



**PILLAR I  
ALBANIAN LEGISLATION**

*The financial activity of the political parties and electoral subjects,  
pursuant to the Albanian legislation*

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**I. ABSTRACT**

This article aims to become an introduction to the situation of the legal framework and implementation of the law, in relation to the financial activity of the political parties and electoral subjects. For this purpose, organised in 8 paragraphs, the article tries to provide information on the mechanisms regulating the financial activity of the political parties and electoral subjects. It also aims to identify the issues encountered by these mechanisms in our country.

**KEY WORDS:** *Political parties, financial activity of the political parties and electoral subjects, audit of the financial activity, electoral campaign, political donations, Central Elections Commission.*

**ABBREVIATIONS:**

**AC**

Constitution of the Republic of Albania: Law No. 8417 of 21<sup>st</sup> October 1998. Official Gazette No. 28; amended by Law No. 9675 of 13<sup>th</sup> January 2007, Official Gazette No. 2 of 14<sup>th</sup> January 2007; Law No. 9904 of 21<sup>st</sup> April 2008, Official Gazette No. 61 of 07<sup>th</sup> May 2008; Law No. 88/2012 of 18<sup>th</sup> September 2012, Official Gazette No. 132 of 11<sup>th</sup> October 2012; Law No. 137/215 of 17<sup>th</sup> December 2015, Official Gazette No. 2019 of 21<sup>st</sup> December 2015; Law No. 76/2016 of 22<sup>th</sup> July 2016, Official Gazette No. 138 of 27<sup>th</sup> July 2016.

**ACC**

Albanian Constitutional Court

**CEC**

Central Election Commission

**EC 2000**

Electoral Code of the Republic of Albania 2000: Law No. 8609 of 08<sup>th</sup> May 2000, Official Gazette No. 12 of May 2000; amended by Law No. 8780 of 03<sup>th</sup> May 2001, Official Gazette No. 22 of 14<sup>th</sup> May 2001.

**EC 2003**

Electoral Code of the Republic of Albania 2003: Law No. 9087 of 19<sup>th</sup> June 2003, Official Gazette No. 52, June 2003; amended by Law No. 9297 of 21<sup>st</sup> October 2004, Official Gazette No. 73 of 26<sup>th</sup> October 2004; Law No. 9341 of 10<sup>th</sup> January 2005, Official Gazette No. 1 of 18<sup>th</sup> January 2005;



- Law No. 9371 of 14<sup>th</sup> April 2005, Official Gazette No. 31 of 11<sup>th</sup> May 2005; Law No. 9676 of 13<sup>th</sup> January 2007, Official Gazette No. 2 of 14<sup>th</sup> January 2007.
- EC 2008** Electoral Code of the Republic of Albania 2008: Law No. 10019 of 29<sup>th</sup> December 2008, Official Gazette No. 189 of 29<sup>th</sup> December 2012; amended by Law No. 74/2012 of 19<sup>th</sup> July 2012, Official Gazette No. 103 of 17<sup>th</sup> August 2012; Law No. 31/2015 of 02<sup>nd</sup> April 2015, Official Gazette No. 51 of 06<sup>th</sup> April 2015.
- FEC** Federal Election Commission
- GRECO** Group of States Against Corruption
- HCJ** High Council of Justice
- LMCP** Law on the main constitutional provisions: Law No. 7491 of 29<sup>th</sup> April 1991, Official Gazette No. 4; amended by Law No. 7558 of 09<sup>th</sup> April 1992, Official Gazette No. 2; Law No. 7561 of 29<sup>th</sup> April 1992, Official Gazette No. 2; Law No. 7570 of 03<sup>th</sup> June 1992, Official Gazette No. 3; Law No. 7692 of 31<sup>st</sup> March 1993, Official Gazette No. 3; Law No. 8257 of 19<sup>th</sup> November 1997, Official Gazette No. 18; Law No. 8266 of 19<sup>th</sup> December 1997, Official Gazette No. 19.
- LPP 1991** Law on the Political Parties 1991: Law No. 7502 of 25<sup>th</sup> July 1991, Official Gazette No. 5 of 25<sup>th</sup> August 1991; amended by Law No. 7591 of 16<sup>th</sup> July 1992; Law No. 7818 of 05<sup>th</sup> May 1994; Law No. 9324 of 09<sup>th</sup> April 1998.
- LPP 2000** Law on the Political Parties 2000: Law No. 8580 of 12<sup>th</sup> February 2000, Official Gazette No. 6 of May 2000; amended by Law No. 9452 of 02<sup>nd</sup> February 2006, Official Gazette No. 15 of 02<sup>nd</sup> March 2006; Law No. 10374 of 10<sup>th</sup> February 2011, Official Gazette No. 14 of 02<sup>nd</sup> March 2011; Law No. 17/2014 of 20<sup>th</sup> February 2014, Official Gazette No. 29 of 13<sup>nd</sup> March 2014; Law No. 125/2014 of 25<sup>th</sup> September 2014, Official Gazette No. 160 of 17<sup>th</sup> October 2014; Law No. 90/2017 of 22<sup>nd</sup> May 2017, Official Gazette No. 118 of 23<sup>th</sup> May 2017.
- ODHIR** Office for Democratic Institutions and Human Rights (ODIHR)
- OSCE** Organization for Security and Co-operation in Europe
- Venice Commission** Commission for Democracy through Law

## II. INTRODUCTION TO THE FINANCIAL ACTIVITY OF THE POLITICAL PARTIES AND ELECTORAL SUBJECTS

The financial activity of the political parties and electoral subjects constitutes one of the greatest challenges encountered by the democracies and electoral processes in a global level. Not even the most consolidated democracies and realities with strong anti-corruption culture and policies are immune to this challenge.<sup>1</sup> Transparency, regulation, and audit of the activity of the electoral subjects and candidates is becoming one of the most integral confrontation in the electoral campaigns.

This confrontation in its essence constitutes the discussion on political freedoms of the individual, and on the other hand the "equality of arms" of the subjects in the race. This is a debate on the principle which is translated into legislation, as a discussion on the structuring of the legal mechanisms that guarantee these principles. In different social-political realities and in different experiences, these legal mechanisms take different shapes. Two of the most unified approaches, contradicting each-other in some elements, are the approach of the European countries on one hand and of the USA on the other hand.

The case law of the USA, in its tradition and in the latest judgements of the Supreme Court<sup>2</sup>, puts the focus on the political freedoms of the individual in the case in question. Under the principle "pay to play", this case law considers much more important the right of a person, be it legal or physical, to financially support the political offer they champion, than ensuring an electoral race based on an "equality of arms".

While the European legislation, has been constant in this regard and places the focus on the balancing. The decision making of the European Court of Human Rights and the Venice Commission<sup>3</sup> have deemed that legal norms should guarantee balances among the political rights of the individual, and the fair race of the political actors for not harming each other. The Albanian legislation and the judgements of the Constitutional Court have followed this balancing spirit, although with a poor doctrine and case law.

This discussion, in a theoretical level and as a legal treatment of the problematics, began late, in the 70s - 80s.<sup>4</sup> On the other hand, the progress and the dynamics of this issue have been extremely slow. Experience has shown that in the consolidated democracies as well as in the

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<sup>1</sup> The International Institute for Democracy and Electoral Assistance, "Funding of Political Parties and Election Campaigns; A Handbook on Political Finance", 2012, page 111.

<sup>2</sup> United States Supreme Court, "James L. Buckley, et al. v. Francis R. Valeo, Secretary of the United States Senate, et al.", datë 30/01/1976; United States Supreme Court, "Citizens United, Appellant v. Federal Election Commission", date 21<sup>st</sup> January /2010; United States Supreme Court, "Shaun McCutcheon, et al., Appellants v. Federal Election Commission".

<sup>3</sup> "Guidelines on Political Party Regulation", approved by the Venice Commission in the 84<sup>th</sup> Plenary Session, Venice, 15-16<sup>th</sup> October 2010, page 67, (...) "Financing of political parties through private contributions is also a form of political participation.. So, the legislation must try to achieve a balance between encouraging modest contributions and limiting inappropriate big ones.".

<sup>4</sup> Some of the pioneering authors that have treated this matter are James Kerr Pollock, Loise Overacker, Alexander Heard and Arnold J. Heidenheimer.



developing democracies, the pre-empirical adjustments of the political finances are rare and they have mostly been caused by strong crises or even public scandals. These cases have placed the matter of the finances of political parties in the centre of the public agenda. Crises have mostly been the "mother" of the reforms, and for many reasons the best ally of the reformers of political finances.<sup>5</sup>

### III. THE ALBANIAN LEGAL FRAMEWORK

"*The Constitution of the Republic of Albania*", approved in 1998, for the first time gave the Central Election Commission the role of a permanent body that "*prepares, manages and monitors the whole process of elections and referendums*". The Central Election Commission lost its privileged position as a Constitutional Institution with the 2008 amendment of the Constitution, but it did not lose any of its functions mentioned above. "*The Electoral Code of the Republic of Albania*" of 2000, 2003 and 2008 did not deviate from that definition even with the numerous amendments they underwent. Furthermore, with the changing of the legal text by the legislative dynamics, this institution has been strengthened in terms of competences and instruments.

Article 9 of the Constitution, which has not changed since its approval, defines the constitutional guarantees on the functioning of the political parties<sup>6</sup>. This article seems to be an almost mechanical transposition of Article 21 of the Constitution of the Federal Republic of Germany.<sup>7</sup> It provides a constitutional treatment of the concept of the political parties, which places Albania in the list of the countries that pay special attention to their functioning, especially to their internal organisation. However, unlike the Constitution which "followed" the German example, when preparing the Law "On the political parties" of 2000 the Albanian legislator did not refer to the analogue German law. This model is one worth following, not only because of the reference to the Constitution, but also because after the Portuguese model, the Law "*On the political parties*"<sup>8</sup> of Germany is considered as one of the most procedural laws with its definitions and regulating on political parties.

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<sup>5</sup> Casas-Zamora, Kevin, "*Political finance and state funding systems. an overview*" Brookings Institution, University of Costa Rica, May 2008.

<sup>6</sup> Part One, Basic Principles, Article 9, (...) "1. *Political parties are created freely. Their organisation must comply with democratic principles.* 2. *Political parties and other organisations whose programmes and activities rely on totalitarian methods which incite and support racial, religious, regional or ethnic hatred, use violence to take power or influence the state politics, as well as the ones with a hidden character, are prohibited by law.* 3. *Financial sources and expenses of the political parties are always made public.*"

<sup>7</sup> "*Basic Law for the Federal Republic of Germany*", "Grundgesetz für die Bundesrepublik Deutschland" (in German), approved on 08<sup>th</sup> May 1949, Article 21, Political Parties, 2000, (...) "1. *Political parties participate in the formation of the political will of the people. They are created freely. Their internal organisation must comply with democratic principles. They must make public the assets, sources and use of their funds.* 2. *Parties whose goals are, or the behaviour of their followers seek to harm or bring down the free basic democratic order, or endanger the existence of the Federal Republic of Germany, are unconstitutional. The Constitutional Court will decide on the matter of constitutionality.* 3. *Details will be regulated by federal laws.*" (Author's translation.)

<sup>8</sup> "*On the political parties*"; "Parteiengesetz – PartG" (in German), approved on 24<sup>th</sup> July 1967.

With the approval of the Constitution, efforts started also for the preparation of a complete regulatory legislation for the electoral processes<sup>9</sup>, political parties or electoral subjects. The two main legal acts approved for this purpose were the Law "*On the political parties*" (2000) and "*The Electoral Code of the Republic of Albania*" (2000). Within a short period of time these acts have been essentially altered or replaced with other acts.<sup>10</sup> In these main lines of the dynamics of the changes in the Albanian Legal Framework of the political parties and electoral subjects, the greatest attention has been placed on transparency, regulation and audit of their financial activity.

This approved and amended legal framework is the foundation of the creation of the responsible institutions that comprise the regulatory mechanism of the financial activity of the political parties or electoral subjects. A problem that needs to be addressed is that this regulatory mechanism does not constitute a materialisation of the complete will of the legislator. The mechanism of today is not a pre-thought result or based on thorough and integral legal vision, of the control of the financial activity of the political parties and electoral subjects in Albania. The preparation and the legal amendments are the results of political agreements of the time or of an external contextual pressure, without ever being an assertion of an all-embracing legislative will.

#### **IV. THE ALBANIAN INSTITUTIONAL MECHANISM ON THE FINANCING OF POLITICAL PARTIES AND ELECTORAL SUBJECTS**

Point 3 of Article 9 of the Constitution, the only article on the political parties, sanctions that "*financial sources and expenses of the political parties are always made public.*" This constitutional sanction creates a guarantee, which is interpretable in what it guarantees. In the legal-literal interpretation, publication of information is a passive form of information offered by an institution based upon a set of requests.<sup>11</sup> While transparency is a guaranteed right for any subject to be provided with information in an active way, with the object of the request for information chosen by the requesting subject.<sup>12</sup>

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<sup>9</sup> General, local, partial and snap elections, and referendums.

<sup>10</sup> Law "On the Political Parties" (2000) has been amended five times, with the main ones happening in 2011 and 2017. While the "*Electoral Code of the Republic of Albania*" (2008) which is still in force, has been amended two times, and the amendments of 2012 were radical because they changed about half of all legal provisions. This legal intervention came after six months work of the Special Parliamentary Commission for the Electoral Reform, following a strong political conflict after the local elections of 2011.

<sup>11</sup> "A guide for journalists on how to access information", OSCE, date 04<sup>th</sup> May 2010, page 24, (...) "A government is transparent when most of information about its activities, politics etc. is open to the public. So transparency is the result of information made public. A transparent public body is one that is characterised by visibility and access to information. It usually means not only that the public body is good and quick in replying to requests for information from the public but that it also publishes a great deal of information without any requests, e.g. by publishing on a website and on the official gazettes, and in reports and flyers simple enough to be understood by the public." (Author's translation)

<sup>12</sup> "Black's Law Dictionary", Ninth edition, Thomson Reuters, 2009, USA, page 1638, "(...) transparency Being open; clarity; lack of fraud and efforts to hide harmful information. • The word is used for publication of financial data, organisational policies and practices, lawmaking, and other activities when organisations interact with the public."

The political pluralism in the country was first guaranteed with the Law “*On the main constitutional provisions*” (1991)<sup>13</sup>. This guarantee was later on affirmed with the Law “*On the political parties*” of 1991. The Law “*On the political parties*” (1991) defined the obligation of the political parties to submit the report of their economic-financial activity to the Parliament of Albania. The reports would have to be examined by a commission of experts set for this purpose by the Parliament, who had the right to audit the whole economic-financial activity of the parties.<sup>14</sup> This parliamentary mechanism, tasked with the audit of the economic-financial activity of the political parties, was unclear in how it would function, and because of the institutional context of the time it resulted totally ineffective.

Only the Electoral Code of 2008 provided a set of stops and restrictions on the financial activity of the electoral subjects during the one month electoral campaign, and a real legal mechanism to audit them. The first mechanism set at that time and which is till in force, tasks the Central Election Committee with selecting, by draw, a team of accounting experts at the end of the electoral campaign.<sup>15</sup> These experts are tasked with auditing the accuracy and completeness of the documentation of the financial activity of the electoral subjects and its compliance to the electoral and tax legislation. The scope of their work is to check how the documentation submitted by the electoral subjects reflects the income and expenses occurred during the one-month electoral campaign. Based on the submitted documentation, the experts perform an arithmetic-logical assessment in compliance with the principles of auditing. The completed audit reports are submitted to the Central Electoral Commission who decides whether to apply sanctions to irregularities discovered by the experts.

The work of these experts during the four electoral campaigns until now (2009, 2011, 2013, 2015), has encountered numerous problems because of lack of legal instruments available to the experts to perform an effective audit of the activity of the electoral subjects. In some cases the

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<sup>13</sup> Article 6, (...) “*Political pluralism is one of the main conditions of the democracy in the Albanian state. Political parties and other organisations create and exercise their activity in compliance with the law. They are totally separate from the state. It is prohibited for the political parties to exercise activity in military bases and institutions of the Ministry of Defence, Ministry of Internal Affairs, Ministry of Foreign Affairs, diplomatic missions abroad, prosecution and investigation offices, Courts, etc.. This exclusion of the parties and de-politicisation are regulated by law.*”

<sup>14</sup> Article 26, (...) “*At the end of the calendar year, the parties submit the report of their economic-financial activity which is examined by a commission of expert set for this purpose by the Parliament. This commission has the right to audit the whole economic-financial activity of the parties. The final report of this commission is submitted to the Parliament.*”

<sup>15</sup> Article 91, Auditing of funds and expenses during the electoral campaign, “(...) 1. *No later than 5 days after announcement of the result for each political party registered as an electoral subject or candidate proposed by the voters, the Central Election Commission appoints by draw one or more licensed accounting experts, selected in compliance with Article 92 of this code, to perform the auditing of the funds acquired and spent in the electoral campaign. The auditing report is submitted to the Central Election Committee within the time frame set by the appointment decision. The report cannot include personal data of the donors for donations under the value set in Point 2 of Article 90 of this Code.*”



audit experts have reported that they have not even been able to contact the electoral subjects they've been supposed to audit.<sup>16</sup>

Later, in 2011, it was the amendments to the Law on Political Parties of 2000 that provided a set of stops and restrictions on the yearly financial activity of the political parties, and a real legal mechanism for the audit of their calendar year. This adjustment which is still in force, first compels the political parties to submit the Self-Declaration Report on the financial activity of the previous year to the Central Election Commission every 31<sup>st</sup> March.

The Central Election Commission will then choose by draw, within 30<sup>th</sup> June, the accounting experts who will audit the financial activity of the political parties for the year. As in the case of the accounting experts who audit only the electoral period, those who audit the whole year face problems too, because they lack the legal instruments to effectively audit the activity of the political parties. They mainly lack the authority to investigate and verify the reports on the financial activity they are tasked to audit. At least in principle and in the spirit of the legal regulation, these experts perform a more voluminous work than the ones who audit just the electoral period. These experts will audit not only the whole calendar period, but will also have to check whether the political parties, in order to avoid the stops and restrictions of the electoral period, have made transactions related to the electoral campaign outside of the one-month period set by the law.

Following these main norms, the Central Election Commission has issued two instructions on the standardisation of the reporting of the financial activity of the political parties and electoral subjects. Initially in 2012, this institution approved the formats for the three above-mentioned reports: (i) annual self-declaration report; (ii) electoral period audit report and (iii) calendar period audit reports.<sup>17</sup> And for the electoral period in 2017, it approved the format of declaration for the electoral subjects on the financial activity during the electoral period.<sup>18</sup>

However, in the experience of a decade of implementation of these mechanisms, the Central Election Commission has imposed no sanctions for violation of the legislation on the financial activity of the political parties. Even in the few cases when the auditors have made known their suspicions on such violations, the institution has been silent.

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<sup>16</sup> For example, the accounting expert that was tasked with auditing the electoral campaign of 2013 reported that *"it was had not been possible to audit the activity of the electoral subject "Party of the National Reconciliation" because the subject was not at the address given and it could not be reached"*. Also for the audit of the electoral campaign of 2015, for three electoral subjects, the Party of the Albanian Democratic Reforms, the Party Left Front, and the candidate proposed by the citizens, Mr. Astrit Zyber Ademi, the accounting experts reported that the *"audit could not be performed because it was not possible to contact the subjects"*.

<sup>17</sup> *"On the approval of the rules on the standardised formats for the financial reports of the political parties, electoral subjects, and reports of the financial audit by the accounting experts"*, Decision of the Central Election Commission No. 3 of 18<sup>th</sup> January 2012.

<sup>18</sup> *"On the approval of the manual and the standardised format of the financial report of the electoral campaign"*; Decision of the Central Election Commission No. 167 of 21<sup>st</sup> April 2017.



## V. FINANCIAL SOURCES OF THE POLITICAL PARTIES IN ALBANIA

In principal, the two financial sources of the political parties are those public and private. In the Albanian case, the public support consists in an annual assistance fund and a fund to assist the organisation of the electoral campaign of the political parties, and material assistance to the parliamentary political parties. At present the public fund as assistance to the political parties and the electoral subjects is allocated in proportion with the electoral results, or as the Constitutional Court put it in its case law, on the basis of the "*seriousness of the offer*".<sup>19</sup>

Apart from the annual public funds they receive, the political parties are also provided with building from the public assets, which they can use as headquarters or offices of their branches. Whole sets of public assets for which there has been no transparency as to who the beneficiaries are and what procedures were followed. Although this support from public funds has been minimised it still remains considerable compared to the private funds, as official figures report.<sup>20</sup>

Private support in our country consists in annual membership fees, financial donations, donations in kind, free services such as voluntarism, or revenue from commercial activity of the political party. The Albanian legislation is not clear on the last one, but at least it clearly allows commercial activity such as periodic publications of the party or educational publications. In their entirety, these financial sources are difficult to audit, especially because of the informality of the Albanian economy. At the same time, the private financial sources of the political parties carry the risk for the political parties to be "caught" by lawful or even unlawful private interests.

## VI. LEGAL BANS AND RESTRICTIONS ON THE FINANCIAL ACTIVITY OF THE POLITICAL PARTIES AND ELECTORAL SUBJECTS

In the legal-institutional structuring of the financial audit of the political parties and electoral subjects, the legislator ought to answer one initial question. Which set of rules can ensure that the money available to the political parties is enough for them to fulfil the indispensable function in a political democracy, and also to ensure that the sources of the money and how they are received do not harm the democratic process? Any qualitative legislation should be the answer to this question, contextualised to the relevant social reality.

The contextualisation should not lead to the usual error of the legislator - "presumption of the ideal", especially in relation to the financial activity of the political parties and electoral subjects.

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<sup>19</sup> Decision of the Constitutional Court of the Republic of Albania, No. 32 of 21st June 2010, Official Gazette No. 94 of 22<sup>nd</sup> July 2010, (...) "*Parties are treated unequally, by distinguishing between parliamentary and non-parliamentary parties, so that the vote of the voters protected from being wasted. The Court is of the opinion that it is "a lawful will of the legislator to ask for the protection of the voters, so that the voters do not cast their votes to a hopeless candidate or offer."*

<sup>20</sup> Year 2013, declared public / private funds: Socialist Party - ALL 76,240,665 / 107,023,570; Democratic Party - ALL 78,985,728 / 73,111,360; Socialist Movement for Integration - ALL 11,045,574 / 31,283,241 ; Year 2014, declared public / private funds: Socialist Party - ALL 75,938,521 / 5,745,000; Democratic Party - ALL 59,441,771 / 415,000; Socialist Movement for Integration - ALL 22,837,891 / 15,418,175 ; Year 2015, declared public / private funds: Socialist Party - ALL 91,862,322 / 59,713,817; Democratic Party - ALL 71,523,086 / 10,057,921; Socialist Movement for Integration - ALL 32,314,107 / 52,898,438.



As for the presumption of the abstract functioning of the electoral monitoring institutions and operators, the regulation of the financial activity of the political parties and electoral subjects requires patience and attention to the most basic elements.

The Albanian legislator has provided a set of bans and restrictions through the legislation on this topic. But these regulations are superficial and include a limited number of cases. The biggest problem is that the regulations mostly cover the one month period of the electoral campaign, leaving almost free the rest of the calendar period.

The basic bans and restrictions set by the Albanian legislation cover the private donors, monetary amounts of expenses and revenues, how the transactions are performed and their publication. These regulations exclude major issues such as the use of voluntary human resources or donation of materials and services. Another flaw of our legislation on this issue is the electoral "shadow campaign", otherwise called the electoral campaign performed by third parties. This kind of campaign, undertaken and performed independently, or at least declared as performed independently by the political supporters of the electoral subjects, has become the major challenge in coping with the forms of deformation of the electoral campaigns, and not only in Albania.

There are also flaws in the regulation of the activity of political parties outside of the one-month electoral campaign. In the calendar year, the political parties have no restrictions related to the amounts of donations they receive, and there are very few restrictions related to the donors, financial or material. One of the major deficiencies in this period of time is that circumstances of donors' conflict of interest during the non-electoral period have not been foreseen.

## **VII. ROLE OF THE CENTRAL ELECTION COMMISSION IN THE CONTROL OF THE FINANCIAL ACTIVITY OF THE POLITICAL PARTIES AND ELECTORAL SUBJECTS**

Each control mechanism of the financial activity of the political parties and electoral subjects, has a supervision institution in its centre. Approaches of the comparative law offer various alternatives to the nature of this institution. The Albanian case is a complex and unique alternative in how it defines the responsible institution. This institution is unique at a comparative level, because it has a four-fold functioning nature. These functions put the Central Election Commission under permanent stress, at least because of the volume of the competencies and the relevant procedures.

The Central Election Commission is one of the 11 independent institutions in the executive structure in Albania. It was designed as a permanent institution in 1998, it has undergone continuous strong re-dimensioning, and it comprises the administration unit and the members of the Commission. When it was first created, the Central Election Commission was a Constitutional body and comprised seven members elected inter-institutionally by three other Constitutional Institutions: the *Parliament of the Republic of Albania*, the *President of the Republic of Albania*, and the *High Council of Justice*. The President of the Republic elected two



members, the High Council of Justice elected two members, and the other three were elected by the Parliament of the Republic of Albania.

This institutional conception was later on altered by two important legislative moments. The first one was in 2008 when the Constitution was amended and the "Electoral Code of the Republic of Albania" of that year was approved, and as a result the Central Election Commission lost its stature as a Constitutional body and the way how its members were elected was changed. After the initial efforts to structure this "unit" of members of the Central Election Commission as an inter-institutional representation, this 10-year experience was abandoned with the new Electoral Code.

Members of this Commission were now to be elected in accordance with the political representation in the Parliament. Three members would be elected by the Parliament majority and would need to be approved by the majority of the Members of the Parliament of Albania. Three other members would be elected by the minority in Parliament and would need to be approved by the majority of the Members of the Parliament of Albania. And the Chairman would have to be elected via a mechanism of parliamentary majority-minority. Initially, the governing majority would present four candidacies to the parliament, and the minority had the right to eliminate two of them. The two remaining candidacies would be voted by the Parliament. The winning candidate would have to secure half of the votes of the MPs.

The second moment was the amendment of the Electoral Code in 2012, which sanctioned that the Chairman of the Central Election Commission would not be a person politically approved by one side, but a technician from the civil society. Thus, because of the structuring of the membership on the basis of political representation, the Chairman of the Central Election Commission as a known technician and a apolitical person, would have to secure the decision-making quorum and the progress of the institution. This solution aimed to ensure impartiality and independence, and keep the institution away from crises.

According to this amendment, election of the Chairman of the Central Election Commission would start with an open call to interested persons. Then the Parliamentary "*Commission of Legal Matters, Public Administration and Human Rights*", would examine and interview the candidates in plenary sessions. Out of all applications, the Commission would forward to the Parliament of the Republic of Albania the two candidacies that secured 2/3 of the votes of the MPs. Then the Parliament of the Republic of Albania would choose one of them with the majority of votes of the MPs.

As an analysis of all legal definitions, the Central Election Commission plays the role of the *superintendent*, directs and monitors,<sup>21</sup> all electoral processes, including referendums, with some specifications. The Institution directs, monitors and gets directly involved in the three

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<sup>21</sup> "The Electoral Code of the Republic of Albania", Article 21, point 3, Competencies of the Central Election Commission, (...) "Directs and monitors, as one body, through each member of structure, the pre-election and the election processes."

dimensions of the electoral processes: (i) preparation and administration of the electoral process; (ii) electoral justice (complaints and appeals on electoral issues); (iii) auditing of the financial activity of the political parties and electoral subjects.

Lastly, this institution got involved in the process of implementation of the so-called legislation of decriminalisation. This legislation started with the “*Resolution of the political agreement between the majority and the opposition in the Parliament of the Republic of Albania*” of 24th December 2014<sup>22</sup>. It was followed by Constitutional amendments, by the Law “*On guaranteeing the integrity of persons who are elected, appointed, or hold public office*”<sup>23</sup> and the Decision of the Parliament “*On defining the detailed rules of implementation of stops set by the Law No. 138/2015 "On guaranteeing the integrity of persons who are elected, appointed, or hold public office"*”<sup>24</sup>. Preparation of the legal framework on this matter was preceded by the “*Preliminary report for the expulsion of violators of the law from the Parliament*” of the Venice Commission<sup>25</sup>. In this context, of the administrative and verification institutions of the Self-Declaration of Decriminalisation, the Central Election Commission is tasked with the verification of the integrity of the officials such as Members of Parliament, Ministers, Mayors, and members of the Municipality Councils. As for its monitoring competency, the Central Election Commission interacts with the General Directorate of the Registry Office, Office of the Judicial Status, and the General Prosecution Service of the Republic of Albania. This interaction aims to verify the civil status and the judicial status of the above-mentioned political officials. If the findings from this inter-institutional control are contrary to the regulations of the legislation of decriminalisation, this may give cause to the Central Election Commission to declare early termination of the political mandate, and set stops or restrictions in running for a political mandate.

Apart from this overloaded institutional situation, the composition of the Central Election Commission on the basis of the political representation poses a problem in relation to the control of the financial activity of the political parties and electoral subjects. The Venice Commission has also, since the beginning, expressed its reservations that the political composition of the Central Election Commission might impinge its functionality in the matter in question.<sup>26</sup> In fact,

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<sup>22</sup> “(...) Based on the European standards, opposition and the governing majority undertake to work together, with consensus, with the assistance of the EU and of the Venice Commission, on the issue of individuals with criminal records who hold public office or seek to be elected or appointed in public office.”

<sup>23</sup> Law No. 138 / 2015 of 17<sup>th</sup> June 2016, Official Gazette No. 220 , 22<sup>nd</sup> December 2016; amended by Law No. 38 / 2016 of 14<sup>th</sup> April 2016, Official Gazette No. 77, 09<sup>th</sup> May 2016.

<sup>24</sup> Decision of the Parliament of the Republic of Albania, No. 17 / 2016 of 04<sup>th</sup> March 2016, Official Gazette No. 38, 10<sup>th</sup> March 2016.

<sup>25</sup> Document based on the comments of Mr. Sergio Bartole (Replacement Member, Italy) Mr. Oliver Kask (Member, Estonia) Mr. Jorgen Steen Sorensen (Member, Denmark), Approved by the Council of the Democratic Elections, in its 51<sup>st</sup> meeting (Venice, 18<sup>th</sup> June 2015) and by the Venice Commission in its 103<sup>rd</sup> Plenary Session (Venice, 19-20<sup>th</sup> June 2015).

<sup>26</sup> “(...) Article 91 of the Code regulates the auditing of the accounts of the campaign by the Central Election Commission. There is concern on Article 91(3) which allows Central Election Commission to verify data in the reports of the financing of the campaign. The concern relates to the fact that the Central Election Commission, set up by the political parties, created by the political parties, might contact the contributors of the non-



the reservation in principle of the Venice Commission on the excess of the tasks of the Central Election Commission related to the financial control as part of the political agendas, resulted in a complete non-functioning of the institution.

The comparative example of lack of efficiency of such a formula is the case of the United States of America. At the federal level, the control of the financial activity of the political parties and electoral subjects has been tasked to the Federal Election Commission (FEC), whose membership reflects the bipartisan parliamentary representation. Although it is a pretty far reality of legal-institutional functioning, even in this case the political composition of this Institution has become a source of stalling and low efficiency.

### VIII. INTERNATIONAL REPORTS AND OPINIONS

Institutions of authority in this matter have given their opinion on the regulations set by the Albanian legislation on the financial activity of the political parties and electoral subjects, and their viability. The Commission for Democracy through Law, aka the Venice Commission and the GRECO have given their contribution with their opinions and reports on this legislation. The Final Reports of the Observation Missions OSCE-ODHIR and the Annual Progress Reports of the European Commission carry a considerable importance in relation to the viability of this legislation.

The Commission for Democracy through Law has, among others, a doctrine broad and rich in reports and opinions on electoral matters. The Commission for Democracy through Law has given its opinion four times on the Albanian legislation related to the electoral matters and political parties. The first two documents refer, in analysis and judgement, to the Electoral Code of 2003<sup>27</sup>, and the other two refer to the Electoral Code of 2008<sup>28</sup> which is still in force. One of the matters which has received attention and importance in these documents is the matter of transparency, regulation and control of the financial activity of the political parties and electoral subjects. The critique of this two documents mainly focuses on the deficiency of the legal framework in regulating this matter.

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*parliamentarian parties, although it might not have factual grounds to suggest that investigation is necessary. This provision is often abused with. The regulatory body contacts the contributor, who, based on political considerations, denies to have contributed. In this case the political party and its official face criminal sanctions. The Venice Commission and OSCE/ODHIR recommend that Article 91 (3) be amended in such a way that it offers objective and non-discriminatory criteria to be met before the Central Election Commission contacts the contributors of the private funds.” (Author's translation)*

<sup>27</sup> “Joint recommendations on the Electoral Law and the Electoral Administration in Albania” by the Venice Commission and OSBE/ODIHR, approved by the Council for Democratic Elections in its 9<sup>th</sup> meeting (Venice, 17<sup>th</sup> June 2004) and supported by the Venice Commission in its 60<sup>th</sup> Plenary Session (Venice, 08-09<sup>th</sup> October 2004); “Joint Opinion on Amendments to the Electoral Code of the Republic of Albania”, by the Venice Commission and OSBE/ODIHR, approved by the Council for Democratic Elections in its 22<sup>nd</sup> meeting (Venice, 18<sup>th</sup> October 2007) and supported by the Venice Commission in its 72<sup>nd</sup> Plenary Session (Venice, 19-20<sup>th</sup> October 2007).

<sup>28</sup> “Joint opinion on the Electoral Code of the Republic of Albania”, approved by the Venice Commission in its 78<sup>th</sup> Plenary Session (Venice, 13-14<sup>th</sup> March 2009); “Joint opinion on the Electoral Law and the Electoral Practice of Albania”, Approved by the Council for Democratic Elections in its 39<sup>th</sup> meeting (Venice, 15<sup>th</sup> December 2011) and by the Venice Commission in its 89<sup>th</sup> Plenary Session (Venice, 16-17<sup>th</sup> December 2011).



The Observation Missions OSCE-ODIHR have continuously observed a total of 19 electoral processes since 1997. Every Final Report of the Observation Missions after 2008 has raised concerns over the issue of transparency, regulation and audit of the activity of the electoral subjects. This concern is not based on the findings of the observation, but it is a reflection of the interviews with interlocutors or communication with actors in the country. This is because these missions in the course of their work do not include observation of the control mechanism, i.e. of the audit activity of the accounting experts.

After the Agreement of Stabilisation and Association was signed, the European Commission has been reporting on the institutional development with its Annual Progress Reports. Again, since 2008, these reports have included the matter of the financial activity of the political parties and electoral subjects. The critical assessments of these reports have become harsher in relation to the legal deficiencies and lack of efficiency of the auditing mechanism.<sup>29</sup> This critical language reached its peak in the Progress Report of 2016 which effectively assessed as "null" the legal-institutional mechanism for transparency, regulation and control of the financial activity of the political parties and electoral subjects<sup>30</sup>.

## IX. CONCLUSIONS AND RECOMMENDATIONS

Completion of the analysis of a legal framework and a law-enforcement mechanism not entirely efficient results in concerns over the origin of the problematics and the solutions perspectives. The control of the financial activity of the political parties is a matter that carries with it problems of the Albanian context, but also specific problems related to the subjects on the focus, i.e. the political parties.

However, the feature mentioned in the beginning of this documents is singled out from the whole picture. The legal regulation of the financial activity of the political parties and electoral subjects has not been prepared and amended in a unitary perspective that would include all responsible actors. This is considered the origin of the problem of a mechanism which, with every effort to improve specific non-functioning links, will fail in its entirety. What is seen as an indispensability of the near future is the commencement of a dialogue beyond politics, which will deal with the problematic and legal adjustments in all aspects related to the finances of political parties.

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<sup>29</sup> "European Commission Report 2015"; date 10<sup>th</sup> November 2015, Brussels; "Progress Report 2014"; SWD(2014) 304, date 08<sup>th</sup> October 2014, Brussels; "Progress Report 2013"; SWD (2013) 414, 16<sup>th</sup> October 2013, Brussels.

<sup>30</sup> "European Commission Report 2016"; DPS (2016) 364, date 09<sup>th</sup> November 2016, Brussels. "(...) *The Central Election Commission is not sufficiently independent and all-powerful to audit the financing of the political parties. The Central Election Commission must clearly set its responsibilities for the monitoring of the financing of the parties, and must perform deep inspections which reach beyond the just formal approach of auditing of the declarations of political parties. Deficiencies in the legal and institutional framework must be urgently addressed, by including the possibility to normally exercise the function of observing and monitoring of expenses during electoral campaigns, and identification of the financing sources of the pre-elections campaign until the elections day.*"