



## Legislative Solution to Prevent the Interference of Foreign Financing in the Electoral Campaign and their Destabilizing Effects

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### Abstract

The Albanian legislation, the Electoral Code and the Law for political parties, prohibit the financing of the election campaign by foreign governments, institutions and/or public or private entities, for political parties and their candidates. Among the effects that such financing can cause, the main ones are: (i) misgovernance and the promotion of destabilizing situations in the country, (ii) the promotion and generation of destabilizing situations in the Balkan region. For well-known geostrategic reasons, the countries of the Western Balkans, including Albania, are really exposed to the interference of foreign funding in election campaigns. This situation conditions the need for further adjustments in the legislation with the following objectives: (i) preventing the interference of foreign financing in the election campaign (ii) strengthening the sanctions (ii) treating this legal violation as a serious criminal offense that must be included in SPAK jurisdiction. Among the issues that should be treated with priority are also the necessary legal regulations through which must be prevent the use of social media and portals as channels for the realization of the objectives aimed at by foreign fundings. Together with these changes, support for strengthen of the capacities of law enforcement institutions for tracking, identifying and punishing violations of the law that prohibits the financing of the election campaign of political parties and their candidates with foreign fund is necessary.

**Keywords:** Electoral campaign, foreing funds, legislation

### 1. Introduction

The political parties financing is one of the important issues that is dealt with in the legislation of countries that are governed in a multi-party system. In these countries, political parties are citizens' voluntary associations, which have as their main objective the acquisition of power for the governance of the country at the central and/or local level. In representative democracies, political parties are the most important institutions to which citizens, through voting, delegate their will to build institutions that govern their affairs and interests. This mode of action of democracy requires for political parties to be built and operate based on the rules and principles that arise from the need for a good and democratic governance of the country and the society. Among these, the rules for financing political parties are very important (<https://aceproject.org/>; Ingrid van Biezen (2003; Borzea, (2020). These rules are an important part of the legislation that deals with issues of organization and development of political parties.

According to Ware (1996) political parties are voluntary social organizations with common programs and goals, the aim of which is to acquire state power, to preserve or participate in state power. In representative democracies, political parties are the most important institutions to which citizens, through voting, delegate their will to build institutions that govern their affairs and interests. This mode of action of democracy requires for political parties to be built and operate

based on the rules and principles, an important part of which are the rules for their financing. In CDL-AD (2002) 23 "Code of good practice in electoral matters" and in CDL-AD (2009)021 "Code of good practice in the field of political parties", Venice Commission, it is emphasized that:

"Political parties need appropriate funding to fulfil their core functions, both during and between election periods." and "the regulation of political party funding is essential to guarantee parties' independence from undue influence of private donors, as well as state and public bodies."

The OECD (2016) emphasis that "Finance is a necessary component of the democratic process. It enables the expression of political support, and competition in elections. However, money may be a means for powerful narrow interests to exercise undue influence, resulting in inadequate policies that go against the public interest

According to Scarrow (2004), political finance is one of the most problematic regulatory areas of democracies, because it is connected to the aim of guaranteeing a certain minimum level of political equality in a context where wealth is unequally distributed. Pinto-Duschinsky, (2002), emphasis that the appropriate way of financing the electoral campaigns has been a controversial debate for over a long period of time..

Ingrid van Biezen (2003) stated that the

"Legal framework of party financing" includes, where applicable, constitutional provisions, laws on political parties and laws on the financing of political parties and election campaigns as passed by the legislator and all other laws that impact on the financing of political parties"<sup>1</sup>

The treatment of issues related to the financing of political parties and in particular the financing of electoral campaigns with foreign funds is one of the legislative issues of special interest in EU countries. The phenomenon of interference of foreign funding in elections in EU countries is present. Meanwhile, it should be noted that

More than half of all EU member states do not have any restrictions or allow foreign donations in specific circumstances (e.g. under a certain threshold or for selected foreign actors). This lack of strict regulations allows foreign money to flow into political campaigns in a large number of EU member states. Consequently, the disparate and sometimes lax regulations on the national level represent a major vulnerability on the European level<sup>2</sup>.

Assessing the undesirable effect caused by foreign financing in the national policies of the EU member states -se, Herzog, (2020) emphasizes that:

The EU has to promote cooperation between its member states and European institutions to develop a common guideline and a minimum standard on transparency of party and election financing.

The same considerations regarding the need for the treatment in legislation of foreign financing for the election campaign, with the aim of preventing the negative effects that this financing generates, are also published by researchers in the USA. According to Powell J. K (2014), in *The Language of 2 U.S.C. § 441e*, emphasis that:

It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national<sup>3</sup>.

Elena & Shein (2020) emphasis that

The corruption problem that threatens democracy is more vast than illicit finance in elections, but this is often the gateway to more pervasive political corruption. The consent of the governed-established through credible elections-is the foundation of democracy. If elections are merely a currency to manipulate at will, this foundation collapses. It is unsurprising then that political corruption fuels foreign malign influence and the entrenchment of autocrats.

The negative effects of the financing of the election campaign by foreign governments, foreign private or public entities appear especially through the impact they have on the foreign policy and in the governance of the country. Such financing exposes the country to the increased risk of economic and political corruption and, therefore, increases the possibilities for economic and political destabilization.

Albania is a country with new experiences in terms of democracy and the rule of law. The changes in the political system that occurred at the beginning of the 90s confronted this country with the challenges of building a pluralistic system, which is achieved through the realization of democratic elections. Political parties, as well as the main

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1 *Financing political parties and election campaigns – guidelines.* [https://eos.cartercenter.org/uploads/document\\_file/path/309/Financing\\_Political\\_Parties\\_en.pdf](https://eos.cartercenter.org/uploads/document_file/path/309/Financing_Political_Parties_en.pdf)

2 Herzog, L. (2020) *Foreign funding for political parties: why should we care?*

<https://polis180.org/polisblog/2020/01/29/foreign-funding-for-political-parties-why-should-we-care/>

3 Donna M. Ballman, *Political Campaign Contributions by Foreign Nationals in Florida Elections*, 65 *FLA. B. J.* 31, 32 (1991) (summarizing the provisions of 2 U.S.C. § 441e).

participants in the elections, use significant financial resources to achieve their objectives. As it was emphasized above, such resources are always exposed to the risk of the interference of unidentified funds. In particular, financing from foreign governments, donors and foreign public or private entities are among the financings that are associated with negative effects on the governance of the country. In countries like Albania, where institutional capacities, culture and behavior towards the requirements of the rule of law, as well as the capacities and legislative preventive and penal solutions are insufficient, foreign financing is a factor with great risk for corruption and political instability. Such a risk is also related to the opportunities that these donations generate for interfering in foreign government politics, based on geopolitical interests, that are present in the Western Balkans region. These circumstances increase the need for strengthening the legislation related to the financing of the election campaign and a comprehensive commitment for its implementation.

In this paper, the solution defined in the Albanian legislation for the financing of political parties and their election campaigns with foreign funds is analyzed and considerations are given regarding the instruments and paths that can be followed for their effective implementation.

### *1.1 Albanian legislation related to foreign financing of political parties*

In Albania, the issues related to the financing of political parties and their electoral campaign are dealt with in Law no. 8580, dated 17.2.2000 "On Political Parties" and Law No. 10 019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended.

Article No. 21, Law no. 8580, dated 17.2.2000 "On Political Parties" amended, stresses out that "Financial assistance and materials from foreign public or private entities and from foreign governments is prohibited. Gifts and assistance that come from a party or international union of parties, from political foundations and organizations, Albanian and foreign, and from individuals who are Albanian private natural person and legal entities is permitted".

According to the Electoral Code, Law No. 10019, dated 29.12.2008 and amended by Laws No.74/2012, dated 19.07.2012, No. 31/2015, dated 02.04.2015, No. 101/2020, dated 23.7.2020, and No. 118/2020, dated 5.10.2020, the electoral subjects and their candidates may receive funds for the purposes of their electoral campaigns only from domestic natural or legal persons. For the purposes of Electoral code, an Albanian citizen who resides outside the territory of the Republic of Albania shall also be considered a domestic natural person". The law allows only

"... gifts and assistance coming from parties or international associations of parties, from local and foreign political organizations and foundations, as well as from individuals, private natural person and legal entities".

The Electoral Code of the Republic of Albania, Article 92/1 reiterates that for the needs of the election campaign "Electoral subjects and their candidates can receive funds only from local natural person or legal entities".

In the Albanian legislation, the violation of the legislation on the financing of political parties and their election campaigns is treated as an administrative misdemeanor, punishable by a fine. In the case when a political party or its candidate accepts and uses funding from foreign sources, the legislation does not deal with it in a clear and special way.

In some countries of the Balkans, such as Turkey, Romania, Greece, Bulgaria, Serbia, Slovenia, the identification, tracking, investigation and judgment of cases of acceptance and use of foreign funds is treated as a criminal offense. In the Albanian legislation, the reaction that the institutions should have in the event that political parties/their candidates violate the provision that prohibits the receipt and use of foreign funds is not dealt with exhaustively.

### *1.2 Possible ways to strengthen the bans for foreign financing for election campaigns and their implementation*

Albania, as a country in the Western Balkans and as a country with little experience in the exercise of democracy, is exposed to interference in the financing of political parties by foreign governments and foreign physical and legal entities that have economic and geopolitical interests in this region. Such financings are the factors that significantly affect the growth of economic and political corruption in the country and, therefore, its destabilization. This makes the commitment to prevent the financing of political parties with funds coming from foreign governments one of the most important, current, challenges for Albania. In order to realize the objectives in facing this challenge, it is necessary to plan and implement complex actions, which should aim at the development of capacities in two main directions:

(i) Drafting of an effective legal framework for the prevention, identification and punishment of financing of political parties and their election campaigns by foreign governments and by foreign physical and legal entities

Referring to the current legal framework, it can be affirmed that, in the Albanian legislation, the issues related to the financing of political parties and their election campaigns with funds from the government, foreign physical or legal

entities are treated in the same way as the treatment done for financing with private funds from Albanian donors who do not declare the source of the funds they donate. The legal treatment of these two possible sources of illegal financing does not take into account the important differences that these two sources of financing have in their negative effects on the governance of the country, the stability of the country and the region and in geopolitical developments.

The current legislation considers the foreign financing for political parties to be a serious problem, and classifying them as illegal financing. But that is not enough. It is necessary that the legislation, in addition to this classification, also deals with and gives solutions to the issues related to the ways and instruments that should be used to track and identify the cases of these financings. In the legislation, the issue of sanctions that should be applied to law breakers should be dealt with in a special way. Such violations must be classified in the Criminal Code of the Republic, clearly and without leaving any room for interpretation, as serious criminal offenses. In addition, the Electoral Code of the Republic should provide for the administrative sanction, the removal of the mandate obtained by the electoral subject who has committed this criminal act.

Among the ways and instruments that are currently being used more and more to influence elections are social media and portals. Their activation in favor of an electoral subject or candidate has every possibility to be realized by using, for this purpose, the support that can be offered by foreign governments, legal or private entities. Our legislation does not deal with this case. In these conditions, the elections and the product obtained from them are really exposed to this influence, with effects almost the same as those brought by monetary financing of political parties and their election campaigns by foreign governments. Addressing the issues related to this phenomenon, the use of social media and portals that are financed by foreign funds, during the election campaign, with the objective of preventing it, is an actual need.

(ii) Building institutional capacities for tracking, identifying and punishing the financing of political parties and their election campaigns by foreign governments and by foreign physical and legal entities.

The Electoral Code of the Republic of Albania charges the Central Election Commission with the task of monitoring and auditing the financing of political parties and their election campaigns. Considering the fact that financing with funds from foreign governments and/or from foreign physical or legal entities, as a rule, is a process that takes place in a complicated way and with sophisticated instruments, the possibility of this institution to track and identify such cases are practically zero. Therefore, it is necessary that in order to make this possible, the legal framework foresees the inclusion in these processes of the tracking and identification of law enforcement institutions, including the State Information Service (SHISH).

In order to increase the transparency of the funding sources of political parties and the election campaign, the legislation should provide that, in addition to the CEC, political parties should also report to other institutions, to the anti-corruption structures and the Directorate of Taxation. The establishment of the Office for monitoring and auditing the finances of political parties and the election campaign, as a constituent structure of the CEC, for which a dedicated budget can be planned, is one of the solutions that will serve to increase the transparency of the financing of political parties

## **2. Conclusions**

The financing of political parties and election campaigns by governments, foreign private physical or legal entities is a factor that generates economic and political destabilization, especially in countries that have insufficient capacities in the exercise of democracy and are located in regions of increased geopolitical interest.

Albanian legislation prohibits the financing of political parties and election campaigns by foreign governments and/or by foreign natural and legal persons, except in the case when this financing is done by parties or international associations of parties, by foreign political organizations and foundations.

Avoiding the risk of economic and political instability of the country and the region as a result of foreign funding for political parties and their election campaigns requires improvements to be made in the Albanian legislation aimed at:

-Strengthen of the capacities of law enforcement institutions for tracking, identifying and punishing violations of the law that prohibits the financing of the election campaign of political parties and their candidates with foreign fund that are ndaluar nga ligji

- Drafting legislation for monitoring social media and portals in elections and during the election campaign.

-Increasing institutional capacities for monitoring and transparency of financing of political parties and election campaigns

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