

# Financing of Political Parties and Election Campaigns

## Armenia Country Report

Political party finance and election campaign finance are regulated by different legal acts. The major legal act regulating party finance is the **Law on Parties**, adopted by the Armenian National Assembly (Parliament) on July 3, 2002 (entered into effect on November 15, 2002). Election campaign finance is regulated by the Electoral Code, which was adopted on May 26, 2011 and entered into effect on June 26, 2011.<sup>1</sup> It replaced the previous Electoral Code, which was adopted on February 1999 and which was also the main legal act regulating election campaign finance.<sup>2</sup> Conceptually, together with the similarities, there are also differences in the approaches of regulation of party and campaign finances.

### A. Overview of the Legislation Regulating Election Campaign Finance

#### *Regulation of income*

Articles 25 and 26 of the Electoral Code contain the basic provisions on campaign income and spending (expenditures) applicable for all types of elections. Provisions specific for each type of elections are in the relevant articles of the sections on each of those elections (for more detail see below).

Armenian Electoral Code does not provide that separate legal entity shall be established to conduct campaign. The same is true regarding receiving funds for campaign. However, if the candidate or party (blocs of parties) conducts election campaigns, then it shall open pre-election fund for funding its campaign<sup>3</sup>. Through the establishment of such “pre-election” fund, campaign funding both for parties and individual candidates nominated by parties is separated from party finance. Opening pre-election funds is not required by the candidates for the membership of the community (except Yerevan Council) and heads of the communities where there are 10,000 or less voters, provided that their expenses on the items, which, according to the Code (see below), shall be declared in the pre-election fund declaration, do not exceed 500,000 Armenian Drams (AMD) or approximately 1,279 USD (1 USD ≈ 391 AMD).<sup>4</sup> In order to form these funds, candidates and parties open special temporary accounts, from

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<sup>1</sup> Some of the provisions of the new Electoral Code entered into effect later.

<sup>2</sup> Before the adoption of the first Electoral Code on February 1999, each of the elections in Armenia (presidential, parliamentary, local self-government) has been regulated by separate electoral law.

<sup>3</sup> *Ibid.*, Point 1 of Article 25 Bloc of parties shall open one pre-election fund for the entire bloc.

<sup>4</sup> *Ibid.*, Point 2 of Article 140 According to Point 5 of Article 27 of the Code, if there are revealed facts that such candidate spent more, than 500,000 AMD, then the candidate, within 3 days upon the demand of CEC, shall present to the Oversight-Audit Service of CEC the declaration on his/her pre-election fund income and expenditures. It is interesting to mention that, as the last electoral campaign (related to the May 6 parliamentary

which no dividends are calculated and paid.<sup>5</sup> These accounts shall be opened only after the official announcement on running elections and shall be closed within 3 months after the announcement of the final results of elections. Payments to pre-election funds can be made from the day of opening of the accounts of these funds until the day, before the voting day. Presidential candidates and political parties shall open their pre-election fund accounts in the Central Bank of Armenia, and other candidates – in any commercial bank, which has branches in all marzes (provinces) of Armenia.

The pre-election fund of the candidate is formed only through his/her personal financial assets, donations from physical persons and means allocated to him/her by the party, who officially nominated him/her.<sup>6</sup> Similarly, the income of the pre-election funds of political parties (blocs of parties) is formed through the means of political parties, which the parties transfer to their pre-election funds and donations from physical persons.<sup>7</sup> Such limited scope of potential contributors also has preventive potential against the misuse of financial administrative resources, though it does not prohibit donations from state officials. Donations from persons, both physical and legal, not eligible to make donations (among them public funding, corporate donors, foreign interests, anonymous donors, etc.) to pre-election funds, are immediately transferred to state budget.<sup>8</sup> Thus, those entities, which are not eligible to make donations, *are not explicitly banned* from making donations; simply such donations will not reach the addressee.

The upper limits for the contribution from personal financial means differ depending of the type of elections. For the presidential candidate it is equal to 5 mln. AMD<sup>9</sup> (≈12,788 USD)<sup>10</sup>, for the candidate for the majoritarian seat of the Parliament it is equal to 1 mln. AMD (≈2,558 USD)<sup>11</sup>. In the case of mayoral candidates and candidates for the community council member these limits differ depending on the size of the community. For the communities with less, than 10,000 voters this limits is equal to 150,000 AMD (≈384 USD) for both mayoral candidate and candidate for the member of community council, and for the communities with more, than 10,000 voters this limit for both types of candidates is equal to 500,000 AMD (≈1,279 USD).<sup>12</sup> The Electoral Code also sets upper limits for the contributions by parties to their own pre-election funds or pre-election funds of the candidates nominated by them. They are equal to 25 mln. AMD for the presidential candidate<sup>13</sup>, 15 mln. AMD for the party (bloc of parties) competing on the proportional list at the parliamentary elections<sup>14</sup>, 2 mln. AMD (≈512 USD) for the majoritarian candidate on parliamentary elections<sup>15</sup>, 200,000 AMD (≈512 USD) for the mayoral and

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elections) revealed, some majoritarian candidates did not open pre-election funds on the grounds that they didn't conduct any campaign at all. It is difficult, however, to confirm, if they really didn't do so.

<sup>5</sup> *Ibid.*, Point 1 of Article 25

<sup>6</sup> *Ibid.*, Point 2 of Article 25 The former Electoral Code was allowing donations from legal persons (with no foreign or state involvement).

<sup>7</sup> *Ibid.*, Point 3 of Article 25

<sup>8</sup> *Ibid.*, Point 4 of Article 25

<sup>9</sup> The average salary in Armenia for the first half of 2012 is 117,000 AMD or \$294.

<sup>10</sup> *Ibid.*, Point 2 of Article 88

<sup>11</sup> *Ibid.*, Point 2 of Article 122

<sup>12</sup> *Ibid.*, Point 3 of Article 140

<sup>13</sup> *Ibid.*, Point 3 of Article 88

<sup>14</sup> *Ibid.*, Point 2 of Article 122

<sup>15</sup> *Ibid.*

community council member candidates in the case of communities with less, than 10,000 voters and 1 mln. AMD in the case of communities with more, than 10,000 voters<sup>16</sup> and 10 mln. AMD for the parties running for the seats of Yerevan Council<sup>17</sup>. The maximum size of donations from physical persons is equal to 100,000 AMD (≈256 USD) for all cases<sup>18</sup>, except for the case of mayoral and community council member candidates for the communities with less, than 100,000 voters, where this maximum size is equal to 50,000 AMD (≈128 USD). Formally, there is no limit on total sum of donations to pre-election funds. As the money on the accounts of these funds can only be used for campaign purposes, the limits on spending automatically define the limits of donations. For spending limits – see below in the **Regulation of spending** section. There are no limits on donations from one source such as employees of the same company.

The electronic forms of declarations, which contain information on the payments (donations) and use of means of pre-election funds, are posted on the relevant page of the Oversight-Audit Service (OAS) on the web-site of the Armenian Central Election Commission (CEC). These forms contain only information on the amounts of payments and donations paid at different period of times during election campaign and there is no personal information about the donors. Such information is available at OAS and its handling is regulated by CEC Decision N34 from February 16, 2012. However, neither the Electoral Code, nor the mentioned CEC Decision contains provisions allowing the public to have access to data on individual donors.<sup>19</sup>

### **Regulation of spending**

As it has been already mentioned, parties and candidates, participating in the elections, conduct their campaigns by themselves and no separate legal entity is established specifically for that purpose. Accordingly, the campaign spending is carried out by them through pre-election funds. Electoral Code sets the upper limits for expenditures from pre-election funds (thus, the size of that fund) for candidates and parties (blocs of parties).<sup>20</sup> In particular, the upper limit of expenditures for the presidential candidates and parties (blocs of parties) competing for seats on proportional list part of parliamentary elections is equal to 100 mln. AMD (≈255,754 USD).<sup>21</sup> In the case of Yerevan Council elections parties (blocs of parties) can spend no more, than 75 mln. AMD (≈191,816 USD).<sup>22</sup> For the majoritarian candidates running for the seats in Parliament the upper limit for expenditures is equal to 10 mln. AMD

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<sup>16</sup> *Ibid.*, Point 3 of Article 140

<sup>17</sup> *Ibid.*, Point 2 of Article 163

<sup>18</sup> *Ibid.*, Point 5 of Article 88, Point 3 of Article 122, Point 4 of Article 140 and Point 3 of Article 163

<sup>19</sup> It should be mentioned that under the previous Electoral Code (which was in effect from February 5, 1999 to June 26, 2011) such information was also posted as part of pre-election funds declarations.

<sup>20</sup> *Ibid.*, According to Point 6 of Article 25, If those sizes are exceeded, then the exceeded amounts are transferred to the state budget.

<sup>21</sup> *Ibid.*, Point 4 of Article 88 and Point 4 of Article 122

<sup>22</sup> *Ibid.*, Point 4 of Article 163

(≈25,580 AMD).<sup>23</sup> The upper limits on the expenditures of the mayoral candidates and members of community councils are differentiated based on the size of the community.<sup>24</sup> For the communities with less, than 4,000 voters these limits are 3 mln. AMD (≈7,673 USD) for the mayoral candidate and 500,000 AMD (≈1,279 USD) for the candidate for community council. For the communities where there are from 4,000 to 10,000 voters these limits are 7 mln. AMD (≈17,902 USD) and 1 mln. AMD (≈2,558 USD), respectively. The respective limits for the mayoral candidates and community member candidates for the communities with the number of voters from 10,000 to 70,000 are 15 mln. AMD (≈38,363 USD) and 3 mln. AMD (≈7,673 USD), respectively. Finally, these limits for mayoral candidates and community member candidates for the communities with the number of voters above 70,000 are 25 mln. AMD (≈63,939 USD) and 5 mln. AMD (≈12,788 USD).

Unlike the previous Electoral Code, the new one defines also specifically which types of expenditures shall be solely covered from the means of pre-election funds.<sup>25</sup> Those are expenditures campaign in mass media<sup>26</sup>, rent of halls and other premises, making and placing of posters and other print materials and production of all types of campaign materials (including print materials) to be disseminated to the voters. All expenditures shall be declared in their market prices and they shall include also those goods and services, which were produced or provided before the opening of the pre-election fund. This provision is aimed to reduce the practice of providing goods and services at discount prices by companies to the parties and candidates and minimize the risks of occurrence of implicit *quid pro quo* donations by such companies. Another provision that also could prevent the practice of discounting is requirement of paying three times of the money spent from the fund for a particular good or service, if it is revealed that the expenditure on it was not declared in its market price.<sup>27</sup> Total amount of the exceeded amount of the upper limit of spending of the pre-election fund and discount provided for campaign-related goods, services and works by more, than 10% entails to the deregistration of the party.<sup>28</sup>

Concrete estimates of the real cost of election campaign do not exist, as the overwhelming part of the campaign expenditures for ruling parties, especially the Republican Party of Armenia (RPA), goes to vote-bribing<sup>29</sup>, which in practice obviously is almost undetectable, as because of the convergence of RPA and the state, the law enforcement bodies, entitled to detect them, become part of the machinery used to falsify the elections and get the needed outcome. Some experts mention that the hidden part of

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<sup>23</sup> *Ibid.*, Point 4 of Article 122

<sup>24</sup> *Ibid.*, Point 5 of Article 140

<sup>25</sup> *Ibid.*, Point 2 of Article 26

<sup>26</sup> According to Point 4 of Article 19 of the Electoral Code, not later, than 10 days after the announcement of national (presidential and parliamentary) and elections to Yerevan Council, Public TV and Public Radio shall publicly announce the rate for one minute of their airtime, which shall not exceed the average rate for commercial ads and shall not change until the end of campaign. By Point 5 of the same Article, these requirements are extended to all other TV and radio companies independent from the form of their ownership. All rates are posted on the CEC web-site.

<sup>27</sup> Electoral Code, Point 3 of Article 26

<sup>28</sup> *Ibid.*, Point 5 of Article 26

<sup>29</sup> Vote buying is a criminal offense and the punishment is either fine from 500,000 to 700,000 AMD (from app. 1,000 to 1,200 €) or imprisonment from 1 to 3 years for bribe recipient and fine from 2 mln. to 2.5 mln. AMD (from app. 4,000 to 5,000 €) or imprisonment from 3 to 5 years (**Article 154.2 of the Criminal Code**) for bribe giver.

expenditures (those spent outside the pre-election funds plus vote bribing) is almost 98% of total expenditures.

### ***Prevention of the misuse of administrative resources***

The use of resources attached to public office by ruling party or parties or officials for electoral campaign purposes is a form of corruption, and in many countries, including Armenia, it is rather widespread and dominant form of political corruption. This misuse is manifested in different forms. Among them, for example, is conducting campaign by such officials, who hold such offices, which require political neutrality. Another example is extensive use of state-owned media in campaign in favor of ruling party or parties.

A number of provisions of the Armenian Electoral Code prevent the misuse of administrative resources. These provisions, which mainly contain in the articles (**Articles 18-22**) of Chapter 5 (Election Campaign), regulate different possible situations, where such misuse could take place. For example, in order to prevent preferential treatment by state and local self-administration bodies in the allocation of the halls and other premises under their ownership to the parties and candidates during election campaign for conducting their campaign-related events, these premises shall be allocated on equal basis and for free.<sup>30</sup> The list of these premises shall be posted on the web-site of the Central Election Committee (CEC) – [www.elections.am](http://www.elections.am).<sup>31</sup> Other provisions aimed at the prevention of the misuse of administrative resources containing in Article 18 are the ban on locating the headquarters of the candidates and parties, participating in the elections, in the same buildings, where the state and local self-administration bodies (municipalities) are located<sup>32</sup>, as well as definition of those categories of public institutions and officials, who are banned to campaign or distribute campaign materials<sup>33</sup>. By Article 20 of the Code, it is also banned to place posters on the mentioned buildings.<sup>34</sup> The mayors of the communities, who are empowered to allocate places for posting the posters free for charge to candidates and parties (blocs of parties), shall ensure equal conditions for them.<sup>35</sup> The same also applies to paid places.<sup>36</sup>

Electoral Code contains also provisions aimed at preventing misuse of public media resources. In particular, all presidential candidates and parties, participating in elections shall have equal rights in using free and paid airtime of the Armenian Public TV and Public Radio.<sup>37</sup> This provision is further

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<sup>30</sup> Point 2 of Article 18 of Electoral Code

<sup>31</sup> *Ibid.*, Point 3 of Article 18

<sup>32</sup> *Ibid.*, Point 5 of Article 18

<sup>33</sup> *Ibid.*, Point 6 of Article 18 Those institutions and officials are: a) state and local self-government bodies, as well as state and municipal employees and pedagogical workers of educational institutions, while executing their duties; b) members of the Constitutional Court, judges, prosecutors, officers of police, national security service, penitentiary institutions and military servicemen; and, 3) members of electoral commissions.

<sup>34</sup> *Ibid.*, Point 2 of Article 20

<sup>35</sup> *Ibid.*, Point 3 of Article 20

<sup>36</sup> *Ibid.*, Point 4 of Article 20

<sup>37</sup> *Ibid.*, Point 1 of Article 19 It should be mentioned that there is no regulation on the use of Public TV and Public radio airtime by the National Assembly (Parliament) majoritarian candidates, as well as candidates running for the

concretized through defining specific length of free and paid airtime on Public TV and Public Radio for the presidential candidates, as well as parties (blocs of parties) during parliamentary elections through proportional list vote and Yerevan Council elections.<sup>38</sup> According to that each presidential candidate and party (bloc of parties) during parliamentary elections have the right to use no more, than 60 minutes of free and no more, than 120 minutes of paid airtime on Public TV, and 120 and 180 minutes, respectively, on Public Radio.<sup>39</sup> During the campaign on Yerevan Council elections each party (bloc of parties) the corresponding numbers for free and paid airtime on Public TV are 30 and 50 minutes, respectively, and on Public Radio – 50 and 80 minutes, respectively.<sup>40</sup> During the election campaign Public TV and Public Radio shall ensure non-discriminatory conditions for all participants of the elections and provide impartial information on them.<sup>41</sup> The same applies also on the newspapers and journals founded by state or local self-government bodies.<sup>42</sup>

Electoral Code prohibits state and municipal employees influencing over the expression of the voters' free will through using their powers to create unequal conditions for parties and candidates and manifest selective approach towards candidates and parties.<sup>43</sup> Article 22 of the Electoral Code imposes certain limitations on campaigning by those candidates, who hold political, discretionary and civil offices or are state or municipal employees. In particular they are prohibited:

- To campaign while performing their duties or misusing their office for getting any advantage towards their rivals;
- To use the premises, transportation and communication means, as well as human and material resources allocated to them for executing their official duties. The use of state property shall be on equal conditions for all candidates.

By the same Article, it is also prohibited the coverage of their activities by media, except those cases, which are defined by the Constitution, official visits and receptions, as well as their actions in dealing with emergency situations.

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offices of mayors and members of the councils in local self-government elections. This does not apply to Yerevan, whose Mayor is not directly elected by population and the elections of the members of the Council are proportional list elections, where parties are running for the seats of the Council.

<sup>38</sup> In addition, Article 10 of the Law on Television and Radio, which mainly reinstates the relevant provisions of the Electoral Code on the use of media, also provides that all campaign ad materials aired on TV shall be accompanied by "**Campaign ad**" caption, and those aired on radio shall be at least three times during the broadcast interrupted by prompt that it is campaign ad.

<sup>39</sup> *Ibid.*, Points 2 and 3 of Article 89 and Point 2 of Article 123 According to Point 4 of Article 89 in the case of second round for presidential elections, as well as in the case of extraordinary presidential elections (by Article 123 the latter case applies also on the extraordinary parliamentary elections), each presidential candidate or party (bloc of parties) shall use no more, than 15 minutes of free and no more, than 25 minutes of paid airtime on Public TV and no more, than 25 minutes of free and no more, than 35 minutes of paid airtime on Public Radio.

<sup>40</sup> *Ibid.*, Points 3 and 4 of Article 162 By the same points of the same Article in the case of extraordinary elections these numbers are 15 and 25 minutes for Public TV and 25 and 40 minutes for Public Radio.

<sup>41</sup> *Ibid.*, Point 3 of Article 19

<sup>42</sup> *Ibid.*, Point 12 of Article 19

<sup>43</sup> *Ibid.*, Point 2 of Article 21

The ban on being proxies imposed by the Electoral Code on the members of the Constitutional Court, judges, prosecutors, officers of police, national security and penitentiary institutions officers to act as proxies also can be considered as a preventive measure against the misuse of administrative resources.<sup>44</sup> During election campaign presidential candidates, except those, who hold political offices, are required to take leave from their job.<sup>45</sup> As this provision applies also to the most of public officials (except political office holders), it also, to some extent, prevents the misuse of administrative resources. Finally, a preventive measure against the misuse of administrative resources is the requirement to take leave from their job for those candidates for the membership of Yerevan Council, who are employees or officials of state or municipal bodies.<sup>46</sup>

### ***Reporting, oversight and sanctions related to campaign income and expenditures***

The basic provisions for the regulation of reporting and oversight of campaign income and expenditures contain in Articles 27 and 28 of the Electoral Code. Every three days since the deadline of the registration of candidates and parties (blocs of parties) the banks, where the accounts of pre-election funds have been opened, shall send to the Oversight-Audit Service of the Central Electoral Commission (CEC) reference on the inflows to and outflows from those accounts.<sup>47</sup> All operations with pre-election funds shall be ceased starting from the voting day<sup>48</sup> and means remained in the funds shall be, within 3 months after the official announcement of the results of elections, used for benevolent purposes by their owners<sup>49</sup>.

All candidates, who are planning to conduct election campaign and are required by Electoral Code to open pre-election funds, as well as parties (blocs) shall submit their declarations on their pre-election funds to OAS on the 10<sup>th</sup>, 20<sup>th</sup> days after the start of the campaign and 3 days prior to the announcement of official results of elections.<sup>50</sup> All contracts related to the expenses mentioned in the declaration shall be attached to the declaration.<sup>51</sup> The declaration shall include:

- Chronology and amounts of the payments made to the fund;
- Names, amounts and chronology of expenditures on the items, which shall be included in the declaration;

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<sup>44</sup> *Ibid.*, Point 3 of Article 32

<sup>45</sup> *Ibid.*, Point 1 of Article 87

<sup>46</sup> *Ibid.*, Point 1 of Article 161

<sup>47</sup> *Ibid.*, Point 7 of Article 25

<sup>48</sup> *Ibid.*, Point 7 of Article 26 By the next Point of the same Article CEC can allow the parties or candidates to make payments from these funds, but only for the contracts executed before the voting day.

<sup>49</sup> *Ibid.*, Point 9 of Article 26 If within that time period the owner of the fund fails to use the remaining means of the fund, then they shall be transferred to the state budget, except the case, when the elections are declared invalid and new elections are declared. In that case, according to the Point 10 of the same Article, the remaining means of the pre-election funds can be used for the new elections, if the owner of the fund participates in the new elections. Otherwise, the remaining means of the funds shall be transferred to the state budget.

<sup>50</sup> *Ibid.*, Point 1 of Article 27

<sup>51</sup> At the same time, Electoral Code does not mention if these contracts shall be posted on CEC web-site.

- The account balance (residue).<sup>52</sup>

All submitted declarations shall be posted on CEC web-site within 3 days after their receipt by CEC.<sup>53</sup>

The oversight of the transactions related to pre-election funds is carried out by OAS.<sup>54</sup> With the adoption of the new Electoral Code, OAS became a permanent body, which also shall oversee the ongoing financial activities of political parties.<sup>55</sup> Electoral Code defines that OAS staff shall consist of 3 members, the position of its head, who is appointed by CEC and cannot be a member of any political party, is civil position and its two other members are civil servants.<sup>56</sup> During national and Yerevan Council elections each party represented in the parliament can appoint one certified auditor for working in OAS on non-paid basis.<sup>57</sup> In addition to that, during national, Yerevan Council and regular local self-government elections OAS can hire up to 5 specialists on a contractual basis for one month.<sup>58</sup>

Armenian Criminal Code and Code of Administrative Violations define sanctions for the violations of electoral legislation. It should be mentioned that violations related to the misuse of administrative resources and campaign finance are classified as administrative violations and, hence, are punishable through the application of the Code of Administrative Violations<sup>59</sup>. In particular, such administrative violations are refusal to submit pre-election fund declaration<sup>60</sup>, violations of the rules (defined by law) of campaigning in mass media, such as, for example, refusal to ensure equal conditions for all participants, coverage of election processes or conducting programs related to electoral processes by those journalists, who were registered as candidates<sup>61</sup>, campaigning or disseminating campaign materials by those, who, by law, are prohibited to do so<sup>62</sup> and dissemination of anonymous campaign materials<sup>63</sup>.

In addition, administrative sanction is foreseen also by the Law on Television and Radio for violating certain regulations related to the media use during elections. Article 60 of the mentioned Law provides that broadcasting campaign-related stories during the period, prohibited by law (on the Election Day and day prior to that day), as well as broadcasting election programs without “**Campaign ad**” caption on TV or announcing at least three times that it is campaign ad on radio entails to administrative liability with imposition of fine. The liability for infringements lays on the participating parties and candidates.

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<sup>52</sup> Electoral Code, Point 3 of Article 27

<sup>53</sup> *Ibid.*, Point 4 of Article 27

<sup>54</sup> *Ibid.*, Point 1 of Article 28 It should be mentioned that OAS also oversees the use of the financial means allocated from state budget to CEC and other electoral commissions.

<sup>55</sup> *Ibid.*, Point 2 of Article 28 The provision on the oversight of financial activities of political parties entered into effect on January 1, 2012. Before that this power was vested in the Armenian Ministry of Justice.

<sup>56</sup> *Ibid.*, Point 3 of Article 28

<sup>57</sup> *Ibid.*, Point 4 of Article 28 These auditors shall be appointed within 10 days after the announcement of elections and complete their duties on the 5<sup>th</sup> day after the official announcement of election results.

<sup>58</sup> *Ibid.*, Point 5 of Article 28

<sup>59</sup> Such election-related violations entail to the imposition of fines on the violators.

<sup>60</sup> Article 40.3 of the Code of Administrative Violations

<sup>61</sup> *Ibid.*, Article 40.7

<sup>62</sup> *Ibid.*, Article 40.8

<sup>63</sup> *Ibid.*, Article 40.11



There are no administrative or criminal penalties for donors. In the case of pre-election funds, if the donor, which, as it has been already mentioned can be physical person having voting rights, donates more amount, than the Electoral Code defines (see above), then that money is transferred to state budget.<sup>64</sup> The same applies also for those donors, who do not have the right to donate.

The proper enforcement of sanctions for electoral violations largely depends on the degree of independence of the election management body, namely, the system of electoral commissions headed by CEC. Members of Central Electoral Commission (CEC) are appointed by the President upon the nomination of the Ombudsman, Chair of the Court of Cassation (highest court on all matters, except for constitutional law) and Chair of the Chamber of Lawyers for 6-year terms. CEC consists of 7 members: 3 are nominated by the Ombudsman, 2 - by the Chair of the Court of Cassation, and 2 – by the Chair of the Chamber of Lawyers.<sup>65</sup> Formally, the nominating bodies are defined as independent by Constitution or laws of Armenia. However, the public perception is that they, as all other institutions are not independent, hence CEC cannot be an independent body, especially considering the fact that all its members are appointed by the President, who is perceived by public as the official, from whom the mentioned, as well as other bodies, depend.

## **B. Overview of the Legislation Regulating Political Party Finance**

Basic provisions on political party finance are contained in Articles 25 to 28.1 of the ***Law on Parties***. They regulate donations to parties, their spending, financial support from state budget, sanctions, as well as regulation of reporting and audit of financial activities.

### ***Regulation of income***

According to the Law on Parties, all physical and legal persons, except those, who are prohibited to donate, have the right to make donations.<sup>66</sup> The same Article defines all those entities, which are banned to donate. Those are:

- Benevolent and religious organizations;
- State and municipal institutions, receiving funding from state and municipal budgets, except the case of funding directly from state budget to the parties (blocs), which have their factions in the Parliament;

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<sup>64</sup> Point 4 of Article 25 of the Electoral Code

<sup>65</sup> *Ibid.*, Article 40

<sup>66</sup> Point 1 of the Article 25 of the Law on Parties

- State and municipal non-commercial organizations and commercial organizations, among whose shareholders are state or municipal institutions;
- Legal persons, who were registered within 6 months prior to the date of donation;
- Foreign governments, citizens and legal persons, as well as domestic legal persons, where foreign shareholders own more than 30% of shares;
- International organizations and international non-governmental movements (organizations);
- Stateless persons (individuals without citizenship);
- Anonymous donors.

The other financial source for certain parties is funding from state budget. Such funding goes to parties, which participated (separately or as a member of a bloc of parties) in the parliamentary elections and received at least 3% of votes at the proportional list vote of the elections.<sup>67</sup> The total amount of funds to be spent on parties from state budget cannot be less than the amount equal to 0.03 times minimal wage defined by law (1,000 Armenian drams (AMD) or about 2 €) times total number of voters registered in the voters list during the last parliamentary elections (for the period from 2008 to 2012 this number is equal to 2,319,722).<sup>68</sup> Thus, the total funding for all parties for each year from 2008 to 2012 is equal to  $0.03 \times 2 \text{ €} \times 2,319,722 \approx 139,000 \text{ €}$ , which has been distributed among 5 parties represented in the Armenian National Assembly (Parliament). Among the parties, eligible for receiving these funds, this amount is distributed in the same proportion, as the votes they received on a proportional list vote of parliamentary elections. State funding received by the bloc is equally distributed among all members of the bloc.

Explicitly there is no ban on state resources being given to or received by political parties, except the mentioned above funding from state budget. However, looking at the list of the forms of state support to parties<sup>69</sup>, one can notice that state resources are not included in that list. State support to parties means only that the state and local self-administration bodies shall ensure equal access to resources under their ownership.

The law establishes annual limits on the amount donors can contribute to a political party over a time period.<sup>70</sup> Those limits depend on the type of the donor. In particular, these limits are equal to:

- 10 mln. AMD per year (app. 20 000 €) for commercial organization;
- 1 mln. AMD (app. 2,000 €) for non-commercial organization; and,
- 10 mln. AMD (app. 20,000 €) for physical person.

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<sup>67</sup> *Ibid.*, Point 2 of Article 27 Parliamentary elections in Armenia are based on the, so-called, mixed electoral system when part of the members are elected through the proportional vote (90 out of 131 MPs), and the other part (the remaining 41 MPs) - through the simple majority vote.

<sup>68</sup> *Ibid.*, Point 1 of Article 27

<sup>69</sup> *Ibid.*, Article 26

<sup>70</sup> *Ibid.*, Point 2 of Article 25

There is no limit of number of donations per year and, similar to donations to pre-election funds, there are no limits on donations from one source (for example, employees of the same company). The total sum of donation per year shall not exceed 1 bln. AMD (app. 2 mln. €).

### ***Regulation of spending***

The Law on Parties has no provisions regulating spending by parties. In particular, there are no limits on the amount a political party can spend.

### ***Reporting, oversight and sanctions related to political party finance***

Political parties have to report regularly on their finances. As it has been already mentioned, starting from January 1, 2012, OAS became a permanent body, which also shall oversee the ongoing financial activities of political parties. It receives and examines financial reports from political parties (before it was the Ministry of Justice). At the same time, similar to all other legal persons, financial and accounting reports can be overseen by tax bodies, as well as those bodies, which are authorized to conduct inspection according to the Law on Organization and Conduct of Inspections in the Republic of Armenia.<sup>71</sup> In practice, besides OAS, only tax bodies conduct relevant inspection of party finance. Political parties are required to post annual report on their income and expenditures on the official website of public notifications of the Republic of Armenia – [www.azdarar.am](http://www.azdarar.am), not later on March 25 of the year following the reporting year.<sup>72</sup> In addition, those parties, whose assets exceeded 10 mln. AMD (app. 20,000 €), as well as those, which are receiving state funding (regardless the size of their assets), shall be subject to audit and their reports, accompanied with audit conclusions, shall be published only after their audit.<sup>73</sup>

Only administrative sanctions are foreseen for political finance infractions. In particular, similar to the cases of other legal persons, refusal to submit or publish annual financial reports is penalized through fine equal to 50,000 AMD (app. 100 €). If within 30 days after the imposition of the fine the party continues failing to publish or submit it's the mentioned reports, then it will be fined by 500,000 AMD

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<sup>71</sup> *Ibid.*, Point 4 of Article 28

<sup>72</sup> *Ibid.*, Point 2 of Article 28

<sup>73</sup> *Ibid.*, Article 28.1

(app. 1,000 €).<sup>74</sup> Similar to the situation with pre-election funds, there are no administrative or criminal penalties for donors.

In the case of donations to parties, if the donor is among those physical or legal persons, who are allowed to donate and the donations exceed the permitted level, then the party, within two weeks after receiving the donation, shall return the whole amount or the part exceeding the permitted level back to the donor.<sup>75</sup> By the same Article, the same shall be done, if the donor is benevolent or religious organization, legal person registered within 6 months prior to donation or stateless person. If the donor is state or municipal institution, state or municipal non-commercial organization, commercial organization with state or municipal participation, foreign entity, legal person whose 30% or more shares are owned by the foreign entity, international organization or public movement or the source of donation is anonymous, then the donation shall be transferred to state budget.<sup>76</sup>

### **C. The practice of political finance**

Since the introduction of comprehensive regulations of political party and election campaign finance in Armenia through the adoption of the first Electoral Code (in February 1999) and Law on Parties (in July 2002) the issues related to them never have been in the focus of political parties, civil society organizations or media in Armenia. Unfortunately, there haven't been also efforts to analyze the reasons for such situation and it will not be correct to discuss on the expert level about the irregularities associated with political finance, especially, party finance. Obviously, under such circumstances this area still remains as an area free from scandals.

Among NGOs only Transparency International Anti-corruption Center, the local chapter of the Transparency International (TIAC) anti-corruption movement undertook regularly projects on monitoring of campaign finance and misuse of administrative resources during elections since 2003. Monitoring projects on campaign finance and misuse of administrative resources were undertaken for 2003 (only campaign finance monitoring), 2007 and 2012 parliamentary elections, 2008 presidential elections and 2009 Yerevan Council elections. At the same time, nothing has been done so far in the area of political party finance.

### **D. Major Shortcomings of Armenian Political Finance Legislation**

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<sup>74</sup> Article 169.12 of the Code of Administrative Violations

<sup>75</sup> Law on Parties, Point 4 of Article 25

<sup>76</sup> *Ibid.*, Point 5 of Article 25

## **1. Regulation of income**

### ***a. Campaign finance***

- There are no limits on donations from one source (as in Armenian electoral legislation corporate donations are prohibited, businesses can indirectly donate very large sums to parties during campaign by “asking” its employees to donate to a particular party).
- Insufficient availability of donors’ data. The relevant information posted on the Central Election Committee (CEC) web-site does not contain personal data of individual donors. Publicizing certain data is necessary, especially for revealing instances of mass donations from employees of the same company.
- Weak regulation of in-kind donations, provision of campaign-related goods and services at discount prices, as well as contributions made by third parties.

### ***b. Political Party Finance***

- Weak regulation of contributions made by third parties.
- Symbolic sizes of public funding, as a result of which parties heavily depend on private, especially corporate and, indirectly, foreign funding.
- Relatively high threshold for parties for receiving public funding. Currently, only parties, which received at least 3% of votes on proportional list vote at parliamentary elections can get such funding. We recommend lowering the threshold to 1%.

## **2. Regulation of spending**

### ***a. Campaign finance***

- Not all campaign-related expenses shall be done through pre-election funds. Hence, wealthy parties can easily hide most of their expenses.
- There is no detailed information, in particular, related to invoices on purchasing goods and services available to public.
- Ceilings for expenditures from pre-election funds do not reflect the real pattern of expenditures. They are too low for wealthy ruling parties, but at the same time too high for much poorer opposition parties. Thus, the current sizes of expenditures do not serve their major purpose, namely, preventing unequal financial conditions for the participating parties.

## **3. Reporting and sanctions**

### ***a. Campaign finance***

- The Oversight-Audit Service (OAS) under CEC, which is the state institution responsible for the oversight of campaign and (starting from January 1, 2012)

party finance is not an independent body. Besides that it has extremely insufficient human, technical and financial capacities for verifying the declarations on pre-election funds and financial reports submitted by parties (actually, the relevant CEC decision (CEC Decision N54-N from August 11, 2011) regulating the functioning of OAS does not enable OAS to verify the mentioned reports and declarations).

- There are no sanctions for illegal donations both to pre-election funds and political parties (simply the mentioned funds are either returned to the donor or transferred to state budget).
- In general, the only sanction related to campaign party finance is for the failure to submit pre-election fund declaration or annual financial report of the party in a timely manner. There are no sanctions for providing false information or for hiding such information.

#### ***b. Political Party Finance***

- So far, the information on party finance published in the newspapers is not detailed enough, though the new amendments to the Law on Parties provide that these reports shall be more detailed. This will be possible to verify only next year, when by March 25, 2013, annual financial reports of parties for 2012 will be publicized.

Considering the above mentioned shortcomings, as well as the legal practices of other countries involved in the **Political Finance** project, a set of major recommendations to the Armenian electoral legislation could be put forward. Those are:

1. Introduction of sanctions for submitting false financial reports by political parties.
2. Capping donations both to political parties and pre-election funds from physical persons, employed by the same legal entity (company, enterprise, institution, etc.).
3. Coverage of ALL (not only part, as now) campaign-related expenses from pre-election funds.
4. Making available access for NGOs (at least, for those who regularly monitor and observe elections) those data on campaign-related expenses, which are not included in the electronic form of pre-election fund declaration, such as invoices of purchased goods and services or personal data of donors.
5. Introduction of sanctions for receiving illegal donations to party or pre-election fund accounts. Currently, donations from the sources, prohibited by law, are either returned back to the donor or they are transferred to state budget.
6. Establishment of a mechanism of gradual increase of public funding of political parties and lowering of the eligibility threshold for them from the current 3% to 1%.

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