



Groupe d'Etats contre la corruption  
*Group of States against corruption*

**DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS**  
**DIRECTORATE OF MONITORING**



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**Theme II**

## **Third Evaluation Round**

### **Evaluation Report on Turkey on Transparency of Party Funding** (Theme II)

Adopted by GRECO  
at its 46<sup>th</sup> Plenary Meeting  
(Strasbourg, 22-26 March 2010)

## **I. INTRODUCTION**

1. Turkey joined GRECO in 2004. GRECO adopted the Joint First and Second Round Evaluation Report (Greco Eval I Rep (2005) 3E) in respect of Turkey at its 27<sup>th</sup> Plenary Meeting (10 March 2006). The aforementioned Evaluation Report, as well as its corresponding Compliance Report, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Turkey from 21 to 23 October 2009, was composed of Mr Inam KARIMOV, Chief Adviser, Law Enforcement Coordination Department of the Administration of the President of the Republic, Secretary of the Commission for Combating Corruption (Azerbaijan); Mr Fernando JIMENEZ SANCHEZ, Department of Political Science and Public Administration, University of Murcia (Spain); and the scientific expert, Ms Patricia PEÑA ARDANAZ, Manager, Office for Democratic Governance, Canadian International Development Agency (CIDA). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 1E, Theme II) as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: Constitutional Court, Supreme Election Board, the Constitutional Committee and the Justice Commission of Parliament, Office of the Chief Public Prosecutor at the Court of Cassation, Office of the Ankara Chief Public Prosecutor, Ministry of Finance, Ministry of the Interior and the Court of Accounts. In addition, the GET met with representatives of the following political parties: Democratic Society Party, Justice and Development Party, Nationalist Movement Party and the Republican People's Party. Moreover, the GET met with representatives of non-governmental organisations (TEPAV – Economic Policy Research Foundation of Turkey, TESEV – Turkish Economic and Social Studies Foundation, Transparency International), Universities of Ankara and Istanbul and the media.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Turkish authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Turkey in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme I - Incriminations, is set out in Greco Eval III Rep (2009) 5E - Theme I.

## **II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART**

### Legal framework

7. The Constitution of Turkey sets forth some general principles concerning political parties and their financing, including the rule that the State has to “provide the political parties with adequate financial means in an equitable manner.”<sup>1</sup> Detailed provisions on the organisation and activities of political parties are contained in Law No. 2820 on Political Parties (hereafter: LPP) of 22 April 1983. The LPP includes regulations on public and private funding of political parties, on transparency of party funding, supervision and sanctions. Under the current regime, direct public funding is granted to political parties which have received more than 7% of the vote at the most recent general elections. The LPP was last amended in 2005, when Parliament repealed the provisional section 16 LPP – under which annual State funding was also granted to smaller political parties, holding at least three seats in Parliament – in order to prevent further political fragmentation. Law No. 298 on Basic Provisions on Elections and Voter Registers of 26 April 1961, Law No. 2839 on Parliamentary Elections of 10 June 1983 and Law No. 2972 on Elections for Local Administrations, Neighbourhood Headmenships and Elder Councils of 1984 regulate participation in the election of political parties and independent candidates, but they do not contain any regulations on the funding and transparency of election campaigns.

### Definition of political parties

8. In accordance with article 68 of the Constitution, political parties are indispensable elements of democratic political life; they can be formed without prior permission and must pursue their activities in accordance with the provisions set forth in the Constitution and the law. The statutes and programmes, as well as the activities of political parties must not be in conflict with the independence of the State, its indivisible integrity with its territory and nation, human rights, the principles of equality and the rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they must not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor may they incite citizens to crime.
9. Political parties are defined by section 3 LPP as “legal entities founded in accordance with the Constitution and laws, that have the purpose of bringing the country to the level of contemporary civilisation in a democratic order of State and society by ensuring the creation of a national will through activities and open propaganda in parliamentary and local elections, in line with the views expressed in their statute and programmes and which have been organised to carry out activities throughout the country.”
10. Political parties acquire legal personality upon the declaration and submission of relevant documents to the Ministry of the Interior.<sup>2</sup> Pursuant to section 7 LPP, the organisation of political parties consists of central bodies, provincial, sub-provincial and town organisations and parliamentary party groups (which may be formed by parties which have at least 20 MPs), general provincial councils and municipal council groups. Statutes of political parties may also stipulate that branches for women and youth should be formed as well as similar subsidiary bodies and that representations in foreign countries should be founded. Such branches and subsidiary bodies do not hold legal personality. In accordance with section 13 LPP, central organs of political parties are the party congress, the chairperson and other decision-making,

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<sup>1</sup> Article 68, paragraph 8 of the Constitution.

<sup>2</sup> Section 8, paragraph 3 LPP.

administrative, executive and disciplinary bodies. In addition, party statutes may include voluntary boards for consultation and research.

#### Founding and registration of political parties

11. The founding of political parties is regulated by section 8 LPP. A political party can be established by at least 30 Turkish citizens who are eligible to become members of a political party, i.e. all citizens over 18 years of age except judges and prosecutors, members of higher judicial organs including those of the Court of Accounts, civil servants in public institutions and organisations, other public officials who are not considered to be labourers by virtue of the services they perform, members of the armed forces and students who are not yet in higher education institutions;<sup>3</sup> moreover, persons who are banned from public service and persons who have been convicted for certain types of offences (e.g. “dishonourable offences” such as embezzlement, corruption etc.) are prohibited from becoming party members.<sup>4</sup> The headquarters of political parties must be in Ankara. A party is registered by the Ministry of the Interior upon application which includes a declaration signed by all founding members (indicating the party’s name, the address of its headquarters, the forenames, surnames, dates and places of birth, education, profession or trade and the address of the founding members), copies of birth certificates and judicial records of each of the founding members, signed statements by each that they meet the conditions to be a founding member of a political party, as well as the party statute and programme signed by all founding members. The Ministry of the Interior submits approved copies of the founding declaration and the receipt, as well as one set of the declaration annexes, to the Office of the Chief Public Prosecutor at the Court of Cassation (hereafter: Office of the Chief Public Prosecutor) and the Constitutional Court within three days.
12. In June 2009, there were 62 parties entered in the Register of Political Parties. Information on the Register can be obtained by anyone<sup>5</sup> upon written request indicating the purpose.

#### Participation in elections

13. Turkey is a parliamentary republic with a multi-party system, whose current Constitution dates from 1982. On 10 May 2007, the Parliament (the *Turkish Grand National Assembly*) adopted a package of constitutional reforms which were endorsed by a referendum held on 21 October 2007. The package introduces the election of the President of Turkey by popular vote for a renewable term of five years,<sup>6</sup> the shortening of the government's term of office from five to four years and the establishment of a quorum of one-third of the total number of MPs for the convention of parliamentary sessions and of an absolute majority of MPs being present for the taking of decisions (however, the quorum for decisions can, under no circumstances, be less than a quarter plus one of the total number of MPs). In a separate constitutional amendment of May 2007, the minimum age for a person to be elected to parliament was lowered from 30 to 25 years. The unicameral national Parliament is composed of 550 members, representing 81 provinces and elected by proportional representation.<sup>7</sup> Elections are held freely, by secret ballot and are conducted on the basis of equal, universal and direct suffrage with an open count and classification of votes. In order to participate in elections, political parties must be organised in at least half of the provinces (i.e. they must have established organisations in at least one-third of the districts of each province concerned, including its central district) and have held their general

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<sup>3</sup> See article 68, paragraph 5 of the Constitution.

<sup>4</sup> See section 11 LPP.

<sup>5</sup> Section 10/A LPP.

<sup>6</sup> Before the adoption of these amendments, the President was elected for a term of seven years by Parliament.

<sup>7</sup> See articles 75 and 77 of the Constitution; see also sections 2, 33 and 35 of the Law on Parliamentary Elections.

congresses at least six months prior to Election Day or they must have a parliamentary group.<sup>8</sup> Parties may not attain seats unless they obtain, nationally, more than 10 % of the votes validly cast.<sup>9</sup> By contrast, no such threshold applies to independent candidates for election who may be elected by simple majority of the votes cast in their electoral district.

14. Local administrations, mayors, municipal assemblies and headmen are elected every five years among party candidates and independent candidates, on the basis of the following two different methods. The simple plurality electoral system is used for mayoral elections at all levels (metropolitan cities, cities and towns) and for headmanship and elder council elections. By contrast, in order to win a seat in local assemblies (provincial general assembly and municipal assembly), a candidate must secure one more vote than one tenth of the valid votes in that electoral district.
15. All Turkish citizens over 18 years of age have the right to vote, except for privates and corporals serving in the armed services, students in military schools, convicts in penal institutions apart from those convicted of offences by negligence, persons whose civil rights are suspended and persons barred from public service.<sup>10</sup> Every Turk over the age of 25 is eligible in parliamentary<sup>11</sup> and local<sup>12</sup> elections. However, persons who have not completed their primary education, have been deprived of legal capacity, have failed to perform compulsory military service, are banned from public service, have been sentenced to a prison term totalling one year or more excluding involuntary offences, or to a lengthy imprisonment; those who have been convicted for dishonourable offences such as embezzlement, corruption, bribery, theft, fraud, forgery, breach of trust, fraudulent bankruptcy; and persons convicted of smuggling, conspiracy in official bidding or purchasing, of offences related to the disclosure of state secrets, of involvement in acts of terrorism, or incitement and encouragement of such activities, may not be elected deputies, even if they have been pardoned. 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 may not stand for election or be eligible to become a deputy unless they resign from office.
16. Parliamentary and local elections are conducted by election boards under the supervision of the Supreme Election Board which is tasked to ensure the fair and orderly conduct of the elections, to carry out investigations and take final decisions on irregularities, complaints and objections concerning the elections, and to verify the election returns of MPs.<sup>13</sup> No appeal can be made to any authority against decisions of the Supreme Election Board.
17. In order to participate in elections, political parties have to submit to the Supreme Election Board their lists of candidates for each electoral district in which they will stand for election.<sup>14</sup> Applications for independent candidature are to be made to the relevant provincial election board, or to the relevant township election board in the case of local elections, together with a letter certifying that the applicant is eligible. Applicants for independent candidature must deposit

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<sup>8</sup> Section 36 LPP.

<sup>9</sup> Section 33 of the Law on Parliamentary Elections.

<sup>10</sup> Article 67 of the Constitution; see also sections 7 and 8 of the Law on Basic Provisions on Elections and Voter Registers.

<sup>11</sup> Article 76 of the Constitution; see also section 10 of the Law on Parliamentary Elections.

<sup>12</sup> Section 9 of the Law on Elections for Local Administrations, Neighbourhood Headmenships and Elder Councils.

<sup>13</sup> Article 79 of the Constitution.

<sup>14</sup> In the case of local elections, in electoral districts where a political party does not have an organisation candidates are determined by the party's central decision and executive committee, see section 10 of the Law on Elections for Local Administrations, Neighbourhood Headmenships and Elder Councils.

an amount equal to the gross salary of a civil servant of the highest rank to the Treasury.<sup>15</sup> Agreements between political parties to stand for elections with joint lists of candidates are prohibited, and it is not permissible to stand as a candidate for more than one political party or within more than one electoral district for the same elections. Once candidates for parliamentary elections have become definitive, the Supreme Election Board announces all candidates and their respective electoral districts on the fifty-fifth day prior to Election Day through the Official Gazette and the radio.<sup>16</sup>

18. According to section 49 of the Law on Basic Provisions on Elections and Voter Registers, the official election campaign period starts on the morning of the tenth day prior to the Election Day and terminates at 6 p.m. on the day before the date of election. According to section 50 of the same law, collective verbal campaigning is forbidden, during the official campaign election period, on public thoroughfares, in temples, in public service buildings and facilities, and in arenas and squares other than those specified by county election boards; moreover, collective verbal campaigning is forbidden in public places from sunset until sunrise.

#### Party representation in Parliament

19. The last general election was held on 22 July 2007. Altogether, 15 parties and 699 independent candidates participated in these elections; 26 independent candidates were elected to Parliament. Subsequently, 21 of them joined the Democratic Society Party and several deputies changed party. As of June 2009, the distribution of parliamentary seats was as follows:

<b>Party Names</b>	<b>Seats</b>
Justice and Development Party (Adalet ve Kalkınma Partisi)	338
Republican People's Party (Cumhuriyet Halk Partisi)	97
Nationalist Movement Party (Milliyetçi Hareket Partisi)	69
Democratic Society Party (Demokratik Toplum Partisi)	21
Independents (Bağımsız Milletvekili)	10
Democratic Left Party (Demokratik Sol Parti)	8
Turkey Party (Türkiye Partisi)	1
Vacancy	6
<b>Total</b>	<b>550</b>

It is to be noted that some further changes have occurred in the meantime. In particular, the Democratic Society Party was closed down by the Constitutional Court in December 2009. Subsequently, the Peace and Democracy Party was established forming a parliamentary group composed of MPs of the former Democratic Society Party and of another independent deputy.

<sup>15</sup> Section 21 of the Law on Parliamentary Elections. – In the case of local elections, this nomination fee is not reimbursed even if a candidate is not elected, see section 13 of the Law on Elections for Local Administrations, Neighbourhood Headmenships and Elder Councils.

<sup>16</sup> See section 24 of the Law on Parliamentary Elections. – In the case of local elections, the district election board announces the list of definitive candidates on the twentieth day prior to Election Day, see section 16 of the Law on Elections for Local Administrations, Neighbourhood Headmenships and Elder Councils.

## Overview of the political funding system

### Sources of funding

20. Article 68, paragraph 8 of the Constitution requires the State to provide political parties with adequate financial means in an equitable manner. In accordance with section 61 LPP, permitted funding sources of political parties are the following, in addition to State support: membership fees from party members; deputy fees paid by party MPs; special fees for candidacy paid to run for MP, mayor, member of a town council or general provincial council, as determined by the authorised central organs of the relevant political party; the earnings from selling party flags, streamers, badges and similar signs and symbols; the earnings from selling party publications; the fees charged for issuing party identity cards and notebooks, receipts and papers; the earnings from social events such as balls, entertainment and concerts organised by the party; the earnings from party property and donations.
21. Section 66 LPP regulates donations to political parties. Under this provision, political parties are prohibited from receiving material or in-kind contributions from foreign States, international organisations and foreign natural or legal persons.<sup>17</sup> Furthermore, public institutions with general and annex budgets, local governments and local headmen, public economic enterprises, banks and other institutions established on the basis of special laws or on authorisation granted by special laws, enterprises which are not considered to be public but do comprise some capital belonging to the State or institutions, administrations, enterprises, banks or bodies belonging to the aforementioned organisations, cannot donate any movable or immovable properties or cash or rights and cannot waive the use of such properties or rights without cost; they cannot be involved in any disposition concerning the transfer of donations in kind to political parties beyond the provisions of law to which they are attached. By contrast, professional organisations in the form of public institutions, trade unions and employers' associations and their senior organisations, associations, foundations and cooperatives can provide aid and donations to political parties provided that they comply with the provisions included in their special laws.
22. The above-mentioned general rules on financing of political parties also apply to their election campaign funding. The election laws do not provide for any specific rules in this respect, nor do they regulate the election campaign funding of independent candidates.
23. The financing of entities related to political parties or otherwise under their control, as well as of organisations affiliated with political parties, is not specifically regulated by any of the above-mentioned laws. The authorities indicated to the GET that political parties may have organisations and entities related such as youth and women's branches and training organisations, which are financed by the parties and cannot generate revenues or earnings independently from them. They stated, furthermore, that the Turkish legal system does not foresee organisations – such as foundations and unions – affiliated to political parties.

### Direct public funding

24. Public funding is provided to political parties for their regular annual financing, in accordance with the following regulations contained in the "additional" section 1 LPP:
  - a) Firstly, the parties which have been admitted by the Supreme Election Board to participate in the most recent general parliamentary elections and which have exceeded the general threshold indicated in section 33 of the Law on Parliamentary Elections (currently 10 %

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<sup>17</sup> See also article 69, paragraph 10 of the Constitution.

nationally, see paragraph 13 above), are entitled to annual allocations paid by the State Treasury, to the amount of 2/5000 of the amount set out under "Table (B)" (which covers tax revenues of the State budget) of the current year's general budget revenues. These funds are distributed in proportion to the number of valid votes received by the parties as announced by the Supreme Election Board after the latest general elections. They are to be paid within ten days of the enforcement of each year's general budget law.

- b) Secondly, the political parties which have received more than 7 % of the votes validly cast at the most recent general election are also granted annual State support, the amount of which is determined in proportion to the annual allocation granted to the least-paid political party (according to the above rules, under a) and to the valid votes received in the last general election, but it may not be less than 350 Turkish Lira/TRY (163 EUR).<sup>18</sup> In order to meet this expense, every year an appropriation is put into the budget of the Ministry of Finance.
- c) In cases where a party has received donations, acquired goods or proceeds in violation of the provisions of the LPP and where such proceeds have consequently been registered as revenue with the Treasury under section 76 LPP, the amount corresponding to two folds of the total value of the proceeds registered are subtracted from the State support of the party concerned.
- d) In election years, the annual State support is increased. The amounts calculated on the basis of the rules under paragraphs a) and b) are multiplied by three in the year of general elections and by two in the year of local elections. Where two elections are held in the same year, the total amount cannot be higher than three-fold. These funds are to be paid within ten days following the announcement of the Supreme Election Board's decision concerning the election calendar.

25. Moreover, the authorities referred to a special financing instrument in the election period consisting in – tax-free – daily fees to be paid to members and staff of ballot-box committees, the amount of which is determined by the Supreme Election Board.<sup>19</sup> Such committees are composed of the chair and vice-chair (public officials) and a further five members (representatives of political parties participating in the election concerned). The authorities indicated that over 150 million TRY/69.7 million EUR had been paid to members and staff of ballot-box committees for the last local elections in 2009.

26. The authorities submitted the following information on direct public funding of political parties during the period 2007-2009:

<b>STATE SUPPORT TO THE POLITICAL PARTIES</b>				
<b>(2007-2009)</b>				
	<b>YEARS</b>			<b>TRY</b>
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>TOTAL</b>
<b>TRUE PATH PARTY</b>	<b>39,313,704</b>	<b>0</b>	<b>0</b>	<b>39,313,704</b>
<b>REPUBLICAN PEOPLE'S PARTY</b>	<b>79,874,760</b>	<b>20,476,032</b>	<b>49,898,358</b>	<b>150,249,150</b>
<b>NATIONALIST MOVEMENT PARTY</b>	<b>34,438,203</b>	<b>13,995,780</b>	<b>34,106,531</b>	<b>82,540,514</b>

<sup>18</sup> Exchange rate from TRY to EUR on 7 July 2009. – This minimum amount was set in 1983.

<sup>19</sup> See section 182 of the Law on Basic Provisions on Elections and Voter Registers.

STATE SUPPORT TO THE POLITICAL PARTIES				
(2007-2009)				
	YEARS			TRY
	2007	2008	2009	TOTAL
JUSTICE AND DEVELOPMENT PARTY	141,216,258	45,685,556	111,331,837	298,233,651
YOUNG PARTY	29,862,765	0	0	29,862,765
TOTAL	324,705,690 (150,890,734 EUR)	80,157,368 (37,249,128 EUR)	195,336,726 (90,772,977 EUR)	600,199,784 (278,912,823 EUR)

27. According to information provided by officials of the parties eligible for State funding, State support constitutes on average around 90 % of the total income generated by the three parties currently entitled to public funding.

#### Indirect public funding

28. All registered parties participating in parliamentary elections are entitled to radio and television broadcasting during the general elections but not during local elections; the time to be allotted and the procedures are regulated in detail by sections 52 to 55/A of the Law on Basic Provisions on Elections and Voter Registers. In accordance with section 52 of this law, every political party entering the elections is attributed two advertising broadcasts of ten minutes each on the first and last day of the broadcasting period (which lasts from the seventh day until 6 p.m. on the last day before the polling date). Every parliamentary party group is given an additional ten minutes; the government party – or, in the case of coalition government, the bigger party in government – is given an additional 20 minutes; minor government parties are attributed an additional 15 minutes, and the main opposition party, an additional ten minutes. Paid advertising in radio and television broadcasts was annulled by the Constitutional Court in 1987 on the basis that it is contrary to the principle of equality. Political parties and candidates are allowed to use newspapers or magazines for paid advertisements. Broadcasts during election periods are administered by the Supreme Election Board and monitored by the Supreme Council of Radio and Television (RTUK). Apart from the above-mentioned rules pertaining to election periods, the government is entitled to 30 minutes' free broadcast each month on the State television (TRT, Radio and Television Institution of Turkey) to promote its activities.
29. Pursuant to section 61 LPP, no duties, taxes and levies are imposed on the income obtained by political parties, except for income deriving from their assets. This rule does not apply to income obtained by independent candidates for their election campaign.

#### Private funding

30. Membership fees are regulated by section 62 LPP which states that the amount of entry fees as well as upper and lower limits of membership fees are to be indicated in the internal rules of the party. There are no legal restrictions as to the amount and calculation of membership fees. However, each party member is obliged to pay a monthly or annual membership fee. A party member can – through a written notice to the presidency of the party organisation – increase the amount of the membership fee he pays, provided that the amount is compatible with the party regulation. The amounts of deputy fees payable by the MPs of a political party, the amounts of

candidate fees and the mode of distribution of these fees to the group activities and the party headquarters is to be decided by the parliamentary group of the party concerned, but they may not exceed the net monthly allowance to deputies.

31. Donations to political parties by Turkish natural and legal persons are allowed, with the exceptions mentioned above (in particular publicly held companies, see paragraph 20 above). Political parties are required to keep records of the donations received and to issue receipts indicating that the donation belongs to the donor or his/her authorised representative or deputy. The authorities indicated that anonymous donations are excluded, as political parties have to record the type and amount of each contribution received as well as the name, surname and address of the contributor.<sup>20</sup> Section 66, paragraph 2 LPP establishes a ceiling for the total amount of donations which may be made by one natural or legal person to a political party in a calendar year, i.e. 23,473 TYR/10,908 EUR in 2009; this amount is increased as of the beginning of every calendar year at a value determined and announced in line with the provisions of the Tax Procedures Law.<sup>21</sup> The aforementioned ceiling does not apply to certain organisations mentioned above (e.g. professional organisations in the form of public institutions, trade unions and employers' associations etc., see paragraph 21 above) which may contribute to political parties in accordance with the special provisions of their founding law.
32. Political parties may not acquire any immovable property except that necessary for their residential needs, purposes and activities. Parties may use revenue from their immovable property provided that it is in line with their objectives.<sup>22</sup>
33. Pursuant to section 67 LPP, political parties are prohibited from borrowing money or taking loans from any legal or natural person, but in order to meet their needs, they may purchase goods in exchange for credit or mortgage. As regards fundraising activities, the authorities referred to section 61 LPP according to which a party may gain income from social events such as balls, entertainment and concerts organised by the party. The same provisions allow a party to generate income from selling its own flags, streamers, badges and similar signs and symbols as well as party publications; also to charge for issuing the party's identity cards and notebooks, receipts and papers. Apart from these specific cases, political parties are prohibited from engaging in commercial activities.<sup>23</sup>
34. The authorities indicated to the GET that contributions to political parties and independent candidates are not tax deductible.

### Expenditure

35. There are no quantitative but only qualitative restrictions for expenditure of political parties. According to section 70 LPP expenses borne by political parties must not be contrary to their purposes.<sup>24</sup> They must be made in the name of the party and be based on a decision of the competent organ or body; according to section 71 LPP, political parties' expenses, contracts and commitments must be made by the person or board authorised to act on behalf of the party's legal entity at the headquarters, the provincial executive board or the district executive board. Section 72 LPP prohibits political parties from lending out money to their members or to other

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<sup>20</sup> See section 69, paragraph 3 LPP.

<sup>21</sup> See the "additional" section 6 LPP.

<sup>22</sup> Section 68 LPP.

<sup>23</sup> See article 69, paragraph 2 of the Constitution and section 67 LPP.

<sup>24</sup> See also article 69, paragraph 3 of the Constitution, according to which the income and expenditure of political parties must be consistent with their objectives.

natural or legal persons under any circumstances. Finally, under the “additional” section 1 LPP public funds may be used solely for the needs or activities of the party.

### III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

#### (i) Transparency (Articles 11, 12 and 13b of Recommendation Rec(2003)4)

##### Books and accounts

36. Pursuant to section 60 LPP organs of political parties at every level are obliged to keep a membership register, a book of decisions, a register for incoming and outgoing documents, an income and expenditure book and an inventory list. According to the authorities, the term “party organs at every level” includes the persons, bodies and boards of political parties, namely the central organisation, the general assembly, chairman, central decision-making body, management and executive organs, central disciplinary board, district organisation and provincial organisation as defined in sections 13 to 20 LPP. The income and expenditure book must contain detailed recordings of any income obtained for the party (indicating the type and amount of each contribution, the name, surname and address of the contributor, the designation, name and surname of the person who issued the receipt) and any expenditure on behalf of the party (detailing the item(s) purchased and the location of purchase; expenses up to a specific ceiling – 60 TRY/28 EUR in 2009 – are exempt),<sup>25</sup> together with the invoices and other relevant source documents. The authorities indicated that the procedures for keeping the summary of membership registers, the drafting and issuing of the budget and the final accounts, as well as requirements of further books which are deemed necessary for party organs and committees are laid down in party regulations and by-laws.
37. Pursuant to section 73 LPP, final accounts of political parties must be prepared according to the principles of balance sheet accounting. Provincial organisations of the parties, including the party headquarters and affiliated sub-provinces, have to prepare the final accounts illustrating the previous year’s performance results until the end of April following each budget year. Final accounts sent by the provincial organisations and those prepared for the party headquarters are to be examined, finalised and consolidated by the central decision-making and administrative board of the party. According to the authorities, final accounts include branches for women and youth as well as similar subsidiary bodies; such bodies do not generate any income and expenditures for their activities are made by the party organisations.
38. As concerns the financing of electoral campaigns of political parties and independent candidates for election, the Turkish legislation does not foresee any specific book-keeping requirements.
39. The Turkish legislation does not impose any specific recording obligation on contributors, apart from the general requirement – based on the Tax Procedure Code – for legal persons to declare their expenses (including contributions to political parties) to the tax authorities.

##### Reporting obligations

40. Section 74 of LPP stipulates that the finances of political parties will be audited by the Constitutional Court which verifies whether the property acquisitions by political parties and their revenues and expenditures are in compliance with the law. To this end, the chairpersons of

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<sup>25</sup> See section 70 LPP. – This amount is increased as of the beginning of every calendar year at a value determined and announced in line with the provisions of the Tax Procedures Law, see the “additional” section 6 LPP.

political parties are obliged to send an approved copy of the final account, as well as the approved copy of the final accounts of the party headquarters and the provincial organisations – which also include their affiliated districts – to the Constitutional Court by the end of June annually, and furthermore to the Office of the Chief Public Prosecutor for information. Lists indicating the value of the immovable property, movable property of over 100 TRY/46.47 EUR, securities and rights acquired by the political party during the accounting period, as well as the date and manner in which they have been acquired are to be annexed to these documents. Invoices and other relevant source documents are to be submitted as well.

41. As regards the preservation of records, the authorities indicated that political parties are obliged to keep the vouchers of revenues for five years as from the notification date of the decision on the first review by the Constitutional Court to the relevant party, and to keep the expenditure documents for five years starting from the date on which the Constitutional Court's first decision on the examination of the final account has been notified to the party.<sup>26</sup>

#### Publication requirements

42. Political parties are not obliged to publicise their financial records. Nevertheless, the authorities indicated that, in practice, political parties disclose the summary of party accounts either in written format on their web pages or by verbal declaration.
43. Financial audit decisions by the Constitutional Court are to be published in the Official Gazette.<sup>27</sup>

#### Access to accounting records

44. The Constitutional Court receives the annual accounts of political parties by the end of June of the following year. Moreover, the Court may, at any time, ask the parties to document information pertaining to their final accounts.<sup>28</sup> The authorities indicated that in order to perform the audit of annual party accounts, the Court may conduct researches and inquiries at the headquarters and local organisations of the parties – either directly or by a delegated member from among its members, or by the most senior judicial or administrative judge of the locality concerned, and possibly with the assistance of a sworn expert.
45. The Office of the Chief Public Prosecutor also receives the final accounts of political parties, for information. The authorities furthermore indicated that the Office of the Chief Public Prosecutor may, at any time, initiate investigations into accounts and source documents of political parties, *ex officio* or following a citizen's complaint.

### **(ii) Supervision (Article 14 of Recommendation Rec(2003)4)**

#### Auditing

46. Political parties are required to carry out an internal audit of their finances and, to this end, audit boards are to be elected by the general assembly or by the assemblies of local party branches. However, Turkish legislation does not impose on political parties any specific auditing mechanism and leaves it up to the parties to organise freely the internal audit of their financial activities. According to the authorities, it has been observed during recent years that political parties engaged professional (external) accountants to keep their books and records properly.

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<sup>26</sup> Section 70, paragraph 4 LPP.

<sup>27</sup> Article 153, paragraph 6 of the Constitution.

<sup>28</sup> Section 75 LPP.

## Monitoring

47. Supervision of the finances of political parties in Turkey is entrusted to the Constitutional Court in accordance with article 69 of the Constitution, sections 16-18 of the Law No. 2949 on the Establishment and Judicial Procedures of the Constitutional Court and sections 74-77 LPP. The Court verifies whether the property acquisitions by political parties and their revenues and expenditures are in compliance with the law, on the basis of certified copies of the consolidated final accounts of the parties, including the accounts of party headquarters and of provincial organisations, and complemented by lists indicating the values of movable and immovable property, securities and rights acquired by the political party during the accounting period. The Court conducts audits on the documents; it may request assistance by the Court of Accounts, it may ask the parties to document information pertaining to their final accounts, it may carry out investigations at the headquarters and local organisations of the parties (see paragraph 44 above), and it may request a written opinion from the chairpersons or representatives of the parties; if deemed necessary, it may hear verbal statements of the responsible party officials or accountants.
48. More detailed provisions on the auditing processes are contained in sections 16 and 17 of the Internal Regulations of the Constitutional Court, according to which the party accounts are examined by expert rapporteurs assigned by the Presidency of the Court, with the aim of establishing whether any material errors or inconsistencies exist in the final accounts that have an impact on their result. The rapporteurs examine both the accuracy of the information contained in the final accounts (on the basis of other documents such as annual budgets, balance sheets, party books, revenue-expense records etc.) and the legality of the recorded revenues and expenditures (determining whether revenues have been acquired from the sources listed under sections 61-69 LPP and whether expenses have been made in compliance with sections 70-72 LPP). In order to verify whether all provinces in which the political parties are organised have conveyed their final accounts, the rapporteurs have access to the previous party records kept by the Office of the Chief Public Prosecutor. The rapporteurs have to submit their reports to the Presidency of the Court within two months, pointing at possible deficiencies, errors or inconsistencies and indicating ways to remedy them. The Court shall give an appropriate time – not longer than three months – to the political parties to remedy deficiencies, errors and inconsistencies. At the end of its audit, the Constitutional Court will take a final – unchallengeable – decision on the accuracy and lawfulness of the revenues and expenditures of political parties as recorded in their accounts and will register as income to the State Treasury those revenues and expenditures that are found not to be in compliance with the law. Copies of the Court decision are submitted to the party headquarters and to the Office of the Chief Public Prosecutor in order to be filed in the records of the party concerned.
49. All the decisions of the Constitutional Court on the accuracy and lawfulness of the income and expenses of political parties, and on the registration of illegal income and expenses as income to the State Treasury, including a summary of the examination of party accounts, violations of the relevant provisions if any and their consequences (fines, sanctions etc.), are published in the Official Gazette.
50. The authorities indicated that any person who claims irregularity in the final accounts of a political party has the right to apply to the prosecutor who has to initiate a lawsuit before the court. Moreover, citizens (e.g. former party officials) who have evidence of violations of party financing regulations may also apply to the Office of the Chief Public Prosecutor. The Office of the Chief Public Prosecutor is also informed of irregularities detected by the Constitutional Court, as the

latter has to submit its final decisions to it. Furthermore, the authorities indicated that the Constitutional Court may demand relevant documents from any official and private institutions or persons, including the tax authorities. The cooperation with the Court of Accounts is limited to the assignment of auditors to the Constitutional Court.

51. The Constitutional Court is composed of eleven regular and four substitute members.<sup>29</sup> The President of the Republic appoints two regular and two substitute members from the Court of Cassation, two regular and one substitute member from the Council of State, and one member each from the Military Court of Cassation, the High Military Administrative Court and the Audit Court, three candidates being nominated for each vacant office by the Plenary Assemblies of each court from among their respective presidents and members, by an absolute majority of the total number of members; the President of the Republic also appoints one member from a list of three candidates nominated by the Higher Education Council from among members of the teaching staff of institutions of higher education who are not members of the Council, and three members and one substitute member from among senior administrative officers and lawyers. The members of the Constitutional Court may not assume other official and private functions, apart from their main functions. The members of the Constitutional Court retire on reaching the age of sixty-five. Membership of the Constitutional Court terminates automatically if a member is convicted of an offence requiring his/her dismissal from the legal profession, and it terminates by a decision of an absolute majority of the total number of members of the Constitutional Court if it is definitely established that s/he is unable to perform his/her duties on account of ill-health.
52. The financial audit of political parties by the Constitutional Court is performed currently by six rapporteurs who previously worked as auditors at the Court of Accounts. In cases of specific needs (e.g. due to court proceedings relating to party finances), a further auditor of the Court of Accounts can be temporarily called in. The rapporteurs are assisted by the Directorate of Decisions of the secretariat of the Constitutional Court. The director and two staff are assigned to this task. There is no specially allocated budget for the control of political finances.

**(iii) Sanctions (Article 16 of Recommendation Rec(2003)4)**

53. The LPP provides for a range of criminal, administrative and civil sanctions to be imposed on political parties, party officials/party candidates or other persons (e.g. donors) – depending on the circumstances – for violations of party financing provisions, as detailed below; these different types of sanctions (e.g. sanctions against party officials and against the party itself) are not mutually exclusive. By contrast, the election laws do not provide for any sanctions in the area of political financing/election campaign funding.
54. Under the relevant provisions of the LPP, four different types of measures and sanctions can be imposed on political parties themselves:

a) Decision of warning by the Constitutional Court

- Section 104 LPP: if the Court finds any contravention by a political party to statutory provisions of the LPP other than section 101 or to the statutory provisions of other laws concerning political parties, the Court passes a decision of warning against the party concerned, asking it to remedy the contravention (failure to obey such a warning is not subject to any sanction).<sup>30</sup>

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<sup>29</sup> See articles 146 and 147 of the Constitution.

<sup>30</sup> The second sentence of section 104, paragraph 2 LPP – which provided the possibility of partial or whole deprivation of the party from State support in such cases, under certain conditions – was abolished by Decision No. 2008/5 E, 2009/81 K of 11.06.2009 of the Constitutional Court.

b) Confiscation by the State Treasury or liquidation of property

- Section 76 LPP: the following assets of a political party are registered as revenue with the State Treasury (confiscated): the whole amount of donations received, goods or proceeds acquired by a party in violation of the financing provisions of the LPP; donations exceeding the legal threshold (the amount/value exceeding the threshold is confiscated); loans or debts provided to political parties in violation of section 67 LPP (the Treasury bears no liabilities vis-à-vis the lender of the loan or debt); income received from undocumented sources in violation of section 69 LPP; assets of the party to the amount of undocumented expenses which should have been documented.

- Section 77 LPP in conjunction with section 68 LPP: immovable properties of a political party – except the ones necessary for their residential needs, purposes and activities – are to be liquidated (converted into money) by the party within a period set out by the Constitutional Court.

c) Deprivation of political parties from State support

- Section 102 LPP: if a political party does not provide requested information and documentation to the Office of the Chief Public Prosecutor, for the monitoring of its finances, within the period indicated in the second notification by the Office (indicating the possible consequences of non-compliance), the Office can file a lawsuit to the Constitutional Court for the deprivation of the party from State support for the current year, in part or in full.

d) Closure of a political party

- Section 101 (c) LPP: a political party which receives financial assistance from a foreign State, an international organisation or a foreign natural or legal person in violation of article 68, paragraph 10 of the Constitution is to be closed down upon decision of the Constitutional Court.

55. Furthermore, the LPP foresees two different types of sanctions and measures which can be imposed on responsible party officials/party candidates:

a) Criminal sanctions

The following sanctions for infringements of financing regulations are available under the criminal provisions of the LPP:<sup>31</sup>

- Section 111 LPP:<sup>32</sup>

a) failure by a party official to hand out the information and documents requested for records to be kept by the Office of the Chief Public Prosecutor, or acts in violation of the provisions of section 102 LPP: administrative fine for 5 to 730 daily amounts of 20 to 100 TRY/9 to 46 EUR;

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<sup>31</sup> It is to be noted that the criminal provisions of the LPP in their current form still contain the terms “light imprisonment” and “light and heavy fines”. However, the New Turkish Penal Code of 2005 – whose general provisions also apply to other laws which include criminal penalties – amended the judicial fine system. In order to make these laws compatible with the new fine system, sections 5 and 7 of the Law No. 5252 on Enforcement and Implementation of the Turkish Penal Code of 4 November 2004 provide that “heavy fines” are transformed into “judicial fines” and “light fines” and “light imprisonment” are converted into “administrative fines”.

<sup>32</sup> Please note that the amounts of the fines provided for in section 111 are increased as of the beginning of every calendar year at a value determined and announced in line with the provisions of the Tax Procedures Law, see section 17, paragraph 7 of the Law on Misdemeanours.

b) acts of a party official in violation of the provisions of section 74 LPP: administrative fine for 5 to 730 daily amounts of 20 to 100 TRY/9 to 46 EUR;

c) hindrance by a party official of examinations and inquiries or failure to hand out the information requested, in accordance with section 75 LPP: imprisonment for a term of six months to one year and judicial fine for 450 to 100,000 TRY/209 to 46,470 EUR;

d) non-compliance by a party official with the warning decision given in accordance with section 104 LPP, leading to the complete or partial deprivation of the party from State support: administrative fine for 5 to 730 daily amounts of 20 to 100 TRY/9 to 46 EUR.

If these offences are repeated, the penalties is to be increased by half.

- Section 113 LLP: failure by a person to keep the books and records mentioned in section 60 LLP: imprisonment for a term of six months to one year; falsification, destruction or hiding of such books and records: imprisonment for a term of one to three years.

- Section 116, paragraphs 1 and 2 LPP: acceptance by a party official of donations or provision or receipt of a credit or loan in violation of the financing provisions of the LPP: imprisonment for a term of six months to one year.

- Section 116, paragraph 3 LPP: acceptance by a party official, candidate or nominee candidate of an aid or donation from a foreign State, an international organisation, a foreign natural or legal person: imprisonment for a term of one to three years.

Some of the aforementioned provisions expressly indicate which person is criminally responsible, e.g. section 111b) LPP in conjunction with section 74, paragraph 2 LPP concerning the obligation for the chairperson of a political party to send the final accounts to the Constitutional Court and to the Office of the Chief Public Prosecutor. In cases where there is no such explicit regulation in the LPP, it was indicated to the GET that the responsible party representatives are to be identified on the basis of the party statutes and of other relevant legislation, in particular, the Law on Associations and the Civil Code.

b) Ban from engaging in political activities

- Section 95 LPP: a founder or member of a political party who caused the party to be closed down through his/her statements or acts cannot become the founder, member, administrator or auditor of another political party for a term of five years (as of the publication in the Official Gazette of the official closure decision along with the justifications rendered by the Constitutional Court) and s/he cannot be nominated by a political party as electoral candidate.

56. Finally, the LPP provides for criminal sanctions against persons outside the political party:

- Section 116 LPP, paragraphs 1 and 2: donation to a political party, provision to a party or receipt from a party of a loan or credit, in violation of the financing provisions of the LPP: imprisonment for a term from six months to one year.

57. The decisions of warnings, confiscation by the Treasury, depriving a political party from State support and closure of political parties are imposed by the Constitutional Court and cannot be

appealed.<sup>33</sup> Criminal sanctions mentioned above are imposed by the criminal courts – following indictment by the Office of the Chief Public Prosecutor – whose decisions may be appealed to the Court of Cassation.

#### Immunities and time limits

58. None of the above-mentioned categories of persons who may be held criminally liable for infringements of party financing regulations – party officials, party candidates, donors etc. – enjoy immunities, except for MPs who benefit from immunity from the day of election until the day of termination of their mandate. As a rule, criminal proceedings filed against a person before s/he was elected to Parliament are suspended until the end of his/her mandate. The immunity of MPs can be lifted by decision of Parliament upon request by the Office of the Chief Public Prosecutor.<sup>34</sup>
59. The general statutes of limitation provided by the Turkish Penal Code (TPC) apply to the criminal offences under the LPP. The period of limitation is determined by the severity of sanctions which can be imposed for the offence in question. Accordingly, the limitation period provided for the above-mentioned criminal offences is 8 years.<sup>35</sup>

#### Statistics

60. Statistics show that on the basis of the review of party accounts of the years 1998-2006, the Constitutional Court rendered 44 decisions to confiscate party property and/or to notify the public prosecution service of criminal offences relating to infringements of party financing provisions of the LPP, during the period 2007-2009. The decisions concerned 21 different political parties. In 37 of these cases the confiscation of party property was decided (8 cases concerned the accounts of 2006 and involved confiscation of altogether 479,242 TRY/222,704 EUR; 2 cases concerned the accounts of 2005 and involved confiscation of altogether 161,934TRY/75,251 EUR). In 21 cases it was decided to notify the public prosecution service (9 cases concerned the accounts of 2006; 3 cases concerned those of 2005).
61. The authorities reported on the following examples of suspected or confirmed infringements of party financing regulations:
- Since one political party submitted in 2007 its books and records several weeks after the deadline defined in section 74 LPP to the Constitutional Court, the Court decided to send the file to the Office of the Chief Public Prosecutor for further action against the responsible party officials.
  - On 13 May 2009, the Constitutional Court decided that certain expenses of one party (to an amount of 25,315.43 TRY/11,764.08 EUR) had not been spent in compliance with the financing regulations of the LPP and were to be registered as income to the State Treasury.

#### **IV. ANALYSIS**

62. In Turkey, political parties are governed by Law No. 2820 on Political Parties (hereafter: LPP) of 22 April 1983 which was last amended in 2005. The LPP provides for annual State support to political parties and also includes rules on transparency, supervision and sanctions in the area of party funding. The relevant provisions contain lists of permitted and prohibited funding sources (e.g. donations by foreign natural or legal persons are generally excluded), they place a strict

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<sup>33</sup> See article 153, paragraph 1 of the Constitution.

<sup>34</sup> Article 83 of the Constitution.

<sup>35</sup> See section 66, paragraph 1e) TPC.

limit on the sum that any one individual may contribute during a year and they include annual reporting obligations. Supervision of party finances is effected by the Constitutional Court. In addition, the Office of the Chief Public Prosecutor monitors the financial activities of political parties on an annual basis. There are criminal, civil and administrative sanctions available for infringements of the relevant regulations. In the view of the GET, the authorities of Turkey are to be commended for the establishment of this legal framework. At the same time, there appears to be a general agreement between parties, regulators and observers that the system needs to be further reformed and to be complemented by specific legislation on election campaign financing. To this effect, a draft proposal had been prepared by the parliamentary parties during the previous legislative period, but due to early elections in 2007 it was not pursued further. The GET identified several deficiencies in the current transparency regime in relation to the principles established by Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (hereafter: the Recommendation). These shortcomings, outlined further below, need to be addressed in order to effectively reduce risks of corruption in the area of political financing.

63. According to article 68 of the Constitution, the State has to “provide the political parties with adequate financial means in an equitable manner.” In this connection, several interlocutors of the GET shared their concerns about the threshold of 7 % of votes in the last parliamentary elections necessary to receive State support. At the time of the visit, only three parties were entitled to public funding, and smaller parties appeared to encounter significant difficulties in raising the resources necessary for their activities and election campaigns. For the parties which benefit from public funding dependence on the State is very significant. On average, around 90 % of these parties’ income comes from the State. In this connection, the GET wishes to draw the attention of the Turkish authorities to Article 1 of the Recommendation, according to which State support should be limited to reasonable contributions and States should ensure that any such support does not interfere with the independence of political parties. Another concern expressed during the interviews was related to allegedly excessive expenses of some parties and candidates for their election campaigns, which were not reflected in party accounts. It might therefore be advisable for the Turkish authorities to consider adopting further measures such as requiring the use of the banking system as a means of transferring all monies or establishing campaign expenditure limits along the lines of Article 9 of the Recommendation.

### Transparency

64. Under the provisions of the LPP, political parties are subject to a quite comprehensive set of transparency and accounting obligations. Organs of political parties at every level (as defined in sections 13 to 20 LPP)<sup>36</sup> are obliged to keep a membership register, a book of decisions, a register for incoming and outgoing documents, an income and expenditure book and an inventory list. Parties are required to keep records of the donations received (indicating the type and amount of each contribution received as well as the name, surname and address of the contributor) and to issue receipts. The ceiling for the total amount of donations which may be made by one natural or legal person (except trade unions, employers’ associations and certain other organisations) to a political party in a calendar year was fixed, in 2009, at 23,473 TYR/10,908 EUR. Provincial organisations of the parties have to prepare final accounts for each budget year according to the principles of balance sheet accounting. The accounts are consolidated by the central decision-making and administrative board of the party and sent by the chairperson of the party to the Constitutional Court by the end of June annually, and furthermore to the Office of the Chief Public Prosecutor for information. Lists of property acquired by the party

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<sup>36</sup> See paragraph 36 above.

during the accounting period, invoices and other relevant source documents are to be submitted as well.

65. Despite this overall satisfactory legal framework, the GET notes with concern that the current provisions on accounting and reporting obligations make no explicit reference, firstly, to income received and expenditure incurred by individual party members – party candidates for election, elected representatives – for their political activities. According to many interlocutors met on site, funds are to a large extent raised and spent individually by such party members without being recorded in the party accounts, as they are not officially made on behalf of the party. Therefore it would appear that in Turkey, party accounts do not comprehensively reflect the financing of political activities of the parties and its members. In this connection, the GET wishes to recall that the principles enounced in the Recommendation also apply, according to Article 8, to the funding of electoral campaigns of candidates for election and to the funding of political activities of elected representatives. Secondly, the GET notes that the above-mentioned provisions of the LPP do not explicitly refer to the accounts of entities related to the political party, or under its control. In line with the reasoning underlying the Recommendation, while recognising that this is not currently the case in Turkish legislation and practice (see paragraph 23), the GET wishes to stress that party accounts need to comprise such information in order to include the support provided by entities which are closely related to – or come under the influence of a party – and in order to give a complete and realistic picture of party funding as well as to prevent circumvention of transparency rules. Consequently, the GET recommends **to ensure that annual accounts of political parties include a) income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, and b) as appropriate, the accounts of entities related, to political parties or otherwise under their control.**
66. Moreover, during the on-site visit the GET's attention was drawn to certain deficiencies in the current reporting practice. According to various observers, party accounts are far from being systematic and rigorous. It transpired from the interviews that donations – especially donations in kind – are frequently not properly recorded and that accounts tend to lack detailed and comprehensive information on the finances of the parties concerned. The GET is of the opinion that credible reporting cannot rely on aggregate figures concerning income and expenses. A low level of detail impoverishes the actual meaning of the information available to the public and therefore hampers the effective monitoring of party financing. In this connection, the GET was advised that the format of the accounts submitted varies considerably from one party to another and is thus a potential source of confusion. Several interlocutors, including party officials, openly admitted the need for guidance by the competent monitoring body (i.e. the Constitutional Court), possibly further regulations and, above all, a common format for party accounts (preferably accompanied by appropriate guidelines). Such measures would conduce to a sufficiently high level of detail in all reports and facilitate comparisons over the years and across the parties. The GET therefore recommends **to take appropriate measures to ensure that annual accounts of political parties provide more detailed and comprehensive information on income and expenditure, including the introduction of a standardised format backed up by common accountancy principles, as well as the provision of guidance to parties by the monitoring body.**
67. As regards the disclosure of party accounts, the GET notes that contrary to Article 13b of the Recommendation political parties are not obliged to make them (or a summary of them) public. During the visit, the GET was informed that one of the main parties had taken the initiative to publish summaries of its accounts. However, the information gathered on site strongly suggests

that these summaries are not detailed enough to allow effective public control of the party's financing schemes, and the large majority of parties do not publish any financial information at all. As concerns the supervisory body, the Constitutional Court, it is only required to publish its financial audit decisions in the Official Gazette. Therefore, the current regime is far from guaranteeing easy access to party financing information. The GET shares the opinion expressed by various interlocutors that the auditing exercised by the Constitutional Court needs to be complemented by public control of political financing, and the information collected by the GET clearly indicates that such an involvement of the public needs to be actively encouraged. This can only be achieved by disclosure of detailed and comprehensible reports in an easily accessible manner, ideally on the party websites. Furthermore, simultaneous publication of the various party reports and/or of monitoring reports by the supervisory body, possibly on the Internet, would be an additional asset for ensuring optimum transparency. In view of the above, the GET recommends **to ensure that annual accounts of political parties and monitoring reports of the supervisory body are made easily accessible to the public, within timeframes to be specified by law.**

68. The above-mentioned transparency rules of the LPP apply to financing of political parties in general and therefore also to their election campaigns. By contrast, campaign financing of individual candidates for election is out of the scope of the LPP and not regulated at all. The different electoral laws applicable to parliamentary and local elections – i.e. Law No. 298 on Basic Provisions on Elections and Voter Registers of 26 April 1961, Law No. 2839 on Parliamentary Elections of 10 June 1983 and Law No. 2972 on Elections for Local Administrations, Neighbourhood Headmenships and Elder Councils of 1984 – are completely silent on this matter. The lack of regulation and control of election campaign funding at national and local level concerns both independent candidates and individual party candidates, who are not – except for one single criminal provision<sup>37</sup> – explicitly addressed by the provisions of the LPP. Many interlocutors identified this issue as the most significant problem regarding election financing in Turkey, asserting that some candidates run expensive campaigns and the sources of their funding are unknown. In this context, there are strong incentives for donations to be channelled to candidates, rather than political parties, in order to avoid disclosure requirements and monitoring by the Constitutional Court. The GET can only conclude that the current transparency regime fails to cover an important part of political financing in Turkey. In addition, it is to be noted that following constitutional changes of 2007, the President of Turkey will in the future be directly elected by popular vote,<sup>38</sup> and new legislation on presidential elections – including on campaign financing – has yet to be developed. This presents Turkey with a unique opportunity to craft a more robust framework for ensuring the transparency of election campaign financing for parties and candidates. For the sake of legal consistency and clarity, new transparency regulations for parliamentary, presidential and local election campaigns need to be compatible with the existing rules of the LPP on permitted and prohibited funding sources (including a ban on anonymous donations), donation ceilings, accounting and reporting obligations. Furthermore, while entities collaborating with political parties (e.g. interest groups, political education foundations, trade unions) are under an obligation to keep accountancy records, their books are not in the public domain. It would therefore prove difficult for the public to establish possible links between such entities and political parties. In view of the above, the GET recommends **to regulate transparency in the financing of parliamentary, presidential and**

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<sup>37</sup> See section 116, paragraph 3 LPP: acceptance by a party official, candidate or nominee candidate of an aid or donation from a foreign State, an international organisation, a foreign natural or legal person is punishable by imprisonment for a term of one to three years. – In addition, the Law on Basic Provisions on Elections and Voter Registers imposes certain prohibitions on candidates during the election campaign period.

<sup>38</sup> Until now, the President was elected by Parliament – the incumbent President, in 2007 – and no campaign financing regulations were necessary.

**local election campaigns of political parties and candidates and, specifically, to find ways of increasing the transparency of contributions by third parties.**

69. Moreover, the present situation calls for regular and appropriately frequent disclosure of donations received by political parties and election candidates. The current regime only requires parties to include information in their annual accounts. In this connection, the GET recalls that GRECO has repeatedly demanded member States to require both parties and candidates to publish the donations received, in an easily accessible manner and at regular intervals, defined by law, including during election campaigns. Such timely information would have the clear benefit of increasing the openness of political financing in Turkey, attracting the attention of the media, facilitating public debate and allowing the public and the authorities to uncover potential irregularities in the funding of parties and elections at an early stage. The GET therefore recommends **to require political parties and election candidates to regularly disclose all individual donations (including of a non-monetary nature) they receive above a certain value, indicating the nature and value of each donation as well as the identity of the donor, including during the electoral campaign period.**

Supervision

*Auditing*

70. Political parties are required to carry out an internal audit of their finances and, to this end, audit boards are to be elected by the general assembly or by the assemblies of local party branches. However, no specific auditing mechanism is proscribed and parties may organise freely the internal audit of their financial activities. The GET notes that in practice, party accounts are generally not audited by external, independent professionals. Given the often unsatisfactory accounting and reporting practice of political parties (see paragraph 66 above), most of the interlocutors interviewed – including party officials – agreed on the need to provide a more robust audit process. The GET is of the firm opinion that auditing of party accounts by independent experts would undoubtedly reinforce the financial discipline of political parties and decrease possibilities for corruption. Consequently, the GET recommends **to introduce independent auditing of party accounts by certified experts.**

*Monitoring*

71. As regards external control of party finances, the final accounts of political parties are checked annually by the Constitutional Court. By contrast, the legislative framework does not foresee specific monitoring of election campaign funding. It is clear that transparency of political financing would benefit significantly if campaign funding was subject to proper independent scrutiny exercised during or shortly after an election – in contrast to the current situation where campaign financing of political parties is controlled only in the following calendar year (in practice often even later) together with other party income and expenditure. In this connection, the GET is particularly concerned about campaign funding of individual party candidates and independent candidates – for both parliamentary and local elections – which is not addressed by the LPP and therefore not subject to any control at all. Likewise, current legislation does not provide supervision over campaign funding of candidates for President, who will in the future be elected by popular vote. The information gathered by the GET clearly indicates that the current situation is not in line with the principle enounced in Article 14 of the Recommendation which makes reference not only to the supervision of party accounts but of electoral campaigns as well. Consequently, the GET recommends, as a complement to the recommendation given in paragraph 68, **that the supervision of the party accounts be complemented by specific**

**monitoring of the campaign financing of parties and candidates, to be effected during and/or shortly after presidential, parliamentary and local elections.**

72. Under the current regime of supervision over party funding, the Constitutional Court verifies whether the property acquisitions by political parties and their revenues and expenditures are in compliance with the law. The Court checks the final accounts – including the accounts of party headquarters and of provincial organisations – and complementary documents submitted by the parties. The Court may ask the parties to document information pertaining to their final accounts, request a written opinion from party representatives, hear verbal statements of the responsible party officials or accountants and carry out investigations at the headquarters and local organisations of the parties. At the end of its audit, the Court takes a final, unchallengeable decision on the accuracy and lawfulness of the revenues and expenditures of political parties as recorded in their accounts. Copies of the Court decision are submitted to the party headquarters and to the Office of the Chief Public Prosecutor. In the view of the GET, the Constitutional Court can be regarded as an independent monitoring body which has, over the years, brought to light a number of infringements of party financing regulations. The GET welcomes the apparent commitment of the auditors and their efforts to implement and enforce the relevant financing regulations. Nevertheless, the interviews held on site left the GET with the clear impression that further improvements are required in order to ensure effective supervision of political financing in Turkey, as outlined below.
73. At present, the financial scrutiny exercised by the Court appears to satisfy accountancy standards, but its staff is mainly specialised in auditing in a strict sense. According to several interlocutors, the submitted reports are not scrutinised beyond the information that parties or candidates themselves provide. For example, there is no verification of whether an election campaign could have been financed by non-declared funding. The information gathered by the GET clearly suggests that there is no sufficient verification of donations exceeding the legal thresholds and of donations in-kind, which are frequently improperly recorded (e.g. donations in the form of personal gifts or services such as free transportation or advertising). Furthermore, several observers argued that the use of public funds – which is legally restricted to the needs or activities of the party<sup>39</sup> – is not monitored in depth. The GET was also informed that the possibility provided by the LPP to carry out investigations at the headquarters and local organisations of the parties had never been made use of – which is all the more disturbing as cooperation between the Court and the law enforcement authorities appears to be unsatisfactory. The Court has to notify the prosecution service of detected criminal offences, but it is not informed of the ensuing procedures, and apparently no guidelines or protocols for efficient cooperation or exchange of information exists. For these reasons, the current monitoring mechanism does not ensure that party accounts are accurate reflections of the money raised and spent. In addition, the auditing of party accounts is often completed with significant delay, up to several years after the accounting period. In this connection, the GET was concerned to hear that there was no specially allocated budget for the control of political finances and that the team responsible for this control was composed of six auditors and three administrative staff – which was considered by numerous interlocutors (although not by representatives of the Court) as insufficient for a large country like Turkey. In view of the above, the GET recommends **(i) to ensure more substantial, pro-active and swift monitoring of political financing, including investigation of financing irregularities and closer cooperation with the law enforcement authorities; and (ii) to increase the financial and personnel resources dedicated to the control of political financing.**

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<sup>39</sup> See the “additional” section 1 LPP.

74. As regards the monitoring body, some observers pointed to advantages of the present regime (independence of the Constitutional Court, experience of its staff), whereas others argued that the backlog and the unsatisfactory effectiveness of current controls was due to the heavy load of the Court's primary task to review the constitutionality of laws. Therefore, it was suggested that another body be entrusted with the monitoring of political financing, such as the Court of Accounts or the Supreme Election Board. Almost all persons interviewed agreed, however, that the supervision of regular party finances and of election campaign funding should be carried out by one and the same body. Clearly, Turkey must itself assess which body would be most appropriate for this supervision. The GET wishes to stress, however, that any such monitoring body needs to enjoy an appropriate level of independence and be given sufficient resources to carry out pro-active and in-depth control, including the provision of advice and guidance to parties, as well as investigative powers and the mandate to impose administrative sanctions in case of violation of political financing regulations.

### Sanctions

75. The LPP provides for a broad range of sanctions relating to political party financing. Under the pertinent enforcement regulations, all the important transparency requirements are subject to criminal, administrative or civil sanctions. Criminal sanctions, to be imposed by the competent courts, apply to natural persons and range from a fine to imprisonment for up to three years. Administrative sanctions such as warnings, deprivation of political parties from State support or winding up of political parties may be imposed by the Constitutional Court, as well as confiscation of party assets by the Treasury. The GET notes that some of these sanctions, in particular confiscation by the Treasury, have been applied repeatedly over recent years. According to statistics submitted by the authorities, the Constitutional Court rendered 37 decisions – on the basis of the review of party accounts of the years 1998-2006 – to confiscate party property. By contrast, the GET was not made aware of any criminal sanctions imposed in the area of party financing, despite several criminal notifications made by the Constitutional Court. However, the GET is confident that enhanced cooperation between the authorities responsible for the enforcement of political financing as recommended (see paragraph 73 above) will also increase awareness of criminal sanctions in this area. In the view of the GET, the arsenal of sanctions available is, at least on paper, quite comprehensive and largely in line with the principles enounced in Article 16 of the Recommendation. The only significant shortcoming in this field which needs to be addressed resides in the lack of sanctions relating specifically to election campaign financing. Such sanctions for infringements of specific campaign financing regulations – yet to be established (see paragraph 68 above) – need to be available for political parties, individual party candidates and independent candidates for parliamentary, presidential and local elections likewise. Consequently, the GET recommends, as a complement to the recommendation given in paragraph 68, **to introduce effective, proportionate and dissuasive sanctions for infringements of yet-to-be established regulations concerning election campaign funding of political parties and candidates.**
76. Finally, the GET notes that according to numerous interlocutors met during the visit, the current regime of immunities in Turkey seriously hampers the enforcement of political financing regulations. It was pointed out that these regulations mainly address high-ranking party officials who are – at least in larger parties – mostly MPs and therefore immune from prosecution under Article 83 of the Constitution. The immunity may be lifted by Parliament, but the GET was informed that in practice requests for lifting the immunity of MPs had never been granted. The GET shares the concerns expressed in this respect and refers to GRECO's previous pronouncements on this subject in the Joint First and Second Round Evaluation Report on

Turkey, in which the established system of parliamentary immunity and its application in practice are identified as one of the problem areas in the context of corruption.<sup>40</sup>

## V. CONCLUSIONS

77. In Turkey, direct public funding is provided to parties having received 7 % of votes during the most recent general elections. These parties rely mainly on State support. Private donations to parties are closely regulated and limited to specified amounts per year and donor. Expenses incurred by parties and election candidates for the financing of their political activities, including election campaigns, are not subject to any quantitative restrictions.
78. The existing legislation on transparency in party funding is, overall, of quite a good standard and in many respects in line with the principles enounced in the Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. By contrast, the situation leaves much to be desired as regards individual persons such as party candidates, independent candidates for election and elected representatives, who are not subject to comparable transparency regulations. Campaign funding of such individuals is therefore neither recorded nor supervised. Hence the most obvious shortcoming of the current system, namely the lack of specific legislation and monitoring of campaign financing, for both national and local elections. Likewise, new processes and administration procedures for elections of the President of the Republic – who will in the future be directly elected by popular vote – have yet to be developed. This presents Turkey with a unique opportunity to craft a more robust framework for ensuring the transparency of election campaign financing for parties and candidates. As regards general party funding, the degree of transparency achieved in practice until now is not fully satisfactory and the challenge is largely one of implementation. Party accounts tend to be incomplete, they are difficult if not impossible to compare among each other and not certified by independent auditors. Most parties do not publish their accounts. Party accounts are subject to annual reviews by the Constitutional Court which have over the years revealed a number of irregularities, often giving rise to confiscation of party property. However, current supervision arrangements warrant further improvements in terms of efficacy, rapidity, thoroughness and detection of undeclared funding, in particular in the form of donations in kind. More resources, specialisation and a more pro-active approach are required in order to better detect illegal practice and circumvention of transparency rules. The current monitoring mechanism therefore needs to be considerably strengthened – and to be extended to election campaign funding of parties and candidates.
79. The authorities of Turkey are clearly to be commended for the establishment of the current transparency regime, but they are also encouraged to take further measures to ensure a complete and consistent legal framework as well as its effective implementation in practice. Given that previous moves in this direction, supported by the main political parties, were not pursued owing to early elections in 2007, it will be crucial that the issue of transparency of political financing in Turkey is put high on the political agenda again.
80. In view of the above, GRECO addresses the following recommendations to Turkey:
- i. **to ensure that annual accounts of political parties include a) income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral**

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<sup>40</sup> See document [Greco Eval I/II Rep \(2005\) 3E](#), paragraphs 93 to 97. See also the corresponding compliance report, document [Greco RC-I/II \(2008\) 2E](#), paragraphs 30 to 32.

**campaigning, and b) as appropriate, the accounts of entities related, to political parties or otherwise under their control (paragraph 65);**

- ii. to take appropriate measures to ensure that annual accounts of political parties provide more detailed and comprehensive information on income and expenditure, including the introduction of a standardised format backed up by common accountancy principles, as well as the provision of guidance to parties by the monitoring body (paragraph 66);**
- iii. to ensure that annual accounts of political parties and monitoring reports of the supervisory body are made easily accessible to the public, within timeframes to be specified by law (paragraph 67);**
- iv. to regulate transparency in the financing of parliamentary, presidential and local election campaigns of political parties and candidates and, specifically, to find ways of increasing the transparency of contributions by third parties (paragraph 68);**
- v. to require political parties and election candidates to regularly disclose all individual donations (including of a non-monetary nature) they receive above a certain value, indicating the nature and value of each donation as well as the identity of the donor, including during the electoral campaign period (paragraph 69);**
- vi. to introduce independent auditing of party accounts by certified experts (paragraph 70);**
- vii. that the supervision of the party accounts be complemented by specific monitoring of the campaign financing of parties and candidates, to be effected during and/or shortly after presidential, parliamentary and local elections (paragraph 71);**
- viii. (i) to ensure more substantial, pro-active and swift monitoring of political financing, including investigation of financing irregularities and closer cooperation with the law enforcement authorities; and (ii) to increase the financial and personnel resources dedicated to the control of political financing (paragraph 73);**
- ix. to introduce effective, proportionate and dissuasive sanctions for infringements of yet-to-be established regulations concerning election campaign funding of political parties and candidates (paragraph 75).**

81. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Turkish authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2011.

82. Finally, GRECO invites the authorities of Turkey to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.