



Strasbourg, 15 May 2009

Public
Greco Eval III Rep (2008) 7E
Theme II

Third Evaluation Round

Evaluation Report on Albania on Transparency of Party Funding (Theme II)

Adopted by GRECO
at its 42nd Plenary Meeting
(Strasbourg, 11-15 May 2009)

I. INTRODUCTION

1. Albania joined GRECO in 2001. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 9E) in respect of Albania at its 12th Plenary Meeting (9-13 December 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 8E) at its 22nd Plenary Meeting (14-18 March 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Albania from 19 to 21 November 2008, was composed of Mr Nenad ZAKOŠEK, Professor, Faculty of Political Science, University of Zagreb (Croatia), Mr Frank ENGEL, Lawyer, secretary of the parliamentary fraction of the Christian Social Party (CSV), parliamentary group CSV (Luxembourg) and Mr José TORRES CAMPOS, Former Secretary of State for Industry and Energy, Former General director of Industry in the Economics Ministry (Portugal). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2008) 6E, Theme II) as well as copies of relevant legislation.
4. The GET met with officials from the following institutions: the Central Electoral Commission, the State Supreme Audit, the Ministry of Finance, the Constitutional Court, the Legal Commission of Parliament and the Council of Ministers. In addition, the GET met with representatives of the following political parties: the Democratic Party, the Republican Party and the Socialist Party. Moreover, the GET met with representatives of non-governmental organisations (INSIZ and Transparency International Albania) and the media.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Albanian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Albania in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2008) 7E-Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Legal framework

7. In Albania, political parties are governed by the Law on Political Parties of 2000 (hereafter: LPP) which includes provisions on financing of political parties in general, whereas specific rules on financing of election campaigns are set out in the Electoral Code of 2008 (hereafter: EC). The Electoral Code regulates elections to the Parliament, elections to organs of local government and referenda. Furthermore, the Constitution of Albania contains several provisions concerning political parties/financing, *inter alia* article 9 which states that “the financial sources of parties as well as their expenses shall always be made public”.
8. The political financing regulations are currently subject to an ongoing reform process. In the framework of a complete revision of the parliamentary electoral system, which changed from a mixed to a regional proportional system, a new Electoral Code – including its election financing regime – was adopted by Parliament after the GET’s on-site visit, on 29 December 2008, and entered into force on 13 January 2009.¹ This reform was aimed at adapting the electoral law to constitutional amendments of 21 April 2008 in good time before the forthcoming 2009 parliamentary elections. The Electoral Code regulates elections to the Parliament, elections to organs of local government and referenda (see section 1) and according to the authorities, its financing regime – including rules for public party funding and transparency regulations – applies to national and local elections likewise. As regards the Law on Political Parties, the authorities indicated that possible amendments aiming to align its (party) financing regulations to the standards established by the Electoral Code were currently under discussion, but no draft legislation existed at the time of the visit.

Definition of political parties

9. The free creation of political parties is guaranteed by article 9 of the Constitution. They are defined by section 9, paragraph 1 LPP as “voluntary unions of citizens based on shared political ideas, convictions, views or interests, aiming at having an impact on the life of the country, through the participation in the elections and representation of the people in the elected forums of power.” The organisation and the activities of political parties must conform with democratic principles,² and they may extend to the whole territory of Albania or to several units of the country’s territorial administrative division.³
10. Political parties acquire legal personality at the moment of their registration in the Register of Political Parties.⁴

Founding and registration of political parties

11. The founding of political parties is regulated by section 9 LPP. Until the date of registration of a party, its founders may only perform actions necessary for its organisation – such as meetings of the founders and election of the management organs. Section 10 LPP specifies that following approval by the founding members of the party documents, its programme, statute and steering organs, a request for its registration is to be submitted to the First Instance Court of Tirana. The

¹ Law No. 10019 of 29.12.2008, published in the Official Gazette 189/2008, p. 9305. – This code replaced the 2003 Electoral Code.

² Article 9 of the Constitution; section 3 LPP.

³ Section 5 LPP.

⁴ Section 9, paragraph 2 LPP.

request must be signed by no less than 500 Albanian citizens and its founding members (all to be permanently domiciled in Albania). It must set out the name and seat of the party, its aims and tasks, its steering organs and the structure of the party as well as its financial resources.⁵

12. A political party is to be registered by the First Instance Court of Tirana within 30 days from the date of submission of the request, unless the request can not be accepted for one of the reasons enumerated in section 7 LPP, for example when the internal party structure is not in conformity with democratic principles. If the court finds irregularities in the documents submitted, it returns the request within 20 days to the founders who can resubmit it after complementing the documentation. A court decision to register or not register a political party can be appealed to the Court of Appeal of Tirana within 15 days from the date the court decision is announced.⁶
13. In December 2008, there were 100 parties registered in Albania. Information on the Register of Political Parties can be obtained by anyone upon written request to the First Instance Court of Tirana.

Participation in elections

14. Albania is a parliamentary republic with a multi-party system, whose current Constitution dates from 1998 and whose electoral law was thoroughly revised, in 2008, by way of constitutional changes and by the adoption of a new Electoral Code, as indicated above. The Head of State is the President, elected for a term of five years by Parliament, requiring more than half of the votes of all MPs, according to the revised article 87 of the Constitution.⁷ The unicameral national Parliament is composed of 140 members who are elected for a term of four years under proportional representation within each of the country's 12 administrative regions, according to the revised article 64 of the Constitution.⁸ Candidates for MP may be presented only by political parties, by coalitions of parties and by groups of voters.⁹ Mandates for each electoral zone are divided between the political parties which receive at least 3 % of the valid votes in the respective electoral zone (5% for party coalitions) and independent candidates presented by groups of voters.¹⁰ As regards local elections, mayors of municipalities and communes are elected by direct vote, and members of the councils of municipalities and communes are elected – also by direct vote – on the basis of multi-name lists submitted by political parties and coalitions as well as on the basis of individual independent candidacies proposed by groups of voters.¹¹
15. Every citizen of Albania who has attained 18 years of age has the right to vote – except for those declared mentally incompetent by a final court decision – as well as the right to be elected – except for those serving a prison sentence¹² and except for certain officials enumerated in article 69 of the Constitution (e.g. mayors, judges or prosecutors).
16. Elections are conducted by Election Zone Administration Commissions (responsible for the administration of parliamentary and local elections in the electoral zones) and Voting centre Commissions (responsible for the conduct of parliamentary and local elections in the voting

⁵ Section 11 LPP.

⁶ See sections 13 and 15 LPP.

⁷ In a possible fourth or fifth vote, whereas in the first – and, if need be, second and third – vote a three-fifths majority is required. Before the legal amendments of 21 April 2008, a three-fifths majority was required even in the fourth and fifth vote.

⁸ Before the legal amendments of 21 April 2008, there was a partial majority system: 100 MPs were elected directly in single member constituencies and 40 were elected from multi-name lists of parties or party coalitions.

⁹ See article 68 of the Constitution and section 63 EC.

¹⁰ Section 162 EC.

¹¹ Section 165 EC.

¹² Article 45 of the Constitution.

centres i.e. the premises designated for holding the voting), under the supervision of the Central Electoral Commission. The Central Electoral Commission is a permanent organ responsible for the preparation, supervision, management and verification of all aspects of elections and referenda and for the announcement of their results. The Commission has at its disposal an administrative division composed of civil servants, in order to carry out the tasks specified in the provisions of the Electoral Code.¹³

17. A political party which nominates candidates for Parliament or organs of local government is to be registered with the Central Electoral Commission as an electoral subject not later than 60 days prior to election day. Two or more political parties may form an electoral coalition and be registered as an electoral subject not later than 45 days prior to election day.¹⁴
18. Political parties which are registered as an electoral subject or which participate in a registered party coalition submit to the Central Electoral Commission, 40 days before the date of parliamentary elections, multi-name lists of candidates for each electoral zone.¹⁵ The lists must be supported by the signatures of 10,000 registered voters (15,000 in the case of party coalitions), unless at least one member of the party concerned holds a seat in Parliament. In the case of local elections, the p lists of candidates are to be submitted to the Election Zone Administration Commission concerned. A group of voters domiciled in the electoral zone may propose, 40 days before the date of parliamentary or local elections, one candidate for Parliament or for an organ of local government, after establishing an Initiator Committee in order to gather the necessary supporting signatures for the candidate (i.e. at least 1 % of the voters in the list of the electoral zone concerned).¹⁶
19. The election campaign starts 30 days before the election date and ends 24 hours before the election date.¹⁷ The conduct of electoral campaigns in public institutions is prohibited.¹⁸

Party representation in Parliament

20. In the parliamentary elections held on 3 July 2005, seats were obtained by the following parties: Democratic Party (PD – 56 seats), Socialist Party (PSSH – 42 seats), Republican Party (PR – 11 seats), Social Democratic Party (PSD – 7 seats), Socialist Movement for Integration (LSI – 5 seats), Environmental Agrarian Party (PAA – 4 seats), New Democrat Party (PDR – 4 seats), Democratic Alliance Party (AD – 3 seats), Christian Democratic Party (PDK – 2 seats), Human Rights Union Party (PBDNJ – 2 seats), Social Democracy Party (PDSSH – 2 seats), Liberal Democrat Union (BLD – 1 seat); one seat was obtained by an independent candidate.¹⁹ Altogether, 57 parties participated in these elections.

¹³ See sections 21 and 25 EC.

¹⁴ See sections 64 and 65 EC.

¹⁵ Section 67 EC.

¹⁶ See sections 69 and 70 EC.

¹⁷ Section 77 EC.

¹⁸ Section 78 EC.

¹⁹ Before the legal amendments of 21 April 2008, there was a partial majority system: 100 MPs were elected directly in single member constituencies and 40 were elected from multi-name lists of parties or party coalitions.

Overview of the political funding system

Sources of funding

21. The funding of political parties is regulated in the provisions of Chapter III of the Law on Political Parties (sections 16 to 24 LPP), according to which political parties may be financed by membership fees, any legally obtained property and financial assistance from the State budget (as approved by Parliament). The authorities indicated to the GET that these three ways of financing political parties include both financial and in-kind resources. Party funding by foreign public or private entities, by governments and by Albanian public entities or those with the participation of State capital is prohibited. By contrast, gifts and assistance by a party or international union of parties, by Albanian or foreign political foundations and organisations and by private Albanian – natural or legal – persons are permitted.
22. Specific provisions on financing of election campaigns are contained in sections 87 to 92 EC, according to which political parties registered with the Central Electoral Commission are entitled to funds from the State budget for their campaign financing, in addition to the annual allocations granted to parties under the Law on Political Parties. The new provisions of the 2008 Electoral Code stipulate that except for those cases provided by law, resources of public bodies – or of public entities with (partial) State ownership or with appointment by the State of the majority of the supervisory or administrative body – cannot be used or made available for electoral subjects (i.e. political parties, party coalitions and independent candidates).²⁰ By contrast, electoral subjects may obtain funds for their electoral campaign from private Albanian – natural or legal – persons. Independent candidates for election and members of Parliament are not entitled to any public funding.
23. The financing of entities related, directly or indirectly, to political parties or otherwise under their control, and of organisations affiliated with political parties is neither regulated by the Law on Political Parties nor by the Electoral Code.

Direct public funding

24. Firstly, political parties are given material assistance from the State budget at the time of their creation, in the amount of 100,000 Albanian Leke/ALL (803 EUR)²¹ which is paid to a party after its entry into the Register of Political Parties.²²
25. Secondly, parties obtain financial assistance from the annual State budget for the performance of their annual activity – which presupposes that they are registered and carry out political activity –, in accordance with the following rules:²³
 - 70 % of the State assistance is divided among the parties having gained seats in the last parliamentary elections, in proportion to the seats won;
 - 20 % is divided in equal shares among the parliamentary parties;
 - 10 % is divided among the parties having received at least 1 % of votes in the last parliamentary elections, according to the percentage of votes won; the remaining part of this 10 % is added to the above 70 % and divided among the parliamentary parties.

²⁰ Section 88 EC.

²¹ Exchange rate from ALL to EUR on 25 September 2008.

²² Section 18 LPP.

²³ See section 19 LPP, which had been amended by section 19 of the Law No. 9452 of 02.02.2006.

In cases when a political party does not fulfil its financial obligations to the State (such as paying fines, lost lawsuits, bills etc.), the respective amount is retained from the annual financial assistance to the party concerned.²⁴

26. Thirdly, political parties are entitled to funds for the conduct of elections. The total amount of these funds must not be less than the amount allocated to political parties in the preceding elections.²⁵ Pursuant to the new provisions of the 2008 Electoral Code, the funds for campaign financing are paid from the State budget of the year during which elections are held, after a decision taken by the Central Electoral Commission on the division of these funds, according to the following rules:²⁶
- a) 50 % is distributed among the parties registered as electoral subjects and represented in Parliament; this amount is paid by the Central Electoral Commission within five days after their registration as electoral subjects and submission of the multi-name list for each electoral unit;
 - b) 50 % is distributed among the parties registered as electoral subjects which in the preceding parliamentary elections received not less than 2 seats, in proportion to the number of votes received nationally. However, within 30 days after the declaration of the final election results, those parties which did not gain any seats in the current elections have to return the funds received (b) to the Central Electoral Commission. These funds are re-allocated to those parties which have gained seats in Parliament, in proportion to the seats obtained, by decision of the Commission within 30 days after the declaration of the final election results. If a party does not return the requested amounts in time, the Commission requests the Minister of Finance to order the Treasury Office to deduct this amount from the other budgetary funds for the party and to transfer the funds to the Commission's budget. Moreover, parties which do not return the requested amounts are not entitled to funds from the State budget for a period of at least five years and are prohibited from registering as electoral subjects for the next elections.
27. Direct public funds are paid from the State budget, through the Ministry of Finance, and therefore presuppose the approval by Parliament. During the electoral campaign, the responsible authority is the Central Electoral Commission, whose budget is a separate item in the State budget.

Indirect public funding

28. According to section 22 LPP, the State facilitates the activity of political parties by the two following means:
- a) parties have the right to use the public mass media free of charge in the event of electoral campaigns and referenda;
 - b) the parliamentary parties are furnished with buildings for their central headquarters and local offices; where this is impossible, the State takes over the payment of rent.
29. Sections 77 to 85 EC contain detailed provisions on the use of the media during the electoral campaign, which stipulate, *inter alia*, that all registered parties are granted free air time on public radio and television, the length of which depends on the representation in Parliament. Private broadcasters are not allowed to put airtime at the disposal of political parties for their campaign, but they may put political broadcasts by registered electoral subjects on the air within certain

²⁴ Section 24 LPP.

²⁵ Section 86, paragraph 6 EC.

²⁶ See section 87 EC.

limits, half of which free of charge. Moreover, news broadcasts of public and private radio and television are also regulated in order to ensure equal treatment of all parliamentary parties. The implementation of these provisions is controlled by the Media Monitoring Board which is established by the Central Electoral Commission ten days before the beginning of the election campaign period.

Private funding

30. Section 17 LPP provides that political parties may obtain income from membership fees but does not contain any regulation regarding their calculation. The GET learned from the interviews held with representatives of political parties that the internal rules of some parties establish differentiated fees, according to the financial situation of the members or to their functions within the party.
31. According to section 21, paragraph 2 LPP, contributions to political parties by both natural and legal Albanian persons – except for public entities or entities with the participation of State capital –, by parties or international unions of parties, by Albanian or foreign political foundations and organisations are permitted. This provision makes reference to the term “gifts and assistance” without further specifying the meaning of this concept. The admissibility of anonymous donations, cash donations, public collections, fundraising activities, loans, legacies and other specific forms of contributions is not explicitly regulated.
32. The establishment of commercial or non-commercial entities, carrying out profit-making activities, directly by political parties or through third parties is generally prohibited. However, parties may use their property and premises for certain types of economic or social activity (e.g. publishing, printing, services or leasing).²⁷
33. With regard to electoral campaigns, the specific provision of section 89, paragraph 2 EC states that private campaign funding in the form of donations by Albanian natural and legal entities is permitted taking account of the following threshold: no natural or legal entity may give to the same electoral subject donations of a bigger value than 1 million ALL/8,027 EUR or the equivalence in objects or services. The authorities indicated to the GET that this ceiling does not refer to one single donation only but to the total amount that a person contributes to an electoral subject during the whole electoral campaign. Moreover, according to the new provisions of the 2008 Electoral Code, contributions by a legal person or its shareholders are prohibited in certain cases, *inter alia* if the legal person has profited from public funds, public contracts or concessions during the last 2 years of a value over 10 million ALL/80,270 EUR or if it has monetary obligations towards the State budget or any public institution.²⁸ Each donor is obliged to sign a declaration, at the moment of donating, that s/he is not in any such situation, and s/he bears personal responsibility for false declaration.
34. Section 90, paragraph 2 of the new Electoral Code furthermore provides that private contributions to an electoral subject must be paid to a special bank account opened by the electoral subject concerned if the contribution exceeds 100,000 ALL/803 EUR. The number of this bank account is published on the official website of the Central Electoral Commission and is to be declared as having been opened for the specific purpose of receiving private contributions by the person responsible for the finances of the electoral subject concerned, not later than three days from the beginning of the electoral campaign.

²⁷ Section 20 LPP.

²⁸ See section 89 EC, which contains further details.

35. The authorities indicated to the GET that the relevant provisions of the Income Tax Law, as amended in 2007,²⁹ might be interpreted to allow the deduction – within certain limits – of contributions to political parties from the income tax, but as this possibility is not clearly expressed by the law, such practice is not widespread.

Expenditure

36. A political party, including its candidates, is prohibited from spending for its electoral campaign more than tenfold the largest amount allocated to any electoral subject from the State budget for its campaign financing, whereas the expenditure limit applicable to independent candidates is 50 % of the largest amount allocated to any electoral subject.³⁰ Apart from this specific provision relating to electoral campaigns, there are no further value thresholds or other restrictions for expenditure of political parties. According to section 20, paragraph 2 LPP political parties may use their property and premises also for certain types of economic or social activity (e.g. publishing, printing, services or leasing), according to the legislation in force.

Statistics

37. The authorities indicated that in 2008, public funds paid from the State budget for the performance of the annual activity of political parties, based on the provisions of the Law on Political Parties, amounted to altogether 191,034,000 ALL/1,533,430 EUR, the biggest shares of which were allotted to the Democratic Party (58,781,000 ALL/471,835 EUR), to the Socialist Party (45,489,000 ALL/365,140 EUR) and to the Republican Party (12,410,000 ALL/99,615 EUR); the same amounts were distributed in 2006 and in 2007. Moreover, the GET was informed by party representatives that in non-election years (contrary to election years, see below) private funds were quite insignificant; according to indications given by the Democratic Party, private funds constituted approximately 10 % of its income, and other parties reported that they received no private funds other than membership fees.
38. Moreover, the authorities provided the GET with tables produced by the Central Electoral Commission on the basis of the campaign financing reports of political parties for the parliamentary election year 2005 and the local election year 2007. According to the table for 2005, public funds distributed amounted to altogether 219,877,043 ALL/1,764,953 EUR, the biggest shares of which were reportedly allotted to the Socialist Party (193,170,000 ALL/1,550,576 EUR) and to the Democratic Party (14,373,211 ALL/115,374 EUR), whereas the Republican Party reportedly received 517,000 ALL/4,150 EUR. As for income from private sources, the Socialist Party reported no such income, the Democratic Party reported 46,102,631 ALL/370,066 EUR (1,647,500 ALL/13,224 EUR of which deriving from membership fees) and the Republican Party 8,350,986 ALL/67,033 EUR (no membership fees indicated). According to the table submitted to the GET, expenditure of the parties amounted to altogether 332,480,682 ALL/2,668,822 EUR; the Socialist Party reportedly spent 198,170,000 ALL/1,590,711 EUR, the Democratic Party 70,707,903 ALL/567,572 EUR and the Republican Party 8,867,986 ALL/71,183 EUR.
39. According to the table on the local election year 2007, public funds distributed amounted to altogether 52,902,704 ALL/424,650 EUR, the biggest shares of which were reportedly allotted to the Socialist Party (20,899,675 ALL/167,762 EUR) and to the Democratic Party (19,438,970

²⁹ See sections 12/2 and 12/3 of the Law No. 9844 of 17.12.2007 On some Addenda and Changes to the Income Tax Law.

³⁰ Section 89, paragraph 4 EC.

ALL/156,037 EUR). As for income from private sources, the Socialist Party reportedly received 24,160,639 ALL/193,937 EUR (13,861,527 ALL/111,266 EUR of which deriving from membership fees) and the Democratic Party 33,502,165 ALL/268,922 EUR (no membership fees indicated). The Republican Party reported no income. According to the table of the Central Electoral Commission, expenditure of the parties amounted to altogether 148,697,356 ALL/1,193,594 EUR; the Socialist Party reportedly spent 45,073,282 ALL/361,803 EUR, the Democratic Party 47,725,422 ALL/383,092 EUR and the Republican Party 10,841,300 ALL/87,023 EUR.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

(i) Transparency (Articles 11, 12 and 13b of Recommendation Rec(2003)4)

Books and accounts

40. The authorities indicated to the GET that in order to intervene as little as possible in the activities and administration of private legal persons and to avoid excessive control by the State, Albanian law foresees a minimal regulation on entities such as non-profit associations and therefore political parties. It follows that political parties are not obliged to submit books and accounts/annual financial statements to any State body. However, the authorities stated that the Income Tax Law obliges all Albanian legal persons and therefore registered political parties to submit a yearly income tax declaration until 31 March of the following year to the competent tax authorities.

Reporting obligations

41. As regards the above-mentioned yearly income tax declarations of political parties, the authorities indicated to the GET that reporting to the competent tax authorities has been streamlined for commercial companies as well as non-profit organisations including political parties, by the Ministry of Finance which has, to this end, developed a model form on the basis of relevant legislation (tax legislation, accounting legislation and further legislation applicable to commercial companies). They stated that parties have to declare and to document all their income, although they pay taxes only on income deriving from profit-making activities, which are to be identified as such (and which are restricted by law to activities such as, for example, renting out of premises, see paragraph 32 above). However, during the interviews held with representatives of tax authorities and of several political parties the GET did not get a clear answer to the question of whether parties comply with this obligation in practice.
42. In addition to this obligation, electoral subjects are to report on election campaign financing to the Central Electoral Commission. Such a requirement was firstly inserted in the Electoral Code in 2005, obliging political parties and independent election candidates to submit, within 45 days after the date of elections, financial reports of their campaign, including all sources of income and of expenses, on the basis of two model forms attached to the instruction, specifying the value (in ALL) and the nature of each donation received, including donations of assets or services (in this case, the equivalence in ALL had to be declared, based on the official monthly index of prices or – if the value of assets or services was not reflected in this index – on the market price at the moment of receiving the donation).³¹ This reporting obligation has recently been replaced by the new registration and reporting regime of the 2008 Electoral Code. According to section 90 of the

³¹ See section 145/1 of the 2003 Electoral Code (as amended by section 91 of the Law No. 9341 of 10 January 2005) as well as the provisions of the Commission's Instruction No. 12 of 15.12.2006.

new code, electoral subjects are firstly obliged to record in a special register (approved as a model by the Central Electoral Commission) all private funds received, indicating the amount of contributions made by each physical or legal person and further information allowing the clear identification of the donors. The list of persons having donated at least 100,000 ALL/803 EUR to the electoral subject concerned must be made public, together with the donated amounts. Secondly, pursuant to section 91 EC, auditing reports on the funds obtained and spent for the electoral campaign of each electoral subject have to be submitted to the Central Electoral Commission. These reports are to be prepared by certified accountants appointed by lot by the Commission (within 45 days after the declaration of the final election results) and are to be submitted within a timeframe fixed in the appointment decision. The reports must not include personal data of those donors who have made contributions under the above-mentioned value threshold of 100,000 ALL/803 EUR.

43. As regards the preservation of records, the authorities indicated to the GET that the general obligation of legal entities to preserve accounting registers and supporting evidence for ten years following the end of the accounting year (section 17 of the Law No. 9228 of 29.04.2004 On Accounting and Financial Accounts) applies to political parties. In addition, section 48 of the Law No. 9920 of 19.05.2008 On Tax Procedures in the Republic of Albania, requires reporting entities to preserve the financial data of their activity for more than five years. Moreover, the authorities entrusted with control of party finances, such as the tax administration and the Central Electoral Commission, have to preserve the copies of financial statements submitted to them.

Publication requirements

44. Article 9 of the Constitution states that “the financial sources of parties as well as their expenses shall always be made public”. The authorities indicated to the GET that this provision only establishes a general principle which needs to be further regulated by more precise legislation. However, among the relevant laws pertaining to party finances – i.e. the Law on Political Parties, the Electoral Code and the tax laws –, only the Electoral Code contains such regulations. Pursuant to section 91, paragraph 3 EC, the auditing reports on campaign financing of electoral subjects are to be published by the Central Electoral Commission within 30 days after their submission (or, as the case may be, within 30 days after verification by the Commission). As for the registers on private election funding of electoral subjects, section 90, paragraph 1 EC stipulates that the list of persons who donate amounts of at least 100,000 ALL/803 EUR, as well as the respective sums, must be made public. The authorities indicated to the GET that this threshold does not refer to one single donation only but to the total amount that a person contributes to an electoral subject during the whole electoral campaign. As regards the tax legislation, the authorities indicated that the obligatory tax declarations to be made by political parties at the end of the financial year are not published but that the public may request access to this information (see paragraph 45 below).

Access to accounting records

45. The right to information is guaranteed by article 23 of the Constitution and by other legal acts, *inter alia*, Law No. 8503 of 30.06.1999 On the Right to Information about Official Documents. The authorities indicated to the GET that on the basis of this legislation, the information contained in the parties’ tax declarations – as it is not classified as a State secret – may be requested at any time by interested entities or media. Requests do not need to be motivated, and the competent tax authorities have to make the information available to the requesting person within a period of 40 days.

46. Tax authorities and prosecution offices are entitled to access the financial information of political parties at any time in order to carry out tax controls or to investigate criminal offences and contraventions.
47. The authorities furthermore indicated in this connection that the High State Control (State Supreme Audit), which is given the authority to control at any time the financial resources of political parties which stem from public sources,³² also has access to the financial information of parties.

(ii) Supervision (Article 14 of Recommendation Rec(2003)4)

Auditing

48. As regards internal auditing of party finances, the authorities indicated to the GET that Albanian legislation does not impose on political parties any specific auditing mechanism and leaves it up to the parties to organise freely the internal audit of their financial activities, according to the principle of minimal intervention of the State into the activities and administration of private legal persons. They stated that the law regulates only in general terms what is considered to be legal or not and that in practice, different management and financial audit mechanisms have been set up and regulated in the internal rules and statutes of parties. On this basis, the annual financial reports of the parties are prepared and approved by their assemblies and members.
49. A specific auditing obligation has been introduced, however, in respect of electoral campaign financing of political parties and independent candidates, in section 91 of the 2008 Electoral Code. As outlined above (see paragraph 42), auditing reports on the funds obtained and spent for the electoral campaign of each electoral subject have to be submitted to the Central Electoral Commission within a timeframe fixed by the Commission. These reports are to be prepared at public cost by certified accountants appointed by the Commission, selected by lot from a list of experts established by the Commission following a competitive selection procedure at the beginning of the electoral year.³³ The list must contain at least 20 experts who have exercised the auditing profession during the preceding five years. Experts are prohibited from auditing the same electoral subject for two consecutive elections. Electoral subjects are obliged to make available to the expert appointed by the Commission any information, documents and data relating to the funding and expenditure for the electoral campaign.

Monitoring

50. Concerning the external supervision of political financing, the current legislative framework of Albania assigns this competency to different State authorities, namely to the High State Control (State Supreme Audit) in respect of party finances in general, to the Central Electoral Commission in respect of campaign financing of electoral subjects (i.e. political parties, party coalitions and independent candidates) and to the tax authorities in respect of tax declarations of parties and election candidates. During the on-site visit, however, the GET was informed that in practice no substantial control of political financing has been exercised so far. In this connection, it should be noted that Albanian legislation in this field is currently subject to a reform process and that, in particular, the 2008 Electoral Code gives increased powers to the Central Electoral Commission.

³² Section 23 LPP.

³³ See section 92 EC, which also provides that further details regarding the selection and appointment of auditors are to be determined by instruction of the Central Electoral Commission. – The necessary funds for the auditing are to be included in the election budget of the State.

51. According to section 23 LPP, the State Supreme Audit is the competent organ for the financial control of political parties and has the right to exercise this control before and during electoral campaigns. In its original version, section 23 LPP also contained a provision according to which the "audit shall not be limited only to the part of the budget of the parties obtained from public funds, but shall also cover gifts and assistance gained in other ways." However, the second part of this provision was declared unconstitutional by decision No. 30/2001 of 9 May 2001 of the Constitutional Court, as the constitutional provisions on the competencies of the State Supreme Audit did not encompass the control of private party income. The Court stated that the aforementioned provision of section 23 LPP would then be "incomplete" and Parliament should amend the law, but this has not been done yet and the GET was informed during the visit that there is no legal obligation on Parliament in this respect. On the basis of current legislation, the State Supreme Audit can only control party income from public funds and expenses charged to these funds. As regards the practical application of this control function, the GET was provided with conflicting information. Several interlocutors, including party officials, stated that in practice no supervision of public party funding was exercised at all, whereas representatives of the State Supreme Audit indicated that they carried out some form of indirect control by auditing other State authorities detaining information on party finances, namely the Ministry of Finance (tax department) and the Central Electoral Commission.
52. Article 162 of the Constitution states that the State Supreme Audit is the highest institution of economic and financial audit. It is tasked to audit and review the economic activity of State institutions and other legal persons of the State, the use and protection of State funds by organs of central and local government, as well as the economic activity of legal persons in which the State owns more than half of the shares, or whose debts, credits and obligations are guaranteed by the State. The State Supreme Audit submits, *inter alia*, its reports on the implementation of the State budget and its annual activity reports to Parliament. Its chairman, who is elected and dismissed by Parliament on the proposal of the President of Albania, remains in office for seven years, with the right of re-election. The GET was informed during the visit that the State Supreme Audit has at its disposal some 160 staff altogether.
53. As outlined above (see paragraph 42), the Central Electoral Commission is entrusted with monitoring functions in respect of electoral campaign funding. Under the old provisions of section 145/1 of the 2003 Electoral Code, political parties and independent candidates for election had to submit to the Commission a campaign financing report, covering income from private sources and campaign expenses; however, the authorities indicated to the GET that the Commission did not have any specific control authority, as it was mainly a supervisory authority of the electoral process. Under the new regime of the 2008 Electoral Code, auditing reports on the income received and spent for the campaign of each electoral subject, prepared by expert accountants appointed by the Commission, are to be submitted to the Commission. According to section 91, paragraph 3 EC the Commission can make verifications of the data contained in the reports, including the questioning of persons, examination of relevant documents at the offices of the electoral subjects concerned, as well as requests for any relevant information from banks or third persons on the data presented in the reports.
54. The Central Electoral Commission is a permanent organ that prepares, supervises, manages and verifies all aspects of elections and referenda and announces their results. Its wide range of tasks is specified in section 21 EC, including the duty to exercise control over electoral campaign financing and comprising, *inter alia*, the following responsibilities: to issue decisions and instructions with general legal power, based on the law and aimed at its implementation; to make decisions for the harmonisation of electoral practices; to direct and check the pre-electoral and

electoral process; to propose the allocation of the number of mandates for each electoral zone for the parliamentary elections; to declare the final result of elections at national level; to train members of election commissions; to appoint and dismiss members of Election Zone Administration Commissions and supervise the carrying out of their duties; to prepare the annual draft budget for the functioning of the Commission and to administer funds allocated from the State budget and from other lawful sources for the purposes of the election; to examine and resolve complaints by electoral subjects on the conduct of the electoral process; to apply administrative sanctions against persons who commit administrative infractions, and to file criminal charges for criminal offences related to elections.

55. The 2008 Electoral Code introduces a new set of regulations (sections 12 to 26) on the Central Electoral Commission which define, *inter alia*, its composition and election procedure, the criteria for membership and the rights and duties as well as dismissal of Commission members. The Commission has its own budget and consists of seven members who are elected for a four-year term (with the right to be re-elected) by Parliament, according to the following new rules: two members each are elected on the proposal of the party with the largest number of seats of the parliamentary majority parties and of the party with the largest number of seats of the parliamentary opposition parties; one member each is elected on the proposal of the MPs of the majority parties (except the biggest majority party) and of the MPs of the opposition parties (except the biggest opposition party); the seventh member and, at the same time, the CEC Chairman, is elected among two candidates selected by the MPs of the biggest opposition party from the four candidates proposed by the MPs of the biggest majority party. Members must have a university education and relevant professional experience and must not have been a member of a political party during the last five years; they are to exercise their functions in the Commission in an independent manner and full time, and their functions are incompatible with any other political, public or private function except for teaching. Members can be dismissed by Parliament, *inter alia*, if they perform political activity or if they are found guilty by a final court decision for the commitment of a crime. The chairman is responsible for, *inter alia*, representing the Commission, performing the duties of administrative director of the Commission and issuing internal orders. Each registered political party or coalition of parties can appoint one representative (and a substitute) to the Commission who has, in the case of the parliamentary parties, permanent status. Party representatives have no right to vote, but they can attend the Commission meetings, request information, discuss and present proposals and requests.
56. The Commission has at its disposal an administrative division composed of civil servants and headed by a Secretary General who is appointed by decision of the Commission. The GET was informed during the visit that the administrative division, which had been established under the regime of the 2003 Electoral Code, was composed of some 60 permanent staff and that for the organisation of elections, some 300 additional (part-time staff) were employed for a period of several months. The GET was furthermore informed that until the time of the visit, the head of the Commission's finance department and two more experts were responsible for the management and control of election funding. The authorities indicated that in order to implement the new monitoring rules introduced by the 2008 Electoral Code, new job descriptions for these positions would apply and possibly more staff would be entrusted with these tasks.
57. The tax authorities examine the annual tax declarations of political parties and election candidates.
58. The authorities indicated to the GET that there are no special regulations with regard to the prosecution of infringements of political financing legislation. In case of suspected criminal offences in this field, the competent prosecution office will institute criminal proceedings *ex officio*

or based on denunciations by citizens or concerned bodies such as the State Supreme Audit, the Central Electoral Commission or non-governmental organisations. The general reporting obligation on any person to report suspicions of crime to the law enforcement authorities also applies to members and staff of the aforementioned bodies. In addition, section 21, point 20 EC provides that the Central Electoral Commission has the duty to file criminal charges for criminal offences pertaining to elections and to impose administrative sanctions on persons committing administrative contraventions in connection with elections, and according to section 168 EC, the members of the Commission as well as the personnel of its secretariat are administratively and criminally liable for violations of these duties.

59. According to the authorities, no inquiries or investigations have been carried out in the last decade by any of the above-mentioned bodies or by the law enforcement within the framework of political financing supervision.

(iii) Sanctions (Article 16 of Recommendation Rec(2003)4)

60. Whereas the Law on Political Parties does not provide for any penalties for violations of political financing regulations,³⁴ the Electoral Code contains a range of administrative sanctions. According to section 145/1, point 3 of the 2003 Electoral Code, the Central Electoral Commission was entitled to impose sanctions on parties, coalitions or independent candidates who failed to submit campaign funding reports (or who submitted incomplete reports), ranging from the complete or partial loss of allocated public funds to fines and the loss of the right to be registered in future elections. The 2008 Electoral Code introduced a new set of provisions foreseeing sanctions for violations of campaign financing regulations as indicated below:

- section 87, paragraph 3 EC: if a political party which has received public campaign funding but does not win any seats in the parliamentary elections does not comply with the obligation to return the funds to the Central Electoral Commission within 30 days after the declaration of the final election results, the Commission requests the Ministry of Finance to order the treasury department that the amount in question be kept from other budgetary funds from which the party concerned would benefit;

- section 87, paragraph 4 EC: in the same case, the party concerned loses its entitlement to obtain public funds for a period of at least five years as well as the right to register as an electoral subject in the upcoming elections, notwithstanding the type of election, either by itself or as a member of a party coalition;

- section 91, paragraph 4 EC: non-compliance by an electoral subject or by a donor with the rules provided in the chapter "Financing of electoral subjects" (sections 87 to 92), if it does not constitute a criminal offence, is an administrative offence punishable in accordance with the provisions of Part XIII of the Electoral Code (sections 168 to 176), as follows:

- section 173, paragraph 1 EC: violations of the provisions on electoral campaign financing by the treasurer of a political party are subject to a fine of between 50,000 and 100,000 ALL/401 and 803 EUR;

- section 173, paragraph 2 EC: non-cooperation of an electoral subject with the auditing performed by the Central Electoral Commission is subject to a fine of between 1 and 2 million ALL/8,027 and 16,053 EUR;

³⁴ Apart from the general rule that outstanding financial party obligations are deducted from annual State allocations granted to the party concerned, see section 24 LPP.

- section 173, paragraph 3 EC: the refusal to make the campaign financial resources transparent or to allow the auditors to exercise their control is subject to a sanction ranging from a fine of 2 million ALL/16,053 EUR to suspension of public financing to the political party for up to 5 years;
- section 173, paragraph 4 EC: violations related to section 90 EC by the donor are subject to a fine of 30 % of the donated amount;
- section 173, paragraph 5 EC: violation of the maximum limit of expenses by an electoral subject is subject to a fine of 10 % of the value above the allowed limit for expenses in accordance with section 90 EC.

61. The aforementioned administrative sanctions are imposed by the Central Electoral Commission whose decisions may be appealed to the Electoral Chamber of the Court of Appeal of Tirana. The Electoral Chamber consists of eight judges selected among the judges of the different Courts of Appeal by a lottery conducted by the High Council of Justice.³⁵
62. In Albanian legislation, there are no specific criminal sanctions for infringements of political financing regulations. However, false financial declarations submitted by parties, coalitions or independent candidates to the Central Electoral Commission, to the State Supreme Audit or to tax authorities may constitute criminal offences such as, *inter alia*, financial fraud or tax evasion in accordance with the Criminal Code and the tax legislation. In such cases, criminal sanctions are imposed by the court, whose decision can be appealed before the court of higher instance.

Immunities and time limits

63. According to the Constitution (and some other laws), immunity (of different kinds) is provided for the following categories of officials in Albania: the President of Albania, members of Parliament, members of the Government, judges of the Constitutional Court, the High Court, Appeal Courts and First Instance Courts, members of the Central Electoral Commission, the chairman of the State Supreme Audit and the People's Advocate. Candidates for Parliament do not enjoy immunity. As regards MPs, they do not bear responsibility for opinions expressed or votes cast in Parliament (non-liability); furthermore, they also enjoy immunity with respect to prosecution and arrest (inviolability), but this immunity may be lifted by Parliament through a secret ballot (simple majority) following a request by the Prosecutor General (the immunity does not apply for arrest in case the MP is apprehended during the commission of a serious crime or immediately after such a crime). The latter kind of immunity (inviolability) also applies to members of the Central Electoral Commission and the chairman of the State Supreme Audit.
64. The general statutes of limitation apply to criminal offences committed in relation to political financing (e.g., 5 years in the case of fraud in the meaning of section 143 of the Criminal Code – or 20 years, when the act leads to serious consequences –, see section 66 CC).

Statistics

65. The authorities indicated that so far, i.e. since the entry into force of relevant legislation such as the 2000 Law on Political Parties, the 2003 Electoral Code in and the 2008 Electoral Code, no violations of political financing regulations by parties or candidates have been detected and therefore no sanctions have been imposed.

³⁵ Section 146 EC.

IV. ANALYSIS

66. Although article 9 of the Albanian Constitution establishes the principle that “the financial sources of parties as well as their expenses shall always be made public”, the GET found that until recently neither the legislation nor the practice developed in Albania satisfied such a standard of openness and transparency of political financing. Until now no substantial supervision has been carried out and no financing irregularities have been investigated. However, the development of political financing regulations is currently part of a promising reform process and the GET notes that important improvements have been made in respect of election campaign financing. A new Electoral Code – which establishes a regional proportional electoral system for parliamentary elections and which also introduces a system of transparency and monitoring of campaign financing – was adopted by Parliament after the on-site visit, on 29 December 2008, and entered into force on 13 January 2009. In this connection, the authorities stressed that one of the main objectives of the reform of the electoral system was to centre the election campaign more on the political party rather than on the individual candidate, in order to decrease the need for specific campaign funding and to facilitate its supervision. The present report takes account of the final version of the Electoral Code. Clearly, Albania must itself assess the application of this legislation in practice, particularly in the light of the first parliamentary elections to be held under the new Electoral Code, on 28 June 2009. As regards the Law on Political Parties of 2000, which includes rather general provisions on (structural) financing of political parties, the GET was interested to learn that possible amendments aiming to align its regulations to the standards established by the Electoral Code and to introduce supervision of regular party accounts were currently under discussion, but no draft legislation existed at the time of the visit. The majority of the officials interviewed on-site agreed that further steps must be taken in order to ameliorate and complete the present legislation and to establish adequate mechanisms for its proper implementation. At the same time, a number of interlocutors – including from civil society – expressed the wish not to go too fast with legislative reforms, which have been numerous in Albania since the end of the communist era and have not yet been “digested” by practitioners and the public. Similarly, it was repeatedly stated that after the country’s experience with extreme political control and regulation, it had been a desire in Albania to minimise State interference, and this is still partially reflected in current legislation. The GET has, in the meantime, drafted a set of recommendations which appear essential and necessary for the establishment of a coherent system of transparency and which may pave the way for further necessary adjustments and improvements at a later stage.
67. Political parties in Albania receive two sorts of direct public funding. The “structural” part is allocated with a view to covering day-to-day operating costs, while each electoral campaign is specifically funded in addition to the structural subsidies. The authorities indicated that annual structural funding amounted to 191,034,000 ALL (approximately 1.5 million EUR) during the period 2006-2008, and campaign funding amounted to 219,877,043 ALL (approximately 1.8 million EUR) during the 2005 parliamentary elections and to 52,902,704 ALL (approximately 425,000 EUR) during the 2007 local elections. For campaign funding, there exists a “proportion limit” on campaign expenditure which must not exceed ten times the largest amount of public campaign funding received by any party. It appears that this limit has not been reached in the past by any of the Albanian parties. For structural funding, there is no legal “proportion limit”, while the economic reality of the country, party membership and fund raising possibilities suggest that party resources are confined within reasonable limits. The allocation and distribution of public funds between the parties appear to be rather transparent – the use of allocated funds and their proportion within the overall resources of the parties, however, do not. In this connection, the GET was surprised that among the representatives of the three – currently main parliamentary – parties met during the visit, one claimed that public structural funding was by far their most relevant source of revenue, another affirmed that its part was relevant but that own resources

held the balance, while the third claimed that public structural funding accounted for only a small part of their overall resources. This state of affairs would indicate that even between the two larger parties which traditionally alternate in government in recent years there would be a significant disparity as to the proportion of public and private funds, in spite of comparable amounts of public allocations. It should be noted though that the authorities provided the GET with tables produced by the Central Electoral Commission on the basis of the parties' campaign financing reports for the election years 2005 and 2007, which only partly confirm the aforementioned indications given by party representatives; at the same time, the GET notes that those tables are far from being complete and consistent (for example, some parties reported no private income or no income at all, and the Socialist Party reported almost 14 times more public funding than the Democratic Party). Against this confusing background, the GET is particularly concerned about the low level of transparency required by the relevant regulations concerning regular party accounts and the obvious shortcomings pertaining to the practical implementation of existing legislation.

Transparency

Election campaign funding

68. The transparency rules applicable to election campaign funding of so-called "electoral subjects" – i.e. political parties, party coalitions and election candidates – as contained in the Electoral Code (hereafter: EC) have been amended on several occasions during the last decade. The GET was informed that the 2003 Electoral Code in its initial version only provided for regulations on the distribution of public funds, whereas amendments of 2005 and of 2007 introduced a set of transparency rules including a value threshold for private donations (1,000,000 ALL/8,027 EUR per donor) as well as a prohibition on donations by foreign natural or legal persons, a spending limit for party campaigning (10 times the largest amount of public campaign funding received by any party) and an obligation for all electoral subjects to submit reports on their campaign funding to the Central Electoral Commission (with identification of the donors and the donated amounts of at least 100,000 ALL/803 EUR). The current regime, established by the 2008 Electoral Code, maintains the aforementioned restrictions for donations and for campaign expenditure of political parties (complemented by a new ceiling for campaign expenditure of individual candidates, i.e. 50 % of the largest amount allocated to any electoral subject) but adds further transparency rules, in particular the prohibition on the use of public resources for the support of electoral subjects (except for the public campaign funding provided by the code); the prohibition on contributions by legal persons or their shareholders in certain situations in order to avoid conflicts of interest (e.g. if the legal person has monetary obligations towards the State budget or any public institution); and the obligations for all electoral subjects to open a special bank account to which all donations above the value of 100,000 ALL (803 EUR) must be allocated, to register the donations received in a special register – including a signed declaration of each donor – and to submit an auditing report on the campaign funds and expenses to the Central Electoral Commission. The auditing report is to be prepared by auditing experts appointed by the Commission within a timeframe determined by the latter, and is to be published by the Commission within 30 days from the date of submission of the report or of verifications made.
69. The GET is of the opinion that the above-mentioned new rules, together with new regulations on supervision and enforcement, provide a promising framework for transparency of campaign financing. The main challenge however – this impression was shared by virtually all the interlocutors met on-site – will lie with the effective implementation of the new provisions. It should be noted that already the 2003 Electoral Code in its amended form contained some transparency rules but no adequate provisions on supervision to ensure effective implementation

of the rules. The GET was informed that neither had any inquiries or investigations been carried out in the last decade by the Central Electoral Commission or by law enforcement agencies nor had any sanctions been imposed on electoral subjects, although it would appear that a number of obligations had not been fulfilled by all the parties (e.g. the requirement to declare all the donations to the Central Electoral Commission). The GET also heard – from some of the interlocutors met during the visit – about decreasing trust and participation of the public in the political process as a consequence of, among other things, the general public perception that expenses of political parties for election campaigns were excessive but not properly reflected in the financial reports. Figures on voter participation appear not to confirm this impression. Still, the GET wishes to stress that concrete and determined measures will be necessary in order to ensure that the legal amendments become effective. Apart from the establishment of a powerful monitoring mechanism (see paragraphs 73 and 74 below), such measures would logically include, *inter alia*, the setting up of precise and consistent secondary legislation (several relevant provisions of the Electoral Code refer to supplementary instructions, yet to be developed, and the authorities indicated after the visit that such instructions and decisions were already in the process of being prepared by the Central Electoral Commission) and of a standardised format (accompanied by appropriate guidelines, if necessary) for the auditing reports to be submitted by all electoral subjects, in order to guarantee a sufficiently high level of detail in all reports and to facilitate comparisons over the years and across the parties and election candidates. Moreover, the interviews held on-site left the GET with the clear impression that, given the low level of transparency achieved until now, there is a significant need for specific and targeted training and advice on the implications of the new legislation. In addition, the GET takes the view that the new transparency provisions would merit continuous evaluation of their functioning in practice and, to this end, the collection of precise and meaningful information such as statistical records of breaches of obligations and of sanctions imposed would appear to be appropriate, with a view to assessing whether further legal adjustments or practical improvements (e.g. more financial and personnel resources for the monitoring mechanism) are required. Therefore, the GET recommends **to take appropriate measures to effectively implement the new provisions on election campaign funding contained in the 2008 Electoral Code, including for example the introduction of precise secondary legislation and of a standardised format for the auditing reports on campaign funding as well as the provision of guidance to political parties, and to assess the efficiency of the new provisions based on the collection of appropriate and detailed information and statistics.**

70. More specifically, the GET wishes to draw the authorities' attention to two aspects of the new provisions of the Electoral Code which warrant additional clarification, possibly by further legal amendments or by secondary legislation. Firstly, as regards the obligatory registers of donations, the GET notes that according to section 90, paragraph 1 EC, "the list of persons who donate amounts not smaller than 100,000 ALL (803 EUR), as well as the respective sums, should always be made public". In the view of the GET, it needs to be clarified whether this provision obliges parties and candidates to publish those lists, and in which form (e.g. via the party websites) and timeframe, or only to grant access on request. The GET recalls that GRECO has repeatedly called upon member States to require parties and candidates to publish the donations received, in an easily accessible manner and at regular intervals, defined by law, including during election campaigns. Such timely information would have the clear benefit of increasing the openness of political financing in Albania, attracting the attention of the media, facilitating public debate and of allowing the public and the authorities to uncover potential irregularities in the funding of parties and of elections at an early stage. Information gathered by the GET clearly suggests that such an involvement of the public in the control of political financing needs to be actively encouraged. Secondly, the GET was informed by party representatives that until now donations in kind (i.e. goods or services offered free of charge or at a discount) were reported only in certain specific

cases, namely when they became part of the party inventory, although donations in kind were at least for some of the parties an important source of income. According to the authorities, under the new provisions of the 2008 Electoral Code all donations and therefore all donations in kind must be reported, however, the GET is concerned about the lack of detailed provisions for such donations to be clearly identified and recorded at their commercial value in the lists of donations and in the auditing reports of electoral subjects. This situation provides obvious opportunities and incentives for covert donations to political parties or election candidates. In the light of the foregoing, and for the sake of legal certainty, the GET recommends **to take appropriate measures to ensure the implementation of the relevant provisions of the Electoral Code in such a way (i) that the lists of donations and of donors (in case of donations above a certain value as determined by the applicable regulations) are reported and published in an easily accessible manner within specified timeframes ; and (ii) that donations in kind are properly identified and evaluated and accounted for at their commercial value, both in the lists of donations and in the auditing reports.**

Structural party funding

71. Turning to the “structural” part of political party funding, covering the parties’ day-to-day operating costs, the GET notes that the Law on Political Parties (hereafter: LPP) contains sufficiently clear regulations for allocation of public funds but quite general rules for financing by private sources, which are less complete and precise than the relevant provisions of the Electoral Code. In accordance with section 17 LPP, political parties may be financed by membership fees, any legally obtained property and financial assistance from the State budget. Pursuant to section 21 LPP, party funding by foreign public or private entities, by governments and by Albanian public entities or those with the participation of State capital is prohibited (however, “gifts and assistance” by a party or international union of parties, by Albanian or foreign political foundations and organisations and by private Albanian natural or legal persons are permitted). By contrast, the Law on Political Parties does not prohibit the receipt of anonymous donations and does not require financial resources of political parties to be paid into bank accounts, as is the case under the Electoral Code (the latter obligation applying to donations exceeding the value of 100,000 ALL/803 EUR). Bearing in mind that, at least for some of the Albanian parties, private funding constitutes an important part of their total income (see paragraph 67 above), the GET has strong reasons to believe that the aforementioned loopholes may lead to situations where large parts of party income are not only unknown to the public but are completely untraceable and where transparency of party funding is thus made impossible. In line with GRECO’s previous pronouncements on this issue, the GET recommends **to introduce a general ban on donations from donors whose identity is not known to the political party.**

72. Concerning the regular financial accounts of political parties, the GET did not obtain much substantial information on the legal requirements as to their content, level of detail and form, and on the compliance of parties with such requirements. The authorities indicated to the GET that in order to intervene as little as possible in the activities and administration of private legal persons, Albanian legislation foresees a minimal regulation on such entities and does not, for example, impose on political parties any specific auditing mechanism nor an obligation to submit books and accounts to any State body or to make them public (only yearly income declarations must reportedly be submitted to the tax authorities, but during the interviews the GET did not get a clear answer to the question of whether parties comply with this obligation in practice). Moreover, it would appear that party accounts are not required to comprise information about entities related to political parties or otherwise under their control. The GET recalls the relevant standards set by Recommendation Rec(2003)4, namely the obligations on political parties under Article 11 (proper books and accounts including, as appropriate, the accounts of entities related to political parties

or otherwise under their control), Article 12 (specification, in party accounts, of all donations received, including the nature and the value of each donation and – in case of donations over a certain value – the identification of donors) and Article 13 (regular, at least annual, disclosure of party accounts or as a minimum a summary of those accounts). The GET concludes that the current legal situation regarding structural party funding is not in line with those standards and that transparency of party finances would certainly benefit from the introduction of a standardised format for party accounts (accompanied by appropriate guidelines, if necessary) and of obligatory auditing of those accounts by certified experts, modelled on the pertinent rules for campaign funding reports. Consequently, the GET recommends **(i) to 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; (ii) to introduce a standardised format and independent auditing of those party accounts by certified experts; and (iii) to ensure that those accounts are made easily accessible to the public, within timeframes specified by law.**

Supervision

73. As regards the monitoring of election campaign funding by political parties, party coalitions and individual election candidates, the new provisions of the 2008 Electoral Code require auditing reports to be submitted to the Central Electoral Commission which is entrusted with control functions and empowered to impose sanctions in case of infringements of transparency rules. The Commission may verify the data contained in the auditing reports, including by questioning persons, examining relevant documents at the offices of the electoral subjects concerned and requesting any relevant information from banks or third persons on the data presented in the reports. By contrast, no such mechanism exists for the “structural” part of party funding. According to section 23 LPP the High State Control (State Supreme Audit) is responsible for the financial audit of party finances, but the Constitutional Court has ruled that the constitutional competencies of this institution are limited to control over *public* funds received and spent by parties.³⁶ As concerns the practical application of this limited control function, the GET was provided with conflicting information. Several interlocutors, including party officials, stated that in practice no supervision of public party funding was exercised at all, whereas representatives of the State Supreme Audit indicated that they carried out some form of indirect control by auditing other State authorities detaining information on party finances, namely the tax department of the Ministry of Finance (income declarations) and the Central Electoral Commission (campaign financing reports). It is clear, however, that regular party accounts are not submitted to any monitoring body and are not subject to any control. The information gathered by the GET clearly indicates that the current situation is not fully compatible with Article 14 of Recommendation Rec(2003)4 which makes reference not only to the supervision of electoral campaigns but also to the funding of political parties in general, including their accounts. Consequently, the GET recommends **to establish comprehensive supervision of the complete accounts of political parties, including structural funding from private sources.**
74. During the on-site visit, the GET discussed at length with a number of interlocutors the question of which body would be most appropriate for the future monitoring of political finances in Albania. As regards the supervision of regular party accounts, a number of different institutions were mentioned, ranging from existing bodies such as the Central Electoral Commission (requiring an

³⁶ Decision No. 30/2001 of 9 May 2001 of the Constitutional Court.

extension of its currently only election-related competencies), the State Supreme Audit (requiring constitutional changes), the tax authorities or the High Inspectorate for Declaration and Control of Assets, to the establishment of a new specialised monitoring body. Almost all persons interviewed agreed that the supervision of regular party finances and of election campaign funding should be carried out by one and the same body. It was highlighted that under the present regime of shared responsibilities between various institutions such as tax authorities, electoral commissions or the State Supreme Audit, no substantial supervision had been carried out by any of those bodies. In the view of the GET, a system involving various bodies needs to be well coordinated to be efficient, however, the GET is 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, including both regular party accounts and campaign finances. Clearly, Albania must itself assess which body could be entrusted with such a task. The GET wishes to stress, however, that any such monitoring body needs to enjoy an appropriate level of independence and be given sufficient resources to carry out pro-active and substantial control (including a material verification of the information delivered), as well as investigative powers and the mandate to impose sanctions in case of violation of political financing regulations. The GET notes that in the field of campaign financing, the Central Electoral Commission has – under the new provisions of the 2008 Electoral Code – recently been given such a mandate and investigative powers, but that it clearly needs more financial and personnel resources to carry out its challenging tasks (the GET was informed that at the time of the visit, i.e. before the adoption of the new Electoral Code, three persons were responsible for the management and control of election funding).³⁷ In light of the foregoing, the GET recommends **to ensure that an independent mechanism is in place for the monitoring of the funding of political parties and electoral campaigns, and that it is given the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.**

Sanctions

75. The GET notes that the Law on Political Parties does not include any provisions sanctioning violations of political financing regulations, whereas the Electoral Code contains a range of administrative penalties to be imposed by the Central Electoral Commission. Albanian legislation does not provide for any specific criminal sanctions in this area either, but the GET was informed that the submitting of false financial declarations by parties or election candidates to State bodies like the Central Electoral Commission or tax authorities may constitute a criminal offence such as financial fraud or tax evasion in accordance with the Criminal Code and tax legislation. The administrative sanctions available under the 2008 Electoral Code are wider in scope than those provided by the previous code and cover – besides certain cases of non-repayment by a party of public campaign funds – violations of the provisions on electoral campaign financing by the treasurer of a political party; non-cooperation of an electoral subject with the auditing performed by the Central Electoral Commission; the refusal to make the campaign financial resources transparent or to allow the auditors to exercise their control; violation of the maximum limit of expenses by an electoral subject as well as violations by the donor of section 90 EC (regarding the payment terms and registration of private funds). Those offences are punishable by financial sanctions of varying severity (e.g., in the case of a refusal to make the campaign financial resources transparent or to allow the auditors to exercise their control, sanctions range from a fine of 2 million ALL/16,053 EUR to suspension of public financing to the political party for up to 5

³⁷ After the visit, the GET was informed that the number of permanent staff responsible for the management and control of election funding had been increased to five and would be complemented by external experts.

years). It should be noted that the GET did not have an opportunity to discuss on-site the new provisions introduced after the visit, which makes it difficult to ascertain whether all the possible breaches of the new legislation are punishable by effective, proportionate and dissuasive sanctions. Nevertheless, the GET notes that the above-mentioned penalties cover acts by both political parties and election candidates, violations of various regulations on transparency, on cooperation with auditors and on expenditure limits and thus appear – and are certainly meant – to be quite comprehensive and effective. Therefore, at the present moment, the GET refrains from recommending further legal amendments and takes the view that priority must be given to an effective implementation of the new provisions, bearing in mind that until now the available sanctions have never been applied. The GET refers to its recommendation aiming at implementation and assessment of the new regulations by the Albanian authorities (see paragraph 69 above) and adds that further possible measures such as broadening the arsenal of sanctions (e.g. deregistration of a political party, or specific criminal sanctions) or the publication of penalties imposed may be contemplated in this on-going process. By contrast, the lack of sanctions for violations of financing regulations concerning the general/“structural” part of party funding – provided by the Law on Political Parties or yet to be developed (see paragraphs 71 and 72 above) – is clearly not in line with the principle enounced in Article 16 of Recommendation Rec(2003)4 which refers not only to the infringement of funding rules for electoral campaigns but for political parties in general. The GET recalls that effective enforcement of political financing regulations is an important element in ensuring public confidence in the political process and, consequently, recommends **to clearly define infringements of existing and yet to be established regulations on general party funding and to introduce effective, proportionate and dissuasive sanctions for these infringements.**

V. CONCLUSIONS

76. Until recently, the level of transparency in Albanian political financing was low, not in line with the standards established by Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and suffering from ineffective supervision and a clear lack of enforcement of the rules. However, Albania is currently engaged in a reform process supported by the main political – majority and opposition – parties which appears promising and which is to be welcomed as a step in the right direction. So far, this process has focused on transparency of election campaign financing, in the framework of the recent adoption of a new Electoral Code and the revision of the electoral system, prior to the forthcoming parliamentary elections in June 2009. The new legislation represents a clear improvement but in order to be effective it needs to be implemented in practice, which will require concrete measures including, above all, the development of an independent and powerful mechanism for monitoring both election campaign financing and general party funding, as opposed to the current ineffective regime of responsibilities shared between various institutions. Moreover, there is a need to align the Law on Political Parties with the standards of the new Electoral Code in respect of transparency, supervision and enforcement. To conclude, it is to be noted that further legislative and practical improvements will almost certainly be necessary, on the basis of an on-going assessment of the system. The Albanian authorities are therefore strongly encouraged to pursue their efforts to establish and implement a comprehensive system of transparency of political financing.
77. In view of the above, GRECO addresses the following recommendations to Albania:
- i. **to take appropriate measures to effectively implement the new provisions on election campaign funding contained in the 2008 Electoral Code, including for example the introduction of precise secondary legislation and of a standardised**

format for the auditing reports on campaign funding as well as the provision of guidance to political parties, and to assess the efficiency of the new provisions based on the collection of appropriate and detailed information and statistics (paragraph 69);

- ii. to take appropriate measures to ensure the implementation of the relevant provisions of the Electoral Code in such a way (i) that the lists of donations and of donors (in case of donations above a certain value as determined by the applicable regulations) are reported and published in an easily accessible manner within specified timeframes ; and (ii) that donations in kind are properly identified and evaluated and accounted for at their commercial value, both in the lists of donations and in the auditing reports (paragraph 70);**
 - iii. to introduce a general ban on donations from donors whose identity is not known to the political party (paragraph 71);**
 - iv. (i) to 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; (ii) to introduce a standardised format and independent auditing of those party accounts by certified experts; and (iii) to ensure that those accounts are made easily accessible to the public, within timeframes specified by law (paragraph 72);**
 - v. to establish comprehensive supervision of the complete accounts of political parties, including structural funding from private sources (paragraph 73);**
 - vi. to ensure that an independent mechanism is in place for the monitoring of the funding of political parties and electoral campaigns, and that it is given the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions (paragraph 74);**
 - vii. to clearly define infringements of existing and yet to be established regulations on general party funding and to introduce effective, proportionate and dissuasive sanctions for these infringements (paragraph 75).**
78. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Albanian authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2010.
79. Finally, GRECO invites the authorities of Albania to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.