**APPEAL**

**Efore: Administrative Court of Appeal - Tirana**

**APPELLANT:** Albanian Institute of Science, with address: Rruga “Asim Vokshi”, Pallati 13/25, 3rd Floor, Tirana, with telephone number 068 20 01 718, duly represented by the Executive Director, Mrs. AranitaBrahaj.

**AGAINST:** The Decision no. \_\_\_\_, dated 10.11.2015 (no.of Fundamental Register 5714 310004-05334-80-2015) of the Administrative Court of First Instance, of parties:

*Plaintiff: Albanian Institute of Science, with address: Rruga “AsimVokshi”, Pallati 13/25, 3rd Floor, Tirana.*

*Defendants: 1.Commissioner for the Right to Information and Personal Data Protection, with address: Rruga e Kavajës, Building 80, Entry 1, Tirana.*

1. *Socialist Party of Albania,with address: “Austria” Place, no. 91,Tirana.*
2. *Democratic Party of Albania,with address: Bulevardi“Zhan D’Ark”, no. 11,Tirana.*
3. *Socialist Movement for Integration,with address:Rruga“Sami Frashëri”, Building 20/10,Tiranë.*

*Subject of Claim: - Annulment of the decision no. 44, dated 22.07.2015 of the Commissioner for the Right on Information and Personal Data Protection.*

*- Obligation of the political parties (election’s subjects) Socialist Party, Democratic Party and Socialist Movement for Integration to deliver to the Albanian Institute of Science the demanded information for the financing of electoral campaing, requested by the latter on 09.06.2015.*

**Honorable Mrs. /Mr. Judge.**

In conclusion of the trial, the Administrative Court of First Instance of Tiranaruledon11.10.2015 (no. 5714310004-05334-80-2015 of fundamental register) where it decided:

*"To reject the claim of the plaintiff,Albanian Institute of Sciences, the defendants for the Right on Information and Personal Data Protection, the Socialist Party of Albania, the Democratic Party of Albania and the Socialist Movement for Integration, with subject of claim “Annulment of the decision no.44, dated 22.07.2015 of the Commissioner for the Right on Information and Personal Data Protection. Obligation of the political parties (election’s subjects) Socialist Party, Democratic Party and Socialist Movement for Integration to deliver to the Albanian Institute of Science the demanded information for the financing of electoral campaing, requested by the latter on 09.06.2015, as not grounded on evidence and the law".*

By this appeal we consider the above decision of the Administrative Court of First Instance-Tirana as unlawful and as such it should be changed.

The Administrative Court of First Instance of Tirana, in its decision states that: *"Contrary to the claims of the plaintiff, the exercising of public functions by this type of legal entity must be a result of the expressed provisions of any law, bylaw or in any other form. In the present case,it does not appear to have such explicit provision for political parties as legal entities.So, in this case the right to exercise public functions is not a matter of interpretation, but expressed provision."*

Such reasoning iillogical and is no legally grounded.

Article 2 of Law No. 119/2014 "On the Right to Information"provides that:

“The following terms in this law have the following meaning:  
1. “Public Authtority”:  
………………..

**c) any natural or legal person, being granted, by law, secondary legislation or any other mean provided for by the current legislation, the right to exercise public functions.**

2. "Public information" is any data recorded in any type of form or format, in the course of exercising the public function, regardless whether it has been compiled by the public authority or not.”

Thus, the scope of the law 119/2014 "On the right to information" includes any other legal person, who according to the legislation, exercises public functions. **The law does not provide an exhaustive list of legal entities by defining them by name, and there is no law in the European Union and the Council of Europe for the right to information to provide a list with specific names of the legal entities included in the scope of this law. The law itself leaves room to consider, case by case, whether the concrete legal person carries out any public functions or not. It is nota legal justification that the law on the right to information does not explicitly specify the political parties as legal persons exercising public functions, since it leaves to the discretion of the Commissioner and afterward to the Court to make such definitions.**

In this case, the Court, deliberately, avoided the essential claim of the plaintiff: Are political partiesin Albania legal personsexercising public functions, under Article 2of Law no. 119/2014"On the Rightto Information"? **The Court has not evenmentioned, norhasanalyzed andhas notrespondedto this allegation. Contrary to what the court decided, the law "On the right to information" applies, also, to those entities that are not explicitly defined in the text of the law, but exercise public functions.** The Court failed to respond to the claim whythe political parties, as legal entities, does not exercise public functionsin Albania.

The Administrative Court of First Instance of Tirana, in its decision statesthat "*the defendant's decision is not inconsistent with Article9/3 of the Constitution and the special law on political parties. The way of satisfying the constitutional obligation by the political parties to make public their financing and expenses, during the election campaigns is provided in the Electoral Code, Part VII...... ..So, from the entirety of these legal provisions is guaranteed the compliance with the constituional obligation and the special legislation acts to make publicfinancing and expenses of electoral subjects. Consequently, as long as based on these provisions exist appropriate structures and means for obtaining the required information, the court considers that the decision, subject of these proceedings does not violate the constitutional and legal rights of the plaintiff."*

Article 9 of the Constitution defines that:

*1. Political parties are freely established.Their organization shall conform to democratic principles.*

*3. The sources of financing of parties as well as their expenses are always made public.*

Item 3 of this article does not require the issuance of a special law to determine the procedure of submission of the request and receiving the answer on financing and expenses of political parties. Rather, the Constitutionclearlystipulates thatthey mustalways be madepublic. The constitutional rightto information isclosely linkedto the concept oftransparency. Transparency, inreal time, of financing of electoral subjects in the election campaignis a fundamental constitutional pre requisite, which election subjects are bound to comply. Adhering to this obligation derives from the constitutional principle that citizens should be informed, even for this aspect of financing, before casting their vote on Election Day.

The submitted lawsuit is not related to the obligation of election subjects to respond by *post-election* audit reports prepared by the CEC.The Electoral Code sets the audit report between the state institution, which is CEC and the election subject participating in elections. **While our relationship with election subjects is only under and pursuant to the Law 119/2014"On the right to information". This law does not provide and there is no way to anticipate the completion of the request for information through a third stakeholder, even the highest institution of the elections.**

**On the other hand, the Court confuses the concepts of "audit" according to the ElectoralCodewithourconcrete information request, based on the Constitution of the Republic of Albania and the Law "On the right to information". Auditing and disclosure of the audit report are essentially different to the “Request for Information”** because, *first* is post-election and does not in any way guarantee the compliance with the constitutional obligation to information for the citizens casting the vote on election day; and *second* is a relationship between the CEC and the election subject, and not related to the "request for information" submitted by the Plaintiff.

The claimis based on Article 9, third paragraph of the Constitution and the Law no.119/2014 "On the right to information", Article 2, letter"c" and Article 3 there of.

Contrary to what is stated in the decision of the Commissioner for the Right to Information, political parties - the election subjectsin the elections-in support of Article 2, letter "c" of the Law no.119/2014 "On Right to Information", are public authorities[[1]](#footnote-2) because:

*The extent to which the state has assumed responsibility for the functionin question.*The constitutional right to information isclosely linked to the concept of transparency. Transparency, in real time, of financing of election subjects in the election campaign is a fundamental constitutional pre requisite, which election subjects are bound to comply with. Adhering to this obligation derives from the constitutional principle that citizens should be informed, even for this aspect of financing, before casting their vote on Election Day.

Political parties in the Albanian constitutional and legal order exercise the following functions where the state guarantees their exercise:

*The functions of political opinion-making*: They articulate the common social interests. Parties express the public's expectations and demands of social groups in the political system.

*Selection Function*: They recruit political staff and nurture the future generations of politicians. Political parties select people and present themas candidates for elections.

*Integration Function*: They develop political programs. Parties integrate diverse interests within the overall political project andtransform them into political programs, for which they are campaigning to getthe consent and support of the majority.

*The function of socialization and participation*: They promote political socialization and participation of citizens. Parties create a link between the citizens and the political system; they enable political participation of individuals and groups with the prospect of success.

*The function of the exercise of political power*: They organize the government.They participatein elections in order to occupy political positions and where a considerable part of government authorities arise from political parties.

*Legitimation function*: They contribute to the legitimacy of the political system, the establishment of links between citizens, social groups and political system. Parties contribute to anchoring the political order in the consciousness of citizens and social forces.

*The role and responsibility of the state in relationship to the subject matter under consideration.*Our request focuses onaccess to information. The existence of this information (which is also the subject of the petition to the electoral subjects), in a later stage, after the election subject shave presented their relevant reports to the CEC does not guarantee the full and effective exercise of the right to seek and receive information. Access to information derives from the relation established between the right of citizens to request information and the obligation that they have to provide this information or publish it without delay and in a timely manner to enable to the former the particitipation in the voting process.

The right to information in real time during the election campaign is rooted in the public nature of information and if that information is in the hands of a political party or in the hands of public or private institutions,it is of secondary importance.

*The nature and extent of public interest in the matter in question.*

The interest of the public in the matter in question is vital, not only based on the fact that the transparency of income and expenses is a direct obligation arising from article 9, paragraph 3 of the Constitution. On the other hand citizens exercise their right to vote in local and general elections and, therefore, they should be informed about this aspect of financing of election campaign before casting their votes freely on Election Day.The transparency of financing of election subjects is a*s inequanon* condition for free and fair elections in harmony with international standards.

The motives why it is necessary and essential to realize into practice the transparency of the financing of the election subjects public toward the public are:

* Prevention of abuse;
* Strengthening a fair political competition;
* Strengthening of thevoters through legal rules of transparency and punishment; and
* Strengthening of political parties as effective democratic actors by increasing the integrity and internal democracy.

*The nature and extent of any legal provision or liability in relation to the matter in question.*

Political parties unlike any other not-for-profit organization are directly defined in the test of the norms of the highest law in the country- the Constitution of the Republic of Albania. Financing of political parties/election subjects and their transparency, through their disclosure, is provided in a specific article in the Constitution.

*The extent, to which the stated irectly regulates, supervises or inspects the performance of the functionin question*.

Regulation of financing political parties and during election campaing of election subjects is provided in the Constitution of the Republic of Albania, the Law "On Political Parties", the Electoral Code of the Republic of Albania and the Law "On the Right to Information". Regulations of financing and transparency of financing are explicitly and directly set up in the relevant articles of these laws, and their violation results in financial and criminal sanctions for political parties and/or persons responsible for violations.

*The extent to which the state makes payments to the functionin question*

Political parties are funded in their most essential part by the state budget and they benefit from not-public donations to achieve considerable public goals. The most common form of financing is the direct financing. The essential financing in this sense, should not be seen narrowly only in the quantitative report public/non-public of the income that the election subject benefits. The test that applies in such a case is not a quantitative component, but the fact that the financing of political parties in the electoral race is to achieve important social goals.

Article19 of Law no. 8580dated17.02.2000"On Political Parties" guarantees a special fund of the state budget each year assigned to the political party as financial assistance to conduct the annual party activities.

Also, Article 87 of the Electoral Code of the Republic of Albania stipulates that political parties participating in the elections that took no less than 0.5 percent of the nation wide vote receive funding from the state budget, according to the number of votes that each party received in the elections. This fund may not be less than the total amount allocated to political parties in the previous elections.

*Extent which may include the coercive power of the state.*

Article 91 and following of the Electoral Code defines the procedure of the audit of funds and expenses made during the election campaign.

Article 173 of the Electoral Code contains a special provision, dedicated in whole to the sanctions set by CEC for electoral subjects if a breach of legal regulations of the Electoral Code dealing with electoral campaign financing occurs.

Moreover, Article 23/4 of the Law no. 8580, dated 17.02.2000 "On Political Parties" contains coercive provisions implemented by the state authorities for violation of legal provisions related to annual funding of political parties.

*Extent of risk that the irregular performance of the function can violate the rights of individuals recognized by the European Convention of Human Rights.*

Political parties,and during election campaigns the electoral subjects, carry out a public function. Political parties in one way or another affect the daily lives of the individuals and are continuously engaged in public processes. Consequently, it is important for them to be accountable and transparent to the public.

There can be no free and fair elections and at the same time non-transparent financing of election subjects competing in elections.

The claimis not related to the obligation of election subjects to respond by post-election audit reports carried out by the CEC. The Electoral Code sets the audit report between state institution, i.e CEC and the electoral subject participating in elections. While, our relationship with electoral subjects is, only, on basis and pursuant to Law119/2014"On the right to information". **This law does not provide and there is no way to anticipate the completion of the request for information through a third stakeholder, even the highest institution of the elections.**

**Conclusion**

Based on the a fore said facts and analysis, we request from the Administrative Court of Appeal:

- Modification of the decision of the Administrative Court of First Instance of Tirana no .\_\_\_\_\_dated 10.11.2015 (no. 5714310004-05334-80-2015 fundamental register).

-Annulment of the decision no. 44, dated 22.07.2015 of the Commissioner for the Right on Information and Personal Data Protection

-Obligation of the political parties (election’s subjects) Socialist Party, Democratic Party and Socialist Movement for Integration to deliver to the Albanian Institute of Science the demanded information for the financing of electoral campaing, requested by the latter on 09.06.2015

**PLAINTIFF**

Albanian Institute of Science

**Duly represented by**

**Aranita BRAHAJ**

**Executive Director**

1. There is still no definition of the term "public function". From the comparative analysis we have undertaken we have concluded than rather than a genuine attempt to definition of the word, European countries take a verification process in any specific issues and dealing with criteria established as a rule in the legislation. Under this approach we have referred the most advanced modelin this area-the "Human Rights Act 1998 (meaning of public function)" of the United Kingdom which provides these conditions:

   ***1. Factors to be taken into account when determining whether function a public function***

   *For the purposes of subsection (3)(b) of section 6 of the Human Rights Act 1998  
   (c. 42) (acts of public authorities), the factors which must be taken into account  
   in determining whether a function is a function of a public nature include:*

   *(a) the extent to which the state has assumed responsibility for the function in question;*

   *(b)  the role and responsibility of the state in relation to the subject matter in question;*

   *(c) the nature and extent of the public interest in the function in question;*

   *(d) the nature and extent of any statutory power or duty in relation to the function in question;*

   *(e) the extent to which the state, directly or indirectly, regulates, supervises or inspects the performance of the function in question;*

   *f) the extent to which the state makes payment for the function in question;*

   *(g) whether the function involves or may involve the use of statutory coercive powers;*

   *(h)the extent of the risk that improper performance of the function might violate an individual's Convention right.*

   (http://www.publications.parliament.uk/pa/cm200708/cmbills/045/2008045.pdf) [↑](#footnote-ref-2)