



## **Monitoring of Election Campaign Finance in Armenia (2007-08)**

### **1. Introduction**

Starting from 1995 eight national-level elections have been conducted in Armenia. Those were 1995, 1999, 2003 and 2007 parliamentary, and 1996, 1998 (extraordinary), 2003 and 2008 presidential elections. All these elections, as well as local self-government elections conducted during the same period, were accompanied by serious irregularities, which were reported by local and international observers and media. The violations were actually manifestations of political corruption in its different forms, such as vote buying, funding from infamous (mainly criminal) sources, forcing the private sector to pay campaign expenditures, creating barriers for businesses to donate money to opposition parties and candidates and misuse of all forms of administrative resources.

In the recent years, it became obvious that electoral campaign finance, especially misuse of administrative resources, is among the most sensitive areas of the electoral process in Armenia. Analysis of the conduct of recent national and local elections revealed that money, rather than ideologies, programs and policies was the most decisive factor in defining the outcomes of the elections. Legal and illegal use of vast financial resources of the ruling political forces and big businesses converged with these forces, combined with different artificial limitations imposed on opposition parties, seriously distorted the results of the elections.

Transparency International Anti-Corruption Center (TI AC: before February 2008 – Center for Regional Development/Transparency International Armenia) conducted monitoring of election campaign finance during 2003 and 2007 parliamentary and 2008 presidential elections in Armenia. The reasons that motivated the implementation of these projects were lack of true transparency in this area, large volumes of illegal money (mainly in the form of bribes given to voters and members of different levels of electoral

commissions) circulating during campaign, shortcomings and loopholes of the existing legislation and procedures regulating campaign finance and absence of political will to properly implement the existing legal provisions. Accordingly, the goals of these projects were to reveal and analyze manifestations of corruption in the campaign finance, promotion of transparency, identification of the shortcomings in the regulatory framework, and monitoring of the enforcement of the existing legal regulations.

The projects were funded by the Open Society Institute and were conducted in March - June 2003, November - June 2007, and January – April 2008. In the sections below, the methodology and results of the last two projects (2007, 2008) are presented in detail.

The analysis of the results of the monitoring efforts will help answer to the following three questions:

- *Which factors affect the implementation of the existing electoral legislation?*
- *How well does the existing legislation on election finance act as safeguard against political corruption during elections?*
- *What policy measures could be taken to eliminate those factors?*

## **2. Methodology of the Monitoring**

Initially, before the start of the 2007 parliamentary elections campaign, the project team decided to use one of the methods of investigative approach, namely, interviewing experts, politicians and persons authorized for the transactions with electoral funds. However, soon it became evident that the mentioned individuals were reluctant to submit valuable and trustworthy information on the campaign income issues. Thus, the project team decided to focus only on the monitoring of the campaign expenditure. The approach used in these projects was to evaluate campaign-related activities (advertising, staged events, rallies, etc.) organized and paid for by candidates, political parties (blocs) or independent third parties as campaign outputs. The estimated value of the observed outputs was then used to estimate the campaign expenditure.

The sample and value of the campaign outputs was estimated using two independent sources of information. The first source was official information from the declarations of pre-election funds of political parties (participating on proportional list contest during

2007 parliamentary elections) and presidential candidates (during 2008 presidential elections), as well as service providers. These declarations were posted on the CEC website (www.elections.am). In addition, at the start of the project implementation political parties (blocs) and presidential candidates were approached and asked to submit information on such campaign activities, which, according to information from media sources and expert opinions, usually are carried out with no expenses<sup>1</sup>. They were also asked to submit the schedule of their public events to be held in monitoring sites, namely, cities of Yerevan, Gyumri and Vanadzor<sup>2</sup>.

Among the service providers were newspapers, printing and publishing houses, and textile plants producing T-shirts and caps with the logos of parties. The project team did not contact with one category of service providers, namely, the representatives of electronic media (TV- and radio-companies) to find out the volume and prices of their services. The reason was that: a) data provided by a media monitoring organization to TI AC already were indicating the amount of broadcast time bought by parties or presidential candidates; b) the official volume was reflected in the declarations on the electoral funds; and, c) according to Electoral Code (see previous section) TV- and radio-companies should publicly announce their prices for one minute broadcast time the latest 10 days after the announcement of the electoral campaign start<sup>3</sup>.

The second source of information were the independent monitors hired by TI AC or with whom TI AC had partnership relations, who carried out independent monitoring of media and campaign materials. The results of independent media monitoring were received from Yerevan Press Club, who measured the **broadcast time (in seconds)** of TV and radio campaign ads and programs and **space (in cm<sup>2</sup>)** allocated by newspapers for ads and articles. The project team estimated only those campaign materials, which were officially recognized as such by law. For TV materials those were ads and programs, which were aired with “Political Advertisement” or “Campaign Program” subtitles. For radio materials the similar ads and programs should be accompanied by announcements (at

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<sup>1</sup> These are activities, which, as the campaign managers and other high-ranking party officials claim, are carried out free for charge and with active assistance and support of party active members or volunteers sympathizing these parties or presidential candidates. Among such activities are transportation of the members of campaign teams from Yerevan to other towns to meet with voters outside Yerevan, allocation of apartments or offices for free under campaign offices or sub-offices, door-to-door campaigning and other campaign-related activities and others.

<sup>2</sup> Even such requests were not satisfied, as the parties (in 2007) and presidential candidates (in 2008) claimed that they did not have a pre-defined schedule and they usually define on such events 1-2 (even on the same day) days before the event.

least three times during the broadcast duration) that it was a campaign ad or program. In the case of newspapers at the end of ads or articles there should be the sign “R”.

The independent monitors hired by TI AC collected information on the volume and prices of campaign **print materials** (posters, booklets, brochures, calendars, etc.), **billboards** with campaign content, costs on the organization of campaign **events**, such as rallies, press-conferences and concerts (only in Yerevan) and **promotion materials** (T-shirts, caps, etc.). Finally, the project team also estimated the number of **TV ads and costs** for their production.

After the processing of information received from independent monitoring the obtained data were compared with data from the declarations of pre-election funds and service providers.

During the implementation of 2007 and 2008 monitoring projects the project experts did not meet after the elections with the representatives of political parties or presidential candidates for clarifying the specific items of expenditures and discrepancies between the monitored and declared amounts of expenditures. It was decided not to meet with them because after the introduction of the provision of requiring detailed declarations it became possible to figure them out from the declarations. Besides that the experience of the 2003 monitoring (during which the project team members met with the above mentioned representatives after the elections) revealed that the representatives of parties and presidential candidates did not give any new and useful information in addition to what they submitted to CEC.

In 2007 and 2008 the expenditure monitoring has been implemented also in the second and third largest towns of Armenia – Gyumri and Vanadzor, respectively. In close cooperation with TI AC local partner NGOs Helsinki Citizens’ Assembly Vanadzor Office and Journalists' Club "Asparez" conducted monitoring in Vanadzor and Gyumri, respectively. This allowed having more complete information on the real volumes of the parties’ and presidential candidates’ campaign spending.

The requirement of submitting detailed declarations made possible (at least, conceptually) to carry out income monitoring as well, using the disclosure statement analysis method.

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<sup>3</sup> These prices were also posted on the CEC web-site.

This has been carried out to some extent, considering some problems connected with deficiencies of declaration forms and volume of work to reveal the real identities of donors (see the discussion of the results below).

In addition to the expenditure monitoring, 2007 and 2008 monitoring projects included also monitoring of the misuse of administrative resource. The major method applied by TI AC was **monitoring the media**, mainly the newspapers. Information collected from media publications was combined with information that the project team members received from their personal sources (friends, relatives, representatives of partner organizations and others) in the monitoring sites (Yerevan, Gyumri and Vanadzor).

### **3. Discussion of the Results**

#### *a) 2007 parliamentary elections*

Before these elections certain legislative improvements have been introduced in the legislation on campaign finance and use of administrative resources (see the discussion above on the campaign finance legislation). As a result, it became possible to compare monitored and declared amounts for particular spending items. Also, one can find out who made donations to the parties' electoral funds.

Analysis of the declarations on the electoral funds of the parties and their comparison with the monitoring results revealed the following:

- Declared expenditures on printed materials (brochures, posters, booklets, etc.) for some parties exceeded the monitored amounts, and for the others they were less than these amounts.
- The results of the monitoring revealed that two parties (Republican and Prosperous Armenia), which received, according to official results, the most number of votes and later formed the ruling coalition, spent more money for campaign, than they were allowed by Electoral Code (60 mln. Drams). Obviously, their submitted declarations did not show such exceeding. The comparative analysis of the declarations and monitored data showed that these (as well as other parties) simply did not put many expenses in their declarations, such as expenses on trips to marzes, concerts, campaign temporary headquarters, campaign

activists, etc. Actually, we observed the same pattern as during 2003 parliamentary elections, when the parties claimed that many campaign events and activities were carried out free for charge. Moreover, in 2007 (as well as during 2008 presidential elections), when detailed declarations on electoral funds were introduced, the parties openly avoided to show many expenditure items in their declarations, labeling them as in-kind contributions.

- In the submitted declarations frequently the addresses of donors were not stated, which was a violation of the requirements of CEC Decision N37-N from August 3, 2005.
- According to declarations, out of 78 legal persons 67 made donations to the biggest party of the ruling coalition, Republican Party, 7 to other pro-governmental parties, and only 4 to different opposition parties. This is already an indirect indication of high level of convergence of business and political elites in Armenia. At the same time, out of 397,721,764 Drams of donations 361,306,814 Drams (or 90.8% of the total sum) were made by physical persons. Interviews with experts and media reports, meanwhile, indicated that there was a widespread practice when big businesses and oligarchs, in order to hide their identities, made their donations through physical persons, mainly their employees. In the case of opposition parties, many businesses supporting these parties, also used this tactics to avoid “interest” from tax authorities. This practice, which occurred both during 2003 parliamentary and 2008 presidential elections, makes difficult to trace the so-called *quid pro quo* donations, which, as international experience reveals, this form of political corruption, is one of the most widespread forms during election campaigns.
- As it has been already mentioned, monitoring of the misuse of administrative resources has been mainly carried out using media reports. Obviously, only opposition newspapers reported such facts<sup>4</sup>. Other sources of information were facts told to TI AC staff by their friends, relatives, colleagues, taxi drivers and others. It is also worth mentioning that during the campaign all types of administrative resources have been misused, including also legislative and regulatory ones. In most cases these irregularities have been committed not directly by the authorities, but rather by those, who, though, formally were outside

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<sup>4</sup> Though there is only one state-owned TV company in Armenia (Public TV or *HI*), other TV companies, as a rule, support the pro-governmental political forces and they also did not report about irregularities during campaigns.

state structures, but, as the experts, analysts and media were mentioning were closely connected to the authorities. Among them were the oligarchs with their bodyguards, criminals, bribed members of different level electoral commissions and others.

Experts, analysts, representatives of political parties and journalists also reported about widespread practice of bribing voters and members of electoral commissions. In fact, some of them argued that namely vote-buying became the major factor that defined the outcome of the elections, especially the majoritarian members of the National Assembly. The teams of majoritarian candidates from pro-governmental parties such as Republican and Prosperous Armenia, as well as some “independent” candidates (the overwhelming majority of which were oligarchs) played very active role in committing the above mentioned irregularities.

#### ***b) 2008 presidential elections***

Violations and irregularities that took place during the 2008 presidential elections qualitatively were mainly the same as those occurred in 2007 parliamentary elections. However, as experts and journalists mentioned their scale was much larger than in 2007, except, probably, vote-buying of ordinary voters. One can observe the same problems with misuse of administrative resources and vote buying as before. During these campaign, mainly because of sharper competition, there were much more cases of harassment and intimidation of proxies of opposition candidates and local observers, especially on the voting day. At the same time, some improvements did occur during these elections. For example, the declarations were filled more accurately. Ministers of the Government either took vacation in order to participate in the campaign events, or did not participate at all.

#### **4. Conclusion: Recommendations**

The monitoring of campaign finance in 2007 parliamentary and 2008 presidential elections (as well as 2003 parliamentary elections) revealed widespread irregularities both in campaign income and expenditures, as well as large-scale misuse of administrative resources. Though existing deficiencies in the Armenian electoral legislation did contribute in these irregularities, the major factors lie outside legislation.

Indeed, there is a general consensus among public, politicians, experts and journalists that the best elections that Armenia have witnessed were those conducted in 1990 (parliamentary) and 1991 (presidential). At the same time, the electoral legislation of that time had much more loopholes and shortcomings, than the current one (enacted in 1999). Moreover, during 2003, 2007 and 2008 campaigns the observers, media and project monitors reported numerous cases, when the irregularities occurred as a result of deliberate and open violation of the provisions of existing electoral legislation, rather than using the loopholes and ambiguities of that legislation.

The major factor affecting on the conduct of elections is the *extent to which political and business elites in Armenia are converged*. Unfortunately, as the local and international experts indicate, the degree of such convergence is extremely high. Thus, the defeat in elections could entail not only to the loss of political, but also, which is even more important, loss of tremendous economic power of the political elite, because of a high risk of the redistribution of the latter in favor of winning political forces. Such possible redistribution is a consequence of the weakness of the institute of property rights, lack of independence of judicial and legislative branches of the government, as well as dominating cynical mentality in the society, when wielding of political power is seen as an excellent opportunity for personal enrichment. Therefore, it is not surprising that none of the national elections held since 1995 in Armenia brought to the victory of opposition parties or presidential candidates.

The high degree of convergence of political and business elites, as well as low living standards of the main part of the population make *impossible for opposition forces to receive substantial financial support*. Moreover, in rare cases, and one such exemplary case the public witnessed during 2008 presidential elections, when these businesses tried to support opposition parties or candidates, the authorities swiftly launched against them harsh reprisals. Under such circumstances opposition parties and candidates could not seriously compete against the ruling political forces. The number of their supporters declines, and those who continue to support them become targets of constant harassment and threats, especially those, who work as proxies on the voting day.

Another factor is the *high level of shadow economy and corruption* in Armenia. Apparently, it influences on the electoral process, as well. Corrupt practices, such as vote

buying, abuse of political office, selling seats in Parliament, avoiding showing real volume of expenses (by parties and candidates) and income (by service providers) easily became a norm in the electoral processes.

Very important factor is the general trend of *consolidation of authoritarian rule* in Armenia. To some extent, this is largely a result of the above mentioned convergence of political and business elites. However, it will not be correct to explain this trend only by convergence. After all, there were (in the past) and still are many examples of the so-called “oligarchic competition” in the world, when different financial-oligarchic groups or clans fiercely compete for power, and by that oversee each other’s actions, especially on the voting day. As many of these examples reveal, such competition eventually brings into the game other, non-elitist political forces, as well, thus, facilitating to the democratization of the political system. In Armenia, for different reasons, the consolidation of the authoritarian rule brought to the elimination of any competition among the different groups of political elite.

The continuous existence of the mentioned economic and political factors almost completely eliminated most of the positive effects from the improvement of the existing electoral legislation, which mainly took place as a result of major changes and amendments of the Electoral Code in 2002, 2005, 2006 and 2007<sup>5</sup>. Such improvements could be efficient only after eliminating, or, at least, limiting the damaging influence of these factors. Only under such circumstances legal improvements could effectively safeguard election campaign finance against the manifestations of political corruption during elections.

Considering this, the possible revision of the provisions and concepts of the Electoral Code, including those, relating to the campaign finance, should either entail to the more active involvement of the public and opposition into election administration, or the existing Code should reflect the realities of the current political system in Armenia<sup>6</sup>. The choice between these two options depends on how politically active will be in the coming

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<sup>5</sup> In general, Armenian electoral legislation formally provides certain safeguards against such manifestations of political corruption in campaign finance, as *quid pro quo* donations, vote buying and misuse of administrative resource. However, the reality occurring during the elections monitored by TI AC, reveals that many of these safeguards were either not working, or working not efficiently.

<sup>6</sup> The events that happened in Armenia after February 19, 2008 presidential elections also contributed in the development of these insights.

months the civil society and opposition in their struggle for democratization of Armenia, and how responsive will be the government to these demands.

Under the first scenario of active civil involvement in the electoral processes the emphasis should be put on the increase of transparency, accountability and participation in the oversight and control over the campaign finance. **The most important recommendation in this aspect should be the radical change in the composition, powers and operations of the CEC Oversight and Review Service.** First of all, at least half of its staff should be representatives of civil society organizations and opposition parties. The Service should have much bigger staff with branches in all marzes of Armenia. It should cooperate with NGOs and political parties and its activities should be more transparent, than they currently are. More frequent (at least once a week during election campaign) should be reporting to public about the financial flows connected with electoral funds. If necessary, **it should become an independent (from CEC) body.** In order to investigate possible instances of *quid pro quo* donations, false in-kind contributions and third party financing, **ORS should be empowered with investigative functions** to trace suspicious cases. Examples of such cases are relatively large (compared to their salaries) donations by a large number of physical persons employed in one company known to be affiliated with certain party or politician, expenses on the design and placement of large billboards or hidden payments to campaign activists.

Parallel to the strengthening of ORS, **greater specification of expenditure items should be introduced.** Physical donors should also mention the company (institution), where they work and its address. Expenditure items should be in a mandatory manner presented in a greater detail, describing some of its characteristics (for example, sizes of the posters or billboards, amount of broadcast time purchased from TV companies, etc.), as well as the identity of the service provider or producer of campaign materials.

The approach in defining of the campaigning period should be revised. Currently, that period is defined based on the status of the candidate or party, i.e. the campaign officially starts the next day following the deadline of their registration provided by the Electoral Code. However, the monitored elections revealed that *de-facto* (looking into the contents of many TV programs, as well as direct or indirect charitable activities of some parties and candidates) many parties and candidates, especially representing ruling political forces start campaigning before the day specified by Code. Hence, there is a need to

**define in the Electoral Code the term “campaigning” based on the content of activity.** After doing that, it will be easier to **regulate pre-election campaigning by either removing its start at an earlier time (the most appropriate starting day could be the start of the electoral process) or banning such activities before the current starting day.**

In order to make more transparent the flow of money from party and candidates’ accounts to electoral funds, the deadlines for submitting financial reports by parties<sup>7</sup> and declarations on income and property by candidates and their frequency during the years of national elections should be revised. Specifically, **at the years of national elections parties (candidates) should be required to submit also semi-annual financial reports (declarations on income and property) covering the quarter in which the voting day occurs and the preceding quarter.** Also, these reports should be more detailed than the current ones. In a similar way, **stricter financial control and oversight should be exercised over those companies and organizations, which provided goods and services to parties and candidates.**

**The Electoral Code should be more specific regarding punitive actions for the violations of campaign finance regulations.** Filing a suit in the court connected to such violations should be mandatory (currently it is either left under the discretion of CEC (see Article 79.10 of the Electoral Code) or it is ambiguous, as by Article 112.5). Also the electoral legislation should be specific in taking punitive actions *after the official end of elections (the day of the official announcement of the final results)*. Currently, the results of elections can be declared invalid only by the verdict of the Constitutional Court. The procedure of an equivalent sanction of disqualifying the party list or candidate registration (by the way never applied so far) for using other, than electoral fund, means is not specified properly, regarding the time of its application.

Certain improvements (providing more active involvement of civil society) could be made to prevent misuse of administrative resources, though it should be acknowledged that the Electoral Code already provides sufficient preventive mechanisms against such abuse. In order to avoid combining official and campaign activities by those candidates,

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<sup>7</sup> According to Article 28 of the Armenian Law on Parties political parties are required to submit their annual financial reports to the Ministry of Justice and publish these reports in mass media by March 25 of the following year.

who hold political positions (for example, ministers), the Electoral Code should **explicitly require temporary suspension from their duties while being candidates** (see Articles 78.1<sup>8</sup> and 97.4 of the Code).

An additional measure aimed at the prevention of the misuse of administrative resources could be **explicit prohibition for public officials, who are candidates to use not only premises, transportation and communication means and material and human resources attached to them (this is already provided by Clause 2 of Article 22<sup>1</sup>), but also any other such administrative means.**

Most of the above mentioned suggestions and recommendations connected with legal regulations of election campaign finance were described in the IFES/Armenia report “Suggestions for Further Improvement of the Electoral Code and Procedures in the Republic of Armenia” prepared and submitted on September 2007<sup>9</sup>.

Under the alternative scenario the provisions of the Electoral Code should be adjusted to current realities, which will enable to avoid imitation of civilized elections and unethical behavior during electoral processes. In this case, **primarily all upper limits of campaign funding (electoral funds, donations made by parties, candidates, physical and legal persons) should be removed.** All parties and candidates should be allowed raising as much money as they could without hiding that and all possible donors could make donations of any size. However, prohibition on making donations by certain organizations, individuals and companies provided by Article 25.2 should be kept. As a result ORS should control only the fulfillment of the requirements set by the mentioned Article 25.2. The proposed measure will most probably legalize and disclose to public such phenomena, as third party financing or “in-kind contributions”, which already flourish in Armenian electoral practice. In general, the approach should be legalizing the existing practice, instead of imposing unrealistic (under such political setting) limitations over campaign finance and use (and abuse) of administrative resources.

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<sup>8</sup> At the same time, exceptions for the incumbent or acting President of the Republic provided in Article 78.1 should remain.

<sup>9</sup> The results of TI AC monitoring projects verified these suggestions, and it is fairly true to assert that these monitoring projects served also as tests for these recommendations.

