

OFFICE FOR OVERSIGHT OF FUNDING OF PARTIES IN REPUBLIC OF KOSOVO AND CZECH REPUBLIC

MAY 2020, PRISHTINA/PRAGUE



OFFICE FOR OVERSIGHT OF FUNDING OF PARTIES IN REPUBLIC OF KOSOVO AND CZECH REPUBLIC

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Abbreviations

- KDI** – Kosovo Democratic Institute – Transparency International Kosova
- CEC** – Central Election Commission in Kosovo
- LGE** – Law on General Elections in Kosovo
- TICZ** – Transparency International Czech Republic
- “ÚDHPSH” or “Office”** – Office for the Surveillance of the Political Parties and Political Movements in Czech
- OPPRC or Office** – Office for Political Parties Registration and Certification





Introduction

This analysis has been jointly produced by Kosovo Democratic Institute (Transparency International Kosovo) and Transparency International Czech Republic, in the light of implementation of joint project for the increase of transparency in funding of political entities.

The subject of the analysis is elaboration of the legal basis and practices, and institutions competent for control and surveillance of finances of political entities in both countries, which are at different levels democracy.

Republic of Kosovo exercises these competencies through a special office within the Central Election Commission, which is mandated for registration, certification and oversight of finances of political entities. The Czech Republic has a special office for oversight of finances of political entities and political movements.

The essential difference between both states lies on the independence of offices in exercising oversight roles and the financial disclosures of political entities. Differences may be observed even in the structure of offices, institutional hierarchy, their competencies, legal power, as well as other aspects of oversight of political entities by these offices. This analysis allowed for identification of shortcomings in these offices' daily operation.





Legal governance of the oversight of political entities' finances in Kosovo

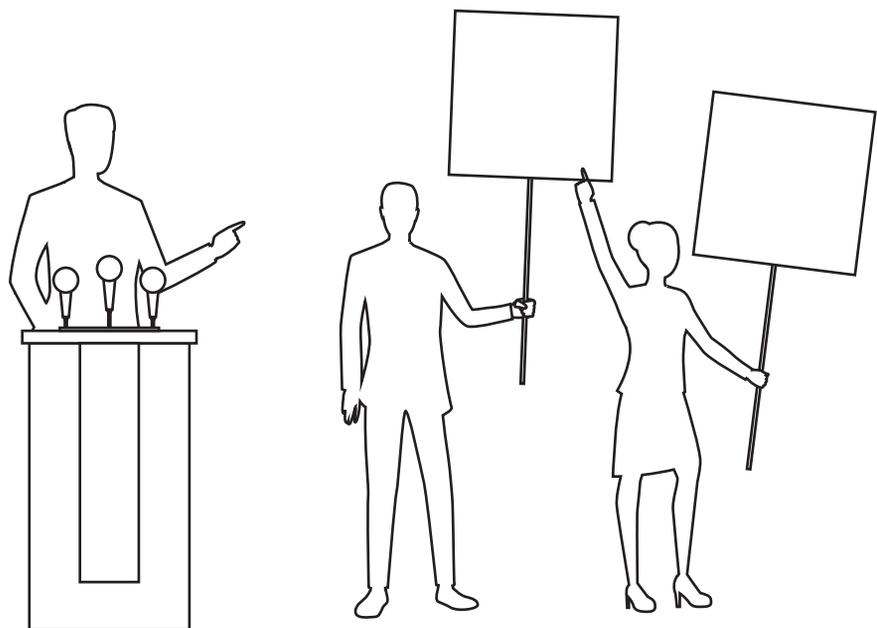
Office for Registration and Certification of Political Parties in Kosovo has been established by the Central Election Commission (CEC) based on the Law on General Elections of 2008, Law No. 03/L-073. The Office is responsible for maintaining the registry of political parties, certification of all public entities to be included in the ballot and limit of campaign spending and provisions for financial disclosure.

After the declaration of the independence, within the consolidation of the basic legislation, Kosovo also adopted the Law on General Elections, whereby governing, inter alia, the holding of elections in Kosovo, functionalization and competencies of CEC, competencies of CEC Secretariat, competencies of OPPRC, code of conduct for political par-

ties during the elections, the manner for controlling political entities finances, as well as legal requirements for reporting.

Until 2008, United Nations Mission in Kosovo (UNMIK), through the third pillar of governance, was competent for registration of the political entities. OSCE (Organisation for Security and Cooperation in Europe) was competent for the third pillar, with the Office for Registration of Political Parties¹, which then competed in the elections held prior to proclamation of independence. From 2006 until the adoption of the Law on General Elections in 2008, this Office gradually transferred its competences to the Kosovo institutions, namely CEC.

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¹ UNMIK Administrative Direction No. 2004/01, Implementation of UNMIK Regulation No. 2000/16, as amended, for registration and activity of political parties in Kosovo.



Functioning of OPPRC within the CEC and its composition

Pursuant to the law, the Central Election Commission established the Office for Political Parties Registration and Certification (OPPRC). The Office is responsible for the maintenance and updating of the Registry of Political Parties, certification of Political Entities and their candidates for elections, limiting the campaign spending of certified political entities and financial disclosures.

OPPRC operates within the Secretariat of Central Election Commission. The CEC Secretariat is the main technical and administrative body that implements the decisions of the CEC, prepares reports, recommendations for CEC decisions, and assists the CEC in the implementation of functions and responsibilities assigned to it in accordance with this Law or other acts.² The Secretariat is managed by the Chief Executive Officer, who is civil servant and is accountable only to CEC.³ The Secretariat registers and certifies the political parties through the Office for Political Parties Registration and Certification.

In the administrative aspect, OPPRC operates within the CEC Secretariat, but is directly accountable to the CEC for its legal works and responsibilities.⁴ The office is led by the Executive Director, who also directly reports to CEC.⁵ This legal governance provided for the independence of the Office from the CEC Secretariat, despite the fact that in the administrative hierarchy is under the Secretariat.⁶

Also, the Secretariat is expressly prohibited from reporting on the duties of the Office, namely of the Director of Office⁷ in CEC.

According to the legal description and competencies provided by the Law on General Elections, the position of the Office for Political Party Registration and Certification is very important due to its powers and institutional hierarchy within the CEC.

However, the Office has no budget allocated for its operation, so the number of permanent support staff is two officials and a director. During the election period, the number of officials can reach up to 30 temporary officials.

The office creates and maintains mailboxes for each political party certified by the CEC. All official correspondence in writing with political parties is done through the Contact Person⁸ and the mailbox. The political parties are obliged to regularly check the mailboxes placed in the CEC.⁹

² Article 65 of the Law No. 03/L-073 on General Elections, accessible in the Official Gazette No. 31, promulgated on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

³ Article 66 of the Law No. 03/L-073 on General Elections, accessible in the Official Gazette No. 31, promulgated on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

⁴ Central Election Commission (CEC) has been established in accordance with Article 139 of the Constitution of Kosovo and it is a permanent independent body. CEC is responsible to organize and implement the elections in Kosovo. The role of CEC is to govern the electoral process by adopting the election rules and oversight of all aspects of election process to ensure that the elections comply with the international standards. CEC is composed of eleven (11) members, namely the Chair and ten (10) other members. The Chair is appointed by the President of the Republic of Kosovo and is elected among the judges of the Supreme Court. The term of the Chair of CEC is 7 years, running from the date set for notifying on the appointment by the President of Kosovo. Ten (10) other members of CEC are appointed as a result of nominations of six (6) largest parliamentary groups of the Assembly of Kosovo and four (4) members representing the small communities in Kosovo.

⁵ Article 11.2 of the Law No. 03/L-073 on General Elections, accessible in the Official Gazette No. 31, promulgated on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

⁶ Ibid

⁷ Article 66.5, Point b, of the Law No. 03/L-073 on General Elections, accessible in the Official Gazette No. 31, promulgated on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

⁸ Contact person is the person who is authorized to communicate on behalf of the political entity with the office for non-financial matters

⁹ Article 11.5 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

Executive Director of the Office

The Executive Director of the Office is a senior official within the CEC Secretariat with a leading position. He has several duties and responsibilities in the course of his/her daily work.¹⁰ His contract is a career and indefinite contract.

Initially, his/her main responsibility is the general administration and management of the office, which also means the management of the office staff. Furthermore, the executive director ensures that the office functions are implemented in accordance with the legal acts, sub-legal acts in force and the CEC decisions. The Office Director prepares reports and recommends them to the CEC directly, then coordinates the activities with the CEC Secretariat and the Election Complaints and Appeals Panel.

The director of the office, within its competences, can draft sublegal acts pertaining to the Office, whereas he can also delegate this acts to his subordinate staff, but always under his supervision. Furthermore, he is in charge of planning activities that the Office will carry out during the daily work or according to the requirements or coordination deriving from the cooperation with the CEC, its Secretariat or the ECAP. The CEC may vest the Office director with other duties and responsibilities that fall within his function as director or other duties and commitments for the best possible performance of the tasks that arise during the work.

A special function of the executive director is to advise political entities regarding their legal obligations to the CEC. In addition to advising, the director can instruct political entities on how to proceed with the obligations arising from the law. This competence is a great help for political entities, as they can always turn to the Office or the director for advice and instructions on how to act in the realization of the requirements arising from the Law or the CEC.

The Office Director represents the Office both inside and outside the institution, i.e. in the CEC meetings, in the reporting before it, as well as in relation to the Secretariat. Furthermore, in the external aspect, the Director represents the Office, first and foremost, in meetings with political entities, and before the ECAP, or other entities, (including NGOs and the Media) where the Office is invited to attend. Normally, the powers of representation are limited only to the legal duties and responsibilities that the Office has.



The Executive Director of the Office is a senior official within the CEC Secretariat with a leading position. He has several duties and responsibilities in the course of his/her daily work. His contract is a career and indefinite contract.

¹⁰ Article 11.2 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

Registration, certification and financial oversight of political parties by the Office

The three main functions related to political parties within the CEC are performed by the Office for Political Party Registration and Certification.¹¹ The first function is registration of political entities in the register of Political Parties. The second function is the certification of political entities to participate in elections (general or municipal elections). Meanwhile, the third and last function is the financial oversight of political entities in relation to the revenues, expenditures and declarations of political entities within the legal deadlines.

Registration

The application for registration of political parties can be done at any time during normal working hours. The application should be submitted to the Office for Political Party Registration and Certification.¹² The application must be done based on the rules established by the CEC and according to the predetermined format.

The Office shall review applications within ten (10) days of receipt and inform the authorized representative of the party within five (5) of the completion of the review of any matter that requires clarification or change in the application form. Within thirty (30) days of receiving the application, the Office, shall inform the CEC of the status of the application, recommending further actions. The CEC may receive from the Office a positive recommendation for approval of application-registration, or negative for not registering. The office also has

the possibility of recommending the CEC to request additional clarifications in areas that are not properly clarified.¹³

Each political party is obliged to submit the form for extending registration to the Office once a year. The annual deadline for submission is 31st of March of each year.¹⁴ The political party must notify the Office of any changes made to its structures within 5 days of the changes.

Certification

This shall mean certification of political entities to participate in the elections that are announced and will be organized by the CEC.¹⁵ Application for certification may be submitted at any time during normal working hours of the Office. The deadline for the submission of application for certification is sixty (60) days prior to the elections. After the deadline, the Office cannot legally consider any application for certification.¹⁶ These deadlines are changed, respectively shortened by the CEC in cases of early elections, where new deadlines are set through the operational plan. To facilitate the functioning of political parties, the CEC has issued Regulation 01-2013 on the registration and operation of political parties¹⁷, which specifies other details on political entities.

The political party, which is registered and is in the register of political parties, has no obligation to apply, but notifies the Office of its participation or non-participation in the announced

11 Article 11.1 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

12 Article 12.1 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

13 Article 12 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

14 Article 12.6 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

15 Article 15 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

16 Article 15.2 Law no. 03/L-073 on General Elections, accessible on the Official Gazette number 31 announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

17 Regulation 01-2013 <http://www.kqz-ks.org/wp-content/uploads/2018/01/KQZ-Rregulla-01-2013.pdf>

elections. The deadline for notifying the Office is 15 days of the declaration of the election date by the President of the Republic. The Office must also be informed of any changes by the President of the party, authorized representative of the party, financial representative of the party and any necessary information related to the same nature. The political party must notify the Office, within this 15 day period, of its intention to participate in the elections as part of a coalition.

The CEC, according to the recommendations of the Office, then certifies the political party with the right to participate in the elections only after that political entity has met the conditions provided by law and CEC rules. Each application must be accompanied by accompanying material. For certification purposes, the CEC through the rule has the opportunity to set a certain amount, the payment of which then qualifies the political party to have the case reviewed.

The Office examines each of the applications for certification and has the competence to evaluate whether or not the political entity has met the legal requirements to be certified. In case the political entity does not meet the certification requirements provided for by law, the Office within 10 days from the day of application notifies the political entity of the reason(s) why their application was deficient. The applicant is entitled to correct the application, explain or address the identified concerns within 5 working days from the day of receipt of the notification.

The Office is obliged to issue a written recommendation to the applicant 5 days after receiving completed documentation. The recommendation may be positive or negative for the applicant, and each recommendation according to the legal requirement holds a brief reasoning for each legal criterion. The CEC within 7 days, after receiving the recommendations from the Office, approves or rejects the certification of political entities. After the decision is rendered by CEC, the office is obliged to immediately notify the political entity of the decision, and in case of negative decision, the entity is entitled to file a complaint for non-certification to the ECAP within 5 working days from the day of receipt of the notification.

All political parties, coalitions, citizens' initiatives, indepen-

dent candidates must be registered with the Office, and must meet the conditions and criteria provided for by Law.¹⁸

The political party, the coalition, or the citizens' initiative is obliged to submit the list of election candidates to the OPPRC, in accordance with time period determined by the CEC rules. In cases where the political party, coalition or citizen's initiative fails to submit such list to the Office, the CEC may withdraw the decision for certification. The political party, coalition or citizen's initiative or coalition are entitled to appeal the CEC decision and file a complaint with the ECAP, within 5 working days from the day of receipt of the notification.¹⁹

The Office first reviews whether the list of candidates complies with the requirements provided for by Law and then, depending on the list, sends a written, positive or negative recommendation to the CEC, within 5 days from the day it has completed submission of lists. If the list does not meet the requirements, the Office along with the reasoning, gives a deadline of 5 working days to the political party, coalition or citizens' initiative to correct the list. Furthermore, the political entity, coalition or citizens' initiative have 3 working days to submit the revised list with the reasoning on the issues identified by the Office.

Oversight of Election Campaign Funding

Political entities, in order to carry out election campaigns and for their daily functioning must have financial means and support from the state²⁰, membership, candidates and supporters of the political entity. Upon the proposal of the Government, the Assembly shall allocate funds, but not exceeding 0.05% of Kosovo Budget, to finance the local and central elections campaigns related to regular or extraordinary elections. The Law on General Elections in Kosovo has given the Central Election Commission the possibility of determining the rule on the maximum campaign expenditure (ceilings) that political entities can make during the elections. The rule is published 5 days after the announcement of the Election Day.²¹ The maximum campaign expenditures based on the total number

¹⁸ Article 17, 18, 19 and 20 of the Law no. 03/L-073 on General Elections in the Republic of Kosovo, accessible at the official Gazette no. 31, published on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

¹⁹ Article 26 of the Law no. 03/L-073 on General Elections in the Republic of Kosovo, accessible at the official Gazette no. 31, published on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

²⁰ Article of the Law no. 03/L-174 on Financing Political Parties, as amended and supplemented by the Law no. 04/L-058 and 04/L-212, accessible at the Official Gazette of the Republic of Kosovo no. 30, published 23.08.2013 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>

²¹ Article 39 of the Law no. 03/L-073 on General Elections in the Republic of Kosovo, accessible at the official Gazette no. 31, published on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

of voters registered in the voters list. According to the LGE, maximum campaign expenditure shall apply to any goods and services purchased for campaign purposes regardless of the time of purchase or provision of service. While the Political Entity shall not accept a Contribution, except as regulated by the Law on Financing Political Parties.

For any expenditure made during the election campaign, the political entity must keep accurate records and then compile a financial report. This report should include all expenditures made by political entity (branches and other bodies of the entity). The report must cover the period of 45 days before the election and 45 days after the end of the elections campaign. The days are counted as calendar days.²² The Campaign Financial Disclosure Reports for the Political Entity shall be published in the respective media no later than six (6) months after the day of the election.

Each Campaign Financial Disclosure Report of every political entity shall include complete and accurate disclosure of:

- a) The Income of the Political Entity during the reporting period, including the source and date of all cash Contributions;
- b) All Expenditures, including Campaign Expenditures, made by the Entity during the reporting period; and
- c) A balance sheet showing the Assets, Liabilities and Equity of the Entity as of the first and last day of the reporting period.²³

Political entities are obliged to appoint financial officers, while the Office for Political Parties Registration and Certification (OPPRC) has a legal obligation to provide these officers with training session in accounting and auditing after his or her appointment. The law allows financial officials of a political entity to avoid this training if they prove that they possess sufficient expertise and experience that such training is not necessary to them.²⁴

After the political entities have submitted financial reports of

the campaign with the CEC, the Office (OPPRC) shall be entitled to perform control of each Campaign Financial Disclosure Reports for the Political Entity or the form of financial disclosure of the candidate and the party. Naturally, the control of each Campaign Financial Disclosure Reports for the Political Entity if performed by certified auditors in accordance with the accounting standards applicable in Kosovo. These auditors shall be elected by the Assembly of Kosovo through public tender procedures.²⁵ Published reports of the campaign of political entities after being published by the CEC may be reviewed by the Anti-Corruption Agency.

Prior to the legal amendments of 2013, the OPPRC was responsible for announcing the tender and finding the auditors, but in order to create greater independence, following the legal amendments made, the competencies have passed to the Assembly of Kosovo, through the Committee for Oversight of Public Finance.

If the political entity fails to submit the financial report of the campaign according to the LGE, then the CEC has the right to charge the political entity with administrative fees. This after the Office has notified the CEC of the failure of the political entity. The law allows a political entity to file an appeal against the decision of the CEC in administrative proceedings within the court. The political entity that loses the legal battle, with the decision of the CEC remaining in force, must make the payment and present the evidence to the Office (OPPRC).²⁶

OPPRC ensures that the financial reports of political entities are transparent to the public, by publishing them together with the annual financial reports on the website of CEC. According to the LGE, the Office is obliged to make public the register of donors, copies of campaign financial disclosure report, copies of certified candidates financial disclosure forms, and copies of final reports of certified candidates relating to audit.²⁷

In conclusion, political entities are closely linked to the Office (OPPRC) from the act of registration, certification, to continuous financial control and reporting on their revenues and expenditures.

²² Article 40 of the Law no. 03/L-073 on General Elections in the Republic of Kosovo, accessible at the official Gazette no. 31, published on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

²³ For all expenses of the political entity during the reporting period, the entity must submit receipts for each administrative fee paid. Furthermore, all these payments over 100 Euro the entity is obliged to save for up to 7 years together with the financial report and all other details including books holding accounts, banking services for all accounts, property documents, ownership or possession, contracts entered into for lease or purchase of movable or immovable property, all contributions to the subject regardless of when they were made. Contributions must be recorded and maintained in accordance with legal procedure. The registration of the contribution includes the receipt of personal data such as full name, address, ID or passport number of each contributor, the value of the contribution, the date of each contribution, and the name of the person who has accepted the contribution.

²⁴ Article 40,7 of the Law no. 03/L-073 on General Elections in the Republic of Kosovo, accessible at the official Gazette no. 31, published on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

²⁵ Article 19 of the Law no. 03/L-174 on Financing Political Parties, as amended and supplemented by the Law no. 04/L-058 and 04/L-212, accessible at the Official Gazette of the Republic of Kosovo no. 30, published 23.08.2013 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>

²⁶ Article 42 of Law No. 03/L-073 on General Elections accessible in the Official Gazette, number 31, announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

²⁷ Article 43 of Law No. 03/L-073 on General Elections accessible in the Official Gazette, number 31, announced on 15.06.2008 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>

Problems in financial oversight by the Office

The removal of the legal competencies that CEC had in terms of announcing the tender for auditing political entities' financial reports, and transferring them to the Assembly of Kosovo, has caused the appointment of auditors, and consequently the audit of the financial reports of political entities, to be constantly delayed.

From 2014 to 2017, the Assembly has consistently failed to select auditors through the Committee for Oversight of Public Finance. This has caused the financial reports of political entities not to be audited for 4 consecutive years (2013, 2014, 2015, and 2016) and to remain out of the public eye. The reasons for auditors not being selected from the Assembly are related to the insufficient funds allocated from the budget, namely the high bids of audit companies in the tender. Despite these problems, the audit budget has never increased.

KDI, in January 2017, through a request for access to public documents, had asked the Office and the CEC to provide access to unaudited financial reports of political entities, but the request was rejected by the Office. KDI had sent the case to the Ombudsperson, who, in January 2018, had given KDI the right to access the unaudited financial reports of political entities. However, the Office has not yet allowed access, on the grounds that the law prohibits such action. A few months later, the Office published the audited reports, since the Assembly, after 4 years, managed to select the auditors, so the audits were carried out for four years. After resolving this deadlock of several years, the Assembly did not select the auditors, therefore, the public was deprived of seeing the audited reports of political entities for the years 2018-2019, although both were election years (early general elections and local elections).²⁸

The public has not been able to see the financial reports of the political entities that have been submitted to the Office (OPPRC) in 2020 either, except for the financial reports of the early parliamentary elections of October 2019 when the CEC, through the Office, in December 2019, had decided to publish them as submitted by political entities within the prescribed legal deadline.²⁹

In analysing the reports, both audited and unaudited, it is noted that the financial statements submitted by political entities are deficient. Many political entities continue to fail in presenting realistic statements of revenues and expenditures they have made, especially during campaign times.

Based on the financial statements of political entities, they never exceed the limit (ceiling) of expenditures set by the CEC on expenditures during the election campaign which is 0.50 Euros per registered voter. These amounts conflict with the reports of the coalition on election observation "Democracy in Action", obtained from direct monitoring of campaign activities, which indicate an excess of expenditure amounts unlike the statements of the entities.³⁰

However, the Office or the CEC does not have a mechanism by which it would be able to control the expenditures incurred and what are the market prices so that comparisons can then be made between statement and reality. Such a mechanism would increase the capacity for control within the Office and independence of the Office from the CEC. But, in order to create such a mechanism, legal changes are needed, which depend on the political will of the political entities represented in the Assembly. Controlling and imposing fines on entities that exceed the limits would be a good opportunity to discipline political entities.

²⁸ List of audited financial statements: <http://kqz-ks.org/sherbime-per-subjektet-politike/raportet-vjetore-financiare-te-audituar/> and List of audited financial reports of election campaigns <http://kqz-ks.org/sherbime-per-subjektet-politike/raportet-financiare-te-fushatave-zgjedhore-te-audituar/>

²⁹ Their access to the website of CEC <http://kqz-ks.org/lajmet/kqz-publikon-dosjen-e-informimit-publik-per-subjektet-politike-dhe-kandidatet-e-zgjedhjeve-2019/>

³⁰ Election Observation Report 2019 (Kosovo Assembly Elections), December 2019, Page 33, Accessible at: https://demokracianeveprim.org/wp-content/uploads/2019/12/DnV_RAPOR-TI-I-V%C3%8BZHIMIT-T%C3%8B-ZGJEDHJEVE.pdf



Czech Republic and legal regulation of the financial supervision of political entities

The Office for the Oversight of Financing of Political Parties and Movements (*Úřad pro dohled nad hospodařením politických stran a politických hnutí* or „ÚDHPSH“ or the „Office“), commenced its activities on 1st of January 2017 by Act no. 302/2016 Coll., which amends Act No. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended (AAPP).

The establishing of the Office resulted from recommendations addressed to the Czech Republic from the Group of States against Corruption (GRECO) in 2011. The recommendations demanded specifically:

- a) requirement to include donations to parties in their financial reports and to make them public,
- b) requirement for consolidation of parties' accounts, and
- c) requirement for establishment of an independent office supervising economic activities of political parties and sanctioning potential misconduct.

The Czech Republic failed to comply with these requirements, therefore the non-compliance procedure was initiated by GRECO along with a great pressure on passing a law reform legislation to supervise economic activities of political parties.

Before the Office was founded, final financial reports of political parties and political movements³³ had had to be certified by an independent auditor of their own choice. Annual financial statements from previous year had to be reviewed by the Committee on Budgetary Control of Chamber of Deputies of Parliament³⁴ – Given the capacity and political composition of the Committee, there could not have been any impartial or independent control.

³³ Altogether referred to also as “political parties”. There are no legal distinctions between a party and a movement in the Czech legal system.

³⁴ Lower house of the Czech Parliament



Position of the Office within the framework of public administration and its composition

ÚDHPSH, located in Brno (second biggest town in the Czech Republic), is a central organ of public administration according to the Czech Competence Law. It is an independent institution bound only by laws and other legislation. Interference in the operation of the Office can be based solely on law³⁵. As a central organ of public administration, the Office creates its own category in the state budget of the Czech Republic.³⁶ For 2020 the budget amounts to CZK 34.444.691 (approx. 1,3M EUR).

The Office is composed of a president, four so-called members and other employees. The president possesses the authority to give orders to the employees and to approve organizational structure of the Office, operation schedule and annual activity report. One of the members chosen by the president acts on his behalf in case of president's absence.

The president is chosen out of two candidates – one proposed by the Chamber of Deputies, one by the Senate³⁷, and appointed by the president of the Czech Republic. The members of the Office are also appointed by the president of the Czech Republic. They are chosen by the Senate (upper chamber of Parliament):

- a) one based on the proposal of the president of the Supreme Audit Office,
- b) two of them from the candidates elected by the Chamber of Deputies and
- c) one from the candidates suggested by the individual members of the Senate.

The president of ÚDHPSH is appointed for a term of 6 years and can be appointed no more than twice in a row. The conditions required for the hold of the presidential function are following: state citizenship of the Czech Republic, full legal capacity, clean crime record³⁸, college master's degree and fulfilment of additional conditions provided by the Lustration Act³⁹. Moreover, the president must not perform any elected political functions within three years prior to his appointment, except from membership in a municipal assembly. A broad demand on incompatibility of the functions is also established⁴⁰, and the president thus must not hold another paid post or perform any gainful activity except from standard educational and publishing activities.

35 ÚDHPSH must follow laws, governmental decrees and regulation of other authorities. It is obliged to proceed by the rules of any piece of legislation, such as work safety, public health or waste management regulations and many others. However, the operation of the Office itself cannot be affected by any other piece of legislation but the law. The government and other authorities are not entitled to decide, how the Office fulfils its role of an oversight authority for financing of political parties. That is the key difference in comparison to ministries, which are directly managed by the government.

36 Financial framework is therefore dependant solely on the Act on the State Budget, which is annually passed by the Chamber of Deputies for each calendar year. During the year, it is not possible to adjust the framework.

37 Upper house of the Czech Parliament

38 In the sense of the AAPP: Someone's record is clean, when they have not been effectively found guilty for an intentional crime in any case or for a negligent crime linked to the public service.

39 Enacted for mass disqualification of those associated with the abuses under the Communist Regime before 1989

40 The president of ÚDHPSH is, at the same moment, not allowed to be president of the Czech Republic, member of a government, member of Parliament, member of European Parliament, judge, prosecutor, member of Czech Audit Office, member of Czech National Bank Council and is not allowed to hold any other function in the public service and be member of a political party.



Conditions required for members of the Office are comparable to those for the president. In contrast to the function of the president, members of the Office can be reappointed in their 6-year's term without limitations. Previous political activity is limited only to 2 years prior appointment.

The mandate of the president or members of the Office terminates at the end of the term of office or by resignation, dismissal, loss of clean record, legal capacity or state citizenship. The President of the Czech Republic shall dismiss the president or a member of the Office if they fail to comply with the given condition of state citizenship, of education, according to the Lustration Act, or if they assume an office or position incompatible with the function of a president or a member of the Office.

Total amount of designated administrative posts in ÚDHPSH, including the president and members of the Office (according to the 2018 annual report) equals 19. Ten of them are regulated by the Czech Civil Service Act, remaining nine are serving under the Labour Code⁴¹. On the basis of an organizational structure of the Office (approved by the president), employees are currently divided into two departments: Department of the President's Office and Department of Control and Administrative Procedures.

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⁴¹ The Act No. 234/2015 Coll., on Civil Service, as amended, professionalizes the civil service and formally secures stronger independence of officials. The standard labour-law relationships include the president and five members of the Office, which are appointed and dismissed by the special procedures given by the AAPP.





Supervision of the Office over financing of political parties

The main purpose of the Office is to perform supervision over the financing of political parties, movements and institutes⁴². The Office performs the supervision by examining annual financial re-ports of the political parties and by performing its own controls⁴³. Supervision is performed by the president, the members as well as by authorized employees.

Every year by 1st of April, all political parties must provide the Office with an annual financial report. The report contains: financial statement, audit report, itemized earnings statement (including shares in corporations, credits, loans and other debts), wage expenses, total expenses, individual election expenses, all received gifts, donations or other non-financial performance, all inherited assets, list of members whose annual membership fee exceeds CZK 50.000 and information about political institute, if established. Annual financial report is public. The Office publishes these mandatory annual financial reports, along with the findings of their control. The Office also informs Ministry of Finance of the Czech Republic about the performance of its duty to publish the report and about the out-come of the evaluation.

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⁴² Legal entities founded by political parties focused on research, education and/or publication.

⁴³ Furthermore, ÚDHPSH is entitled to punish for offences and publicizes an annual report. The AAPP enables ÚDHPSH to carry out any other task specified by a law.



Supervision of the Office over election campaigns

Except from the supervision over economic activities of political parties and movements, the Office also supervises and controls financing of the individual election campaigns before each given election.”

Importantly, an “election campaign” is defined as any advertising or canvassing for a candidate, including public declarations of support, as well as declarations disad-vantaging opponents proclaimed in the announced period before the E-day.

The authority over the election campaigns was given to the Office by the Act No. 322/216 Coll., Amending Elec-toral and Other Associated Acts, that came into force also on 1st of January 2017.⁴⁴Therefore, the Office supervises financing of election campaigns to the Chamber of Depu-ties⁴⁵, the Senate⁴⁶, regional assemblies⁴⁷, PEuropean Par-liament⁴⁸ and for the president⁴⁹.

Among fundamental obligations of each political party and each individual candidate are:

- a) opening and maintenance of a transparent election banking account,
- b) keeping the financial books and
- c) publishing a report on financing of a campaign with-in 90 days following the day of the official declara-tion of aggregate results of the election.

There are financial limits for expenses for every election under the supervision of the Office. The limits are estab-lished differently for each campaign by a corresponding legal act, according to the type of elections (see footnotes below; the sum always includes VAT).

Natural or legal person intending to participate in an elec-tion campaign without candidate’s knowledge must be registered by ÚDHPSH before joining the campaign (in legal terms: “registered third person”, abbreviated as RTP).

⁴⁴ The rules for election campaigns are incorporated in each corresponding electoral act of law. The rules are generally unified. Their divi-sion between different legal acts originates from Czech legislative technique, as rules for each election are stipulated in corresponding law.

⁴⁵ § 16 – 16i of the Act No. 247/1995 Coll., on Election to the Parliament of the Czech Republic, as amended financial limit for political party: CZK 90 million financial limit for RTP: CZK 1,8 million

⁴⁶ same provisions of the law as for the Chamber of Deputies financial limit for political party/candidate: CZK 2 million per candidate (CZK 2,5 million, if participating in 2nd round) financial limit for RTP: CZK 40.000 per each constituency (CZK 50.000 if 2nd round takes place)

⁴⁷ § 56a – 56g of the Act No. 130/2000 Coll., on Election to the Regional Assemblies, as amended financial limit for political party: CZK 7 million times number of regions, in which they run financial limit for RTP: CZK 140.000 times number of regions, where they campaign

⁴⁸ § 59 – 59f of the Act No. 62/2003 Coll., on Election to the European Parliament, as amended financial limit for political party: CZK 50 million financial limit for RTP: CZK 1 million

⁴⁹ § 35 – 38b of the Act No. 275/2012 Coll., on Election of the President, as amended financial limit for candidate: CZK 40 million (CZK 50 million, if participating in 2nd round) financial limit for RTP: CZK 800.000 (CZK 1 million if 2nd round takes place)

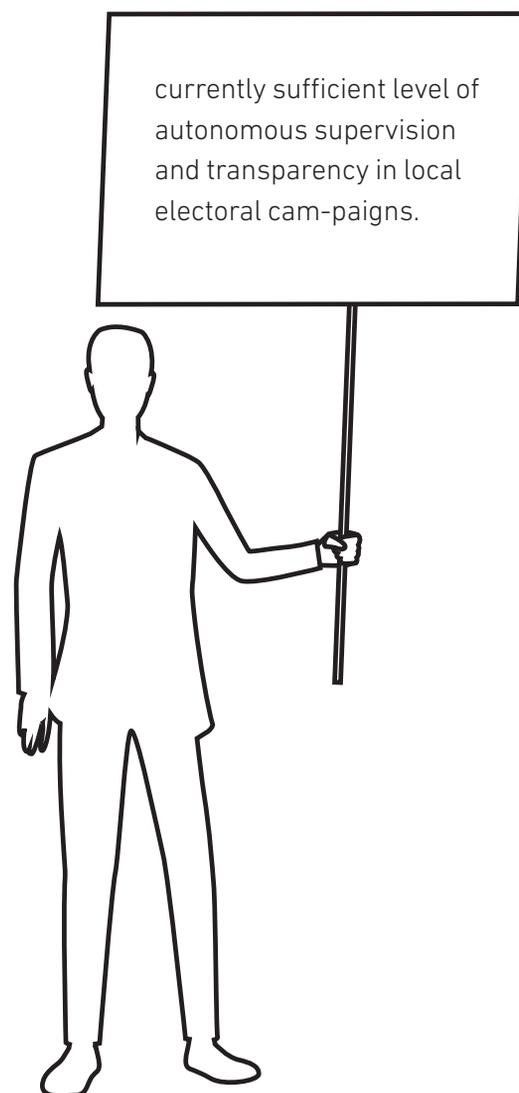
There are financial limits set for the registered third persons as well.

The Office supervises all election campaigns in the Czech Republic except for municipal elections. According to the explanatory memorandum to the Act No. 322/2016 Coll., the reason for excluding the supervision over municipal election were

- i) an excessive burden for impartial candidates and their associations,
- ii) discouraging effect of releasing detailed information on candidates (as there are problems in many municipalities with an insufficient interest in elected posts; political competition is then absent) and
- iii) currently sufficient level of autonomous supervision and transparency in local electoral campaigns.

When the law was being adopted, supervision at least over municipal election campaign in large cities or Prague was being considered. But an argument prevailed, that associations of impartial candidates have no legal capacity and therefore cannot keep the books and cannot be made effectively liable for breaking the law. And since these associations have still the civic right to campaign and ask to be voted, the regulation was generally in order not to avoid their right to run municipal campaign. It is worth noting, that on small municipalities level the impartial candidates are often relevant representatives of public interest and in some cases the parties have problem to establish their candidates on small municipalities level in the Czech Republic.

The enacted rules could be bypassed by moving the expenses of the campaign from one individual municipal district to another one. Nevertheless, the Prague municipal election in 2018 exposed that the absence of limits for financing such local election campaigns causes problems. The most powerful political movement ANO invested CZK 140.200.000,- into the election. It even exceeds the limit for general election to the Chamber of Deputies which amounts CZK 90.000.000.





Other competences of the Office

ÚDHPSH is entitled to sanction violations of the AAPP. In the most serious cases, breach of duties is punishable by a fine up to CZK 2.000.000,- The fine may be imposed onto political parties or political movements and institutes as well as on natural or legal persons if they e.g. do not mention the purpose of payment transaction in the payment order in cases of providing finances on party account.

According to the current proposal of the Act on Lobbying, which was approved by the government in 2019 and passed on for debate to the Chamber of Deputies, the Office should also supervise a new lobbying agenda. ÚDHPSH should be the administrator of a register of lobbyists and should supervise the fulfilment of duties resulting from the law. Committing an offence to the law (omission to announce lobbying or to deliver a report to the register) should be fined. Yet the proposal is still to be broadly debated and discussed by legislators (as of 2020).



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Actual operation of the Office until today

ÚDHPSH informs about its operation in its own annual reports.⁵⁰ As of the date of its establishment, Mr Vojtěch Weis was appointed as the president of the Office. All 4 members of the Office were appointed within next few months. In 2017 – first year of operation – the Office was build up inter-nally and vacancies were filled. The pivotal activity was preparing overview methodologies and in-forming political parties about their new duties. First proceedings were commenced in autumn 2017, because of tens of offences (not opening, maintaining or informing about the compulsory transparent bank accounts).

General election to the Chamber of Deputies took place in October 2017. ÚDHPSH controlled the election bank accounts, election materials and donors. Tens of offense proceedings were started. First offence proceedings related to the report on financing of the general parliamentary campaign were commenced in 2018.

At the end of 2017, the Office started to control the presidential campaign. The presidential election then took place in January 2018.

First annual financial reports of political parties for 2017 were evaluated (naturally) the following year. There were 235 political parties at that time. ÚDHPSH received 84 complete and 12 incomplete annual reports on time and 21 complete reports late. The rest of 118 parties were reminded of their obligation, 67 of which submitted the report after all. ÚDHPSH fined tens of political parties and in 17 cases it proposed dissolution of the parties. The Office of the Government is entitled to file a motion to the Supreme Administrative Court.

In 2018, the Office imposed 380 fines in total amount of CZK 2.388.200. The evaluation of reports related to the campaign for 2017 elections to the Chamber of Deputies was carried out too.

Regular election to one third of the Senate took place together with municipal elections (which do not fall within the scope of ÚDHPSH) in autumn 2018. One third of political parties did not submit the annual financial report for 2018. Therefore Office imposed over a hundred of fines in total amount of CZK 1.596.000 in this regard. The highest fines reached CZK 35.000.

But the first complex controls of expenses on the election campaign to the Chamber of Deputies from 2017 were commenced in March 2019. The Office chose to review 4 out of 9 successful parties (ČSSD, ODS, SPD and ANO) and 2 unsuccessful (Realisté and SPO) based on suspicions over disproportions between indicated and real expenses for the campaign. The populist party SPD was fined by CZK 250.000, which represents so far the highest fine imposed by ÚDHPSH, so far. According to the me-dia, other parties might be fined as well, but the final verdicts have not been issued yet.

In the beginning of 2020, the media reported on complex control of presidential elections, which took place in January 2018. No results have been made public yet.

⁵⁰ Available here <https://udhpsch.cz/dokumenty-uradu>



Detected problems in ÚDHPSH's organization

The legal independence of the Office is of a high level, given that it is classified as a central organ of public administration. The process of appointing the president and the members is distributed among several constitutional bodies (namely both chambers of the Parliament and the President of the Re-public). The president of the Office or the member can (and has to be) dismissed by the President of the Czech Republic only under objectively defined circumstances. The wording of AAPP act offers an interpretation that the President of the Czech Republic could dismiss the president of the Office based on his consideration. This interpretation should not prevail, but there have been certain at-tempts of such interpretation of the presidential competence in recent Czech legal practice. Loose formulation in the AAPP could potentially be misused as well.

The functioning of ÚDHPSH is problematic due to the vague legal grounds and unclear management structure. The law is not clear enough regarding the question of management authorizations of the members of the Office. According to the AAPP, only the president is entitled to give orders to the employees. The approved organization structure also states that the employees are subordinate to the president, but not to the members. Thus the main issue is the extent of member's authorities and how are they supposed to manage the oversight and control activities, when they have no power over the employees without cooperation of the president. As of 2020 there is not a satisfactory resolution.

ÚDHPSH is a rather small office in comparison to the ministries and other central organs of public administration. The Office points out in its annual report for 2018 that a low number of designated posts (employees and members) means that most of them cumulates more agendas, which brings higher demands on expertise of Office's human resources.

The president and all the members of ÚDHPSH were appointed in the beginning of 2017. The term of all these functionaries' mandates is 6 years and all of them are going to expire within 2 months at the beginning of 2023, which is a time of regular presidential election. This fact endangers the independence of the Office, because its whole leadership could be replaced at (just) one crucial moment.⁵¹

⁵¹ The temporary provisions of the Act No. 302/2016 Coll. do not deal with this issue. The function of the members could have begun gradually or the term of some members could have been shortened, so the functionaries would be replaced continuously.





Detected problems in ÚDHPSH's operation

From the Office's activity up to this date becomes apparent that the parties' reports on financing of election campaigns have poor quality and are too vague, which complicates the control function of the Office. However, ÚDHPSH has tools to estimate market prices of provided services, so it can confront the provided figures with its own estimated findings.

The complications for control of election campaigns are caused also by the fact that the elections to the Senate (Upper chamber of Parliament) always take place in concurrence with other elections. Then, it is necessary to distinguish, which expense is connected with which election (in order to control the limits).

Above all, there is neither financial limit for municipal campaigns nor authority of ÚDHPSH to over-see these campaigns, which can be misused by the political parties by effective transferring expenses spent on Senate campaign to the municipal elections, which cannot be controlled by any authority.

The practice shows that the Office penalizes fundamental misconducts in election campaigns with enormous delay. A complex scrutiny of expenses on election campaign to the Chamber of Deputies was commenced a year and a half later and the delay, which occurred in control of campaign for the presidential elections was even longer (still not finished as of 2020)! The impact of such late decision is lowered, because the political parties have competed in other elections in the meantime and thus no serious reputation damage is caused to the candidates who had broken the law some years ago.

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The fines imposed until now are also rather low compared to the financial limits on the campaign and real expenses. They aim on breaches of formal duties only, too. Although the final results of the re-view of presidential election campaigns have not been published yet, the finding of ÚDHPSH have been relativized by accused candidates.



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