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AUTHORS: Cüneyt Yüksel

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## POLITICAL FINANCE IN TURKEY WITHIN THE CONTEXT OF INTERNATIONAL LAW, REGULATIONS AND PRACTICES

### ULUSLARARASI HUKUK, DÜZENLEMELER VE UYGULAMALAR KAPSAMINDA TÜRKİYE’DE SİYASETİN FİNANSMANI

Doç. Dr./Assoc. Prof. Cüneyt Yüksel\*

#### Abstract

*Political finance bears considerable importance both in terms of democratic political order and in terms of ethics in politics. Based on the premise that relations between politics and money can lead to serious conflicts of interest in legislative processes, it must be born in mind that there is need for establishment of a contemporary system suitable for international law, regulations and practices on political finance. Therefore, this Article deals with the general concepts and practices on political finance. It examines international law, regulations and practices and identifies the problems related to the political finance in Turkey. Finally, the Article concludes with the recommendations for establishing a legal infrastructure of political finance in Turkey.*

#### Öz

*Siyasetin finansmanı hem demokratik siyasal düzen hem de siyasette etik açısından çok büyük bir önem taşımaktadır. Siyaset-para ilişkilerinin yasama sürecinde büyük çıkar çatışmalarına yol açabileceği bilincinden yola çıkarak siyasetin finansmanı konusunda uluslararası düzenlemelere uygun çağdaş bir sistemin kurulması gerekliliği göz ardı edilmemelidir. Bu bilinçle, bu Makale’de siyasetin finansmanı ile ilgili genel kavramlara yer verilmekte, uluslararası hukuk, düzenlemeler ve uygulamalar incelenmekte ve Türkiye’de siyasetin finansmanı ile ilgili sorunlar tespit edilmektedir. Aynı zamanda, bu Makale’de Türkiye’de siyasetin finansmanı ile ilgili bir mevzuat çalışması değerlendirilmesi yapılmakta ve sonuç olarak yasal altyapı kurulması için tavsiyelerde bulunmaktadır.*

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\* Istanbul University, Faculty of Law, Department of Public International Law, Istanbul, Turkey, cuneyt.yuksel@istanbul.edu.tr

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**Anahtar Kelimeler:** *Siyasetin finansmanı, Türkiye’de siyasetin finansmanı ve hukuk, Siyasal etik, demokrasi, Siyasetin finansmanı ve uluslararası hukuk ve düzenlemeler.*

## I. Introduction

Money has become an inevitable element for making politics<sup>1</sup>. This creates unethical consequences that require solution in all democracies including both developed and developing countries. This Article deals with the topic of political finance based on the premise that the relation between politics and money is closely related to the balance of democracy and the emergence of unethical activities and corruption in legislation processes<sup>2</sup>.

The political finance is closely related to the ethical codes of behaviour and conflict of interest in politics<sup>3</sup>. On the other hand, it is essential in terms of ensuring public participation in politics and intra-party democracy that parliamentarians observe the rules of political finance and display ethical behaviour. Therefore, political finance has considerable importance for ethics in politics in particular and development of democracy in general<sup>4</sup>. Political finance is a vital issue for democracy, governance, and development. No matter how flawless are the country’s elections, how active its civil society, how competitive its political parties, and how responsible its local authorities, the role of money in politics undeniably influences the quality

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<sup>1</sup> See, OECD Report, *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris, 2016, p. 21-22. (online) <http://dx.doi.org/10.1787/9789264249455-en>. Main findings of this Report are 1) finance is a necessary component of the democratic processes; 2) money enables the expression of political support; 3) it enables competition in elections; 4) money may be a means for powerful narrow interests to exercise undue influence e.g. newly elected officials may be pressured to "return the favor" to corporations; 5) infrastructure and urban planning are particularly vulnerable to the risk of policy capture and; 6) consequences include inadequate policies that go against the public interest.

<sup>2</sup> For similar opinions generally see, Richard S. KATZ, *Democracy and the Legal Regulation of Political Parties*, Paper Prepared for The USAID Conference On, *Changes in Political Parties: United States Agency for International Development*, Washington, D.C., 1 October, 2004, p. 1-3. (online) <https://tr.scribd.com/document/190180368/Democracy-and-the-Legal-Regulation-of-Political-Parties>.

<sup>3</sup> See, Cüneyt YÜKSEL, *An International Comparison of Legislative Ethics*, *Annales de la Faculte de Droit d’Istanbul*, V. 38, No: 55, 2006, p.128-134.

<sup>4</sup> See, Elin FALGUERA/ Samuel JONES/ Magnus OHMAN, (eds.), *Funding of Political Parties and Election Campaigns*, Stockholm, 2014, p.1 (Hereinafter, “FALGUERA/ JONES/ OHMAN, *Funding of Political Parties*”). (online) <https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>.

of democracy and governance. Only through greater transparency will one fully understand the extent and nature of this influence<sup>5</sup>.

It is evident that money is important in terms of political finance. However, money which is not properly declared and bordered corrupts political competition and influences the governance process which follows elections. Introduction of ethical principles in the political finance was necessitated by the possibility that unethical use of money in politics could turn into personal interest in legislative processes. The fact that unethical money used in politics generates political benefits in return for those who provide this money can lead to corruption in politics which is a worldwide problem<sup>6</sup>.

Ensuring transparency in topics related to money in politics is the key to better governance which, in turn, is the key to not only democracy but also social development as a whole. Corrupted and insufficient governance is one of the biggest obstacles of development<sup>7</sup>. Ethical rules as regards political finance aim at preventing unethical behaviours which can emerge in legislative and policy-making processes in general, they assure the citizens that democratic rights are employed in a manner free from corruption and social interests are protected. For this reason, ethics in politics and political finance bears key importance in terms of the quality of governance.

Corruption and unethical activities degenerate the institutions and values of democracy, weaken justice, and endanger sustainable development and rule of law in most countries of the world<sup>8</sup>. Today countries are aware that corruption and unethical behaviours pose serious threat to social stability, security and development<sup>9</sup>. There is a consensus on the opinion that personal wealth acquired by unjust enrichment, political corruption and unethical activities damages democratic institutions, national economies and the principle of rule of law in particular. Corruption and unethical activities are no more local issues; they have become international

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<sup>5</sup> See, Office of Democracy and Governance, *Money in Politics Handbook: A Guide To Increasing Transparency in Emerging Democracies*, Technical Publication Series, U.S. Agency for International Development, Washington, 2003, p. 5. (Hereinafter, “*Money in Politics*”). (online) [www.u4.no/recommended-reading/money-in-politics-handbook-a-guide-to-increasing-transparency-in-emerging-democracies/](http://www.u4.no/recommended-reading/money-in-politics-handbook-a-guide-to-increasing-transparency-in-emerging-democracies/)

<sup>6</sup> *Money in Politics*, p. 7.

<sup>7</sup> See, USAID, *Foreign Aid in The National Interest: Promoting Freedom, Security and Opportunity*, 2002, p.3. (online) [pdf.usaid.gov/pdf\\_docs/Pdabv901.pdf](http://pdf.usaid.gov/pdf_docs/Pdabv901.pdf).

<sup>8</sup> See, Cüneyt YÜKSEL, *Devlette Etik: Dünyada ve Türkiye’de Kamu Yönetiminde Etik, Yasal Altyapı ve Uluslararası Uygulamalar*, Boğaziçi Üniversitesi Yayınları, İstanbul, 2010, p. 47-57.

<sup>9</sup> See, Mark ROBINSON (ed.), *Corruption and Development*, Frank Cass Publishers, London, 1998, p. 1-13.

and even global phenomena which affect all societies and economies whose control obliges international cooperation<sup>10</sup>.

On the other hand, corruption and unethical activity cases which emerge in political finance stage are subject to assets that represent a considerable portion of national resources and endanger political stability and sustainable development; therefore, countries take measures as regards this problem<sup>11</sup>. In addition to national regulations, international organizations are also preparing recommendations and declarations as regards political finance with awareness that the issue has sensitivity in terms of ethics in state and democracy<sup>12</sup>. For example, according to the 7<sup>th</sup> clause of 15.12.1995 dated decision of European Parliament on Combating Corruption in Europe, “member states must ensure transparency in financing of political parties in their national legal systems and realise reforms so that the management of these parties can be clearly understood by the public”<sup>13</sup>. In addition, according to the 15<sup>th</sup> clause of Twenty Basic Anti-Corruption Principles of Council of Europe dated 6.11.1997, “states must encourage the parliamentarians to adopt codes of behaviour and create rules as regards political parties and funding of election campaigns which deter corruption”.

The presence of illegal resources in political finance constitutes a critical problem in the world. Many countries are revising their rules on political finance in order to overcome this problem<sup>14</sup>. All measures are usually directed towards making parties democratic, ensuring

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<sup>10</sup> See, Arnold J. HEIDENHEIMER, Michael JOHNSTON, *Political Corruption*, Routledge, New York, third edition, 2017, p. 909. (Hereinafter, “HEIDENHEIMER/ JOHNSTON, *Political Corruption*”). Generally see, Michael JOHNSTON, *Political Corruption and Public Policy in America*, Brooks/Cole Pub. Co., 1982.

<sup>11</sup> HEIDENHEIMER/ JOHNSTON, *Political Corruption*, p. 909.

<sup>12</sup> This general interest and fascination with money and politics have led to a global debate supported by governmental and non-governmental organizations such as: the Council of Europe, the Organization for Economic Co-operation and Development (OECD), the Institute for Democracy and Electoral Assistance (IDEA) and Transparency International (TI).

International Documents, Recommendations and Declarations as regards political finance:

- 7<sup>th</sup> clause of 15.12.1995 dated decision of European Parliament on Combating Corruption in Europe
- Twenty Basic Anti-Corruption Principles of European Council dated 6.11.1997
- Recommendations of 19<sup>th</sup> and 21<sup>st</sup> European Conferences of Ministers of Justice
- 1516 (2001) numbered 22 May 2001 dated Recommendation of Parliamentary Assembly of Council of Europe on Financing of Political Parties
- (2003) 4 numbered 8 April 2003 dated Recommendation on Financing of Political Parties and Election Campaigns of Committee of Ministers of Council of Europe
- Declarations on illegal financing of political parties by European Conference on Specialised Services on 3<sup>rd</sup> Combating Corruption organized in Madrid on 28-30 December 1998
- European Council resolution numbered 5 (99) which founded Group of States against Corruption.

<sup>13</sup> See, European Parliament, Resolution on Combating Corruption in Europe, 15.12.1995, European Parliament Official Journal No. C017, 22/01/96 P.0443.

<sup>14</sup> See, Michael WALDMAN, *Political Accountability, Campaign Finance, and Regulatory Reform*, 18 North Carolina Banking Institute, 2013, p. 86. For the U.S.A., Waldman argues that campaign finance laws are ripe for reconsideration. First, the Supreme Court of the United States' recent decision in *Citizens United v. Federal Election Commission* has created numerous unexpected consequences, despite the case's young age. Second, the

equality of opportunity between parties and candidates and ensuring that the society can make its choice in the most accurate manner. Measures for preventing unregistered political finance are extremely critical so that political system can operate for the benefit of the entire society, that parties can adopt a more democratic philosophy of management, and that political system can avoid degradation.

In addition to the importance that political finance has combatting political corruption and unethical actions, the mode of organization of political parties should also be mentioned. The organization model and membership structure of a political party is shaped by the model it uses as source of finance. Participation of members in decision-making processes, the extent to which the party opens or closes democratic participation channels, centralised structure, authoritarian or democratic management style adopted are directly related to the source of finances<sup>15</sup>.

The financing model implemented by a party affects both its organization and membership structure. This is due to the fact that politics is a function of money in addition to human element. In order to create an organization, buildings and people working in those buildings are needed; in order to perform political action, communication is required; in order to introduce the party to the electorate, propaganda is needed and in order to make propaganda, activities such as meetings and political advertisements are necessary. All of the foregoing requires money and material resources. Parties can continue their activities if they can find a financing source that will cover the expenses of these activities<sup>16</sup>.

Political finance generally regulates the state support given to parties, individual donations and limitations thereto and the restrictions imposed on parties in election campaign periods. Regulations in this area mostly focus on the transparency in the registration of revenues and expenses and inspection of records. Access to information gains importance when it comes to inspection. Supreme Court of United States of America underlines the importance of access to

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advent of political action committees (PACs), nonprofit 501(c) (4)s, and other politically motivated entities poses a threat to both Democrats and Republicans alike, opening the door for reform. And, lastly, Waldman discusses plausible regulatory reforms, ultimately recommending a reform measure that provides public funds to match, by a set ratio, small donor contributions to participating political candidates. *Also see*, Samuel ISSACHAROFF, *On Political Corruption*, 124 Harvard Law Review, 2010, p.119. (Hereinafter, “ISSACHAROFF, *On Political Corruption*”) (argues that “*the restrictive aspect of the reform agenda is ultimately both its strength and its constitutional liability*”).

<sup>15</sup> See, Abdullah MUTLU, *Kurumsallaşmış Demokrasilerdeki Siyasi Partiler Sistemi ile Ülkemizdeki Siyasi Partiler Sisteminin Karşılaştırmalı Değerlendirmesi ve Özgün Model Arayışları*, İçişleri Bakanlığı, Araştırma, Planlama ve Koordinasyon Kurulu Başkanlığı Uzmanlık Tezi, April 2005, p. 34, (online), [http://www.icisleri.gov.tr/\\_Icisleri/WPX/apktez1.doc](http://www.icisleri.gov.tr/_Icisleri/WPX/apktez1.doc) (Hereinafter, Mutlu, “*Kurumsallaşmış Demokrasilerdeki Siyasi Partiler*”).

<sup>16</sup> *Ibid.*

information as regards political finance in a case related to financing of campaigns: “financial declaration improves the quality of information that ensures access to political institutions and increases participation in democracy by informing the society on issues that interests it”<sup>17</sup>. Supervision of financial declarations of political parties outside election periods and the supervision of their revenues and expenses in election period is the most controversial issue in political finance. According to an international research, less than one-third of the examined 188 countries have financial declaration rules on financing of political parties in place<sup>18</sup>. The same deficiency is also witnessed in the supervision of election campaigns. This colossal deficiency in the political finance has its reflections in these countries as corruption in politics and unethical actions<sup>19</sup>.

In Turkey, in spite of the final paragraph of 69<sup>th</sup> article<sup>20</sup> of constitution, no regulations have been made on “the supervision of election campaigns of parties and candidates” except for the provisions regarding the propaganda organization and candidacy application fee that are regulated by the Law No. 298<sup>21</sup>, the Law No. 2839<sup>22</sup> (Article 21) and the Law No. 2972<sup>23</sup> (Articles 10 and 13) and election expenditures which will be spent by the Supreme Electoral Board. However, the government has prepared an amendment on the Law on Register of Electors so as to ensure supervision and restriction of election expenditures of political parties and candidates and included it in the 3<sup>rd</sup> National Program to demonstrate its sensitivity on the political finance<sup>24</sup>. In addition, in 2005 and 2014 the amendments to the Law No. 2820<sup>25</sup>

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<sup>17</sup> U.S. Supreme Court, *Buckley v. Valeo*, 424 US 1 (1976), see (online), <http://www.campaignfinancesite.org/court/buckley1.html>. For a detailed analysis of *Buckley v. Valeo* case see, e.g., ISSACHAROFF, *On Political Corruption*, p. 121. (Beginning with *Buckley*, the Court recognized that contributions had the unique potential to corrupt the political process. Also, in *Buckley v. Valeo*, the U.S. Supreme Court has struck down spending limits because they interfere with free speech rights under the First Amendment to the U.S. Constitution.)

<sup>18</sup> The research was sponsored by USAID and conducted by International Foundation for Election Systems (IFES), see (online), [www.ifes.org](http://www.ifes.org)

<sup>19</sup> Three factors that contribute to the incidence of corruption are: the politicians’ willingness to accept bribes, both for themselves and their parties, the voters’ tolerance of such payments and the willingness of wealthy groups within the society to make such payments. See, Susan ROSE-ACKERMAN, *Corruption and Government: Causes, Consequences, Reform*, Cambridge University Press, 1999, p. 4-5.

<sup>20</sup> (Amended: 3.10.2001-4709/25 Article) The establishment and activities of political parties, their supervision and dissolution, their deprivation of State aid wholly or partly, the election expenses and procedures of the political parties and candidates, are regulated by law in accordance with the above-mentioned principles.

<sup>21</sup> Date of Enactment on April 26th 1961, Published in the Official Gazette No: 10796 on May 2nd 1961 4.t. Register, v.1 - p.2553.

<sup>22</sup> Date of Enactment on 10 June 1983, Published in the Official Gazette No: 18076 on 13 June 1983 5.t. Code, c.22

<sup>23</sup> Turkish Official Gazette, No: 22068, dated September 1, 1994.

<sup>24</sup> See, Ömer Faruk GENÇKAYA/ Umut GÜNDÜZ/ Damla CİHANGİR-TETİK, *Political Finance and Transparency*, Transparency International Turkey, Altan Matbaacılık, January 2016, p. 44-47. (online) <http://www.seffaflik.org/wp-content/uploads/2016/01/Siyasetin-Finansman%C4%B1-EN.pdf> (Hereinafter, “GENÇKAYA/ GÜNDÜZ/ CİHANGİR-TETİK, *Political Finance and Transparency*.”)

<sup>25</sup> Date of Enactment on 22 April 1983, Published in the Official Gazette No: 18027 on 24 April 1983.

changed the criteria for state aid. Moreover, the thresholds for state aid have been the subject of scrutiny at the Constitutional Court (AYM) or at the European Court of Human Rights (ECHR). With the constitutional amendments made in 1995, the regulations on financing of election campaigns were supposed to be arranged by law. Apart from the election of the President, no arrangements have been made regarding the financing of the candidates' campaigns<sup>26</sup>. In accordance with Article 102 of the Constitution which states that methods and principles of presidential elections would be regulated by law. A new Law on Presidential Elections was published in the official gazette on January 26, 2012 and came into effect. The purpose of the presidential elections law no. 6271 is to explain the methods and principles of presidential elections, qualities of presidential candidates, and any measures necessary before, during and after the elections<sup>27</sup>.

The new presidential elections law also allows presidential candidates to receive private donations and financial aid. According to the article 14th of the law, presidential candidates can accept financial contributions and donations from individuals who are Turkish citizens. There is a limit to such kind of donations. The Article 14 of the Law No. 6271<sup>28</sup>, states that, “*the amount of in cash donation each person may make to candidates for each election round may not exceed the monthly gross amount of any payments that are actually being made to the civil servant of the highest rank as part of financial rights*”. In addition, the law prescribes several conditions to make sure that such contributions are transparent and under control<sup>29</sup>. According to these rules, any contribution need to be registered, contributions in cash need to be deposited to the candidate's bank account, any other contributions requires a receipt from the candidate<sup>30</sup>. The law bans legal entities from making donations to the candidates in Presidential elections. It is not clear whether the terms “donations” and “aids” in the law incorporate the contributions in kind. Furthermore, according to Communiqué No. 201, issued by the Supreme Electoral Board in accordance with the Law, Presidential candidates cannot raise donations and aids in

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<sup>26</sup> GENÇKAYA/ GÜNDÜZ/ CİHANGİR-TETİK, *Political Finance and Transparency*, p. 23.

<sup>27</sup> See, Ömer Faruk GENÇKAYA., *Cumhurbaşkanı Seçim Kampanyasının Finansmanı Raporu: Adilîyet, Şeffaflık ve Hesap Verilebilirlik*, Demokrasi Barometresi Analiz Raporu No:1, Denge ve Denetleme Ağı, 2014, p. 4; Mehmet KAHRAMAN, *Cumhurbaşkanının Halk Tarafından Seçilmesi ve Cumhurbaşkanlığı Seçim Kanunu*, SÜ İİBF Sosyal ve Ekonomik Araştırmalar Dergisi, 2014, p. 266; Abdurrahman TARAKTAŞ/ Canatay HACIKÖYLÜ, *Cumhurbaşkanlığı Seçiminde Adaylara Yapılan Bağış ve Yardım Uygulamasının Değerlendirilmesi*, Uluslararası Antalya Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 3, Sayı: 5, (Haziran 2015), p. 13-39.

<sup>28</sup> Date of Enactment on 19 January 2012, Published in the Official Gazette No: 28185 on 26 January 2012.

<sup>29</sup> GENÇKAYA/ GÜNDÜZ/ CİHANGİR-TETİK, *Political Finance and Transparency*, p. 45.

<sup>30</sup> *Ibid*.



kind<sup>31</sup>. Law No. 6271 on Presidential Elections is the first legal instrument on the election campaigns of candidates for presidential election campaign financing in Turkey<sup>32</sup>.

One of the least supervised areas in political finance is election expenditures. On the other hand, despite the restrictions on donations to and revenues of political parties, due to the inadequacy of supervision, unethical actions can be witnessed. If the lack of transparency of revenue resources of political parties lead to the representation of the interests of special interest groups rather than the electorate, ethical violations in politics can occur, which eliminates the functions of democracy<sup>33</sup>. Therefore, political finance is necessary for the effective functioning of democratic institutions<sup>34</sup>.

In Turkey there is need for regulations which record political finance and make it transparent<sup>35</sup>. In addition, it is necessary that these regulations are supported with an effective supervision mechanism and there are applicable sanctions in place in case of violation of regulations on political finance. Although applicable sanctions will be able to prevent unethical actions in the political finance, it can totally eliminate such sanctions only by the development of ethical awareness in the entire society (not only in the politicians).

## II. What is Political Finance?

Political finance is not a new discipline especially in western democracies<sup>36</sup>. For example, the first regulations on election campaigns in United States of America date back to 1867<sup>37</sup>. In the last century, radical changes were made in political finance systems, new laws were enacted, regulatory agencies were developed and supervisory institutions were established to observe the application of laws<sup>38</sup>. The discipline of political finance seeks ways to establish a balance

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<sup>31</sup> Supreme Electoral Board, Communique No. 201, 6.06.2014.

<sup>32</sup> *Ibid.*

<sup>33</sup> Karl-Heinz NASSMACHER, *The Funding of Party Competition: Political Finance in 25 Democracies*, Baden-Baden: Nomos Verlag, 2009, p. 30-35.

<sup>34</sup> See, Keith EWING, Jacob ROWBOTTOM, Joo-Cheong THAM (eds.), *The Funding of Political Parties: Where Now?*, Routledge, London and New York, 2012, p. 191.

<sup>35</sup> See, Mehmet KARAKAŞ, *Siyasetin Finansmanı: Sürdürülebilir Bir Demokrasinin Aracı*, Beta Yayınları, İstanbul 2015, p. 112. Also generally see, Abdulkadir SAKA, *Siyasi Partiler Hukuku Açısından Siyasi Partilerin Finansmanı*, On İki Levha Yayıncılık, İstanbul, 2013; Cem D. UZUN, *Siyasi Partilerin Finansmanı*, Seta Analiz, Sayı:110, Kasım 2014; Pulat TACAR, *Siyasetin Finansmanı*, Doruk Yayınları, Ankara, 1997, p. 70-80.

<sup>36</sup> See, Susan E. SCARROW, *Political Finance in Comparative Perspective*, Annual Review, Political Science, V. 10, 2007, p. 194-195, (Hereinafter, "SCARROW, *Political Finance*").

<sup>37</sup> For the dates of legislations on political financing in the USA, see (online), <http://www.campaignfinancesite.org/history/financing1.html>

<sup>38</sup> For country examples see, SCARROW, *Political Finance*, p. 196.

between applicability of rules and ensuring accountability of political actors, on one hand, and financing of political activities in general, on the other<sup>39</sup>.

The increased attention towards political finance in the last half a century is based on some scandals which revealed the relations between politics and money<sup>40</sup>. In 1974 the corruption originating from politics-money relation that erupted with Watergate scandal in 1974 led to a government crisis in the USA<sup>41</sup>. This case increased the attention on this subject in several democratic institutions. In 1945-1987 period in Italy, 101 corruption cases were determined which involved illegal usage of public resources. In the investigations which came to the agenda in Italy after the murder of Judge Giovanni Falcone in May 1992, several politicians, bureaucrats and businessmen were questioned. In 1992-1994 period the immunities of 111 of the 228 members of parliament who were being investigated were lifted<sup>42</sup>. The political consequence of all these developments was that Christian Democrats and Socialists, who enjoyed 300 chairs in the in the parliament in 1992, could gain only 48 chairs in 1994 elections<sup>43</sup>.

Political finance is usage of money or other material resources for political actions. The concept of political finance included two wide meanings related to money: usage of money for elections (election campaign funds) and usage of money for the expenses of political parties (party funds)<sup>44</sup>. Election campaign funds indicate the functions related to the campaign for the financing of election campaign. These procedures include official or legal financing or donations and other revenues in rem. Official procedures that fall within the scope of law are state funding of election campaigns, which shows differences depending on the country<sup>45</sup>. Political traditions and culture vary between countries, and it should not be assumed that what is considered the ideal solution in one country would even be acceptable in another. To put it

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<sup>39</sup> See, Jeffrey CARLSON, *From Discourse to Action: Avoiding Pitfalls in Political Finance Disclosure Initiatives*, IFES Political Finance White Paper Series, 2004, p. 2.

<sup>40</sup> See, Bruno Wilhelm SPECK, *Money in Politics: Sound Political Competition and Trust in Government*, OECD Publishing, Paris, 14-15 November 2013, p. 36.

<sup>41</sup> For details as regards Watergate Scandal generally see, Fred EMERY, *Watergate: The Corruption of American Politics and Fall of Nixon*, Touchstone, New York, NY, 1994; Keith W. OLSON, *Watergate: The Presidential Scandal That Shook America*, University Press of Kansas, 2003.

<sup>42</sup> For the corruption scandal in Italy generally see, Donatella Della PORTA, *A Judges' Revolution, Political Corruption and the Judiciary in Italy*, European Journal of Political Research 39 (1), January, 2001, p. 1–21.

<sup>43</sup> See, Ömer Faruk GENÇKAYA, *Siyasi Partilere ve Adaylara Devlet Desteği, Bağışlar ve Seçim Giderlerinin Sınırlanması*, in Ali Çarkoğlu, Tarhan Erdem, Mehmet Kabasakal (eds.), *Türkiye’de Yeni Bir Parti Sistemine Doğru: Siyasi Partiler Kanunu, Parti Örgütleri ve Parti İç Demokrasiden Beklentiler*, TESEV Yayınları. 2000, p. 59.

<sup>44</sup> FALGUERA/ JONES/ OHMAN, *Funding of Political Parties*, p.14.

<sup>45</sup> FALGUERA/ JONES/ OHMAN, *Funding of Political Parties*, p.14-15.

differently, since there is no form of democratic governance that is preferred everywhere, there is no ultimate method of regulating political finance<sup>46</sup>.

According to another definition, political finance are financial resources provided to political parties and candidates that are in competition for being elected to a certain public position or obtaining political power<sup>47</sup>. The narrowest definition of “political finance” would be money for electioneering or campaign finance and examine the revenues and expenses only in election periods<sup>48</sup>; however, political parties have essential roles to play in election campaigns in most countries of the world. It is difficult to draw a line between campaign expenditures and routine expenses of political parties; thus, it makes sense to include party funds in the studies of political finance<sup>49</sup>. This money may be collected and spent by candidates for public office, by their political parties or by other individuals and organized groups of supporters. Political parties play a crucial part in election campaigns in many parts of the world, and since it is difficult to differentiate between the campaign costs of party organizations and their routine expenses, political party funds may reasonably be considered “political finance,” too. A leading scholar of comparative politics, Nassmacher, rightly notes that there is a fundamental difference between campaign-and candidate-oriented North American and party-orientated European political finance. He suggests that “In Europe, the term political can appropriately be used as a synonym for party finance<sup>50</sup>.”

On the other hand, there is a fundamental difference between North American and European systems in terms of political finance. This difference is that North American system is campaign-focused whereas European system is candidate-focused<sup>51</sup>.

At present certain laws on financing of political parties or election campaigns include the rules on political finance. Usually these rules are found in laws on political parties, elections or prevention of corruption. Political finance is not regulated in a single law but in dispersed

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<sup>46</sup> FALGUERA/ JONES/ OHMAN, *Funding of Political Parties*, p.16.

<sup>47</sup> See, Khayyam Z. PALTIEL, *Political Finance*, in Vernon BOGDONAR (ed.), *The Blackwell Encyclopedia of Political Institutions*, Blackwell Publishing, 1987, p. 454.

<sup>48</sup> See, Michael PINTO-DUSCHINSKY, *Financing Politics: A Global View*, *Journal of Democracy* 13(4), October 2002, p. 70. (Hereinafter, “PINTO-DUSCHINSKY, *Financing Politics*”). (Pinto-Duschinsky explores the link between political finance and political corruption, and discusses the difficulties most commonly associated with two of the more popular means to control corruption in party funding, the provision of parties with public subsidies and the enactment of laws regulating political finance.).

<sup>49</sup> See, Marcin WALECKI, *Challenging the Norms and Standards of Election Administration: Political Finance Standards*, IFES, 2005, p. 1.

<sup>50</sup> See, Karl-Heinz NASSMACHER, *Structure and Impact of Public Subsidies to Political Parties in Europe*, in Herbert E. Alexander (ed.) *Comparative Political Finance in the 1980s*, Cambridge University Press, Cambridge, 1989, p. 236–267.

<sup>51</sup> *Ibid.*

legislations which makes implementation difficult. Laws on political finance include the following regulations<sup>52</sup>:

- i. Bans on corruption and illegal activities
- ii. Supervision of financial accounts of candidates
- iii. Provisions on financial declarations
- iv. Restriction of revenues and expenses
- v. Prevention of funding of political parties by certain actors (foreign countries, private sector institutions etc.)
- vi. Ban on certain expenditures
- vii. Financial supervision
- viii. Direct state funding
- ix. Removal of tax liability
- x. The right to make campaign on television and radio
- xi. Rules as regards keeping accounts of political parties
- xii. Rules on providing the money needed for daily activities of political parties
- xiii. Rules as regards funding of referenda
- xiv. Rules as regards declaration of property ownerships of member of parliament candidates
- xv. Making use of public opportunities for campaign
- xvi. Rules as regards using state opportunities

These regulations are measures towards ensuring equality of opportunity in politics, making public and registering revenues and expenditures, and preventing unlimited power with uncertain resources. These measures are critical in that in the case that campaign expenditures of political parties or candidates are funded by private sector companies or some interest groups, politics can suffer from conflicts of interest in the future<sup>53</sup>.

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<sup>52</sup> See, Magnus OHMAN, *Political Finance Regulations Around the World: An Overview of the International IDEA Database*, Trydells Forum, Sweden, 2012, p. 11-45. (online) <http://www.idea.int/political-finance>.

<sup>53</sup> See, PINTO-DUSCHINSKY, *Financing Politics*, p.70.

As regards political finance, it could be more realistic to deal with financial declarations, supervision and application instead of the rules regulated in dispersed laws and bulky legislations. First of all, while determining standards as regards the political finance in developing states, public opinion should be consulted so that democracy could be learned and understood by all actors and critics should be evaluated and reflected in the legislation. Secondly, all restrictions imposed upon revenues and expenditures lack meaning if effective and applicable laws are prepared as regards financial declaration and supervision.

Without timely and complete declarations, such restrictions cannot be supervised and implemented. Declarations are extremely important in order to determine whether a given political party or candidate observes various bans and restrictions.

### **III. Establishment of Legal Infrastructure in Turkey on Political Finance within the Context of International Regulations and Practices**

In this section, the legal infrastructure in Turkey on political finance is being examined in the light of international regulations and practices. Legislation on political finance is being evaluated and concrete recommendations are made as regards changes that have to be made in the legislation. The regulations which constitute the legal infrastructure for political finance examined in this section are as follows:

- i. Constitution (art.68, art.69)
- ii. Political Parties Law no.2820 dated 22.04.1983 (hereinafter referred to as “Political Parties Law”.)

The constitution includes general regulations on political finance in 68<sup>th</sup> and 69<sup>th</sup> articles. According to the 68<sup>th</sup> article of the constitution, “*the state gives adequate and fair aid to political parties. The principles of aid to parties, their membership fees and donations are regulated by law.*”

According to the 69<sup>th</sup> article of the constitution, “the revenues and expenses of political parties have to be suitable for their objectives. The implementation of this law is regulated by law. Laws include the methods to be used by constitutional court to determine the convenience of property acquisitions, revenues and expenses of political parties, supervision of these matters and sanctions that will apply in case of breach. Constitutional court seeks help from Supreme Court of Accounts while performing its supervisory functions. The decisions that will be made

by constitutional court at the end of such supervision are final.” However, 8<sup>th</sup> article and relevant paragraph of 69<sup>th</sup> article of the constitutional amendment that was put to referendum have been amended as follows: *“Revenues and expenditures of political parties have to be suitable for their purposes. The application of this law is regulated by law. Financial audit of political parties is performed by Supreme Court of Accounts. Laws include the methods to be used by constitutional court to determine the convenience of property acquisitions, revenues and expenses of political parties, supervision of these matters and sanctions that will apply in case of breach. The decisions that will be made by Supreme Court of Accounts at the end of such supervision are final.”* As shown, constitution leaves such matters as state aid to political parties, donations, membership fees as well as the supervision of revenues and expenditures of political parties to laws.

Political Parties Law includes the following regulations as regards political finance:

- i. Revenues and resources of parties (Article 61)
- ii. Donations (Article 66)
- iii. Ban on commercial activity, receiving loan and borrowing (Article 67)
- iv. Procedures in making the revenues and expenditures of parties (Article 70)
- v. Financial responsibility (Article 71)
- vi. Ban on lending money (Article 72)
- vii. Intra-party financial affairs, party budgets and final accounts (Article 73)
- viii. Financial supervision to be performed by constitutional court (Articles 74–75)<sup>54</sup>
- ix. Sanctions of financial provisions, confiscation by the treasury, encashment (Articles 76–77)
- x. Penal provisions (Articles 112–113–114–116)
- xi. State aid to political parties (Additional article 1)

In this section, the legal infrastructure on political finance defined above will be examined by systematically following the 2003/4 numbered recommendation on Financing of Political Parties and Election Campaigns of Committee of Minister of Council of Europe (hereinafter

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<sup>54</sup> Finally, the amendment made on the 69<sup>th</sup> article of the constitution by the 8<sup>th</sup> article of constitutional amendment which was presented to referendum gives the authority of auditing to Supreme Court of Accounts.

referred to as “Council of Europe 2003/4 numbered recommendation”) and a new law is recommended on political finance<sup>55</sup>.

## 1. External Revenue Resources of Political Parties

The article 4 of Political Parties Law reads “*political parties are indispensable elements of democratic political life*” and underlines the importance that political parties bear for democracy. Like all social organizations, political parties need financial resources for different and various reasons, the major of which are listed below:

- i. Management of election campaigns,
- ii. Purchasing or hiring buildings for party activities,
- iii. Employing workforce for party activities,
- iv. Making publications to publicize the opinions of the party and making researches to determine policies.

Political parties have essential roles in terms of monitoring and protecting political tendencies and rights. They have to fully perform these duties. Salaries and insurances of permanent employees of the party, and expenses of such activities as inspections, communication, public relations, public opinion polls, meetings, posters, publications, travels, and real estate rents are to some extent the cost of democracy. In order to cover these expenses, many actors make contribution: members with their membership fees, individuals and private sector with donations and aids to political parties, and the state through direct and indirect state aid.

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<sup>55</sup> How should the model law on political finance be written?

Law on political finance:

- It must be written with a clear and understandable language.
- The scope of the law must be well-defined and the used terms must be defined clearly so as to prevent misunderstanding of any kind.
- Regulations to ensure the transparency of financial records and accounts of political parties should be introduced.
- All revenues of parties, including revenues in kind, should be supervised.
- Legal restrictions must be imposed on revenues.
- The responsible persons in case of breach of rules must be clearly identified and the accountability of these persons must be guaranteed.
- Clear guidelines must be determined in order to ensure application and sanctions must be envisaged in case of violation.

In order to ensure accounts and records of political parties, right to access must be provided for the citizens and public announcement mechanisms must be in place.

Financing resource of political parties also determines the direction of its political preferences. For this reason, the funding resources used by political parties determine or, at least, influence the policies that they will apply when they come to power and the management style within the party. Therefore, supervision and monitoring of these resources bears colossal importance.

The external revenue sources of political parties regulated in 61<sup>st</sup> article of Political Parties Law in Turkey are as follows:

**a) Entrance and membership fee:** it is regulated in 62<sup>nd</sup> article of Political Parties Law. Every person who becomes member of a political party promises to pay a monthly or yearly membership fee at his/her registration. The party member can increase his/her membership fee by writing to the chair of organization level that he/she is registered provided that it is appropriate according to the party charter<sup>56</sup>. The procedures against party members who do not pay their fee and relevant bans are detailed in party charter. The penalty cannot be in the form of temporary or permanent suspension of membership.

**b) Member of Parliament fee:** it is regulated in the 63<sup>rd</sup> article of Political Parties Law. Another source of revenue of political parties is member of parliament fee. The amount of member of parliament fee is determined by the Grand National Assembly of Turkey (“TGNA”) party group decision. The annual member of parliament fee cannot exceed net monthly amount of member of parliament benefits. The fee which will be paid by members of parliament whose party does not have a group at the TGNA is determined by central decision and management board provided that it does not exceed net monthly amount of member of parliament benefits.

The law rules that the fee will be collected from members whereas special fee can be received from candidates for nomination for seats at parliament, mayor offices, seats at municipal councils and seats at provincial general assemblies. In practice, special membership fee is regularly collected from members of parliament and at election periods special fee is collected from candidates for nomination in the form of application fee, whereas regular fee collection application from party members is not used as a funding source by political parties although there is no legal obstacle in the law.

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<sup>56</sup> In order to ensure fairness among members, it is possible to establish a membership fee system which is proportionate to revenue instead of a standard membership fee. For detailed information on this subject *see*, Maurice DUVERGER, *Political Parties* Science Editions, 1963 (translated by Ergun Özbudun, Siyasi Partiler, Bilgi Yayınevi, 1993), p.118-119.



**c) Sales prices:** it is regulated in the 65<sup>th</sup> article of Political Parties Law. Political parties can raise revenue from the sales of party flags, badges, streamers, emblems and similar signs. In addition, they can raise funds from the sales of party publications and member identification cards.

**d) Donations:** it is regulated in the 66<sup>th</sup> article of Political Parties Law. One of the most important sources of revenue of political parties is donations. The real and legal persons who can make donations in kind and in cash to political parties as well as the amount of donations are restricted by law.

**e) Revenues that can be raised from party properties:** it is regulated in the 68<sup>th</sup> article of Political Parties Law. Political parties can gain revenue from the movable and immovable properties belonging to the party. The revenue obtained from hiring out a location in the organization building of a political party for a meeting can be given as an example of raising revenue from property. In addition, interest can be obtained from bank accounts so as to evaluate the revenues raised. The properties of political parties include both movable and immovable properties. Immovable properties are the real estates that are required for the purposes, activities and residence of parties. Other than that, political parties cannot obtain any immovable properties. However, they can raise revenue from the immovable properties that they own. Movable properties of political parties are the fixed assets that they use in their purposes and activities. In addition, they can keep cash money for using in their expenditures. This cash money is kept either at bank accounts or in the case where party organ is located. Provisions can be found in party charter as regards this matter. Political parties cannot have any source in the form of capital as the money paid by political party members is different from profit-seeking organizations; it is not money paid for being a shareholder. They are money paid with the purpose of covering expenses. Therefore, they can be accepted as share of expenses.

**f) State aids:** another revenue source of political parties is state aids. According to law, political parties can receive state aids from general budget especially in times of election.

**g) Other financial provisions:** according to the 67<sup>th</sup> article of Political Parties Law, political parties cannot deal with commerce. They cannot receive direct or indirect loans or debits from any place or person in any way whatsoever. However, they can purchase goods on loans or mortgage from real and legal persons that will make donation to political parties. According to the 72<sup>nd</sup> article of the law, they cannot lend money to their members and other real and legal persons. On the other hand, political parties are not allowed to obtain goods other than their purpose and activities and residences. In addition, some persons and groups are not allowed to

make donation to political parties. However, they are allowed to purchase goods on loan or debit from persons and institutions according to restrictions shown in the law.

## **2. Expenditures of Political Parties: Election Expenditures**

Elections lead to a variety of expenses. These expenses are basically of two types:

- i. First of these types is the expenditures directly related to the execution of the election such as printing of ballots, preparation of ballot boxes, allowances of polling clerks.
- ii. Second type of expenses includes those related to the introduction of candidates and parties to voters which generally accrue during campaign period. These expenses which usually occur through political advertisements today aim at increasing the interaction between voter and party/candidate and gather more voter support. In addition, gathering voter support by canvassing door to door and political consultancy services are also evaluated among this type of expenses.

Especially in the second half of twentieth century, expenditures in these areas reach significant levels in western democracies.

Nevertheless, political finance is not limited with election periods only. Expenditures in election periods, in other words, the size of monetary support that parties and candidates need, is on increase. However, sustaining political activities between two elections also has its costs. The financial resources that professionalised party organizations need in order to execute their daily affairs and sustain their existence become even more vital. An examination from different perspectives shows that money plays significant role in translating economic power into political power in elections and allowing individuals and groups to try to create influence and power in politics.

Restricting the election expenses which is considered as a measure in order to protect the independence of political parties is on the agenda of the whole world. First restrictions on election expenditures were imposed in France followed by United Kingdom where the amount of expenditure that each candidate could make in his/her constituency was limited at 3,648 pounds.

All expenditures that accrue during party activities within law with the purpose of realising its objectives in its charter and programme are accepted as party expenses. For example;

- i. All building expenses such as rent, water, electricity, heating, illuminating, communication etc.
- ii. Travel and accommodation expenses
- iii. Representation and hosting expenses
- iv. Election and propaganda expenses
- v. The wages, compensations, pay rises, fees, taxes, insurance premium etc. expenses of employees
- vi. Publication and broadcasting expenses
- vii. All purchasing expenses made for books, stationary, vouchers, identity cards etc.
- viii. Propaganda material expenses such as flags, streamers, badges etc.
- ix. Purchase prices of fixed assets and materials
- x. Ball, entertainment, concert and dinner expenses
- xi. Transportation vehicle expenses
- xii. Other expenditures and expenses.

Payments made in return for the expenses and expenditures of the party are recorded in income-expenditure book. In addition, they are recorded to the relevant type of expense of the expenditure auxiliary book. If the party is using a cashbook, the payments in cash are recorded in the cash out-flows part of the cashbook. If the expenditures are for a fixed asset or an active asset, they are first recorded in income-expenditure book and then in fixed asset book. If the payments are made using cheque, an explanation is made in the expenditures part of income-expenditures book and the part of the banks book which is reserved to the amounts withdrawn from bank. If any materials are bought on loan, they are recorded to the expenditure part of income-expenditure book and the relevant type of expenses in the expenditures auxiliary account<sup>57</sup>.

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<sup>57</sup> See, Azzem ÖZKAN, *Ülkemiz Siyasi Partilerinde Muhasebe Kayıt Düzeni ve Denetimi*, Muhasebe ve Denetime Bakış, Yıl 2, Sayı 7, 2002, p. 61-72.

Political parties can acquire fixed assets through donations. The imputed cost of the purchased fixed assets is recorded in the income-expenditure book both as income and expenditure and the account is balanced. In addition, they are also recorded in fixed asset book. If advance payment is made with cash or cheque for future offsetting for party expenditures and expenses, they are recorded in cash or bank accounts. If the advance is closed, they are recorded in the expenditure part of income-expenditures book according to expenditure documents. They are also recorded in advance book. The books can be kept manually as well as in computer media. All expenditures must be based on document. These documents can be invoices, retail sales slips, self-employment voucher, passenger ticket or expenditure vouchers approved and used by organization level. Non-documented expenses are not acceptable by Constitutional Court and are subject to appropriation reimbursement<sup>58</sup>.

In USA, no restrictions are imposed to the expenditures of candidates in state election, but the expenditures by parties for candidates are restricted. In presidential elections candidates benefiting from state resources are subject to certain restrictions.

In election periods in Turkey there is no legislation regulating the employment of all kinds of movable and immovable goods which are not in the possession of parties and candidates in election campaigns in a temporary and free-of-charge fashion. On the other hand, parties and candidates can hire or purchase movable and immovable properties in the possession of real and legal persons with the purpose of using in election campaigns. Such an action is previously notified with bank voucher to district election board where the campaign is conducted. These notifications are publicized based on the principle of transparency. Sanctions envisaged in 116<sup>th</sup> article of Political Parties Law apply to those who violate this provision.

### 3. Financial Auditing of Political Parties

Two different types of audit can be mentioned as regards the auditing of political parties in Turkey. First one is internal audit and the second one is external audit. These types of audits will be examined below.

**Internal audit:** according to the 73<sup>rd</sup> article of Political Parties Law: “*organization levels of parties are obliged to give account of their revenues and expenditures to the higher level that they report to at least annually. District organizations prepare final accounts showing the*

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<sup>58</sup> *Ibid.*

*application results belonging to the previous year on the revenues and expenditures before the end of April and send them to provincial board of directors; provincial organizations send these reports covering districts to the party headquarters. Those sent by provinces organization and final accounts belonging to the party headquarters are examined, resolved and unified by central decision and management board. In addition, by establishing an intra-party supervision mechanism, the chairman can have the accounts of organization levels inspected by party inspectors. He/she can prepare and implement accounting and financial affairs internal regulations.”*

**External Audit:** according to the 73<sup>rd</sup> and 74<sup>th</sup> articles of Political Parties Law, approved copies of final account charts of provincial organizations covering the headquarters and reporting districts finalized by central decision and management board are sent by the chairman to Constitutional Court and, for information, Republican Prosecutor’s Office, before end of June. Final accounts are examined and resolved by the Constitutional Court. Constitutional Court performs its examination on the document. During supervision, the Court can utilize specialists of Supreme Court of Accounts or Ministry of Finance and experts in other public agencies and institutions, and assign a sworn referee. If it deems necessary, the court can request written opinion from the chairman of the political party or his/her representative. According to the 75<sup>th</sup> article of Political Parties Law, *“at the end of its supervision, Constitutional Court decides that the revenues and expenditures of that political party are accurate and lawful or appropriation reimbursement due to unlawful revenues and expenditures.”* Therefore, with its capacity as public supervisor, Constitutional Court performs here compliance inspection from the viewpoint of accounting science.

The financial audit decision of Constitutional Court on the accounts of Republican People’s Party for years 1998, 2004, 2005 and 2006 was published in 8.7.2008 dated Official Gazette. CHP was obliged to pay to the Treasury the 980 thousand 527 YTLs that was found to have been spent contrary to Political Parties Law. CHP violated relevant articles of Political Parties Law and tax procedures law and unduly registered expenditures which are not related to the legal personality of the party as expenditures. On the other hand, travel expenses of certain people and the tips they paid abroad were recorded as expenditures based on documents which had no legal validity. According to the decision, it paid from the party budget the penal fees applied to party members due to their failure to perform their duties which is a clear abuse of state resources. On the other hand, CHP officials performed multiple falsifications on various documents and committed the crime of forgery of documents and allegations were made at

Republican Prosecutor's Office for the responsible persons. Allegations were made about party officials who did not have the Party General Journal where financial records are kept and who did not give page numbers to the general ledger. CHP repeatedly registered as expenditure huge expenditures without lawfully presenting document. For this reason, allegations were made for the responsible persons.

In Turkey the supervision of revenues and expenditures of political parties is performed by Constitutional Court. Law regulates this supervision in detail. According to these provisions, if as a result of the financial supervision of parties, constitutional court identifies unlawful income and expenditures, this situation does not require any sanction that would lead to the closure of the party; only financial sanctions apply for the party. Constitutional court can order appropriation reimbursement if it identifies unlawful revenues and expenditures of a party. In addition, if it is understood that the political party has real estate other than its residence and the ones required for its purpose and activities, Constitutional Court can opt for liquidation of these properties. Another essential point in the law as regards financial supervision is that party officers who make or accept illegal donation and the creditors or lenders of the parties can be punished with imprisonment from six months to one year. In addition, one to three years imprisonment is envisaged for those who accept aid from foreign states or foreign real and legal persons<sup>59</sup>.

According to the applicable rules, supervision of political parties is conducted by Constitutional Court; however, the relevant paragraph of 69<sup>th</sup> article of the constitutional amendment package that will be put to referendum have been amended as follows: "*Revenues and expenditures of political parties have to be suitable for their purposes. The application of this law is regulated by law. Financial audit of political parties is performed by Supreme Court of Accounts. Laws include the methods to be used by constitutional court to determine the convenience of property acquisitions, revenues and expenses of political parties, supervision of these matters and sanctions that will apply in case of breach. The decisions that will be made by Supreme Court of Accounts at the end of such supervision are final.*" As is seen, if the constitutional amendment package is accepted in the referendum, financial supervision will be made by the Supreme Court of Accounts.

There are no clear information and records on resource(s) in political finance especially on the basis of local organizations. It is not possible to identify in the records of local organizations

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<sup>59</sup> See, GENÇKAYA, *Major Sources of Revenue of Political Parties*, p.10.

the salary records of the personnel employed at the party, even rent, telephone expenses and how these expenses are covered. Usually financing is provided by the chairman of local organization and a few directors or party members, while these aids are not recorded. The expenditures and aids registered at local organization consist only of the money obtained from headquarters and where they are spent. However, these amounts are only the tip of the iceberg.

If the financial affairs of political parties are regulated by law, it is obligatory that these affairs are supervised by an independent institution which is not reporting to the executive and not under political influence of any kind. 69/4 article of 1982 constitution contented itself with stating that financial supervision of political parties would be conducted by Constitutional Court while 61<sup>st</sup> and 77<sup>th</sup> articles of Political Parties Law introduced detailed provisions in this subject. However, the structure of Constitutional Court does not allow for any kind of supervision which is not highly formal. In this respect, in the constitutional amendment proposal which is under discussion at TGNA, it is inappropriate to offer that constitutional court will seek assistance from Supreme Court of Accounts.

Constitutional court judges and party officials agree that the practice of constitutional court performing the financial supervision of political parties is not appropriate.<sup>60</sup> Therefore, the Supreme Court of Accounts change which is planned with the latest constitutional amendment is extremely appropriate.

Constitutional court performing supervision function for political finance is a situation which has no similar examples in the world. In addition, some difficulties are frequently witnessed in terms of keeping party books, page numbers, and entering revenues and expenditures in order as regards constitutional court inspections. In Turkey provincial and district organizations of political parties keep separate accounts and combine them for supervision to the constitutional court, which created a labyrinth-like system. Constitutional court is not organized to perform supervision function and it lacks sufficient personnel for this task. On the other hand, while supervision function is assigned to the constitutional court, no allowance is envisaged for this function, which is a de facto hindrance. In addition, in some cases inspection of accounts takes long years and sufficient supervision cannot be performed due to the bulkiness of this process.

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<sup>60</sup> “As the workload prevents constitutional court from assuming the dynamism which will ensure that it will be able to closely follow universal law, the task of “financial supervision of political parties” which does not comply with the position and functions of the court must be taken from the constitutional court.” 41<sup>ST</sup> Anniversary of Foundation, Inauguration Speech of President of Constitutional Court, Mustafa BUMIN (online), <http://www.anayasa.gov.tr/general/icerikler.asp?contID=271&menuID=64>.

On the other hand, there are differences between party logs and accounts and the lists of parties are not organized. This, in turn, affects party revenues. Parties usually fail to deliver their accounts to constitutional court on time. There are always missing documents and revenue receipts have incomplete information. In addition to the financial resources of political parties, supervision of their revenues and expenditures can create problems in all countries.

It was mentioned above that there was no such practice as financial supervision of political parties in the countries of the world. Today modern and democratic countries prefer independent regulatory agencies as the supervisor of political finance system.

For example, in the USA the financial supervision of political parties and supervision of whether laws related to financing of political parties are observed by political parties and candidates is performed by American Federal Election Committee. The American Federal Election Committee (FEC) has six members (three Democrats and three Republicans). The members are assigned by the president for six years upon consultation with the leaders of both parties and the Senate. Members of Commission elect the chairman and deputy chairman every year. There are suspicions about the independence of the Commission. This is due to the fact that commission membership depends on party leaders for reflection to the Senate. The 2000 budget of the Commission is around 38 million dollars and the Commission employs 352 staff. Experience shows that the Commission is dependent on the Congress. That is, if the Congress is not satisfied with the decisions of the Commission, it can restrict its funds<sup>61</sup>.

As a regulatory agency which will observe the application of American Federal Election Campaign Act-FECA, FEC serves four important functions:

- i. Publicizing the financial declarations of revenues and election expenditures of political parties before federal elections,
- ii. Guaranteeing that candidates, committees and others act in compliance with the restrictions, bans, and rules related to declarations and reporting imposed by FECA and other rules,
- iii. Administering the public funding of presidential elections,
- iv. Serving as an exchange room for information related to administration of elections.

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<sup>61</sup> For American Federal Election Committee, see, Anthony CORRADO, *Money and Politics: A History of Federal Campaign Finance Law*, in Anthony CORRADO/ Thomas E. MANN/ Daniel R. ORTIZ/ Trevor POTTER (eds.), *The New Campaign Finance Sourcebook*, Brookings Institution Press, 2005, p. 7-48.



In Turkey, in line with the international examples examined above, it is a positive development in terms of ethics in politics that supervision of political finance will be performed by Supreme Court of Accounts.

In addition to publishing the audit reports of party final accounts in Official Gazette, just like bank and company annual balance sheets, final accounts of parties must be published in at least two national newspapers with the highest circulation in the form of an understandable chart which can be followed by every citizen and presented to the information of the public. Below these balance sheets, the illegal revenue/expenditure applications identified by the supervision by Higher Board of Elections must be indicated. As a requirement of transparency, Treasury sources must declare to the public state aids given to political parties in due form on an annual basis. It must be guaranteed that party accounts are kept in due form and by authorised persons.

#### **4. Transparency in Political Finance: Financial Declarations**

Political parties and candidates must have financial declaration liabilities. In parliamentary systems the main fund-raisers are parties whereas in presidential systems they are the candidates. Most comprehensive and well-designed financial declaration rules regulate the financial declaration liabilities of both political parties and candidates.

While making declaration as regards monetary donations, the name of the donator, the amount and date of donation must be written. Knowing the identity of donators is essential in identification of unethical activities. According to a study, in only 32% of 118 countries the identities of donators are declared. Lent money is another type of monetary contribution; thus, the name of the lender must be declared along with the amount of the money lent and the date. If it is impossible for the candidate or the party to pay back the lent money, it is recorded as covert donation or non-reported revenue. In some countries there are gaps as to how the money lent to parties or candidates is to be recorded. Some others have banned this practice completely. For example Australia laid down rules in this subject recently<sup>62</sup>.

Contributions in kind to political parties and candidates must also be included in financial declaration. The monetary value of these contributions in kind must be determined and they must be recorded and declared just like the case in donations. Donations in kind can be made entirely to the party and the candidate or they can be allocated in the form of tenure for a certain

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<sup>62</sup> See, *Money in Politics*, p. 21.

period of time. For example, professional campaign services which have monetary value but provided on a voluntary basis are mostly ignored contributions in kind. Canada noticed this gap recently and separated work including political functions and normal professional services of volunteers from each other. For example, if a lawyer is distributing booklets about political party, it is a voluntary activity without monetary value. However, if a lawyer is providing pro bono legal opinion for a political party or candidate or providing free-of-charge legal advising functions, the standard price of these services have to be registered and declared as donation. Similar regulations are in place in the United Kingdom and the USA<sup>63</sup>.

Financial declaration rules must clearly state the amount of donations which are subject to declaration. Here is the hypothesis: the higher the amount of donation, the higher the possibility of the donator to expect unethical interest from the member of parliament candidate. Declaring very negligible amounts of donations can lead to bulkiness in declaration matters and result in high amounts of donations going unnoticed.

Determining the persons who collected donations made to political parties and the persons who provide and use the services and goods provided depends on invoicing thereof. Unless revenues and expenditures are invoiced, limitations as regards campaign expenditures cannot be implemented. Transparency in political finance cannot be ensured by only declaring the amount of election expenditures. Instead, the date, reason and agent of expenditure have to be listed and invoice has to be added to this declaration. Otherwise examination of declaration by auditors will be useless and those who act in an unethical manner will not be subjected to sanctions<sup>64</sup>.

In several countries, the money spent for gifts given to voters and the money spent for buying votes are neglected. Most financial declaration laws lack clear provisions in these matters and auditor institutions do not pay attention to this problem. Although it is difficult to trace the money spent for gifts given to voters and the money spent for buying votes, it will be easier to trace such unethical activities as long as the accounts of political parties are transparent and sufficient auditing is performed<sup>65</sup>. Studies show that expenditures are mostly declared but due to collective declaration systems extremely complicated forms emerge.

If any institution is assigned by electoral commissions or law, declaration reports are delivered to that institution. The relevant public institution or electoral commission is the only

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<sup>63</sup> *Ibid.*

<sup>64</sup> *See, Money in Politics*, p. 23.

<sup>65</sup> *Ibid.*

institution which performs examination of declaration; thus, the only information as regards these account declarations are in its possession. However, a meaningful and effective declaration mechanism is one which guarantees access of the public to these declarations. Most voters do not have the time or curiosity to examine declarations about campaign expenditures or political party accounts; however, these declarations can be examined and analysed by civil society organizations, the media and academicians. The findings of these analyses will attract the attention of the society and determine the opinions on political parties<sup>66</sup>.

The access of the public to declared information is subjected to certain limitations in some countries. Studies show that in very few of the 108 countries examined the public has access to campaign and party financing reports. Moreover, internet made traditional systems for access to declarations useless. For example, Estonia lists donations on the internet. In Latvia and Bosnia-Herzegovina campaign financing reports are published on the internet; Lithuanian Electoral Board publicizes a complete list of all donations made to political parties in its internet site.

Creating a balance between confidentiality of personal information and the right of public to access declaration is also essential. United States of America declaration rules display this balance successfully. Donations made for national campaigns must be made to Federal Electoral Committee by indicating the full name, open address and profession of the donator. However, such personal information enjoys two types of protections. First of all, Federal Electoral Committee shades the street name in the address while declaring this information on the internet. Second, politicians and private sector institutions are banned from using this information for commercial or political purposes. In order to be able to trace violations, some of the names given in the published lists are fake. Companies and politicians that try to search such non-existent donators face penal sanctions<sup>67</sup>.

Financial declarations have to be publicized in a timely manner. Declarations which are not publicized timely will be meaningless. Laws must impose a time limit as regards declarations. In international practices donations and political party accounts are usually publicized before the election day. Studies have shown that in very few countries such time restrictions are in place.

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<sup>66</sup> See, *Money in Politics*, p. 24.

<sup>67</sup> *Ibid.*

In Turkey publicizing financial declarations on the internet is obligatory. It is clear that e-government has made contribution to good governance today. E-government provides accessibility to decision-making processes and creates opportunity for multi-party and two-way communication. It brings citizens and the state together and ensures that decision-making processes are supervised, and it also increases participation in policy-making processes. Today e-government is seen as an effective way of accelerating access to information and thus ensuring transparency and accountability. These features of e-state improve efficiency in services to citizens and allows for providing services for lower costs within the principles of good governance.

As one of the leading objectives of e-government application, transparency minimizes the confidentiality limitations as regards financial declarations and facilitates the usage of the right and freedom of information. Citizens who access information easily through internet increase the supervision on politicians and political parties. For all these reasons, e-government applications have to be adopted without delay so that public supervision and transparency of political party accounts and revenues and expenditures of political parties can be ensure. On the other hand, opportunities must be created so that political activity can be continued through internet. The following points should be taken into consideration as regards e-government application:

- i. Unlike television broadcasts, internet contributes to the creation of an interactive, diverse and dynamic democratic process which increases public participation in political processes. The distributed/divided structure and pluralism of internet which is controlled by the user restricts the opportunity of concentrating interest in the monopoly of a speaker and thus silencing all other voices.
- ii. It minimizes the potential of major donations made to political parties and candidates to turn into unethical activities and corruption in politics afterwards and contributes to ensuring the integrity of democratic system. It encourages more individuals to participate in political activities, political processes and campaign processes through internet and increase in aids.
- iii. Higher Board of Elections must refrain from preventive/protective rules against hypothetical and potential harms that political expressions made on internet can cause within the limits of freedom of expression and criticism.

However, in case of verifiable damages, legal restrictions must be imposed on the regulation of such activities.

- iv. Higher Board of Elections must allow for the unification of independent internet speakers or speaker groups without breaching collective political activity bans and observing responsibility purposes.
- v. Law and regulations which will be imposed by Higher Board of Elections must allow for performing political activities through internet taking into consideration the innovations on internet. Rules must be clearly flexible and encouraging innovation and improvement in internet speeches.

If the identities of donators continue to be secret as the case today, restrictions and rules on political finance will not be any good. If the identities of real or legal persons that have unethical interest expectations in politics in the future, monitoring such unethical activities in politics will also become difficult. Therefore, identities of donators should be declared and publicized which will mark one of the most important changes in political finance.

In several countries of the world political parties and candidates have the responsibility of declaring their expenditures to the public so as to ensure transparency in politics and put accountability principles into practice. This is also one of the most important principles of rule of law. Legislations in this direction were first put into effect in the USA. Today political action committees which provide donation to candidates in the USA prepare four donation reports a year outside election periods and publicize the names, addresses and other information of persons who donate more than two hundred American dollars. In many countries parties and candidates are obliged to declare their expenditures as well as revenues to the state or private auditing institutions. In others the donators who give more than a certain amount are required to declare their identity.

## **5. Sanctions**

According to the Law on Basic Provisions of Elections, the following sanctions apply for the candidates in whose election accounts unreal or illegal issues are identified and who exceed the expenditure limits imposed by the 132/c article of the law:

- i. Higher Board of Elections sends to the Presidency of Turkish Grand National Assembly a report on the request of cancellation of election minutes of the member of parliament.

Turkish Grand National Assembly makes the final decision on the revocation of member of parliament status according to the 82<sup>nd</sup> and 84<sup>th</sup> articles of the Constitution of Republic of Turkey.

- ii. Provincial electoral boards and district electoral boards decide on the cancellation of electoral minutes for metropolitan mayors and other mayors respectively and the election is repeated in that constituency. After the finalization of this decision, announcement is made to declare that election will be made in that constituency. Voting day is the first Sunday following the sixtieth day after this announcement.

If unreal or illegal issues are identified in the election accounts of political parties, appropriation reimbursement is enforced on party properties equal to the amount identified by Higher Board of Elections.

Legal persons who are identified to have acted against 132/b provision of this law cannot enter into contractual relations with the state or any public institution or agency or partnership directly or indirectly for five years following the elections.

Decisions made by authorised electoral boards according to the (a) sub-paragraph of the first paragraph and second and third paragraphs are announced in Official Gazette and a nationally circulated gazette; the decisions given according to the (b) sub-paragraph of the first paragraph are announced according to traditional procedures in place.

As a starting point, political finance system must clearly define political party accounts and the breaches of rules as regards reporting of these accounts. For example, 1) hiding financial activities by creating separate accounts or through attorneys, 2) failing to prepare reports, 3) providing fake or incomplete documents, 4) late submittal of reports, 5) failing to maintain the documents illegally. In addition to defining the foregoing, effective and measured sanctions must be determined which will be applied in case of violation of rules that regulate the mentioned issues. Sanctions that apply in case of violation of political finance rules show diversity. Studies conducted in several countries have shown that, rather than heavy penal sanctions, financial sanctions including depriving of state aid are more effective. In fact, the

most important point is effective implementation of sanctions rather than regulating them. Otherwise, sanctions lose their deterrence which, in turn, damages the principle of rule of law<sup>68</sup>.

As regards sanctions, in addition to the sufficient and effective supervision of declarations, announcing breach of laws through individual application is also possible in terms of finding criminal elements. Mainly four types of sanctions are applied to violations of rules<sup>69</sup>.

- i. The most popular and general sanction is imprisonment for those who violate laws. The second sanction is monetary fines but they are not much deterrent.
- ii. Another type of sanction is depriving the relevant party and/or candidate of state aid.
- iii. Finally, the sanction applied in United Kingdom is depriving the convict of his electoral rights. In France, the election is cancelled even if the candidate was elected. There is no doubt that transparency of declarations will make the penalty to be given by public opinion the real and most effective sanction.

In addition to the confiscation and imprisonment penalties envisaged in case of breach of financial provisions in Political Parties Law, suspending the state aid to the parties that receive state aid on that date must be regulated as an effective sanction.<sup>70</sup>

#### **IV. Conclusion and General Recommendations**

A code of behaviours displaying the rules that parties must observe during election campaigns must be prepared on which all political parties reach a consensus and it must be ensured that elections are conducted in an independent and fair manner in the eyes of the public. Electoral Commission must prepare a forum so as to ensure consultancy and deliberation between parties as far as possible and thus it must be ensured that political parties are knowledgeable about their rights and responsibilities related to all aspects of electoral process.

Revenues and contributions provided from individuals and private sector institutions must be restricted with reasonable amounts. The purpose of such restrictions is to prevent influence on politicians afterwards with the contributions made. Above all, the right to work voluntarily for parties during electoral process must not be restricted. Before the election campaign begins

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<sup>68</sup> See, Marcin WALECKI, *Political Money and Corruption*, IFES Political Finance White Paper Series, 2004, p.10 (online) Walecki IFES White Paper on Political Money and Corruption.pdf.

<sup>69</sup> *Ibid.*

<sup>70</sup> Richard S. KATZ/ William CROTTY (eds.), *Handbook of Party Politics*. London, UK, Sage, 2006, p. 446–447.

and after the election all political parties and candidates must declare their property ownerships and liabilities.

Campaign advertisements broadcasted on radio and television must be controlled at acceptable levels. Additionally, Board of Elections must determine the time to be allocated for each party on radio and television. Each party has the right to benefit from these instruments during election campaign.

Preventing election advertisements by interest groups or persons not authorised by candidates and parties is essential in preventing the limits imposed by laws from being exceeded and committing fraud against law. Campaign periods must not be kept too long so that campaign expenditures can be reduced. However, these periods must also not be kept too short to avoid advantage to governing parties against opposition parties.

Undocumented donations and donations made by front companies must be prevented. If such donations are identified they must be used to cover the expenses of Electoral Board. Revenues obtained from public funds must be determined based on the performance shown in previous elections and a formula determined by Electoral Board.

A country should pay attention to the following points below in political finance:

- i. *Political parties and their competition for power are necessary for sustainable democracy and good governance:* a decent party competition requires sound political parties. For this effect, parties have to be encouraged for development, strengthening and consolidation. Competing political parties need proper resources for necessary activities.
- ii. *Money is one of the most important parts of this process and it has to be defined as a necessary resource for good political practice:* this means that in democracies the relation between money and politics have to be seen as a basic instrument for a democratic state instead of being seen as a problem that has to be solved. Therefore, the problem which requires solution is establishment of the balance between the search for sustainable financial resources for political parties and reducing the unethical effects of these resources in politics and preventing corruption.
- iii. *Some activities of certain political parties can be partisan:* These activities are beneficial neither to the political system nor to the civil society. The questions that require answering are as follows: which activities of political



parties are necessary for a sustainable democracy? How much money is needed for these activities? Which resources are appropriate for law and ethics so as to meet the expenses of these activities?

- iv. *Funding of political activities of political parties and candidates must be made a point of social deliberation:* recording and publication of financial declarations and accounts of political parties are necessary for ensuring transparency in politics. Transparency is necessary for voters in their choice for parties as well.
- v. *It can be inconvenient for a democracy if political parties and candidates are dependent only on state or donators in terms of political finance:* democracy requires pluralism in all matters including financing sources of politics. While preparing the legal infrastructure on political finance, modern democratic countries have to regulate donations from individuals and private sector institutions in addition to state aids.

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