



POLITICAL FINANCING IN KOSOVO:

**WHAT AFTER THE RECENT
LEGAL CHANGES?**



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LIST OF ABBREVIATIONS AND ACRONYMS

EU

European Union

ISA

International Standards on Auditing

Venice Commission

Venice Commission for Democracy through Law

CEC

Central Election Commission

SAA

Stabilisation and Association Agreement

ODIHR

OSCE Office for Democratic Institutions and Human Rights

OSCE

Organisation for Security and Cooperation in Europe

UNDP

United Nations Development Programme

ORFCPE / Office

Office for Registration, Certification and Financial Control of Political Entities





INTRODUCTION

The financing of political entities represents one of the most sensitive links of their operation. The method of funding, transparency and accountability relative to these finances are indicators of both the level of intra-party democracy and the democratic culture of a country. There is a broad consensus that the political entities finances, not least those funded by the public funds (as well), should be subject to the strict reporting and audit procedures. The adequate governance of this segment is a prerequisite for guaranteeing the financial transparency and accountability.

In the case of Kosovo, the Law on Financing Political Parties constitutes the most controversial law, which was brought for consideration in the Assembly and then withdrawn from the parliamentary procedures several times in recent years. This law has been supplemented and amended three times, while two other initiatives for its amendment have failed.

The new law, approved by the Assembly in August 2022, essentially addresses the issues raised in the opinion of the Venice Commission, as well as most of the recommendations of international institutions and local civil society organisations. However, some acute and problematic issues still remain outside the scope and legal governance, such as the finances of candidates of political entities, the expenses for “*online*” electoral campaigns, as well as the third-party campaigning.

The conclusion of the saga of supplementing and amending the legislation concerning the political financing in Kosovo constitutes a positive development and progress towards transparency and financial accountability of political entities. However, the applicability of this law in practice will be tested only after the main body that will control the finances of political entities - the Office for Registration, Certification and Financial Control of Political Entities (hereinafter: “Office”) - is consolidated and operationalised.





THE PATH TOWARDS LEGAL AMENDMENTS CONCERNING THE POLITICAL FINANCING

The Law on Financing Political Parties was approved for the first time in 2010. The then version of the law was basic, governing only the methods and conditions of financing, administration, supervision, transparency, reporting of expenses and income of political entities.

Although the law was the first step in long-term goals towards achieving full transparency in political financing, it had many substantive deficiencies. Oriented more towards the governance of the method, sources and forms of financing of political entities, the law had overshadowed the governance of equally important parts, such as financial control, or sanctions in case of violations. The law defined **public financing** as one of the forms of financing political entities, through the establishment of the Fund for Support of Political Parties, from which approximately four million euros will be allocated each year.¹

The control of the finances of political entities was initially left to the responsibility of the CEC. The legislators had taken care that the punitive provisions against political entities were minimal and modest, with the highest foreseen fine amounting to only 10 thousand euros. Paradoxically, this was equal to the amount a private company could donate annually to a political entity.

In 2012, the law was again subject to amendments, whereby fines against political entities were toughened. The highest fine that could be imposed on political entities was EUR 50,000. Also, the method of spending the funds of the Fund was determined.²

The main amendment in the legislation concerning the political financing took place in 2013. The then amendments had transferred the competence for the selection of auditors of financial reports of political entities to the Assembly of Kosovo, while the competences of the CEC were limited only to the publication of these reports. In fact, the reports were planned to be published once the audit is complete, which was usually not done in time.³ Although sanctions were further tightened, adequate control mechanisms were still lacking.⁴ The definition of 'contributions' was detailed - from the definition that contributions consist of cash and other material goods, to the definition that services, sale and offering of items below the market price also constitute a contribution. More importantly, the 2013 legal amendments had set limits on private companies offering donations to political entities, making it impossible for them to enter into contractual relationships with public institutions for three years following the donation. Likewise, the law obliged the political entities to have a single bank account to realise all financial income - through bank transactions.

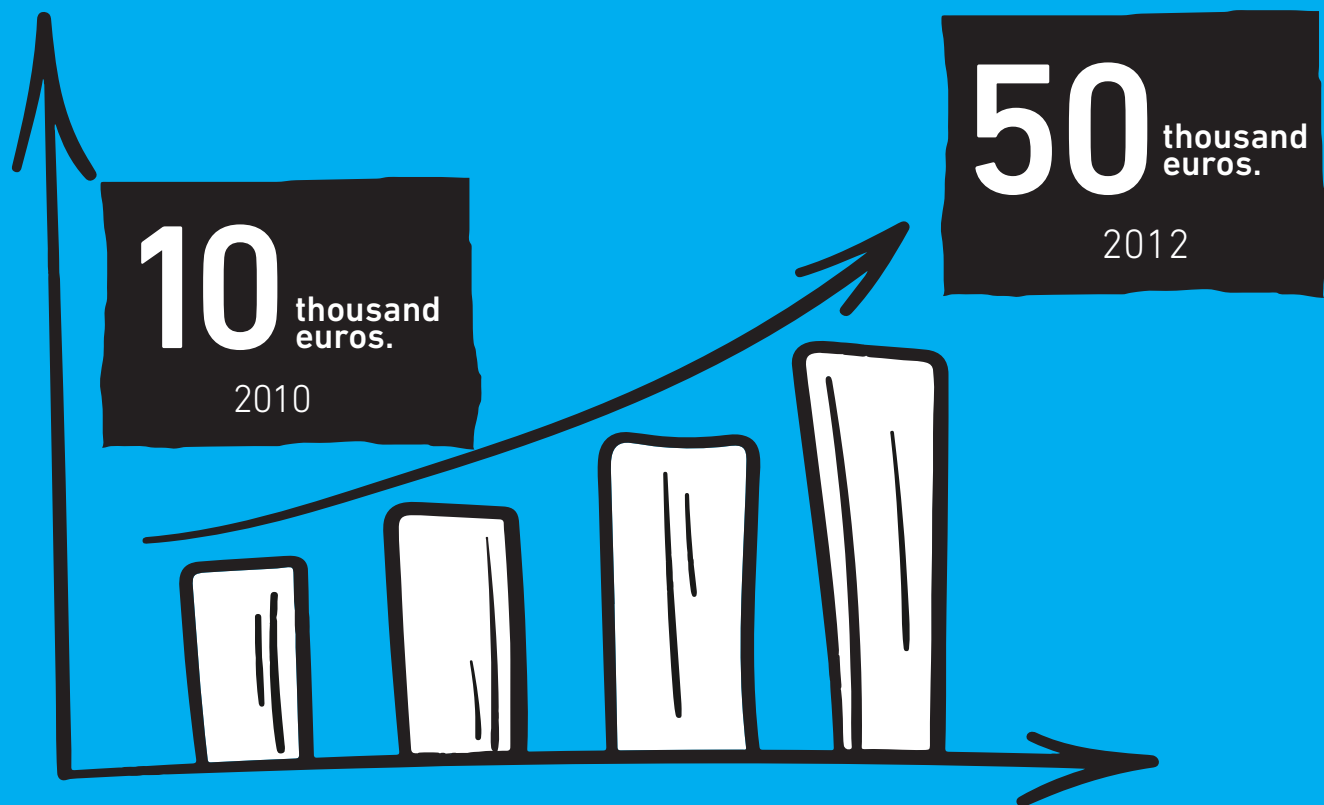
1 According to the existing law in force, the amount of budget funds dedicated to the Fund for Support of Political Party cannot exceed 0.34% of the Kosovo Budget.

2 Law No. 04/L-058 on Amending and Supplementing of the Law No. 03/L-174 on Financing Political Parties, 12 January 2012. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>

3 For instance, in case of annual reports of 2017, they were only audited in mid-2019. Supplementing

4 Law No. 04/L-212 on supplementing and amending the Law No. 03/L-174 on Financing Political Parties, supplemented and amended by Law No. 04/L-058, 23 August 2013. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2705>





Although the law prohibited direct donations to candidates, no adequate control mechanism was envisaged to enable the practical implementation of that provision. On the other hand, the CEC, namely the Office, had insufficient resources to identify irregularities related to the financial declaration of political entities, which was recorded in local and international election observation reports.⁵

Despite expectations that the amended law in 2013 would enable proper control of the finances of political entities, in practice, the law was so ineffective that even audit reports were no longer relevant, due to long delays in their publication. This happened due to the fact that the audit process was essentially left in the hands of political entities, i.e., the Assembly of Kosovo - composed of political parties - which was responsible for tendering, namely the selection of auditors of annual financial reports and those of the campaign. The procurement procedures of the Assembly for the selection of auditors had failed due to insufficient budget allocation.⁶ As a result, the delays of this process went up to three or four years. Even when the parties had to potentially be fined, prior formal approval of

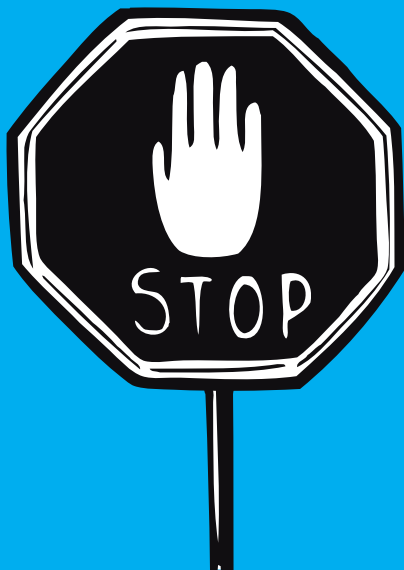
the CEC was required - where once again the representatives of the parliamentary parties were decision-makers. As a result of that situation, in the sixth legislature of the Assembly, the saga of amending the Law on Financing Political Parties began again. This was the request of international partners, especially the European Union, which had established this issue as an insurmountable element in Kosovo's European journey. The request was manifested through the European Commission Country Reports, SAA implementation plans, and others.

Concrete efforts for a new amendment of the law began in 2018. According to the initial amendments, it was envisaged that the competence for the selection of auditors would be returned to the Office within the CEC - which had been offered greater independence and additional resources; advancing reporting and auditing requirements; as well as more effective and proportionate sanctions. In order to further improve the legal framework and align it with international standards, the then Government led by former Prime Minister Ramush Haradinaj, had requested an opinion from the Venice Commission regarding the draft and the

⁵ EUEOM, Kosovo* 2019 Final Report – Early Legislative Elections, (Prishtina: EUEOM, 2019), page 26.

⁶ For more information, see: <https://kallxo.com/gjate/deja-vu-ne-tenderet-e-kuvendit-per-auditimin-kuletet-se-partive-politike/>





In order to oppose these unconstitutional interventions and to prevent their approval in the Assembly, over 100 civil society organisations organised the “Rejection March” to oppose the version of the draft law on financing political parties amended by the MPs, which was on the verge of final approval.

proposed amendments. The Venice Commission had given positive evaluations to the draft law proposed at that time.⁷

Despite the good work of the Government’s working group in drafting the draft law and the incorporation of the comments of the Venice Commission by the Government, when this draft law was submitted to the legislative procedure in the Assembly, it was subject to drastic negative changes, which undermined the very essence of the draft law. The draft law metamorphosed in the Assembly contained over 20 unconstitutional articles. In order to oppose these unconstitutional interventions and to prevent their approval in the Assembly, over 100 civil society organisations organised the “Rejection March” to oppose the version of the draft law on financing political parties amended by the MPs, which was on the verge of final approval. Due to the growing pressure of civil society and international factors, the then-former Prime Minister, Ramush Haradinaj, had decided to withdraw the draft law from the Assembly before its approval in the second reading of the session.

The draft law was returned again to the Assembly in the following legislature, in 2020, by former Prime Minister Avdullah Hoti. However, the draft law was not addressed due to the announcement of early elections.

The current government, led by Prime Minister Albin Kurti, once again proceeded to the Parliament the draft law to supplement and amend the Law on Financing Political Parties,

at the beginning of 2022. The draft law was drafted in cooperation with all relevant stakeholders, with the support of UNDP, the Westminster Foundation, the EU Office, the OSCE, as well as civil society organisations. The version of this draft law was aligned with the opinion of the Venice Commission, with the recommendations of civil society, as well as with other international reports and documents on the country.

After proceeding in the Assembly, initially, the draft law was not approved due to the lack of quorum⁸ – but also due to objections from PDK, the largest opposition party, which claimed that the draft law constituted a constitutional violation because it violated the collegial decision-making of the CEC. However, after numerous calls from all stakeholders, the MPs gave the draft law the “green light” in principle on March 16, 2022.⁹ This had opened the way for the proposal and examination of amendments by MPs and other parties. In an effort to preserve the content of the law and a kind of consensus that existed among the political entities, the parliamentary parties had informally agreed that there would be no substantial amendments to the law that would deviate from the opinion of the Venice Commission, as this would prolong the approval of the law. The procedure of reviewing the draft law in the committees had lasted less than a week. Thus, on August 4, the Assembly approved the law (with a total of 35 approved amendments – all technical ones). The law was decreed and announced by the President of the country, Vjosa Osmani, on August 22. The law entered into force on September 20.

⁷ Opinion No. 922/2018 of the European Commission for Democracy through Law (Venice Commission) on the Draft Law on Amending and Supplementing the Law No. 03/L-174 on the Financing of Political Entities (amended and supplemented by the Law No. 04/L-058 and Law No. 04/L-122) and the Law No. 003/L-073 on General Elections (amended and supplemented by the Law No. 03/L-256).

⁸ For more information, see: <https://www.gazetaexpress.com/desh-ton-miratimi-i-projektligjet-per-financimin-e-partive-politike/>

⁹ For more information, see the legislative procedure for the adoption of this law: <https://kuvendikosoves.org/eng/projektligjet-dhe-ligjet/draftlawopen/?draft-law=360>



INTERNATIONAL STANDARDS RELATED TO THE FINANCING OF POLITICAL ENTITIES

Numerous various international standards have been defined for the financing of political entities. This issue is related to the guaranteed right to freedom of association and organisation, defined by the International Covenant on Civil and Political Rights,¹⁰ as well as the freedom of expression, defined by the European Convention on Human Rights.¹¹ Furthermore, the United Nations Convention Against Corruption also establishes as a standard the obligation of states to advance transparency regarding the financing of political entities and candidates for public office, through laws and other administrative measures.¹² “The Guidelines of the Venice Commission on Political Party Regulation” are another very important document, whereby defining the main standards, definitions and guidelines that deal with the financing of political entities, including, among others, private and public funding, the limits of expenses, financing of individual candidates, regulation of expenses, as well as regulatory and monitoring bodies.¹³

Another document of particular importance regarding the issue of financing political entities is Recommendation Rec (2003)4 of the Committee of Ministers of the Council of Europe addressed to member states on common rules against corruption in the financing of political parties and electoral campaigns. This document defines the sources of funding for political entities, donations, rules for financing candidates, spending limits, transparency, supervision and sanctions - measures to prevent and fight corruption.

10 Article 22 of the International Covenant on Civil and Political Rights.

11 Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12 Article 7, paragraph 3, of the United Nations Convention against Corruption.

13 Chapter XII of the Guidelines on Political Party Regulation, by the OSCE/ODIHR and the Venice Commission.



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These standards and other principles were also highlighted during the review of the draft law for supplementing and amending the Law on Financing Political Parties in Kosovo, by the Venice Commission in 2018. The opinion of the Venice Commission had given a positive evaluation to the draft law. The opinion analysed the main elements of the law, including the determination of contribution, financial control, the publication of financial reports by political entities, as well as the mandate and powers of the Office, which were evaluated as significant improvements in this area.¹⁴

However, although the Venice Commission had positively evaluated the proposed changes and the initiative, it considers them only as an initial step towards an ideal objective of even more comprehensive reform in political financing. In this regard, the issue of financing candidates of political entities, although defined as an international standard and good practice, has not been addressed with the latest legal changes.

On the other hand, in recent years, until the adoption of the new law on financing political entities, Kosovo has been constantly criticised for inadequate monitoring of political entities, especially during election campaign periods. Such negative evaluations are given in the reports of the European Commission for Kosovo, but also in the local and international reports on the observation of the elections. Recommendations deriving from these reports included the need for an independent and effective mechanism to oversee the financing of political entities and their campaigns. The law essentially addresses most of the recommendations of this nature, although there is still room for improvement.

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¹⁴ Opinion No. 922/2018 of the European Commission for Democracy through Law (Venice Commission) on the Draft Law on Amending and Supplementing the Law No. 03/L-174 on the Financing of Political Entities (amended and supplemented by the Law No. 04/L-058 and Law No. 04/L-122) and the Law No. 003/L-073 on General Elections (amended and supplemented by the Law No. 03/L-256).





WHAT THE AMENDED LAW (DOES NOT) PROVIDES FOR?

The adoption of the new law that supplements and amends the legal framework concerning the financing of political entities should undoubtedly be seen as a very positive development in terms of increasing transparency and financial accountability of political entities. However, the substantial and immediate amendments to this law may produce some difficulties in its implementation. On the other hand, the recent amendments to the law have not included the issue of (self-) financing of candidates of political entities and their reporting, “online” campaigns, nor *third-party campaigning*.



NEW MANDATE OF THE OFFICE

According to the amendments to the Law on Financing Political Parties, the Office for Registration, Certification and Financial Control of Political Entities is guaranteed a greater functional independence and additional resources to discharge its legal powers in monitoring and financial control of political entities.

The independence of the Office is reflected primarily in the financial aspect. The Office will have and manage its own budget, which cannot be reallocated or changed by the CEC without the approval of the Office Director.¹⁵ However, since the law concerning the state budget recognises the CEC as a unique budget organisation, the budget of the Office is first

allocated to the CEC, namely the Secretariat, which is then obliged to allocate the necessary financial resources to the Office. To audit the finances of political entities, the Office will have an additional budget in the amount of not less than 5% of the Fund for Support of Political Party. Whereas a supplementary budget of no less than 3% of the Fund will be allocated to the Office for the audit of the financial reports of the election campaign during election cycles.¹⁶ Based on the current level of the Fund’s resources, during the election years, the Office is expected to have a budget of approximately 320 thousand euros only for the audit of the annual financial and campaign statements of political entities. Also, the Office, namely the Director, will have increased competencies with regards to the *ex-post* control of audit reports.

Also, the Office, namely the Director, will have increased powers regarding the *ex-post* control of audit reports. Unlike until now, the Director of the Office will not be elected or dismissed from the full (political) composition of the CEC. This competence now is vested on the panel composed of the Chairman of CEC and heads of four independent institutions: Anti-Corruption Agency, Ombudsperson Institution, Information and Privacy Agency, as well as the Office of the Auditor General.¹⁷ The procedure for the appointment of the director begins with the announcement of the public call, while the decision on the election of the Director will be made by a simple majority of the members of the recruiting panel. The Director’s term of office will be four years, with the possibility of re-appointment for another term. The Director of the Office will report directly to the Chairman of the CEC and not to the CEC as a collegial body.¹⁸

¹⁵ Articles 11.1/a and 11.1/d of the new Law on Financing Political Parties.

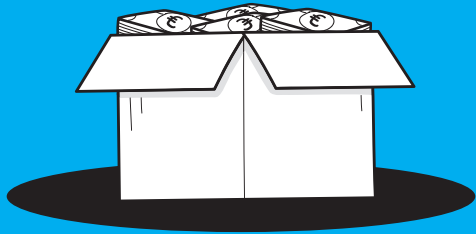
¹⁶ Article 11.1/c of the new Law on Financing Political Parties.

¹⁷ Article 11.2/b of the new Law on Financing Political Parties.

¹⁸ Article 11.2 of the new Law on Financing Political Parties.



320
thousand euros



Based on the current level of the Fund's resources, during the election years, the Office is expected to have a budget of approximately 320 thousand euros only for the audit of the annual financial and campaign statements of political entities. Also, the Office, namely the Director, will have increased competencies with regards to the ex-post control of audit reports.

Regarding the selection criteria of the Director of the Office, other than the standard and formal ones¹⁹, the criterion of eight years of professional experience is also included, of which five years must be in management positions. However, the law has not specified whether professional experience should be in a similar field.

On the other hand, premature termination of a Director's term may occur as a result of death, resignation, imprisonment for more than six months for any criminal offense and dismissal for poor performance. In order to increase the functional independence of the Office and to avoid cases of arbitrary dismissals of the Director, the law has defined the specific circumstances in which a decision on dismissal can be made by the Panel, following the proposal of the Chairman of the CEC. Initially, it has defined that the Director can be dismissed only as a last resort. Further, the specific circumstances for the Director's dismissal consist of non-compliance with legal requirements, disclosure of confidential or sensitive information, involvement in political or other illegal activities, misuse of position for personal gain, violation of Office and CEC policies, as well as any serious violation of the code of ethics.²⁰ In this regard, since the law does not provide for the design of any new Code of Conduct for the Office, the provisions of the Code of Conduct for the CEC staff will be applied.

The current law, based on one of the amendments approved in the Assembly, terminated the mandate of the then Director of the Office, who was recently elected. This was grounded on the provisions that the procedures for the election of the new Director, approved by a sub-legal act of the CEC²¹, must be completed within three months from the entry into force of the law.

The office is also guaranteed independence in decision-making, especially in relation to the imposition of fines on political entities. According to the previous legislation, the Office only had the right to propose the imposition of fines on political entities, while the decision to impose fines had to be taken by the CEC, as a collegial institution, practically composed of members appointed by political entities.

In terms of organisation, the human resources of the Office will increase. The staff of the Office will consist of at least ten professional employees, as opposed to the current staff of three people within the Office. This staff and existing assets will be transferred to the Office with the new mandate.²² Although the Office's organisational structure will be determined according to the Regulation on the Internal Organization and Systematization of Workplaces in the CECS, the law obliges the CEC to provide the Office with the necessary resources to discharge its legal powers. In this regard, the Office enjoys complete organisational and functional independence regarding staffing.²³

19 Citizenship, education and criminal record

20 Article 11.2/g of the new Law on General Elections, which is amended within the Law on Financing of Entities.

21 Regulation No. 01/2022 - For the Selection and Appointment Procedure of the Director of ORFCPE. Accessible at: https://kqz-ks.org/wp-content/uploads/2022/11/Rregullore_01-2022_al.pdf

22 Article 5 of the new Law on General elections, amended within the Law on Financing Political Parties.

23 Article 11.1/e of the new Law on Financing Political Parties.

According to the electoral rules and the Law on General Elections, the Office provides training for political entities, namely their financial officers, regarding the method of financial reporting, calculation and auditing. Financial officers of political entities are obliged to attend training unless they prove their sufficient expertise in this field.²⁴

POTENTIAL CHALLENGES IN IMPLEMENTATION

Although recent legal changes have provided the Office with independence, there is still an opportunity, at least a nominal one, for political interference. Initially, it was the CEC, as a collegial institution, that drafted the regulation which defines the details and procedures for the appointment of the new Director of the Office. On the other hand, the fact that the recruiting panel consists of leaders of independent institutions whom the Assembly of Kosovo elects can be interpreted as a possibility for them to be politically influential during the election of the director of the Office.

Although the human resources capacity of the Office is expected to triple, the recruitment rules applicable to the civil service will be applied to their recruitment. Based on the fact that the salaries for civil servants of this category are relatively low and non-competitive, there is a possibility that the Office will not be able to attract adequate staff and, therefore, will not be able to recruit qualitative staff. Also, there is no established standard regarding the Office's obligation to provide training for staff, especially new staff.

Regarding the internal functioning of the Office, the law stipulates that the Director is considered the Chief Administrative Officer. However, with other sectoral laws, it is clearly defined that institutions, such as the Secretariat of the CEC, to which the Office *de facto* belongs, can only have one Chief Administrative Officer. According to the context and the current legal framework, this position in the CEC is held by the Chief Executive Officer of the CEC Secretariat. This can potentially produce problems related to hierarchy in the management of public finances, especially internal financial control and cooperation with other institutions.

CEC, as a collegial institution, that drafted the regulation which defines the details and procedures for the appointment of the new Director of the Office.

On the other hand, the fact that the recruiting panel consists of leaders of independent institutions whom the Assembly of Kosovo elects can be interpreted as a possibility for them to be politically influential during the election of the director of the Office.



EXPANDED DEFINITION OF CONTRIBUTIONS

The law brings advancement in terms of the level of transparency that political entities should have in relation to their finances. In this regard, with the recent changes, the types of contributions that political entities can accept have been specified. The new definition of contributions includes financial and non-financial benefits of political entities, payments of their debts, other benefits and services provided to political entities below the real market value - which constitute innovations and essential elements to enable more effective financial control of political entities. According to the law, the same restrictions have remained on the donations that political entities are allowed to receive each year. Political entities cannot accept donations from a natural person over two thousand euros per calendar year. On the other hand, the limit of donations from natural persons has remained at 10,000 euros per calendar year.

Even concerning the reporting of donations, the law marks an advancement, obliging natural and legal persons to issue evidence of donations. Natural persons must issue

²⁴ Electoral Rule No. 12/2013 – Campaign Spending Limit and Financial Disclosure. Article 4, paragraph 5. Accessible at: <https://kqz-ks.org/wp-content/uploads/2018/01/KQZ-Rregulla-12-2013.pdf>

In the case of in-kind contributions, the natural and/or legal person must issue a statement of the purpose of the contribution indicating the market value of the good or service.

For non-fulfilment of these obligations, natural persons may be fined from one thousand to two thousand euros, while legal persons can be fined from five thousand to

**15
thousand euros.**

proof in the form of a statement for any donation of goods or services, including non-monetary contributions. On the other hand, legal entities must issue invoices specifying the market value of each product or service donated and the amount donated to the political entity. In the case of in-kind contributions, the natural and/or legal person must issue a statement of the purpose of the contribution indicating the market value of the good or service. For non-fulfilment of these obligations, natural persons may be fined from one thousand to two thousand euros, while legal persons can be fined from five thousand to 15 thousand euros.

Anonymous donations continue to be considered illegal under previous versions of the law. The law requires that every donation has detailed information about the contributor, regardless of whether it is a natural or legal person.

Although political entities are obliged to carry out all income and expenses through a single bank account, recent legal changes still enable the acceptance of donations in cash, in the maximum amount of 50 euros. Since political entities are obliged to have a single bank account through which all transactions are carried out, allowing contributions in cash is unnecessary and creates room for misuse and circulation of entity finances based on cash.



FINANCIAL CONTROL OF POLITICAL ENTITIES

With the latest legal changes, the responsibility for controlling the finances of political entities has been returned to the CEC, namely the Office, which will select the auditors of the annual financial reports and those of the election campaigns of political entities through an open public competition. However, this form of selection of auditors of financial reports of political entities by supervisory institutions is quite unusual in Europe - where supervisory institutions perform financial control of financial reports of political entities through internal capacities and resources.

The new legal framework did not foresee any radical changes regarding the financial reporting deadlines for political entities. Their annual financial statements must be submitted by March 1 of each subsequent year, while campaign finance reports are submitted up to 45 days after the election.

The audit procedures will be carried out according to International Standards on Auditing (ISA) and local legislation, per the determinations of the Kosovo Council for Financial Reporting. The Law provides that auditors can be natural persons or private companies. The criteria for the selection of auditors have generally remained the same. While after the selection, to increase the integrity of the process, the auditors were asked to sign a declaration that they have no conflict of interest or connection with any of the political en-



tities. The model of this declaration must be drawn up by the Office within three months from the entry into force of the new Law, as well as published on the CEC website and other accompanying documentation during the auditor selection process. The Office may initiate compliance verification in violations of auditors' declarations of conflict of interest or connection with a political entity, based on anonymous or other complaints submitted, information provided by a public institution or by decision of the Director of the Office.

The auditors will continue to be appointed by a draw, for auditing the financial statements of political entities. However, the Law no longer foresees a ban on auditing the financial reports of a political entity twice in a row by the same auditor.

Political entities are obliged to cooperate with the auditors and provide them with access to any data, financial register or related register within a period not longer than 15 working days following the request. In potential cases of non-fulfilment of this obligation by political entities, the latter are deprived of the right to benefit from the Fund for Support of Political Parties for the following year - as a financial sanctioning mechanism.

According to the Law, the entire process of auditing annual financial reports must be completed by June 15 of the following year, which is a relatively sufficient period for conducting the audit, including the eventual procedures of challenging, supplementing or correcting the auditors' findings.

Legal changes have finally addressed the dilemma of whether unaudited financial reports should be published by the CEC. The Office is already legally obliged to publish the annual financial statements on the CEC website by June 30, while the final audit reports should be published within 15 days of their receipt,²⁵ however, as a process, it is expected to be completed by June 15 of the following year at the latest. In addition, key deadlines are clearly specified. On the other hand, the financial reports of the election campaign of political entities must be published by the Office, no later than forty-five days after the election day.

The practice of submitting audit reports to law enforcement institutions and agencies, including the Office of State Pros-

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ecutor, the Anti-Corruption Agency, the Financial Intelligence Unit and the Tax Administration of Kosovo, is codified in the Law. The reports are expected to be submitted to these institutions or agencies only when suspicions of irregularities fall under the competence of these institutions.²⁶

POTENTIAL CHALLENGES IN IMPLEMENTATION

International standards and good practices determine the need to publish financial reports on the day of their receipt by the institutions responsible for financial control (in the case of Kosovo, the Office within the CEC), not linking them to the completion of the audit process.²⁷ Although the Law has specified the maximum deadlines for the development of the audit procedures of the annual financial reports as well as those of the publication, there is a gap of about four months from the moment of submission until the publication of the annual financial statements of the political entities. Although the Law can be interpreted in the spirit of publishing reports 15 days after their receipt, there is ambiguity and there are no specific provisions that define the obligation of immediate publication of reports.

²⁵ Article 19, paragraph 16 of the new Law on Financing Political Parties.

²⁶ Article 19, paragraph 17 of the new Law on Financing Political Parties.

²⁷ Compilation of Venice Commission Opinions and Reports Concerning Political Parties. P. 54. Accessible at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)016rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)016rev-e)

Fines of one thousand to three thousand euros are foreseen for the responsible persons of political entities in cases where it is proven that the violations committed by the political entity occurred due to their action or inaction.

However, the fines range from one thousand to 10 thousand euros for mayoral and independent candidates.

10 thousand euros



SANCTIONS

The Office for Registration, Certification and Financial Control of Political Entities will be the final instance for imposing financial sanctions in case of violations of the Law, without prejudice to the implementation of any criminal or other sanctions by the responsible institutions. The decisions of the Office will no longer need to be formally approved by the CEC.

Political entities and their officials have been granted the right to appeal against decisions on the imposition of fines or other sanctions, in the basic court, within five days from the decision on the said sanction.

However, the latest changes mark a severe regression regarding the level of financial sanctions that can be imposed in case of violations. The Law provides for a wide range of fines varying from four thousand to 40 thousand euros, but without specifying in which cases which fine is imposed. This is left to the discretion of the Office, namely the Director, depending on the gravity and type of violation. Fines may be imposed for violations related to the manner in which funds are used, bank statements, donations, non-compliance with reporting and publication deadlines, or failure to provide adequate access for auditing by auditors.

In addition to political entities, fines are also foreseen for their other actors, including responsible party officials, candidates for mayors and independent candidates. Fines of

one thousand to three thousand euros are foreseen for the responsible persons of political entities in cases where it is proven that the violations committed by the political entity occurred due to their action or inaction. However, the fines range from one thousand to 10 thousand euros for mayoral and independent candidates. On the other hand, the Law foresees the possibility of imposing fines for natural persons (1,000 to 2,000 euros) or legal persons (5,000 to 15,000 euros) in cases of non-fulfilment of obligations related to contributions. However, the Law does not determine fines or other sanctions for candidates of political entities, including candidates for MPs or candidates for municipal assemblies, in case they act in violation of the legal provisions.

POTENTIAL CHALLENGES IN IMPLEMENTATION

The range of fines and the Director's discretion in imposing them will be very wide. In the absence of a strict definition, this will potentially pose a challenge, as it may result in problems due to the imposition of fines of different amounts for violations of the same or similar nature. The fines as such, also based on the opinion of the Venice Commission, could be even higher and stricter, ultimately bringing about a more pronounced financial discipline of the political entities and the avoidance of violations.



Setting a maximum amount of fines in the amount of only

40,000
euros

can damage the essence and importance of the fines, especially in cases of violations that include illegal acceptance of contributions in values many times greater than the fines themselves.

In terms of financial sanctions, the removal of provisions concerning the confiscation and the fine amount in the multiple values (double or triple) of contributions or other violations, which were part of the previous law, will also cause problems. Setting a maximum amount of fines in the amount of only 40,000 euros can damage the essence and importance of the fines, especially in cases of violations that include illegal acceptance of contributions in values many times greater than the fines themselves.

As for legal responsibility, the Law includes the head of the political entity, together with authorised representatives, members of the political entity, as well as other individuals acting on behalf of the entity, within the group of persons who are held legally accountable in cases of violations of the Law. Likewise, all relevant officials of political entities will be legally responsible for their omissions, including the accuracy of data submitted to the CEC.



TRANSPARENCY AND ACCOUNTABILITY

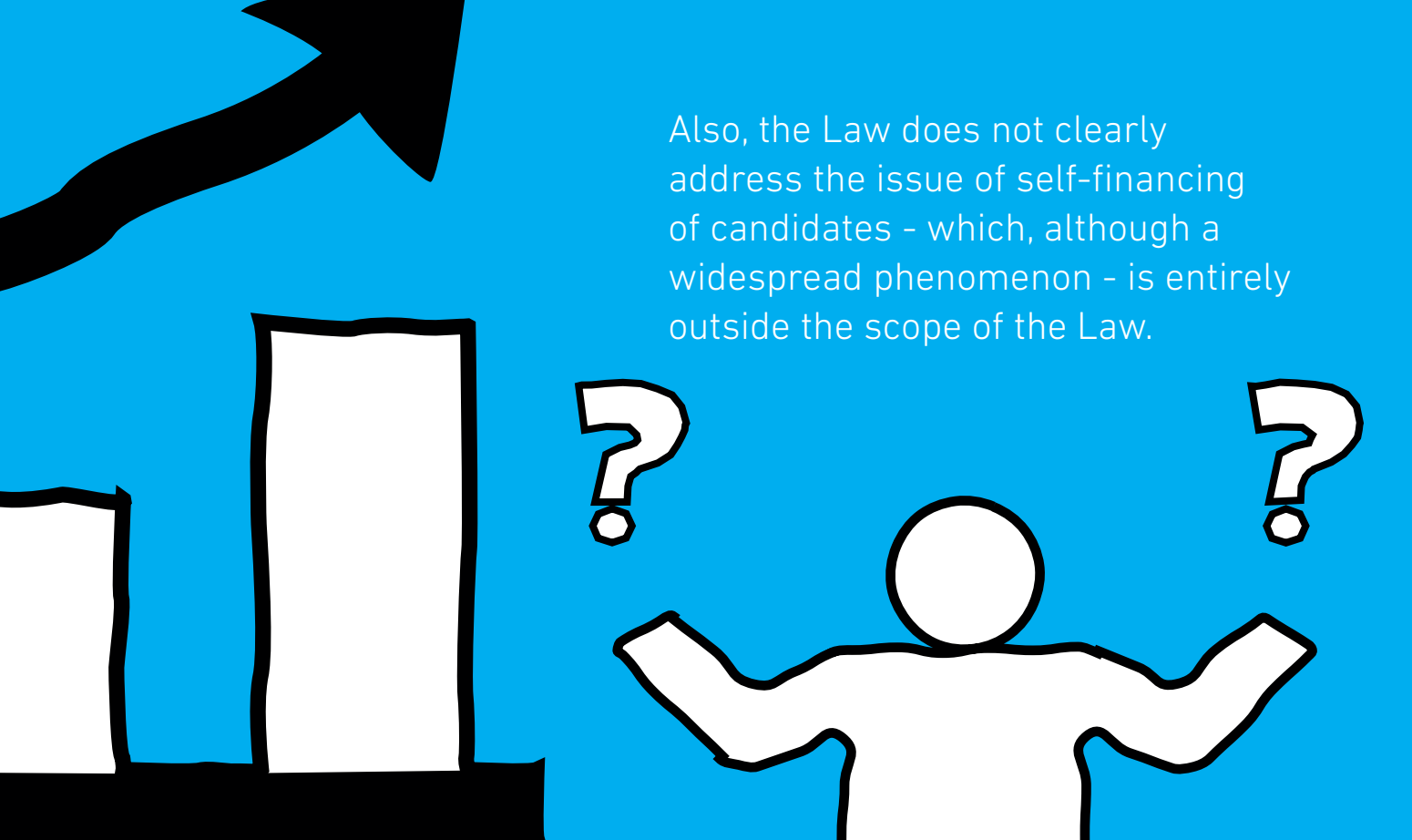
According to the new Law, parliamentary political entities must have functional websites where the list of donors and all expenses for their activities are published every quarter. Political entities are also instructed to keep annual financial and campaign reports published on their websites for at least three years. During election campaigns, political entities must publish the list of donors for the campaign period. However, the fact that these provisions apply only to parliamentary entities, but not to political entities that have won mandates at the local government level, is problematic.



CANDIDATE FINANCES

Highly important issues for the transparency and financial accountability of political entities, which have nevertheless not been included in the framework of recent legal changes, are the financing and self-financing of candidates - including candidates for MPs and those for municipal assemblies. Although many of the candidates repeatedly declare that they have spent large sums on financing their campaigns, none of them have been included in the annual financial reports or the financial reports of the campaign of political entities. This issue has also been raised by the EU Election Observation Mission for the 2021 local elections, which has emphasised that candidate expenses, although significant,





Also, the Law does not clearly address the issue of self-financing of candidates - which, although a widespread phenomenon - is entirely outside the scope of the Law.

are not reported separately as expenses, nor are they included in the financial reports of political entities.²⁸

The Law does not explicitly define the control of the finances of candidates of political entities during the campaign, but on the other hand, it prohibits the direct acceptance of donations for the candidate. In this regard, the responsible institutions have never dealt with the candidates' public declarations about the large sums spent by them on the campaign, including in-kind contributions.

Also, the Law does not clearly address the issue of self-financing of candidates - which, although a widespread phenomenon - is entirely outside the scope of the Law. Therefore, in the absence of control mechanisms or sanctions for candidates who do not comply with the Law, the Office will have difficulties effectively supervising the finances of thousands of candidates of political entities in the elections.



DIGITAL CAMPAIGNS AND THIRD-PARTY CAMPAIGNING

'Online' campaigns in social networks are not clearly normatively regulated. However, this type of campaigning has had a lot of focus, especially in recent local elections²⁹. The lack of legal regulation of this campaign has allowed political entities or other parties to act without monitoring or sanction.

In addition, third-party campaigning is left out of the legal scope, although this form of campaigning is increasingly appearing in Kosovo. In the last local elections of 2021 alone, international observers found that approximately one-third of campaign ads circulating on Facebook and Instagram before the second round of mayoral elections were sponsored by third parties.³⁰

28 European Union Election Observation Mission in Kosovo 2021 - Municipal Elections 17 October - 14 November 2021. P. 20. Accessible at: https://www.eeas.europa.eu/eom-kosovo-2021/eu-eom-kosovo-2021-municipal-elections-final-report_en?s=4371&page_lang=sq

29 "Democracy in Action", Report on the 2021 Local Elections Campaign (Prishtina: DnV, 2021), P. 14.

30 European Union Election Observation Mission in Kosovo 2021 - Municipal Elections 17 October - 14 November 2021. P. 21. Accessible at: https://www.eeas.europa.eu/eom-kosovo-2021/eu-eom-kosovo-2021-municipal-elections-final-report_en?s=4371&page_lang=sq

RECOMMENDATIONS

- 1 Remaining issues related to the financing of political entities should be included in the electoral reform:** In the framework of the current initiative to reform the electoral system in the Assembly of Kosovo, other changes in the legislation on financing should be included, including (self) financing of candidates, digital campaigns and third-party campaigns;
- 2 Political entities should have fully transparent bank accounts:** To advance transparency, the changes should include mandatory provisions so that political entities keep their bank accounts transparent (online) during the campaign period. According to the models of various EU countries, in particular, the Czech Republic, the existence of several bank accounts can be foreseen: one for the campaign period, one for donations, one for public financing and others.
- 3 The types of sanctions/fines for financial violations of political entities should be categorised:** the CEC, in cooperation with the Office, should adopt a new electoral rule regarding financing political entities and sanctions. The regulation must clearly define the types and amounts of fines that the Office can impose, as well as the types of violations for which they are imposed;
- 4 The conflicts in competences between the Director of the Office and the Chief Executive Officer of the Secretariat should be clarified:** the CEC should, in cooperation with the executive, clarify the exercise of the competences of the Chief Administrative Officer from two positions within the CEC. The Director of the Office, according to the spirit of the Law, should enjoy complete autonomy in the drafting of budget requests, allocation of funds, recruitment of personnel, financial reporting and the like;
- 5 The Office's organisational structure should be adopted according to its actual needs:** When determining the Office's organisational structure through the regulation, the CEC must take into account the actual needs of the Office for human capacities, as well as guarantee the functional independence of the Office.

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