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Political Party/Campaign Finances and Use of Administrative Resources in Armenia

Country Report

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¹ Disclaimer: The views and opinions expressed in this report are those of the author and do not necessarily reflect the official policy or position of SAOG, Council of Europe, International IDEA, IFES, NIMD, OSCE-ODIHR, TI Georgia.

ABSTRACT

Modern political systems cannot be imagined without parties and elections. There are almost no countries in the world where there are no political parties and elections. Political parties compete for power against each other either through elections or other, non-constitutional, means. This competition requires substantial financial means. Armenia is not exception in this sense. Campaign and party finance play significant role in the Armenian political system and it is important to understand how they are regulated and how these regulations work in practice.

This report tries to analyze legal regulations in the area of political party/campaign finance and use of administrative resources, how the respective state bodies implement these regulations and how effective is the functioning of these bodies. It also tries to analyze how Armenia meets its international obligations through implementation of the recommendations developed by international organizations, such as OSCE/ODIHR, Venice Commission of the Council of Europe, GRECO and OECD. Finally, it explores possible solutions to the problems of the reform of political finance by recommending certain actions to be undertaken by concerned political parties and civil society organizations.

The analysis shows that, in general, the regulations of political finance are in Armenia meet international standards. At the same time, in practice these regulations are not properly implemented and the implementing bodies are too dependent and lack necessary capacities to be effective. As a result, they fail shaping truly competitive political environment.

The study revealed that though there exist elaborated regulations on campaign and political party finance, the political context and political goals of the system are such that these regulations at best serve to window dressing and imitation of democratic behavior, and, at worst, having serious potential of punishing the political opponents, could be used to even more weaken the opposition through their selective application.

To conclude, it is legitimate to assert that Armenia, unfortunately, became one of those countries, where because of the authoritarian nature of the regime with its agenda to consolidate even more power in the hands of the ruling elite, elaborated and rather progressive regulations of political finance do not give the desired results and serve only to further consolidation of power in the hands of the ruling political force.

BACKGROUND INFORMATION

On January 30, 1992, shortly after gaining independence, Armenia was admitted to the Conference on Security and Co-operation in Europe (CSCE), renamed on January 1, 1995 to the Organization for Security and Co-operation in Europe (OSCE). Admission OSCE enabled Armenia to adhere to international democratic standards in different areas and among them – political party and campaign finance and regulation of the use of administrative resources. At that time the major international document regulating issues of campaign finance and use of administrative resources during elections was **1990 OSCE Copenhagen Document**, which still remains the key document on democratic elections, rule of law and other fundamental rights and freedoms.

The first non-Communist, democratic government came to power in Armenia as a result of May 1990 parliamentary elections, and this government immediately started democratic reforms in Armenia. Among those reforms was also the establishment of the multi-party system in the country and already on February 26, 1991 the Supreme Council of Armenia (former (until 1995) name of the Armenian Parliament) adopted the Law on Civic-Political Organizations, which laid the legal grounds for the activities of political parties. Several provisions of the Law, which had only 8 articles, were regulating, though in a very general and vague terms, issues of party finance. The Law defined the sources, from which the means of the political party could be generated.² It provided that the party's income, sources of income, expenditures, as well as the legality of its property should be subject to financial oversight. Finally, the political party should submit statement on its financial activities, which should be published in press. All these provisions were contained in Article 6 of the Law. Also, the Law provided certain safeguards against the misuse of administrative resources. Article 2 of the Law provided that “The employees working in the Ministry of Justice, Ministry of Interior (currently - Police), State Security Committee, prosecution bodies, court of arbitration, judiciary, customs bodies, as well as those serving in military cannot be member of any civic-political organization during the whole period of their employment or service.”

On July 5, 1995 Armenia held its first national (parliamentary) elections since independence.³ The conduct of these elections was regulated through the Law on the Elections of the National Assembly of the Republic of Armenia, which was adopted on March 31, 1995, by the Supreme Council of Armenia and entered into effect on April 5 of the same year. On May 30, 1996 Armenian National Assembly (NA) passed the Law on the Elections of the President of the Republic of Armenia, which should regulate the coming presidential elections scheduled for September 1996. Both laws were containing provisions on campaign finance.

Thus, campaign finance and party finance were regulated in Armenia through different from each other regulations. This approach was further enhanced with the adoption of the first Electoral Code on February 1999, which replaced the operating at that time the mentioned above laws on parliamentary and presidential elections, as well as elections on local self-administration bodies (adopted on June 10, 1996) and the Law on Political

² Those sources were membership fees, publishing activities, donations received from non-state sources, inheritance and means generated from the organization of cultural events. By the way, the Law provided that the income of the political party should be taxed in a manner prescribed by law.

³ On the same day, also the referendum on the first Constitution of the independent Armenia was conducted. By that Constitution, Armenia became semi-presidential republic, where both the President and National Assembly (Parliament) should be elected through popular vote. The 2005 constitutional referendum, though introduced substantial changes in the Constitution, did not change the form of the government and it remained semi-presidential. Finally, the new Constitution adopted through the constitutional referendum held on December 6, 2015, changed the form of the government and Armenia became parliamentary republic, where only the parliament shall be elected through popular vote (the President shall be elected by the National Assembly).

Parties, adopted by the Armenian National Assembly (NA) on July 2002 (entered into effect on November 2002), which replaced the Law on Civic-Political Organizations. Unlike their predecessors, these legal acts were containing rather comprehensive regulations on campaign finance, political party finance, as well as use of administrative resources. These regulations were also in line with the concepts developed by international organizations, primarily OSCE and IDEA. Moreover, throughout the whole period of its operation they underwent serious changes and were amended several times, which also improved the provisions related to campaign and party finance. Among those changes were also those, which were introduced to implement GRECO recommendations stemming from its Third Evaluation Round (see more in detail in the section on the Armenia's international commitments).⁴

The mentioned above comprehensive regulations on political party and campaign finance, and use of administrative resources became the basis for the similar regulations in the next two Electoral Codes and the new Law on Political Parties, which replaced the older legal acts.⁵

On December 16, 2016, following the requirements of the new Constitution of Armenia, NA adopted the new, Constitutional Law on Political Parties. Most of Its provisions entered into effect on April 1, 2017, except of some provisions of Part 3 of Article 13, which will enter into effect on the day of assuming its powers by the new President, and Part 3 of Article 16, which will enter into effect on January 1, 2021. Similar to the previous Law on Political Parties, the new Law also has regulations on party finance and use of administrative resources with more detailed regulations.

ELECTORAL POLICY AND LEGISLATION

Following the approach used by Dr. Magnus Ohman in the *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (see Chapter 2 of the Handbook), in order to understand what kind of policy is carried out by the Armenian authorities to regulate and enforce political finance, one must start with considering what are Armenia's *political goals* and in which *context* the regulations are taking place. Namely, the political goals (including view of politics and political parties) and context shape political finance regulations and their enforcement.

Though Armenian authorities declare that their goal is to establish democracy in the country based on the system of Western values and they are implementing democratic reforms aimed to achieve this goal, there is general consensus in the society, as a whole, most of political parties and civil society organizations that Armenia is becoming more and more authoritarian country. This assessment is in compliance with the categorization of Armenia as semi-consolidated authoritarianism, according to the methodology applied in the *Freedom House's Nations in Transit* research project on democracy in 29 former Communist countries from Central Europe to Central Asia. At the core of the project is an annual survey on democratic reform carried out

⁴ See, for example, HO-10-N Law on Introduction of Changes and Amendment in the Law on Political Parties adopted by the National Assembly on February 9, 2012 and entered into effect on March 17, 2013.

⁵ The first Electoral Code was replaced by the Electoral Code, adopted by NA on May 26, 2011. Following the requirements of the new Constitution of Armenia adopted through popular referendum on December 2015, the new Constitutional Law on Political Parties and new Electoral Code, which also has a status of constitutional law (the concept of constitutional law was introduced in the Armenian Constitution as a result of the mentioned referendum) were adopted. The Constitutional Law on Political Parties was adopted on December 16, 2016 and entered into effect on April 1, 2017. The new Electoral Code was adopted on May 25, 2016 and it entered into effect on June 1, 2016.

since 1995 and its current methodology was developed in 2003. According to the 2017 survey, Armenia remained as semi-consolidated authoritarianism.⁶ Armenia's Democracy score for 2017 was 5.39 (in 2016 it was 5.36).⁷ Countries whose scores lay between 5 and 6 are considered as countries with semi-consolidated authoritarian political regime and since 2003 Armenia's Democracy score was always between 5 and 6. It is worth mentioning that the deterioration of Armenia's Democracy score (from 5.36 to 5.39) was due to the degradation its 2 (out of 7) ratings, namely, *National Democratic Governance* and *Electoral Process* (both worsened from 5.75 to 6.00 and are the worst ratings among all 7 ratings). It is of no surprise for a country, where there has been no change of the government through elections since 1990 despite persistent deterioration of socio-economic situation and huge emigration, to witness permanent worsening of the *Electoral process* score, whose value (6.00) means that the country's electoral system is transforming from a system characteristic to semi-consolidated to that of consolidated authoritarian regime.⁸ The implicit (undeclared) major political goal of such regime is establishing dominant-party political system, where other, than the ruling, parties serve simply for imitating democratic transition and being a buffer between the discontent of the society and ruling elite. The subordinate role of other parties is achieved through creating various obstacles for donations to them (mainly, creating troubles for donors such as, for example, frequent visits of tax inspectors to them, especially, if they are corporate donors), limiting their public funding, creating more elaborate mechanisms allowing state interference into their affairs and co-opting big businesses and local well-known and respected individuals into the ruling party.

Having said this, it is now fair to assert that for Armenia's current rather extensive and elaborate political finance regulation system it holds the argument put forward on p. 173 of the *Handbook on Political Finance* (hereafter - Handbook), that is, **such system mainly is used to weaken the opposition and prevent the emergence of new and powerful political actors**. Apparently, these regulations do not *explicitly* discriminate opposition parties and candidates, however, their analysis in the context of current political regime in Armenia, as can be seen below, gives different meaning to these regulations, than that in the context of democratic regimes, and creates serious advantages to the ruling political force.

The methods of regulating political finance in Armenia are congruent to the categorization used by Magnus Ohman in Chapter 2 of the Handbook. Below these methods are discussed using that categorization.

Donation bans and limits

There are donation bans and limits both for campaign finance and party finance. According to Part 3 of Article 26 of the Electoral Code, only physical persons having voting rights can make donations to parties (party alliances) during electoral campaign by making payments to the pre-election funds, which the participating in the elections parties and candidates shall open at the start of the campaign. Electoral Code also sets limits on the sizes of the donations made by those persons. The maximum sizes for the donation from physical persons differ

⁶ See <https://freedomhouse.org/report/nations-transit/2017/armenia>

⁷ The ratings are based from 1 to 7 with 1 representing the highest level of democratic progress and 7 – the lowest. Democracy score is an average of ratings (currently there are 7 ratings) for the categories tracked in a given year. One of these ratings is the “Electoral Process”.

⁸ As was mentioned in the Executive Summary of the Armenia Country Report (see <https://freedomhouse.org/report/nations-transit/2017/armenia>), the *Electoral Process* score degraded “due to the new evidence of serious shortcomings during the 2015 referendum and 2016 local elections, failure to resolve shortcomings in the law with new regulations, and adoption of experimental formal rules in the new electoral code”.

depending of the type of elections and size of communities.⁹ Though the Electoral Code does not explicitly ban donations by other, than physical persons, entities, it does prohibit them implicitly through Part 4 of Article 26, providing that donations from persons, both physical and legal, not eligible to make donations to pre-election funds, are immediately transferred to state budget. Also, there are no mechanisms to prevent indirect donations from legal persons, when the management of the legal entity obliges its employees to make individual donations to the political force or candidate, whom that management favors.¹⁰ It is worth mentioning that before the adoption of the previous Electoral Code on May 2011, there was no ban on corporate donations.¹¹ At the same time, corporate donors now also can make donations, though indirectly, through making donations to political parties (see below), which, according to Part 3 of Article 26, have the right to use their own means in funding their own electoral campaigns.

Regarding party finance, donation bans are more explicit. Article 24 of the Law on Political Parties defines who is allowed and who is prohibited to donate to political parties. Donations to political parties are prohibited from:

- Benevolent and religious organizations, as well as organizations in which they are involved;
- State and municipal budgets, and (or) their off-budget means, except the case of state funding defined by the same Law;
- State and municipal non-commercial organizations, and commercial organizations, among whose shareholders are state or municipal institutions;
- Foreign governments, citizens and legal persons, as well as domestic legal persons, where foreign shareholders own more than 30% of shares;
- International organizations;
- Stateless persons (individuals without citizenship);
- Anonymous donors.

After receiving donations from these sources (except for donations from benevolent and religious organizations and stateless persons), the parties shall, within two weeks after receiving them, transfer the whole amount of the donation to the state budget (see Part 6 of the Article 24). In the case of benevolent or religious organizations or stateless persons, the donations shall be immediately returned to them.

The same Article of the Law also sets limits for donations from those, who are not prohibited for donations. In particular, Part 2 of the named Article provides that the total size of donations, including works and services

⁹ See for the sizes of donations from physical persons Part 3 of Article 92 of the Electoral Code in the case of parliamentary elections, Part 3 of Article 115 and Part 3 of Article 139 in the case of local self-administration elections.

¹⁰ Monitoring of campaign finance conducted by TIAC during 2012 parliamentary and 2013 presidential elections revealed many such cases.

¹¹ One possible reason for prohibiting corporate donations in 2011 could be one of the findings from the monitoring of campaign finance conducted by TIAC during 2007 parliamentary and 2008 presidential elections. According to it (see p. 32. and p. 35 in the TIAC publication “Monitoring of election campaign finance during 2007 parliamentary and 2008 presidential elections” at <https://transparency.am/en/publications/view/73>). According to the monitoring results, 67 out of 78 corporate donors made donations to the ruling Republican Party of Armenia and only 4 to opposition parties during 2007 parliamentary elections. During 2008 presidential elections out of 133 corporate donors 130 donated to the presidential candidate from the ruling Republican Party. These numbers, which made big noise at that time, revealed the true extent of convergence of political and business elites in Armenia. Thus, it is natural to conclude that it was very uncomfortable for those elites, who took steps to hide this picture.

rendered to the political party, shall not exceed 1 bln AMD during one-year period. Also, Part 3 of the same Article provides limits for donations in the form of (landed) property. The value of that property shall not exceed 200 mln AMD and it cannot be taken back from the political party within 5 years following the act of the donation. Part 2 of the same Article also provides that the annual limits for donations are equal:

- 10 mln. AMD by one commercial organizations;
- 1 mln. AMD by one non-commercial organizations; and,
- 10 mln. AMD by one physical person.

If these limits are exceeded, then the party shall transfer either the whole amount of the donation or the excessive amount to the state budget (see Part 5 of Article 24).

Public funding

There is no direct public funding to campaign during elections. However, as it was mentioned above, due to the fact that political parties can contribute their own means to the campaign, which (certain of them) are eligible for public funding. According to Article 26 of the law on Political Parties, political parties, which have got at least 3% of the votes in the most recent parliamentary elections are entitled to receive public funding from the state budget. The total amount of funds to be spent on parties from state budget cannot be less than the amount equal to 0.04 times of the minimal wage defined by law (1,000 Armenian drams (AMD) or less, than 2 □ times total number of voters registered in the voters list during the last parliamentary elections.¹² These funds are distributed in the same proportion, as the votes they received on the parliamentary elections through their national proportional lists (since last year, after the adoption of the current Electoral Code, Armenian electoral system is pure proportional with national and regional proportional lists). If as a result of elections party alliance(s) receive at least 3% of votes, then the amount, that the alliance shall receive, according to the law, shall be equally distributed among all members of the alliance(s).

As it can be seen from the *Footnote 11* the total amount of public funding is about □190,000, which, as the representatives of political parties argued during their interviews to the researcher of the project conducted by TIAC on political finance, is miserable.¹³ Thus, it does not serve to the goal of promoting (by the state) a party system with few strong parties competing against each other. In addition, considering the mentioned above situation with the ruling party always winning parliamentary elections, the proportional method of distributing public funding even more favors the ruling party. Also, considering the high levels of poverty among population and mistrust towards political parties in the society, the only substantial source of income for political parties remain corporate donations. Taking into account the mentioned above high levels of convergence between political and business elites, it is not surprising that, as the TIAC research on political finance revealed, most of the corporate donations also go to the ruling party, leaving other parties in the miserable financial conditions.

¹² During the last, April 2017 parliamentary elections the total number of voters registered in the voters lists was equal to 2,564,334. Thus, starting from the next year and until 2022 when the next parliamentary elections will take place, the total amount of public funding from the state budget will be equal to about 1,025,734 AMD (or around □89,526).

¹³ During the conduct of the mentioned project, that amount was even less, because of the less total number of voters registered at the previous, 2012 parliamentary elections and less amount of money, allocated for each vote (it was 0.03 times of the minimal wage defined by law).

Regulations to prevent illicit funding

As mentioned above, the Law on Parties imposes certain bans on donations to political parties and these bans can serve as safeguards against illicit funding. The research on party finance conducted by TIAC also did not reveal such instances on illicit funding.

Armenian Electoral Code, as well as regulations related to the elections, provide safeguards against vote buying and define sanctions for vote buying, but the instances of punishment remain extremely rare and, what is more important, have no serious effect on this vicious phenomenon. Part 6 of Article 19 of the Electoral Code prohibits the candidates and political parties participating in elections, as well as those, who are acting on behalf of them giving or promising money, food, securities, goods or rendering or promising services during campaign, Election Day and the day preceding the Election Day. Also, by the same Part benevolent organizations, whose names are similar or associated with parties or candidates participating in the elections are prohibited to carry out their activities nationwide (during parliamentary elections) or in those municipalities, where such parties or candidates are participating during local self-administration elections. Vote bribing also is a criminally punishable offense. According to Part 1 of Article 154.2 of the Armenian Criminal Code, vote bribing is punished through fine from 500,000 to 700,000 AMD or imprisonment from 1 to 3 years.¹⁴

Prevention of the abuse of state (administrative) resources

It may be absolutely correct to argue that together with vote buying abuse of administrative resources became one of the main factors influencing the outcome of elections in Armenia. It should be expected in a country with excessive concentration of power in the hands of one state institution, in our case – the Presidency, lack of independence of judiciary, prevalence of monopolies in the economy and convergence of business (the owners of those monopolies) and political elites. In fact, Armenia is mentioned in the handbook as an example of a country with widespread abuse of state (administrative) resources (see p. 185 of the Handbook). At the same time abuse of administrative resources in Armenia has its specifics, which makes it distinct from those examples brought in the Handbook. The most efficient and widespread forms of the abuse of administrative resources in Armenia are not those, against which there are provisions in the electoral legislation.

More elaborate regulations on the use of administrative resources are foreseen in the Electoral Code and they are designed to prevent abuse of such resources during electoral campaigns. These provisions, which mainly contain in the articles (**Articles 19-23**) of Chapter 4 (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 (see Part 2 of Article 19). Other provisions aimed at the prevention of the abuse of administrative resources containing in Article 19 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 located¹⁵, as well as enlisting those categories of public institutions

¹⁴ Part 3 of the same Article provides that if the bribe recipient within 3 days after receiving the bribe informs about that the law enforcement bodies and cooperates with them in the disclosure of that crime, shall be freed from criminal liability.

¹⁵ Part 4 of Article 19 However, the same Part of the mentioned Article stipulates that the political parties (blocs of parties) can establish their headquarters in those parts of such buildings, which are not owned by the state or municipal bodies, occupying those buildings.

and officials, who are banned to campaign or distribute campaign materials¹⁶. Those institutions and officials are: a) state and local self-government bodies, as well as state and municipal employees and pedagogical employees of educational institutions, while executing their duties; b) members of the Constitutional Court, judges, prosecutors, officers of police, national security service, penitentiary institutions, bailiffs and military servicemen; and, 3) members of electoral commissions.

Electoral Code contains also provisions aimed at preventing abuse of public media resources. In particular, all parties, participating in parliamentary and Yerevan Council elections shall have equal rights in using free and paid airtime of the Armenian Public TV and Public Radio.¹⁷ This provision is further 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 and Yerevan Council elections. During the election campaign Public TV and Public Radio shall ensure non-discriminatory treatment for all participants of the elections and provide impartial information on them, even if the participating party(ies) and alliances of parties are not conducting campaign events or not submitting information about those events.¹⁸ The same applies also on the newspapers and journals founded by state or local self-government bodies.¹⁹

Article 23 of the Electoral Code imposes certain limitations on campaigning by those candidates, who are public servants. 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, except for the resources needed for ensuring the security of those high-ranking officials, who are nominated as 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.

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.²⁰ As this provision applies also to the most of public officials (except of those, who hold political and discretionary positions), 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, Gyumri and Vanadzor Councils, who are employees or officials of state or municipal bodies (except of those, who hold political and discretionary positions).²¹ Finally, Articles 82, 108 and 126 prohibit judges, prosecutors, officials serving in all types of law enforcement bodies, National Security Service,

¹⁶ Part 5 of Article 19

¹⁷ Part 1 of Article 20 It should be mentioned that there is no regulation on the use of Public TV and Public radio airtime by the candidates running for the offices of mayors and members of the councils in local self-government elections.

¹⁸ Part 3 of Article 20

¹⁹ Part 12 of Article 20

²⁰ Part 3 of Article 33

²¹ Part 1 of Article 137

bailiffs, emergency services, tax and customs services, militaries and members of electoral commissions to be nominated as candidates for members of NA and councils of communities.

The provisions in the Law on Political Parties that are aimed to prevent possible manifestations of abuse of administrative resources contain in Part 1 of Article 25 of the Law. According to it, the state and local self-administration bodies shall ensure equal and non-discriminatory access of all political parties to those media outlets, which are founded by them. Also, these bodies shall ensure such access for political parties to the buildings and communication means owned by them, though the priority shall be given to those parties or alliances of parties, which have representation in NA.

Spending limits and third party spending²²

Armenian legislation on political finance establishes spending limits both for campaign and political party expenditures. The spending limits for campaign expenditures depend on the type of elections. In particular, a party or alliance of parties can spend maximum 500 mln AMD for parliamentary elections.²³ In the case of Yerevan Council elections parties (blocs of parties) can spend no more, than 100 mln AMD and in the case of elections to Gyumri and Vanadzor councils – no more, than 30 mln AMD.²⁴ The upper limits on the expenditures of the mayoral candidates and members of community councils are differentiated based on the size of the community varying from 500,000 AMD (≈,037 USD) for the candidate for council member of community with less, than 4,000 voters to 25 mln AMD for the candidates for the head of community with more, than 70,000 voters.²⁵

Regarding spending limits for political parties, there are no explicitly defined values for such limits. However, as Part 2 of Article 24 of the Law on Political Parties defines that the total size of donations, including works and services rendered to the political party, shall not exceed 1 bln AMD during one-year period (see above), this upper limit can be considered as the upper limit for expenditures for political parties.

The Law on Parties does not contain provisions on third party spending.

Financial reporting

Similar to most of the countries in the world, political finance reporting requirements are in place also in Armenia. Reporting provisions are in place both in the Electoral Code and Law on Political Parties.

Reporting on campaign finance is regulated by Article 28 of the Electoral Code. All candidates, who are required by Electoral Code to open pre-election funds, as well as parties (alliances of parties), shall submit their declarations on their pre-election funds to Oversight-Audit Service (OAS) of CEC on the 10th, 20th days after

²² Considering the fact that vote buying is almost everywhere prohibited (see, for example, p. 26 of the Handbook), and, in particular, it is criminal offense in Armenia (see the discussion above), it is considered in this study not as a type of campaign spending, but rather as illicit funding, when the wealthy businessmen or oligarchs, as they are named in Armenia, are “donating” money to parties for only one purpose, namely, for bribing the voters.

²³ Part 4 of Article 92 If the second round of voting shall be conducted, then the parties (blocs of parties), which will participate in the second round, according to the same Part of the mentioned Article, can spend the remaining part of their pre-election fund. Part 5 provides that in the campaign of the second round these parties (blocs of parties) can spend no more, than 200 mln AMD.

²⁴ Part 4 of Article 139

²⁵ Part 4 of Article 115

the start of the campaign and 3 days prior to the date of the announcement of official final results of elections, defined by the Code.²⁶ The declaration of the pre-election fund, the electronic form of which is defined by CEC decision (see Part 2 of Article 28)²⁷, shall contain information about the donations made to the participating party (alliance of parties) or candidate and expenditures made for campaign purposes (see Part 1 of the same Article).

The Part 1 of Article 28 also provides that all contracts concluded by the party (alliance of parties) or candidates for acquisition of goods and services shall be attached to the declaration. In addition, the declaration shall also contain a column, which shall display the market price of the acquired good or service.²⁸ Part 4 of Article 28 provides that within 3 days after the receipt of the declarations, CEC shall post them on its official web-site (www.elections.am) Currently all declarations of all candidates (presidential and for community council members) and all parties participating in all elections since the adoption of the previous Electoral Code (May 2011) are posted on the page of OAS (only in Armenian) on the CEC website (see <http://www.elections.am/audit/>). It is also worth mentioning that the information posted on CEC website does not contain information either on the identities of donors or contracts on the expenditures for acquisition of goods and services for campaign purposes, whereas before 2011 when the first Electoral Code (adopted on February 1999) was in effect, such information was publicly available.²⁹

Similar to campaign finance, there are also provisions in the Law on Political Parties that regulate financial reporting of political parties. Part 1 of Article 27 of the Law provides that political parties shall submit their financial and accounting reports in a manner and timelines defined by law for reporting of legal entities. Part 2 of Article 27 provides political parties are required to publish annual report on the sources of their income and expenditures, as well as on its property in mass media and post it on the official web-site of public notifications of the Republic of Armenia – www.azdarar.am, not later on March 25 of the year following the reporting year. Those parties, which are required to undergo audit, shall also publish in mass media and post on www.azdarar.am the auditor's conclusions on their financial operations, as well. By April 1 of the same year these reports shall be submitted to OAS of CEC (see Part 3 of the same Article).

Article 28 of the Law provides that certain political parties are required to undergo audit and publish their financial statements together with the auditor's conclusion only after the audit. Those parties are parties, whose assets during the reporting year exceeded 10 mln AMD (see Part 1 of the Article)³⁰ and parties, which received from state budget (see more about that in the *Public Funding* sub-section) funding exceeding 3 mln AMD per year.

²⁶ Part 1 of Article 28

²⁷ The current form of the electronic declaration of the pre-election fund was adopted through November 9, 2016 CEC Decision N125-N (see <http://irtek.am/views/act.aspx?aid=87528&m=%27%27&sc=#> - in Armenian).

²⁸ Analysis of the declarations of parties (alliances of parties) participating in the 2012 and 2017 parliamentary elections, as well as declarations of the presidential candidates at 2013 presidential elections revealed that all participants put under the market prices for all goods and services they have acquired the same price as their actual prices were.

²⁹ Namely that information enabled TIAC to find out the huge asymmetry in the numbers of corporate donors donating funds to the ruling party and oppositional parties in 2007 parliamentary elections and similarly to the ruling party's and oppositional parties' presidential in 2008 presidential elections. Also, the contracts on the acquisition of goods and services posted on the CEC website allowed TIAC to find out the discounts given to parties by the companies (see about these facts above).

³⁰ Part 2 of the same Article provides that if the excess of these 10 mln AMD is due only to the total value of the party's movable and immovable property, and, if that value does not change next year, then the party shall not be obliged to submit auditor's conclusion next year.

An additional opportunity for financial reporting is the participation of political parties in the parliamentary and Yerevan, Gyumri and Vanadzor Councils elections. According to Part 5 Article 8 of the Electoral Code, within 5 days after the deadline of their registration defined by the Code, the participating parties and candidates shall submit to CEC declarations on their assets and income.³¹ These declarations shall cover the 12-calendar-month period preceding the month of the submission of the application by parties and candidates for participating in elections. Part 6 of the same Article provides that within 3 days after their submission these declarations shall be posted on the CEC official website. Their copies can be submitted to proxies, mass media and observers.

Enforcement and sanctions

Similar to many other post-Soviet countries enforcement of political finance is one of the weakest, if not the weakest elements of the of the political finance system. After the adoption of the previous Electoral Code on May 2011, OAS of the CEC became the sole governmental institution for control and oversight of both campaign and political party finance. Its structure and functioning are regulated by Article 28 of the Electoral Code. OAS is structurally part of CEC. Its Head is appointed by CEC Chairman and its budget is part of the CEC budget. Part 7 of that Article provides that the order of its operations shall be established by CEC.³² Thus, it can be concluded that OAS is not an independent body, meaning that Armenia does not meet international requirements on such bodies, though Part 1 of the same Article provides that “OAS operates independently from electoral commissions and is not accountable to them”.

Even worse is the situation regarding capacities of OAS. According to Point 6 of the mentioned above CEC Decision N 24-N OAS shall have 3 permanent members – the Head of the Service and two employees. Though Parts 3 and 4 of Article 29 of the Electoral Code provide that during parliamentary elections each faction in NA *can* nominate one auditor in OAS, who shall work starting on the 10th day after the announcement of the elections and ending on the 5th day after the announcement of their official results (Part 3). Also, during all types of elections OAS can hire 5 additional specialists for 1-month employment (Part 4). These resources are absolutely insufficient to conduct serious oversight over political finance, including those prescribed by the mentioned Article of the Electoral Code.

Armenian legislation foresees sanctions also for the violations related to political finance. These sanctions are contained in the Criminal Code and Code on Administrative Delinquencies. Regarding campaign finance the Code on Administrative Delinquencies defines sanctions for not opening pre-election fund or not submitting declarations on the use of the means accumulated in that fund. Article 40.3 defines that such violation shall entail to fine equal from 100,000 to 200,000 AMD. Also, Article 40.10 of the Code penalizes vote bribing and campaigning while rendering benevolence to voters. For the first violation a fine from 1 mln to 2 mln AMD is foreseen, and the second violation is penalized with fine from 2 to 2.5 mln AMD. Interestingly, vote bribing entails also to criminal liability. According to Part 1 of Article 154.2 of the Criminal Code vote receiving or giving bribe shall be penalized with fine from 5 to 7 mln AMD or imprisonment from 1 to 3 years.³³ Thus, it gives the investigative authorities discretionary power to decide whether the concrete act of vote bribing shall entail to criminal or administrative liability, even though Article 40.10 of the Code on Administrative

³¹ The electronic form of the declaration and the procedures of its submission are defined by CEC June 17, 2016 Decision N 24-N.

³² Currently, after the adoption of the new Electoral Code, it is CEC June 17, 2016 Decision N 39-N.

³³ Part 3 of the same Article provides that if the bribe receiver within 3 days after the commitment of the crime informs the law enforcement bodies (provided that the law enforcement bodies did not know prior about that) about the bribery act, then he/she shall be exempted from criminal liability.

Delinquencies provides that administrative liability shall come into effect, if the offense is not entailing to criminal liability.

Political parties are subject to administrative liability for certain violations related to party finance. In particular, their relevant official(s) shall be fined from 40,000 to 50,000 AMD for failing to submit annual report on their income and expenditures (see Article 189.13 of the Code on Administrative Delinquencies). According to Article 189.16 of the same Code, the party shall be fined from 100,000 to 150,000 AMD for failing to transfer to the state budget donations from those donors, who are prohibited to donate to parties, as well as the excessive part of the donation from the eligible donors (the amount exceeding the defined by law size of the donation from the particular donor – see above). Also, according to Article 189.15 of the same Code the eligible donors shall be fined from 200,000 to 250,000 AMD (for legal persons) and from 100,000 to 150,000 AMD (for physical persons) for failing to transfer donations exceeding 100,000 AMD through wire transfer. Simultaneously, by the same Article the political party's relevant official shall be fined from 250,000 to 300,000 AMD for accepting the donation of such size in cash. There is no criminal liability for offenses related to political party finance.

According to Article 223.2 of the Code on Administrative Delinquencies, CEC is designated as the official state institution empowered for the imposition of sanctions foreseen by the above mentioned Articles 189.13, 189.15 and 189.16. However, until now there is no publicly available information (including such posted on the CEC website) about imposing sanctions for the above mentioned offenses. According to Article 190 of the Code of Criminal Procedure, vote bribing to be punished by Article 154.2 shall be investigated by the Investigative Committee. Here also there were only rare cases of prosecution for vote bribing. This picture is a clear indication of a lack of political will to enforce sanctions against violations related to political finance. Together with functioning of a very dependent and weak oversight body (OAS) this lack of enforcement gives grounds to argue that the existence of rather elaborated regulations on political finance in Armenia are mainly serving the purposes of imitation and avoidance from liability for the perpetrators of violations in the area of political finance.

Armenia's international obligations on political finance

Armenia's concrete international obligations on the improvement of the legislation and practices in political finance stem from Armenia's membership to OSCE, Council of Europe, GRECO and OECD Anti-corruption Network's Istanbul Action Plan.

OSCE develops its recommendations to the country mainly after its structural unit ODIHR observes the country's national elections and these recommendations are included in the OSCE/ODIHR's Election Observation Mission's (EOM) final reports. The last parliamentary elections in Armenia took place on April 2, 2017 and 340 long-term and short-term observers from OSCE/ODIHR observed these elections. However, so far its EOM's final report is not published. Hence, one has to look into how Armenia implemented OSCE/ODIHR's recommendations developed as a result of observation of the preceding elections, namely, 2012 parliamentary and 2013 presidential elections. As Armenia's current Electoral Code was adopted last year on June 1, obviously one has to look into this Code to see, if the recommendations developed as a result of the mentioned elections have been reflected in it.

OSCE/ODIHR EOM Final Report on 2012 parliamentary elections has two recommendations related to campaign finance (including vote buying) and abuse of administrative resources. The Priority Recommendation 6 (see <http://www.osce.org/odihr/elections/91643?download=true>, p.26) recommends Armenian law enforcement authorities to apply wider implementation of vote buying and enforcement of the ban on campaigning in schools and on involvement of educational staff and students in campaigning. It also recommends amending the Criminal Code “to include offenses for ... abuse of administrative resources for campaigning”. The Report included also two specific recommendations on campaign finance (see <http://www.osce.org/odihr/elections/91643?download=true>, p.27). Recommendation 13 calls for expanding the legal definition of campaign expenditures so that all costs of the contestant’s campaign would be included. Recommendation 14 calls to make mandatory opening of special campaign funds (pre-election funds) and submission of reports on campaign finance, even, if the contestant is not planning to or are spending funds on for campaign purposes. Also, the nomination of the auditors by parties represented in NA shall become mandatory.

Priority Recommendation 2 in the OSCE/ODIHR EOM Final Report on 2013 presidential elections (see <http://www.osce.org/odihr/elections/101315?download=true>, p. 28), actually, repeats the call made in Recommendation 6 of the previous Report (on parliamentary elections) for amending the Criminal Code “to include offenses for ... abuse of administrative resources for campaigning”, with one important difference, namely, using the word “should” instead of “could” related to amending. The same Recommendation also explicitly calls for public officials to “refrain from abuse of administrative resources, including abuse of office towards their employees and public”. Priority Recommendation 4 (see the same page of the Report) says that “The authorities should ensure that safeguards are developed and implemented in order to ensure a clear separation between the State and party, as required by paragraph 5.4 of the 1990 OSCE Copenhagen Document”. Recommendation 14, which is specific to campaign finance says that “Party and campaign offices should not be located in buildings occupied or owned by state or local government bodies.” (see <http://www.osce.org/odihr/elections/101315?download=true>, p. 33).

The new Electoral Code includes provisions, which stem from some of the above mentioned recommendations. In particular, Article 154.2 of the Criminal Code specified the instances of vote bribing. It now defines all possible types of bribe (both monetary and non-monetary). At the same time, this Article now relieves from criminal liability the bribe taker, if he/she informs law enforcement bodies about that criminal offense within 3 days following the act of the offense. The current Electoral Code also implemented (though partially) another part of Recommendation 6 from 2012 parliamentary elections Final Report. First of all, according to Part 2 of Article 19, on working days the halls of schools can be used for conducting campaign events only after 6pm. Also, Part 5 of the same Article now bans the employees of pedagogical staff of educational institutions to get involved in campaign or disseminate campaign materials while performing their duties. Armenian authorities to a large extent implemented also the requirement of the Recommendation 14 from the Final Report on 2012 parliamentary elections, namely, making mandatory opening of special campaign (pre-election) funds (see Part 1 of Article 26 of the Electoral Code), except for the mayoral and council member candidates in the case of municipalities with less, than 10,000 voters. At the same time, there was no progress regarding the implementation of Recommendation 13 from the same Report regarding expanding the legal definition of campaign expenditures so that all costs of the contestant’s campaign would be included. Moreover, in the current Electoral Code one more spending item, namely, expenditures on campaign headquarters is now excluded from the items, whose expenses shall be covered from campaign fund (see Part 1 of Article 27). Also,

no steps were undertaken to implement recommendations aimed at including in the Criminal Code offenses for abuse of administrative resources for campaigning, as well as taking out party and campaign offices from the buildings occupied or owned by state or local government bodies.

Another set of recommendations related to campaign finance (including abuse of administrative resources) is contained in the joint opinions of OSCE/ODIHR and European Commission for Democracy through Law (Venice Commission). The most recent, Second Joint Opinion on the Armenian Electoral Code (as amended on June 30, 2016) was published on October 17, 2016 (**Venice Commission Opinion No. 853/2016** and **OSCE/ODIHR Opinion No: ELE-ARM/293/2016** - see <http://www.osce.org/odihr/elections/armenia/275511>). It analyzes to what extent Armenian authorities implemented the recommendations from the Joint Opinion on the Draft of Armenian Electoral Code (as of April 18, 2016), which was published on May 10, 2016 (see <http://www.osce.org/odihr/elections/armenia/239591?download=true>). In the Joint Opinion on the Draft of Armenian Electoral Code (as of April 18, 2016) there were 7 recommendations related to campaign finance. Those were:

1. Campaign finance regulations shall cover all campaign-related activities, including organizational expenditures, such as services of marketing agencies, campaign offices, transportation, and communication expenses.
2. Explicit regulation of such important campaign finance issues, such as the treatment of anonymous donations and the possibility of making in-kind donations.
3. Revoking of candidate or candidate list registration for excessive campaign spending shall be only an exceptional case.
4. Clarification of OAS status – is it independent institution or subordinate to CEC.
5. The timeframe for campaign finance audits by OAS shall be extended
6. Empower OAS to obtain all information from all corresponding state and non-state entities relevant to its audits.
7. The period for which the declaration of property and income (of participating parties and candidates) is to be submitted could be established by the law.

As it can be seen from the recommendations, many of them overlap with those developed in the last OSCE/ODIHR Final Reports on 2012 and 2013 elections. The Second Joint Opinion analyzed the implementation of these recommendations in the adopted text of the Electoral Code (see <http://www.osce.org/odihr/elections/armenia/275511?download=true>). Among the most important conclusions made from the implementation of the recommendations were that OAS remained as not independent body (even though a provision was included in the final text saying that OAS shall act independently and not be accountable to electoral commissions), the time period for the OAS audit of pre-election funds remained insufficiently short (7 days). From the other hand, following the recommendations from the First Joint Opinion, OAS now can demand all needed information from banks, companies and other entities about to have more complete picture on the party's spending (see part 6 of Article 29). Also, Part 5 of Article 8 of the Code now clarifies the period for which the declaration on the income and property of the party or candidate shall be submitted (12 calendar months prior to the month of the submission of the documents for the registration for elections).

OSCE/ODIHR and Venice Commission also issued a Joint Opinion on the Draft Constitutional Law on Political Parties (**Opinion No. 843/2016** and **ODIHR Opinion-Nr.: POLIT-ARM/299/2016**). It was published on

December 12, 2016 (see <http://www.osce.org/odihr/289071?download=true>). The Joint Opinion contains 10 recommendations on financing of political parties. Among them are:

- To explicitly refer loans, credits or debts as forms of donation - **implemented** (see Part 1 of Article 24 of the Law on Political Parties);
- To include entry and membership fees as donations (to prevent circumvention of maximum limits of donations) – **not implemented**, According to Article Part 2 of Article 23 membership and entry fees are considered as part of the party’s property;
- To revise ban on the donations from organizations having stake in charitable or religious organizations, from organizations in which charitable or religious organizations participate or from legal persons registered less than six months before making donations – **partially implemented** – the relevant article of the Law (Article 24) does not include legal persons registered less than six months before making donations, as well as organizations having stake in charitable or religious organizations are not included in the list of entities, who are prohibited making donations. At the same time, organizations in which charitable or religious organizations participate remained banned from making donations;
- To impose the same cap applied for cash donations (100,000 AMD) to anonymous donations – **not implemented**;
- Strengthening OAS by empowering them with additional powers, such as the power to call witnesses under oath or ask other governmental institutions for assistance in carrying out its work – **not implemented**;
- To condition the receipt of public funding with the requirement to submit financial statements by the deadline defined by law – **not implemented**; and,
- To increase the sizes of public funding to parties – **partially implemented** in the final text of the Law (see Part 2 of Article 26) the amount to be received for one voter increased from 30 AMD to 40 AMD, which, however, still remains, as discussed earlier, a miserable amount.

Another set of Armenia’s international obligations are obligations stemming from its membership to GRECO. Recommendations on political finance, as it is known, were included in the Third Round of Evaluation. For Armenia, the evaluation of that Round started with the on-site visit of GRECO Evaluation Team on May 17-21, 2010. The Armenia Third Round Evaluation Report was adopted on December 3, 2010 at the GRECO 49th Plenary Meeting and was published on April 11, 2011. The Compliance Report was adopted on December 7, 2012 at the GRECO 58th Plenary Meeting (was published on December 17, 2012) and the Second Compliance Report was adopted on December 12, 2014 at the GRECO 66th Plenary Meeting (published on December 16, 2014).³⁴ As it can be seen from the dates of publications, Armenia completed the implementation of the GRECO recommendations already at the end of 2014. As it can be seen from the GRECO General Activity Report of 2016, Armenia’s rate of implementation of GRECO Third Round Evaluation is equal to 100% (see <https://rm.coe.int/seventeenth-general-activity-report-2016-of-the-group-of-states-against/168071c885>, p. 23). Considering the fact that, as was mentioned earlier, the current, Constitutional Law on Political Parties was adopted on December 16, 2016 and the current Electoral Code was adopted on May 25, 2016, all recommendations of the GRECO Third Evaluation Round were implemented through changing and amending the previous Law on Political Parties (adopted on July 2002) and the previous Electoral Code (adopted on May

³⁴ This information is available from the relevant page of the GRECO official website (see <http://www.coe.int/en/web/greco/evaluations/round-3>).

2011). For more information one can look into the Compliance Report (see <https://rm.coe.int/16806c2b35>) and Second Compliance Report (see <https://rm.coe.int/16806c2b3a>). Here, it should only be mentioned that all provisions stemming from the implementation of GRECO recommendations and which are reflected in the previous Law on Political Parties and Electoral Code, are included in the current Law on Political Parties and Electoral Code.

Finally, Armenia, as a member of the OECD Anti-corruption Network Istanbul Anti-corruption Action Plan (IAAP), has certain anti-corruption obligations, as well. Currently, Armenia is in the Third Round of IAAP monitoring cycle, which started for Armenia on October 2014 and will be completed on October 2017. Regarding political finance, part of the Recommendation 3.7 (which is related to political corruption) from the previous, Second Round of Monitoring (October 2011 – October 2014) was on political finance. The whole Recommendation was only partially implemented (see more on the implementation of that Recommendation at <https://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>, pp. 86-92). In the same publication, based on the results of the implementation of the recommendation from the previous monitoring cycle, the new Recommendation (Recommendation 21 – see p. 92) related to political corruption is formulated. This Recommendation consists of four parts, two of which are related to political finance. Those are:

- Ensure that political parties disclose their financial data, including bank loans and contracts with foundations, associations and other bodies related to them.
- Ensure substantial and independent monitoring of election campaign funding and monitoring of political parties financing by an independent authority, with adequate staff, material resources and powers to proactively supervise such funding, investigate alleged infringements of political financing regulations and impose sanctions. At a minimum, the Control and Verification Service should be given the power and corresponding tools to assess and verify the validity of declarations.

As it can be seen, these recommendations are almost identical to those from OSCE/ODIHR EOM final reports and OSCE/ODIHR-Venice Commission joint opinions. The deadline for the implementation of these, as well as remaining OECD IAAP recommendations is set October 2017.

The discussion above already revealed which were the changes in the area of political party/campaign finance since the Regional Conference on Money in Politics, held in Tbilisi, Georgia on 18-19 February 2016. Since that Conference the new, Constitutional Law on Political Parties and the new Electoral Code were adopted. These legal acts, together with other legal acts related mainly to the regulation of electoral processes and its enforcement, brought substantially new concepts and approaches in the regulations of elections and activities of political parties. However, if one takes political finance, the changes were few and not radical in their content.

Regarding campaign finance and use of administrative resources during elections more or less substantial changes are:

- The period to be covered by the declarations of income and assets of the parties and candidates (12 calendar months preceding the month of the submission of the documents for the registration for participation in the elections) is now defined by the Code, rather than CEC decision;
- Restrictions are imposed on campaigning in the educational institutions and by pedagogical staff of the educational institutions;
- All parties (alliances of parties) are required to open pre-election (campaign) funds;

- Expenses on running campaign headquarters are taken out from the list of items the expenses on which shall be mandatory covered by the campaign funds;
- OAS is declared as not accountable to electoral commissions – this provision in the current political-administrative context has purely declarative character.
- Appointment to OAS of an auditor from each faction represented in NA is now not mandatory.
- OAS is empowered to request and receive information from banks and commercial entities regarding the financial transactions of political parties.
- Vote bribing is now clearly defined in the Criminal Code.

Regarding political party finance the changes are:³⁵

- Credits, loans and debts are also specified as types of donations;
- Donation in the form of immovable property is explicitly regulated;
- Legal persons registered within six months prior to the moment of making donation are now allowed to make donations;
- Political parties are obliged to submit their financial statements to OAS;
- Political parties, whose assets exceed 10 mln AMD only due to possession of movable and immovable property, are not obliged to submit auditor's conclusion for the years, when no changes took place in their movable or immovable property.
- Among parties, which receive public funding, submission of auditor's conclusion is required only for those parties, who received more, than 3 mln AMD from the state budget during the fiscal year.

FINDINGS

In the course of the discussion on the political finance legislation and policy analysis in the previous section, the real situation or what is happening in practice was frequently pointed out. Thus, in this section only the major findings related to the practice in the area of political finance in Armenia are summarized.

The major findings are:

- Unfortunately, more and more widespread is becoming vote buying during elections. This phenomenon occurred at an unprecedented scale during the last parliamentary elections on April 2017 and mainly it was done by the ruling Republican Party of Armenia. Obviously, money used for bribing the voters was not reflected in the declarations of pre-election funds of the political parties, and, thus, can be viewed as illicit funding.³⁶ The source of such funding, according to the findings of the TIAC project on the monitoring of the misuse of administrative resources and other electoral violations, are mainly means of

³⁵ The small number of changes could be explained also by the fact that Armenia only recently (by December 2014) completed the implementation of GRECO Third Evaluation Round recommendations and the provisions stemming from those recommendations were already introduced in the previous Law on Political Parties, which was in effect at that time.

³⁶ Though, formally the means used for bribing the voters mainly are not of criminal origin (those are mainly the means of wealthy businessmen, who run for the seats in NA), they are used for actions, which entail to criminal liability.

affluent businessmen, who were in the regional proportional lists of mainly the ruling Republican Party and, to some extent, Tcarukyan alliance of parties.³⁷

- Forms of abuse of administrative resources are very subtle and rather difficult to detect. As the monitoring of the abuse administrative resources during the recent 2017 parliamentary elections conducted by TIAC revealed, the major form of abuse of administrative resources were pressure and intimidation on the employees of state and municipal institutions, teachers, students, doctors, nurses, employees of kindergartens and employees of private businesses to vote for the candidates of the ruling party included in the regional proportional lists.³⁸ As almost all oppositional parties in practice are very passive in the periods between elections, the manifestations of similar forms of the abuse of administrative resources during those periods are rare.³⁹
- The phenomenon of the third party spending is rather widespread in Armenia, especially in favor of the ruling Republican Party. Mostly such spending goes for vote bribing, which was discussed in detail in the *Illicit funding* sub-section. Also, as TIAC monitoring of campaign finance during 2007 parliamentary, 2008 presidential, 2012 parliamentary and 2013 presidential elections revealed, the businesses use also other methods of support to parties (not necessarily only the ruling party), which could qualify as third party spending.⁴⁰ As the analysis of the declarations of pre-election funds revealed, the prices of many services rendered or goods purchased by the participating in the elections parties or presidential candidates were much lower, than the market prices for those services and goods.⁴¹ This is a clear indication of a widespread practice of using discounts for rendering services or selling goods to participating parties, which is an indirect form of third party financing and could be viewed as a type of *quid pro quo* donation.⁴²
- Also, the above mentioned monitoring exercises conducted by TIAC in 2007 and 2008 revealed significant exceeding of spending limits by two parties in 2007 parliamentary elections (the ruling Republican Party and Prosperous Armenia Party, which after those elections joined the ruling coalition) and presidential candidate Serzh Sargsyan (the incumbent President) in 2008 presidential elections.⁴³ The exceeded parts of the expenditures were covered by businesses affiliated to those parties or owned by their leading members. The response of the authorities to those findings was rather instructive and could be viewed as a textbook example, how the authoritarian regimes imitate political finance

³⁷ Though Armenian Constitution explicitly bans MPs to run businesses (see Article 95 of the Constitution), in practice this ban is widely ignored and the same also happened with the current NA.

³⁸ One of the biggest scandals during the recent campaign of April 2017 parliamentary was connected with the abuse of administrative resources. The members of an NGO called to the principals of 114 schools and kindergartens and pretending as representatives of the headquarters of the ruling party started to ask them about what they have done among the their teachers and the parents of their students and kindergarten children to secure necessary amounts of votes for the party. The principals reported in detail to them about the steps they have undertaken (including pressing and harassing their subordinates) and all their answers were recorded and then made public. However, the relevant law enforcement bodies did not take any steps against these principals, and moreover, 30 principals from those 114 sued that NGO for libel. The court hearings are scheduled for the end of July.

³⁹ These similar forms could be forcing the teachers or students or their parents to join the ruling party.

⁴⁰ TIAC did not conduct such monitoring during the recent April 2017 parliamentary elections, but while preparing this expert report, the author analyzed the declarations of pre-election funds of participating parties and alliances.

⁴¹ In order to assess the market prices of goods and services purchased by the participating parties and presidential candidates, TIAC was hiring experts in different areas for the assessment of those prices.

⁴² The Electoral Code contains provisions against the practice of discounting of prices for goods and services rendered to participating in the elections parties. Part 2 of Article 27 provides that if the goods or services were obtained for free or at discount price, then they shall be included in the declarations of pre-election funds in their market prices.

⁴³ These findings were among the arguments used by oppositional parties and presidential candidates in their appeals to the Constitutional Court calling for annulment of the results of those elections. The Constitutional Court dismissed these arguments only on the grounds that data collected by an NGO could not be used as proof.

regulations, turning them in their favor. In the next Electoral Code, adopted on May 2011, it was specifically defined which types of expenditures shall be covered from the pre-election funds of parties and candidates. As a result, many types of campaign-related goods and services, such as gasoline for travels to regions to conduct campaign events, cars used for such travel, expenditures on organizing concerts or sports events, etc. were excluded from the items, the spending on which should be covered from the pre-election funds. Obviously, expenditures on these services and goods became third party spending. The situation was repeated at TIAC monitoring of campaign finance during 2012 parliamentary and 2013 presidential elections. This time TIAC monitors revealed huge expenses by the ruling party (during 2012 parliamentary elections) and its presidential candidate (during 2013 presidential elections) for running campaign headquarters.⁴⁴ The response of the authorities this time did not differ from that of the previous time and in the new Electoral Code, which is now in force, the spending on campaign headquarters were also taken out (see Part 1 of Article 27 of the Code).

RECOMMENDATIONS

Proposing recommendations on the improvement of the policies, legislation and practices in the area of political finance at this moment could be not much relevant considering the current political context and timing for developing them.

The major problems with political finance in Armenia are a) abuse of administrative resources, b) state control over political parties, c) convergence of political and business elites, and, d) serious scales of illicit funding, mainly used for vote bribing during elections. These problems are not unique for Armenia and can be observed in most of the post-Soviet countries. Hence, on a conceptual level, the recommendations should be aimed to address the mentioned problems.

However, considering the fact that Armenia has semi-authoritarian political regime and this is recognized also by well-known international organizations, as the discussion above revealed, it will be virtually impossible to believe that any proposed recommendation related to political finance and aimed to curb the abuse of administrative resources, weaken state control over political parties, separate politics from business or stop bribing the voters during elections would be properly implemented. Firstly, either political will from the side of elites or regime change will be needed to change the existing context of the Armenian political finance system, namely, the essence of the current regime. Second, assuming that there is political will to transform the current political regime from authoritarian to real multi-party democracy with free market and free and fair elections, the change in the patterns of political finance should be connected with the broader change of the political system, and not only political. Armenian political-economic system, which is labeled as oligarchic with dominance of monopolies and oligopolies will hardly tolerate any reform in the area of political finance, as it could threaten its foundations. Thus, any reform must have systemic character to include simultaneous political (including political finance), economic and social reforms. The latter is an absolute necessity, as huge levels of poverty, social inequality, existence of extremely weak middle class hardly would be fertile soil for the establishment of genuine multi-party system in Armenia and ensure free and fair elections.

⁴⁴ It is worth mentioning that only Republican Party had hundreds such headquarters, whereas other parties or presidential candidates had very few, some of them only 1 or 2 headquarters.

Another, also rather important reason for refraining making recommendations is the time factor. The new Electoral Code has been adopted only one year ago and the next national elections will be held on 2022. As the practice both in Armenia and elsewhere shows, usually, discussions on changing electoral legislation start sometimes around two years before the next elections. Therefore, hardly there will be serious discussions related to electoral reform earlier, than in 2020, if there wouldn't be some *force majeure* situations. In addition, the new Law on Political Parties entered into effect only on April 1, 2017 and hardly one should expect that in the coming 2-3 years this law will also undergo substantial changes.

Saying this does not, of course, mean that political parties and civil society organizations shall do nothing and wait for more relevant times. On the contrary, they have to find ways to trigger reforms changes. But that should not mean that they have to be intensively engaged in lobbying legal changes in the existing regulations, as the practice revealed many times that legal changes in the unchanging political context and political goals of the political elites bring at best to some façade improvements (or window dressing) and only facilitate the imitation game played by the authorities. What political parties and concerned civil society organizations shall do as a priority task is to make some kind of inventory of the existing political forces to understand the starting conditions for the long and exhaustive struggle for democracy in Armenia. The next recommendation should be a thorough and very scrutinized and academic analysis of possible strategies that the parties could apply to change the existing context. Finally, they must simply start to get involved in the everyday routine of party work at grassroots level, instead of remembering the voters only during the election campaign, which take place only every five years for less, than a month period.

That way is, obviously, much harder, than getting co-opted by the ruling elites and imitate political struggle guided by the Olympic principle "Participation (in elections) is more important, than winning them". However, the gains would definitely be enormous, compared with those that they get currently.

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