

Transparency International Estonia



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REPORT

Party and Campaign Financing Regulations in Estonia

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Part 1 Legal and Institutional Framework

1.1 Entities That Are Allowed to Campaign

In Estonia there are three bodies that are allowed to campaign for elections - political parties, single candidates and election coalitions. The types of bodies differ accordingly to the election type. In parliamentary (Riigikogu) elections (parliament is elected for four years) only political parties and single candidates may run for office.¹ Same applies in the case of European Parliament elections.² In case of local government elections (local governments are elected for four years) there is an additional body- the election coalition.³ The election coalitions can be formed by Estonian citizens and citizens of the European Union who are entitled to vote at the local elections, the coalitions are based on a civil law partnership contract between their members and are formed for furthering the political agenda of their members and electors.⁴ The election coalitions have no legal personality. In addition to previous election types there are presidential elections, but since the President (president is elected for five years) of Estonia is not elected directly this will not be discussed in this report.

1.2 Political Parties Act and Regulation of Funding

The political parties financing in Estonia is regulated by the Political Parties Act.⁵ The act states the types of funding political parties are allowed to use.

The stated types are:

- Membership fees.
- Funding from the state budget.
- Donations.
- Transactions with party property.
- Loans.

There are however considerable restrictions. Funding from the state budget is only available to political parties and not for single candidates or election coalitions. The § 12⁷ of Political Parties Act states the terms of state funding - a party that receives 1% of votes during parliamentary elections is entitled to 9587 € per year, a party that receives 4% of votes is entitled to 15 978€ per year and parties that receive 5% or more get seats in the Riigikogu (Riigikogu has 101 seats and is elected on a principle of proportionality) and their funding is proportional to the number of seats they have (the total amount paid is divided in to twelve parts and money is paid monthly).⁶ Terms of allowed donations are regulated by § 12³ of the same act. The law explicitly states that the following donations are prohibited: anonymous

¹ The Riigikogu Election Act (RT (Riigi Teataja, the Estonian State Gazette) 2002, 57, 355.) § 26, § 27. All Estonian legislative acts in force can be found on the official site of the Riigi Teataja:

<https://www.riigiteataja.ee/> The official translations of names of Estonian legal acts and some of the texts can be found here: <http://www.legaltext.ee/et/andmebaas/document.asp?tyyp=X&ptyyp=A&query=01>

² The European Parliament Election Act (RT I 2003, 4, 22.) § 25, § 26.

³ The Local Government Council Election Act (RT I 2002, 36, 220.) § 31, § 31¹, § 32.

⁴ For details see the Local Government Council Election Act (RT I 2002, 36, 220.) § 31¹

⁵ The Political Parties Act (RT I 1994, 40, 654.)

⁶ In 2012 the combined amount granted to political parties from the state budget is approximately 6312 678 €.

donations and donations from legal persons. Providing free services or goods or legal rights for using such resources for political parties that would not be available to other people is also considered an illegal donation. This provision is in place in order to avoid trading political favours for “free” services or goods (for example “free” commercials during campaigning). Voluntary work for parties is allowed and not considered to be a donation. In addition to the previously mentioned restrictions there is a legal ban on abolishing legitimate financial claims against political parties. For example if a party owes a company for services or goods provided and that company goes bankrupt the debt can't be abolished and has to be paid to the state budget instead. Abolishing of claims is considered an illegal donation.⁷ According to the Political Parties Act § 12³ all donations made in cash are to be immediately registered and prohibited donations (both monetary and non-monetary) must be returned to the donor. In case the donation can't be returned to the donor a monetary donation has to be transferred to the state budget instead. The non-monetary donation that can't be returned has to be sold at a market price (the validity of the selling price which shall be reflected in the party's annual fiscal report will be later evaluated by an auditor in order to determine whether the value of the commodity was evaluated correctly) and the money received from the sale transferred to the state budget as well. If it is impossible to sell the donation, its ownership must be relinquished and it can't be given to a member of the political party or a party affiliated organisation.⁸ The requirement to try to sell the donation at a market price does not however apply when the value of the object is less than 64 €, all the rest of the provisions though are still in place.

§ 12² sets the conditions for borrowing - political parties can only take loans from official credit companies and under market conditions. The loans can be backed up only with party property or by the contract of suretyship signed by its members. The strict loaning conditions however do not apply in case of simple everyday economic activities that are conducted under market conditions.

Another source of legal income for political parties is their property. Parties can earn from transactions with their property (for example selling the real estate they own). It should be also mentioned, that in Estonia there are no limits for donations, a person can donate as much as he or she wishes and as often as he or she wants. There is also no limit on the amount of money parties can receive from donations in total or spend on elections and no explicit ban on foreign donations.

1.4 Regulatory body, Transparency and Reporting

The financing of political parties and election campaigns in Estonia is overseen by the Supervisory Committee on Party Financing which is financed from the state budget and its members have an office term of five years.⁹ The committee consists of seven members, three

⁷ The Political Parties Act (RT I 1994, 40, 654.) § 12², § 12⁴(2).

⁸ An affiliated organisation is a not for profit organisation which was either founded by a party or party is a member of and that serves the purpose of helping the party to achieve its goals. See the Political Parties Act (RT I 1994, 40, 654.) § 1 (1), § 12⁶(1).

⁹ The committee's budget can be found on the official site of Riigikogu:
<http://www.riigikogu.ee/index.php?id=87902>

of whom are named by the following institutions - Chancellor of Justice, National Audit Office and Electoral Management Body (one member plus one substitute member is appointed by each institution) and four of whom by parties in the Parliament (one member per parliament party). Members appointed by the parties cannot be members of the Parliament or government.. Political parties are required to regularly report the donations they have received to the committee and can only have and use bank accounts that the committee has been informed of (in case of campaign financing this requirement also applies to election coalitions and single candidates). Donation reports have to be presented quarterly and these reports have to be publicly available on the website of parties and are also available on the website of the committee. The reports are quite thorough when it comes to donor information, the Political Parties Act § 12³(8) states that the donation reports have to contain the name of the donor, the personal ID number of the donor, the sum donated and the date of the donation and also have to clearly state that the sum received was a donation.¹⁰ In addition to the donation reports parties have to present their annual fiscal reports. These reports are presented to the court's registration department and later published on a designated registry website and the party website. The annual fiscal reports have to be audited by a sworn auditor prior to presentation to the registration department in case the party has received funding from the state budget. The annual fiscal reports also contain information on the party's affiliated organizations¹¹ and costs incurred by them for the purposes of attainment of party's objectives.

The third type of reports that parties have to present is election campaign expenditure reports. These reports have to be presented by single candidates and election coalitions as well. The campaign reports are presented (reporting deadline is one month after the elections day) to the Supervisory Committee of Party Financing and have to contain all campaign related costs. The technical requirements are the same for all the bodies that can run for office during different elections and are contained in the Political Parties Act under § 12⁸. The campaign reports have to contain information on the date the expense was made, the payment receiver's name and ID or registry code, the invoice number the payment was based upon, explanation of the payment and the sum of the payment in euros. The expenses made have to be declared under following headings: **1. Economic costs (including communication costs) 2. Labour costs 3. Advertising costs (by type) 4. PR costs 5. Costs of publications and print materials 6. Transportation costs 7. Rental costs 8. Costs of arranging public events 9. Other costs.** In addition to previously mentioned information, the campaign reports of single candidates and election coalitions have to also contain the information on donations made for their campaign and the relevant donor and payment information (same requirements as in the case of donation reports that political parties have to present to the committee). The Political Parties Act also states that in addition to the previously mentioned information, the campaign reports have to contain information on unfulfilled financial obligations or claims against third persons the party, single candidate or the election coalition has after the elections. In case there are such obligations or claims, for example debts to advertising companies or someone owes the party, the party, single candidate or the election coalition has to present the committee with quarterly campaign report updates until all obligations are fulfilled and/or claims satisfied.

¹⁰ Donation reports also include the money received from membership fees, but donations and membership fees have to be clearly separated in the report.

¹¹ Ibid 8

Another important aspect that concerns campaign expenditure reports is the obligation for a candidate who ran for office in the party's election list but made additional campaign expenses from other resources to present the list of the expenses made from other resources so it can be annexed to the party's campaign financing report. The responsibility for the accuracy of this part lies solely on the person.

1.5 Sanctions and Liability

There are different types of administrative sanctions for both legal and natural persons. The sanctions are contained in the Political Parties Act and they apply to political parties, single candidates and election coalitions alike. Pre-trial investigation of these breaches rests with the Police and Border Guard Board and is adjudicated at the courts of first instance.¹²

The Supervisory Committee on Party Financing can make precepts if a party, an election coalition or a single candidate has not abided by the law.

Precepts can be made if:

1. The obligation to submit the campaign report has not been fulfilled or there are shortcomings in the report.
2. A prohibited donation has not been returned.
3. A received donation has not been documented
4. A prohibited donation that could not be returned has not been transferred to the state budget
5. The documents required (by Political Parties Act § 12⁸(2), (3)) have not been submitted.

These precepts obligate the concerned party to eliminate the shortcomings. The committee can also make precepts concerning third parties that obligate them to give sayings or submit relevant documents. If the committee precepts are not abided by, the committee can apply penalty payments and late fees. In case the concerned party has not abided by precepts concerning points 1 -3 the committee can apply a penalty payment up to 6400 €. In case the concerned party has not abided by precept 5 the committee can apply a late fee which is 0.85% per each day delayed.

Other breaches of the Political Parties Act are adjudicated by the courts of first instance and they are investigated by the Police and Border Guard Board. The Political Parties Act says the following:

§ 12¹⁴- Failure to notify the about a party's bank account(s) can punished with a pecuniary punishment up to 200 fine units¹³ in case of a natural persons and up to 6400 € in case of a legal persons.

§ 12¹⁵- Failure to notify the committee about the bank account(s) of an election coalition or a single candidate can be punished with a pecuniary punishment up to 200 fine units.

¹² The Political Parties Act (RT I 1994, 40, 654.) § 12⁸

¹³ One fine unit equals 4 €. See Penal Code (RT I 2001, 61, 364) §47.

§ 12¹⁶ - Failure to notify the committee about the bank account(s) of an affiliated organisation can be punished with a pecuniary punishment up to 200 fine units in case of a natural persons and up to 6400 € in case of a legal persons.

§ 12¹⁷ - Failure to submit the campaign expenditure report of a party, single candidate or an election union to the committee can be punished with a pecuniary punishment up to 300 fine units in case of a natural persons and up to 20 000 € in case of a legal persons.

In addition to sanctions that concern the party and campaign financing there are also important sanctions in the Penal Code paragraphs 161 to 168 that concern elections freedom related violations.¹⁴

From the perspective of this report it is worth bringing out that in Estonia vote buying is a criminal offence and according to the Penal Code § 164 is punishable with a pecuniary punishment or imprisonment up to one year but vote selling is not sanctioned.

1.6 The Role of the Electoral Management Bodies in Estonia

In Estonia the electoral management bodies have no role in supervision over party or campaign financing. The role of these bodies is the technical arrangement of elections and assuring of their procedural integrity and uniformity, counting the votes and announcing the results. The rights and obligations of electoral management bodies are covered in different election acts.¹⁵ There election management bodies are divided into several levels highest of which is the National Electoral Committee (NEC).

The NEC consists of 7 members: Chief Justice appoints one judge from a court of first instance and one judge from a court of appeal, Chancellor of Justice appoints one of his advisors, Auditor General appoints one of the officials from the State Audit Office, Chief Public Prosecutor appoints one public prosecutor, secretary general of the Riigikogu (parliament) appoints one official of the Chancellery of Riigikogu and State Secretary appoints one official from the State Chancellery. The election sub committees – the county electoral committees, rural municipality and city electoral committees and division electoral committees are all subject to the procedural rules set by NEC and the election acts.

In addition to the previously mentioned functions the NEC serves another function in case of parliamentary elections or elections of the European Parliament the candidates that run for office have to deposit security money equal to two minimum wages for each person nominated as a candidate on the bank account of the National Electoral Committee. This provision is in place to ensure that running for office is taken seriously. The sum is returned to the candidate or the party if the candidate it was paid for gets elected or receives votes to the extent of at least one-half of the simple quota in the electoral district or if the political party receives in total of at least 5% of the votes at national level.

All the electoral management bodies are financed from the state budget.

¹⁴ For details see Penal Code (RT I 2001, 61, 364) §161 - §168.

¹⁵ For details see the Riigikogu Election Act (2002, 57, 355.), Local Government Council Election Act (RT I 2002, 36, 220.) and European Parliament Election Act (RT I 2003, 4, 22.).

Part 2 Practice and Shortcomings

No thorough campaign monitoring has been conducted in Estonia and therefore it is hard to say for sure whether political parties, single candidates and election coalitions report their campaign expenses accurately.

Despite of the fact that no such monitoring has been conducted it can be said with reasonable certainty that there are many shortcomings in the enforcement of the financing legislation and campaign reporting. The shortcomings are the result of a combination of incomplete laws that allow sneaking past their intended purpose and occasional unethical behaviour of Estonian political parties.

A crucial aspect in regard to transparency and honesty of financing and campaign financing is the work of the Supervisory Committee on Party Financing. There are several concerns related to the committee. Firstly there is the issue of its possible bias. Since the committee consists of seven members, four of whom are members of parties and requires a majority vote to pass resolutions, it is questionable whether all the possibilities to conduct thorough oversight are always used. Another committee-related issue is its rather low administrative capacity as the committee has limited personnel at its disposal and therefore can't always scrutinize the reports thoroughly or conduct background checks on the validity of information presented to them. In short, the committee mostly only reviews the campaign financing reports from the perspective of numbers adding up and the actual validity of presented information is not scrutinized. The same applies for the donation reports. It is not checked whether the money donated was actually the official donor's and whether the amount donated is in accordance with the income of the donor.

The second important problem that concerns the campaign expenditure reports is the vagueness of their contents. The Political Parties Act only obligates to declare lump sums and no unit costs and therefore it is difficult if not impossible to assess whether the reported costs are realistic from the standpoint of market price or not.

Another important aspect concerns the decriminalisation of forbidden donations. On 01.04.11 the amendment to the Political Parties Act entered into force and prohibited donations were decriminalised, prior to this law amendment they could be investigated by the Police Board but now the oversight is under the jurisdiction of the institutionally questionable Supervisory Committee on Party Financing which also was created with the aforementioned law amendment.¹⁶

In addition to the previously described shortcomings there is a serious issue of allowing cash donations which raise the risk of illegal donations and money laundering. Recently a major scandal emerged when a former member of the Riigikogu and a member of the Reform Party (the main coalition party) Silver Meikar came forth in the media and announced that he had been donating money coming from unknown sources to the party. He claimed that the former Secretary of the Reform Party Kristen Michal (currently the Minister of Justice) had made him a proposal to support the party and asked whether he was willing to donate money to the

¹⁶ This law amendment received the title of the worst law from a group of legal experts. The article can be found here: <http://arvamus.postimees.ee/659050/parim-ja-halvim-seadus-miks-selline-valik/>

party under his name. The newspaper article¹⁷ by Mr Meikar on May 22, 2012 resulted in a criminal investigation (based on the Penal Code § 402¹ violation of restrictions established on economic activities and assets of political party). After the initial article and the launching of the investigation, other politicians came forward and admitted that they had been asked to do the same and the problem is much more widespread and more political parties are involved.

Another problematic aspect of political campaigning is the lack of clear definition of activities that constitute a campaign. Though the use of administrative resources for campaigning is banned, this still often occurs through covert means. This is due to the fact that neither the Political Parties Act nor any of the election acts define what types of activities are considered campaigning. For example in case of local elections coming there are often banners or posters prior to the campaign period that have a face of a politician of the local council or an employee of the local government on them who will run for office at the future elections. The posters usually advertise some local activity or inform the people about some public event the local government will organize. This may be often seen as political propaganda and misuse of administrative resources for campaigning purposes since the costs of the advertisements will be mainly covered by the municipality, but since the materials do not directly advertise the candidate there are no legal grounds for reprimand or punishment based on the existence of posters alone. This also constitutes another serious issue which is related to campaign expenditure reports. If some activities can't be clearly defined as campaigning then even if the party has paid for them there is no obligation to show these expenses in the report.

On the positive side it has to be said that despite of all the aforementioned shortcomings the legally guaranteed public availability of the campaign and donation reports is a powerful tool for the media and the NGO-s. The accessibility of information can be used for scrutiny and public pressure which should eventually result in a better political culture.

Part 3 Recommendations

1. Cash donations for political parties should be forbidden (currently cash donations for parties are allowed and this heightens the risk of concealing the true source of the money through using a proxy donor, who donates under his/her name while using someone else's money, therefore only donations via bank transfer should be allowed, this would increase transparency and traceability of the source of the donation).
2. The Supervisory Committee on Party Financing should be reformed in a manner that all of the members would be apolitical.
3. The administrative capacity of the committee should be increased (the committee should have more support staff in order to raise its investigative capacity).
4. The accepting of forbidden donations should be recriminalized.
5. The legislation should be clarified so that it would clearly define what types of activities are considered campaigning.
6. Legal provisions should be set in place that would obligate parties, single candidates and election coalitions to show unit costs in their campaign expenditure reports.
7. An upper limit should be set for donations that parties are allowed to accept.
8. An upper limit of campaign costs should be set for different election types.

¹⁷ The article can be found here: <http://arvamus.postimees.ee/849254/silver-meikar-erakondade-rahastamisest-ausalt/>