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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

# KOSOVO

# OPINION

# 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 THE 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)"

**Adopted by the Council for Democratic Elections at its 62nd meeting (Venice, 21 June 2018)**

**and by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018)**

**On the basis of comments by**

**Mr Philip DIMITROV (Member, Bulgaria)**
**Mr Pere VILANOVA TRIAS (Member, Andorra)**
**Mr Vardan POGHOSYAN (Substitute Member, Armenia)**

## Contents

## I. Introduction

1. By letter of 16 April 2018, the Prime Minister of Kosovo requested the Venice Commission to prepare an opinion 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 the 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)" (CDL-REF(2018)018), hereafter referred to as "the draft law".

2. The Commission invited Mr Philip Dimitrov (Bulgaria), Mr Vardan Poghosyan (Armenia) and Mr Pere Vilanova Trias (Andorra) to act as rapporteurs for this opinion.

3. On 14-15 May 2018, a delegation of the Commission, composed of Mr Philip Dimitrov (Bulgaria) and Mr Pere Vilanova Trias (Andorra), accompanied by Mr Michael Janssen from the Secretariat, visited Pristina and met with representatives of a large number of relevant authorities, political parties (majority and opposition parties), civil society and international organisations.

4. The present opinion was prepared on the basis of contributions by the rapporteurs and on the basis of English translations of the following legal texts: the draft law; the Law no. 03/l-174 on the Financing of Political Entities[1] (Amended and Supplemented by the Law no. 04/l-058 and the Law no. 04/l-122) (CDL-REF(2018)016), hereafter referred to as "the LFPE"; and the Law no. 003/l-073 on General Elections (Amended and Supplemented by the Law no. 03/l-256) (CDL-REF(2018)017), hereafter referred to as "the LGE". Inaccuracies may occur in this opinion as a result of incorrect translations.

5. This opinion was adopted by the Council for Democratic Elections at its 62nd meeting (Venice, 21 June 2018) and by the Venice Commission at its 115th Plenary session (Venice, 22-23 June 2018).

## II. Background

6. The 2010 LFPE, as amended in 2011 and 2013, regulates the financing of political entities i.e. of political parties, coalitions, citizen initiatives and independent candidates. It includes provisions on permitted and prohibited funding sources, on donation ceilings,[2] the allocation and use of public funds,[3] internal and external financial control as well as penal provisions. While the focus of the LFPE was initially on regular finances of political entities, the current version also regulates the funding of election campaigns. The 2008 LGE, as amended in 2010, includes complementary provisions on campaign spending limits and contributions, financial disclosure requirements, auditing and sanctions in relation to campaign financing.[4] In addition, the CEC has issued relevant regulations, in particular the Regulation No. 14/2015 on the Financing of Political Entities and Sanctions which mainly repeats relevant provisions of the LFPE and the LGE, as complemented by some additional (mainly procedural) provisions and annexes, namely forms for financial reports.[5]

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[1] In the English translation of some official documents, the terms "political parties" or "political subjects" are used. The present opinion follows the terminology used in the request by the Prime Minister which employs the term "political entities".

[2] €2,000 for natural persons and €10,000 for legal entities in a calendar year.

[3] Public funding is provided each year to political entities in proportion to the number of seats they hold in Parliament.

[4] See in particular Articles 39 to 42 of the LGE.

[5] The CEC issued this regulation on 16 January 2015 and based it on Article 23 of the LFPE as amended, on Articles 29.2 and 64.2 (a), (b) of the LGE as amended, and on Article 20 of Law No. 03/L-072 on Local Elections. See http://www.kqz-ks.org/wp-content/uploads/2018/01/KQZ-Rregulla-14_eng.pdf.

7. Different observers assessed this legal framework for political financing as overall adequate. At the same time, they expressed significant concerns about the lack of effective implementation and enforcement of the rules.[6] Similar conclusions were drawn by Council of Europe experts in their 2013 assessment report[7] and the corresponding 2014 follow-up report.[8] In the latter report, it was noted that the 2013 amendments to the LFPE addressed some of the previous recommendations. However, further progress was needed to ensure a satisfactory degree of public disclosure and external audit of financial reports of political entities as well as proper enforcement of the rules.

8. In its most recent report on Kosovo, of 17 April 2018, the European Commission referred to the independent audits of the political parties' finances from 2013 to 2016, which had been carried out with much delay, in 2017. According to those audits, "the political parties had significant amounts of unverifiable income and expenditures, persistent violation of financial accounting, internal control and reporting standards and showed instances of being in violation of the tax laws and the Law on the Prevention of Money Laundering." The European Commission recommended that in the coming year, Kosovo should "*ensure that the financial reports and campaign disclosure reports of political parties are consistently published and audited, and sanctions applied for violations of relevant laws*". It should also "*amend the legal framework governing political party and campaign financing on the basis of an opinion of the Venice Commission to ensure effective enforcement, accountability and transparency*."[9]

9. Under the European Reform Agenda, which was agreed jointly with the European Commission in December 2016, the Government of Kosovo committed to "amend the Law on Financing of Political Parties to ensure transparency, accountability and effective enforcement and sanctions, based on wide public consultations". This has subsequently been included also in the National Plan for Implementation of the Stabilisation and Association Agreement (SAA).

10. The Legislative Programme of the Government foresees amendments to the Law on Financing of Political Parties in 2018.[10] A corresponding Draft Concept Document prepared by the Legal Office of the Prime Minister underwent a consultation process in October 2017. The Concept Document identified the following problems: the failure of the institutions involved to audit the political parties' annual financial and campaign disclosure reports; the lack of publication of these reports by the political parties themselves and by the Central Election Commission (CEC), despite the existence of legal provisions for this purpose; and the lack of mechanisms of enforcement by the LFPE and related legislation (notably the LGE), of the fines and sanctions imposed on the parties for failure to respect the legal provisions.

11. On 29 January 2018 the Government established a working group (supported by UNDP and the Westminster Foundation for Democracy) in order to prepare draft amendments to the LFPE. Following consultations with representatives of political parties, NGOs, public institutions, independent agencies and international organisations on the first draft, a revised version of the draft law was sent to the Venice Commission. According to the legislative agenda it is

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[6] See e.g. http://www.legalpoliticalstudies.org/lack-transparency-party-funding-kosovo/; http://kdi-kosova.org/wp-content/uploads/2017/11/26-Political-Finance-Draft-Report-ENG-FINAL-02.pdf; https://knowledgehub.transparency.org/assets/uploads/helpdesk/Kosovo_Overview_of_political_corruption_2014.pdf.

[7] See EU/CoE Joint Project against Economic Crime (PECK) – Anti-corruption Assessment Report of 10 June 2013 (in particular, paragraphs 28ff. and 381ff.).

[8] See the Follow-up Report of April 2014 (in particular, paragraphs 28ff. and 275).

[9] See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf, pages 18f.

[10] See page 3, item 7 of this link: http://www.kryeministri-ks.net/repository/docs/PROGRAMI_LEGJISLATIV_PER_VITIN_2018...pdf

envisaged that the amendments be adopted by the Government and sent to the Assembly in September 2018.

12. The Venice Commission is pleased that the Government of Kosovo has submitted this first request for a legal opinion, four years after Kosovo became a full member of the Commission in 2014. The rapporteurs gained the clear impression during their visit to Pristina that the regulation of political financing is considered both by the Government and by domestic and international stakeholders as an important part of the country's fight against corruption and that it is intended to be further reformed as a matter of priority, with a focus on ensuring effective implementation and enforcement of the already existing rules.

13. The rapporteurs were informed that the EU and other international organisations as well as civil society had been working towards such a reform for years. The authorities are to be commended for the current initiative and for the inclusive law-making process which involved a broad range of national agencies, international organisations and civil society and took into account many of their comments and suggestions. That said, representatives of major opposition parties interviewed by the rapporteurs indicated that their parties had not been duly involved and had not even seen the draft law or the preceding Concept document. This is all the more disturbing in such a politically sensitive area which concerns, first and foremost, political parties themselves. The rapporteurs also noted a lack of awareness of the content of the draft law among representatives of majority parties. Generally, they gained the impression that awareness among party officials of the current reform proposals, and of the importance of proper implementation of the political financing regulations, needs to be considerably strengthened. *The Venice Commission recommends involving various political parties – including from the opposition – more broadly in the further legislative process.*

14. Many interlocutors expressed their view that the legal framework governing elections and political parties needs to be reformed in a far more comprehensive way. They shared their concerns about inconsistencies between the different legal acts (*inter alia*, the different election laws and the LFPE). They also advocated the elaboration of a comprehensive Election Code, of a Law on Political Parties and a Law on the CEC – the latter being in need of more complete regulation which should be aimed at strengthening its role and independence. The rapporteurs noted with interest that such views were not only shared by several relevant state agencies but also by Government representatives who indicated that the preparation of the current draft law was to be seen as a first step in a broader reform process. On this understanding, the Venice Commission clearly supports the current reform as a first encouraging step in the right direction.

## III. International standards relating to the financing of political parties and electoral campaigns

15. International standards relevant to the financing of political parties and election campaigns are found principally in Article 7, paragraph 3 of the United Nations (UN) Convention Against Corruption, and in Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the European Convention on Human Rights (ECHR), which both protect the right to freedom of association. The right to freedom of opinion and expression under Article 10 of the ECHR and Article 19 of the ICCPR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR are also of relevance. Similarly, OSCE commitments under the Copenhagen Document include the protection of the freedom of association (paragraph 9.3) and of the freedom of opinion and expression (paragraph 9.1), as well as the holding of genuine and periodic elections (paragraphs 5, 6, 7 and 8).

16. In addition, standards in this area can be found in the recommendations of the UN, the Council of Europe and the OSCE. These include General Comment 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal

access to public service, Council of Europe Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns (hereafter: Rec(2003)4), the Joint Guidelines on Political Party Regulation issued by the OSCE/ODIHR and the Venice Commission (hereafter: *Guidelines*), the Joint Guidelines on Freedom of Association issued by the OSCE/ODIHR and the Venice Commission, the Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes issued by the OSCE/ODIHR and the Venice Commission,[11] as well as the following Venice Commission documents: Guidelines and Report on the Financing of Political Parties,[12] Code of Good Practice in the field of Political Parties,[13] Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources,[14] Code of Good Practice in Electoral Matters.[15]

17. At the outset, the Venice Commission recalls that political parties are associations and as such they – and their members – enjoy freedom of association as defined by Article 11 of the ECHR[16] and other international human rights treaties. In accordance with Article 11 of the ECHR, the freedom of association may only be restricted by law, for one of the listed purposes and to the extent "necessary in a democratic society". Pursuant to Principle 7 of the Joint Guidelines on Freedom of Association, "associations shall have the freedom to seek, receive and use financial, material and human resources …" However, this freedom is subject, *inter alia*, to requirements "concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards."

18. In Rec(2003)4, the Council of Europe Committee of Ministers calls upon member states to, *inter alia*, ensure transparency and independent monitoring in respect of the funding of political parties and electoral campaigns, as well as enforcement of the rules through effective, proportionate and dissuasive sanctions. Likewise, the Council of Europe Parliamentary Assembly in its Recommendation 1516 (2001) on Financing of Political Parties underlines the need for complete transparency of accounts, the establishment of an independent audit authority and meaningful sanctions for those who violate the rules. The importance of transparency in the funding of political parties and electoral campaigns is also stressed in Article 7, paragraph 3 of the UN Convention against Corruption, the Venice Commission Guidelines and Report on the Financing of Political Parties,[17] the Code of Good Practice in Electoral Matters,[18] the Code of Good Practice in the field of Political Parties[19] and in previous opinions of the Venice Commission.[20] According to the *Guidelines*, "the regulation of political party funding is essential to guarantee parties independence from undue influence created by donors and to ensure the opportunity for all parties to compete in accordance with the principle of equal opportunity and to provide for transparency in political finance."[21] Transparency in party

[11] CDL-AD(2016)004.
[12] CDL-INF (2001)8.
[13] CDL-AD(2009)021.
[14] CDL-AD(2006)014.
[15] CDL-AD(2002)023rev.
[16] See the judgment of the European Court of Human Rights in the case of *United Communist Party of Turkey and Others v. Turkey*, application no. 19392/92, 30 January 1998.
[17] See guidelines 5, 7 and 12.
[18] See paragraphs 108ff.
[19] See paragraph 38.
[20] See e.g. Joint Opinion on the legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns, CDL-AD(2017)027, paragraphs 19f.; Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine, CDL-AD(2015)025, paragraph 41; Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, CDL-AD(2014)035, paragraphs 36ff.
[21] See paragraph 159 of the *Guidelines*.

and campaign finance "is important to protect the rights of voters as well as prevent corruption. Transparency is also important because the public has the right to receive relevant information and to be informed."[22]

## IV. Analysis of the draft amendments

### A. Article 2 of the draft law, amendments to the LFPE

#### 1. Definition of a contribution

19. The draft law provides for an amended definition of the term "contribution" in Article 2, paragraph 1.5 of the LFPE which is more detailed than the current one. In particular, it covers "any kind of benefit" including benefits "in kind" and it explicitly refers to, among other things, payment of debts, profit through loans, services and facilities for use of the political entity. The rapporteurs noticed some confusion during the interviews in Pristina about the meaning of this provision. In the understanding of the Venice Commission, it is not meant to regulate which funding sources are permitted by law but to determine the scope of the different regulations on contributions – in particular, Article 5 of the LFPE which establishes thresholds and other limitations for contributions, and Article 15 of the LFPE which requires political entities to include a register of contributions in their financial reports.

20. In the view of the Venice Commission, the amended definition is an improvement. The new wording is clearer than the current one and includes a broader range of advantages ("any kind of benefit"). This is more in line with international standards such as Article 2 of Rec(2003)4, according to which a contribution[23] should cover "any deliberate act to bestow advantage, economic or otherwise, on a political party". It is also positive that the amended definition is closer to the definition of a contribution used in Article 3 of the LGE. *That said, it would seem more coherent to harmonise both definitions even further. The passage "services provided to a political entity by individuals voluntarily, on their own time and free of charge shall not be considered to be contributions" (see Article 3 of the LGE) is still missing in Article 2, paragraph 1.5 of the LFPE. Conversely, the passage "a contribution shall also be considered the acceptance of a service or monetary or material value by political entities below the real market value" (see Article 2, paragraph 1.5 of the LFPE) should also be included in Article 3 of the LGE. At the same time, it seems necessary to define more precisely – possibly in the law itself – how such services or values provided below the real market value are to be evaluated in financial reports, even though the necessity for ad hoc judgements will remain as it is not possible to legally define all benefits, particularly those in kind. This may include using pre-existing cost estimates from relevant state agencies. The same applies more generally to benefits in kind and to "services and facilities for use of the political entity" which are covered by the definition of a contribution in Article 2, paragraph 1.5 of the LFPE as amended by the draft law.*

21. Some of the rapporteurs' interlocutors were critical about the fact that the amended definition includes the payment of party debts and they favoured an outright prohibition of such payments. They stated that such payments might create conditions for perverse effects and undermine the independence of political entities. The Venice Commission acknowledges that such a prohibition – which for systematic reasons would be better placed in other provisions of the LFPE, i.e. those which limit or prohibit certain funding sources (such as Article 5) – might indeed have some benefits. However, in the absence of any international standards it refrains from making a recommendation in this respect. As far as "profits through loans" are concerned, their inclusion in the definition of a contribution is welcome and in line with international

[22] *Ibid*., paragraph 194.
[23] Article 2 of Rec(2003)4 employs the term "donation".

standards. As the *Guidelines* make it clear, "loans which are granted at particularly advantageous conditions or even possibly written-off by the creditor should in principle be treated as a form of in-kind or financial contribution" and in case that a loan is not reimbursed (partly or in whole) by the party or candidate themselves, but by a third person, "the loan also becomes a form of contribution". It is thus "important that rules on transparency deal consistently with this form of resources."[24] In accordance with the Commission's previous pronouncements on this issue, "records should also be kept of loans and debts of political parties, and published".[25] *For this purpose, it would be advisable to supplement Article 15, paragraph 3 of the LFPE so as to explicitly require loans to be listed in the party's annual financial reports with terms and conditions detailed.*

22. The draft amendments to the definition of a contribution in Article 2, paragraph 1.5 of the LFPE also make it clear that anonymous donations and cash donations above a certain threshold (€50 or more) are prohibited. In principle this is to be supported, for the sake of transparency*. That said, for systematic reasons it would appear more appropriate to include these material regulations in Articles 4 and 5 of the LFPE which already deal with forms of payment and contributions from unknown sources.* This would also be in the interest of clarity and avoid possible inconsistencies. It is to be noted, for example, that under Article 4, paragraph 4 of the LFPE all revenues of political entities (with some specific exceptions such as membership fees) must be made through bank transaction, regardless of their amount. *If it is intended to introduce an exception to this rule for cash donations up to €50, this should be clearly regulated in the same Article.*

### 2. Financial Control

23. Under Article 19 of the LFPE in its current form, control of the political entities' annual financial reports and campaign funding reports ("financial declaration reports of campaign") is "outsourced" to external auditors. The responsibility for selecting the auditors was shifted in 2013 from the CEC to Parliament/the parliamentary Committee for the Oversight of Public Finances (which failed to engage any auditors during several years). The CEC kept only limited competences such as receiving and publishing financial reports and audit reports.

24. The draft law amends the current provisions of Article 19 of the LFPE in several respects and adds a number of new paragraphs. Most prominently, the responsibilities in this area are again re-distributed. Annual financial reports and campaign funding reports are to be submitted to the reformed and renamed "Office for registration, certification and financial control of political entities" under the CEC (hereafter the "Office") instead of the CEC itself; the external auditors tasked to check the financial reports are selected by the Office instead of Parliament; the auditors submit their audit reports to the Office instead of the CEC; and the Office instead of the CEC is responsible for publishing the audit reports and for preparing annual reports which form the basis for the allocation of public funds by Parliament to political entities.

25. The composition and functions of the Office are regulated in the amended Article 11 of the LGE (see Article 3 of the draft law) and will be examined more in detail below in the section dealing with the draft amendments to the LGE. That said, it should be mentioned already here that according to the draft law, the reformed Office has broader competences than the "Office of political party registration and certification" in its current form, including the competence to

[24] See paragraph 171 of the *Guidelines*.
[25] See e.g. Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, CDL-AD(2014)035, paragraph 37.

perform monitoring and financial control of political entities;[26] contrary to the current Office, it shall enjoy operational independence, have its own budget (administered by the CEC Secretariat) and not be part of the CEC Secretariat;[27] its director must meet specified criteria[28] and shall be elected by the CEC through a public vacancy.

26. The Venice Commission takes the view that the redistribution of functions and the establishment of the new Office, which has a mandate to exercise financial control of political entities and enjoys a higher degree of independence than the current Office, are steps in the right direction. In particular, it is a welcome development that the selection of external auditors is moved away from the Parliament i.e. a political body which has not proved to be effective in this area. In sum, the reform brings the auditing mechanism more into line with international standards such as Article 14 of Rec(2003)4 which requires "independent monitoring in respect of the funding of political parties and electoral campaigns".

27. In this connection, the rapporteurs were informed that the question of which body should in the future be competent for financial oversight has been discussed in depth in the consultation process. The Government's Concept document of October 2017 elaborated on a number of alternative options, including the Auditor General, the Anti-Corruption Agency and the Election Complaints and Appeals Panel (ECAP). It would appear that further proposals have been made by various stakeholders, such as joined responsibility of different bodies.[29] It seems that in each scenario, certain adaptations of the legal framework would be necessary: none of the aforementioned bodies has at the moment both the legal competences and the know-how and resources necessary to ensure professional auditing of political entities' financial reports. International reference texts recognise that monitoring of political finances "can be undertaken by a variety of different bodies".[30] In line with previous pronouncements on this matter,[31] the Venice Commission acknowledges that it is up to Kosovo to decide which body should be entrusted with such functions. That said, this body should be granted a satisfactory degree of independence and adequate financial and personnel resources.[32] These *caveats* will be further developed below in section B.

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[26] In addition to the tasks of the current Office which are related to maintaining the registry of political parties, the certification of political entities to be included in the ballot, and the campaign spending limit and financial disclosure articles of the LGE.

[27] According to article 3 of the draft law, the first sentence of Article 65.2 of the LGE which states that "the Office shall function as part of the CEC Secretariat" is deleted.

[28] Including eight years' relevant professional experience (five of which in leadership positions), professional reputation and moral integrity.

[29] Several of the rapporteurs' interlocutors expressed a preference for entrusting the control of political entities' finances to the Auditor General, given the independence and expertise of this institution. However, the Government (and some other stakeholders) are of the opinion that this would conflict with Article 137 of the Constitution, which defines the Auditor General's competences. Namely, this institution is tasked to audit "1. the economic activity of public institutions and other state legal persons; 2. the use and safeguarding of public funds by central and local authorities; 3. the economic activity of public enterprises and other legal persons in which the state has shares or the loans, credits and liabilities of which are guaranteed by the state."

[30] See e.g. the *Guidelines*, paragraph 212.

[31] See e.g. Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia, CDL-AD(2016)038, paragraph 46; Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, CDL-AD(2014)035, paragraph 39.

[32] See paragraph 212 of the *Guidelines*, which state that "whichever body is tasked to review the party's financial reports, effective measures should be taken in legislation and in state practice to ensure its independence from political pressure and commitment to impartiality." See also paragraph 220, according to which "adequate financing to ensure the proper functioning and operation of the regulatory body" is also necessary.

28. Among the other draft amendments to the existing provisions of Article 19 of the LFPE are the following: under paragraph 2.2, the external auditors must have three instead of two years relevant working experience; under paragraph 7, the audit results must be presented to the political entity within 90 instead of 60 days; under paragraph 8, the political entity may provide corrections and explanations within 15 instead of five days; under paragraph 14, audit reports on campaign funding must be submitted within 45 days after Election Day instead of six months; under paragraph 17, the annual report to be prepared by the Office must be submitted to Parliament no later than 31 July, whereas the current provision does not foresee any deadline. These amendments include some clear improvements, in particular they harmonise procedural deadlines with those foreseen in Article 41 of the LGE. *Regarding the requirements for being selected as auditor (Article 19, paragraph 2 of the LFPE), the increase in the time of relevant working experience to three years is a positive step, provided that a sufficient number of auditors with such experience can be found in Kosovo.*[33] *Additionally, it would be advisable to require that auditors are not affiliated with political entities, as such affiliation might undermine the impartiality of the auditor's work*. Currently, the law only requires that auditors have not had contractual relations with political entities, have not benefited from them and have not been donors during the last three years.

29. Another amendment is to be found in draft Article 19, paragraph 15 of the LFPE, according to which the "Final Audit Report of Political Entities" shall be published on the official website of the Office within five days from the day of submission. In contrast, under the current Article 19, paragraph 10 of the LFPE that report is published no later than 30 June of the following year, together with the political entities' financial reports. The CEC – and, following, the political entities – have interpreted the current rule such that the financial reports of political entities only need to be published after they have been audited. Thus, in the absence of any audit report between 2013 and 2017, practically no financial reports were published by the CEC or by political entities themselves.

30. Against this background, it is commendable that the draft law separates the publication of audit reports (draft Article 19, paragraph 15 of the LFPE) and that of political entities' reports (draft Article 19/A of the LFPE, see further below). That said, it would be preferable to oblige not only political entities[34] but also the Office to publish the financial reports (independently from the audit reports). Moreover, the wording of draft paragraph 15 seems to imply that only audit reports on annual financial reports are to be published, but not those on campaign financing reports; this is unsatisfactory, bearing in mind that information on campaign financing is particularly relevant to the public. *Both aforementioned shortcomings are apparently addressed by the draft amendments to the LGE (draft Article 11, paragraph 11.6); for the sake of consistence and clarity, this should also be reflected in the LFPE.*

31. According to the draft law, Article 19 of the LFPE is furthermore supplemented by new paragraphs 6, 9-11 and 16 which contain more detailed procedural rules and are apparently aimed at enhancing the audit process and increasing transparency. In principle, this is a welcome development, but some modifications seem necessary. First, it is highly commendable that under the draft provisions political entities have to cooperate closely with the auditors, provide all requested documents without delay (paragraph 6) and provide unlimited access to the offices and the books (records) where data are kept (paragraph 11). That said, the rule that political entities have to provide requested documents "immediately and without delays" and that those who "do not provide full cooperation" with the auditors will be deprived of public funding for the following year (paragraph 6) lacks the necessary precision. Such unclear terms carry the risk that this provision will not – or not consistently – be applied in practice. *It is therefore recommended clearly specifying in the law both the deadlines for the submission by*

[33] The lack of applications has been a considerable problem for years, but this was explained to the rapporteurs mainly by reference to the financial conditions proposed in the contracts.
[34] As foreseen in draft Article 19/A of the LFPE.

*political entities of requested documents and the exact kind of situations in which political entities shall be deprived of public funding.*

32. Second, it is positive that according to draft paragraph 16 of the same Article relevant authorities – i.e. the Office of the State Prosecutor, the Anti-Corruption Agency, the Financial Intelligence Unit and the Tax Administration – may review the audit reports "if they have identified violations of legal provisions that are in the mandate of these institutions". *That said, the cooperation and division of tasks between the Office and the other aforementioned authorities should be regulated more precisely.* For example, it is not clear how possible situations where different authorities come to diverging conclusions would be dealt with. *It also appears necessary to assign to the Office a clear coordinating function and to specify the role of each of the aforementioned agencies in order to avoid a situation where none of those agencies feel responsible for following up on the auditors' findings.*

33. This leads to a more general concern: the exact competences and responsibilities of the reformed Office remain unclear. A strict reading of the draft amendments to Article 19 of the LFPE might give the impression that the Office's role is limited to selecting external auditors, submitting the audit reports to the political entities, publishing them and preparing an annual report. At the same time, the draft amendments to Article 11 of the LGE explicitly entrust the Office with "monitoring and financial control of political entities" and empower it to "carry out oversight on any occasion" (see further below). Government representatives indicated to the rapporteurs that the idea behind the reform was indeed to assign to the Office veritable monitoring functions. This should, however, be more clearly expressed in the law. *The Venice Commission recommends further harmonising the relevant provisions of the LFPE and the LGE, making it clear in both acts that the Office has veritable monitoring functions and defining more precisely its competences. It would be advisable to give it the mandate to at least initiate (or even conduct) investigations*[35] *of possible irregularities in political entities' finances as well as enhanced powers and obligations for coordination with law enforcement and other relevant bodies.*

34. These kinds of competences are in line with international standards and previous opinions of the Venice Commission: in the terms of the *Guidelines*, "generally, legislation should grant regulatory agencies the ability to investigate and pursue potential violations. Absent such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate."[36] In the case of Kosovo, a number of observers including the European Commission have identified a need for enhanced investigation of irregularities and proper follow-up of audit reports.[37] There have been numerous allegations of various covert funding schemes. For

[35] At a minimum, the legislation should grant the Office the ability to pursue potential violations further by initiating a sanction or referring the alleged case of abuse to the Office of the State Prosecutor (or another responsible body) which then has the obligation to further monitor and investigate the irregularities.

[36] See paragraph 220 of the *Guidelines.* See also Joint Opinion on the legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns, CDL-AD(2017)027, paragraph 70; Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine, CDL-AD(2015)025, paragraph 36; Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, CDL-AD(2014)035, paragraphs 42 and 43.

[37] See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf, page 19. See also the above-mentioned Anti-corruption Assessment Report under the EU/CoE Joint Project against Economic Crime and the corresponding Follow-up Report (in particular, recommendations xxxvi and xl). Furthermore, see e.g. http://www.legalpoliticalstudies.org/wp-content/uploads/2014/11/PolicyReport_102014_Financing_Political_Parties_ENG_FINAL.pdf; http://kdi-kosova.org/wp-content/uploads/2017/11/26-Political-Finance-Draft-Report-ENG-FINAL-02.pdf; https://dgap.org/sites/default/files/article_downloads/drilona-aliu_financing-politcal-parties.pdf.

example, civil society organisations have consistently claimed that political parties receive donations and carry expenditures in cash, and the cash is not registered or tracked in the parties' financial reports. During the meetings held in Pristina, several interlocutors also referred, for example, to cases where citizens made contributions to political parties which exceeded their annual income but no agency checked their origin. Whatever the veracity of such claims, it is crucial that any credible suspicions be properly investigated.

### 3. Publication of financial reports by political entities

35. Under the current Article 15, paragraph 5 of the LFPE, political entities are obliged to publish on their websites both their annual financial reports – which must contain detailed information as specified in paragraphs 2 and 3, including on the assets, obligations and capital of the political entity, the incomes and expenditures, as well as supporting documents – and their campaign funding reports – which must be prepared according to the detailed provisions of Article 40 of the LGE. Moreover, political entities are required to publish short versions of those reports in daily national newspapers. Deadlines for publication are 30 July of the following year in the case of annual financial reports and six months after Election Day in the case of campaign funding reports.

36. The draft law introduces some amendments to the reporting regime by way of a new Article 19/A of the LFPE. In particular, under the draft political entities represented in Parliament are obliged to have an operational website and to keep published on it both annual financial reports and campaign funding reports for at least three years (instead of one year as under current legislation). They must also publish further financial information on a regular basis, including the costs for carrying out an activity exceeding €100 as well as detailed information on donors. Non-parliamentary political entities are subject to less stringent publication requirements.

37. Bearing in mind that lack of disclosure has been one of the main concerns in recent years, the additional draft regulations on public disclosure of financial information by political entities are clearly to be supported. Reference is made here to international standards and to previous opinions of the Venice Commission which stress the importance of public disclosure of information on party and campaign funding. Such disclosure should be effected without unnecessary delay and be easily accessible to the public for an extended period of time.[38] It is particularly welcome that in addition to the financial reports, political entities have to publish further financial information on a regular basis (draft paragraphs 1.2 and 1.3). These new rules respond to a concern raised repeatedly in the past, which related to the only punctual *ex-post* auditing of political finances (if ever) and to the lack of continuous disclosure and monitoring.

38. *As far as the publication of financial reports is concerned, given that in practice (in the absence of any audit reports) political parties did not feel obliged to publish their reports, it is advisable to regulate more explicitly in the new provisions that publication requirements for political entities are independent of the audit process, in order to prevent such problems in the future. Financial reports should be published within the legal deadlines, even if they have not yet been audited (and possibly corrected). Moreover, it seems necessary to amend Article 15(5) of the LFPE so as to bring it into line with the new Article 19/A, especially as regards the minimum duration of publication.*

[38] See e.g. Article 13b. of Rec(2003)4, paragraphs 200 and 206 of the *Guidelines*, paragraphs 108ff. of the Code of Good Practice in Electoral Matters, paragraph 38 of the Code of Good Practice in the field of Political Parties and the Venice Commission Guidelines and Report on the Financing of Political Parties (guidelines 5, 7 and 12). See also e.g. Joint Opinion on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine, CDL-AD(2015)025, paragraph 60; Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, CDL-AD(2014)035, paragraph 38.

### B. Article 3 of the draft law, amendments to the LGE

39. Most importantly, the draft law amends Article 11 of the LGE and supplements it by a number of new paragraphs. They provide for the establishment by the CEC of the "Office for registration, certification and financial control of political entities" (the "Office") and regulate its composition, tasks and *modus operandi*. As stated above, this reform is commendable, provided that the Office enjoys functional independence and is granted sufficient resources in practice, as required by international standards.[39]

40. In this connection, a number of interlocutors in Pristina raised concerns about the Office's independence, as it will be established by the CEC and will be closely linked to it. They indicated that the CEC, whose chair is appointed by the President of the Republic and whose other 10 members are appointed by political parties,[40] has been repeatedly subject to political pressure. They were also critical about the weak position of the CEC chair. The latter was meant to strengthen the independence of that body but had practically no – even administrative – rights except for voting rights as other members and the responsibility to lead CEC sessions. The rapporteurs were interested to hear from Government representatives that they shared such concerns and were in favour of reforming the CEC.

41. In the meantime, however, it will be necessary to establish adequate safeguards to ensure that the Office can exercise its functions free from political influence. This is of particular importance in the sensitive area of political finances. Whatever the veracity of recent allegations about political pressure on the CEC, it is of paramount importance that the supervisory body is – and is perceived to be – independent from such pressure and committed to impartiality.[41]

42. It is therefore highly commendable that according to draft Article 11 of the LGE, the Office shall – contrary to the "Office of political party registration and certification" in its current form – enjoy operational independence, have its own budget and not be part of the CEC Secretariat.[42] *At the same time, in the view of the Venice Commission it would be preferable that its budget be administered by the Office itself instead of the CEC Secretariat (as foreseen in draft paragraph 1/B) and that the Office be empowered to recruit its own staff. It also seems necessary to regulate the procedure for the appointment of the director of the Office and the rest of the staff more precisely, to introduce safeguards for merit-based recruitment and eligibility criteria based on integrity and professional competence, and to define the salaries.* As to the selection of the director, it is not convincing that the requirements are on several points less strict than the requirements for the selection of external auditors. *Notably, the requirement that auditors have not had contractual relations with political entities, have not benefited from them and have not been donors during the last three years, should also be introduced for the*

[39] See paragraph 212 of the *Guidelines*, which state that "whichever body is tasked to review the party's financial reports, effective measures should be taken in legislation and in state practice to ensure its independence from political pressure and commitment to impartiality." See also paragraph 220, according to which "adequate financing to ensure the proper functioning and operation of the regulatory body" is also necessary.

[40] Pursuant to Article 139 of the Constitution, the CEC chair is appointed by the President of Kosovo from among the judges of the Supreme Court and courts exercising appellate jurisdiction. Six members are appointed by the six largest parliamentary groups represented in Parliament (which are not entitled to reserved seats), one member is appointed by the deputies holding seats reserved or guaranteed for the Kosovo Serb Community, and three members are appointed by the deputies holding seats reserved or guaranteed for other Communities that are not in majority in Kosovo.

[41] See paragraph 212 of the *Guidelines*.

[42] According to article 3 of the draft law, the first sentence of Article 65.2 of the LGE which states that "the Office shall function as part of the CEC Secretariat" is deleted.

*selection of the Office director; the same applies to absence of affiliation with political entities, which has been recommended above with respect to auditors.*

43. As far as the operational capacities of the Office are concerned, the draft provisions foresee that "the Office will be provided with all the necessary professional and administrative capacities by the CEC Secretariat"[43] and that "the Office is provided with the necessary human resources for accomplishing the competences provided for by the legislation in force".[44] In principle, these provisions are commendable, but given the past experiences it would be advisable to introduce more precise commitments in the law. It would appear that before 2013, when the CEC was the competent body, the CEC faced severe challenges in performing its auditing responsibilities due to a lack of human and financial resources. According to the Government's Concept document of October 2017, the "lack of professional staff in the Office for Registration of Political Parties within CEC has been mentioned as a challenge that this institution has continuously faced". Currently, the Office operates with only two staff and has not been able, to date, to follow-up on the audit reports 2013-2016 and on the detected infringements of the law.

44. Considering that one reason for failure to perform audits is the lack of a sufficient budget, the Concept document proposes reserving 1% of the Democratisation Fund[45] – which is dedicated to the financing of political entities – to the audit of political entities. However, this proposal is not reflected in the draft law. *The Venice Commission recommends complementing the draft law by more precise guarantees for the Office's operational capacities, preferably both in terms of financial resources and of a sufficient number of specialised staff able to provide effective follow-up to the audit reports submitted by the external auditors.* The provision of sufficient budgetary guarantees is all the more important as the selection of auditors repeatedly failed in the past for lack of candidates. It would appear that they considered the remuneration proposed as too low. *As an alternative option, such problems could also be avoided by integrating the whole audit process in the Office and by recruiting financial auditors on a permanent basis.*

45. Regarding the tasks and competences of the Office, it is noteworthy that according to the draft provisions it is explicitly responsible for the "monitoring and financial control of political entities";[46] that it may carry out oversight "on any occasion" (if deemed that a political entity has violated the legal provisions) and request written information;[47] that it shall request the elimination by political entities of irregularities, if possible (before the imposition of sanctions);[48] and that it must publish both political entities' financial reports and corresponding audit reports.[49] These new rules are promising steps in the right direction. *At the same time, attention is drawn to the recommendations made above in section A.: the relevant provisions of the LFPE and of the LGE should be further harmonised, it should be made clear in both acts that the Office has veritable monitoring functions, its competences should be defined more precisely and it should be given the mandate to initiate investigations of possible irregularities in political entities' finances as well as enhanced powers – and obligations – for coordination with law enforcement and other relevant bodies.*

46. Finally, it is to be noted that the draft law repeals Article 41 of the LGE which regulates the auditing of campaign spending. In other words, auditing of party and campaign financing would

[43] Draft Article 11, paragraph 1/B of the LGE.
[44] Draft Article 11, paragraph 1/C of the LGE.
[45] The Democratisation Fund amounts to 0.34% of Kosovo's budget. It is estimated that 1% of the Democratisation Fund amounts to approximately €42,000.
[46] Draft Article 11, paragraph 1 of the LGE.
[47] Draft Article 11, paragraph 1/D of the LGE.
[48] Draft Article 11, paragraph 1/E of the LGE.
[49] Draft Article 11, paragraph 6 of the LGE.

exclusively be regulated by the LFPE. Such a more streamlined approach, which prevents any possible inconsistencies between different regulations, is to be welcomed.

### C. Issues not covered by the draft law, penal provisions

47. During the interviews held in Pristina several interlocutors drew the rapporteurs' attention to the fact that the draft law failed to address several other gaps and problems encountered in practice (e.g. unsatisfactory internal control of party finances) as well as a number of inconsistencies between the different laws, in addition to those already mentioned in the preceding sections of this opinion. While a more comprehensive reform of the regime of political finances would certainly be ideal, the Venice Commission understands that the Government has decided to focus on a limited number of core areas, as a first step. That said, the Commission will comment on one additional key issue which has not – yet – been included in the draft law, i.e. the sanctioning regime to be applied in case of non-compliance by political entities with the financing, reporting and publication requirements. It notes with satisfaction that Government representatives declared their readiness to take such comments into account in the further legislative process.

48. The relevant provisions of the LFPE[50] are to be found in Article 21 which was overhauled in 2013 and provides mainly for monetary fines, the amount of which depends on the type of offence. E.g. in the case of non-submission of the annual financial report or the campaign funding report within the statutory deadlines, the fine amounts to 10% of the public funds received by the political entity in the previous year (basic penalty),[51] plus 0.01% of that amount as daily penalty until presentation of the report; in case of presentation of inaccurate and incomplete data, or failure to publish the financial report, or keeping active more than one bank account, the basic penalty is €5,000; in the case of non-submission of documentation copies with the financial reports, €2,000; in the case of failure to inform the CEC about funds received in contradiction with the LFPE, €1,000; in the case of acceptance of donations above the legal thresholds, or from prohibited sources, or whose origin cannot be proved, the political entity is fined twice the value received. Furthermore, a political entity which does not submit a financial report within the deadlines loses eligibility to benefit from public funds in the following year. Finally, if it can be proven that a mandate was won as a result of misuse of funds, the mandate of the candidate or political entity can be taken. As for the LGE, it provides in Article 42 that the CEC may impose administrative fees in accordance with its rules on political entities which fail to submit campaign finance reports within the statutory deadlines.

49. The Venice Commission refers to relevant international standards such as Article 16 of Rec(2003)4 which requires "effective, proportionate and dissuasive sanctions".[52] Information gathered by the rapporteurs clearly suggests that the existing regime of sanctions has not been effective to prevent infringements of the political financing regulations of the LFPE and the LGE.[53] At least some of the basic penalties provided for by Article 21 of the LFPE – such as

[50] Sanctioning provisions are also included in Article 13 of the CEC Regulation No. 14/2015 on the Financing of Political Entities and Sanctions. They are entirely based on the LFPE provisions and do not contain any additional or diverging sanctions.
[51] For political entities which did not receive public funds, the fine is €1,000.
[52] See also paragraph 215 of the *Guidelines* and the Venice Commission Guidelines and Report on the Financing of Political Parties (guidelines 13ff.), as well as previous opinions of the Venice Commission, e.g. Joint Opinion on the legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns, CDL-AD(2017)027, paragraph 79.
[53] See also the report of the European Commission of 17 April 2018, quoted above, which notes that "the political parties had significant amounts of unverifiable income and expenditures, persistent violation of financial accounting, internal control and reporting standards and showed instances of being in violation of the tax laws and the Law on the Prevention of Money Laundering"

fines of €1,000, €2,000 or €5,000 – appear too low (especially when compared to the amounts at stake in the area of political financing) to have a deterrent effect against malpractices such as submission of inaccurate financial data, failure to publish financial reports or keeping more than one bank account.[54]

50. *The Venice Commission recommends considerably increasing the fines provided for by the LFPE, in proportion to the seriousness of the different offences. Furthermore, the arsenal of sanctions should be widened to include e.g. partial or total loss of public funding and other forms or public support, as a temporary measure; ineligibility for future public support for a set period of time in other cases than non-submission of reports; forfeiture to the state treasury of financial support previously granted; criminal sanctions in cases of significant violations.[55] Moreover, sanctions such as fines provided for by the LFPE and the LGE and criminal sanctions should be available not only for political entities as such but also for their members and other individuals acting on behalf of them who are responsible for the violation of the law;[56] such responsibilities should be clearly defined.*

51. As has been indicated in the Government's Concept document of October 2017, the fines foreseen by the LFPE also need to be harmonised with the Law on Minor Offences which entered into force in 2017. At the same time, this would pose another problem, since the Law on Minor Offences caps fines at a maximum of €20.000 which might present insufficient deterrence against serious breaches of the LFPE (and some other laws). The Venice Commission is convinced that adequate solutions to the dilemma can be found. It notes with interest that possible solutions, such as introducing in the Law on Minor Offences exceptions to the general sanctioning regime for special cases where more robust sanctions are needed, are under discussion.

52. *The draft law furthermore fails to provide for sanctions in case of violations of the new legal requirements, such as the new publication obligations for political entities under draft Article 19/A of the LFPE. In the interest of consistency and comprehensiveness, the sanctioning provisions of Article 21 of the LFPE need to be complemented accordingly, so as to provide for effective, proportionate and dissuasive sanctions for such violations.*

53. Finally, it will be necessary to explicitly regulate which body is competent to impose penalties. It seems that currently the CEC is competent, even though the legal framework fails to regulate this clearly and comprehensively: the LFPE is completely silent on the matter; under Article 42 of the LGE, the CEC may impose fines on political entities which do not submit campaign finance reports within the legal deadlines; Article 126, paragraph 1 of the LGE contains a general clause stating that "the CEC or the Court of First Instance may punish violations of the provisions of this law, when they do not constitute a criminal offence and have not been addressed by the ECAP,[57] by a fine between €200 and €2,000"; the above-mentioned CEC Regulation No. 14/2015 on the Financing of Political Entities and Sanctions states that the CEC can impose fines for violation of provisions of the LFPE and the LGE (see Article 1, paragraph 1.4).

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(https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf, page 19).

[54] This view is shared by many observers, see e.g. the above-mentioned Anti-corruption Assessment Report under the EU/CoE Joint Project against Economic Crime and the corresponding Follow-up Report (in particular, recommendation xxxix); see also https://dgap.org/sites/default/files/article_downloads/drilona-aliu_financing-politcal-parties.pdf.

[55] See the catalogue of possible sanctions listed in the *Guidelines*, paragraph 225.

[56] *Ibid*.

[57] The Election Complaints and Appeals Panel.

54. Some of the new provisions seem to indicate that the draft law intends to shift these competences from the CEC to the Office: under draft Article 11.1/E of the LGE, the CEC Office shall request from relevant political entities the correction of irregularities before imposing sanctions; and Article 3 of the draft law further replaces the term "CEC" in Article 126, paragraph 1 of the LGE by the term "CEC Office". This move is clearly to be supported, as it further strengthens the role and position of the Office. That said, its competences in this respect should be regulated more clearly.

55. *The Venice Commission recommends regulating more explicitly, both in the relevant LGE and LFPE provisions, that the Office is competent for the imposition of sanctions on political entities in the area of regular and campaign financing. Article 42 of the LGE should also be amended accordingly, for the sake of consistency. As for Article 11.1.E of the LGE, according to which political entities shall be requested, before the imposition of sanctions, to make corrections within the deadline set by the Office, it is recommended to introduce clear legal deadlines instead of leaving this decision to the discretion of the Office. As far as Article 126, paragraph 1 of the LGE is concerned, it lacks the clarity necessary to determine without doubt which offences can be sanctioned under this provision. It is also unsatisfactory that the CEC/CEC Office and the Court of First Instance have parallel competences, which might lead to conflicting decisions. It is recommended that these deficiencies be remedied in the current reform process.*

56. Regarding appeals, Article 42 of the LGE makes it clear that political entities may appeal CEC decisions imposing a fine under this article (i.e. in case of untimely submission of campaign funding reports) to the first instance court. On the other hand, Article 21, paragraph 12 of the LFPE states that political entities have the right to challenge decisions on sanctions before the ECAP "according to the legislation in force".[58] *The two provisions need to be harmonised.* Moreover, in the view of CEC representatives interviewed by the rapporteurs the terms "according to the legislation in force" in Article 21, paragraph 12 of the LFPE are to be understood by reference to Article 122 of the LGE. The latter provides for the right to challenge CEC decisions before the ECAP, but only in a limited number of cases which include decisions based on Article 42 of the LGE but not those based on LFPE provisions. *In order to avoid a legal vacuum, the Venice Commission recommends explicitly providing – both in the LGE and the LFPE – for consistent appeal channels against decisions made by the Office in relation to the financing of political entities and of election campaigns. Finally, in accordance with international standards, the law should "define reasonable deadlines by which applications should be filed and decision granted" and it should "specify the procedures for initiating judicial review (appeal) of a decision affecting the rights of a political party" or "other parties that are affected by the decision", in order to ensure effective legal redress.[59] Such provisions need to be added to the LFPE and the LGE.*

## V. Conclusion

57. The Venice Commission welcomes that the Government of Kosovo has submitted this first request for a legal opinion, four years after Kosovo became a full member of the Commission in 2014. It seems that the regulation of political financing is considered both by the Government and by domestic and international stakeholders as an important part of the country's fight against corruption and that it is intended to be further reformed as a matter of priority, with a focus on ensuring effective implementation and enforcement of the already existing rules.

[58] The composition and competences of the ECAP are regulated in Articles 115ff. of the LGE. Pursuant to Article 115 the ECAP is a permanent independent body whose members are appointed by the President of the Supreme Court from among judges of the Supreme Court and the District Courts.

[59] See paragraphs 232 and 233 of the *Guidelines*.

58. The Venice Commission acknowledges that the current reform initiative is an important step in the right direction. The draft law contains significant amendments to the Law on the Financing of Political Entities (LFPE) and the Law on General Elections (LGE). It further clarifies the definition of a contribution to a political entity, it strengthens publication requirements with respect to information on political entities' finances and includes new tools for monitoring compliance with the rules. The responsibilities in this area are re-distributed: the reformed and renamed "Office for registration, certification and financial control of political entities" under the Central Election Commission/CEC (the Office) will have the leading role, with the support of external auditors and other competent authorities.

59. The Venice Commission notes that the question of which body should in the future be competent for financial oversight has been discussed in depth in the consultation process and a number of alternative options have been considered. It acknowledges that it is up to Kosovo to decide which body should be entrusted with such functions. In the view of the Commission, the redistribution of functions and the establishment of the new Office are welcome developments – provided that the role of this body is clearly defined and that it is granted a satisfactory degree of independence and adequate financial and personnel resources.

60. The Venice Commission also notes that the series of previous amendments has led to inconsistencies in the legal framework and introduced some provisions that are difficult to apply in practice and, thus, fail to be effective. Overall, the lack of public disclosure, comprehensive monitoring and effective enforcement of the rules seem to be the main concerns. In this regard, it must be stressed that effective reform of political financing in Kosovo is not only a question of adopting legislative texts, but also depends on the political will and the practical implementation of the provisions to create a truly transparent system and a level playing field for all political parties. It is crucial that any new regulations be construed in such a way that they can be effectively implemented.

61. The Venice Commission formulates the following main recommendations:

A. Further harmonise the provisions of the LFPE and the LGE relating to financial control, make it clear in both acts that the Office has veritable monitoring functions and define more precisely its competences. It would be advisable to give it the mandate to at least initiate (or even conduct) investigations of possible irregularities in political entities' finances as well as enhanced powers and obligations for coordination with law enforcement and other relevant bodies [paragraphs 33/45];
B. Take additional measures to strengthen the Office's independence. This could include vesting the Office with the right to administer its own budget and recruit its own staff, regulating the procedure for the appointment of the director of the Office and the rest of the staff more precisely – ensuring merit-based recruitment based on integrity and professional competence and excluding candidates with close ties to political entities – and introducing more precise guarantees for the Office's operational capacities, preferably both in terms of financial resources and of a sufficient number of specialised staff able to provide effective follow-up to the audit reports submitted by the external auditors. As an alternative option, the whole audit process could be integrated in the Office, by recruiting financial auditors on a permanent basis [paragraphs 42/44];
C. Regulate more explicitly in the new provisions that publication requirements for political entities are independent of the audit process, in order to ensure that financial reports are published within the legal deadlines, even if they have not yet been audited (and possibly corrected) [paragraph 38];
D. Strengthen the regime of sanctions available for infringements of party and campaign funding rules. This should include increasing the fines provided for by the LFPE – in proportion to the seriousness of the different offences, – widening the arsenal of sanctions and making them applicable also to members of political entities and other individuals acting on behalf of them who are responsible for the violation of the law, and

defining sanctions for violations of the new obligations introduced by the draft law [paragraphs 50/52];

E. Regulate more explicitly, both in the relevant LGE and LFPE provisions, that the Office is competent for the imposition of sanctions on political entities in the area of regular and campaign financing, and provide for consistent appeal channels [paragraphs 55/56].

62. These and a number of additional recommendations and suggestions, which are included throughout the text of this opinion (highlighted in *italics*), are aimed at further improving the compliance of the legal framework governing the funding of political parties and electoral campaigns in Kosovo with Council of Europe and other international human rights standards and with recommendations contained in previous opinions of the Venice Commission.

63. The authorities are to be commended for the current initiative and the inclusive law-making process which involved a broad range of national agencies, international organisations and civil society. That said, it is worrying that according to representatives of major opposition parties interviewed by the rapporteurs their parties had not been duly involved and had not even seen the draft law or the preceding Concept document. It therefore seems necessary to involve various political parties – including from the opposition – more broadly and effectively in the further legislative process.

64. Finally, the Venice Commission notes that according to many interlocutors, the legal framework governing elections and political parties needs to be reformed in a more comprehensive way. While more complete reforms would certainly be ideal, the Venice Commission understands that the Government has decided to focus on a limited number of core areas at the present stage, which should be seen as a first step in a broader reform process. This is clearly to be supported.

65. The Venice Commission remains at the disposal of the authorities of Kosovo for further assistance in this matter.