



CHECKS AND BALANCES NETWORK

BIRARADA.ORG

Democracy BAROMETER

POLICY PAPER NO:12

May 2014

WE WANT THE FIRST PRESIDENT TO BE ELECTED BY THE PEOPLE TO BE TRANSPARENT IN THE ELECTION CAMPAIGN HE WILL CONDUCT WITH INDIVIDUAL DONATIONS.

In this election, the candidates will not receive public assistance. They cannot accept donations and assistance from legal entities. Since they are legal entities, political parties will also not be able to provide financing support to the candidates, who may accept donations and assistance only from citizens who support them.

Our country will go to the polls on 10 August 2014 for the first time in its history to elect the President of the Republic.¹

How transparently the first President to be elected by popular vote will conduct his election campaign is very important for our confidence in the person to be elected. ***As the Checks and Balances Network, we want transparent financing of the election campaign to be conducted by the first President of our country to be elected by popular vote, and we hope that the electoral race will be equal, pluralistic and based on principles of fair competition.***

The Legislation for the Election Campaign should be Disclosed

Law no. 6271 on the Presidential Election provides for the monitoring of campaign financing by candidates.² This legislation concerning the transparency of the election campaign is very encouraging.³ Nevertheless, ***considering international standards and principles, it will be appropriate for the relevant legislation to be more detailed and to include further provisions.*** The Supreme Electoral Board (SEB) has announced that 25 communications regarding the Law on the Presidential Election have been prepared and that they will be disclosed in due time.⁴ As of today, those 25 communications are still to be published. For this reason, it is likely that the communications prepared by the SEB include the areas which we have stated need to be improved. The fact that the communications on the legislation which regulates such an important election have still not been disclosed results in us voters making an assessment based on probabilities and this is contrary to the principles of openness.

Candidates may Accept Donations only from Citizens

The presidential election is a very special election for our country. In this election, the candidates ***will not receive public assistance. They cannot accept donations and assistance from legal entities. Since they are legal entities, political parties will also not be able to provide financing support to the candidates, who may accept***

Elections and referendums are held under judicial administration and supervision, according to the principles of free, equal, secret, direct and universal suffrage and open counting and sorting. A Supreme Electoral Board has been created for this purpose.

Under Article 79 of the Constitution, the SEB performs the duties of "carrying out and causing to be carried out all actions to ensure the fair and orderly conduct of elections from the beginning to the end and of reviewing and finally deciding upon all complaints and objections regarding electoral matters during and after the elections."

citizens who support them. The amount of assistance a single individual may provide to a candidate shall ***not exceed the gross monthly salary of the highest civil servant, which is the salary of the Prime Minister's Undersecretary and which currently equals TL 9,871.***¹

An Equal, Pluralistic and Fair Campaign should be Conducted

Very large sums are spent in election campaigns. *Advertising expenses, newspaper advertisements, leasing of billboards, organization of rallies, hiring of aeroplanes or helicopters, cargo expenses, badge purchases and many other items of spending* considerably heighten the costs of election campaigns. To give an example, political parties faced a total cost of TL 136 million in the local elections of 30 March 2014. It is stated that the Justice and Development Party spent TL 41 million, the Republican People's Party TL 45.8 million, and the Nationalist Movement Party TL 25.8 million.⁵ As the amounts personally spent by the candidates have

¹ The maximum donation amount was announced as 9.081 TL by The Supreme Electoral Board (SEB) in June 2014.

“Since the Election Day is 10 August 2014, the candidates will conduct their campaigns for only 30 days. This is a very insufficient time for an equal, pluralistic and fair campaign process.”

To build confidence between his electors and himself and to conduct his election campaign as transparently as possible, the first future President to be elected by popular vote should weekly disclose his donors, their occupational statuses, where they work and the amounts of their donations on his website and inform the public.

donations and assistance only from

According to the calendar fixed by the SEB, **applications for candidacy will start on 29 June 2014 and finish on 3 July 2014**. The provisional list of candidates will be published in the Official Gazette on 8 July and **the final list on 11 July 2014**. Since the Election Day is 10 August 2014, the candidates will conduct their campaigns for only 30 days. This is a very insufficient time for an equal, pluralistic and fair campaign process.

The President must Show that s/he Considers the Needs of the People, not Simply his Donors

The President is the head of the State. He represents the Republic of Turkey. He oversees the enforcement of the Constitution and the **orderly and harmonious** functioning of the State organs. **To build confidence between his electors and himself** and to conduct his election campaign as transparently as possible, the first future President with this title to be elected by popular vote should **weekly disclose his donors, their occupational statuses, where they work and the amounts of their donations on his website and inform the public**.

We stated that the local elections of 30 March 2014 cost political parties TL 136 million. In the light of this figure, let us assume that the total spending in the presidential election will be TL 80 million, that there are 4 candidates in the race and that each candidate will make an equal amount of spending. The amount of spending per candidate will be TL 20 million. Under the law, an individual may donate to a candidate up to TL 9,871, which is the gross monthly salary of the highest civil servant. Thus, each candidate will need 2,026 donors who we assume will make a donation in the maximum amount to be able to spend TL 20 million for his campaign. For such number of donors to make contributions to an election campaign in such a short time, it is likely that influential donors capable of making donations at the upper limit will step in. In a campaign conducted with individual donations, in the event that financially more powerful individuals contribute greater amounts to campaign funding (and in particular that they make donations at the upper limit and use their influence to get others to make such donations), the suspicion may arise that their interests will be given more consideration following the election.

In the picture that emerges, the donations so made by wealthy individuals may carry the risk that, if the particular candidate is elected, they will turn into a relationship of private interest that benefits certain individuals or groups.

not been revealed, we do not know the total amount of spending.

In order that this situation may not take on a suspicious character with regard to the candidate and that possible inappropriate allegations may be avoided, **it will be useful for the candidates to disclose transparently and regularly to the public who their donors are, the occupations of these individuals and the amounts donated by them. As a result, if elected, a candidate will be able to disprove, in accordance with transparency, any allegations of a potential relationship of private interest with his donors, and citizens will be confident that the President considers the needs of the public rather than the demands of any particular groups who may have made large donations to him in an attempt to establish a relationship of private interest.**



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APPENDIX I:

International Principles Regarding Transparency in the Funding of Election Campaigns, and Proposals for the Improvement of Current Legislation

Many international organizations such as the Venice Commission, the Organization for Security and Cooperation in Europe (OSCE) and the Group of States against Corruption (GRECO)⁶ state that transparency in the funding of election campaigns is one of the essential principles for ensuring public confidence in the candidate elected and social peace.⁷ Under the last paragraph of Article 67 of the Constitution, changes made to the electoral laws shall not be applicable in elections to be held within one year from the date of their entry into force. Since it is too late for this election, the good practices that come to the fore in the light of the following international principles and our proposals for the improvement of legislation are for the next election.

International Principles Regarding Transparency in the Funding of Election Campaigns	Law no. 6271 on the Presidential Election	Proposals for the Improvement of Legislation
<p>The election calendar should be organized in view of a time span in which candidates will be able to collect donations and effectively conduct their campaigns.</p>	<p>According to the calendar fixed by the Supreme Electoral Board (SEB), applications for candidacy will start on 29 June 2014 and finish on 3 July 2014. The provisional list of candidates will be published in the Official Gazette on 8 July and the final list on 11 July 2014. Since the election day is 10 August 2014, the candidates will conduct their campaigns for only 30 days.</p>	<p>More than 30 days time is needed for the candidates to conduct an equal, pluralistic and fair campaign. The election calendar should be organized in view of a time span in which candidates will be able to collect donations and effectively conduct their campaigns.</p>
<p>The legislation regarding transparency of election campaigns should be detailed and leave no room for questions.⁸</p>	<p>The candidates will each open a bank account as the "Election Account" in their names. Donations will be deposited into this bank account. Donations below the amount to be determined by the SEB will be collected against a receipt and deposited into the election account. During the period from the finalization of the candidates to the finalization of the election results, the donations and expenditures made will be recorded on lists certified by the Supreme Electoral Board. Donations and contributions received may be used in election spending and not be allocated for any other purpose.</p>	<p>The current legislation includes gaps concerning the stated international principle. For example, the words "donations and assistance" in Law no. 6271 on the Presidential Election refer only to cash support. There is no clear provision regarding whether in-kind support may be extended to candidates. If there is to be in-kind support, how will it be recorded? The legislation should include a provision concerning whether in-kind support is permissible. To prevent transfer of resources for other purposes, the legislation should provide that campaign expenses must be defined categorically (in-kind and in-cash). Nor is there any provision concerning whether candidates are permitted to use their own personal resources. This should be clarified in the legislation. If candidates are to be permitted to use their own personal resources, where and how the budgets created by them are used should be recorded and publicly disclosed.</p>
<p>The legislation should include a provision against anonymous donations and donations made under a false name or in the name of another person.⁹ Donations should be regularly disclosed to the public.</p>	<p>The SEB will not disclose the election account to the public. Nor will the candidates be required to disclose their donors. There is no provision requiring the candidates to disclose the donations made to them during the electoral process.</p>	<p>To conduct their election campaigns as transparently as possible, the candidates should weekly disclose their donors, their occupational statuses, where they work and the amounts of their donations on their websites and inform the public.</p>
<p>For candidates to receive a certain amount of public support is considered</p>	<p>The Law on the Presidential Election does not provide for public support to</p>	<p>The Council of Europe requires that political parties to participate in</p>

among the main criteria regarding the funding of election campaigns. ¹⁰	candidates.	elections receive public support. In this light, it would be appropriate for the presidential candidates to receive public support, even if in a small amount, for them to conduct their campaigns and for a fair political competition to take place.
Candidates should make a declaration of assets within the period of application for candidacy.	During the period of applications for candidacy, the candidates must make a declaration of assets. The elected candidate's declaration of assets will be published in the Official Gazette upon the finalization of the election results.	Business interests, if any, as well as share certificates should be disclosed in the declaration of assets.
Transparency in the funding of election campaigns should be inspected by an independent body, which should oversee the implementation of the rules and check campaign funding by candidates. ¹¹ Its reports should be regularly disclosed to the media and the public.	The candidate may, on condition that he informs the Supreme Electoral Board in advance, authorize one or several professionals or lawyers who are licensed under the Law on Independent Accountants and Financial Consultants and Sworn Financial Consultants in respect of recording and producing information and documents concerning the election account and the incomes and expenses.	An independent body should be created that oversees the implementation of the rules to ensure transparency in the financing of the election campaign. Its regular reports including the names, occupational statuses and workplaces of donors and the amounts of their donations should be weekly disclosed on the website created for information.
To prevent unfair competition, there should be an upper limit on election campaign spending. ¹²	The SEB has not imposed an upper limit on election spending.	To ensure equality in the election campaign and to prevent unfair competition, an upper limit should be imposed on election campaign spending and sanctions applied against candidates who spend above that limit.
The legislation should include a mechanism of effective, proportionate and deterrent sanctions against possible violations by candidates in the financing of their election campaigns. ¹³ The election should be cancelled even if the candidate who has violated the rules wins the election. ¹⁴	Within 10 days after the election results are finalized, the candidates will submit their donation and spending documents to the Supreme Electoral Board. They will be checked within a month for possible limit violations and irregularities. Any amounts in excess of the limit or not spent will be transferred to the Treasury.	Under the current legislation, the transparency of the election campaign will have been checked after the candidate is elected. The check should be made on a daily basis during the campaign, and the weekly reports prepared by the independent supervisory body should be publicly disclosed on the Internet. The legislation does not specify what kind of a sanction is applicable in the event that a violation is identified. It is necessary to enact provisions including effective, proportionate and deterrent sanctions concerning possible violations with regard to election campaign financing by candidates.

Endnotes

¹ Article 101 of the Turkish Constitution (as amended by Article 4 of Law no. 5678 dated 21/10/2007): "The President of the Republic shall be elected by popular vote from among members of the Grand National Assembly of Turkey who have completed the age of forty and received higher education or Turkish citizens who have these qualities and who are eligible to become a deputy." http://www.tbmm.gov.tr/anayasa/anayasa_2011.pdf

² Law no. 6271 on the Presidential Election, <http://www.tbmm.gov.tr/kanunlar/k6271.html>

³ The GRECO, of which our country is a member, also supports the special monitoring by the Supreme Electoral Board of the campaign financing by presidential candidates and encourages the authorities to effectively implement the new legal provisions; The Report of Conformity on Turkey, Criminalization (ETS 173 and 191, GPC 2), Transparency in Party Financing, Third Stage of Evaluation, 54th General Assembly, Strasbourg, 20-23 March 2012, Recommendation vii, art. 80, p.14.

⁴ "It is stated that 25 communications regarding the first presidential election to be held across the country and at representations abroad have been prepared and they will be disclosed in due time." Final Results of March 30 Elections Announced, Milliyet, 7 May 2014, <http://www.milliyet.com.tr/30-mart-kesin-secim-sonuclari-aciklandi-ankara-yerelhaber-183165/>

⁵ "Election Costs RPP Dearly", NTVMSNBC, <http://www.ntvmsnbc.com/id/24963227/>

⁶ The aim of the GRECO is to observe the anti-corruption systems of its members and help to increase their capacities.

⁷ Democracy Through Law, the Venice Commission, Good Practices in the Field of Political Parties, 77th Session, No: 414/2006, 12-13 December 2008, Venice, p.23, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)021-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)021-e)

⁸ Ibid. Article 15: Specialized personnel

⁹ Financing Political Parties and Election Campaigns - Guidelines, Anonymous Donations, Ingrid Van Biezen, Birmingham University, United Kingdom, Article 5, p.26

¹⁰ The Council of Europe, Committee of Ministers, Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, Section 1: External Sources of Funding of Political Parties, Article 1: Public and Private Support to Political Parties, <https://wcd.coe.int/ViewDoc.jsp?id=2183>

¹¹ The Council of Europe, Committee of Ministers, Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, Section 5: Supervision, Article 14: Independent Monitoring, <https://wcd.coe.int/ViewDoc.jsp?id=2183>

¹² The Council of Europe, Committee of Ministers, Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, Section 3: Electoral Campaign Expenditure, Article 9: Limits on Expenditure
<https://wcd.coe.int/ViewDoc.jsp?id=2183>

¹³ Financing Political Parties and Election Campaigns - Guidelines, Violations of the Law, Types of Offences, Ingrid Van Biezen, Birmingham University, United Kingdom, p.69

¹⁴ Venice Commission, European Commission for Democracy Through Law, International Standards of Financing of Political Parties and Election Campaigns, Astana, December 2008 Conference, Strasbourg, 2009, Section vi. : Sanctions, Article 16,p.47, file:///C:/Users/User/Downloads/Tanchev%20member%20states_Conf_Kazakhstan.pdf