

Policy Paper

“FINANCING OF POLITICAL PARTIES IN ELECTORAL CAMPAINGS”

In Frame of “The Electoral Room for Reform” Project

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REPORT ON “FINANCING OF POLITICAL PARTIES IN ELECTORAL CAMPAIGNS”

Political party financing and electoral campaign financing has two components: they are highly technical and political, and these two elements are closely interdependent.

A technically proficient legislation conducted in a negative political climate will be useless - and on the other side - an environment of political goodwill will not salvage a technically chaotic legislation. The process is indeed a complex one, and the formulation of particular rules to govern party financing in electoral campaign is not an easy task: it has a crucial effect on the extent and type of political competition in a country.

Over a period of nearly 23 years, the Albanian framework of party funding regulation and electoral campaign financing has undergone a total transformation. Further reforms are needed and first this must be done through a cross party wide political consensus. For this reason, this report contains a list of legislative and administrative recommendations, with a short guide for translation into legislative language at a later stage.

It is important to stress at the end that transparent, inclusiveness and wide political consensus is the best route to a fair, sustainable party/electoral campaign funding settlement in Albania.

Recommendations:

1. The experts of the Institute of Authorized Chartered Auditors of Albania (IEKA) recommend to be mentioned in the law the accounting standard known as “EVR” (*Expenditure Verification Report*). This standard must be provided in the law as a general rule, and CEC in cooperation with IEKA should be delegated to approve the technical subsidiary rules and regulations.

The current format of auditing required by legislation is too much detailed and makes the auditing task a voluminous task. A “stripped down” form of accounts should be required containing what is important, like revenue, spending, loans, etc.

Therefore, article 91 of the Electoral Code should be amended accordingly.

2. For the year 2012 the CEC was obliged to provide the audit of 123 political parties registered in the Register of Political Parties in Tirana district court. The audit reports were presented by 13 political parties. 21 political parties are not contacted at all by CEC because they do not have or made known to CEC an accurate residence. For the remaining 89 political parties there is no information at all for their financing.¹

The Electoral Code and the law “On political parties” must provide a legal solution for these circumstances. The parties must be obliged by law that if they change the residence the latter must be made known officially within a fixed time period to CEC, by the political parties themselves or by chairman of Tirana district court.

¹ These data are presented in a conference by CEC Chairwomen.
<http://www.cec.org.al/sq-al/activities/ID/176/Tryeza-Teknike-Financimi-i-Partive-Politike-Fushatave-Zgjedhore>

The law should provide a mechanism and procedure that must be followed (like public announcements) in case that this obligation is not respected and the proportionate sanctions to such situation.

3. Article 90, paragraph 2 of the Electoral Code provides that non-public funds exceeding ALL 100,000 shall be donated only through a special bank account of the electoral subject and the finance officer of the electoral subject declares the number of the bank account opened for this purpose.²

This threshold is very high and creates possibilities to hinder the transparency of funding sources under this amount.

Therefore these provisions should be amended in order to lower the threshold (up to 150 euro as the minimal wage) in order to disclose all donations made to the political parties.³

4. Article 88 of the Electoral Code should address more rigorously the prohibition on using public resources to support electoral subject. The CEC must have the competence to adopt all the necessary mechanisms in order to prevent political parties from abusing with state resources. If this happens, the CEC should react immediately and take all necessary measures and penalties that the same will not be repeated in the following days of electoral campaign

Therefore article 88 of the Electoral Code should be amended accordingly.

5. Article 89 of the Electoral Code provides that donation of funds by a legal person or any of its shareholders is prohibited if he/she has received public funds, public contracts or concessions in the last 2 years, exceeding ALL 10 million; exercises media activity; has been a partner with public funds in different projects or has monetary obligations towards the State Budget or any public institution.

However Electoral Code does not provide the conflict of interest for post election period. The conflict of interest in party financing is not only before the election date, but must be extended also after the election date.

Furthermore restrictions should be provided for individual donors so that party donors must not held any public office in the state administration or state owned companies after the election.⁴

The Electoral Code should specify the institution that should exercise control before the election date on these issues and the respective sanctions in case of their violations.

Therefore article 89 of the Electoral Code should be amended accordingly.

6. The Electoral Code should provide clearly the competence to CEC to submit for further consideration its findings in the prosecution office or the tax administration office.

7. The Electoral Code should provide some sort of guarantees or protection for audit experts to guarantee their performance in a non bias, honest and professional manner, free from

² According to Open Data Albania: *Electoral campaign 2009*: 59% of the value 'Donations' has as source donors with a value below ALL 100 000. In absolute value, this is ALL 64 435 904 million. The other part are donors for values above ALL 100 000.

Electoral Campaign 2011: 78,8% of the value 'Donations' are from donors with a value below ALL 100 000, which are not subject to the provisions of Article 90 of the Electoral Code.

Electoral Campaign 2013: 30 % of the value 'Donations' are donations with a value below ALL 100 000.

³ Article 59 of the law "On taxation procedures in Republic of Albania", provides the threshold for cash payments for less than 300 000 ALL.

⁴ A careful examination from a human rights perspective must be elaborated on this issue.

external political pressure and intimidation, especially when they audit financing of the main parties in power or parties that won the election.

8. Article 84, paragraph 6 of the Electoral Code creates an additional financial resource for the important political parties. The way how it is implemented, it implicates in financial transactions and fiscal activities even media institutions creating confidential economic situations among parties and radios and televisions. This is an article which is very difficult to be monitored and it involves several monitoring structures (the media board, taxation office, etc.).

The situation provided in this article has been implemented in an arbitrary way in the 2011 elections by at least one party and two media companies⁵, although this law should be implemented only for parliamentary elections.

Article 84 paragraph 6 of the Electoral Code provides that: *“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/televisions is calculated as a deductible expense for taxation purposes. The CEC, the National Council on Radio and Television and the Minister of Finance are responsible for issuing the respective instructions.”* There are two issues here: i) the financing of 50% of the time by the state is extra hidden funding and moreover its size its not clear because this provision says half of the total airtime and not half of the costs, *and* ii) in practice, Open Data Albania observed that one political party reported for the local election 2011 it has benefited, on the basis of Article 84, point 6, of the Electoral Code, free airtime by private radio/televisions for political advertising, which is calculated as a deductible expense for taxation purposes. This particular accounting item has been recorded separately by the auditor.

9. Article 90, paragraph 2 of the Electoral Code allows the public to access information about donations with a value higher than ALL 100 000. The law provides that these data should be “always public” which means that the right to information starts at the moment the donation is recorded in the respective bank account.

During the 2013 Electoral Campaign, the team that worked for Open Data Albania requested in a written form to eight main parties to reveal their donors from the beginning of the campaign. Although the request was made in an official written form, it was never replied with information be it during or after the campaign. The political parties tried to argue that they are not subject to this legal provision, and some of them even replied that they are not subject to the right to access information, i.e. they are not obliged by the Albanian law on right to information to provide information.⁶

Therefore Electoral Code should be amended in such way to guarantee transparency and the right to information on financing of political parties. The law should not only provide declaration of the general nature, but also effective remedies and sanctions in case of violation.

10. The CEC role should be strengthening by provide enough human resources and budget to effectively and timely exercise the competences defined by law. This can be done based on a detailed regulatory impact assessment.

⁵ Recommendation of Open Data Albania at <http://open.data.al/sq/lajme/lajm/id/739/LSI---Fonde-dhe-Shpenzime-Elektorale-2011>

⁶ *Ibid.*

11. The Electoral Law should provide an effective mechanism of party financing control in cases of restricted budget and human resources. Priorities for the control of party financing should be provided expressly in the law. Priorities are for example annual control for those parties that are funded by public funds, important political parties in Albania, the level of compliance and respect for the law and sublegal acts, complaints received for non-respect of financing legislation by state institutions, NGO-s or individuals, etc.

11. The Electoral Code should provide mechanisms to make the participation in the auditing of political parties financing more attractive for IEKA members. The task of the audit expert is very delicate and the law obliges them with the duty of finding and signing over accounting regularities or irregularities of very powerful subjects (executive and legislative).

12. The Electoral Code should be amended to provide that the political parties in electoral campaigns will have a proportionate reduction of financing by public funds, if they do not respect the gender requirements provided by Electoral Code.

13. The Central Election Commission needs to conduct proactive investigations to verify the financial accounts of political parties.

Channels of communications with representatives of civil society must be established and explicit cooperation between CEC and civil society organisations monitoring elections must be created.

Also, it is important that CEC not only must be an independent institution, but must be seen by the public as an independent one.

Furthermore, the law “On political parties” should be amended as follows:

- Disclosure of financial information by political parties should be regulated by specific legal provisions and monitored by the designated state oversight agency (in case of Albania, the CEC). Political parties in Albania have failed to disclose financial information to the public, its party members and voters.⁷
- Clear provision to be included in the law in order to separate the reporting format of annual finances from the reporting of election finances in case of electoral years. Exact deadline for submission by political parties to CEC and the obligation of CEC, in exact deadlines, to made public these reports should be provided in the law.
- Financial reports are submitted and disclosed by CEC in different periods of timing. There is a legal loophole regarding the deadline of submission because the law “On political parties” does not provide specifications on the date of reporting.
- The law “On political parties” provides that the control of party financing must be done every year for each political party. But around 50 % of the registered of political parties in Tirana district court did not take part in the last four electoral competitions.⁸
- The law should provide an effective mechanism of party financing control in cases of restricted budget and human resources. Priorities for the control of party financing should be provided expressly in the law. Priorities are for example annual control for those parties that

⁷ On 16 November 2016 LSI decided that in the official website public may find information on the finances and funding of this political party. Socialist Party more recently has decided that the “finances of this political party will be legally audited”.

⁸ CEC Chairwomen speech.

are funded by public funds, important political parties in Albania, the level of compliance and respect for the law and sublegal acts, complaints received for non-respect of financing legislation by state institutions, NGO-s or individuals, etc.

- The Law “On political parties” lacks media regulation concerning political advertising during political parties` annual activity (non-electoral campaign).