

# TURKEY

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## I. INTRODUCTION: THE NATIONAL POLITICAL SYSTEM

### A. Overview of the Political System

#### 1. Major organs of government containing elected officials

The Republic of Turkey, which was established in 1923, has experienced different forms of parliamentary government. The current Constitution of 1982 (Constitution) introduced a unicameral Parliament (Grand National Assembly of Turkey, GNA) composed of 550 members elected through universal and direct suffrage. The members of Parliament (MPs) representing the political party or parties and/or independent deputies (in the case of a coalition government), constitute a parliamentary majority in the National Assembly and control the executive power (Council of Ministers, CM). Generally the leader of the majority party is appointed by the President of the Republic as Prime Minister to form the CM from among those eligible for election as MPs (the Constitution permits the appointment of non-parliamentary ministers) with a joint as well as individual responsibility for the implementation of the government's general policy and for the conduct of affairs under their jurisdiction and for the acts and activities of their subordinates.

The President of the Republic as the formal head of State is elected for a term of office of seven years by the GNA from among its own members who are over 40 years of age and who have completed their higher education or from among Turkish citizens who fulfil these requirements and are eligible to be deputies. In the interest of empowerment of the executive in Turkey, the President was entitled to exercise distinctive functions by the Constitution, including the promulgation of laws and the appointment of the members of Constitutional Court (CC), and of the rectors of public universities. Concern was expressed that some of these functions may conflict with the principle that the President will be impartial.

## **2. Election cycle**

Elections for the GNA are held every five years (Constitution Article 77). The Assembly may decide to hold a new election before the termination of this period, and new elections may also be decided upon according to a decision, taken in accordance with the conditions set forth in the Constitution, by the President of the Republic. In cases where the number of vacant seats reaches five percent of the total number of seats after at least 30 months have elapsed from the date of the previous general elections, by-elections can be held. However, by-elections can not be held within one year before general elections. The GNA may decide to defer elections for a year due to war (Article 78).

## **3. Federal or subsidiary structures**

Turkey is a unitary State. In terms of central administrative structure, Turkey is divided into provinces, the administration of which is based on the principle of devolution of wider powers (Constitution Article 126). The formation, duties and powers of the local administration are regulated by law in accordance with the principle of local administration.

The central administration has the power of administrative trusteeship over the local governments within the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity with the principles of the integral unity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs, in an appropriate manner (Article 127).

## **4. Political party system**

Following the single party period of the Republican People's Party (RPP), the first multi-party election was held in 1946. With the landslide electoral victory of the Democrat Party in 1950, a typical two-party system lasted until 1960 when the Turkish Armed Forces took power. In the years after 1961, proportional representation (basically the *D'Hondt* version) was used in parliamentary elections. During this time, the three main maladies of the Turkish party system manifested themselves to varying degree—namely volatility, fragmentation, and polarization. Center-periphery cleavage, factionalism, oligarchical tendencies, and attempts by leadership to impose a high degree of party discipline have been

major organizational characteristics of Turkish parties. The first political parties act was adopted in 1965.

According to Article 69 of the Constitution “the foundation and activities of political parties, their supervision and dissolution, or their deprivation of State aid wholly or in part as well as the election expenditures and procedures of the political parties and candidates, are regulated by law in accordance with the above-mentioned principles.” The current Law on Political Parties was adopted by the Consultative Assembly during the military period in 1983.

Despite a high electoral threshold which was introduced in 1983 with a view to fostering stability in government, the post-1983 Turkish party system displayed more fragmentation and volatility than ever before. Consequently, during the past twenty years, the country has, for some half the time, been governed by coalitions. The weakening of moderate center-right and center-left tendencies, the increasing prominence of religious and ethnic issues, and a lack of organizational development and of party identification can be considered other maladies of the party system. The only consistent pattern has been the gradual rise of pro-Islamist parties since 1987. Fragmentation has remained high despite a downturn in that trend and a relatively increased focus on one or two parties. The lack of pre-election coalitions before November 2002 and the persistent fragmentation in voter preferences resulted in a very high percentage of unrepresented electoral preferences in the parliament (approximately 45% of the vote).

In 2002, the pro-Islamic and nationalist group of parties increased their share of the vote to nearly 53%, an all-time high in Turkish politics. As such, this group is about 3.3 times larger than the center-right parties and about 2.5 times larger than the center-left parties. However, the more salient question is whether and when electoral support will become consolidated and stabilize behind these new parties.

In addition to the Justice and Development Party (JDP) and the RPP (which respectively received 34.3 % and 19.4 % of the vote at the 2002 election), the parties which either failed to pass the threshold in the last general elections or were newly established after the election and gained representation in the current parliament by transferring MPs from other parties or Independents (along with their share of the vote in 2002) are:

- The Motherland Party: (5.13%)
- True Path Party: (9.54%)
- The Social Democrat People’s Party: (did not attend the elections)
- The Rise of People Party: (did not attend the elections)
- Independents: (1.0%)

The present government has sufficient support from the JDP to maintain its present policy course. The numerical inferiority of the opposition has enabled to JDP to govern without substantial collaboration with the opposition parties.

### 5. Voting system

During the single party period an indirect election system was used for parliamentary elections. In parallel to the constitutional amendment which established universal suffrage for women in 1934, the criteria for electing the Electoral College were amended twice in the same year and in 1942. With the introduction of direct elections for the parliament in 1946, a plurality party list system was also implemented from 1946 through the 1957 elections. The *d'Hondt* version of proportional representation has been implemented for parliamentary elections in Turkey since 1961 (with a constituency threshold in 1961, with a national and constituency threshold in 1983, a national and constituency threshold and contingent quota in 1987 and 1991, a national threshold in 1995, 1999, and 2002, and without threshold in 1969, 1973, and 1977). Another version of PR, namely, the Largest Remainder System (under the name of National Remainder System), was used in the 1965 elections.

A political party can only enter the general elections if the party is fully organized in at least half of the provinces and one-third of the districts within these provinces. It must also have convened its general party congress six months prior to the ballot day (Law No. 298 on Fundamental Principles of Elections and Electoral Registry Article 14/ 11, Law No. 2820 Article 36). According to Law No. 2839 on Deputies Election (Article 12) every Turkish citizen who is eligible to be a deputy (1982 Constitution Article 76) can be nominated from a political party or as an independent candidate.

According to Law No. 2839 on Deputies Election of 1983, the party list, with a ten percent threshold, is used in parliamentary elections. The candidates are elected from 81 multi-seat provinces. Each province automatically is assigned at least one seat, regardless of population. A quotient is determined by dividing the population of Turkey, which is determined by periodic census, by the remaining number of seats. The population of each province is divided by this quotient to set the number of seats to be elected from each province. Provinces where up to 18 deputies are to be elected is considered as a single constituency; between 19 to 35 deputies, two constituencies; and 36 and more deputies, three constituencies.

Seats from each electoral district are allocated to political parties which passed the threshold and independent candidates by the *d'Hondt* formula.

### B. Allocation of Legislative Competence

According to the present Constitution legislative power is vested in the Turkish Grand National Assembly on behalf of the Turkish Nation. This power cannot be delegated. However, in line with the idea of rationalization of parliament and of empowerment of the executive, the parliament may authorize the Council of Ministers to issue decrees having the force of law. However, fundamental rights, individual rights and duties included in the First and Second Chapter of the Second Part of the Constitution and the political rights and duties listed in the Fourth

Chapter, cannot be regulated by decrees having the force of law except during periods of martial law and states of emergency (Constitution Articles 87 and 91).

Legislation dealing with political parties and electoral matters is basically referred to Parliament's Constitution Commission for debate. This standing commission does not take action on these matters unless a motion of bill is sent. The Commission consists of 24 deputies from parties belong to parliamentary party groups.

The Constitutional Court examines the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the GNA.

While the administrative agencies which deal with electoral matters (the Supreme Board of Election and local board of elections) have some discretion in how they will interpret and apply legislative provisions, there is no formal rule-making power delegated to these bodies. However, the decisions of the Supreme Board of Election (Board) are final (Law No. 298 Article 14).

## II. REGULATION OF CAMPAIGN CONTRIBUTIONS

The sources of revenue of political parties are regulated by Law No. 2820 on Political Parties (Article 61). According to Article 66 of this law, with the exception of certain entities, any individual or legal person can contribute to political parties, up to a certain limit, in the form of cash or make in kind contributions, including moveable or real estate properties, at any time. The exceptions are public departments governed by general or an annexed budget, local administrations and headmanships, state economic enterprises, banks and other institutions which were established by a special law or by an authorization given by a special law, institutions half of the paid capital of which belongs to the State or the above mentioned institutions: these entities may not contribute to political parties. Public professional organizations, trade unions of employees and employers and their superior organizations, associations, foundations and cooperatives can donate to political parties on the condition of complying with certain provisions of private law. Political parties cannot receive material assistance from foreign States, international organizations and real persons and legal entities that are not of Turkish nationality (see also Constitution Article 69). In case of violation, a political party is dissolved by the CC permanently (Article 69 and Law No. 2820 Article 101). According to Article 116 of the Law No. 2820, any contributor and responsible party officer who have violated the provisions of this law are sentenced to six months to one year imprisonment. If a responsible party officer or candidate or person who applied for nomination is convicted of having received a contribution from a foreign State, international organization or real person or legal entity not of Turkish nationality, he is sentenced to one to three years imprisonment. Besides this provision, however, there is no regulation concerning campaign funding for individual candidates.

### III. PUBLIC FINANCE AND THE POLITICAL PROCESS

There is no direct funding of election campaigns. However, state aid to eligible parties is given during election time. No public funding is made available to individual candidates in elections. Parties are given free broadcast time during the propaganda period.

All political parties represented in Parliament which meet the criteria set by Law No. 2820 receive funding from the annual State budget to be used for the party's needs or party activities only. Both the Constitution (Article 69) and Law No. 2820 (Article 67) prohibit political parties from engaging in commercial activities. The CC, with the assistance of the Audit Court, is responsible for monitoring the income and expenditure of political parties and for verifying that expenditures are consistent with party-political objectives. The monitoring function includes the auditing of the income, expenditures and acquisitions of political parties, as well as the verification of their conformity to the laws regulating their revenues and expenses. The decisions of the CC in these matters are final.

MPs receive a monthly salary, half of which is paid as an allowance based on the salary of the highest-ranking civil servant (Law No. 3671 Article 1). They also receive compensation for representational services (Provisional Article 8). Prime Minister, Ministers and other paid office holders, including the Speaker and Deputy Speakers, and the members of the Office of Speaker and the MP who serves as inspector for the Final Accounts of the GNA, are also paid compensation for representational services (Law No. 3054 and 3055).

#### A. State Aid to Parties

State aid to political parties was first introduced by Law No. 648 on Political Parties in 1965 and has been subject to interpretations, constitutional amendments and constitutional review since then. In 1974, in response to the 1971 and 1973 constitutional amendments, legislation amending Law No. 648 provided that "political parties which entered the last general elections and received at least 5% of the total valid votes or won seats sufficient to form a parliamentary party group" were entitled to receive state aid in proportion to the votes the party received. This provision was in force until the military intervention of September 12, 1980, when all political parties' activities were halted.

Neither the original text of the 1982 Constitution nor the new Law No. 2820 on Political Parties included state aid to political parties. However, joint legislation amending Law No. 2820 initiated by the parliamentary party groups in the newly elected GNA entitled political parties to receive annual state aid in proportion to their seats (Additional Article 1). Later, state aid became subject to amendment and several categories of percentage of votes and seats were created. Meanwhile, the Constitution (Article 68) was amended in 1995 and required that "the state shall provide the political parties with adequate financial means in an equitable manner. The financial assistance to be extended to political parties,

as well as procedures related to collection of membership dues and donations, are regulated by law.”

Following the recent amendment to Law No. 2820, adopted in May 2005, only those political parties which entered the last general elections can receive state aid in proportion to the votes they received.

According to Additional Article 1 of Law No. 2820, a total of 0.0004% of the Column “B” of the Revenues of the General Budget of that year is allocated to those political parties which were entitled to enter the last election for deputyship by the Board and passed the general threshold defined by Article 33 of Law No. 2839. This allocation is paid to political parties in proportion to the valid votes they received. Political parties which failed to pass the countrywide threshold but received more than 7% of the valid votes cast are also eligible to receive state aid. This aid is calculated in proportion to the minimum amount of state aid given to the political party and the votes that the party received in the last general election. However, this aid cannot be less than 350 New Turkish Liras (currently as equivalent of approximately \$260).

This aid is given as much as three times in a general election year and as much as twice in local administration elections. These allocations are paid within ten days after the Board publicizes the calendar of elections.

The regular annual state aid is paid ten days after the law on annual budget enters into force, and in an election year, it is paid ten days after the Supreme Board of Election publishes the election calendar. Parties are free to spend the state aid wholly or partially, yet for their needs and political activities only.

### **B. Restrictions on the Political Activities of State Servants**

The Constitution (Article 76) requires that “judges and prosecutors, members of the higher judicial organs, members of the teaching staff at institutions of higher education, members of the Higher Education Council, employees of public institutions and agencies who have the status of civil servants, other public employees not regarded as labourers on account of the duties they perform, and members of the Armed Forces cannot stand for election or be eligible to be a deputy unless they resign from office.”

Except for members of the Armed Forces, all public officials whose nominations were rejected by political parties or who failed to be elected to the parliament can return to their former office or another public office having equal pay on the condition that they apply within one month following the announcement of electoral results by the Board (Law No. 298 Additional Article 7).

Law No. 298 strictly prohibits state servants from taking active part in electoral campaigns and propaganda (Articles 62, 63). All public officials, including those who work in organizations governed by the subsidiary budget, special pro-

vincial administration, municipalities and their annexes, state economic enterprises and their organizations and joint ventures and other public legal entities, associations for common public interest and their servants are expected to remain officially neutral during an election campaign. They may not donate or contribute to any political party or candidate, nor may they provide any service or equipment or facility of the state to any party or candidate. During the electoral propaganda period, which begins in the morning of the tenth day prior to the election day and ends at 6 pm on the day before the election day, no ceremony can be organized and no statement can be made on the premises of the above mentioned organizations and the enterprises governed by the Law on Banks (Article 64). During this period, the Prime Minister, ministers, and MPs cannot use public vehicles for their campaign activities (Article 65); and no public civil servant can attend electoral propaganda meetings or assemblies (Article 66). Some ceremonies such as ones to be held for national commemoration, welcoming and farewell for the President of the Republic and for foreign statesmen are exempted from these prohibitions (Additional Article 6).

In line with the principles set forth by Law No. 5176 on the Establishment of the Board of Ethics for Public Officials (May 25, 2004), the Regulation on the Principles of Ethical Behavior for Public Officials and Procedure and Principles of Application (April 13, 2005) states that: "Public officials fulfill their duties without discrimination, irrespective of language, religion, philosophical belief, political ideology, race, sex, or any such considerations." Public officials cannot behave in favor or at the expense of any political party, individual or group (Article 9). A breach of this code can be the basis for disciplinary action against the public servant and may end with a judicial investigation. However, the Constitution (Article 129) provides guarantees for public officials during disciplinary investigations and says that "Prosecution of public servants and other public employees for alleged offences can be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law."

There are no particular measures designed to protect challenging candidates, aside from a general obligation imposed on the broadcast media to ensure that "the equality of opportunity is established among the political parties and democratic groups; the broadcasts can not be biased or partial; the broadcasts can not violate the principles on the election bans which are determined at election times" (Law No. 3984 on the Establishment of Radio and Television Enterprises and Their Broadcasting Article 4). "From the beginning of a general election period, no broadcast for or against a specific political party or candidate or any broadcast that may influence the citizen's vote such as public polls, questionnaires, forecasts, and information through printed, audio and visual press and broadcasting means or mini phone referendum can be made..." (Law No. 298 Article 61). This provision was redefined by the third paragraph of amended Article 32 of Law No 3984 in 2003 as follows: "Within twenty-four hours before the polling date, no broadcast for or against a specific political party or candidate nor any broadcast that may influence the citizen's vote through any kind of



programs such as news and interviews or through advertising or public opinion surveys, questionnaires, forecasts, and via information communication telephone lines under labels such as mini-referendums can be allowed. Those not complying with these restrictions are deemed to have violated the broadcasting standards.” The Supreme Board of Elections also referred to this new provision relating to the prohibitions on public polls during the election period (January 1, 2004 Decision No. 21).

In addition, “persons involved may resort to the courts for the right of reply and rectification against broadcasts which constitute attacks on individual rights of real or legal persons and against broadcasts they claim to be untrue” (Law No. 3984 on RTUK Article 32, see also Articles 14 and 18 of Law No. 5187 on Press). In election time the right of reply is vindicated through justices of the peace (Law No. 298 Article 176).

Political parties (and their candidates) and independent candidates cannot organize indoor meetings in places of worship, schools, and military buildings and facilities such as barracks, military headquarters, encampments, or military mess and other places where public services are performed (Law No. 298 Article 51). No in-kind public contribution is made to political parties or candidates during the election.

### **C. Allocation of Free Broadcast Time on Television or Radio**

All registered parties that enter the general elections are allocated radio and television broadcast time in the general election period. (This does not apply to local administration elections). The principles and procedure relating to the broadcasts during election periods is regulated by the Board within the framework of powers vested in the Board by Law (Law No. 298 Articles 52, 54, 55, and 55A and Law No. 3984 Article 32).

Within the limits set out in other laws, political parties which enter the election may broadcast propaganda through radio and television (through state-run Radio and Television of Turkey) beginning on seventh day prior to the polling day and ending at 6 pm on the day before the polling day (Law No. 298 Article 52). This provision states that every political party which enters the elections is entitled to have two propaganda broadcasts on the first and last day of the broadcast propaganda period; each broadcast lasting 10 minutes. Every parliamentary party group is given 10 minutes extra broadcast time. The government party, or in the case of coalition government, the bigger party, is given 20 minutes; and minor government parties are given 15 minutes additional broadcast time. The main opposition party is given 10 minutes additional broadcast time.

Parties may distribute their propaganda programs to other broadcast media; and these are broadcast by all radio and television channels at the same time.

According to Law No. 298 and Law No. 3984, neither political parties nor candidates are permitted to purchase broadcasting time. In 1987, the CC banned paid advertising, finding that it is contrary to the principle of equality.

The Supreme Council of Radio and Television monitors, supervises and evaluates the broadcasts of radio and television enterprises during election periods in accordance with the decisions of the Board (Law No. 3984 Article 32).

In addition, Law No. 2954 on Radio and Television of Turkey (Article 19) entitles the government to 30 minutes of broadcast time each month to promote government practices in compliance with the principles of broadcast, without right of reply but also without carrying any political objective. Other radio and television companies may also broadcast this program simultaneously or later.

#### **IV. REGULATION OF CAMPAIGN EXPENDITURES**

Turkish law does not regulate the expenditures of political parties or candidates. In other words, there is no restriction on campaign spending. Political parties do submit their campaign expenditures as a part of their annual accounts to the CC. The distribution of any gift or samples by political parties and candidates or their distribution through third persons and organizations are prohibited (Law No. 298 Article 61). It is not required to document expenditures made by political parties up to 26 new Turkish Liras (approximately \$20 at the current exchange rate and revalued every year, Law No. 2820, Article 70 and Additional Article 6).

Law No. 2820 underlines that “the state aid can only be used for a party’s needs or party activities.” There are no express provisions restricting spending by entities other than candidates and political parties.

Broadcasting until recently in Turkey was a state monopoly. It was the first subject of public funding of politics in Turkey, and political parties were allocated free election broadcast through state radio as early as 1949. However, election propaganda through state radio was abolished by the parliament in 1954. Later, the 1961 and 1982 Constitutions underlined the principle of impartiality in radio and television broadcast. With an amendment to Article 133 of the 1982 Constitution adopted by parliament in 1993, the state monopoly in broadcasting was ended, and now radio and television stations can be established and administered freely in conformity with law. The principles and procedures relating to the regulation of radio and television broadcasts were established by Law No. 3984 of 1994. However, state radio and television was regulated by Law No. 2954 of 1983. Law No. 3984 (Article 27) states that “broadcasts during election periods are regulated by the Board within the framework of powers vested in the Board by law.”

According to Article 55/A of Law No. 298, broadcast propaganda conducted by parties through private radio and television stations must comply with the procedures and principles set forth under Law No. 2954. Broadcast propaganda transmitted via private broadcasters is supervised by the Board at the national level and by the provincial board of election at the local level.

## V. REGISTRATION AND DISCLOSURE OBLIGATIONS

### A. Registration Requirements

#### 1. Political parties

The Constitution (Article 68) states that “political parties can be formed without prior permission and pursue their activities in accordance with the provisions set forth in the Constitution and law.” However, Law No. 2820 (Article 8) stipulates that a political party can be established by thirty Turkish citizens who are eligible to be elected and have established a legal entity, by submitting information and documents about the persons founding the party, as required by the law, to the Ministry of Interior Affairs. The Ministry sends the declaration of a party’s establishment and copies of other documents to the Office of the Chief Public Prosecutor of the Republic (OCPPR) and the CC within three days.

A registry file for each political party is kept by the Office of the Chief Public Prosecutor. This registry is open to the public (Article 10). The party registration includes a declaration form of the party’s establishment and its annexes; the identity, profession, and residence information of those who serve in the party’s central and local organizations; all regulations and other publications governing the party’s activities; and the identity, profession, and residence information of the party’s members. This information must be renewed at regular intervals.

A party may not use the names, emblems, symbols, or other signs of a party which has been closed down by the CC, or of a currently registered party (Law No. 2820 Article 96). If a political party twice fails to submit documents requested by the OCPPR, the latter may bring a suit to the CC for the dissolution of the party or partial or total revocation of state aid to the party (Law No. 2820 Article 102).

The above mentioned provisions (Law No. 298 Article 14/ 11, Law No. 2820 Article 36) apply to a party’s participation in elections. A political party which fails to enter two consecutive general elections following the date of its establishment is asked to dissolve itself by the OCPPR within one month after the second general election. In the case where a political party fails to dissolve itself within three months of receiving the OCPPR’s notification, the party is dissolved by the CC upon suit brought by the OCPPR.

#### 2. Candidates

Any citizen of the Republic of Turkey who is over the age of 30 is eligible to stand as a candidate for election (1982 Constitution Articles 67 and 76; Law No. 2839 Articles 10, 11, and 12). Law No. 2820 Article 37 stipulates that parties may include on their candidate lists those individuals who were found eligible under one of the procedures set forth in the parties’ statutes in accordance with the principles of free, equal, secret vote and open counting. Except for nomination by the

party central executive committee, pre-elections for nomination are conducted under the administration and supervision of the board of elections in accordance with the procedure and principles set forth in Law No. 2820 Articles 41-52.

A nomination fee for party candidates can be determined by the party's internal regulation on the condition that the fee can not exceed the monthly pay of an MP (approximately \$5,260).

Any eligible citizen can individually apply as an independent candidate for an electoral contest. Application is made to the provincial board of election, with a deadline of 5 PM on the tenth day following the pre-election day (Law No. 2839 Articles 16 and 21). Independent candidates submit their documents along with approximately \$2,750 (equivalent to the gross monthly salary of the highest-ranking public official). If an independent candidate fails to be elected, this deposit money is transferred to the State Treasury (Law No. 2839 Article 41). An independent candidate, who died before the election or withdrew from the candidacy or whose candidacy was rejected by the Board or who is elected, or their legal heirs are repayed this deposit.

Whilst there exists no campaign regulation concerning reporting of contributions to individual candidates, there are reporting requirements for contributions to the registered political parties.

Article 74 of Law No. 2820 requires that chairmen of political parties submit a copy of the previous year's final accounts of party organization, including provincial and township branches, to both the CC and the OCPFR, including a list indicating property and movable assets valued at more than 100 new Turkish lira; and securities and all rights bought, their values and date of purchase.

According to Article 66 of Law No. 2820, eligible real persons and legal entities can only make cash or in-kind contributions not exceeding the value of 2000 New Turkish Liras in any one year (after revaluation currently 10,500 New Turkish Liras, equivalent approximately to \$ 7,777).

Political parties, on collection of contributions, return a receipt on which the type and amount of contribution, name, surname and address of donor, and name, surname and signature of collector are stated (Article 69). Receipt stubs must be kept by political parties for five years beginning from the date of notification of the Constitutional Court's first examination of the party.

There are no reporting requirements for registered political parties and individual candidates with respect to their election expenditures. Political parties which entered the elections submit their itemized electoral revenues as a part of their annual account to the CC.

### **3. Third parties**

Under Turkish law, no organization other than a political party can directly involve itself in the electoral process. Political parties can cooperate with associa-

tions, unions, foundations, cooperatives and public professional organizations and receive material assistance from them. Besides the above mentioned prohibitions, there are no special requirements for these organizations' electoral activities.

#### **4. Communications with government officials**

There are no legal restrictions upon communications with government officials.

#### **B. Restrictions on Election Period Communications**

Besides the provisions of Article 61 of Law No. 298 and Article 32 of Law No. 3984 mentioned above, Article 80 of Law No. 298 prohibits "broadcasting news, forecast and commentary on elections and election results through radio and all means of broadcast on election day until 6 PM." It is also forbidden (Article 88) "to interfere with any voter, to insinuate or advise the voter in the polling place." It is an offence under Article 151 of Law No. 298 to organize public meetings or meetings for electoral propaganda in public places or to broadcast with the aim of instigating such meetings, or to propagandize through verbal, written or other means in a way that interferes with the organization of polling or to make a false statement of fact beginning from 6 PM on the day before the polling day and on the polling day. Those convicted of one or more of these offences may be sentenced to three to six months imprisonment and subject to a heavy fine.

If a private broadcast institution that covers the entire country violates the general principles of broadcasting set forth under Articles 5, 20, 22, 23 and the second paragraph of Article 31 of Law No. 2954, its broadcast rights are suspended by the Board for five to fifteen days. In case of a local private broadcast institution, broadcasting is suspended by the decision of the town board of election for three to seven days (Article 149 of Law No. 298). Persons responsible for these institutions may also be sentenced to a substantial fine.

### **VI. LIMITATIONS ON NON-CITIZENS AND NON-RESIDENTS**

Besides the above mentioned provisions on participation of non-citizens (foreigners) in elections, political parties established in Turkey may not interfere in other States, international organizations or with foreign natural persons and legal entities in matters for which the Republic of Turkey holds exclusive competence (Article 79 of Law No. 2820).

Every Turkish citizen, resident or non-resident, can exercise electoral rights equally. Although the Constitution (Article 67) requires that "applicable measures are defined by law to enable Turkish citizens abroad to exercise their right to vote," non-resident Turkish citizens can only vote at polling places at custom stations beginning at 8 am on the 75th day before the polling day and until 5 pm on the Sunday before the polling day (Amended Article 94 of Law No. 298).

## VII. EXTRATERRITORIAL APPLICATION

Under Article 252 of the new Penal Code (No. 5328), in respect of international commercial transactions, there may be criminal liability for making or attempting to make a bribe of a foreign official, but as the code was only enacted in 2001, there has yet to be a prosecution under that particular article.

## VIII. LOBBYISTS AND GOVERNMENT CONTRACTORS

Lobbying is not recognized as such under Turkish law, but certain provisions governing gift-giving may apply to transactions with government officials.

According to Article 3 of Law No. 3628 on Disclosure of Property, Struggle Against Bribery and Corrupt Practices, all public officials, including elected and appointed ones (for the definition of public official, see Article 2 of this law and Article 6 of the new Penal Code) have to surrender a gift or any other item of that nature, the value of which is ten times more than minimum wage at the time of its receipt, to their institutions. Otherwise, it constitutes an offence, punishable by 3 to 5 years imprisonment (Article 13). In addition, a public official who was sentenced to imprisonment according to this provision is prohibited from public service for life (Article 15).

However, framed souvenir pictures given by foreign statesmen and the representatives of international organizations are exempted.

The Council of Ethics for Public Officials, which was established in August 2004, is authorized to determine the scope of the ban on gift-receiving and has authority to request a list of gifts received by any public official of the rank of general director or equivalent and above (Law No. 5176).

## IX. ADMINISTRATION AND ENFORCEMENT

There are three main institutions charged with enforcing Turkey's election and political parties laws.

*Constitutional Court:* The CC is composed of eleven regular and four substitute members appointed by the President of the Republic from among the members of the higher courts, members of higher education institutions and senior administrative officers and lawyers in accordance with the requirements set forth by the Constitution (Article 146). According to Article 69 of the Constitution, "the auditing of the income, expenditure and acquisitions of political parties as well as the verification of conformity to law of their revenue and expenses, methods of auditing and sanctions to be applied in the event of unconformity" are regulated by law (see Articles 74 and 75 of Law no. 2820). The CC is assisted in performing its auditing task by the Court of Accounts. The judgments rendered by the CC as a result of auditing are final. Instead of dissolving them permanently in accordance with the above-mentioned paragraphs, the CC may decide to re-

voke State aid, in whole or in part, depending on the severity of the party's offence. Procedures for examining party accounts are regulated by Articles 67-77, 111, and 116 of Law No. 2820 and Articles 18 and 30 of Law No. 2949 on the Establishment and Trial Procedure of the Constitutional Court.

After auditing by the Court, illegal revenues and expenditures of political parties, including real estate, credits and loans are transferred to the State Treasury (Articles 75-76 of Law No. 2820).

If, upon a suit by the OCPPR, it is determined that a political party received material assistance from foreign states, international organizations, or real persons or legal entities that are not of Turkish nationality (Article 101 of Law No. 2820), it is dissolved by the CC. The OCPPR *ex officio* brings a suit to dissolve a political party permanently or to revoke its state aid in part or in full where a party has failed to submit information or documents requested by the OCPPR within the determined time following two notifications of the OCPPR (Article 102).

Prosecution and investigation of individuals suspected of election offences under Law No. 298 are carried out by public prosecutors (Article 173-174). Public prosecution against election offences may be opened within two years following the end of elections (Article 180).

*The Office of the Chief Public Prosecutor of the Republic:* The Constitution (Article 154) states that "the Chief Public Prosecutor of the Republic and the Deputy Chief Public Prosecutor of the Republic of the High Court of Appeals are appointed by the President of the Republic for a term of four years from among five candidates nominated for each office by the Plenary Assembly of the High Court of Appeals from among its own members by secret ballot. They may be re-elected at the end of their term of office. The Chief Public Prosecutor directly or with the help of the deputy-Chief Public Prosecutor or deputy-prosecutors supervises the statutes and programs and legal status of the founders of political parties in conformity with the Constitution and laws; prosecutes their activities; and when needed inspects, examines and investigates the political party, its members or organization locally; and may open suit to ban a political party (Article 27 of the Law No. 2797 on High Court of Appeals).

Under the OCPPR there is a Bureau of Political Parties' Registry which keeps the records of political parties.

*Supreme Board of Election:* According to Article 79 of the Constitution, the Supreme Board of Election is composed of seven regular members and four substitutes, chosen by the Plenary Assembly of the High Court of Appeals and by the Plenary Assembly of the Council of State from amongst their own members, by secret ballot and by an absolute majority of the total number of members. The Board, as a superior court, executes all functions to ensure the fair and orderly conduct of elections from the beginning to the end of polling. The Board carries out investigations and takes final decisions on all irregularities, complaints and objections concerning elections during and after the polling, and verifies GNA

election returns. No appeal can be made to any authority against the decisions of the Board.

### A. Enforcement Practice

Financial auditing of political parties is done by the CC according to “whatever political parties return and information and documents available.” The lack of the financial institutionalization of political parties limits the effectiveness auditing. Law No. 2820 (Article 73) requires political parties to use a balance sheet and to keep a list of revenues and expenditures. The procedure and methods of keeping accounts are left to the parties’ own determination. Accounts of local party organizations in particular are far from being systematic and rigorous. Insufficient numbers of experts and lack of coordination between the CC and other organs in support of this function slow down the auditing of parties’ accounts. The final decisions of the CC on financial auditing examinations sometimes take years to publish; consequently, the CC’s auditing continues to be superficial and ineffective. The financial auditing of the parties which were banned or dissolved also remains ambiguous and inconsistent.

The OCPPP and prosecutors seem to be the most effective agencies with regard to their functions exercised *ex officio* or upon request of the relevant institutions in enforcing the laws on elections and political parties in Turkey. The OCPPP or deputy-CPPR or public prosecutors take action comparatively rapidly against election offences. In case of a violation of Law No. 2820, OCPPP notifies the relevant party and responsible individuals (or does so through the CC) to correct the violation within a certain period. In the event of continued non-compliance, it may then bring suit before the CC or relevant ordinary courts.

Elections are supervised by the Board. Decisions of the Board are judicial: A decision of the Board is final but valid for one election term only. In other words, another objection on a similar dispute can be brought to the Board in the next election term and the Board may take another decision on it.

### B. Prominent Cases of Enforcement

The CC, the OCPPP, and public prosecutors *ex officio* investigate parties’ accounts. In case of violation, the CC and ordinary courts apply sanctions stipulated by the Constitution and relevant laws as described above. Two prominent enforcement actions may be summarized here.

- *Dissolution of Greens Party (1994)*. The party had failed to submit in timely fashion its unified party accounts for 1988, in violation of the Articles 73 and 74 of Law No. 2820. Under Article 104 of Law No. 2820, the CC notified the party leadership, giving two written warnings concerning the unified accounts for 1991 and 1992. Upon failure of the party to comply within six months following the written warnings, the OCPPP brought a lawsuit to dissolve the party. The CC dissolved the party in 1994. In his dissent, Justice Güven Dinçer, one of the members of the CC at that time, underlined that since the



Constitution does not provide expressly for the dissolution of a political party as sanction for faulty accounting, the CC could not dissolve the party on this ground.

- *Lost one trillion case of the Welfare Party (2003)*. According to Article 107 of Law No. 2820, all property of a dissolved political party is confiscated by the State Treasury. Before the final verdict of the CC on the dissolution of the pro-Islamic Welfare Party in 1997, its leaders withdrew from the party's bank account a total of 100,000 DM (equivalent approximately to one trillion Turkish liras ( \$55,800) at that time). In fact, this money had been given to the party as state aid that year. In 1998 the PPR of Ankara brought a public lawsuit against the persons involved. The party's leadership claimed that the money had been distributed to local party branches. However, the 9th High Criminal Court of Ankara sentenced some party members, including former Prime Minister Necmeddin Erbakan, to two years and four months imprisonment on charges of swindling, forgery and violation of Law No. 2820 in 2002. The sentence was approved by the 11th Criminal Department of the High Court of Appeals in 2003.

## X. PITFALLS AND PENDING REFORMS

### A. State Funding

Although the recent amendment to Additional Article 1 and the repeal of Provisional Article 16 of Law No. 2820 introduced a simple method of providing annual state aid to political parties in proportion to the percentage of votes each eligible party received in the last election, there are still disputes to be resolved in the field of public funding. First, the lower limit for state aid—7 percent of the vote—is commonly considered quite high. Instead, it is proposed by some that, consistent with worldwide trends, all political parties which received a significant vote support should be entitled to receive annual state aid. A proposal to reduce the lower limit of receiving state aid from 7% to 1% was submitted to the Speakership of the GNA in 2001 but failed to win adoption. In order to introduce a fairer and more egalitarian system of state funding, it might be better to consider this amendment in parallel with a possible amendment of the electoral threshold, currently 10%, which is also quite high and is seen by some as discouraging competitive political life.

The second dispute respecting state funding is how parties will spend public money. According to Additional Article 1 “this aid is used for a party's needs or activities.” The general view is that state aid is not being used to promote democracy in political parties. Currently there is an individual proposal at the Constitution Commission requiring that “20% of state aid be used for research, promotion, education and policy making towards women and allocated to women's branches of political parties.”

### **B. Disclosure of Campaign Finance**

The disclosure of the campaign financing of political parties and candidates is a major loophole. According to empirical evidence in recent years, donations disclosed in parties' accounts gradually declined and were 20 percent of total revenues of parties on average. It is suspected that political parties evade disclosure and receive contributions illegally. According to an individual proposal which is before the Constitution Commission of the GNA, political parties and individual candidates would open an election account at a national bank. Revenues and expenditures which are not recorded on this bank account would be considered illegal. Thirdly, state aid, which is given at election time, would have to be spent for election purposes only. Moreover, no legal entity would be permitted to donate or contribute to political parties and candidates during the elections. Furthermore, the upper limit of expenditures for candidates would be 20,000 new Turkish liras (\$14,815). Finally, an Election Accounts Commission, which would consist of higher judges, would examine the appropriateness of electoral revenues and expenditures *ex officio* or upon complaint. As the principal duty of the CC to review the constitutionality of laws adopted by the GNA is time-consuming, the Court does not allocate sufficient personnel to audit the political parties' accounts. Therefore, it is believed that a more rigorous auditing system should be applied to political parties.

### **C. Radio and Television Propaganda**

There has as yet been no definitive distribution of private radio and television broadcasting bandwidth, and, in consequence, unregulated broadcasting takes place. However, both the Supreme Council of Radio and Television and the broadcast media owners are widely thought to be pleased with this *de facto* situation, which has created an "accord of inaction" amongst them.

The Council fails to supervise the broadcast media effectively in accordance with the principles of Law no. 3984. A recent constitutional amendment to Article 133 brought a firmer "political tutelage" to parliamentary party groups in the election of the members of the Supreme Council of Radio and Television, which may cast doubt on its "impartiality" and "autonomy."

The period for broadcast propaganda is a further area of dispute. Until the propaganda period (which begins in the morning of tenth day before the polling day), the government party can use the TRT state-run broadcast medium for its propaganda, free of charge. Moreover, as described above, the distribution of free broadcast time for propaganda during election time is unequal, with the ruling party receiving more time than do the other parties. This would seem to be contrary to Article 13 of the Constitution, concerning the respect for fundamental rights and freedoms.