

“ELECTION FUNDING ENTITY FROM NON-PUBLIC FUNDS”

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Abstract

The election of the deputies is one of the most important moments in the political life of each democratic state. This process which is the most important one includes the well organisation and the cooperation of all the relevant institutions that the Albanian Constitution provides. This declaration is obvious in the Article 2§1 of it.

Political parties are very important in the democratic system to emphasise the main aim of it. These organisations are concentrated to have an efficient and effective performance during (or even out) the election campaigns to gain the majority of votes and even to enlarge their self's. Whatever, to perform in the appropriate way and to transmit the information, political parties need to have incomes. According to the Article 9§3 of the Albanian Constitution these parties has the obligation to declare every income, to respect the transparency of all their activities.

The new Electoral Code that enter in force in 2008 provides the procedure that the parties should follow to obtain founds according to the law. In this article we will present an analysis of the way of obtaining financial founds from these organisations in the view of the Electoral Code. Even more, it will be explained the concepts and the procedure of public and non-public financing, within all the elements of them such as the fair declaration of the incomes, the deadline to obtain them ect .

On the other hand, we will bring the focus to the problems that these way of finding incomes has. More over this article try to respond to the question if the law and the ongoing system contains all the appropriate mechanisms to control the well function of the all process.

In other words, in terms of methodology this article will offer a qualitative view of the financing process of political parties from public and non-public founds.

Keywords: *Electoral Code, political parties, public founds, non-public found.*

INTRODUCTION

“No matter what kind of rules are adopted in a country on the financing of the election, they should be designed in order to ensure an equal playing field for all competing parties in the political arena and to guarantee their independence”¹

It has been possible in this study to highlight the Albanian legislation on the financing of electoral subjects that have a deficient legal framework in terms of control of financial activities of political parties in the election and especially the pre-election period, donations sanction "legitimate "and how issues prevent favoritism and political influence over public donors. Financing of election subjects and his ties to corruption have always awake the interest of the public and widely reported in the media². Despite this, there is a reduced role of political parties as important pillars of representative democracy, but it has become apparent that clear rules and transparent accounts are key to restoring or maintaining public trust in politicians and parties. Funding is a key issue in the political parties because the need for increasing resources during election campaigns is really high. Money should not be allowed to purchase access to the parties and decide on civic decision making.

I. GENERAL CONTEXT OF THE LEGAL FRAMEWORK ON FINANCING POLITICAL PARTIES

In the 23-year history of political pluralism in Albania local elections, referendums are central or regulated by several laws to the approval of the First Electoral Code³ after the 1998 Constitution⁴, which are coupled with strong public debates by representatives of political parties and not only. Finally, any electoral law since 2003 onwards has found political compromise in approval, thus bringing a legal act of the spirit of the joint.

¹This is the message conveyed by Z.W.Schwimmer, General Secretary of the Council of Europe (2003), through integrated project guide titled "On the financing of political parties and election campaigns"

²Guidelines "Financing of political parties and election campaigns", published by the Council of Europe, December 2003

³Law No. 8609, dated 08.05.2000 "The Electoral Code of Republic of Albania"

⁴ Law No. 8147, dated 21.10.1998 "The Albanian Constitution"

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These laws are described by the parties as the major reform, most important, the most serious of the 15 years which is widely discussed as electoral reform. For the first time this process is carried out by international monitoring and is supervised by the ODIHR. In connection with the last parliamentary election system enshrined in the constitutional amendments of 2008, the political parties themselves have finished the assessment as: *“This system is not for large parties or small parties, but against unrealistic ones. This system creates two-party political system, it creates a stable majority, retains the qualities and capabilities and avoids political north south division. Code guarantees standards and Albanians vote.”* This is an overall assessment of the parties approving the Code, which are seen as enthusiastic about standards, guaranteeing the votes of citizens and not talk at all, not even mentioning any reform in terms of transparency of the process of electoral funding.

If we talk about the legal basis governing the financing of political parties in Albania, certainly will refer, first Constitution of the Republic of Albania in Article 9, paragraph 3 which provides: *“The financial resources of the parties, and their costs are always made public”*, in this way the transparency of funding and expenses related parties, is a constitutional obligation to always be public. Conversely electoral law defines political parties as organization of individuals who voluntarily on the basis of ideas, views and common interest, in order to exercise influence and having their elected representatives in public order, or as otherwise designated by law, and political entities *“political party, coalition, civic initiative or independent candidate”*.

Election code in force, Law No. 10019, dated 29.12.2008 *“Election Code”* (as amended by Law 74/2012) provides in section VII of his *“Campaign Financing”* chapters divided into two issues. Chapter 1 *“Financing of Elections”* and Chapter 2 *“Financing of election subjects”*. Funding of political parties, in terms of electoral campaigns, categorizes these funds to finance public and non-public sanction and control method of income and expenses related elective subjects (Article 87/1)⁵.

⁵Article 87/1 states "sources of campaign financing for electoral subjects are: a) advance funds allocated from the state budget for political parties registered as electoral subjects b) the subject of income generated by the electoral law c) gifts in money, kind or services furnished under Article 89 of this law d) loans taken out by political parties according to law. In any case the value of a loan shall not exceed the amount of money, according to paragraph 2 of Article 89 of this Code "

Sources of financing election campaign subjects divided into two major categories: **1. Advance funds allocated from the state budget for political parties registered as electoral subjects;** **2. Donations (gifts) in money, kind or services furnished under Article 89 of this Law.** In any case the total donation value should not exceed the amount of money, according to paragraph 2 of Article 89 of this Code⁶.

The legislation in force stipulates the allocation of public funds for political parties from the state budget that represents the first set of funding but the less important or less estimable. Public funding of political parties is through the Budget of the Republic of Albania. This results from the content of Article 87 of the Electoral Code “Political parties participating in the elections and received no less than 0.5 percent of the vote in the country, receiving funding from the state budget, according to the number of votes that each party received in the elections. Fund for this purpose determined by the Assembly and is a separate item in the State Budget for the relevant election. This fund may not be less than the total amount allocated to political parties in previous elections “. With the following distribution law clarifies procedures, the role of the CEC in the operation and control in relation to the votes received in the election as political entities.

The system of funding from the state budget has not ever presented a problem for the simple fact that it has always been small and insufficiently appreciated in expensive Albanian electoral campaigns, so there were no reason for leaving debates.

Elective subjects can not benefit funds through public donations (private), for purposes of their election campaign. The second group consists in electoral funding and exactly what is considered as "hot-potatoes", the Albanian elections in the area of financing.

These donations are received only by domestic natural or legal persons (foreigners detained).

⁶ Article 89 states that "Elective subjects may receive funds for the purposes of their election campaign, only domestic legal or natural persons. For purposes of this Code, considered the natural home Albanian citizen residing outside the territory of the Republic of Albania.

2. The amount that any natural or legal person may give an electoral subject may not be greater than 1 million or the equivalent in goods or services. 3. The issue of funds by a legal person or any of its shareholders, if one of the following conditions: a) has received public funds, public contracts or concessions in the last 2 years worth over 10 million b) carries out activities in the media, c) has partnered with public funds in various projects d) no monetary obligations to the State Budget or any public institution. This obligation does not apply if the shareholder owns these shares as a result of the public offering.

But for purposes of this Code, are considered the natural home Albanian citizens residing outside the territory of the Republic of Albania.

Here begins the so called sanctioned private system of financing in Albanian elections. This system results from the content of Articles 89 to 92 of the Electoral Code⁷. We have accepted limited funding system from non-public funds. As for donations, which can be the amount of cash contributions, services, objects to the political credit that can accept, is limited. **The amount that any natural or legal person may give an electoral subject may not be greater than 1 million or the equivalent in goods or services.** This is the first restriction. **Also is prohibited from providing funds by a legal person or any of its shareholders, if received public funds, public contracts or concessions in the last 2 years worth over 10 million, operates in the media, has been a partner with public funds in various projects; has monetary obligations to the State Budget or any public institution.** The second limitation. But this limitation has its own legal exemption. This obligation does not apply if the shareholder owns these shares as a result of the public offering.

Also presented in the form of limiting admission procedure which in principle stipulates that: **Political parties can not accept any contribution that is not in accordance with the legislation in force.** Currently, Article 90 provides that **any election subject shall record in a special register, adopted as a model by the decision of the CEC, the amount of funds received for any natural or legal person, as well as other information relating to the identification of clear to donors. At the time of the donation, the donor signed a statement pledging that he is not in one of the circumstances set out in this Code section 89 of this Code and personal responsibility for false declaration. Form and content of the declaration is adopted by the CEC and is required to sign in each case donation.** Also in the procedure is introduced banking system in order to increase transparency and control. **Donation of non-public funds worth more than 100 thousand must be done only in a special account opened in a bank by the electoral subject.**

⁷Law No. 10 019, dated 29.12.2008 (as amended by Law no.74/2012) Electoral Code of the Republic of Albania
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The most important limitation of the founding system is the one provided in article 90§3 of the Electoral Code. “*One political parties and its candidates can not make more expenses that the decuple of the sum that this parties received from public founds, according to Article 87§3 of the Code... A candidate of this parties can not spend more than 50% of the total amount that his parties received from public founds.*”

This article has opened up a lot of debates relating with the election funding entity from non-public funds, because the total amount that the donators can donate is tenfold greater than the public grant received from the parties. The political subjects audited after the elections have resulted always according to the law, but the reality of the expenses of their electoral campaigns is different⁸.

The restrictions provided by the Electoral Code about the election funding entity from non-public funds are exactly precisely predicted to monitor the law infringement. Articles 91 and 92 of the Code provide all terms of procedures relating with the audit and the way that the audit reports should be done. Disregard of the above rules constitutes an administrative fault.

On these point we should emphasise that the law derive an *aposteriori* audit for the political parties, after the end of the elections and on our opinion this is an appropriate way to control the system in Sweden or even in Finland but no in Albania.

I. ESTIMATES FOR THE FUNDING SYSTEM, PROBLEMS OF THE LEGAL BASES AND RECOMANDATIONS

Firstly we would like to emphasise that in a limited non-public funding system is not the best way to implement, because it can be the cause of many manipulations. In other words the limitation of the system pushthe political parties to manipulate the financial statements because the public funds and the limit set to the non-public funding are insufficient to deal with costs of electoral campaigns.

⁸The labour report and the conculusions of the special parliamentary commite about the electoral reform. Parliamentary document. Tiranë 2011.

Here we can bring an example, according to the Code, one person can donate in maximum 1000000 lek, in case that he would like to donate much more money he can manage to donate the amount through other people. He can bring 9 other people just to sign.

Meanwhile, the law should prevent these situations and should visualize a procedure for transparency of the source of the donation.

On the other hand the law may allow a liberal funding system. In other words the law should not limit the amount of money of a non-public fund. Every political parties will profits' from donations on its favour, and as consequence they will not infringe the law. For sure all these liberalisation should be under a declarative process.

Thirdly, the law should emphasise the control bodies and the procedures on which they will operate. Moreover, the audit should begun at the beginning of the election year, not at the end of it because it may cause many problems. The CEC has the obligation to determine the appropriate audits close to the parties headquarters and the finance offices. The auditor should control and observes any donation despite the form of it. All these procedures should be transparent from the beginning before the start of the electoral year and campaign in order to know the value of which begins on election financing.

Another important issue that is not settled by the law is the avoidance of conflicts of interest that occur in this process in two moments: firstly when drafting the law in parliament, parliamentary parties adopt by consensus among others funding system and control as described above, and secondly a very important moment is when CEC audit the parties and appoints auditors. The CEC should condemn parliamentary parties when they have violated the law, but in the reality this is impossible because the parliamentary parties have appointed the CEC members, and as a consequence can discharge at any moment.

Maybe the solution of the problem may occur if this role will be undertaken by the Constitutional Court or the Supreme Council of Justice.

Recommendations':

1. *All the articles that implicate any form of funding of political parties should be included in a special law "Law on Financing Political Parties during normal operation and during the electoral campaign".*

2. The legally independent institutions realizing through transparent complaints procedures and control, investigating and publishing the financing of political parties in general and those taking part in elections in particular.

3. Changing the system of financing of political parties from being liberalized and restrictions and increasing transparency and control. Political parties should be obligated from the law to declare any fund.

4. Avoiding conflicts of interest regarding with the audit and all its procedures by leaving the power of control to the Constitutional Court.

5. Political parties should allow the media and the public to have access to their finances (through websites ect) in order to respect the constitutional obligation for full transparency in this process.

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