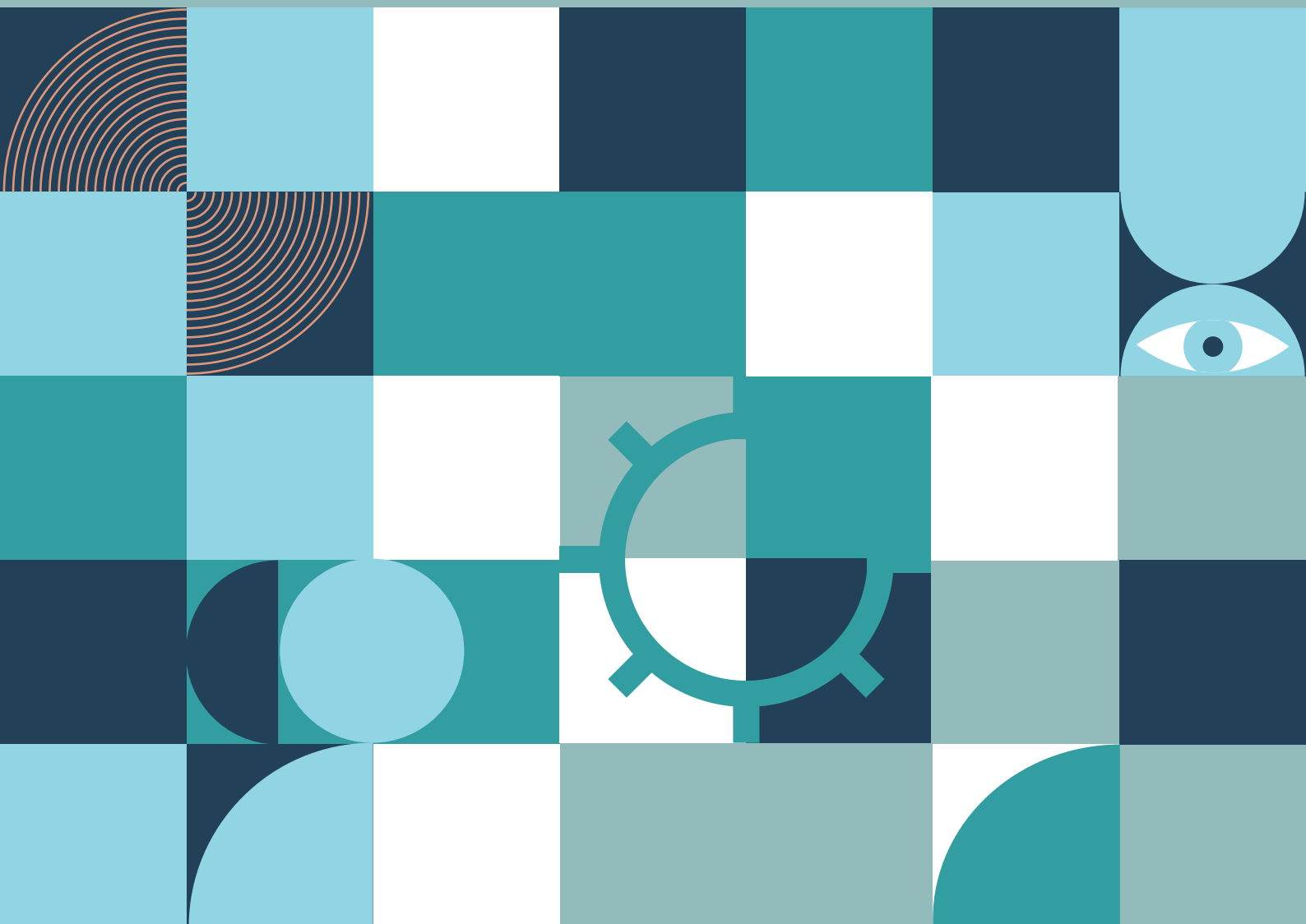


The role of the State Commission for Prevention of Corruption during the 2020 early parliamentary elections

Author: Snezana Kamilovska Trpovska



The Monitoring the Success of the Work of the State Commission for Prevention of Corruption project is
financed by Foundation Open Society - Macedonia.

The content of this document is the sole responsibility of the authors and in no way reflects the views and the
opinions of the Open Society Foundation - Macedonia.

Impressum

Title: The role of the State Commission for
Prevention of Corruption during the 2020 early
parliamentary elections

Author: Snezana Kamilovska Trpovska

Publisher: Institute for Democracy
'Societas Civilis' – Skopje

Design: Matea Londza Shumkovska

This publication is available free of charge at
<http://www.antikorupcija.mk/>

The Monitoring the Success of the Work of the State Commission
for Prevention of Corruption project is financed by Foundation Open
Society – Macedonia.

The content of this document is the sole responsibility of the authors
and in no way reflects the views and the opinions of the Open Society
Foundation – Macedonia.

Introduction

Early parliamentary elections in the Republic of North Macedonia during the Coronavirus

Last year was marked by the COVID-19 pandemic, and the Republic of North Macedonia, too, succumbed to it. The crisis influenced many social and political events, which resulted in the revision of certain pieces of legislation, as well as their temporary suspension in order to enable the country to operate normally.

That is precisely what happened with the early parliamentary elections, as well, since after the Assembly of the Republic of North Macedonia was dissolved on February 16, 2020, they were scheduled for April 12 of the same year.

Quickly after the dissolution of the Assembly, the situation with the Coronavirus started to escalate and it became necessary to proclaim a state of emergency in order to ensure the minimum conditions for the operation of the Government are met and to provide it with the legal authority to adopt decrees with legal force, in line with the state Constitution.

One of the first decisions made by the Government was precisely the Decree with legal force for election-

related issues¹ in which it was stated that all electoral activities for implementing the elections are thereby stopped and that the provisions from the Electoral Code that refer to the functions of member of Government and deputy-prime minister, as well as to advertising and media publication during an election, are temporarily suspended.

In such circumstances, the election date becomes uncertain since the Decree² clearly states that electoral activities will continue after the end of the state of emergency.

The Assembly loses its power with the dissolution, which jeopardizes the implementation of Article 125 of the Constitution³, which governs the manner and the time when the Assembly of the Republic of North Macedonia will be able to confirm the country-wide state of emergency and specifies the body will sign the new decision for announcing the elections whenever the country is ready for them.

¹ Decree of the Government of the Republic of North Macedonia, Official Journal of the Republic of Macedonia no. 72 of March 21, 2020, available at: <http://www.slvesnik.com.mk/Issues/efd6cd84b37e40a19e3f75515b759d06.pdf>

² An analysis of the Decrees with legal force adopted during the state of emergency in 2020, Blueprint grupa, Skopje, 2020, available at: https://fosm.mk/wp-content/uploads/2020/11/analiza-na-donesenite-uredbi-so-zakonska-sila-za-vreme-na-vonrednata-sostojba-vo-2020_blueprint.pdf

³ Article 125 of the Constitution of the Republic of North Macedonia: "A state of emergency shall be declared in case of large-scale natural disasters or epidemics.

The state of emergency for the whole country or for a part of the country shall be declared by the Assembly upon the proposal of the President of the Republic, the President of the Government or at least 30 MP's.

The decision that confirms the existence of a state of emergency shall be made with two thirds majority of the total number of MP's and shall be valid for at least 30 days. If the Assembly is unable to convene, the decision for activating a state of emergency shall be made by the President of the Republic, which he shall submit to the Assembly for confirmation whenever it is able to convene."

Despite the Coronavirus and the legal incongruity during the procedure, on June 16 2020 the President of the Assembly still managed to sign the Decision⁴ for running the parliamentary elections on July 15, when in the end they were held.

These early parliamentary elections were specific in terms of many elements which were linked by a cause-effect relationship not only because of the Coronavirus crisis, but because of the system itself, which was discussed in the course of 2020. The fact

that different institutions and political constituents could interpret the legal layout in various ways, coupled with the legal vagueness, resulted in delays of the electoral process itself.

In the entire process, apart from the executive and legislative powers, a key role was also played by the independent bodies, such as the State Commission for Prevention of Corruption (hereinafter: SCPC), which are in charge of preventing illegal activities in politics and of implementing the electoral process.

⁴ A Decision for announcing early elections for MP's at the Assembly of the Republic of North Macedonia, Official Journal of the Republic of North Macedonia no. 43 of February 16, 2020, available at: <https://www.slvesnik.com.mk/Issues/14dfd5c2d1764a809ee97512c36e15f6.pdf>

The role of the SCPC during the elections in the Republic of North Macedonia

In line with the Law on prevention of corruption and conflict of interest (hereinafter: LPCCI)⁵, the SCPC has a significant role in monitoring the lawfulness of the financing of the political parties and monitoring the lawfulness of the electoral campaign financing. Bearing in mind the potential misuse in politics, the law is extensive in this segment and offers a detailed explanation of the competences of the SCPC during the electoral process and of the checks it is required to carry out. In the domain of the competences for financing control during elections, the SCPC's authorities stem from the Electoral Code⁶, as the fundamental legal act for regulation of the electoral processes in the country, as well as from the Law on Financing Political Parties⁷.

In line with the LPCCI, in case there is doubt of illicit financing of an electoral campaign, the SCPC launches a procedure for establishing the facts by its own initiative or upon an appeal by an organizer of an electoral campaign or by accredited observers. The procedure for establishing the facts is carried out transparently, by means of a public debate which is considered urgent, and organized within 5 days of the reception of the appeal, in order to examine the allegations and act on the appeal.

The organizers of an electoral campaign are required to submit the electoral campaign financing reports to

the SCPC, and the SCPC uses these reports as basis for drafting its own report for confirmed misuse of the financing of the electoral campaign within three months of the day the election ended. This report shall be submitted to the Assembly and shall be published on the SCPC website.

This does not exhaust the competences of the SCPC during the election process. Namely, the SCPC is competent to monitor the lawfulness of the use, or management of the budget from the day they are announced to the end of the elections. If the SCPC determines that there is doubt of violations of the provisions of the Electoral Code that govern the prohibition of the use of the budget, that is the actions of the public institutions that are forbidden, that occurred after the day the elections were announced, it launches a procedure for establishing the facts on its own initiative or upon receiving an appeal from an organizer of an electoral campaign.

Furthermore, the SCPC plays a key role in determining whether there was any misuse of the financing of political parties during the electoral campaign. Namely, when there is reasonable doubt that property owned by the state, regardless if it is on a central or local level, has been used for an electoral campaign or for any financing of an electoral or another political activity, and regardless of whether this happened

⁵ Law on Prevention of Corruption and Conflict of Interest, Official Journal of the Republic of North no. 12 of January 19, 2018, available at: <https://dsk.mk/wp-content/uploads/2020/12/%D0%97%D0%B0%D0%BA%D0%BE%D0%BD-%D0%B7%D0%B0-%D1%81%D0%BE%D1%80%D0%B5%D1%87%D1%83%D0%B2%D0%B0%D1%9A%D0%B5-%D0%BD%D0%B0-%D0%BA%D0%BE%D1%80%D1%83%D0%BE%D1%86%D0%B8%D1%98%D0%B0%D1%82%D0%B0-%D0%B8-%D1%81%D1%83%D0%B4%D0%B8%D1%80%D0%BE%D1%82-%D0%BD%D0%B0-%D0%B8%D0%BD%D1%82%D0%B5%D1%80%D0%B5%D1%81%D0%B8.pdf>

⁶ Electoral Code, Official Journal of the Republic of North Macedonia, no. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16, 136/16, 142/16, 67/17, 125/17, 35/18, 99/18, 140/18, 208/18, 27/19, 98/19 и 42/20), available at: https://drive.google.com/file/d/1FtLTHFCCRi3wc_80ndLxIT4FhTgLBsSR/view

⁷ Law on Financing Political Parties, Official Journal of the Republic of North Macedonia no. 76/2004; 86/2008; 161/2008; 96/2009; 148/2011; 142/2012; 23/2013 и 140/2018 и 294/2020, available at http://aa.mk/WBStorage/Files/Zakon_finansiranje_politicki_partii.pdf

directly or indirectly, through investment or in any other manner, the SCPC is required to take action to establish the facts.

Thus, by conferring all of these competences to the SCPC, the goal of the legislator is to thwart any misuse by the organizers of the electoral process, to thwart any trading in influence, and to prevent any type of corruption that may influence the electoral process

itself. By conferring all of these competences to the SCPC, the legislator makes it unequivocally clear that this is an obligation of an independent body that is not subject to control by the executive government and that works completely independently. This position of the SCPC in the system is precisely what provides a realistic picture of the electoral violations by all participants and thwarts future integration of such violations in the system.

The role of the SCPC in the 2020 early parliamentary elections

From the moment the early parliamentary elections were announced in February 2020, the SCPC started taking steps to meet its legal requirements.

Acting in its preventive role, and in a timely manner, the SCPC published on its website an announcement for the legal limitations during the electoral process that apply to all state bodies and institutions. In this way it pointed to the legal obligations, the procedure for establishing whether they were violated, and the potential sanctions. In this way, the SCPC pointed to the basic rules used for sanctioning corruption during the elections and outlined its role in the process.

The SCPC reactivated the tool it promoted during the 2019 presidential elections for reporting suspicion of illicit activities and violations of the electoral process. This enabled every citizen to report potential irregularities in regards to misuse of state property for the needs of the participants in the electoral process.

At these elections, the SCPC bolstered the cooperation with some other independent bodies, or more specifically with the State Audit Office, in order to improve the cooperation with the banking sector and thus simplify the procedure for receiving timely banking data in regards to the transaction accounts of the participants in the elections. The cooperation between the SCPC and the civic organizations continued on these elections, too, in order to provide data for potential misuse by the participants in the electoral process. In addition, in order to bolster the mechanism, the SCPC hired 17 independent observers

tasked to provide evidence for illicit activities done by the participants in the elections in the sense of the way they presented and advertised themselves, and it compared this data to the financial reports of the participants.

Apart from these preventive mechanisms, the SCPC also acted on cases of non-adherence to the Electoral Code. It acted on a total of 33 cases, 32 of which have been filed as complete, and the last one is being processed.

The SCPC outlined all of these activities in the 2020 Special report for misuse discovered in the course of the financing of the electoral campaign of the early elections for MP's in the Assembly of the Republic of North Macedonia⁸.

This report clearly shows that the SCPC found that the participants in the electoral process are not using the same electoral financing report form which, in turn, resulted in a situation in which the participants themselves implemented the provisions disproportionately, and so this requirement was not fully met. In addition, the SCPC has started five procedures for establishing the sources of financing, which are still ongoing.

In accordance with SCPC's Report, it is clear that the institution has acted in line with its legal competences and has assumed an active role in the regulation of the prevention of corruption during the electoral process.

⁸ A special report for misuse discovered in the course of the financing of the electoral campaign of the early elections for MP's in the Assembly of the Republic of North Macedonia - 2020, no. 03-3617/1 of October 19, 2020, available at: https://dksk.mk/fileadmin/user_upload/2020/Posebna_Izveshta_za_utvrdeni_zloupotrebi_vo_finansiran_e_na_izbornata_kampa_a_Parlamentarni_izbori_2020.pdf

Additionally, apart from the systemic inconsistencies and the need for some legal amendments to the Electoral Code, the Law on Prevention of Corruption and Conflict of Interest and the Law on Financing Political Parties that were established, the SCPC did not confirm that the participants committed any other major infringements of the electoral process.

Namely, the SCPC found that even though they asked for amendments to the Electoral Code⁹, they were not implemented, and as a result their actions continue to bear no fruit. Bearing in mind its significant role, this legal gap brings into question the actions it may take in the electoral process itself, as well.

One of the more significant comments of the SCPC is related to the expanded sources of electoral campaign financing, in the sense that the membership fee and the donations of the regular accounts of the political parties may be used for financing the electoral campaign. This opportunity undermines the concept of capping the donation amounts during the elections.

The SCPC used its analysis to detect the legal, i.e. systemic vagueness mentioned above and suggested that they are rectified in order to improve the system for the next electoral cycle.

⁹ In the 2020 Special report for misuse discovered in the course of the financing of the electoral campaign of the early elections for MP's in the Assembly of the Republic of North Macedonia, the SCPC underlined Articles 8-b, 85, 78-a, 84-b, 85-a and 83 of the Electoral Code as provisions that cause vagueness and that need to be revised.

Expectations for the next electoral cycle and recommendations for its improvement

Last year we went through the early parliamentary elections, and as soon as 2021 we are expecting a new electoral cycle - the local elections.

This means that we must start improving the system right away in order to prevent any electoral misuse and in order to prevent corruption in the course of the elections.

After nearly half a year since the SCPC submitted its Report, it is clear that the authorities are not implementing their recommendations, despite the fact that they are explained in great detail, and the weaknesses that were found are supported by evidence.

The executive and legislative governments must act on the SCPC recommendations in order to demonstrate their willingness to fight against corruption and to ensure the interest of the state prevails over that of the parties. These requests have been supported by important international institutions, and the country is expected to show palpable political will for preventing corruption.

The cooperation between institutions remains to be one of the fundamental requirements for creating a system based on the principles of transparency and accountability. The independent bodies such as the SCPC and the State Audit Office and their allegations and decisions must carry greater weight

in making this happen, which would thus grant them priority for implementation.

On the other hand, the SCPC must focus its resources in detecting specific misuse during the electoral cycle. The repressive role of this body must be reinforced in this segment and palpable efforts for establishing misuse in politics must be demonstrated.

Taking the Special report of the SCPC as a starting point, it is evident that the participants in the electoral process are not complying with the Law on Prevention of Corruption and Conflict of Interest when it comes to financing political parties, thus preventing the SCPC to operate efficiently. Thus, it is important to stress that all participants in the elections must be aware of the obligations that stem from all laws and abide by them. If they meet the requirements partially, the operation of this stakeholder and its future actions as a significant actor in shaping our society is brought into question.

In order to create a fair, democratic electoral cycle, free from the shackles of misuse, it is essential that all participants make palpable efforts, starting from the most senior bodies in the state, through to the participants in the elections, and all the way to the citizens. Consequently, all of these stakeholders must take proactive action in order to strengthen the trust in the institutions, and so that the citizens are ready to report irregularities and misuse during the electoral cycle.

