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The logo consists of the letters 'T' and 'A' in a light blue, sans-serif font. The 'T' is positioned above the 'A'.

TA

A large, decorative graphic element on the left side of the page. It is a curved shape that starts wide at the bottom and tapers to a point at the top. It is composed of two overlapping layers: a darker blue outer layer and a lighter blue inner layer, separated by a thin white line.

Buying Influence or Supporting Democracy

In democratic systems, the line between endorsement and bribery can be faint.

JUDITH DE BOER

Introduction

Political donations are an integral part of democratic systems, allowing individuals and companies to support political movements that reflect their values and interests. Political donations are protected by Article 11 of the European Convention on Human Rights (ECHR), which guarantees the right to political participation and association. The Venice Commission, a European advisory body on constitutional law, also emphasizes that political donations are a fundamental aspect of democratic engagement ([Microsoft Word - data0000199838.doc \(coe.int\)](#)). With regard to private donations, the Commission states that it is appropriate for parties to seek private financial contributions. Legislation should require all political parties to be at least partly privately funded as an expression of minimum support. With the sources of funding prohibited by relevant legislation, all individuals should have the right to freely express their support for a political party of their choice through financial and in-kind contributions. However, reasonable limits may be imposed on the total amount of such contributions.

Without the possibility of private donations, political parties, especially smaller and local ones, would struggle to function and reach voters during election campaigns. In the Netherlands, political donations are regulated by the Act on the Financing of Political Parties (Wet financiering politieke partijen or Wfpp), which requires transparency but has traditionally left much unregulated. This autonomy regarding party donations was intended to preserve the freedom and democratic nature of political parties and their financing. However, the line between a legal political donation and a bribe can sometimes be blurred, especially when the donation has the potential to influence public officials.

Several large donations to political parties in the Netherlands have been publicly questioned in the media. For example, a Christian Democratic party received a €1.2 million donation from a businessperson ahead of the 2021 elections, followed by a notable change in its electoral platform that was highly favorable to the donor. Similarly, a Democratic party called D66 received €1 million from a prominent tech billionaire who had previously successfully lobbied for changes to the national education curriculum. The public question was whether this was a genuine donation or simply a thank you or gift for past favors.

The issue is not limited to these examples. VVD, the People's Party for Freedom and Democracy, offers access to exclusive events where donors, who contribute €1,000 each, can engage in private dialogue with top politicians. This raises the question of whether this is simply networking, or a way for wealthy donors to gain political influence. Meanwhile, in 2018, local VVD branches received around €300,000 in anonymous donations from business-focused sponsor clubs, which later led to public scrutiny, especially given the close ties between party officials and the business community.

These cases have never led to a criminal investigation into bribery. However, there has been an increasing focus on unlawful influence in relation to party donations. This has led to changes in the law. As of January 2023, the Netherlands introduced a national donation cap of €100,000 per donor to prevent the appearance or risk of undue influence on national politics. While this cap addresses concerns about influence at the national level, there is as yet no limit at the municipal level. A draft law would impose a €20,000 limit on local donations, but it is still under discussion. These rules reflect growing concerns about whether large donations give wealthy individuals disproportionate influence over political decisions.

The key question, however, is: when does this right to contribute to a political party that supports one's values and (financial) interests become a criminal offence such as bribery? This article examines when political donations cross the line from legitimate political support to corrupt activity, as dealt with in recent case law.

POLITICAL DONATIONS IN QUESTION

In recent rulings by the Appeal Court in The Hague (Wethouders vrijgesproken van omkoping en veroordeeld voor schending geheimhoudingsplicht (rechtspraak.nl)), the Court examined whether political donations to the local political party "Hart voor Den Haag" amounted to bribery. These rulings followed a 2023 lower court decision (Vrijspraak voor Richard de Mos in corruptiezaak (rechtspraak.nl)), where all defendants, including my clients, were acquitted of bribery.

This case attracted considerable attention. Also, in light of the larger donations mentioned in the introduction, it was striking that in this case the total donations amounted to €100,000, spread over five businessmen. In this case, these businessmen had made political donations to 'Hart voor Den Haag' to support its campaign for the 2018 municipal elections. This means that at the time there was no legal limit on the amount of donations. Moreover, these donations would fall well below the new cap for national parties that were introduced in the law in 2023, and for most of the defendants their donations would even fall below the proposed laws for local parties. The donations were therefore generally considered perfectly legal. The donations funded promotional activities such as website development and campaign videos. All donations were invested directly in the party and not a single cent went into the pockets of the party leaders, who became council members after they won the 2018 elections and became the largest party.

The prosecution alleged that the donations were part of a broader scheme to secure preferential treatment in municipal decisions. The public prosecutor argued that these donations were not simple political support but rather bribes intended to influence public officials for the businessmen's benefit. In this view, the businessmen's relationship with the public officials amounted to unlawful gain. On the indictment in appeal, it stated that the donations were made with the specific intent to get preferential treatment and for the two public officials it stated that the reasonably should have known that these donations were made to get a preferential treatment.

The defense, however, painted a different picture, arguing that the donations were genuine expressions of political support for the party and its agenda, rather than attempts to bribe public officials. Importantly, it was pointed out that there was no explicit or implicit agreement between the businessmen and the politicians to exchange donations for political favors. Moreover, there was no link between the donations and their political involvement within the party, and they were legally allowed to donate to a party that generally had their interests at heart, and that shouldn't prevent them from being active in the political arena and within the party, or even lobbying for certain causes. Donating should not exclude someone from the political playing field.

Moreover, the defense criticized the prosecution for selectively presenting evidence by removing the broader context of informal conversations and

jokes in an attempt to establish the intent behind the donations. The defense's contention that the prosecution misrepresented the evidence highlights a critical point in corruption cases: the need for accurate, complete context to assess intent, and the understanding that informal communications are subject to multiple interpretations and that the prosecution should consider all perspectives. In this case, informal communications were presented as evidence of corrupt intent when they could have been interpreted as enthusiasm for the political party rather than an expectation of political favors.

WHEN DOES A POLITICAL DONATION BECOME A GIFT TO A PUBLIC OFFICIAL?

Political bribery is criminalized under two different articles of the Dutch Criminal Code (DCC). Anyone who gives a gift, makes a promise, or provides or offers a service to a current, former, or prospective public official with the intention of influencing or rewarding them for doing or refraining from doing something in the performance of their duties is punishable under Article 177 DCC. The public official is punishable for accepting or soliciting such a gift, promise or service if he knows or should reasonably suspect that it is intended to influence or reward actions related to his current or former duties (Article 363 DCC). In this context, one of the questions in this case was whether and under what circumstances a donation to a political party could be considered a gift to a public official.

The Court of Appeal of The Hague confirmed in 2024 that a donation to a political party can be considered a gift to a public official. The Court of Appeal stated that a gift made for a third party can also be considered a gift to a public official. It emphasized that this includes any gift, promise or service that has value to the public official. This could be something as small as a modest sum of money or a minor promise or service. Thus, a payment made directly to a political party may be considered a gift to a public official if it has value to that official. But when does a party donation have value for a politician?

The donations made in this case were made in connection with the municipal elections and were used to promote the party. The payments were either made directly to the party or payments were made to, for instance, a website designer. According to the case file, the public officials in this case

were actively involved in the party's election campaign in 2017 and 2018 and supervised the party's promotional efforts. Both were also responsible for the budget related to these promotional activities.

In addition, they sought to secure as many votes as possible for the party in the elections, with the aim of maximizing its influence on municipal policy and decision-making. As high-ranking candidates on the party list, they had a good chance of being elected to the city council and possibly becoming city councilors, depending on the election results and coalition negotiations.

In light of these facts, the payments made to the party were of value to the officials, concluded by the Court. As such, these payments can be classified as gifts to a public official within the meaning of the Dutch Criminal Code. This shows that a donation to a political party can easily be considered a gift to a public official, thus fulfilling the first requirement for determining bribery.

CORRUPT INTENT: THE KEY LEGAL ELEMENT

The focus of this case is on the intent behind the political contributions. In the case of the businessmen, the court had to determine whether the contributions or gifts were made with the intent to create a "special relationship" or preferential treatment. This was the charge in the formal accusation. For the public official, it was required that, at the time the gift was accepted or solicited, the public official knew or reasonably suspected that the gift was given, offered, or promised to induce him or her to act or refrain from acting in his or her official capacity, or that the gift was given, offered, or promised as a reward for acts or omissions in his or her current or former official capacity.

Therefore, there needs to be a casual relationship between the gift(s) and a benefit the donor intends to. The evidence can be based on all the circumstances, including nature, frequency and timing of the gifts, their appearance and the facts and circumstances surrounding them.

In terms of frequency, the Court found in this case that the amounts were relatively limited in relation to the total amount spent on the party's promotional expenses. The nature of the donations was also taken into

account and the court noted that the defendants had argued and stated that these donations were made purely to promote the party. Thus, the nature of the donations also appeared to be purely for political support and not for preferential treatment. In addition, the court considered that the donations were made in the run-up to the municipal elections, at a time when the two officials were members of the municipal council, but not city councilors.

The court found it plausible that the businessmen made the donations to support the political party. The court concluded that although the businessmen gained influence within the party through participation in an advisory board and informal discussions after the donations were made, this did not automatically demonstrate corrupt intent or a causal link. The appeals court ruled that participation in such discussions and advice is a legitimate part of the democratic process. Political influence, particularly through participation in policy discussions, is not inherently corrupt, especially since all sectors of society, including business interests, have a right to be heard. Such influence and participation are consistent with a democratic process in which all sectors have the opportunity to be heard, the Court of Appeal noted. The court also concluded that there was no convincing evidence that, at the time the gifts were made, the defendant intended to establish a “special relationship” with the officials or sought preferential treatment. Nor could it be shown that the gifts were made as a result of or in connection with such an intent, even considering all the surrounding circumstances.

Regarding the public officials, the court added that the donations were intended for the party, and they did not have discretion over the use of the funds. Moreover, there was no evidence that it had been stated, written, or agreed that the council members, aldermen, or the party should or would take specific actions in exchange for the donations. Nor were the donations promised in the context of a business meeting concerning real estate interests or in connection with a specific request for official action that might have required the defendant to be aware of an expectation of reciprocity.

The court emphasized the need for careful interpretation of the communication, taking into account the possibility of an alternative reading as suggested by the defense. The evaluation of the communication must consider the timing, the participants, and the broader context.

This case illustrates that in the absence of a concrete quid pro quo between a gift and a specific favor, the political arena remains delicate, as the line between legitimate influence and a party donation can be difficult to define. Although this case does not provide very concrete guidance on when political contributions can be considered a bribe in relation to, for instance lobbying activities, it does show bribery cases are highly factual. All remains dependent on the specific circumstances of the case, the communication at hand and the nature, amount, and moments in which the donations were made.

PREFERENTIAL TREATMENT: WHAT DOES IT MEAN?

Under Dutch law, for a gift to be considered a bribe, there must be proof of intent to induce a public official to act under his public duty. These acts do not have to interfere with any public interest. According to case law of the Supreme Court in the Netherlands, the intent to get a preferential relationship, can be enough for such an act. It keeps on interesting me what this means in the political domain.

In politics, the concept of preferential treatment is complex. Politicians regularly engage with various groups, including businesses, and consider their views when making decisions. As the defense argued in this case, this is not only legal but also necessary for a functioning democracy. Political parties often advocate for the interests of specific groups or social movements because they rely on their support. Should people with a specific interest be excluded from making political party donations?

Engagement between political parties and people, business and interest groups are a fundamental part of the democratic process. These relationships allow different segments of society to have their concerns heard and to influence policymaking in a legitimate manner. Politicians, in turn, must be responsive to the interests of their supporters, as these groups often form part of their voter base. This type of interaction is not inherently corrupt; rather, it reflects the natural dynamics of political representation, where parties align themselves with particular constituencies or sectors, also when these people make donations.

The challenge arises in determining when such an engagement crosses the line into bribery, for instance when a donation is made. But of course, you want a politician to act according to your interests, thus what is a preferential treatment in that respect if you do not seek a specific quid pro quo? It is not unusual for supporters to seek influence over policies that align with their interests. However, this does not automatically imply that a 'preferential' relationship is corrupt, given this fine line, in my opinion political corruption cases, which are solely based on party donation should have evidence of a specific quid pro quo, where donations or support are given in exchange for specific actions or favors from public officials, a preferential treatment should not be used to prevent political engagement even if it is for your own (financial) interest.

CONCLUSION

The 2024 appellate decisions in this case underscore the importance of intent, proximity, and context in cases involving political contributions and potential bribery. For legal practitioners, these rulings highlight the challenges of distinguishing between lawful political contributions and political influence, and the fact-specific nature of these cases.

In addition, these rulings reflect the balance between political freedom and anti-corruption enforcement. In this case, the main political party was excluded from the coalition as a result of the proceedings, which had an extremely negative impact on democracy. In political bribery cases involving political donations, no matter which side you are on, democracy is at stake, and it remains a balancing act to uphold democratic values.

AUTHOR



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[Judith de Boer](#) is a partner at Hertoghs advocaten, a boutique firm in Amsterdam, Netherlands, specializing in white-collar crime, tax fraud, and tax litigation. Her work includes handling cases involving money laundering, bankruptcy fraud, sanction law violations, and tax litigation, with experience representing clients before the Dutch Supreme Court.