

Council of Europe
Conseil de l'Europe



European Union
Union européenne

PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

TECHNICAL PAPER

**OPINION ON THE ALBANIAN LEGAL AND INSTITUTIONAL FRAMEWORK
FOR REGULATING THE FINANCING OF POLITICAL PARTIES AND
ELECTORAL CAMPAIGNS**

Prepared by:

Quentin Reed, PACA Team Leader
March 2010

Table of Contents

Introduction/Executive Summary	3
1 CONTRIBUTIONS TO POLITICAL PARTIES: DONATIONS, IN-KIND DONATIONS AND LOANS	5
1.1 Financial donations	5
1.2 Donations in-kind	6
1.3 Loans	7
2 POLITICAL PARTY EXPENDITURE: DEFINITION	7
3 RESTRICTIONS ON PARTY EXPENDITURE AND INCOME.....	8
3.1 The Political Parties Law	9
3.2 Cutting the cost of elections: financial limits vs. restrictions on activities	9
4 PUBLIC FUNDING FOR POLITICAL PARTIES	10
4.1 Fairness.....	11
4.2 Conditions on the receipt of public funds: lack of positive incentives	11
5 TRANSPARENCY OF PARTY FUNDING	12
5.1 GRECO Recommendations.....	12
5.2 Additional issues.....	14
6 SUPERVISION AND ENFORCEMENT.....	15
6.1 Conditions for effective supervision/enforcement	15
6.2 General weaknesses: powers, capacities and two-track regulation	16
6.3 The importance of independent monitoring	18
7 ADDRESSING THE (MIS)USE OF STATE RESOURCES.....	18

For any additional information please
contact:

Corruption and Fraud Unit
Economic Crime Division
Directorate of Co-operation - DG-HL
Council of Europe
F-67075 Strasbourg Cedex FRANCE
Tel +33 388 41 29 76/Fax +33 390 21 56 50
Email: lado.lalicic@coe.int
Web: www.coe.int/economiccrime

This document has been produced with
the financial assistance of the European
Union. The views expressed herein can
in no way be taken to reflect the official
opinion of the European Union or the
Council of Europe

Introduction/Executive Summary

This Technical Paper has been drafted to implement Activity 1.2.2 of the PACA Workplan, namely to “Provide a review of the legal and institutional framework for regulating and supervising the financing of political parties and elected representatives, including recommendations for amendments to the Law on Political Parties, and the Electoral Code as appropriate, *inter alia* in the light of Third Round GRECO Evaluation recommendations.”

Prior to this opinion, two evaluations conducted in 2009 by international organizations have addressed political party financing regulation in Albania. The main evaluation is the Third Round Evaluation of GRECO on ‘Transparency of Party Funding’ issued in October 2009. The other evaluation was conducted on the Electoral Code by experts of the European Commission for Democracy through Law (Venice Commission) and the OSCE, and was issued in March 2009. This opinion refers to both the evaluations as relevant. The findings and recommendations of this opinion relate unless otherwise stated both to political parties and entities related directly or indirectly to parties or otherwise under their control.

The main findings and recommendations of this opinion are the following:

- The GRECO findings and recommendations on the transparency of Albanian political party financing are supported by the expert, with the addition that it is important to maintain a balance between transparency and the burden/efficiency of regulations.
- The current legal framework suffers severely from the absence of key definitions, in particular of campaign spending and of donations/contributions (especially donations in kind), and it is of vital importance that such definitions are provided if regulations are to function.
- The current framework does not - and should be amended in order to - address the issue of loans to political parties.
- While relatively generous, the system of public funding should be allocated more fairly and should be adjusted so that subsidies are a positive incentive for parties to fulfil other legal requirements such as transparent disclosure.
- The expert recommends a shift away from financial limits on election campaign spending to restrictions on particular campaign activities (and in particular television advertising), as the latter are far more effective ways of restricting the cost of elections and thereby the pressure to seek donations.
- The best solution regarding supervision and enforcement would be to entrust one body (probably the Central Election Commission) with supervision of all political party finances. However, given the political context, it may be necessary to transfer supervision of political party finances from the High state

Audit to the High Inspectorate for the Declaration and Audit of Assets (HIDAA). This is on condition however that HIDAA is allocated sufficient powers (particularly the supervision of all party finances including election campaign finance where appropriate), mandate and resources, and that a clear and extensive Memorandum of Understanding is established between the CEC and HIDAA in order to ensure a common database and exchange of information.

- The authorities should consider further clarifications and/or additions to regulations designed to prevent the misuse of state resources for electoral purposes.

1 CONTRIBUTIONS TO POLITICAL PARTIES: DONATIONS, IN-KIND DONATIONS AND LOANS

The Albanian legal framework regulates general party financing - the costs of party organisation, maintaining facilities and other non-election-related operational expenses - on the one hand, and election campaign finance on the other through different laws, and in particular establishes specific rules on spending and income for the purposes of election campaigns.

The current legal framework contains serious gaps relating to contributions to political parties. The Political Parties Law does not regulate donations to political parties in general at all. Neither the PPL nor the Electoral Code clearly define what constitutes a donation to a political party or electoral candidate, and in particular, the law does contain clear provisions on in-kind donations. In addition, the law contains no provisions on loans to political parties at all.

1.1 Financial donations

The Political Parties Law does not regulate donations/contributions to political parties at all except for the provisions on permissible/impermissible donors in Article 21. The absence of any substantial regulation of donations in the Political Parties Law undermines provisions in the Electoral Code to limit the size of donations to parties and other electoral subjects for the purpose of election campaigns. Article 89 of the Electoral Code defines from what sources parties and candidates may obtain 'funds for the purposes of their electoral campaigns', and states that the maximum amount any person (natural or legal) may donate to a political party or candidate is ALL 1 million (approx. Euro 7,200) in the form of funds 'or the equivalent value in goods and services'.

The problem of the combination of these provisions is that, since the Political Parties Law does not regulate donations at all, and in particular does not prohibit anonymous donations, there is little to prevent parties accepting such donations and using them for electoral purposes as part of their 'own resources'. According to the auditing reports on the election campaign finances of the two largest political parties during the 2009 parliamentary elections, one-third of the campaign funds of the Democratic Party and four-fifths of Socialist Party funds came from 'own resources' (in the case of the DP) and 'internal SP funds' (in the case of the SP).

- As stated in Section 5, the expert is in agreement on the concerns and recommendations of GRECO, particularly regarding the absence of any requirement for annual accounts to contain any detailed information on income, the absence of any ban on anonymous donations, and the absence of any requirement to submit accounts to a state authority or other certified auditor.
- In addition, the expert suggests that attempts to regulate donations for electoral campaigns separately are unrealistic, and it would be more advisable to regulate donations to political parties in general (including donations to their election

campaigns) – in other words specify rules and restrictions that apply to all donations, without separate provisions for election campaigns.

1.2 Donations in-kind

The current Albanian legal framework provides almost no regulation of in-kind donations – that is, contributions to political parties that are not financial donations but in the form of goods or service provided for free or at lower-than-market value, for example advertising space, entertainment services, or for that matter the provision of an entire campaign by a public relations or other service provider.

The Political Parties Law contains no provisions on donations or contributions, let alone provisions on in-kind donations, only a statement that the financial resources and assets of parties consist of membership dues, any property gained in a lawful manner and financial assistance from the State Budget. The GRECO Evaluation referred to indications by the authorities that these three sources include both financial and in-kind resources – indicating that in-kind donations are tolerated, yet not regulated.

The phrase “or the equivalent value in goods and services’ in Article 89 of the Electoral Code is the only reference anywhere in legislation on party financing to in-kind donations. As the GRECO evaluation noted, there are no detailed provisions in the law for the identification of such donations and their recording (declaration) at commercial value in the lists of donations and auditing reports of electoral subjects.

The lack of proper provisions on in-kind donations constitutes a fundamental gap in political financing regulations. Contributions in the form of goods or services provided to a party, or – explicitly or implicitly – on behalf of a political party – may constitute a substantial proportion of election campaign resources, or for that matter party income in general. As the current Electoral Code stands, if a private company purchased all of a political party’s electoral advertising it is not even clear whether this would constitute the provision to the party of ‘goods or services’, and if a company stated that it had purchased such advertising on its own behalf due to its sympathy with the party’s policies.

The expert therefore wishes to underline the importance of implementing GRECO recommendation ii (ii) as a fundamental condition for meaningful regulation of party finances. In the opinion of the expert, this means the inclusion of a full and clear statement – either in the Political Parties Law, Electoral Code or secondary legislation – of:

- what exactly is to be counted as a donation to a political party, including:
 - purchases of goods or services by non-related entities on behalf of a party;

- the provision of goods and services for free or at less than market prices (or for example at a discount of more than a certain percentage compared to prevailing market prices);
- clear guidelines on what is to constitute the benchmark for determining the market price in such cases – for example on guidance from the statistical authorities, as calculated by the CEC, etc.

1.3 Loans

While provisions on in-kind contributions are inadequate, the Albanian legal framework contains no provisions at all regarding loans to political parties or electoral candidates. This is an equally large gap in the regulatory framework. The experience of other countries, be they advanced or transitional/new democracies, suggests that loans may often be a more lucrative source of party funding than donations, and many corruption scandals have arisen as a result of them.

While loans can in theory be defined as in-kind donations where they are provided on conditions that are more favourable than market ones, it is likely to be extremely complicated in practice to determine whether a loan has been provided on better-than-market conditions, and such provisions are easier to circumvent (e.g. through a party defaulting on a loan).

For this reason, the expert recommends strongly that the legal framework is altered so that political parties (both in general and in the context of election campaigns) and electoral candidates are required to report loans specifically to the relevant supervisory/enforcement body.

2 POLITICAL PARTY EXPENDITURE: DEFINITION

This, restrictions on campaign spending are established through three main provisions. Article 78 of the Electoral Code states that every electoral subject “has the right to make electoral propaganda in any lawful manner”, Article 77.1 of the Electoral Code establishes that the electoral campaign begins 30 days before - and ends 24 hours before – election day, and Article 90.3 defines limits on total spending by a political party or candidate for an electoral campaign (see Section 4 for details).

However, neither the Electoral Code, nor to the expert’s knowledge any implementing regulation define what constitutes ‘electoral propaganda’, or more specifically ‘campaign expenditure’. Without a definition of - or list of - types of expenditure that constitute ‘campaign spending’ or ‘electoral propaganda’, it is questionable whether the restrictions on spending are enforceable. For example, if a party pays for some or all services related to the election campaign before the campaign officially begins, and then claims for accounting purposes that the spending was a part of ‘ordinary’ spending, neither the Electoral Code nor Political

Parties Law appear to prohibit this clearly. This is specifically a result of the fact that campaign spending is not clearly defined.

In addition, the official campaign period is very short in international comparison, which provides strong incentives for parties to begin campaigning before the official campaign period begins. Again, without a clear definition of campaigning, preventing this will be difficult.

The implementation of regulations relating to campaigning can only be ensured if it is clear what for legal purposes constitutes campaigning. The expert therefore recommends that binding regulations or instructions are issued by the CEC to clarify exactly what constitutes 'campaign spending', and that these contain clear provisions to prevent the disguising of campaign spending as ordinary spending. An example of such provisions can be found in UK regulations (http://www.electoralcommission.org.uk/_data/assets/pdf_file/0017/71252/039_campaign_expenditure_Final_19Jan.pdf), which

- clearly define campaign expenditure as expenditure incurred by a registered political party in promoting the party or its candidates at a relevant election, or in promoting the standing of the party or its candidates in connection with future relevant elections, including through efforts to damage the prospects of other parties/candidates;
- provides a breakdown of what is – and also what is not – campaign expenditure;
- define the campaign period as a relatively long period (365 days ending on election day)'
- clearly state that expenditure incurred before the campaign period on items that are used for electoral purposes during the campaign period must also be included as campaign spending in party reports.

3 RESTRICTIONS ON PARTY EXPENDITURE AND INCOME

Albanian party funding provisions establish the following restrictions and limits on spending and income:

- The Political Parties Law (Article 21) bans certain entities (foreign entities, Albanian public entities or entities with participation of state capital) from contributing to political parties.
- Article 90.2 of the Electoral Code limits the maximum total amount that any natural or legal person may donate to a political party or other electoral subject for electoral purposes to ALL 1 million (approx. 7,200 Euro).

- Article 90.3 of the Electoral Code limits the total spending by a political party on an election campaign to 10 times the highest amount that an electoral subject has received from public funds for the election campaign, and Article 90.4 establishes the limit for candidates proposed by voters at 50% of the same amount.

In the opinion of the expert, the current framework is to a considerable extent unenforceable. This is partly due to the weakness of enforcement mechanisms in general, as well as the absence of sufficiently detailed requirements to disclose donations and spending (see Sections 5 and 6). But it is also partly due to the absence of any restrictions on contributions and spending in the Political Parties Law, and to an over-reliance on financial spending limits.

3.1 The Political Parties Law

The Political Parties Law establishes no limits on contributions to political parties or spending by them. Section 2 argued that the lack of a proper definition of campaign spending made the limits on campaign spending largely unenforceable since the distinction between campaign spending and ordinary party spending is blurred. The absence of limits on donations for general or ordinary party funding makes it even easier for parties to overspend on an election campaign, disguising this as ordinary spending. If such financial limits are to be enforced (on this see below), then it is essential that campaign spending is clearly defined, as argued in Section 2.

3.2 Cutting the cost of elections: financial limits vs. restrictions on activities

A more important point the expert wishes to underline – and one of the key messages of this opinion – is that the reliance on financial limits on spending is unfortunate in light of international experience, according to which such limits are by nature very difficult to enforce. Even in countries with the strongest institutions of enforcement, parties and candidates have all incentives and therefore an unstoppable tendency to circumvent spending limits, and monitoring spending in order to detect violations of financial limits is a massive task.

In addition, the main objective of spending limits is to prevent elections being a financial arms race between parties/candidates – i.e. make them affordable and thereby reduce the inequality between rich and less rich parties/candidates. However, it makes sense to assume, and international experience strongly confirms that this objective is much more likely to be achieved if the cost of elections is reduced – indeed, that the objective itself is better framed in this way. Moreover, reducing the cost of elections will – other things equal - reduce the pressure on parties to attract donations in return for *quid pro quo* benefits. Translated into more concrete terms, international experience also suggests strongly that the most effective way to cut the cost of elections is by imposing direct bans or restrictions on particular campaign activities which can be easily monitored and enforced.

The most obvious and best candidate for such restrictions is paid advertising on certain electronic media, and in particular television. There are at least three powerful arguments for restricting or banning paid television advertising. The first is that it occupies a substantial proportion of election spending, and its restriction or abolition can reduce the cost of elections substantially. Second, political parties are already provided in Albania with free time on television to conduct election campaigning; the availability of such free time is an important step to facilitate a ban on paid advertising. Third, monitoring observance of such a ban is easy – especially compared with the difficulties of monitoring the observance of general spending limits. Experience in a number of countries – for example the UK, Germany or the Czech Republic - suggests that such a ban is an effective way of limiting the cost of elections without restricting the ability of all parties to campaign or overburdening regulators.

The expert therefore strongly recommends that the Albanian authorities consider steps to ban paid electoral advertising on television, limiting campaigning on television to the use of free time allocated to parties and candidates. It should be noted that in parallel with such a ban, it is necessary to pay heightened attention to ensuring that news and public affairs TV coverage conform with legal requirements on balance and objectivity.

4 PUBLIC FUNDING FOR POLITICAL PARTIES

The Albanian Political Parties Law and Electoral Code together establish a relatively generous system of public funding of political parties, as summarised in the GRECO Evaluation.

Article 19 of the Political Parties Law provides assistance for the ‘annual activities’ of political parties from the state budget, of which:

- 70% is divided among parties “in equal parts according to the votes won in the last parliamentary elections”;
- 20% is divided equally among parties which have a parliamentary group;
- 10% is divided equally among parties that took part in the last two parliamentary elections with national lists.

Article 87.2 of the Electoral Code stipulates that:

- 50% of public funds distributed for election campaign financing purposes are allocated to parties that are represented in the Assembly, proportionately to the number of seats they gained in the last election.
- The other 50% is distributed to parties that gained at least 2 seats in the previous elections, in proportion to their share of the national vote.

- Parties that do not win any seats in the election must return to the Central Election Commission money that was provided to them under the second rule.

4.1 Fairness

Given its focus on the transparency of party funding, GRECO did not comment specifically on the provisions on public funding. However, the Venice Commission/OSCE opinion did criticise Article 87.2 of the Electoral Code, judging that the provisions are unfair because they provide funds only to parties already represented in the Assembly (first two bullet points above), and also rewards the election winners by punishing the losers (third bullet point). The opinion recommends that Articles 86-87 are amended so that:

- some public funding is provided for non-parliamentary parties participating in elections;
- the campaign funds of parties who do not obtain any seats in the elections are not withdrawn and distributed among the winners.

The expert agrees with this opinion. First, in other countries which provide public funding for electoral purposes, in general some (if small) funding is also provided at least to parties that field a national candidate list, even if they are not yet represented in the legislature. It is therefore recommended that the current system is altered to make this also the case in Albania.

Second, and more important, the withdrawal of funds provided for campaigning in the event that parties do not meet a threshold is an entirely unfair provision, as it punishes political parties for (and only for) the choices made by voters. It appears to be the case that parties affected by this provision have refused to return public funds in indignation. It is recommended that this provision is deleted in the interests of fairness and to legitimise the current situation.

4.2 Conditions on the receipt of public funds: lack of positive incentives

In addition to the above comments, the main point that the expert wishes to underline regarding the system of public funding for political parties in Albania is that the current regulations do not attach any conditions that parties must fulfil in order to receive such funds. In this sense, the law misses an opportunity to secure transparency and other desirable conduct on the part of political parties by requiring them to fulfil certain conditions *before* receiving public funds.

The law contains provisions allowing the withholding of public funds if a violation of financing provisions is detected. Article 24 of the Political Parties Law states that financial assistance may be withheld in order to pay fines or other obligations owed by political parties to the states. Article 173 of the Electoral Code states that a party that refuses to 'make the financial resources of a campaign transparent or to allow

the audit to exercise its activity' may *inter alia* have public funding to it suspended for five years. The effectiveness of this provision is unclear unless it is clear what it means to 'make the financial resources of a campaign transparent'. In addition, the withdrawal of public funds appears to depend upon a proactive finding by the regulatory authority of a particular violation.

A more effective way of pursuing compliance with regulations is to make the provision of public funds to parties conditional on the latter *already* fulfilling reporting requirements, for example the submission of a complete list of donors for the previous year, or more generally the submission of a full audited financial report. This issue is linked intrinsically to the improvements in disclosure recommended by GRECO and this opinion. The point here is that, rather than giving the regulatory authority the power to withdraw state funds as a result of a failure to report accurately in the past, the release of public funds should be made conditional on a party already fulfilling strict disclosure requirements and as confirmed by the regulatory authority.

The expert therefore recommends that, taking into account whatever amendments to the Political Parties Law and/or Electoral Code are drafted, the receipt of public funds is made conditional on the fulfilment of other key requirements that will be contained in the amended law/s – in particular on the accounting for spending of public funds in the previous year, and more generally in the submission to the relevant authority together with publication of full financial reports.

Such conditions are an example of what can be termed 'positive incentives' i.e. conditions that reward certain positive behaviour (in this case for example the disclosure of certain information) rather than sanctioning failure to behave in a certain way. The expert also recommended that the authorities should consider the possibility in the future of extending the principle of positive incentives to other areas of political finance regulation. Perhaps the best examples of 'carrot-based' regulations are state subsidies based on 'matching donations' (as practised in Germany or Canada), where state subsidies are provided to match private donations to political parties up to a certain threshold, on condition that the political party discloses the source of the private donations and in a timely manner.

5 TRANSPARENCY OF PARTY FUNDING

This section summarises the findings of the GRECO Evaluation concerning specifically the transparency of party funding, and notes a few additional issues highlighted by the expert.

5.1 GRECO Recommendations

The 2009 GRECO Evaluation focused explicitly on 'Transparency of Party Funding'. GRECO noted that the Albanian authorities' referred to their preference for minimal regulation of non-profit associations, including political parties, and the consequent

fact that parties are not obliged to submit books and accounts/annual financial statements to any state body. The expert would like to underline that while they may be non-profit associations from a legal point of view, political parties receive by law contributions from the state budget, and in addition are the main mediators of public policy and holders of power in the state. A narrow view of parties as organisations deserving extensive privacy is therefore unjustifiable, especially when combined with a policy of providing them with generous state assistance.

GRECO criticised in particular the Political Parties Law, which currently contains no specific provisions regarding the keeping of records of, reporting or disclosure of party funding or expenditure. GRECO recommended specifically that the law be amended to:

- introduce a general ban on donations from donors whose identity is not known to the political party;
- require that annual accounts of political parties provide detailed information on income (including a specification of each donation received and, in case of donations over a certain value, the identification of donors, as well as the indication of donations in kind, accounted for at their commercial value), expenditure, debts and assets and that they include – as appropriate – the accounts of entities related, directly or indirectly, to political parties or otherwise under their control;
- introduce a standardised format and independent auditing of those party accounts by certified experts;
- ensure that those accounts are made easily accessible to the public, within timeframes specified by law;

In addition, although the Evaluation acknowledged the considerable progress made in increasing transparency of election campaign finances under the new Electoral Code in force since January 2009, it had important recommendations in this regard too, namely that:

- there is clarification and/or the elaboration of secondary legislation or guidelines to ensure that the list of donations and of donors to party election campaigns is published at regular intervals in an easily accessible manner, and to establish a standard format for the auditing reports on campaign funding;
- donations in kind (on which see Section 1 of this opinion) are properly identified, evaluated and accounted for at their commercial value, and that donors are published at regular intervals during election campaigns

It should be noted that at the event on Political Party Finance held on 19 April 2010 under the PACA Project, it was understood that although the Central Election Commission has issued instructions on the format of reports submitted by political

parties, as a result of which the publication of the identities of all entities donating more than the ALL 100,000 threshold. However, the CEC does not appear to have issued any templates for the auditing reports on campaign finance, nor any guidelines on in-kind donations.

5.2 Additional issues

The expert agrees with the GRECO findings, and in addition wishes to underline three additional issues.

- The first is that particular attention again needs to be paid to ensuring that the rules on disclosure of ordinary party finances are tightened sufficiently to ensure as far as possible that ordinary party finances are not used to disguise donations or spending that are in fact election campaign-related. This requires not only the definitional clarifications underlined in Section 1-2, but also the stricter disclosure requirements listed above.
- The current disclosure laws do not contain any specific requirements relating to the use of funds from the state budget. There do not appear to be any conditions in the two laws concerning what parties may use public funds for, nor is there any requirement to account specifically for the spending of such funds – in other words no duty to report to the relevant authority on what exactly public money was spent. Following the arguments forwarded in Section 4.2, it is especially recommended that parties are under an obligation to specifically account for how public funds were spent, and that at a minimum the further receipt of such funds is conditional upon full and transparent reporting of such spending.
- A second issue that is not highlighted by GRECO is the need to ensure that disclosure requirements for both elections and ordinary finances are clear not only with respect to donations/income, but also for expenditure. Section 2 underlined the need to define campaign expenditure clearly, thereby by default defining what is ordinary expenditure (*i.e.* is not campaign expenditure). Once such definitions are provided, it is vital that the law mandates disclosure by parties of their ordinary and campaign expenditure to the relevant authority and to the public. Indeed, it is as important to ensure compulsory disclosure of expenditure as it is to ensure disclosure of donations and income, because a key mechanism for scrutinising the veracity of political parties disclosures is by comparing declared income to declared expenditure.
- Third, in designing new regulations or amendments to existing legislation concerning disclosure requirements, it is important to ensure that they are kept as simple as possible, and that attention is paid to maintaining a proper balance between ensuring transparency of party finances on the one hand, but ensuring on the other hand that the burden of disclosure is not too high for either parties or the regulatory authorities. For example, a requirement to disclose to the CEC every single donation can result in regulatory overload and an excessive burden on political parties, yet yield little in terms of greater transparency of the important sources of financing. The current Article 90.1 of the Electoral Code

requires the disclosure to the CEC in party reports of the total amount donated by every single donor; in the light of the previous comment, it might be more sensible to limit this obligation to donors who have contributed over a certain amount, while ensuring an obligation on the part of parties to maintain a record of all donations.

6 SUPERVISION AND ENFORCEMENT

This section addresses the fundamentally important issue of supervision and enforcement of political finance regulations. Effective supervision and enforcement is the key condition for real implementation of such regulations, and is an area in which the Albanian authorities will need to take major steps in institutional design.

The Electoral Code establishes the Central Election Commission as the body responsible for overseeing the financing of political parties' (and candidates') election campaigns. In particular, under Article 91 the CEC appoints certified accounting experts to audit the election campaign accounts of parties and submit an audit report, and empowers the CEC to verify the data contained in the reports, with relatively wide powers to secure information from parties and banks or other third persons who can provide information on the data in the reports.

The Political Parties Act defines the High State Audit (HSA) as the body responsible for supervising political party finances (financial audit), including gifts and other assistance provided to parties by non-governmental sources. The article also declared that the HSA could audit parties "both before and during electoral campaigns." However, a 2001 Constitutional Court decision declared the audit of private gifts and assistance to be unconstitutional, and declared the article to be incomplete until Parliament amends it – which in practice appears to have ended any supervision by the HSA of political party finances to date.

6.1 Conditions for effective supervision/enforcement

If there is a consensus among experts on political party and election campaign financing on one thing, it is that the implementation in practice of regulations is a bigger challenge than the passage of regulations themselves. It may be convincingly be argued that:

- In almost no country are political finance regulations adequately enforced by regulatory authorities.
- Supervision and enforcement are inadequate usually due to a combination of some or all of the following reasons:
 - The task of supervision is simply difficult due to the difficulties of observing and monitoring the activities of political parties and candidates

- Regulations are too complex
- Regulatory authorities are afforded insufficient independence, powers or resources
- Where political parties and/or candidates are held accountable for failure to observe the spirit or letter of regulations, this is almost always initiated through exposure by the media, other non-governmental monitoring organisations or (less often) political opposition.
- The successful role of the regulatory body is therefore dependent upon
 - The clarity and simplicity of regulations
 - The independence, powers and resources of the regulatory authority
 - The existence of independent monitoring of political party/election campaign finances
 - The existence of a clear line of responsibility, for example the definition of the party treasurer/chief financial officer or party leader as personally responsible for violations of political financing regulations.

6.2 General weaknesses: powers, capacities and two-track regulation

The GRECO Evaluation underlined several current weaknesses of supervision of party finances. The main ones were the following:

- The *de facto* absence of any system of supervision of general party finances at all, exacerbated by the lack of any proper requirements for political parties to report on their finances.
- A lack of capacity of the CEC to perform its oversight role properly - GRECO evaluators were informed in 2008 that three people were responsible for the management and control of election funding.

An additional reason for the weakness of supervision is the two-track system of oversight, under which party funding for election campaigns is supervised/enforced separately from ordinary funding. In addition to the definitional problems highlighted in Sections 1-2, which hinder the clear distinction between 'ordinary' and 'election' components and therefore undermine restrictions on election campaign financing, the expert wishes here to underline what is perhaps the most important argument of this opinion, which is the need to ensure that a functioning system of supervision of political party finances is established. The GRECO Evaluation discusses this issue at some length and states clearly the following two main points.

- Almost all persons interviewed on the issue agreed that the supervision of regular party finances and election campaign funding should be carried out by one and the same body.
- The evaluators were convinced that the most complete and efficient control could be realised by a single agency with a comprehensive mandate to supervise all areas of political financing.

The expert also believes very strongly that effective supervision of political party finances will be very difficult unless a single agency conducts such supervision. There is no consensus on whether establishing the CEC as the body responsible for oversight of both election campaign and ordinary party finances would require amendment of the Electoral Code, which would appear to be difficult given the need for a three-fifths majority of all MPs to enact changes in the Code. An alternative option suggested has been to establish the High Inspectorate for the Declaration and Audit of Assets (HIDAA) as the body responsible for supervision of party financing in general (also requiring only an ordinary parliamentary majority).

In light of the previous comments, the expert believes that the following solution will be the most realistic one. If the legal amendments required are realistic, the CEC should be established as the body responsible for supervision of all party finances. However, special attention needs to be paid to the following:

- The process of appointment of the CEC, given the observed tendency of the body to resolve complaints about campaign violations by voting strictly along party lines. The expert believes that the independence of the CEC is a likely risk in the option recommended. If the legal amendments are not feasible, or the necessary independence of the CEC can not be guaranteed, the following solution should be pursued:
- Capacity of the CEC. The CEC currently conducts no auditing of campaign accounts itself, but essentially outsources this activity to independent auditors as required by law. If the body is to become responsible for supervising party finances as a whole, it will be essential to ensure that it has the capacity necessary to carry out this role properly.

If the legal amendments to alter the role of the CEC are not feasible, or its independence and/or capacity can not be guaranteed, the following solution should be pursued instead:

- Preserving the role of the CEC as it currently stands, with improvements in regulations as already outlined by GRECO and this opinion, and also in the capacity of the CEC to effectively monitor and enforce election campaign finance regulations.
- Establishing HIDAA as the body responsible for supervising and enforcing political party finance in general, in the context of the extensive changes to the

Political Parties Law that have been outlined or referred to in this opinion, and on condition that HIDAA is equipped with appropriate and sufficient powers and resources to perform its mandate.

- Ensuring that HIDAA can where necessary also monitor or analyse information on the election campaign finances of political parties, independently of the CEC.
- Establishing a clear Memorandum of Understanding between HIDAA and the CEC under which
 - a common database of HIDAA and the CEC will be established, containing all information held by the regulators concerning political party finance including their election campaign finances;
 - a clear and efficient procedure is established for the exchange between the CEC and HIDAA of other information on political party finances on an *ad hoc* basis.

6.3 The importance of independent monitoring

In the context of the conditions defined in subsection 6.1 for effective supervision and enforcement, it may well be noted that two types of monitoring – by the regulatory authority and by the media – have at least thus far been very weak in Albania. However, monitoring may also be conducted by non-governmental organisations. An example of such monitoring during the 2009 Parliamentary election campaign was conducted on the basis of an objective and neutral methodology by NGOs funded by the Open Society Foundation for Albania. The monitoring yielded information that was potentially of great use to the CEC in monitoring the accuracy of political party election campaign finance reports. The expert also recommends that cooperative links are established between the regulatory authorities and non-governmental monitoring organisations which can play a role in monitoring the election campaign finances of political parties.

7 ADDRESSING THE (MIS)USE OF STATE RESOURCES

Reports of international observation missions on the 2009 Parliamentary Elections – in particular of the OSCE/ODIHR Election Observation Mission – noted substantiated cases of the misuse of state resources for electoral purposes by the two main parties. It should be noted that the use of state resources by incumbent political parties (whether at national or local level) of institutional, financial or media resources of the state may be classified as a component of election campaign finance. Some political financing laws (for example in the UK) recognise this explicitly by mandating the reporting of the use of public facilities as both a donation and campaign expenditure.

However, the importance of the issue should not be underestimated, as ensuring that the state is not used for political party purposes is a condition for political party and election campaign finance regulation to be relevant. This opinion does not address this issue in detail. Nevertheless, on a cursory examination of the legal framework the expert suggests considering the following steps.

- Article 88 of the Electoral Code contains prohibitions on the use for electoral campaign purposes of the movable and immovable assets or human resources of public entities or entities where the state owns capital/shares or appoints the majority of either of the statutory organs. with respect to Albania. This provision might be elaborated to specifically cover phenomena that have been reported in monitoring reports, such as: the attendance (whether voluntary or involuntary) of campaign events during working hours by public employees; a prohibition on the use of any party/candidate logos at official events (such as the opening of a road or other completed project) for campaign purposes), etc.
- Article 81.3 of the Electoral Code states that “the time for covering government activities that are related to the electoral campaign is included in the time of the party to which the head of the institution that organizes the activity belongs.” This Article should be clarified and accompanied with CEC guidelines to define much more clearly what constitutes a government activity related to the electoral campaign.
- In addition to any prohibitions, the Political Parties Law and Electoral Code could classify the use of state resources as in-kind donations to political parties, which must be accounted for at either the cost their use imposes on public administration (for example the salaries of employees) or the amount they would cost at market prices, whichever is larger. This step would constitute an additional tool for monitoring of such activities by the regulatory body, and for that matter independent monitoring.