

Bulletin No.4

11 May 2011

Problems in Funding of the Election Campaigns of the Candidates for the Office of the President of the Republic of Kazakhstan

1. Problem Related to the Definition of “Election Campaign Funding” Concept

Paragraph 3.3, Article 34 of the Law on Elections in the Republic of Kazakhstan¹ (hereinafter referred to as “the Election Law”) provides for the possibility to make “voluntary contributions by the citizens and organizations” to the candidate’s election fund. However, the Election Law does not contain the concepts (definitions) of what is meant under funding and voluntary contribution in favour of the candidate’s election campaign, though it is a key aspect that determines what forms of the election campaign funding are legal and what forms are illegal.

The meaning of the concept of funding may be drawn from related legal notions, for example, voluntary contribution. The “voluntary contribution” concept is defined in the Civil Code of the Republic of Kazakhstan. According to this concept “A voluntary contribution shall be recognised as the gift of an item or of a right for common useful purposes”.²

The international standards in the area of democratic elections include wide range of benefits to the meaning of the concept of funding. Thus, the Council of Europe has adopted the Council of Europe’s Recommendation of the Committee of Ministers on Common Rules against corruption in the funding of Political Parties and Electoral Campaigns³. Article 2 of the said Rules provides the following definition of voluntary contribution in favour of a political party: “Voluntary contribution is the conscious granting of advantages of economic or another nature to the political party”.

As is seen, the concept of funding through voluntary contributions in the CE member states is not limited by provision of the property benefits as distinct from one in the Kazakhstani legislation and covers a relatively wide range of benefits, which naturally includes monetary contributions and other economic benefits.

From the practical point of view, when the legislation lacks a clearly defined concept of funding of the election campaigns, it means that the issue of responsibility for engaging into the election campaign human resources, for example, from government financed organizations, including educational institutions and large companies of any form of ownership, remain unregulated.

In this context, it will be reasonable to incorporate in the legislation of the Kazakhstan a clear definition of what constitutes “funding of an election campaign”, which excludes any ambiguity

¹ The Constitutional Law “On Elections in the Republic of Kazakhstan” of 28.09.1995 N 2464.

² Article 516 of the Civil Code of the Republic of Kazakhstan (General Part). Enacted by the Decree of the Supreme Soviet of the Republic of Kazakhstan of 27 December 1994 as amended as at 15 June 2010.

³ International standards of funding of political parties and election campaigns. — Almaty: The Legal Policy Research Centre, 2009 — P. 83.

when rendering financial aid or any other support to presidential candidates from individual persons or organizations.

2. Unequal Possibilities to Fund an Election Campaign for a Party Candidate and Independent Candidate

The Election Law provides for the possibility of state and non-state funding of a candidate's election campaign. The presidential candidates have the right to set up an election fund, where the money for the election campaign is accumulated. Article 58 of the Election Law stipulates the origin and size of an election fund of a presidential candidate as follows:

- “1. The candidate's own funds, the total amount of which should not exceed the national minimum wage rate⁴ by more than five thousand times;⁵
2. funds allocated to the candidate by a national public association, which has nominated the given candidate, the total amount of which should not exceed the national minimum wage rate by more than seven thousand times;⁶
3. voluntary contributions of citizens and organizations of Kazakhstan, the total amount of which should not exceed the national minimum wage rate by more than fifteen thousand times”.⁷

Paragraph 2 of Article 58 of the Election Law discriminates an independent candidate as it deprives him (her) of the opportunity to rely on the financial aid from a political party as one of the three sources of funding. This provision contradicts to the international standards. Paragraph 7.5 of the Copenhagen document establishes that the member states “respect the right of citizens to contest the political and government offices in a private capacity or in capacity of the representatives of political parties or organizations without discrimination”.⁸ Moreover, Paragraph 2 of Article 58 in its current wording prevents small political parties, which do not have substantial funds to nominate their own candidate, to take part in the election campaign of another independent or party candidate through funding or rendering other support.

A discriminatory nature of Article 58 of the Election Law may be avoided if the amount of funds from the candidates own sources and voluntary contributions are not strictly limited by the requirements stated in the Law. This would allow to compensate the lack of funding from the other the source, i.e. public associations.

However, with the current wording of this legal provision the interests of an independent candidate are infringed as he/she may not rely on one of the sources of funding. Thus, an independent candidate has fewer funds for an election campaign.

In 2004, the OSCE Office for Democratic Institutions and Human Rights (OSCE ODIHR) recommended to indicate clearly in Article 58 of the Election Law that the total amount of contributions from political parties may not exceed the amount specified in Paragraph 2 and “revise the wording “that has nominated a candidate”, which has a restrictive nature, to enable

⁴ In accordance with the Law of the Republic of Kazakhstan “On the National Budget for 2011-2013” No. 357-IV of 29 November 2010, effective from 1 January 2011 the minimum wage is 15,999.

⁵ The threshold amount under this item is KZT 79,995,000 (seventy nine million nine hundred ninety five thousand tenge).

⁶ The threshold amount under this item is KZT 111,993,000 (one hundred eleven million nine hundred ninety three thousand tenge).

⁷ The threshold amount under this item is KZT 239,985,000 (two hundred thirty nine million nine hundred eighty five thousand tenge).

⁸ Document of the Copenhagen meeting of the Conference on the human dimension of the CSCE (Copenhagen, 29 June 1990). URL: www.osce.org/ru/odihr/elections/14304

the independent candidates to obtain financial support from political parties”.⁹ Up to date the Government of Kazakhstan has not put into effect the OSCE ODIHR recommendation concerning Article 58 of the Election Law.

To our opinion, increase of the election fund threshold through a share of non-state funding will have positive impact on the nature and content of elections and will be commensurate to the aims of presidential candidate to increase the transparency of their funding. Election campaign of presidential candidates may not and should not be restricted to the densely populated regions only due to limited funds. Taking into account the geography of Kazakhstan, it is necessary to create conditions for the full involvement of the population in the election process, while the financial restrictions provided for in the law¹⁰ prevent from such involvement.

3. Inflexible Government Funding of an Election Campaign

The government guarantees equal funds from the state budget for all candidates to cover the election campaign in mass media. In particular, a candidate is guaranteed to have airtime on TV and radio, as well as printing space for two articles, holding of public events and issuing of campaign materials.¹¹

In accordance with Paragraph 2 of Article 28 and Paragraph 2 of Article 33 of the Election Law, the Central Election Commission (CEC) sets the norms of spending of the budget funds appropriated for the presidential elections. The following norms were set for the early presidential elections held on 3 April: televised address with an election program – KZT 4,625,000; radio address – KZT 169,000; publishing of two articles – KZT 810,000; rent of premises to hold meetings with the electors – KZT 200,000; production of campaign materials – KZT 290,000; transportation expenses – KZT 200,000.¹² The funding procedure is determined by the budget legislation of the Republic of Kazakhstan.¹³

This provision does not contradict the international standards and complies with the principle of “strict” equality, which implies equal opportunities for all candidates irrespective of the level of support on the part of electorate. According to the Code of Good Practice in Electoral Matters by the Venice Commission “It must apply to the use of public facilities for electioneering purposes (for example bill posting, postal services and similar, public demonstrations, public meeting rooms)”.¹⁴

However, the use of funds from the state budget gives rise to criticism on the part of participants of the election process, as these funds are not transferred directly to a candidate’s election fund but are paid, in case of presidential elections, through CIC upon the provision of services. Such practice creates difficulties in the use of the allocated funds as it is necessary to submit a bill for service payment to CIC, then CIC makes a wire transfer and only after that a candidate may use, for example, an office to meet the electors. Certainly according to the principle of “strict” equality, the funds appropriated from the state budget should be thoroughly regulated; however, a scheme under which the funds are transferred directly to the election

⁹ OSCE/ODIHR Assessment of the Constitutional Law of the Republic of Kazakhstan «On Elections in the Republic of Kazakhstan» from 24 August, 2004. URL: www.osce.org/odihr/elections/35973

¹⁰ Not more than KZT 431,973,000 for an election camping in 2011. See footnotes 4-7.

¹¹ Paragraphs 3—5 of Article 28 of the Election Law.

¹² Decree of the Central Election Commission No. 31/52 of 26 February 2011 URL: http://election.kz/portal/page?_pageid=73,1569401&_dad=portal&_schema=PORTAL

¹³ Paragraph 1 of Article 33 of the Election Law.

¹⁴ Section I, 2.3, paragraph 18 of the Code of Good Practice in Electoral Matters. Guidelines and explanatory report

(adopted by the Venice Commission at its 52nd session, Venice, 18-19 October 2002). URL: [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-rus](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-rus) (hereinafter – the Explanatory Report).

fund and used without the CIC intermediation would be more effective and suitable for the participants of elections and would not contradict the above-mentioned principle of equality. CIC should act as an independent and competent arbitrator. Any form of CIC involvement in distribution of funds among the presidential candidates may endanger its objectivity and equidistance from all participants of the election campaign.

4. Poor Transparency of Financial Reports

Transparent financial reports of the election campaign are one of the key elements of fair elections and the best evidence of absence of corruption during elections. Each candidate to the office of the President should publish his (her) financial reports in order to inform the electors, to the fullest extent, about the sources of funding of his (her) election fund and spending thereof. In the country where there is no stable democratic practice, nor political tradition of the transparent elections, it is necessary to establish legal mechanisms to ensure transparency in the issue of formation and spending of the elections funds. Moreover, the Venice Commission underlined that “such transparency is important irrespective of the level of political or economic development of one country or another.”¹⁵

Paragraph 9 of Article 34 of the Election Law states: “Not later than in five days after establishment of the results of the elections, the candidate... is obliged to present to the respective election commission a report on spending of his (her) election fund...” Then Paragraph 4 of Article 34 clarifies that “Information about the total sum of money which has been received by the fund and of its sources shall be published in mass media within ten days after publication of the results of elections... by the Central Election Commission.”

The CIC RK, based on the result of elections held on 3 April, published in mass media the information about the amounts of election funds of presidential candidates and their sources:¹⁶

Full name	Amount received	Candidate's own funds	Funds allocated by political parties that have nominated the candidates	Voluntary contributions of citizens and organization of the Republic of Kazakhstan
1. Akhmatbekov, Zhambyl Auzhanovich	40,524,110	279,800	—	40,244,310
2. Yeleusizov, Mels Khamzayevich	21,791,326	—	—	21,791,326
3. Kasymov, Gani Esenkeldyuly	22,290,645	—	—	22,290,645
4. Nazarbayev, Nursultan Abishevich	431,972,577	79,995,000	111,993,000	239,984,577

¹⁵ Section II, 3.2, paragraph 108 Explanatory Report.

¹⁶ Information of the Central Election Commission of the Republic of Kazakhstan // Kazakhstanskaya Pravda No.150—151 (26571—26572) 07 May 2011.

However, the information provided is extremely scarce in terms of the sources of funding and absolutely fails to disclose the expense side of the candidates' election campaigns. In addition, the information published within ten days after publication of the voting results does not provide a regular update and disclosure of information about transfers to the candidate's election fund. These factors reduce the transparency of the financial component of election campaigns.

The purposes and amounts of funds appropriated from the state budget are spelt out and may be used for the state guaranteed airtime on TV and radio and production of campaign materials. The CIC has a full access to the reports on use of said funds but unfortunately the law does not obligate the candidate to publish this information, which may become a reason of incomplete awareness of electors about how different candidates have used the taxpayers' money and in what amount.

We think that, firstly, all expenses for election campaign should be properly detailed in the reports and these reports should be publicly available for electors. Since the CIC already has all information and control over the spending of candidate's election fund¹⁷, it is preferable that the same information is provided simultaneously to the electors. Secondly, the candidates should be obligated to provide information about incoming transactions to their election funds on a regular basis, for example, once per ten days; this will allow informing the electors in time about the funds accumulated on the accounts of the candidates. These recommendations comply with the best practice of holding elections.¹⁸

5. Sanctions for Errors in Financial Reports

Paragraphs 9 and 10 of Article 34 of the Election Law provides for the possibility to cancel the registration of a candidate and after the elections – to cancel registration of a candidate as the President. Specifically, according to the requirement set out in Paragraph 9 a candidate “within five days from the confirmation of the results of elections” should provide the financial reports on spending of the election fund. However, a delay in submission of financial reports even for one day, provided that the reports are correct, may entail the cancellation of the candidate's registration.

Such sanctions, in our view, are disproportional to the violation and are overly strict. In cases when the reports are submitted with minor financial errors or not in time, the CIC may restrict itself to a fine, which is commensurable with a financial error made, rather than cancel the candidate's registration. In 2004 the OSCE ODIHR recommended the Government of the RK to abolish these provisions on cancellation of registration,¹⁹ but the recommendation has not been implemented.

As we have mentioned above, the issues of election campaign funding are the cornerstone for the elections to be recognized as fair. The precision of the statutory regulation based on the

¹⁷ In case of the presidential election the Central Election Commission exercises control in accordance with the Decree of CIC No.19/222 of 7 August 1999 “On approval of the Rules for Spending Money of the Election Funds and Submission Reports on Spending thereof in case of elections of the president, Deputies of the Parliament and Maslikhats of the Republic of Kazakhstan”. Clause 8: “The Banks shall submit to the respecting election commission a weekly report on the funds transfer to the special temporary accounts and on spending thereof...” Claus 10: “ Within five days after establishment of the results if elections, a candidate shall be obliged to submit to the respective election commission the report on spending of his (her) election fund and state the sources of cash inflows to the elections funds and all expenses thereof...”

¹⁸ Section II, 3.2, paragraph 109 Explanatory Report.

¹⁹ OSCE/ODIHR Assessment of the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan” of 24 August, 2004. URL:www.osce.org/odihr/elections/35973

international standards and best practice of holding elections may promote higher transparency and strengthen the spirit of democracy. Therefore, the extent of reducing abuses and level of corruption in politics will directly depend on the extent of public's participation in control and regulation of the financial aspects of elections.



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