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TECHNICAL PAPER

OPINION ON PROVISIONS TO ENSURE TRANSPARENCY OF PARTY FUNDING IN ALBANIA AND RECOMMENDATIONS FOR FUTURE MONITORING BY THE CENTRAL ELECTORAL COMMISSION

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1 Introduction

This Technical Paper comments on provisions of the Electoral Code and of the recently amended Law on Political Parties, regulating political party financing in Albania. It analyses briefly the relevant legislation with regard to its application in practice. Based on the documents he has been provided with, the consultant identifies possible gaps in legislation that may lead to problems in practical application and may grant opportunities to circumvent transparency requirements. The author's analysis leads to advice regarding the development of standardized templates and instructions concerning financial reporting and auditing to be issued by the Central Election Commission (CEC) in order to ensure the transparency of party funding in Albania and the effective fulfilment of CEC's monitoring functions.

2 Rules with respect to electoral campaign financing and their practical application

The consultant has been provided *inter alia* with a translation of Article 3, Articles 77 to 92 and Article 173 of the Electoral Code. His opinion on these provisions, mainly with regard to their practical application, is as follows.

2.1 Campaign financing under the Electoral Code

The financing of electoral subjects, i.e. registered political parties and candidates, is ruled by **Articles 87 to 89 of the Electoral Code**. To put it roughly, Article 87 deals with the allocation and re-allocation of public funds to political parties, Article 88 prohibits (additional) public aid to all electoral subjects if not expressively allowed by law, and Article 89 states restrictions to the funding of electoral subjects by non-public donors. These provisions say on the one hand what electoral subjects are allowed to receive as means in order to support their election campaigns, and on the other hand how the dedicated financial aid deriving directly from the state budget is allocated to those political parties with at least a minimum of success in elections, i.e. gained seats in the Assembly.

With regard to the allocation and re-allocation of public funds according to Article 87, it remains **unclear** to the consultant if the Electoral Code provides specific **rules of procedure in case a political party disagrees with a decision of the CEC based on Article 87 of the Electoral Code**. While the verification of some conditions in Article 87.2 of the Electoral Code (e.g. registration and seats in Assembly) is fault-safe, other conditions appear to be more error-prone (e.g. distribution in proportion with obtained votes, Article 87.2 lit. b). Or, one could think – if appropriate in Albania – of elections nullified or of a (partial) recount of votes after the announcement of the final election result, leading to a re-allocation of funds and consequently to the obligation of a political party to return funds (analogous to Article 87.3).

Irrespective of that, the **right to an effective remedy** should be ensured in case the electoral subject seeks to contest a decision of the CEC which affects the electoral subject's own rights. Furthermore, it should be clear if such a remedy suspends the effects of CEC's decision. The **question of an (automatic or to be especially applied for) suspensive effect** should be treated with reasonable care. The suspension of a decision e.g. to re-allocate returned public funds (Article 87.5) may hit all political parties, qualified to benefit, except for the one obliged to return funds (and hoping to keep the money). On the other hand, the obligation to return

funds with immediate effect may destroy the ability of the political party obliged to further participate in the democratic process. Nonetheless, a certain equation for that last concern is provided by Article 87.3 which seems to leave a "backdoor" for the CEC, maybe using the phrase "without reasonable cause" to practically suspend the effects of its own decisions where demanded by the rule of law and by the important function of political parties in a democratic society.

The prohibition of the use of public resources for the support of electoral subjects in Article 88 of the Electoral Code **is defined in a clear and covering manner**. But, making no difference for example between entities where the state owns the majority of shares and those where the state is just one amongst a great number of shareholders, the provision may produce **unforeseeable risks to the party official being responsible for financial matters**. Article 88.1 deals with resources that "can not be used or made available for the support of" electoral subjects, so it addresses also party members and officials. Hence, the treasurer ("chief of finance" is the wording in the translation of Article 173.1) has to check carefully in every case if a company is in such a (maybe minimal) relationship with the Albanian State. In this context, it remains **unclear** to the consultant **if an element of fault, a culpable omission** of the treasurer **shall be a prerequisite for a sanction** imposed on him pursuant to Article 173.1 of the Electoral Code.

In which cases of a violation of Article 89 of the Electoral Code **sanctions according to Article 173.1** shall be imposed on the treasurer appears to be unclear, too. Article 89.1 addresses the electoral subjects, and so Article 173.1 should be applicable in cases of donations from foreign countries. The wording in Articles 89.2 and 89.3, however, seems to address potential donors. That leads to the question if the treasurer – e.g. in case of a culpable omission to verify the admissibility of a donation – shall be punishable in case of an infringement of Article 89.2 or 89.3, also. This **should be clarified not only to gain legal certainty for party officials, but also to prevent possible circumventions of Article 89.3** (which prohibits certain donations): According to Article 90.1 of the Electoral Code, the donors bear personal responsibility for false declarations. And, reading (the translation of) Article 173.4 of the Electoral Code, it seems that the fine of 30 percent of the amount unlawfully donated shall be imposed on the donor. But, if a political party is allowed to keep the full amount of an unlawful donation in case the donor pays the fine, and if even not the treasurer is held responsible, gates are open to intentional infringements, the donor just accepting an extra cost of 30 percent to his unlawful donation and the political party pretending to have trusted in the false declaration.

Even if the political party would be obliged to pay a fine of 30 percent of the prohibited donation and may keep the other 70 percent, it has to be kept in mind that those 70 percent are gained in an unlawful manner – bearing great risks to the independence of the concerned political party that result from potentially corruptive influences. Also for prevention purposes, **political parties should – at least – not be allowed to keep donations obtained illegally**.[1] The consultant understands that the amendments to the Law on Political Parties (as

[1] See e.g. the German Law on Political Parties, Section 31c: "A political party which, in contravention of Section 25 para. 2, has accepted donations and not remitted them to the President of the German Bundestag in accordance with Section 25 para. 4 shall be liable to pay three times the amount of the illegally obtained sum of money; donations already remitted shall be deducted from the payable amount."

in force since 17 March 2011) address this issue in the new Article 23/4 para. 5[2] – though covering only certain forms of illegally obtained donations (see 3.1 in this paper), and, what's more, seemingly leaving untouched a legislative **gap concerning illegally obtained funds** for the purpose of their electoral campaigns, at least during the campaign period (30 days before the election date, see Article 77 of the Electoral Code). If this gap turns out to be a small or big "loophole" will depend on the interpretation of Article 15/1 para. 1 of the Law on Political Parties ("The provisions of this chapter shall regulate the funding of political parties from financial and material resources, public and non-public, which are not regulated by the provisions of the Electoral Code.") and the understanding of Article 77 and Articles 88 to 91 of the Electoral Code (for comments on the reach of application of both laws see 2.4 in this paper).

Last, coming back to Article 173 of the Electoral Code (sanctions related to campaign financing), **legal remedies to contest a sanction should be provided** and be defined by law. Further, the **time limit should be clarified within which a sanction can be imposed** on the political party or on the individual (if not ruled by other provisions of the Electoral Code, unknown to the consultant). Furthermore, it should be clear if an ongoing verification by the CEC and/or measures/examinations carried out by other authorities, e.g. criminal prosecution, shall suspend the expiration of that time limit for the imposition of sanctions under the Electoral Code.

2.2 Rules for reporting and auditing

According to **Article 90.1 of the Electoral Code**, the "list of persons who donate amounts of not less than ALL 100 thousand, along with respective values, must always be made public". That is obviously the only provision in that law demanding electoral subjects to report relevant financial data directly and on their own responsibility to the public. This obligation to immediately publish the fact a certain (legal or natural) person has contributed a significant amount to support the ongoing electoral campaign of a certain political party meets transparency requirements quite well. Nonetheless, the provision lacks certainty by using only "always" and leaving unsaid in which way and within which timeframe the party has to make public the list. The consultant recommends to **clarify the requirements for the publication of the party's list of donors**. Preferably, the list should be published immediately (without undue delay) in the party's website – and, with regard to the relatively short campaign period of 30 days, it should be actualised daily. However, to recognize and to mark the exact amount of a donation can be problematic, if donations are provided in goods or services – e.g. the support by a car company, providing driving services for party officials – because the value of such a donation depends on non-foreseeable facts like the quantity and quality of events, sudden changes in timetables etc. One must bear in mind that in those and similar cases the value of a donation can only be estimated and not be marked exactly until the end of the campaign period. Nonetheless, political parties receiving such **donations "in kind"**, if presumably exceeding the threshold in Article 90.1, should publish immediately

[2] Article 23.4 para 5 LPP: "Non-public funds received by the political party, if the identity of the donor is unknown or not clearly defined, shall be passed on to the Central Election Commission."

during the campaign period the name of the donor and the estimated value of the donation together with an explanatory annotation.

As to **Articles 91 and 92 of the Electoral Code**, the consultant wants to stress out that these provisions are suited well to ensure the quality and impartiality of the auditing. Especially the "rotation system" in Article 92.3 ("In any case, one auditor may not audit the same electoral subject for two consecutive elections") and the appointment procedure, concretized by CEC Instruction No. 8 of 25 March 2009, need to be highlighted. The fact that, according to Article 92.4, the budget for elections comprises necessary means for auditing the electoral subjects[3] may help "smaller" political parties to be able to effectively fulfil transparency requirements without using their funds for the costs of auditing but for their participation in the formation of the political will of the people.

However, the consultant agrees to the opinion that the timeframe within which the auditing reports have to be submitted to the CEC should be specified in the Electoral Code. But, as Article 91.1 of the Electoral Code lacks this specification[4] and leaves the decision on the deadline to the CEC, the **CEC should at least make public what criteria it will use when deciding on the deadline for submission** – in order to prevent every pretence of partiality.

2.3 Brief analysis of two auditing reports (2009)

The consultant has been provided with a translation of the auditing reports on the funds received and expenses made by the Democratic Party of Albania (DP) and by the Socialist Party of Albania (SP) during the electoral campaign 2009, concerning the period 28 May to 28 June 2009.

Article 91 of the Electoral Code contains only rudimentary requirements with regard to the content and the form of an auditing report. Article 91.1 states that a certified accounting expert shall be appointed by the CEC "to perform an audit of the funds obtained and those spent for the electoral campaign". This auditing report is then submitted to the CEC. According to Article 91.2, the electoral subjects have to make available to the auditor any information, documents or data that are related to the financing and expenses of the electoral campaign. The law does not expressively oblige a political party to issue a financial report to be audited by the appointed expert. In practice, looking at the introductory remarks in the two auditing reports (DP 2009 and SP 2009), the provisions of the Electoral Code are obviously read as if a political party was obliged not only to make available the data, but to issue – on the responsibility of its own executive committee ("management"[5]) – a compilation of funds and expenses in form of a financial report that is to be audited.

The consultant generally appreciates this interpretation – indeed, one may wonder how an auditor could independently audit a report that he himself wrote –, but wants to point out the following: There is **a need not only for declaration of strictly separated responsibilities, but**

[3] Unlike the new provision in Article 23/3 para. 4 of the Law on Political Parties with regard to annual financial reports.

[4] See also the (new) Article 23 para. 4 of the Law on Political Parties: "The annual financial report shall be submitted (…) within the timeframe defined by the Central Election Commission."

[5] Read Article 18 of the Law on Accounting and Financial Statements.

also for transparency in authorship to make obvious who is responsible for what. If an auditor states for example "This financial report is a responsibility of the XX party management. My responsibility is to express an opinion on this financial declaration" then it has to be obvious for the reader of the auditing report which parts and which explanations come from the auditor and which from the party.[6] It is important to know if someone comments on tables or other figures and facts he compiled or wrote himself, or if he is auditing a financial report and explanatory notes written by and issued solely under the responsibility of the party's "management". That question could also be of relevance with regard to potential administrative sanctions and/or criminal prosecution. Both auditing reports the consultant has been provided with are in this regard inconsistent and may bear avoidable risks to the independent auditors.

As far as one auditing report refers to expenses, representing "unpaid receipts up to the date of this report" (i.e. 1 November 2009) and the other refers to "unpaid expenses" resp. "unpaid creditors" (date of the auditing report is 2. November 2009), it seems to be remarkable that the relevant invoices date from June 2009. In such cases the treasurers of political parties, the auditors and the CEC should ascertain that the respective debt claim still exists. In any case, the party obtains a donation in the moment a **debt waiver** is declared by the debtee. In case the invoice was apparently issued only in pretence or if goods and services are delivered for prices obviously lower than their market value, there is concrete evidence for a **"hidden donation"**. If goods and services are not in appropriate ratio to the price agreed on (**when no appropriate "synallagma" exists**), the value of the delivered goods and services "exceeding" the paid (or to be paid) amount should be treated as a donation. If such constellations are recognized before the auditing report is issued, the disclosed "hidden donations" have to be registered and, if applicable, the name of the donor has to be published in accordance to the provisions of the Electoral Code. The question how "hidden donations" that were afterwards recognized by the political party (or by the CEC during the verification of an auditing report) shall be treated, needs to be clarified. One could think of an addendum to the once issued auditing report, to be published in the same way the original auditing report had been published.

2.4 CEC template and instructions, publication of auditing reports

Pursuant to Article 90. 1 of the Electoral Code, the CEC issued a model for a **register of donations** (or: table of donations), approved by its Decision No. 266 of 1 June 2009. This template is annotated as follows: "*Note*: For each donation in items or services, the electoral subject shall calculate and declare their value in lekë based on the monthly price index published by INSTAT. Should the monthly price index fail to reflect the items or services donated, the electoral subject shall refer to the market price at the time of receiving the donation."

The consultant understood that the CEC is currently considering to amend and/or clarify these instructions, so he just wants to stress out the following: The authors of further

[6] Strict division into two parts (statement on accounts by the party and audit report by the auditor) in Germany, compare http://dip21.bundestag.de/dip21/btd/17/048/1704800.pdf (see e.g. pp. 3, 94, 95).

instructions will have to take into account the relationship between the provisions of the Electoral Code and the recently amended Law on Political Parties. To the consultant, the respective **reach of application of the two laws remains unclear**. Article 15/1 para. 1 of the Law on Political Parties could be read as "immunizing" the exclusivity of the provisions in the Electoral Code with regard to all donations given at any time to an electoral subject for the purpose of its electoral campaign(s) or solely with regard to those donations obtained – for electoral campaign purposes as well – during the campaign period of 30 days. The consultant understands Article 15/1 para. 1 of the Law on Political Parties as if it was guaranteeing an exclusive applicability of the provisions of the Electoral Code with regard to donations for the purposes of the electoral campaign obtained only during the electoral campaign period of 30 days. According to this understanding of Articles 77 and 88 to 91 of the Electoral Code, two conditions would have to be fulfilled to make a donation given to a political party a donation ruled by the Electoral Code – and exclusively ruled by that law: The donation has to be obtained during the campaign period of 30 days before the election date, and it has to be donated in order to support the electoral campaign of the concerned political party. Donations obtained before this electoral campaign period are, following this argumentation, donations that are ruled by the Law on Political Parties, even if they are donated to support the political party's efforts to attract voters. As donations, at the end, always serve to help a party to participate in the formation of the political will of the people, also keeping in mind that political parties have to register every donation (and, if applicable, publish the donor) according to the Law on Political Parties, if not registered (and, if applicable, published) under the provisions of the Electoral Code, and with regard to the fact that in election years the both reports have to be submitted together and will be published together in the CEC's website, this interpretation of the relationship between the two laws does not decrease the transparency of party funding by non-public donors.

Reading the two analysed auditing reports (see above, 2.3), the application in practice in the year 2009 (before the Law on Political Parties had been amended) seems to have been guided by this understanding of Articles 77 and 88 to 91 of the Electoral Code. To orientate oneself on a strictly defined period, namely the election campaign period of 30 days, seems to be advantageous because the differentiation between donations given in order to support an electoral campaign and those donations given to a political party for "ordinary" purposes may be quite difficult in practice. However, auditing reports should contain **explanatory notes** if there turns out to be a "gap" between the amount of funds obtained and expenses made during the electoral campaign period, originating from the use of the party's own resources, in particular of funds or goods obtained before that period (such donations have to be declared in the annual financial report and their use during the electoral campaign has to be declared as expenses in the campaign auditing report and in the annual report[7]), or from the use of loans or credit facilities provided to the electoral subject before or during the electoral campaign period.

With regard to the **publication of auditing reports** by the CEC according to Article 91.4 of the Electoral Code: The reports will be published in an easily accessible manner, i.e. in the CEC's website, see Article 23 para. 6 of the Law on Political Parties, but they should also be available

[7] See proposal on page 13 (3.3 in this paper).

to the public for a long time, at least for the period within which sanctions could be imposed on individuals or on the political party (compare 2.1 in this paper).

3 The recently amended Law on Political Parties

On 10 February 2011, amendments to the Law on Political Parties were adopted by the Albanian Parliament. They entered into force on 17 March 2011. The consultant's opinion on the provisions, mainly with regard to their prospective application by the CEC, is as follows.

3.1 Party funding under the Law on Political Parties

Following the consultant's view on the Albanian legislation in force (see above, 2.4), donations obtained by a political party during the electoral campaign period (the 30 days before the election date, see Article 77 of the Electoral Code) are ruled exclusively by the provisions of the Electoral Code. Donations gained in times out of this period are subject to the provisions of the Law on Political Parties. The consultant agrees to the opinion that "it would be more advisable to regulate donations to political parties in general (including donations to their election campaigns)" (REED, PACA Technical Paper, March 2010, 1.1), in particular as there is **no real congruence regarding the prohibition of certain kinds of donations in both laws**. Thus, it has to be noticed that Articles 88 and 89 of the Electoral Code are more specific and that they contain more prohibitive provisions regarding potentially problematic donations (see e.g. Article 89.3 Electoral Code) than Article 21 of the Law on Political Parties. On the other hand, Article 23/1 para. 3 of the Law on Political Parties puts a strict and clearly defined ban on anonymous donations. Under the Electoral Code, anonymous donations are not expressively prohibited, though they are not allowed, as Article 90.1 takes this ban on anonymous donations as a given. By the way, as Article 21 para. 1 of the Law on Political Parties says "or those with participation of state capital", this lack of a certain threshold[8] regarding the dimension of this relationship with the Albanian State appears to be problematic (see above, 2.1, comments on Articles 88 and 173.1 of the Electoral Code).

The new provisions on **sanctions in Article 23/4 of the Law on Political Parties** in general are a great step forward. Nevertheless, the relationship between Article 23/4 para. 1 of the Political Parties Law and Article 173.1 of the Electoral Code remains unclear to the consultant and should be clarified: A "violation of the provisions on election campaign financing" (Article 173.1) could be covered by the wording "infringement of the provisions of the funding of political parties" (Article 23/4 para. 1). And, pursuant to Article 23/4 of the Law on Political Parties a sanction could be imposed on "the person in charge of finances within the political party or the individual assigned by the party statute to carry out this duty". On the other hand, Article 173.1 of the Electoral Code addresses only the "chief of finance". Article 23/4 para. 2 and para. 3 Political Parties Law obviously allow to impose sanctions on the political party itself, because para. 2 is speaking of "the obligation of the political party" and para. 3 declares a "five-year suspension to fund the party" as the maximum of possible legal consequences. Article 23/4 para. 4 misses such clear hints, presumably the sanction shall be imposed on the political party. The fine foreseen in Article 23/4 para. 6 of the Law on Political

[8] In Germany, e.g., there has to be a 25 percent direct state's participation, see Section 25 para. 2 No. 5 Political Parties Act.

Parties shall obviously be imposed on the political party receiving donations in excess of ALL 100 thousand not going through the dedicated bank account (whose number has to be published in the CEC's website, see Article 23/1 para. 2). In case the only infringement consists "in the wrong way of donating", the fine of 30 percent of the donated amount seems to be an appropriate sanction. In other cases, when elements of Article 21 para. 1 of the Political Parties Law are given also (e.g. foreign donors, entities with State's participation as donors), the political party will be allowed to keep 70 percent of this illegally obtained fund (compare already 2.1 in this paper).

Unlike the German legislation[9], the Albanian Law on Political Parties does not expressively prohibit for example donations made (or evidently made) in the expectation of, or in return for, some specific financial or political advantage. This does not necessarily mean a gap regarding the system of individual sanctions in the Law on Political Parties, because such misfeasance should constitute a criminal offence, at least an offence of the donor (see Article 23/2 para. 5). But, Article 23/4 para. 5 of the Albanian Law on Political Parties obliges the political party to pass on to the CEC **only non-public anonymous donations**, saying "non-public funds received, if the identity of the donor is unknown or not clearly defined". This leaves – as already stated above (see 2.1) – **a serious gap relating to illegally obtained public funds, and with regard to donations by non-public donors prohibited in Article 21 para. 1** (foreign donors, entities with State's participation as donors). This legislative gap bears great risks to the independence of the concerned political party that result from potentially corruptive influences. Also for prevention purposes, political parties should – at least – not be allowed to keep donations obtained illegally (as mentioned above, 2.1).

Article 19 para. 5 Political Parties Law deserves to be highlighted because it ensures the right to effective judicial review of a political party, being affected by the decision of the CEC which sets the exact amount of public funds for each political party. But, as mentioned above (see 2.1), **it should be ensured the right to contest every decision of the CEC that affects the political party's rights** (e.g. decisions according to Article 22/1 related to premises and, in particular, the imposition of sanctions pursuant to Article 23/4).

3.2 Rules for reporting, auditing and publication

The obligation of all political parties to submit financial reports annually to the CEC (Article 23 para. 1 of the Law on Political Parties) is a condition for the entitlement to participate in the allocation of public funds (see Article 19 para. 4). This alone means a **strong incentive to the political parties to comply with transparency requirements**, and additionally, as well as independently from the entitlement to public funds, a non-compliance with this obligation can be punished according to Article 23/4 para. 4 Political Parties Law.

[9] Section 25 para. 2 of the German Political Parties Act: The following shall be excluded from the right of political parties to accept donations: (...) 4. donations from professional organizations, which were made to the latter subject to the proviso that such funds be passed on to a political party; (...); 6. any donations exceeding 500 euros each, which are made by an unidentified donor or which evidently are passed on as a donation by unnamed third parties; **7. donations evidently made in the expectation of, or in return for, some specific financial or political advantage**; (...).

However, the timeframe within which the financial reports (along with the auditing reports, and, in election years, together with the auditing reports on the electoral campaign financing) have to be submitted to the CEC should be specified by law. But, as Article 23 of the Law on Political Parties lacks this specification[10] and leaves the decision on the deadline to the CEC, the **CEC should at least make public what criteria it will use when deciding on the deadline for submission** – in order to prevent every pretence of partiality. Further, the consultant would like to stress out that the strictly defined timeframe of 30 days within which the submitted reports have to be published by the CEC may not be effective in practice, regarding the addendum in Article 23/2 para. 4 ("or where appropriate, from the date the verification procedure was completed"). One should bear in mind that those **verification procedures might take a long time**. The more accurate the verification and the graver the suspected infringements of transparency requirements, the later the report will be published. It seems to be more advisable to publish all reports within the 30 days and, where appropriate, add an annotation by the CEC saying that the verification procedure was still going on. If following that advice, the CEC should oblige, if appropriate, the concerned **political party to revise its financial report after the verification procedure has been completed**. The revised version of the financial report should also be published, of course.

The procedure foreseen in Article 23/2 para. 1 and Article 23/3 of the Law on Political Parties for the **assignment of the independent auditors** ensures the quality and impartiality of the auditing on the annual financial reports. Especially the "rotation system" in Article 23/3 para. 3 ("In any case, an accounting expert may not audit the same political party for two consecutive years") needs to be highlighted. What needs to be clarified is, if – in election years – an accounting expert will be assigned to audit both the electoral campaign report and the annual financial report of the same political party. **One auditor being responsible for both audits** would mean to gain "synergetic" and "harmonizing" effects enhancing comprehensibility of the both financial reports, in particular with regard to the limited informative value of the amount of funds spent for electoral campaign purposes coming from a party's own resources (compare REED, PACA Technical Paper, March 2010, 1.1 para. 2). But as, according to Article 23/3 para. 4 of the Political Parties Law, the expenses needed to audit the annual reports of the political parties shall be covered by the political parties themselves, the CEC should take into consideration that, according to Article 92.4 of the Electoral Code, the expenses to audit the electoral campaign financing are covered by means of the State budget, so there has to be found a **proportionate split-up of costs**.

With regard to the list of persons who donate funds of not less than ALL 100 thousand (Article 23/1 para. 1 Political Parties Law), it can be observed that this provision (like Article 90.1 of the Electoral Code, see 2.2 in this paper) lacks certainty, using "at all given times" and leaving unsaid in which way and within which timeframe the party has to make the list public. The consultant recommends to **clarify the requirements for the publication of the party's list of donors**. Preferably, the list should be published immediately in the party's website[11] after the first receipt of a donation exceeding the threshold, and political parties

[10] See also Article 91.1 of the Electoral Code.

[11] Or – better for comparability of the respective ability to attract non-public funds – in the CEC's website (at least additionally), assuming that the CEC will be capable to guarantee the immediate publication of the actualised lists of donors, submitted to the CEC by the political parties without undue delay. However, Article 23/1 para. 2 Political Parties Law is only dealing with the bank account number to be published by the CEC, so there is apparently no binding

should be obliged to actualise the list without undue delay. In this context, it remains unclear to the consultant if the threshold of ALL 100 thousand refers to the amount of each single donation by a donor or to the total of all funds donated by one natural or legal person during one year. In sound with transparency requirements the provision should be read as an obligation put upon the political parties to **publish the name of a donor as soon as the total of his donations to the party during the current year exceeds the threshold of ALL 100 thousand**. If not sharing this interpretation, gates are open to intentional infringements of the spirit of this provision by splitting up donations to avoid a publication of the donor's name.

3.3 Proposals for the integral parts of annual financial reports

According to Article 23 para. 1 Political Parties Law, political parties shall submit financial reports to the Central Election Commission once per annum.

Article 23 para. 2 reads as follows:

> The annual reports must contain detailed information:
>
> a. on funding sources based on the standardised template approved by the Central Election Commission;
>
> b. on expenses based on the standardised template approved by the Central Election Commission;
>
> c. information provided by the political party itself on subjects directly or indirectly linked to or under the control of political parties themselves.

The annual financial report of a political party preferably should, as stated for example in the German Political Parties Law (Section 24 para. 1), "in compliance with the principles of proper bookkeeping and on the basis of the actual facts and circumstances, provide information on the origin and use of funds and on the party's assets".

With regard to the provisions in Article 23 para. 2 of the Albanian Political Parties Law and in reference to his analysis of the legislative framework relating to party financing in Albania the consultant is of the opinion that a template for the annual financial reports of political parties should contain a statement of accounts which covers at least the following categories of funding sources and expenses:

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obligation to the political parties to report donations exceeding the threshold of ALL 100 thousand directly and immediately to the CEC.

Funding sources (Article 23 para. 2 lit. a Political Parties Law)

- public funds (Article 19 Political Parties Law)
- donations from natural persons (unless declared in the electoral campaign report)
- donations from legal persons (unless declared in the electoral campaign report)
- membership dues[12]
- income from economic-social activities[13] and participating interests in companies
- income from other assets
- any other receipts

Expenses (Article 23 para. 2 lit. b Political Parties Law)

- personnel-related expenditure
- operating expenditure
    - on day-to-day business
    - on general political work
    - on election campaigns (unless covered by obtained funds declared in the electoral campaign report)
    - on asset management, including any interest accruing therefrom
    - other interest
    - any other expenses

Though an "asset and liability statement"[14] is not expressively demanded by the provisions of the Albanian Law on Political Parties, a political party will have to provide at least information on "subjects directly or indirectly linked to or under the control of political parties themselves" (Article 23 para. 2 lit. c Political Parties Law[15]).

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[12] If appropriate (depending on the internal regulations of Albanian political parties), there should exist another category: "contributions paid by elected office-holders and similar regular contributions".

[13] Article 20 para. 2 Political Parties Law.

[14] See Section 24 para. 6 German Political Parties Law: The asset and liability statement shall cover: 1. assets owned: A. capital assets: I. tangible assets: 1. real estate, 2. branch office furnishings and equipment, II. financial assets: 1. participating interests in companies, 2. other financial investments; B. working assets: I. receivables from party branches, II. amounts receivable under state-provided partial funding, III. money holdings, IV. other types of assets; C. total of assets owned (...); 2. accounts payable: A. reserve funds: I. reserves for pensions, II. other reserves/provisions; B. liabilities: I. amounts owed to party branches, II. repayment obligations with regard to state-provided partial funding, III. amounts owed to credit institutions, IV. amounts owed to other lenders, V. other liabilities (...).

[15] Compare Section 24 para. 7 of the German Political Parties Law: An explanatory part shall be appended to the asset and liability statement which must cover the following items, in particular: 1. a list of the participating interests in companies under paragraph 6 no. 1 A II 1 above, as well as the companies' direct and indirect participating interests as recorded in their annual financial statements, including the following information for each case: name and address, the share and the amount of the nominal capital and, in addition, the share in the capital, the equity capital, and the results recorded by these companies during the last business year for which an annual financial statement has been prepared. Information on participating interests listed in the companies' annual financial statements shall be included in the explanatory part as contained in the respective annual financial statement. Participating interests within the meaning of the present Act are shares as defined in Section 271 para. 1 of the Commercial Code; 2. designation of the main products of media enterprises if the respective political party has any participating interests in such enterprises; 3. at five-year intervals, a valuation of the real estate property and of the participating interests in enterprises as stipulated in the Property Valuation Act (buildings and unimproved property pursuant to Sections 145 seqq. of the Property Valuation Act (...).

Thus, another indispensable integral part of the annual report has to be something like "**Subjects directly or indirectly linked to or under the control of the XX party**".

Though not expressively stated in Article 23 para. 2 of the Law on Political Parties, the "list of persons who donate funds of not less than one hundred thousand ALL along with the respective amount donated" (Article 23/1 para. 1) should be an indispensable part of the annual report, too: "**List of non-public donors according to Article 23/1 para. 1 Political Parties Law (> ALL 100.000 per annum)**".

In addition to these reporting requirements, a political party should be obliged to make public in its annual report – at least – the most **relevant liabilities** (amounts owed to credit institutions and amounts owed to other lenders, e.g. companies or party members).

Additional information, e.g. about the **number of party members**, about the party's youth organization (and its financial sources) et.al., would also be of great interest to the public (which is the main addressee of the annual reports to be published by the CEC).

4 Conclusion

The CEC plays an extremely important role relating to a permanent and sound compliance with the recommendations of GRECO on the transparency of party funding in Albania. It is obvious that the Albanian legislator confers **great responsibility upon the CEC**, not only with regard to its monitoring and sanctioning functions, but as well in relation to its other competencies according to Article 15/2 of the Law on Political Parties, making the CEC responsible *inter alia* for the drafting of templates and guidelines.

First and foremost, the consultant recommends to clearly **differentiate the reach of application of the Electoral Code on the one hand and the reach of application of the Law on Political Parties on the other hand** (see 2.4, compare 2.1 and 3.1 in this paper). Before issuing new instructions or drafting amendments to the existing instruction No. 266 of 1 June 2009, the CEC should be absolutely clear about which donations obtained by a political party at which time shall be declared either in the electoral campaign auditing report or in the annual financial report of that political party.

Fulfilling its monitoring functions, the CEC should **be aware of the potential "loopholes"** highlighted in the brief analysis above. The CEC should issue annual reports[16] on its application of the laws in practice – with **advice to treasurers and auditors** aiming to raise the transparency of party funding and the independence of political parties form potentially corruptive influences.

[16] According to Article 23 para. 6 Political Parties Law, the CEC issues a "report" (on the political parties' financial reports), and that report of the CEC shall also be published in the CEC's official website.

The political parties, especially their treasurers, the independent auditors and, in particular, the National Accounting Council[17], should have the opportunity to participate in the process of drafting guidelines and templates – in order to **develop a code of practice** that meets transparency requirements well, but does not hinder the free and continuous participation of the political parties in the formation of the people's political will.

[17] See Article 19 of the Law on Accounting and Financial Statements. Looking at the German experience, the German "Wirtschaftsprüferkammer" has been able to give valuable advice to the supervisory body. And the "Institut der Wirtschaftsprüfer in Deutschland e.V." (IDW) has issued most valuable guidelines for the political parties on issuing their accounting statements and for the independent auditors on the specialties in auditing those annual reports. Available only in German (in: "Die Wirtschaftsprüfung" (journal) 15/2005, pp. 856-861, and 13/2005, pp. 724-732).

5 Annex 1: List of documents the consultant has been provided with by PACA (in English)

- Article 3, Articles 77 to 92 and Article 173 of the Electoral Code
- Law on Political Parties (as in force since 17 March 2011)
- Law on Accounting and Financial Statements
- Template "Table of Donations", approved by CEC Decision No. 266 of 1 June 2009
- CEC Instruction No. 8 of 25 March 2009 "On Approval of the Criteria and Procedures of Selections and Appointing the Licensed Accounting Expert Regarding the Audit of the Funds Obtained and Spent by Electoral Subjects for the Electoral Campaign"
- Independent Auditor Report "Statement of funds and expenses during the electoral campaign for the period 28 May 2009 – 28 June 2009" (Democratic Party of Albania)
- Independent Auditor Report "On the income and expenses of the Socialist Party campaign for the June 28th, 2009 parliamentary elections"
- 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
- PACA, Technical Paper "Recommendations for amendments to the Political Parties Law", prepared by Quentin REED, PACA Team Leader, June 2010
- PACA, Technical Paper "Comments on amendments to the Political Parties Law approved by the Council of Ministers on 24 November 2010", prepared by Quentin REED, PACA Team Leader, November 2010 (NOT PUBLIC)

6 Annex 2: List of other documents referred to (selection)

- GRECO, Third Evaluation Round, "Evaluation Report on Albania on Transparency of Party Funding", adopted by GRECO at its 42nd Plenary Meeting, 15 May 2009
- (German) Act on Political Parties (Parteiengesetz – PartG) of 24 July 1967 in the version published on 31 January 1994 (Federal Law Gazette I 1994, p. 149), last amended by the Ninth Act amending the Political Parties Act, of 22 December 2004 (Federal Law Gazette I 2004, p. 3673), available at http://www.bundestag.de/htdocs_e/bundestag/function/party_funding/index.html (this website contains also further information about the German regulations regarding party funding in English; only available in German: template for annual "statement of accounts" http://www.bundestag.de/bundestag/parteienfinanzierung/hinweis.html and statements on accounts, published together with the respective audit reports http://www.bundestag.de/bundestag/parteienfinanzierung/rechenschaftsberichte/index.html as well as the latest report of the President of the German *Bundestag* on the annual financial reports of the political parties with detailed survey of practical application of the Political Parties Act, see http://dipbt.bundestag.de/dip21/btd/16/141/1614140.pdf)