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**STUDY**

**COMPARATIVE ANALYSIS OF THE  
LEGAL FRAMEWORK ON FINANCING  
OF POLITICAL PARTIES AND ELECTION  
CAMPAIGNS VIS-A-VIS EUROPEAN  
STANDARDS AND BEST PRACTICES**



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## INTRODUCTION

Pluralism and the rule of law are essential to guaranteeing basic human rights and freedoms. They are prerequisites to having freedom, peace, security and justice.<sup>1</sup> As a result, the requirement for free, democratic, pluralistic and competitive elections are foundation of modern constitutional regime where government is legitimated by the real consent of the majority of governed.<sup>2</sup> Free elections are closely linked to the freedom to associate in political parties, since political parties exist for the purpose of winning political power through free and fair elections.<sup>3</sup>

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<sup>1</sup> The Document of the Copenhagen Meeting of the Conference for Security and Cooperation in Europe, on the Human Dimension, 1990, p. 2;

<sup>2</sup> Evgeni Tanchev, Financing of Election Campaigns in the New European Union Member States (mostly countries of Central and Eastern Europe), Conference “International standards of financing of political parties and election campaigns”, European Commission for Democracy through Law (Venice Commission), 1 December 2008, p. 23;

<sup>3</sup> Gianni BUQUICCHIO, Conference “International standards of financing of political parties and election campaigns”, European Commission for Democracy through Law (Venice Commission), 1 December 2008, p. 4;

Now, three decades after the overthrow of the communist regime, faced from time to time with deep political problems in the country, with the legacy of an informal society, with strong suspicions of corruption at all levels of state functioning, it is time to conduct an analysis of how the right to vote and the right to be elected has been institutionalized.

This study will address one of the most complex issues, that of financing of political parties and election campaigns, which is extremely challenging in any democratic society, because money is the instrument that affects almost every aspect of policy-making, starting from access to the means of communication, to advertising, selection of candidates, encouragement of voters, their enthusiasm, the development of daily party activities, the emergence into political life of new parties, and so on.

This indispensable link is costing democracy too much. The increase in the costs and expenditures of political parties creates the perception that we are dealing with corruption in its administration, which in turn hurts the credibility of political parties and also brings about an overall reduction of voter interest in their programs, in the importance of politics and in increasing dependence on personal and financial benefits through the voting process. Failure to participate in the political life of the country causes a disfunction of the entire democratic system of a country. Therefore, the regulation of political parties' financing is essential to guarantee their independence from financial sources, self-improvement of political parties and an opportunity to compete on an equal footing even for new political parties.<sup>4</sup>

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<sup>4</sup> Code of Good Practice in the Field of Political Parties, European Commission for Democracy through Law (Venice Commission), 2009, p. 40.

## SCOPE AND PURPOSE OF STUDY

The purpose of this study is to create an overall regulatory model on the financing of political parties and election campaigns in Albania, to improve the existing legal framework, guided by the international principles and standards in this field. Due to the fundamental importance of political parties to the level of democracy in the country, the appropriate means must be found to ensure that these legal measures become applicable in practice. This study should aid political stakeholders, the state and interest groups reflect upon the importance of establishing a climate of trust, order, transparency, and competition in the exercise of the activities of political parties. The questions that this study needs to answer are: Can political freedoms and rights be restricted? To what extent can these restrictions be considered reasonable and proportionate in a democratic system? What resources should be allowed to fund political parties? How should the balance between state funding and private funding be established? Should donations from abroad be banned even

when they come from an EU country? What about when they come from an EU political party? What standards should be required for transparency and accountability? What are the control methods and how can they be made effective? What is the role of sanctions in case of breach of obligations by political parties or candidates? What sanctions are effective? What are the strategic and long-term methods for regulating the financial activities of political parties?

## METHODOLOGY

In order to fulfill the purpose of this study we chose the inductive approach, which requires the use of research, comparison, analysis and synthesis methods to proceed from the analysis of the facts to the conclusions of a study.

The main methods employed here are: *the method of analysis - synthesis of the law*, which identifies legal issues in the field of financing of political parties, which are attempted to be solved through logical, literal, systematic, historical interpretation, etc., as well as *comparative methods*, where standards set by the ECHR, the 1996 United Nations Covenant on Civil and Political Rights, other international instruments and the practices of European and region's countries have been used.



## ABBREVIATIONS

European Convention on Human Rights – **ECHR**

European Court of Justice – **ECJ**

Universal Declaration of Human Rights – **UDHR**

International Institute for Democracy and Electoral Assistance – **IDEA**

Central Election Commission – **CEC**

High State Audit – **HSA**

Audio-visual Media Authority – **AMA**

Voting Center Commission – **VCC**

Election Monitoring Mission – **EMM**

National Commission for Campaign Accounts and Political Parties Financing – **NCCAPPF**



# CHAPTER I

## International standards for financing of political parties and election campaigns

The roots of democracy lie in elections. They are now of universal importance. When the electorate believes that elections have been free and fair, they can be a powerful catalyst for better governance, greater security, and human development<sup>5</sup>. However, elections are always threatened by corruption, intimidation of the electorate, of the opposition or new parties, by fraud and lack of control, elements that undermine the entire internal political system and deprive democracy of its power. Everywhere in the world, both in new democracies and in consolidated ones, the problems that come with financing of political parties have been inevitable. As a result, elections have received attention and have been a priority of regulation at the international level. The purpose of these regulations has been to provide meaning to elections and to ensure effective implementation of the right of every citizen to participate in the governance of the country through freedom of expression, freedom of assembly and association, the right to vote and the right to free elections. These freedoms and rights are not unlimited, and their limitations are set precisely to achieve a balance in their exercise by citizens.

The right and freedom of assembly and expression may be restricted only in accordance with the law and when restrictions are necessary in a democratic society to meet the lawful purposes

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<sup>5</sup> Kofi A. Annan, *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*, IDEA, 2012, p. 3-4;

provided for in the European Convention for Human Rights (ECHR). The way each country fulfills these freedoms and their enforcement by the institutions shows the level of democracy of a country. Of course, states have the right to ensure that political parties and groups have legitimate intentions and that they act in accordance with the law, but they must do so in a manner consistent with the obligations arising from the Convention and other international acts. In the case of reviewing the financing of political parties and election campaigns, international standards, almost universally accepted, make states have a low rating margin in terms of assessing what restrictions should be imposed on political parties and the reasons for these restrictions. Consequently, the restrictions that states may impose on private donations or election campaign expenses must comply with these standards, otherwise they will be considered violations of the ECHR, Articles 10 and 11 and Protocol 1, Article 3. Standards such as equality, transparency and accountability in funding sources, the distribution of funding and its administration by political parties require the same recognition, interpretation and implementation by states, regardless of their electoral system or national characteristics. The latter must be considered by the states at the time of choosing the methods and means for the most effective implementation of the obligations arising from these standards.

In order to understand and interpret international standards in the field of political party financing, this study has examined the most significant international acts in this field: the Universal Declaration of Human Rights (UDHR), Article 21; International Covenant on Civil and Political Rights, Article 25; Copenhagen Document; United States Convention against Corruption; European Convention on Human Rights (ECHR) and Additional Protocol; Council of Europe recommendations; reports, opinions, guidelines and conferences of the Venice Commission in

cooperation with the OSCE/ODIHR as well as publications of the International Institute for Democracy and Electoral Assistance (IDEA).

International acts require each state to establish rules governing the financing of political parties and election campaigns. It is also important that the regulatory mechanisms that the state chooses reflect the changes in social and economic reality and aim to empower political parties, providing them with sufficient financial resources to exercise their duties and functions.

Rules on financing of political parties and election campaigns should be based on several principles:

1. A variety of financing sources, with a reasonable balance between public and private funds
2. Fair criteria for the distribution of public funds to political parties.
3. Strict rules on private donations.
4. A threshold on political party expenditures related to election campaigns.
5. Complete transparency related to accounts and relevant transfers.
6. Establishment of an independent auditing authority.
7. Appropriate and reasonable sanctions for those who break the rules.<sup>6</sup>

In summary, due to the elaboration and addressing of the principles related to the financing of political parties and election campaigns, three are the basic guiding principles:

- Equality
- Transparency
- Accountability

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<sup>6</sup> Recommendation 1516 (2001) on Financing of Political Parties, Council of Europe Parliamentary Assembly;

## 1. EQUALITY

*Financing sources* are the first important element that becomes the determinant factor of the political terrain in which political parties and various political groups will operate. The more diverse the ways of financing, the lesser risk to the competition between political parties. Two are the main forms of financing - state budget financing and private financing.

The conditions in which political parties operate and the scope of election campaigns have already changed significantly. The need for political parties to have sufficient financial resources in order to gain visibility and provide political support for their ideas has increased. Because the amounts are large, the source of funding becomes particularly important. For this reason, finding a balance between state funding and private funding is not always easy. This is because if public funds in support of political parties were to be expanded, this could lead to a weakening of the political party's ties with the electorate, while the addition of private funds could create opportunities for influence and corruption.<sup>7</sup>

Given that the latter is therefore highly important and sensitive, it becomes dominant over the right of subjects to support the political party they want to. Despite the problems that private donations bring about, their importance should not be overlooked, not only economically for the party that seeks support, but also for society itself. Society must be part of policymaking, it must support it, and it must have the power to control it through voting. Citizens should be encouraged to follow the policy of their state and the political platforms presented to them. They must contribute to the functioning of

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<sup>7</sup> Ibid;

the political system by being active and showing interest. The first tool that increases political participation and improves the relationship between the party and citizens is to reduce the contrast or inequality between public and private funds.<sup>8</sup>

## 1.1 State budget funding

A universally accepted standard is the **need for state budget funding** of political parties and political groups aiming to enter into parliament, so that, first, political parties are not dependent on private donors and do not feel indebted to them when they come into power, and, secondly, public funding can help guarantee equal opportunities for large and small political parties.

An important role is also played by the **way in which public funds are distributed** so that the main parties do not become a monopoly on obtaining state funding. The contribution from the state budget should, on the one hand, be calculated on the basis of the political support of the political party (assessed on the basis of objective criteria such as the number of votes, the number of seats in parliament), and, on the other hand, enable new parties to enter the political arena and compete in fair conditions with well-established and well-organized parties.

States should also contribute in **indirect ways**, based on the law, for example by covering postage fees, meeting room expenses, assisting youth organizations and research institutes, and also pursuing tax incentive policies through preferential treatment.

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<sup>8</sup> Political Party Funding Regulation in Europe, East and West: A Comparative Analysis; OSCE, ODIHR, 2017 accessed in: [file:///C:/Users/user/Downloads/OSCE-ODIHR%20Discussion%20Paper%20on%20Political%20Party%20Finance%20Spain%20\(1\).pdf](file:///C:/Users/user/Downloads/OSCE-ODIHR%20Discussion%20Paper%20on%20Political%20Party%20Finance%20Spain%20(1).pdf); p. 3;

## 1.2 Private funding

States should encourage citizens to participate in political parties' activities, including providing them with financial support. This support can be in the form of membership fees or donations. Donation includes any voluntary action to donate advantages, both economic or other, to a political party.

The principles governing donations are stricter because, on the one hand, donations have traditionally accounted for the bulk of political party funding, and on the other hand, being "private" relationships, they have been difficult to track and control. Measures that the state must take to regulate donations to political parties must contain specific rules aimed at:

- Preventing conflicts of interest;
- Ensuring transparency in donations and avoiding secret donations;
- Avoiding prejudice over political parties' activities;
- Ensuring independence of political parties.<sup>9</sup>

The state should set some rules related to private donations:

1. Prohibit donations from state-owned enterprises, other enterprises or companies under state control, or companies offering goods and services to the public sector.
2. Prohibit donations coming from companies with offshore headquarters.
3. Setting strict limitations on donations from legal persons.
4. Legal maximum limit on donated amounts.
5. Prohibit donations from religious institutions.<sup>10</sup>

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<sup>9</sup> Recommendation 2003 (4), on common rules against corruption in the funding of political parties and electoral campaigns, CoE Committee of Ministers, 2003;

<sup>10</sup> Recommendation 1516 (2001) on Financing of Political Parties, CoE Parliamentary Assembly;

The rules on donations to political parties must be applied, as far as they are appropriate, to all entities which are directly or indirectly affiliated with a political party or are under the control of a political party.

### 1.3 Foreign donations

States should specifically limit, prohibit or otherwise regulate donations from foreign donors.<sup>11</sup> The Guidelines on the Financing of Political Parties developed by the Venice Commission in 2001 provided that states should prohibit donations from foreign states or companies, with the exception of donations made by from citizens of that country who were living abroad.

The Venice Commission, in a later opinion, made a distinction between the rules to be applied when funds come from a foreign country to an EU member country and when funds are coming from an EU country to another EU country.<sup>12</sup> Thus, in this view, the fact that EU legal systems differ from those of international law, which is created in most cases by international agreements, must be taken into account. The European Court of Justice (ECJ) has stated that: “The Community constitutes a new legal regulation... for the benefit of which States must restrict their sovereign freedoms, and its subjects are not only Member States but also their nationals.<sup>13</sup>” Regulation no. 2004/2003, Article 6, stipulates that contributions from a political party which is a member of a political party at European level, shall be accepted, provided

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<sup>11</sup> Recommendation 2003 (4), on common rules against corruption in the funding of political parties and electoral campaigns, CoE Committee of Ministers, 2003;

<sup>12</sup> Opinion on prohibition of financial contributions by foreign sources to political parties, Venice Commission, March 2006;

<sup>13</sup> Case 26/62, Van Gend & Loos, ECJ;

that they do not exceed 40% of all annual income. Freedom of donation also finds support in the freedom of movement of capital provided for in the Treaty on European Community, and is therefore directly applicable.

The Venice Commission suggests that the imposition of restrictions on foreign donors should be reconsidered in the light of the situation as a whole in Europe. Establishing and enhancing cooperation between political parties through these supranational organizations and institutions in today's Europe makes these collaborations necessary in a democratic society.

#### 1.4 Limitations on expenditure

Voters must be able to form an opinion independently, free from any form of violence or threat of violence, coercion, incitement or manipulative interference of any kind. In addition to the “qualitative” limitations that apply to entities that are allowed or prohibited from contributing, as described above, the state must also impose “quantitative” limitations. These limitations must be reasonable and refer to the source of donation and campaign expenditure. These measures are necessary to ensure that the free choice of the electorate is not undermined and that the democratic process is not distorted as a result of disproportionate expenditures of candidates or political parties.<sup>14</sup>

Thus, states must impose limitations on the maximum expenditure allowed during election campaigns<sup>15</sup>, together with limitations on the maximum amount of funding a candidate or political party can receive.

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<sup>14</sup> International Standards on Elections 1996, UN Committee on Human Rights, General Comment 25, “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service”

<sup>15</sup> Recommendation 1516 (2001) on Financing of Political Parties, PACE

Even the Venice Commission in their Guidelines on Financing of Political Parties maintains that expenditure during election campaigns should not exceed a ceiling, a reasonable maximum limit, set while taking into consideration the economic situation of the country, the overall number of voters and type of election (e.g. it could set different limits for general elections, local elections or presidential ones).

## 2. Transparency

Not only the new democracies, but also the consolidated ones, have been repeatedly accused of involvement in dishonest exchanges between high-value donations on the one hand and benefits from public contracts, up to favorable legal and regulatory measures, when the party which they have financed comes to power, on the other hand. In order to stop this phenomenon, in addition to the measures related to state budget funding and the limitations on expenditures mentioned above, measures were needed to increase transparency and make public the accounts related to these donations.

The Copenhagen Document stressed that voters should not be barred or restricted from discussing about and getting acquainted with parties and candidates and should vote without fear of being punished. So, this document emphasized the importance of the information that voters should have before they vote.

Transparency has become one of the basic principles, on which the effectiveness of every measure taken in the field of regulating the financing of political parties depends. Transparency is the starting point for regulating the financing of political parties. Only transparency and disclosure give the opportunity to verify the practices and rules, written and

unwritten, used by political parties and candidates to finance them. By increasing levels of transparency, voters have the opportunity to make informed choices about candidates and parties on election day.<sup>16</sup>

In order for financing of political parties to be entirely transparent, political parties should:

- a) keep detailed data on all income and expenses, which must be presented at least once a year in front of the independent audit authority and must be made public;
- b) disclose the identity of donors who provide a financial contribution that exceeds a certain limit.<sup>17</sup>

The recommendations of the Committee of Ministers of the Council of Europe, in 2003, further elaborated these obligations and provided that States should ensure that not only donations from legal persons are recorded in the legal book and accounts, but also that shareholders (partners) or any other (natural) member of the legal person to be informed of donations. The accounts of political parties must specify all donations received, including the nature and value of each donation. A special article is devoted only to the maintenance of expenditure data during election campaigns, where each state must request that data on expenditures be stored directly or indirectly, about election campaigns for each political party, for each list of candidates and each candidate (Article 10).

As transparency is seen as the surest way to prevent and combat corruption, the 2004 United Nations Convention against Corruption has imposed an obligation on every state to take appropriate legislative and administrative measures in accordance with the objectives of this Convention and in

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<sup>16</sup> Standards on political funding and favours, Transparency International (TI), 2009;

<sup>17</sup> Recommendation 1516 (2001) on Financing of Political Parties, PACE; Recommendation 2003 (4), on common rules against corruption in the funding of political parties and electoral campaigns, CoE Committee of Ministers, 2003;

accordance with the basic principles of the state, to increase transparency in the financing of candidates for public office and, where appropriate, for the financing of political parties (Article 7, item 3).<sup>18</sup>

In conclusion, the limitations that can be imposed on the financing of political parties or limitations on election campaign expenditures are meaningless if there is no transparent reporting and disclosure of information. The legal framework in each state must provide for the obligation of periodic reporting in reasonable intervals on all contributions and funding received and expenses incurred by an electoral subject. To make this right effective for the public, the law must also provide for the agency or entity responsible for collecting, compiling and maintaining data on the financing and expenditure of political parties. Also, the law should clearly provide for when and where this data (reports) should be open to the public (setting deadlines), so that the latter can have access to their content.<sup>19</sup>

### 3. Accountability

The success of any political reform in the field of finance requires that, in addition to the requirement for transparency that should accompany the process, the way of verifying in practice the abidance by legal requirements and the basic principles in the field of financing political parties be clearly provided. as well as the relevant penalties in case of their violation by the parties or candidates.

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<sup>18</sup> UN Convention against Corruption, 2004;

<sup>19</sup> International electoral standards guidelines for reviewing the legal framework of elections, IDEA, 2002, p. 68, <https://www.idea.int/sites/default/files/publications/international-electoral-standards-guidelines-for-reviewing-the-legal-framework-of-elections.pdf>;

This is not an easy task, as the experience of Central and Eastern Europe has shown the great contrast that exists between very good and ambitious laws on one hand, and the failure to enforce them, on the other. This is also the reason why laws should be as realistic as possible.<sup>20</sup>

### 3.1 Oversight

States should set up an independent audit authority and give it the necessary powers to oversee the financial data of political parties and their expenses related to election campaigns.<sup>21</sup>

Oversight can be done by one or more entities, including audit bodies or state financial bodies. Whatever body oversees the financial reports of political parties, it must guarantee independence from any political interference and must be a completely impartial body. Independence is essential for the proper functioning of this body and this must be strictly provided for by the entire legal framework. The law should define the procedure for appointing members of this body and should clearly describe their rights and duties. Generally, in order for these appointments to meet the requirement for independence, they must be made separately from the electoral cycle links. It is also important to determine the duration of their tenure in office, which must either be very long, permanent, or short and without the right to re-election. In all cases, the law should not provide for the same bodies to

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<sup>20</sup> Conference “On international standards of financing of political parties and election campaigns”, European Commission for Democracy through Law (Venice Commission), 1 December 2008, p. 38;

<sup>21</sup> Recommendation 1516 (2001) on Financing of Political Parties, PACE; Recommendation 2003 (4), on common rules against corruption in the funding of political parties and electoral campaigns, CoE Committee of Ministers, 2003;

decide on their appointment and dismissal.<sup>22</sup>

This body should be given the power to monitor and supervise any oversight process on reporting made by political parties and candidates. In order for there to be no room for any bias or discrimination, the law must clearly provide for the process and procedures that determine the manner of selection and the order in which the reports to be monitored will be selected.<sup>23</sup>

A very important element of the independence of the oversight body is its budget. This body must have sufficient budget and financial independence in its administration and be provided with all the human resources (specialized staff) and logistics needed to exercise its powers of investigation in full independence.

One model that guarantees independence in this area is the French model, where two commissions have been set up to ensure transparency and accountability for political parties, one for the financing of political parties and the other for election campaigns. Both commissions present their reports to the National Commission on Campaign Accounts and Political Party Financing (CNCCFP). This commission consists of 9 members: three from the State Council, three from the Court of Cassation and three from the Court of Audits (Administrative Court). The members are appointed by the Prime Minister upon recommendation of the President or the Vice President of the respective institutions and have a full 5-year mandate. The Chairman of the Commission is elected by the members themselves. The commission is an independent administrative body and has a budget ranging

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<sup>22</sup> Guidelines on political party regulation, OSCE/ODIHR and Venice Commission, 2010;

<sup>23</sup> Guidelines on political party regulation, OSCE/ODIHR and Venice Commission, 2010;

between three and five million Euros, depending on the year. It is aided by 33 permanent officials, including the legal staff responsible for electoral complaints. The decisions of the Commission may be appealed to the electoral court, the members of which change in light of the elections. However, according to OSCE/ODIHR reports, this body should have more power to monitor election campaigns in real time or to obtain information from donors and service providers.<sup>24</sup>

### 3.2 Sanctions

The Recommendation of the Parliamentary Assembly of the Council of Europe in 2001 as well as the Recommendation of the Committee of Ministers in 2003 stipulated that political parties should be subject to appropriate and reasonable sanctions, including partial or total loss or mandatory reimbursement of state financial contributions or the imposition of fines. When individual responsibility is established, sanctions should include the annulment of the elected mandate or a period of ineligibility. In addition, these sanctions should be effective and have dissuasive power.<sup>25</sup>

The Venice Commission guidelines have the same line of provision. It provides that irregularities in financial reporting, discrepancies in financial statements or misuse of public funds should result in partial or total loss of those funds. Fines may also be used as alternative sanctions. In any case, it is very important that the sanctions be effective, proportionate and dissuasive. In establishing the sanction, the value involved

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<sup>24</sup> Report on Presidential Elections in the Republic of France, 23 April and 7 May 2017, OSCE/ODIHR;

<sup>25</sup> Recommendation 1516 (2001) on Financing of Political Parties, PACE; Recommendation 2003 (4), on common rules against corruption in the funding of political parties and electoral campaigns, CoE Committee of Ministers, 2003;

must be taken into account, whether or not there has been an attempt to conceal the violation committed, or whether the violation is repeated. Administrative sanctions should be escalated, while criminal sanctions should only be imposed in cases of very serious violations which undermine public integrity.<sup>26</sup>

In the event of the imposition of sanctions, the party must be able to appeal to a fair and independent tribunal, to be tried in accordance with judicial principles.<sup>27</sup>

### 3.3 Internal Monitoring of Political Parties

The state should encourage political parties and candidates to monitor their own financial activity, prevent any financial misconduct, and act in accordance with the requirements for maintaining and reporting any financial action that affects their activity.

While working for this, each political party should provide, in their statute, mechanisms for controlling its accounts at both central and local levels.<sup>28</sup> The statute should provide certain procedures for refusing politicians with problems related to their income and for preventing financial misconduct.

These mechanisms play an essential role because they have the capability to predict and prevent abusive behavior that even the law itself, no matter how sophisticated, cannot cover. Political parties should consider hiring subject-matter specialists to perform these functions and the law should provide for political parties or candidates to authorize and

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<sup>26</sup> Guidelines on political party regulation, OSCE/ODIHR and Venice Commission, 2010;

<sup>27</sup> Guidelines on political party regulation, OSCE/ODIHR and Venice Commission, 2010;

<sup>28</sup> Code of Good Practice in the field of Political Parties, European Commission for Democracy through Law (Venice Commission), 2009, p. 11;

appoint a commission to serve as a finance manager and be responsible for all debits and credits in the finances of the political entity. Also, the law should require political parties or the commission dealing with the financial aspect to only use one bank account, in order to facilitate any kind of control over the actions performed.<sup>29</sup>

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<sup>29</sup> Conference “On international standards of financing of political parties and election campaigns”, European Commission for Democracy through Law (Venice Commission), 1 December 2008, p. 42-43;

## CHAPTER II

### Financing of Political Parties in Albania

Albania participated in the Copenhagen meeting, in 1990, with the status of an observer country, a moment that dates back to the beginning of democracy in Albania. The Copenhagen Document, issued after this meeting, constitutes one of the founding acts of the guarantee of free voting and free and fair elections for every participating state which pledged to implement the basic principles and to reflect in their legislation the obligations arising for the state. Each subsequent international and European act has elaborated and built upon these basic principles. In Albania, the elections following the overthrow of the communist regime have been characterized by a polarized political culture, with deep antagonism between political forces grouped around the main parties, namely the Socialist Party and the Democratic Party. However, the 2001 parliamentary elections marked progress compared to previous elections in terms of campaign development, media and election administration.<sup>30</sup> These elections took place in a new atmosphere of legal amendments that was finalized with the adoption of the Electoral Code May 2000 (amended in May 2001) and of the Law on Political Parties of 2000, which set rules for the financing of political parties and the management of funds for election

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<sup>30</sup> Final Report of OSCE/ODIHR on parliamentary elections of 24 June -19 August 2001 in Albania, p. 1;

campaigns. Since then, the legal framework in Albania has been improving in terms of transparency and accountability. However, the factual situation has proven how difficult it is, even with good legislation, to prevent and limit or eliminate forms of illegal interference in election campaigns, especially those brought about by the use of illegal, covert funding, which aim at buying votes and distorting the will of the electorate, in order to profit from power in the post-election period. The need to limit the impact that business has on politics and state formation remains a challenging requirement for Albanian law and practice.

## 1. Legal Regulatory Framework

The Constitution of the Republic of Albania provides for the right to freely form political parties, to participate and to engage with them in accordance with democratic principles. The Constitution, requiring that the financial sources of political parties, as well as their expenditures always be made public<sup>31</sup>, has raised at the constitutional level one of the most important guiding principles of the financial activity of political parties – transparency.

In addition to the provision in the Constitution, the financing of political parties and election campaigns in Albania are regulated by two basic laws: the Electoral Code of the Republic of Albania, approved by Law no. 10019, of December 29, 2008, and amended by Law no. 74/2012, of July 19, 2012, and Law no. 31/2015, of April 02, 2015, and Law no. 8580, of February 17, 2000, “On political parties”, as amended. These two laws are complementary and make

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<sup>31</sup> Constitution of the Republic of Albania, Article 9;

reference to each other. For this reason, the legal analysis of the financing of political parties and election campaigns should be done by jointly and logically analyzing these two laws.

Also, on November 27, 2014, the Albanian Parliament passed Law no. 154/2014, “On the organization and functioning of the High State Audit”, which provides that this body is responsible for auditing political parties in the Republic of Albania in relation to funds allocated from the state budget.

### **1.1 Legal principles and mechanisms for financing of political parties and election campaigns**

The Electoral Code provides for the basic principles that should guide the elections and conduct of political parties, defining concrete mechanisms in order to enforce and control the compliance with these principles. Important principles such as freedom of choice, equality and non-discrimination, transparency, impartiality and accountability are principles that are also reflected in the regulation of the financing of political parties and election campaigns.

It is appropriate to highlight a general rule, which in the Electoral Code appears as a principle, and which specifically refers to the use of public goods by political parties. Article 3, item 7, stipulates that: “Except for the cases provided by law, it is *prohibited for electoral subjects to make use of various public assets, funds and materials, as well as human resources of public administration of any level.*”<sup>32</sup> This principle aims to eliminate the various types of dependence that can be created between the government and political parties, which would jeopardize the equality in the treatment of electoral subjects. Exceptions

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<sup>32</sup> Electoral Code of the Republic of Albania (Approved by Law no. 10019, of December 29, 2008, as amended);

to this rule, as will be noted below, relate to public funds provided in the state budget for political parties and buildings, state or public property, lent to be used as headquarters and branches of political parties at central and local level.

The law “On political parties” focuses on the behavior of political parties and their financing beyond the election campaign, establishing principles and rules that should accompany the entire activity of political parties. It is important to highlight the principle of transparency, equality of the parties and the oversight of political parties, principles which are explicitly stated in this law. Thus, in Article 15/1, items 2 and 3 it is provided that: “...2. Political party funding shall be guided by the principle of transparency. Data on party financial resources as well as their expenditures shall always be published. 3. The rules of monitoring, oversight and audit of financial and material resources, in any case, shall respect the equality of political parties before the law and not violate the right to freely create them.”.

By analyzing the provisions on the financing of political parties and election campaigns, and comparing them to international standards in this matter, analyzed in Chapter I, we can identify three main issues that need to be addressed: funding sources (along with limitations and prohibitions), transparency and accountability.

### 1.1.1 Funding Sources

Funding sources should be analyzed in two main directions: the funding entity and the value of funding. Both of these components create a balance in funding between various political parties, in order to create an equal competition environment. At the same time, they reduce

the risk of corruption and misuse of political party funding through rules and restrictions related to the amount of funding, or how it is distributed and administered. If we look at the German model, financial policies there have found a solution through the large donations made by the state, while the UK model, after the reform of 2000, finds the balance through the mechanism of limiting expenditures.

There are three sources of funding for political parties: membership fees, public funds, to the extent specified in the State Budget approved by a law adopted the Assembly and non-public funds, which may be in the form of financial donations, donations in kind, services, various sponsorships, loans or guarantees, as well as any other financial transactions permitted by law.

The ratio between these sources is important so that political parties do not depend entirely on public funds, but build a close relationship of trust with the electorate, where the latter, by being aware of the role and function of political parties, can participate in funding through membership fees or donations. On the other hand, these funds from supporters of a political force should not be a cause for creating monopolies about certain names or entities that have more economic resources and make high donations, and, worse still, should not become a cause for subsequent benefits through the party that will govern the country. In Albania, sources of non-public funding do not provide much guarantee, both in terms of transparency in their donation and the source of this income for the donor, whether these are legal income or not. This is why the election campaigns are characterized by widespread allegations of vote-buying and political corruption, which further undermine public confidence and prevent political parties and candidates from paying attention to the presentation of the concrete

platforms with which they will lead and rather focus on the characters of the candidates and the reputation of their past.

This is why it is important that support from public funds be sustainable and provide real opportunities for political parties to operate and fund their election campaigns. The amount of public funds allocated to the parties should be carefully decided to ensure that this fund is used as needed and does not remove the need for private contributions or diminish the importance of individual donations. It should be noted that economic support, whether as membership fees or as donations, with low or high values, is one of the forms of citizens' participation in politics.

Regarding the distribution of public funds, of course the impact of each party should serve as a gauge of their distribution, but on the other hand it should not be an obstacle for new parties or independent candidates. Albanian law is problematic in terms of financing the election campaign by not allowing independent candidates to profit from public funds, which is contrary to international acts and guarantees that they give the right to independent candidates to enjoy a system of support from the state in order to ensure that they are treated as equals with political parties regarding the distribution of state resources.

One of the ways to control the superiority of one source over another is to set spending limits, provided by law, in the case of election campaigns. The law does not provide any limits on the maximum value of private funds that a political party can benefit from. However, the law has limited the amount that can be donated by any person, natural or legal, to 1 million ALL and has also imposed other restrictions in the form of prohibitions, as will be analyzed below. The imposition of this legal limit on the amount each entity is entitled to donate

meets the requirement to limit the income that a political party may receive from a private donor, a requirement set out in Council of Europe Recommendation (2003)<sup>4</sup> on financing of political parties.<sup>33</sup> With regard to election campaigns, the law has set a limit, which is calculated on the basis of the public fund, in order to establish a fair balance between public and non-public funds that can be used [in election campaigns]. This imposes a restriction on non-public funds. Thus, the Electoral Code, Article 90, stipulates that the total expenditure of an electoral entity shall not exceed ten times the amount that an electoral entity has received from public funds. The same limitation applies to independent candidates, but the way to calculate the maximum for them is different. Specifically, it is provided that the expenses incurred by them shall not exceed 50% of the highest amount that an electoral subject has received from public funds. This provision was developed because independent candidates are not considered by law as beneficiaries of public funds for the election campaign and it was deemed appropriate that the limitation of their expenditures be based on the values provided for other beneficiary entities. The failure of the law to treat independent candidates as beneficiaries of public funds is contrary to international standards. Until this is reflected in the law, limiting spending to 50% of the highest amount an electoral subject has received from public funds seems to be a reasonable limit because it is the campaign of an individual person. For the 2017 parliamentary elections campaign, the State Budget gave ALL 65 million and the CEC distributed it on May 31, 2017. (SP - ALL 28 million; DP - ALL 20.8 million; SMI - ALL 7 million; RP - ALL 2 million; PDIU - ALL 1.8

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<sup>33</sup> Recommendation (2003)<sup>4</sup>, Article 3, item b: “b. States should: ii. consider the possibility of introducing rules limiting the value of donations to political parties.”

million; and the other parties - between ALL 1.2 million and ALL 325,000), while the maximum expenditure limit was estimated at ALL 280 million, i.e. a limit about four times higher than the support from state funds, which potentially enabled private donations to account for approximately four-fold of public funds, although in fact those declared by political parties were low values.

The limit set for campaign spending in Albania has created a ratio in which private funds can go to much higher values than state funds, and is always proportionate: the higher the state funds, the higher the private funding, the greater the gap between public and private funding. As provided in the law, private donations, membership fees and loans can fund up to 90% of the election campaign. As a matter of fact, if we look at the reports submitted to the CEC over the years by electoral subjects, the donation figures are very low compared to state funds. This raises some questions: Is the law in line with Albanian reality and practice? Are the reports of the electoral subjects regarding their financial situation, donors and expenses during the election campaign truthful? Has the law provided for a general philosophical line on the basis of which it prioritizes private funding over state funding?

Taking into consideration the Albanian economy, its gross domestic product, imports and exports, the nature of small and craft businesses, the nature of large businesses, the way free professions work, and other economic indicators, the informality that has existed and continues to be part of the economy and transactions in Albania, the problems of Albanian society regarding education about the importance of elections and voting, it can be concluded that the most worrying problem related to the financing of political parties in Albania is unknown and un-reported donors. This is due

to the fact that it could bring about uncontrolled spending, opportunities for corruption, opportunities for vote buying and buying, and a direct impact on state policies to provide privileges and favors. The approach that can be taken to address this phenomenon is to strictly control the financing, donors, their connections and conflicts of interest, by conducting investigations and involving a specialized body in this field, as well as by reducing in law the gap that exists between public and private funds.

The Electoral Code contains a special provision, Article 88, which relates to the misuse of public assets, both movable and immovable, of public bodies or entities at central or local level, or any other type of entity where the state owns capital or quotas or/and appoints the majority of the supervisory body or administrative body of the entity, regardless of the source of capital or ownership. Also, the administration of the institution cannot be used for election campaign purposes within official working hours. In addition, the forced and organized use of students of the pre-university school system in the election campaign is prohibited. During the election campaign it is forbidden to hire, dismiss, lay off, move and transfer officials in public institutions or entities, except in justified cases. In reality, the misuse of state administration is a phenomenon that has been difficult to resolve, even with these legal provisions. The status of civil servants and the ways in which civil servants are recruited into the administration seem to provide a higher level of independence. Also, the oversight performed by the Commissioner for the Oversight of the Civil Service, an independent public body, provides further guarantees, because this body is responsible for overseeing the legality in the administration of the civil service during the election process. S/He performs this function by continuously

monitoring developments regarding new appointments, dismissals/lay-offs from the civil service and the conduct of civil servants during the election campaign, as well as through the reporting of monitoring groups set up by institutions involved in the scope of Law no. 152/2013, “On the civil servant”, as amended, as well as through events reflected in the media or various information reports addressed to the Commissioner.<sup>34</sup>

Furthermore, the Electoral Code has provided some conditions on private donations. First, electoral entities may receive funding, for the purposes of their election campaign, only from domestic natural or legal persons. This provision is contrary to Article 21 of the Law on Political Parties, which allows gifts and assistance coming from parties or international associations of parties, from domestic and foreign political organizations and foundations. The law must be harmonized so that there is no contradiction. Generally, foreign financing is prohibited. However, in a common environment, as is expected to be the European one, funding between parties or organizations creates and strengthens cooperation between them and makes these collaborations necessary in a democratic society. The Electoral Code and the Law on Political Parties need to be reviewed under this perspective to allow donations only from foreign legal entities from certain countries, such as European Union member states.

Secondly, the amount that any natural or legal person can give to an electoral subject cannot be greater than ALL 1 million or the equivalent in goods or services. This value seems reasonable considering the economy of our country and the importance of not creating the circumstances where very economically powerful donors can influence the policies

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<sup>34</sup> Law no. 152/2013, “On civil servant”, as amended.

of the party and seek benefits from it. However, it allows a situation whereby both the legal person and natural persons comprising this entity can donate to a political party, thus bringing the donated amount to several million or even tens of millions of Albanian lek. The more shareholders or partners a company has, the more millions of lek they are entitled to donate to a political party.

This is also connected to the third important limitation, which is the conflict that exists in the case when the donor, entrepreneur, seeks to benefit from public contracts. The Electoral Code makes a partial adjustment, when it states that “Donation of funds by a legal person or any of its shareholders is prohibited if one of the following conditions applies: a) has received public funds, public contracts or concessions in the last 2 years, exceeding ALL 10 million;... ”, This provision only regulates the case where the legal person has previously benefited from a public contract, and then wants to make a donation, but does not regulate the case when s/he, after making a donation, participates in tenders or procurement procedures.

This provision regulates the cases where persons who wish to benefit from public contracts, make several donations distributed over time so as not to raise suspicion, but in the meantime there is no specific provision to stop the direct conflict that is created in cases where the donor wishes to benefit from public procedures and contracts as soon as the political party s/he supports comes to power. To avoid the illegal influence and the illegal benefit of public procurement, the provision should extend the prohibition to include cases where the person seeks to benefit from a public procedure, for a term and a contract value to be set by the lawmaker.

Another problem related to private funds is the failure to

develop legal requirements for various political organizations, established as foundations or centers. Article 21 of the Law “On political parties” allows gifts and assistance coming from political organizations and foundations, but does not provide for any kind of regulation or obligation of transparency or oversight for them. Recommendation 1516 (2001), item 8/f and Recommendation 2003 (4), Article 6, require that the law on the financing of political parties and election campaigns be applied, as far as they are appropriate, even in the case of entities affiliated, directly or indirectly, with political parties, such as political foundations.

Restrictions on various activities also lead to expenditure limitations. We bring to your attention the control that takes place in the field of media. First, private donors cannot be legal persons or shareholders of legal persons operating in the field of media. Secondly, the law sets rules for the television airtime that political party campaigns should receive. Given that the Albanian Radio and Television allocates free airtime for the election campaign and the political parties, the rules related to it are only those that guarantee equality and proportionality in the set time for each electoral subject. In the case of private televisions, where parties have the right to pay for advertising, the law establishes regulatory mechanisms such as same tariffs announced 5 days earlier in the CEC and a maximum airtime dedicated to advertising for each electoral subject (90 minutes).

From the analysis that has been made of the campaign broadcasting in the media, it is obvious that the two private televisions with the highest viewership, TV Klan and Top Channel, are the ones that have violated the rules the most. TV Klan gave 42% of the coverage to the SP, 24% to the DP and 17% to the SMI, while on Top Channel, the coverage

was 42% for the SP, 33% for the DP and 16% for the SMI, but the tone of coverage for the DP was partly negative. This biased display of media behavior shows the political and financial influence exerted on it. This was the reason why the Audio-Visual Media Authority (AMA) started monitoring the media to cover the activities of political actors outside the campaign period and published its periodical bulletin no. 3, which included reports on the economic performance of media entities and their ownership.<sup>35</sup>

Also, in the 2017 elections, after the political agreement of May 18, an unclear legal situation was created regarding the political advertisements in the media. The Law on Political Parties, through a provision directly referring to the 2017 elections, banned television, from broadcasting paid political advertisements during the campaign, which was contrary to the Electoral Code. Although this situation did not have legal consequences because both the media and political parties did not implement this legal amendment and continued to implement the Electoral Code, overall, it was a negative indicator in the perception on the relationship between the media and politics.

The rules set forth in the Electoral Code and the Law “On Political Parties” address these issues through specific legal provisions:

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<sup>35</sup> <http://ama.gov.al/wp-content/uploads/2018/12/Buletini-periodik-Nr.-3-1.pdf>

*Public Funds*

<i>Funding sources</i>	<b>Public funds</b>
<p><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li>· Principles regulating public funds;</li> <li>· Conditions to profit;</li> <li>· Method of setting a value for each electoral subject;</li> <li>· Funds in the case of election campaigns.</li> </ul>	<p><b>Electoral Code, Article 3, item 7:</b> “7. Except as otherwise provided for by law, it is prohibited to provide for the use of electoral subjects any means, funds or different materials that are public property, as well as human resources of the public administration of any level.”;</p> <p><b>Law on Political Parties, Article 15/1, item 2 and 3:</b> “2. The funding of political parties shall be guided by the principle of transparency. Data on the parties’ financial resources and expenses shall be published at any given time. 3. The rules on monitoring, supervision and auditing of financial and material resources must observe at all times the equality of political parties before the law and must not infringe their right to be established freely.”;</p> <p><b>Electoral Code, Article 87:</b> “1. Political parties <i>participating in the elections</i>, which have received no less than 0.5 per cent of votes nationwide, are entitled to State Budget funds, based on the number of votes of each party in those elections. This fund is determined through a decision of the Assembly and comprises a separate item in the State Budget for the respective electoral year. This fund may not be lower than the aggregate sum allocated to political parties in the previous elections.”</p> <p><b>Electoral Code, Article 87/2:</b> “The fund defined through a decision of the Assembly, according to point 1 of article 87, is given in advance to the parties that are registered as electoral subjects as follows: a) 95 per cent of the fund is distributed to the political parties registered as electoral subjects, which have received no less than 0.5 per cent of the valid votes in the previous elections; b) 5 per cent of the fund is distributed to the political parties registered as electoral subjects and do not profit according to letter “a” of this article.”</p> <p><b>Electoral Code, Article 87/3:</b> “Article 87/3§ Calculation of advanced funds, 1. The fund defined according to letter “a” of article 87/2 is calculated by dividing this fund with the total number of valid votes received by the political parties, which profit funds according to letter “a” of article 87/2 of this Code. The result from this division is multiplied by the number of valid votes received by the respective political party in the previous elections. 2. The fund defined according to letter “b” of article 87/2 is distributed by dividing this fund with the number of the political parties that profit funds, but in no case may this amount be higher than the smallest amount profited by one party, according to point 1 of this article. 3. For elections to the Assembly, the applied criterion is the result at national level as declared by the CEC for the previous elections to the Assembly. For local government elections, the applied criterion is the result for the local councils at national level, as declared by CEC for the previous local government elections. 4. The fund determined to be distributed, according to article 87/2, is given to each party no later than 5 days from the registration of the multi-name lists, or to the candidates for mayor of the local government unit of the respective party.</p>

<i>Funding sources</i>	<b>Public funds</b>	
	<p><b><u>Issues for discussion:</u></b></p> <ul style="list-style-type: none"> <li>· Principles regulating public funds;</li> <li>· Conditions to profit;</li> <li>· Method of setting a value for each electoral subject;</li> <li>· Funds in the case of election campaigns.</li> </ul>	<p><b>Electoral Code, Article 88:</b> “Prohibition on using public resources to support electoral subjects, 1. Except when otherwise provided by law, resources of central or local public bodies or entities, or of any other entity where the state holds capital or shares or/and appoints the majority of the supervisory or administrative body of the entity, regardless of the source of the capital or ownership, may not be used or made available to support candidates, political parties or coalitions in elections. 2. For purposes of this article, current and fixed assets provided for in article 142 of the Civil Code, as well as any human resources of the institution, shall be considered as “resources”. Use of “human resources” shall mean the obligatory use for electoral purposes of the institution’s administration within the work hours, as well as the obligatory and organized use of students of the pre-university system within the lesson hours, in the electoral campaign. 3. During the electoral campaign, the recruitment, dismissal, release, movement or transfer in duty in public institutions or entities is prohibited, except for legally-justified cases. Legally-justified cases shall refer to cases when movement or release from duty occurs when the respective legislation is violated, or when recruitment by the public institution or entity, in fulfilling their mission, is carried out within the organization’s staffing and structure in force before the electoral campaign. This does not apply to cases of emergencies arising from unanticipated events, which dictate recruitment.”</p> <p><b>Law on Political Parties, Article 21, item 1:</b> “Financial assistance and materials from foreign public or private entities and from government is prohibited, as well as that from Albanian public entities or those with the participation of state capital.”</p> <p><b>Law on Political Parties, Article 22:</b> “The state facilitates the activity of political parties. The facilitation by the state of the activity of political parties includes the following fields:</p> <p>a) Parties have the right to use, without compensation, the public mass media in the case of electoral campaigns and referenda. b) parliamentary parties obtain premises (headquarters) for their central and local offices. The right to obtain premises belongs also to the political party with the average of votes over the last three parliamentary elections was over 1 percent nationwide. c) if the party is equipped with a lease contract building, according to this law, but does not meet the requirements of the letter” b “of this article, it (the party) shall have the right to conclude a lease contract for the building, only for headquarters or its local offices use. More detailed rules are defined by the Council of Ministers on proposal of the Minister of Interior.”.</p>

## Non-public funds

Funding sources	Non-public funds
<p><b><u>Issues for discussion:</u></b></p> <ul style="list-style-type: none"> <li>· Sources of non-public funds</li> <li>· Rules and restrictions on subjects and value;</li> <li>· Foreign donations.</li> </ul>	<p><b>Law on Political Parties, Article 17:</b> "...non-public funds, which are <i>financial donations, in-kind donations, services, sponsorships, loans or guarantees, as well as any other financial transaction.</i>";</p> <p><b>Electoral Code, Article 89:</b> "Financing of electoral subjects through non-public funds, 1. Electoral subjects may receive funds for the purposes of their electoral campaigns only from domestic natural or legal persons. For the purposes of this Code, an Albanian citizen who resides outside the territory of the Republic of Albania shall also be considered a domestic natural person. 2. The amount that each natural or legal person may give to an electoral subject may not be larger than ALL 1 million or the equivalent value in kind or services. 3. Donation of funds by a legal person or any of its shareholders is prohibited if one of the following conditions applies: a) has received public funds, public contracts or concessions in the last 2 years, exceeding ALL 10 million; b) exercises media activity; c) has been a partner with public funds in different projects; ç) has monetary obligations towards the State Budget or any public institution. This obligation is not applicable if the shareholder owns these shares as a result of a public offer.";</p> <p><b>Law on Political Parties, Article 21/2:</b> "Gifts and assistance that come from a party or international union of parties, from political foundations and organizations, Albanian and foreign, and from individuals who are Albanian private natural and legal persons is permitted."</p> <p><b>Law on Political Parties, Article 23/1, item 2:</b> "2. The donation of non-public funds in excess of one hundred thousand ALL must be made only through a special bank account opened by the political party. The person in charge of finances at the political party shall notify the Central Election Commission of the bank account number opened for this very purpose no later than three months from the establishment of the political party. The bank account number of each political entity shall be published in the official website of the Central Election Commission."</p>

## Limitations on expenditure

<b>Fund- ing sourc- es</b>	<b>Limitations on expenditure</b>	
	<p><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li>· limitations on value;</li> <li>· limitations on media relations;</li> <li>· criteria for determining expenditure</li> </ul>	<p><b>Electoral Code, Article 90, item 3, 4:</b> “3. The total expenses made by a political party, including its candidates, for an electoral campaign shall not exceed <i>10 times the highest amount that an electoral subject has received from public funds</i>, according to article 87/3 of this Code. Every expense for the electoral campaign is documented and carried out in respect of the fiscal legislation in force. 4. Obligations provided for in this article are also applicable to candidates proposed by voters who are registered in accordance with articles 69 and 70 of this Code. The total amount that a candidate proposed by voters may spend shall not exceed 50 per cent of the highest amount that an electoral subject has obtained from public funds, according to article 87/3 of this Code.”;</p> <p><b>Law on Political Parties, Article 24/2:</b> “1. Each political party participating in elections, cannot exceed the expense for financial campaign fund specified in paragraph 3 of Article 90 of the Electoral Code. 2. Central Election Commission, in accordance with the maximum fund provided for in paragraph 1 of this Article, <b>determines the maximum expenditure for each election campaign</b>, based on the overall economic situation in the country, the total number of voters enrolled in the voter list, the activities, services and materials necessary for the conduct of an election campaign. 3. The Central Election Commission shall approve the <b>manner of calculating the financial cost of any activity, service or material to be used for election or political purposes by political parties during the election campaign</b>. 4. The Central Election Commission determines by <b>an instruction the types and number of activities, activities, services and materials allowed to be used by a political party in the electoral field</b>. 5. In any case, the use of propaganda materials, including flags and posters of any kind or size, is prohibited at a distance of more than 5 m from the electoral subject or candidate electoral office. 6. It is forbidden to broadcast commercials produced, funded or paid by state institutions or any other state or public entity for the period of three months before the election date, except for those serving the information of voters, according to legal definitions.”;</p> <p><b>Law on Political Parties, Article 24/5, item 1:</b> “Regardless of stipulations of the Electoral Code, during the <b>election campaign for the 2017 Assembly elections</b>, National, local or satellite radio and television stations are obliged to make available free of charge to electoral subjects for political advertising, Respectively only 90 minutes for the largest party of the parliamentary majority and the largest party of the parliamentary minority, 45 minutes for the other parliamentary parties and 10 minutes for the non-parliamentary parties. Political parties and any other subjects are prohibited from making political advertisements versus payment during the election campaign. The cost of making available free time to electoral subjects is calculated as a full deductible tax expense.”</p>

*Limitations on expenditure*

<i>Funding sources</i>	<b>Limitations on expenditure</b>	
	<p><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li>· limitations on value;</li> <li>· limitations on media relations;</li> <li>· criteria for determining expenditure</li> </ul>	<p><b>Electoral Code, Article 84, item 5, 6:</b> “5. The total broadcast time of political advertisements throughout the election campaign by each private radio and television station may not exceed 90 minutes for each party registered for the election. Radio and television operators in each case apply the same fees within the same time segment throughout the campaign. Radio and television operators are obliged to submit fees for each time segment at the CEC 5 days before the start of the campaign. Tariffs are published on the official website of the Central Election Commission. 6. For elections to the Assembly, private national and satellite radios and televisions that accept paid advertisements in accordance with this article are obliged to make available to the electoral subjects, free of charge, half of the total airtime for advertisement provided for in point 5 of this article. The cost for making the free airtime available to the electoral subjects by private radio and televisions is calculated as a deductible expense for taxation purposes. The CEC, the NCRT and the Minister of Finance are responsible for issuing the respective instructions.”</p>

### 1.1.2 Transparency

Transparency of funding sources and expenditures of political parties and candidates gives meaning to all provisions related to the rules and restrictions imposed by the Law on Political Parties. For this reason, it is of essential importance, regardless of the funding source. Adherence to this principle prevents and avoids secret donations, prevents the misuse of public funds by political parties, dissuades prejudices about political activity, all aiming at strengthening the role of political parties, in terms of their independence and enhancing citizens' trust in the overall political system in the country.

Transparency should be encouraged in two aspects: firstly, as an opportunity and element that connects the activity of political parties with the public and state monitoring bodies, and secondly, as a key element that strengthens the political party and its internal structures.

In order to achieve transparency with the public, Albanian law provides for a series of measures related to the recording of financial activity data, their publication and storage for seven years. Political parties are required to show funding sources and their amount, to identify donors, avoid conflict of interest, have an office within the party structures to deal with financial issues and an authorized person to make payments to the bank account of political parties, to report annually on financial activities, to cooperate with state bodies for providing information, etc. The law also stipulates that all this data and financial statements must be published so that the public has access to them.

From the legal provisions it is noticed that all reports and audit results in election years are submitted and audited

after the election campaign, although the control and audit initiate at the start of the election campaign. This does not allow the public or opposition parties to know how the election campaign is going and to form an opinion before going to the polls. Also, after the elections, it seems that the interest in analyzing how the campaign was administered by the electoral subjects fades away. A significant shortcoming in legal provisions is also related to setting a deadline for when audit reports should be submitted. The law only provides for the CEC's obligation to make them public within 30 days from the moment of their submission by the auditor, without specifying the time allotted to the auditor.

Bylaws, especially CEC decisions and guidelines, are the ones that will need to ensure that the way, rules, reporting formats are freely accessible to those interested and are clear and understandable. This is the only way that the standard of transparency can be met.

In the amendments to the Law “On Political Parties” in 2017, the CEC was given the right and responsibility to oversee, through financial experts, the election campaign, activities, and materials used by political parties during the election campaign. Financial experts are entitled to request and verify the financial transactions carried out during the 3-month period before and after election day, by natural or legal persons, domestic or foreign, in order to identify unjustified transactions that may have been used for illegal financing of the election campaign of one or several political parties.

The CEC has issued an Instruction “On the procedure of overseeing and verifying the financing and expenditures of political parties and the election campaign” which, in addition to detailing what the law stipulates, has made an addition that

is of interest to be mentioned and related to intermediate reporting. The law states that the monitoring report is submitted to the Central Election Commission within the deadline set in the appointment decision, but in any case no later than 4 months from the date of announcement of the final election results, while the instruction provides that financial experts, contracted by the CEC to monitor election campaign expenditures, must also submit in electronic format to the CEC, on a weekly basis, an interim report on monitoring results. The CEC immediately sends a copy of the interim report to the electoral subject, for their acquaintance and objections. The CEC, within 24 hours from the moment of submission, examines the results of the interim report.

If from the verification and review of the interim report and the objections submitted by the electoral subject it is ascertained that there is a violation of the provisions of the Law “On political parties”, as amended, in relation to the election campaign, the CEC notifies the Mayor of the municipality where the violation was identified and the electoral subject in order for them to take measures to restore legitimacy. The interim report and, depending on the case, the decision of the CEC in relation to the measures, shall be immediately made public.

This provision has played a role especially in the last election campaign held in 2017 and the CEC for the first time has imposed fines on electoral subjects that have violated the law.

In conclusion, we can say that in addition to preventing corruption and controlling financial activities, these reports, and especially their publication, are important for the public to be more informed the day they go to the polls. It is very important that the public know. For this reason, these deadlines must be reviewed or the law will have to provide

for interim reports and publications according to the stage at which the election campaign is at. A good model is the Croatian one, which stipulates that all candidates are required to submit two financial reports to the SEC: the first one - seven days before the elections and the second one - 30 days after the elections<sup>36</sup>, a model which by analogy can be used to make legal amendments to the Albanian law.

Political parties should aim to exercise their functions with integrity and honesty even internally. They should respect the established bodies and strive for well-governance internally. Cases where members of a political party, even senior ones, are unaware of donations or cases where important financial activities performed by party members are not known and approved are problematic for democracy. Especially in Albania, due to problems caused by corruption, crime and informality, political parties themselves must take action to avoid possible links with persons suspected of being involved in these acts.

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<sup>36</sup> Report on Presidential Elections, Republic of Croatia, 22 December 2019, ODIHR, 28 November 2019;

## Record keeping and publication

<i>Trans- parency</i>	<b>Issues for discussion:</b>	<p><b>Law on Political Parties, Article 11, item ç:</b> “In the documents for the registration of a political party, there are set out: ç) initial funding sources and the number of founding members.”;</p> <p><b>Law on Political Parties, Article 23:</b> “1. Political parties shall submit financial reports to the Central Election Commission once a year, which shall contain detailed information on: a) <b>funding sources</b> based on the standardized template approved by the Central Election Commission; b) <b>expenses</b> based on the standardized template approved by the Central Election Commission; c) subjects, directly or indirectly affiliated with or controlled by political parties, which are declared by the political party itself. 2. Political parties shall submit the annual financial report along with the auditing report drawn up by certified accounting experts in accordance with the provisions of this law. 3. The annual financial report shall be submitted either by the person in charge of finances at the political party or by an individual assigned by the statute of the political party within the timeframe defined by the Central Election Commission. 4. During an election year, the financial reports of the political party must be submitted with the financial report of the election campaign. 5. The annual financial report, the report of the certified accounting experts, the financial report of the election campaign and the report of the Central Election Commission shall be published in the official website of the Central Election Commission no later than 30 days from the date of their submission by the political party.”;</p> <p><b>Law on Political Parties, Article 23/1:</b> “1. Each political party must record in a special record book, according to the template approved by the Central Election Commission, the amount of funds received by any natural or legal person, and data clearly defining the identity of the donor. When awarding the donation, the donor shall at all times be obliged to sign a donation statement, in accordance with the template approved by the Central Election Commission. The list of persons who donate funds of not less than ALL 100,000 along with the respective amount shall be made public at all times. 2. The donation of non-public funds in excess of one hundred thousand ALL must be made only through a special bank account opened by the political party. The person in charge of finances at the political party shall notify the Central Election Commission of the bank account number opened for this very purpose no later than three months from the establishment of the political party. The bank account number of each political entity shall be published in the official website of the Central Election Commission. 3. <b>Receiving non-public funds donated by entities which fail to declare their identity, or whose identity is not clearly identified by the political party that is the beneficiary of the non-public fund, shall be prohibited.</b> 4. All political party expenses shall be incurred and documented in compliance with the tax legislation in force.</p>
	<ul style="list-style-type: none"> <li>· Data to be recorded;</li> <li>· Periodicity</li> <li>· Effectiveness.</li> </ul>	

## Record keeping and publication

### *Trans- parency*

**Issues for discussion:**

- Data to be recorded;
- Periodicity
- Effectiveness.

**Law on Political Parties, Article 24/3, item 1, 2, 3:** “1. Political parties are obliged to document in a correct and complete manner, according to the rules of the legislation in force, all the expenses incurred and the manner of using the funds during the election campaign. All persons responsible for finances in a political party are trained by the Central Election Commission for the maintenance, administration, reporting and retention of documentation and data under this article. 2. The political party submits to the Central Election Commission a full copy of the documentation for each payment made during the election campaign period. Within 60 days of the announcement of the election result, any political party that is registered in the elections must make public and submit to the Central Election Commission a report on the financial declaration of the campaign, including all branches and their constituent parts. The report contains correctly: a) The income earned or available by the political party, including the source and date of the benefit for the period from the setting of the election date until Election Day; b) All expenses incurred for the period from the setting of the election date until Election Day, detailing any expenses that have been made to the financial fund provided for election campaign expenditures; c) The balance sheet of the assets and liabilities of the political party for the period from the setting of the election date to the Election Day. 3. Each political party participating in elections should keep and preserve in their archives for a period of seven (7) years, Full and detailed documentation of its financial standing and all branches for the period covered by the report, including: a) Accounting books, in accordance with the applicable law, where all revenue by source, amount, identifying the manner in which the payment was made, as well as all payments made to third persons, the purpose of the payment and How the payment was done; b) Accurate documentation of all expenses incurred; c) The situation and movements in its bank accounts; c) Complete documentation of immovable property in possession or owned by a political party, as well as any contracts related to the lease, lease, order, or sale of movable and immovable property;”

**Electoral Code, Article 90, item 1, 2:** “1. Each electoral subject shall register the amount of funds received for each natural or legal person, as well as other data related to the clear identification of the donor, in a special register which is approved as a template by a CEC decision. At the moment of donation, the donor signs a declaration affirming that none of the circumstances specified in article 89 applies to him/her and that he/she bears personal responsibility for false declaration. The form and content of the declaration is approved by the CEC and its signing is obligatory for all donations. 2. Non-public funds exceeding ALL 100,000 shall be donated only through a special bank account of the electoral subject. The finance officer of the electoral subject declares the number of the bank account opened for this purpose no later than three days from the start of the electoral campaign. The bank account number for each political subject shall be published on the official website of the CEC.”

### 1.1.3 Accountability

The power of the law also lies in providing for mechanisms that will ensure its implementation. Especially in the field of financing, rights and obligations must be clearly and precisely defined. Also, the manner of control, which includes the procedure, the responsibility of the bodies designated to exercise control, the cases when sanctions are envisaged, the criteria for their imposition, the escalation of sanctions and the manner of execution must be clear and exhaustive. However, for the accountability mechanism to be effective, it does not suffice that the auditing bodies perform their functions properly – it also requires the involvement of other components of the justice system, such as investigating and trying the cases as well as training the individuals involved in this process. It should be taken into account that the effectiveness of accountability in the financial system is dependent upon the main institutions in the country, on how democratic they are and whether they are organized and aim to discipline the political behavior in the country. This makes transparency and effectiveness of accountability in Albania even more prejudiced.

The extent to which legislation enables accountability on the part of electoral subjects can be determined through the analysis of several indicators:

- Firstly, whether there are effective controls.
- Secondly, whether there are sanctions for failure to meet requirements, and whether these sanctions are effective and enforceable.
- Thirdly, whether legislation and state policies encourage citizen complaints and address them.

### 1.1.3. 1 Oversight and control

The legal framework in Albania provides for two independent, public bodies in charge of monitoring the financing of political parties and election campaigns: the Central Election Commission and the High State Audit.

Of primary importance for both of these bodies is that their independence is guaranteed. Independence will have to come from the way hiring is done, their job stability, status and salary of members, the budget of the institution and its administration.

The law also provides for the establishment by the CEC of a special unit, the Media Monitoring Board, which monitors the compliance with party expenditure rules as regards political advertising on public and private radio and television channels and notifies the Central Election Commission within a day, in case it identifies violations of the legal requirements.

**The Central Election Commission** (CEC) consists of 7 members, who have a 6-year mandate, with the right to be re-elected. The CEC chairman has a 4-year term, with the right to be re-elected. All CEC members are elected by the Assembly upon proposals of political parties. Here the law has tried to maintain a kind of balance by deciding that the proposals come from both the ruling party and the opposition. Also, groups of MPs from the parties of the parliamentary majority and the parliamentary opposition have the right to propose one member each. Despite the ban on participating in a political activity for 5 years before their candidacy, this does not eliminate the strong party influence on CEC members, which undermines their independence and makes it difficult, or impossible, for this body to act contrary to the intent of the political parties, an intent which may also

include the concealment of financial resources, misuse of public finances or corruption. A bad example was the one occurring in 2017, when after the agreement between the two largest political parties, the Democratic Party and the Socialist Party, the Assembly replaced, on May 22, the CEC Chairman, 35 days before election day, with another CEC member, a representative of the opposition, bypassing the legal procedure.

The experience of various countries in Eastern and Western Europe shows that they are aiming increasingly more at the independence of this body, as much so that even members of the judiciary are engaged in this process. One case that can be taken as a model is the Committee set up in Greece, which consists of representatives of the parliament, the Supreme Court and other state institutions<sup>37</sup>, or the French model mentioned in CHAPTER I.

The CEC has no budget-related issues, compared to other independent bodies, nor with its internal organizational structure, but it must be taken into account how effective they are and to what extent do they serve the purpose for which they were set up.

The Central Election Commission (CEC) is responsible for auditing political parties, based on the reports they submit to the CEC annually. It does this by means of external auditors, selected by lot, who meet the legal criteria to be auditors. This provision of the law may not guarantee the result intended, the oversight of the financing of political parties, in an election year and a non-election year, because it presents some risks:

- the auditor does not receive a special status at the time s/ he is selected to be an auditor;
- only one auditor is appointed to conduct the audit, not a group of them;

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<sup>37</sup> Report on Greek parliamentary elections, October 2019, ODIHR, 24 May 2019;

- the audit is based on reports made in advance by political parties;
- the auditor's payment is made by the audited political party itself

Also, other elements, such as the payment received by auditors, the fact that auditors are selected only among those who apply (there have been cases in the CEC when there were no applications) and the quality of auditors who apply are indicators of the situation in which the auditing is done and they should be taken into consideration.

All of these elements do not seem to provide sufficient guarantees that auditing will be a fair and impartial process, given the significant influence that political parties have in this country and the power, sometimes abusive, they exercise when they take office.

The law has vested the CEC with another right, according to which the CEC can verify the data of the report, by questioning various persons and entities, and examining documents related to this issue, at the relevant offices of political parties that have submitted the report, as well as obtaining any information from banks or third parties, ordering natural and legal persons to provide their assistance for the normal development of the verification procedure. This right has so far not been exercised by the CEC, thus remaining unimplemented in practice. This is due to the fact that this provision is not supported by effective means and due to the lack of will of the CEC to make it applicable. The bylaws would have to regulate a number of aspects: cases and reasons when the CEC can make a verification; to what extent its powers extend; whether it is necessary to be provided with any tip-offs; who will assess whether the tip-off may constitute a reason for opening a verification process; and, if the CEC

should have specialized staff for this verification nature. These shortcomings are the reason why this provision was never implemented by the CEC.

Regarding the CEC's authority to monitor the election campaign, this issue was discussed earlier, in item 1.1.2 of this chapter, which talks about transparency.

**The High State Audit (HSA)** is a constitutional, independent body tasked with auditing political parties as relates to funds allocated to them from the state budget. The law provides sufficient guarantees for the independence of the HAS Chairman and inspectors, however, so far, HSA has not started to audit political parties, although such a thing is in its authority<sup>38</sup>, which raises questions regarding the real independence of this body. The reasoning used in the 2017 Report relates to the low value provided by the state budget to political parties compared to private funding. From the Law on State Budget of 2017, it results that the state made available ALL 290 million for political parties, while private donations are reported by political parties at a much lower value than this, referring to the annual reports published by the CEC. These indicators show the lack of will on the part of HSA to exercise this task, taking into account the fact that, in general, the Chairmen of the High State Audit have held senior positions in political parties. Given that overseeing how public funds of political parties are managed is very important, the role of HSA is also of great importance. The state must find incentivizing and accountable mechanisms for HSA to exercise this duty.

**The Media Monitoring Board** consists of 7 members. Each of the CEC members appoints a member of the Media

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<sup>38</sup> HSA 2017 Report, Annex no. 6. On implementation of recommendations from international bodies and EU reports, p. 230-231

Monitoring Board from a list proposed by the non-profit national media organizations, which have been registered for at least 1 year. The provision, according to which it is non-profit organizations that send 3 proposals for each vacancy, makes this process not be directly connected to CEC members or various political forces.

<b>Oversight and control</b>	
<i>Accountability</i>	<p><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li>· Control elements;</li> <li>· Independence of bodies assigned to control;</li> <li>· Effectiveness;</li> </ul> <p><b>Electoral Code, Article 91, item 1-3:</b> “Auditing of electoral campaign funds and expenses. 1. No later than 5 days after the declaration of the final election result for each political party registered as an electoral subject or for the candidates proposed by the voters, the CEC appoints by lot one or more certified accounting experts, selected in accordance with article 92 of this Code, to perform an audit of the funds received and spent for the electoral campaign. The audit report shall be submitted to the CEC by the deadline provided for in the appointment decision. The report may not include personal data of donors under the value provided for in point 2 of article 90 of this Code. 2. The electoral subjects specified in point 1 of this article shall make available to the auditor appointed by the CEC all information, documents or data that are related to the financing and expenses of the electoral campaign in accordance with this Code. 3. The electoral subjects that are being audited shall make available all the information they have from the banks, institutions or third persons related to the audit, or authorize the auditor to obtain such information from third parties. The CEC shall make available to the auditor the information it receives from third parties about the subject being audited, at each phase of the auditing process.”</p> <p><b>Electoral Code, Article 92:</b> “Selection of auditors by the CEC. 1. The CEC selects by competition a list of licensed accounting experts at the beginning of the electoral year. 2. The list should contain at least 20 experts who have been exercising this profession in the last 5 years. 3. Procedures, criteria for the selection of the preliminary list and their appointment are determined by instruction of the CEC. In any case, one auditor may not audit the same electoral subject for two consecutive elections. 4. The budget for elections should also envisage the fund needed for auditing the electoral subjects.”</p> <p><b>Law on Political Parties, Article 15/1, item 3:</b> “3. The rules on monitoring, supervision and auditing of financial and material resources must observe at all times the equality of political parties before the law and must not infringe their right to be established freely.”</p>

Account- ability	<b>Oversight and control</b>	
	<p data-bbox="259 212 355 280"><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li data-bbox="259 347 341 392">· Control elements;</li> <li data-bbox="259 416 352 528">· Independence of bodies assigned to control;</li> <li data-bbox="259 552 327 596">· Effectiveness;</li> </ul>	<p data-bbox="370 212 904 421"><b>Law on Political Parties, Article 23/2, item 1-4:</b> “1. The CEC holds in implementing this law, the list of certified accounting experts, including all certified accounting experts with experience, who practice the profession over the last five years, and who apply for conducting political parties auditing. 2. The Central Election Commission shall assign by lot one or more certified accounting experts from the list it has selected itself in accordance with this law to audit the funds received and used by the political party throughout the calendar year.</p> <p data-bbox="370 445 904 810">The assignment shall take place no later than 45 days from the registration of the political party and at the beginning of each calendar year. The auditing report shall be submitted to the Central Election Commission within the timeframe set by the CEC when it decided on the assignment of the experts. 3. Political parties must make available to the expert assigned by the Central Election Commission any information, document or data concerning the funds and expenses incurred during the calendar year, in accordance with this law. 4. <b>The Central Election Commission may verify the data on the report by interviewing individuals and various entities, by checking the documents related to this issue with the respective offices of the political parties that have submitted the report, as well as by obtaining information from the banks or any other third persons. Natural and legal persons are obliged to assist in the smooth running of the verification procedure.</b>”;</p> <p data-bbox="370 834 904 1043"><b>Law on Political Parties, Article 23/3:</b> “1. In any case, an accounting expert may not audit the same political party for two consecutive years. 2. <b>The expenses needed to audit the political parties shall be covered by the political parties themselves.</b> Political parties shall transfer the sums needed for this purpose to the bank account of the Central Election Commission. Detailed rules on the running of this process shall be defined by way of an instruction issued by the Central Election Commission.”</p> <p data-bbox="370 1067 904 1275"><b>Law on Political Parties, Article 24/1, item 3:</b> “3. The Central Election Commission establishes detailed rules for monitoring the election campaign expenditures of political parties registered as electoral subjects, to verify the observance of the detention provided for in point 2 of this article, as well as the manner of spending the financial fund benefited by the political party. The election budget should also provide the necessary funding for the audit of electoral subjects, as well as to monitor the election campaign expenditures.”</p> <p data-bbox="370 1299 904 1453"><b>Law on Political Parties, Article 24/4:</b> “Monitoring of election campaign expenses. 1. No later than the start of the election campaign, the Central Election Commission appoints a sufficient number of financial experts by lot, <i>to conduct the election campaign monitoring of political parties, including the activities, activities and materials used by them during the election campaign.</i></p>

Account-ability	<b>Oversight and control</b>	
	<p><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li>· Control elements;</li> <li>· Independence of bodies assigned to control;</li> <li>· Effectiveness;</li> </ul>	<p>2. The monitoring report is submitted to the Central Election Commission within the deadline set in the appointment decision, But in any case, <b><i>no later than 4 months from the date of the announcement of the final election results.</i></b> The report details in full all the activities, events and materials used by the political party during the election campaign. 3. Financial experts are also entitled to request and verify financial transactions conducted for the period of 3 months before and after election day, by physical or legal persons, domestic or foreign, with the purpose of identifying unjustified transactions and that may have been used for unlawful financing of the election campaign of one or several political parties. 12 12 4. At the request of the financial expert, forwarded through the Secretary General of the Central Election Commission, second tier banks and other entities exercising banking and financial activities in the Republic of Albania, are required to provide information on deposits, accounts and transactions conducted during the monitoring period. Data collection, processing and administration, under this article, is subject to the rules for the protection of personal data. They should be public only if it is proved to be used for illegal financing of a political party, and in this case the Central Election Commission submits a criminal report to the prosecution body. 5. The procedures, the criteria for selecting the preliminary list and the appointment of financial experts, as well as the manner of exercising their activity, are determined by the instruction of the Central Election Commission”.</p> <p><b>Law on Political Parties, Article 24/5, item 3:</b> “3. Monitoring the implementation of the rules provided for in this article is done by the Media Monitoring Board, which informs the Central Election Commission, within one day, if it considers violations of the obligations set out in this Law. The Central Election Commission shall impose sanctions according to point 2 within 24 hours from the moment of notification by the Media Monitoring Board or the request of any electoral subject.”</p> <p><b>Electoral Code, Article 85:</b> “6. Public and private radios and televisions are obliged to register all their broadcasts during the period of the electoral campaign. These registrations are retained for a period of three months after the conclusion of elections and are made immediately available to the commission on the request of the CEC.”.</p> <p><b>Electoral Code, Article 85/1:</b> “The Media Monitoring Board is composed of 7 members. Each of the CEC members appoints one Media Monitoring Board member from the list proposed by national non-for-profit media organizations, according to the following procedure:</p>

<p><i>Accountability</i></p>	<h2>Oversight and control</h2>	
	<p><b><u>Issues for discussion:</u></b></p> <ul style="list-style-type: none"> <li>· Control elements;</li> <li>· Independence of bodies assigned to control;</li> <li>· Effectiveness;</li> </ul>	<p>a) no later than 4 months before the beginning of the electoral campaign, the CEC asks the District Court of Tirana a list of non-for-profit organizations that operate in the media sector, which have been registered at least 1 year before the date of the upcoming elections; b) no later than 80 days before the beginning of the electoral campaign, the CEC sends to the non-for-profit organizations, which are identified according to letter “a” in this article, a request to propose members for the Media Monitoring Board; c) within 30 days from the request of the CEC, each of these non-for-profit organizations proposes no fewer than three candidates for board members. The proposed candidates shall be journalists, analysts or media researchers, by profession or experience; ç) no later than 45 days before the beginning of the electoral campaign, each member of the CEC chooses one name from the submitted proposals, according to letter “c” of this article, for the board member, and presents it to the CEC. The CEC approves the Media Monitoring Board in compliance with the deadline of point 1 of article 85. In case a vacancy rises in the board, the respective member of the CEC immediately proposes to the CEC for a new member of the board one of the names in the proposed list, according to letter “c” of this article.”</p> <p><b>Constitution of the Republic of Albania, Article 162-165:</b>  “Article 162 1. The High State Audit is the highest institution of economic and financial audit. It is subject only to the Constitution and laws. 2. The Chairman of the High State Audit is elected and dismissed by the Assembly on the proposal of the President of the Republic. He remains in office for seven years, with the right of reelection. Article 163 The High State Audit audits and reviews: a. the economic activity of state institutions and other juridical persons of the state; b. the use and protection of state funds by organs of central and local government; c. the economic activity of juridical persons in which the state owns more than half of the interest, or whose debts, credits, and obligations are guaranteed by the state. Article 164 The High State Audit submits to the Assembly: a. a report on the implementation of the state budget; b. its opinion on the report of the Council of Ministers for the expenses of the previous financial year, before it is approved by the Assembly; c. information on the results of audits and reviews whenever asked by the Assembly. 2. The High State Audit submits an annual report on its activities to the Assembly. Article 165 1. The Chairman of the High State Audit may be invited to participate and speak in the meetings of the Council of Ministers when questions related to its functions are reviewed. 2. The Chairman of the High State Audit has the immunity of a member of the High Court.”</p>

### 1.1.3.2 Sanctions

Sanctions for failure to meet requirements in the field of financing of political parties is a measure which should be taken only if it is effective and prevents repetition of the same violation in the future. Even in such cases, the measure must be taken commensurate with the violation.

It is important to identify provisions related to sanctions because they can be found simultaneously in two different laws. The Law on Political Parties has a special provision on sanctions, Article 23/4, and sanctions are also provided for in separate provisions. The division will be based on three criteria:

- the first criterion is the nature of the violation for which a sanction is provided for;
- the second criterion is the subjects to be sanctioned;
- the third criterion is the type of sanction.

Regarding the first criterion, the nature of the violation, the law provides for both administrative and penal sanctions.

**Administrative violations** are those related to:

- the application of rules in keeping, registering and reporting data, such as e.g. failure by the political parties to submit the financial report, violation of the deadline for submission of the financial report or submission of reports in violation of standardized formats; failure to cooperate with the licensed accounting expert; failure to register non-public funds, etc.

- implementation of the rules for financing conditions and criteria, such as e.g. receipt of non-public funds worth more than ALL 100 thousand and when the transaction is

not performed through a bank account; non-public funds benefited by the political party, when the identity of the donor is not known or clearly determined; violations in the field of radio and television broadcasting of election campaigns and advertisements, etc.;

Regarding persons responsible for violations in the field of financing of political parties and election campaigns, the law provides for some entities that may be held accountable for administrative violations:

- Political party as a legal subject;
- Person in charge of finances in a political party;
- Donor;
- Public and private radio or television.

Albanian law provides for administrative measures, if the violation is not considered a criminal offense. The types of administrative sanctions are:

- A fine, which is foreseen in almost all violations in the field of financing of political parties and the amount of the fine is determined based on the seriousness of the violation, starting from ALL 50,000 to ALL 8,000,000. In some cases, the law has not provided for a fixed fine, but has provided for the method of calculating it, e.g. a fine in the amount of 30 percent of the donated amount, or a fine equal to 10 percent of the value above the allowable spending limit in case of violation of the maximum expenditure limit by the electoral subject;

- Transfer of the donated amount to the accounts of the Central Election Commission;
- Suspension of up to 5 years of public funding for the political party;
- Exemption of the political party from receiving annual financial assistance;

- Prohibiting registration as an electoral subject in the next elections;
- Blocking the broadcasting of the radio and television operator for 48 hours.

**Criminal offenses in the area of elections**, provided for in the Criminal Code, have been the subject of discussions and amendments due to the measures taken to combat the phenomenon of vote-buying, misuse of public office during the election campaign, corruption, etc. For this reason, the lawmakers attempted to make them stricter. Thus, since 2017, in addition to active corruption, the law provides for the criminal offense of passive corruption. Also, the penalties for involved public officials in these offenses were toughened. Another criminal offense is the one related to the exercise of activity by the financial expert appointed by the CEC to observe the progress of the election campaign. The law stipulates that: "... Threatening or using violence against a commissioner, observer, vote counter *and any other official in charge of elections* to prevent him/her from performing his/her duties or due to his/her activity in the election administration is punishable by imprisonment. from one year to four years."

The criminal law provides as subjects of criminal offenses not only any general subject, but also some special ones:

- Employee performing a state duty, in the civil service or in a non-political function in the state administration.
- Employee who performs a state duty in public education, or a duty or function in non-public education.
- Voter.

In all cases of criminal offenses, the penalty for these offenses is imprisonment ranging from a minimum of 6 months to a maximum of 5 years.

From a logical analysis of all provisions governing cases, conditions, persons against whom a sanction is imposed and the extent of this sanction, we can conclude that the law as a whole has been lenient in its treatment of political parties as an entity and has included it directly only in some administrative violations, violations which either are not frequent in practice, or are very difficult to document (such as the failure to return the difference between advance payment and actual expenses made during the campaign). This is an offense which is very easy to be handled by the CEC and at the same time a violation that is not committed often by political parties. Another offense could be the acceptance of non-public funds worth more than ALL 100 thousand, or a transaction that is not performed through a bank account – a violation that is very difficult to detect when it is provided for only as an administrative offense and not as a criminal one).

The financier of political parties has been given a very large weight, since the law provides for a fine of up to ALL 3 million for violations, a punishment that has not been provided for in the case of the political entity. This distinction between liabilities of the financier and those of the party for which s/he works is counter-productive in terms of punishing the subject. The aim is to punish the non-transparent and irregular use of political party funds and to have a preventive effect. The financier of the political party is one of the most trusted persons of the political party and it is difficult to believe that s/he commits acts without the knowledge of the political party and for his/her own benefit. Even if these were the circumstances, then it is the criminal law that punishes him/her through the criminal acts provided for, such as fraud, theft, etc.

An imbalance has also been created in the punishment of radio and television operators and the political party, where

the latter would be issued a lower fine. Although the reason for setting this type of provision is to prevent such violations, by exerting more influence on the third party, which is the radio and television operator, this is not the right choice in cases where it is the same violation, but it is a method which applies to violations of various stages. So, while both radio-television and the political party are found carrying out the same violation, under the same provision, the law should be more punitive against the political party, which is the initiator, instigator, rewarder of the radio-television, which, even due to its own characteristics as a subject, should not be punished in the same way, let alone in a more severe scale than the political party itself.

Given that transparency is the essence of the oversight that can be exercised on political parties, the measures that the state should take, including punitive policies, should also be focused on it. Meeting the standard of transparency fully guarantees the progress of the process of financing and spending carried out by political parties until the elimination of opportunities for corruption, vote-buying and favoritisms in tenders or public contracts. The participation of businessmen in politics is not problematic in itself – what is problematic is the lack of transparency in their donations, the involvement of donors in organized crime, trafficking, or other criminal offenses, as well as the purpose for which these donations are made. For all these reasons, the administrative and criminal penalties should be toughened in terms of transparency control in transactions carried out by political parties and candidates, as the first preventive and deterrent mechanism. Due to Albania's situation, where the level of informality is very high, it is difficult to determine the effective amount of the fine, therefore, CEC should be able to provide a more professional

guidance, given that it is charged with the task of determining the cost of election campaigns and given that only in 2017 did it conduct a direct monitoring of the campaign. In the next elections, the real cost of the election campaign may be clearer and it can be used as a basis on which the amount of the fines provided by law should be reconsidered.

Regarding the manner of execution of the imposed sanctions, this issue is not problematic due to the provision in the law of the possibility that the CEC has to immediately rectify the liability. In other words, if the subject has to pay a fine imposed by the CEC, the latter has the right to deduct that amount from the annual state budget fund allocated to that subject.

A subject which has been sanctioned administratively has the right to appeal the CEC decision. In the case of fines, the appeal follows the usual procedure under the Civil Procedure Code, while in cases of other penalties, the subject has the right to address the Electoral College of the Tirana Court of Appeals.

<i>Accountability</i>	<b>Sanctions</b>
<p><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li>· Sanctionable violations;</li> <li>· Subjects;</li> <li>· Types of sanctions;</li> <li>· Execution of sanctions;</li> <li>· Appeals.</li> </ul>	<p><b>Law on Political Parties, Article 19, item 4:</b> “4. In any case, annual financial aid shall be awarded on the proviso that political parties have already submitted the financial report of the preceding year according to the rules defined by 6 6 the Central Election Commission. Failure to submit annual financial reports shall lead to exemption of political parties from receipt of annual financial aid.”;</p> <p><b>Law on Political Parties, Article 23/4:</b> “1. The infringement of the provisions of the funding of political parties by the person in charge of finances within the political party or the individual assigned by the party statute to carry out this duty shall be punishable by a fine of ALL 50 000 to 100 000. 2. The infringement of the obligation of the political party to cooperate with the certified accounting expert assigned by the Central Election Commission shall be subject to a fine of ALL 1 000 000 to 2 000 000. 3. Failure or refusal to make the financial sources of the political party transparent or to allow the auditing by the certified accounting expert of Central Election Commission to take place shall be subject to a fine ranging from ALL 2 000 000 to ALL 5 000 000 and/or a five-year suspension to fund the political party. 4. The failure to submit the financial report within the established timeframe or the submission of reports which fail to comply with the standardized template approved by the Central Election Commission shall be subject to a fine of ALL 50 000 to 100 000. 5. Non-public funds received by the political party, if the identity of the donor is unknown or not clearly defined, shall be passed on to the Central Election Commission. 6. Receipt of non-public funds in excess of one hundred thousand ALL and the failure to go through with the transaction through a bank account shall be subject to a fine of 30% of the donated amount”;</p> <p><b>Law on Political Parties, Article 24/2, item 7:</b> “<b>Limitation and determination of the indispensable expenses for the election campaign</b> ...7. Failure to comply with the rules provided for in this article, except for the provisions of the Criminal Code, constitutes an administrative contravention and passes the punishment by the Central Election Commission of the person responsible for the finances, respectively with a fine from ALL 1 000 000 to 3 000 000.”</p> <p><b>Law on Political Parties, Article 24/3, item 4 and 5</b> “4. If the amount earned by the political party, according to the Electoral Code, is greater than the amount documented as spent for financing the election campaign, the party is obliged to return the difference received to the CEC. 5. The Party, which does not return the respective funds, according to point 4 of this article, within 90 days from the announcement of the election result, loses the right to other public funding for a period of time not less than 5 years, and does not register as an electoral subject in the next election, regardless of their type, either alone or as a member of any coalition.</p>

Ac- count- ability	<b>Sanctions</b>	
	<p><b>Issues for discussion:</b></p> <ul style="list-style-type: none"> <li>· Sanctionable violations;</li> <li>· Subjects;</li> <li>· Types of sanctions;</li> <li>· Execution of sanctions;</li> <li>· Appeals.</li> </ul>	<p><b>Law on Political Parties, Article 24/5:</b> “2. In case of a violation of the obligations provided for in paragraph 1 of this article, or the broadcasting of paid <b>political advertisements</b>, the Central Election Commission fines the local or satellite radio-television operator with ALL 4 000 000, National radio and television operator with ALL 8 000 000, and the political party with ALL 3 000 000. The decision of the Central Election Commission is an executive title and is executed by the bailiff’s office. The appeal against the decision does not suspend its execution. In case of a violation, the CEC orders the Audiovisual Media Authority to block the broadcasting of the radio-television operator for 48 hours. The deadlock is set no later than 18:00 o’clock of the following day.”</p> <p><b>Electoral Code, Article 84 item 9:</b> “In the case of a violation, the CEC fines the local radio/television broadcaster with ALL 2,000,000 and the national radio/television broadcaster with ALL 3,500,000. The decision of the CEC constitutes an executive title and is executed by the bailiff’s office. An appeal against the decision does not suspend its execution.”</p> <p><b>Law on Political Parties, Article 23/2, item 6:</b> “6. The failure of political parties or donors to comply with the rules defined in this law shall be deemed an administrative offence, unless it constitutes a criminal offence, and it shall be punished according to the provisions of this law.”;</p> <p><b>Criminal Code of the Republic of Albania, Article 328:</b> “Active corruption in elections. Offering or giving money, material goods, promise of a job or other favors in any form contrary to the law, for the voter or other persons related to it, in order to obtain their signature for fielding of a candidate in elections, to vote in a certain way, to participate or not in voting, or to engage in illegal activities in support of a candidate or political party, constitutes a criminal offense and is punishable by imprisonment from one year to five years.”;</p> <p><b>Criminal Code of the Republic of Albania, Article 328/a:</b> “Use of public office for political or electoral activity. Participation of an employee performing a state duty in the civil service or in a non-political function in the state administration, contrary to the law, in election activities or campaign of a political party or election candidate, constitutes a criminal offense and is punishable by imprisonment of <b>six months to three years</b>. Forcing or organizing to pre-university education students to participate in the electoral activities of an electoral subject, when done by employees performing a state duty in public education, or duty or function in non-public education, constitutes a criminal offense and is punishable by imprisonment of <b>six months to three years</b>. Forcing or requesting citizens, against their will or under the threat of using administrative or disciplinary measures, to participate in the electoral activities of an electoral subject, to participate or not to participate in elections, to support or not a political party or a candidate in elections, or to vote in a certain way, when done by an employee performing a state duty constitutes a criminal offense and is punishable by imprisonment of <b>one year to three years</b>.”</p>

<p><i>Ac-count-ability</i></p>	<h2>Sanctions</h2>	
	<p><b><u>Issues for discussion:</u></b></p> <ul style="list-style-type: none"> <li>· Sanctionable violations;</li> <li>· Subjects;</li> <li>· Types of sanctions;</li> <li>· Execution of sanctions;</li> <li>· Appeals.</li> </ul>	<p>The use by an employee performing a state duty, of public good, state function or activity, or of financial or human resources, in order to favor a political party or candidate in an election, contrary to the law and the purpose of the duty, constitutes a criminal offense and is punishable by imprisonment of <b>one year to three years.</b>”;</p> <p><b>Criminal Code of the Republic of Albania, Article 328/b:</b> “Passive corruption in elections. When a voter solicits or accepts money, material goods, or other favors in any form contrary to the law, for oneself or others, in order to give the signature for the nomination of a candidate in the election, to vote in a certain way, to participate or not to vote, or to engage in illegal activities in support of a candidate or political party, constitutes a criminal offense and is punishable by imprisonment of one to five years.”;</p> <p><b>Criminal Code of the Republic of Albania, Article 329:</b> “Threatening or using violence on election participants. ... Threatening or using violence against a commissioner, observer, vote counters and any other officials engaged in elections, in order to prevent him/her from performing his duties or because of his/her activity in the election administration is punishable by imprisonment from one year to four years. When this offense is committed in collaboration or more than once, it is punishable by two to five years of imprisonment.”</p> <p><b>Electoral Code, Article 87, item 4:</b> “4. From the amount calculated according to point 3, the CEC deducts the financial sanctions, which are imposed on respective parties according to this law, and have become executive titles.”;</p> <p><b>Electoral Code, Article 176:</b> “<b>Execution of administrative sanctions.</b> A fine imposed by the CEC, in accordance with this Part, constitutes an executive title and is executed in accordance with the procedures provided for in article 510 of the Civil Procedure Code.”;</p> <p><b>Electoral Code, Article 145:</b> “<b>The right to appeal to court.</b> 1. Electoral subjects have the right to appeal to the Electoral College of the Court of Appeals in Tirana against CEC decisions which affect their legal interests, by the deadline established in Article 152 of this Code. Individuals or political parties whose request to be registered as an electoral subject has been rejected also have the right to appeal in compliance with this article.”</p>

## 2. Reports by various international instruments on Albania

Since 2011, Albania has consistently improved its legal framework on financing of political parties, bringing it closer to international standards, an obligation stemming from the signing of the Stabilization and Association Agreement in 2006. Despite ongoing efforts to amend legislation aiming at establishing control and accountability mechanisms, again, over the years, the European Commission's reports, the OSCE/ODIHR reports, and Transparency International assessments have emphasized the need to implement these changes in practice in order to ensure transparency, oversight and punishment.<sup>39</sup>

Political corruption has always been seen as an obstacle to Albania's membership in the European Union. It manifests itself in several forms, including the illegal financing of political parties, vote-buying and the undermining of reforms that could be carried out against corruption. The illegal financing of political parties guarantees impunity and the illegal influence of private business interests in matters of political decision-making. Because Albania is a relatively poor country, rising election campaign costs help build links between demand for power and dubious funding sources. If these financial aspects are not controlled, the silent practices of benefits in public contracts, rewarding through senior positions in the administration, and other phenomena severely undermine democracy. Due to the above reasons, in order to address issues of political party financing and all the question marks they raise, improving the law does not suffice – it must be

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<sup>39</sup> Albania: Corruption in politics 2014, Transparency International, file:///C:/Users/user/Desktop/Financimi%20i%20partive%20politike%20IPLS/legjislacioni%20shqiptar/Country\_profile\_Albania\_2014.pdf;

implemented effectively, in order to clean up politics, achieve impartial law enforcement and coordination among various bodies against corruption.<sup>40</sup>

The findings and recommendations provided after the June 2017 parliamentary elections are important to bring to the attention in this phase of the reform of the electoral system in Albania. The Special Commission for Electoral Reform has resumed work and the parties have started to provide various options of amending the legislation, to include regarding the way of financing political parties, where discussions are focused on the ratio that should be established between the sources of funding.

According to the OSCE/ODIHR, the legal changes that followed the political agreement of 18 May 2017 were aimed at reducing campaign costs, strengthening campaign financing oversight and increasing penalties for election violations. Although the agreement contributed to a more inclusive electoral process and a less polarized campaign, its implementation often jeopardized the fundamental principles of the rule of law. The delayed adoption of legal changes and the lack of significant public consultation violated legal certainty and negatively affected the administration of some electoral components, contrary to OSCE commitments and Council of Europe standards.<sup>41</sup>

Following the 18 May political agreement, amendments to the Law on Political Parties, the Law on Audio-Visual

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<sup>40</sup> Albania: Corruption in politics 2014, Transparency International, file:///C:/Users/user/Desktop/Financimi%20i%20partive%20politike%20IPLS/legjislacioni%20shqiptar/Country\_profile\_Albania\_2014.pdf;

<sup>41</sup> Assembly elections, 25 June 2017, OSCE/ODHIR, file:///C:/Users/user/Desktop/Financimi%20i%20partive%20politike%20IPLS/legjislacioni%20shqiptar/13\_raporti%20i%20OSCE%20odhir%20per%20zgjedhjet%20prlamentare%202017.pdf;

Media and the Criminal Code were adopted on 22 May. These changes brought new regulations related to the election campaign, campaign funding, broadcasting of political advertisements by audio-visual media, and provided for new criminal offenses in the field of elections as well as increased sanctions for existing ones. The essence of the changes was welcomed. The Central Election Commission (CEC) acted transparently, with regular public hearings. Following the 18 May political agreement, CEC and its administration faced a number of complex legal, institutional, financial and administrative challenges. However, they fulfilled their main tasks. Also, a positive cooperation was established between the CEC, the Media Monitoring Board and the media entities as regards the resolution of media disputes.<sup>42</sup>

*The problems reported by the OSCE/ODIHR* were, first of all, related to the long and deep political gap between the ruling coalition SP and the opposition DP, as well as the low public confidence in the electoral process. Although the agreement between the SP and DP leaders mediated by the internationals, which ended a three-month stalemate, initially seemed a positive development, in fact it gave the DP the opportunity to appoint individuals to several key ministerial posts, including a deputy prime minister and heads of other institutions, and enabled the election date to be changed from 18 to 25 June. However, this agreement could not avoid the continued politicization of election-related bodies and institutions. A very significant indicator of the decline in confidence in the election as a whole was the fact that the Voting Centers Commissions (SEC) had not yet been set up two days

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<sup>42</sup> Assembly elections, 25 June 2017, OSCE/ODHIR, file:///C:/Users/user/Desktop/Financimi%20i%20partive%20politike%20IPLS/legjislacioni%20shqiptar/13\_raporti%20i%20OSCE%20odhir%20per%20zgjedhjet%20prlamentare%202017.pdf;

before election day. All parties delayed the proposals for fear of possible corruption of their commissioners by the opponents, which reflects a deep mistrust even internally in political parties. Delays in proposals were also used to circumvent the legal ban on the replacement of VCC members. This is an indication of the systemic weaknesses of a highly politicized electoral administration.

Secondly, the OSCE/ODIHR analysis shows that last-minute legislative changes violated legal certainty and the compatibility of the legal framework, as some of the new provisions were not in line with the Electoral Code. Many of the OSCE/ODIHR interlocutors emphasized the need for experts to be involved not only from the main parliamentary parties and the analysis of various policies, ahead of the upcoming reform.

Thirdly, the widespread allegations of vote-buying and pressure on voters, which lowered public confidence in the electoral process, were considered a major concern. According to the OSCE/ODIHR, some interlocutors of the Election Observation Mission (EOM) raised specific concerns about vote-buying efforts in areas with large Roma and Egyptian communities. Pressure on voters was particularly linked to the workplace and was exercised over private and public sector employees. According to the OSCE/ODIHR, there is concern that, in an environment with politicized institutions, the electoral preferences of public sector employees, a segment of society vulnerable to pressure, may have consequences on the individual's livelihood and their employment in the future.

Finally, regarding the financing of the election campaign, transparency and accountability, some interlocutors of the OSCE/ODIHR EOM expressed concern that individuals with criminal pasts still played a significant role in the

campaign, as candidates or as supporters. The amended legislation contributed to transparency and accountability for campaign financing, in part by addressing some previous recommendations of the OSCE/ODIHR and the Council of Europe. The new measures to reduce campaign costs were welcomed by most OSCE/ODIHR EOM interlocutors. However, the late adoption of the changes left little time for their full implementation. New campaign rules lacked consistency and clarity from time to time. The transparency of campaign funding was reduced due to the fact that parties were not required to disclose information on election funding before election day. The transparency of campaign donations remained limited due to the lack of requirement to disclose them during the campaign. Also, the methodology used by financial experts was not developed, cooperation with political parties could not be achieved, and the object of interim reports was different. The ensuing rules related to the campaign lacked consistency and clarity, and they did not ensure genuine transparency of campaign funding before election day.

The OSCE/ODIHR 2017 Election Report contains *recommendations* in support of efforts to bring elections to Albania in line with OSCE commitments and other international obligations and standards of democratic elections. Priority recommendations include an inclusive and timely electoral reform, addressing the ongoing issue of vote-buying and misuse of state resources, depoliticization of the election administration, unreasonable restrictions on voters' rights, decriminalization of defamation, rights of observers and guarantees for the right to free and secret voting.

According to the report, the Electoral Code is overall a good basis for the conduct of democratic elections, but the shortcomings identified in previous OSCE/ODIHR reports

have not been fully addressed. Provisions in various election-related laws need to be harmonized, especially those related to campaigning, campaign finance, and the media. To this purpose, bylaws should be drafted in order to ensure a solid methodology and access to complete information on campaign financing for financial experts and voters before and after election day. Attention could be paid to setting deadlines for post-election audits. The report also recommends that serious efforts be made to address the ongoing issue of vote-buying, both through a public awareness campaign and through criminal prosecution, in order to enhance confidence in the electoral process. Political parties can take a concrete and genuine commitment to combating vote-buying practices. Also, a public rejection by politicians to financial support offered from individuals with a criminal past would help build public confidence in the integrity of the elections.

Not much has been done since 2017. The Special Commission for Electoral Reform ceased its operation and the reforming efforts froze when the parliamentary opposition renounced its mandates and abandoned the Assembly. This is the situation in which the June 2019 local elections were held, without candidates from the opposition.

However, the elections again were marked by much controversy and allegations of corruption, vote-buying and denunciations that some elected mayors had been previously convicted and had failed to disclose this fact on the decriminalization form. Because of this, the European Commission's report emphasized the need for transparency and control over the financing of political parties.<sup>43</sup>

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<sup>43</sup> European Commission 2019 Progress Report on Albania <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>;

## Conclusions and Recommendations

1. In conclusion, it can be stated that the regulatory system for financing of political parties in Albania should provide a fair balance between financing sources, should aim to involve citizens in politics and increase the level of democracy in the country. This system should provide equal opportunities and the same rules for political parties, be those large or small, and should avoid any influence of political corruption on political life. To achieve these major and long-term goals, some measures are recommended which address these shortcomings in the existing regulatory system:
2. Support of political parties and election campaigns from public finances should be sustainable and offer real opportunities for exercising their activity in accordance with economic development. Support from public funds should be to such an extent as to free parties from any kind of financial pressure they may face as a result of the need to have as much income as possible in support of their

activities, but on the other hand it should not remove the need for private contributions or diminish their role and significance. This requires that the ratio between the funds that a political party receives from the state and the funds that it receives from private individuals not be of such a large difference as to undermine the significance of either source of funding. Article 90 of the Electoral Code, which sets a limit on the total expenses that a political party, including their candidates, may incur in relation to an election campaign, a limit which is 10 times the highest amount that an electoral subject has received from public funds, should be amended to a lower multiple.

3. The Electoral Code and the Law “On Political Parties” should contain new provisions regarding political organizations or foundations which provide donations to political parties. Specifically, the law should require that the same rules of transparency and accountability apply to these entities as for political parties.
4. The law should provide independent candidates with the right to financing of their election campaigns as well. Thus, Article 87 of the Electoral Code should list as beneficiaries of public funds to finance election campaigns not only political parties, but also independent candidates.
5. The Electoral Code and the Law “On Political Parties” should avoid the contradiction of the provisions regarding financing from foreign parties or organizations, respectively Article 89 of the Electoral Code and Article 21 of the Law “On political parties”. The provision should be reviewed in terms of allowing donations only from foreign legal entities from certain countries, such as the member states of the European Union.
6. Article 89 of the Electoral Code, a provision relating to

restrictions on private donations, because they are the most prejudiced type of financial transactions of political parties and have a high risk of political corruption, should be reviewed to add guarantees that there will not be any conflict of interest between the donor and the public contract they will enter into with the government. In addition to the prohibition of accepting donations from entities that have benefited from public funds, public contracts or concessions in the last 2 years of a value exceeding ALL 10 million, the legislator should consider adding at least one new condition, that of prohibiting participation in public procedures for the purpose of entering into public or concessionaire contracts for all legal entities that in addition to being donors themselves, also have shareholders or donor partners as natural persons. The prohibition provided in Article 89 that no natural or legal person shall donate more than ALL 1 million to a political party, does not avoid a situation where a legal person themselves would donate ALL 1 million, but in the meantime their shareholders or partners, as natural persons, are entitled to donate ALL 1 million each, thus bringing the donated amount to several million ALL or even tens of millions of ALL, depending on the number of partners or shareholders.

7. The publication of political parties' reports, audit reports or any other kind of control exercised over the financing of political parties and their expenses *during* the election campaign is very important in terms of transparency and increase of electorate's trust in political parties. Consequently, the legal framework should accurately predict where and when these reports will be accessible to the public. Also, reports drafted during the

election campaign should be accessible to stakeholders, candidates, and voters both *before* and after the vote. Access also includes the requirement that these reports be *comprehensible and usable by the general public*.

8. The Law “On Public Procurement” could require the declaration of data related to the amount of donations that the legal person and its shareholders/partners have made to a political party, in the event they participate in a public procedure. This is very important in order to ensure transparency and non-discrimination in relation to other legal persons participating in a public procedure. In addition, the state, when issuing a law or bylaw affecting a group of certain subjects, should ensure that the legislative initiatives or draft administrative acts contain data related to donations made by legal persons affected by the initiative. This would play the role of a double control and would prevent cases where donors influence state policies.
9. The CEC, as the main decision-making, oversight, controlling and administrative body for the entirety of the electoral process in Albania, must enjoy full independence from political parties. To achieve this, the election and tenure of the CEC Chairman and members should reflect this independence. The legislator must undertake the necessary legal changes by choosing a model that ensures independence, impartiality and job stability.
10. The control and audit of political parties requires auditors with high professional and moral integrity. Therefore, the law should promote a competitive climate between auditors, provide special financial treatment, and provide the conditions for them to carry out their duties impartially. The law should avoid any dependence or influence that the auditor may have on political parties, including the

provision that the auditor is paid by political parties, and should also avoid circumstances where proceedings are not conducted because there is no competitor. Resolving this situation by providing for an unblocking mechanism, such as a mandatory drawing of lots, is very important to ensuring a normal functioning of the oversight mechanism for political parties.

11. In order for Article 23/2, item 4 of Law “On Political Parties”, which provides for the right of the CEC to verify the data contained in the report, to become applicable in practice and not to remain just a provision that does not produce any effects, the law itself must be clear on how a violation or unlawfulness in the field of political party financing and in election campaign spending can be reported or denounced, how a verification process can be initiated, how should the CEC decision-making be in order to agree on this verification and what could be the scope of the CEC investigation. To achieve this, the law must ensure that the CEC has sufficient human capacities and sufficient financial resources to guarantee professionalism and impartiality in the exercise of these functions.
12. Given that controlling how public funds are managed by political parties is of paramount importance, the role of HSA is also highly significant. The state must find motivating and accountable mechanisms for HSA to exercise this duty.
13. The law should provide for more severe sanctions for the concealment of financial data and of the manner they are managed, and should make a fairer distinction between violations attributed to the financier of the political party and the political party itself as a subject.

14. The law and the responsible institutions, such as the Security Academy and the School of Magistrates, should increase the specialization of the court, prosecution, police and other support staff in the fight against illegal financing of political parties and election campaigns.
15. The state should promote involvement of civil society and investigative journalists in reporting illegal situations or conflicts of interest. Freedom of expression should be effectively protected and the state should not promote punitive policies against the media. The Electoral Code and the law “On Political Parties” provide for the role of the media and its responsibilities in the case of election campaigns, responsibilities which are related to providing information, reporting on campaigns, organizing debates, the right to observe on election day, etc., but do not mention it as a cooperating entity alongside the CEC in initiating the procedure of verifying the financing of political parties or election campaigns. Investigative journalism has an important role to play in unveiling corruption cases that affect politics and elections.

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