of regulation should be taken into account, as well as the need for other accompanying regulations (for example of media plurality) if appropriate.