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# The finance of the political parties, movements and campaigns in Colombia: its evolution and deficiencies

## El financiamiento de los partidos, movimientos y campañas políticas en Colombia: su evolución y sus falencias<sup>1</sup>

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**Abstract:** The paper studies how the political finance system in Colombia has been legally transformed, as it analyzes its deficiencies, and some recommendations are proposed. This work makes part of a larger academic project that explores the problems related with the illegal, irregular and corrupted finance activities of political campaigns and parties in Colombia. The main idea is that the political democratic system will work correctly only if it is sustained by a strong and transparent finance political model, equipped with mechanisms that allow it to prevent, correct, and penalize those practices that may endanger the system.

**Key words:** Political finance, democracy, corruption, political parties, political campaigns.


**Resumen:** El artículo hace una revisión de la evolución del sistema de financiamiento político en el ordenamiento jurídico colombiano, al tiempo que se analizan los vacíos y deficiencias en dicha regulación y se formulan algunas propuestas. Esta aproximación hace parte de un proyecto más amplio en el que se indaga por los problemas relacionados con la financiación ilegal, irregular y corrupta de campañas, partidos y movimientos políticos. Se parte de la premisa que estipula que el correcto funcionamiento del sistema político democrático requiere de un modelo de financiamiento robusto y transparente, dotado de instrumentos que le permitan prevenir, corregir y sancionar comportamientos y prácticas que pueden ponerlo en riesgo.

**Palabras clave:** Financiación política, democracia, corrupción, partidos políticos, campañas políticas.

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## INTRODUCTION: POLITICAL FINANCING AND DEMOCRACY

Beginning with what was called “la tercera ola democratizadora”, Latin America began to open up to democracy after a period of military dictatorships, especially in the south of the continent (Huntington, 1994, pp. 17-40). Gradually, although with many ups and downs, there has been a tendency to defend the consolidation of democratic political systems in which greater plurality, competitiveness and control over the transparency of political activity are advocated (Gutiérrez and Zovatto, 2011).

The maintenance and improvement of a democratic culture of these characteristics implies, among other things, having the necessary mechanisms and instruments for its strengthening. One of these instruments is precisely the system of financing political activity which, as will be seen, constitutes one of the central axes for the life of plural and participatory democracies. In the different Latin American countries, the incorporation and implementation of changes in the financing system has been achieved through arduous and complex reform processes (Zovatto, 2016). Today's electoral contests are characterized by being more or less competitive and specialized, which is evidenced by the political involvement of a considerable number of actors, as well as the demand for resources (Gutiérrez and Zovatto, 2011). Colombia has not been immune to this evolution. Before the issuance of the 1991 Political Constitution, there were few political parties, so that the contest was limited almost exclusively to two traditional parties, Liberal and Conservative. In fact, during almost the entire last century, the most characteristic feature of the Colombian political system was the adoption of a two-party system in which the monopoly of public administration and the electoral process was in the hands of these two parties. During this period, the so-called Frente Nacional emerged, in which liberals and conservatives governed the country alternately “repartiéndose proporcionalmente la burocracia estatal” (Giraldo, 2007, p. 126). This implied an extremely exclusionary model that left out any political force other than the two traditional parties.

One of the circumstances that contributed to reinforce the exclusionary bipartisanship of the political system before the constitutional reform of 1991 was the oligarchic character that characterized political participation. Thus, the financing of politics was a private affair; only the wealthiest could engage in politics and had the capacity to pay the expenses involved in the existence and operation of a party or a political campaign. Such a state of affairs, although convenient for a few, represented a major obstacle to the development and consolidation of a true democracy, “basada en mejores reglas de juego y con garantías reales de competir, aparte de la riqueza o del abuso de los bienes públicos” (Londoño, 2013, p. 299). It was precisely with the issuance of the Political Constitution in 1991 that a process of changes that began to take shape in the late 1980's crystallized. Pluralism and citizen participation were introduced as central axes of the democratic political system. From then on, several reforms have been implemented to strengthen the system of political parties and

movements (Puyana, 2012). To this end, efforts have been made to strengthen and regulate the political financing system; in order to achieve this goal, the State was assigned a more proactive role, consisting of providing a large part of the resources with which, at present, political campaigns and organizations<sup>4</sup> should be financed. The change has facilitated the participation of new political actors, different from the traditional parties.

Despite the above, political activity today continues to be controlled to a large extent by clientelist machines that limit authentic citizen participation; this happens due to the co-optation of public contracting, or the way in which resources destined for social investment are managed in the different regions of the country. As stated by Casas and Zovatto (2011), “si bien la democracia no tiene precio, sí tiene un costo de funcionamiento” (p. 18); it is unavoidable to talk about financing so that the different actors seeking access to public power under the rules of the democratic system have the resources to carry out the necessary activities. Political financing is also “una de las formas legítimas de participación política de individuos y entidades privadas, por medio de la cual se manifiestan las preferencias políticas” (Transparencia por Colombia, 2010, p. 4). Thus, the way in which resources are allocated to politics is a determining factor if we want to guarantee, in the best possible conditions, trust in the political system, the very existence of parties, their institutionalization and transparent and fair competition in the electoral contest (Zovatto, 2016).

This is especially relevant if we take into account that today political activity is carried out in an environment characterized by a high degree of competition, in which highly costly media contests predominate. This is due to the need, in order to compete on equal terms, to hire promoters, image consultants, publicists, pollsters, communicators, anthropologists, psychologists, among others (Constitutional Court, November 11, 2005). Hence, political parties and movements that aspire to compete in such specialized and onerous contests require a strong financial muscle. There is no doubt that the relationship between money and politics poses several risks to the legitimacy of democratic processes and practices (Malem, 2003). One of these risks is materialized in the unequal access to sources of financing, since the greater possibility of obtaining financial resources creates opportunities to achieve better electoral returns. In this sense, the unequal distribution of money influences “sobre las posibilidades reales disfrutadas por los partidos y los candidatos para llevar su mensaje a los votantes” (Casas and Zovatto, 2011, p. 18).

From the perspective of potential voters, it also seems clear that the greater their economic capacity to contribute to politics, the greater their privileged position and, therefore, the greater the possibility of influencing electoral processes, and it is precisely for this reason that a regulation is required that establishes clear and equitable rules to ensure the principle of equality in democratic participation. This makes it possible to enforce the rule of “una persona, un voto” (Casas and Zovatto, 2011, p. 18). Another of the risks that can affect and distort the transparency and competitiveness of electoral processes and the functions of political parties in a democracy is associated with corruption. In fact, monetary transactions between political organizations and donors are fertile ground for the creation of a dark market of favors and exchanges between them.

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<sup>4</sup> From now on, when the term “political organizations” is used, reference will be made to political parties and movements as well as to significant citizen groups.

On the other hand, an inadequate political financing system, in addition to discouraging the institutionalization of parties,<sup>5</sup> discourages citizens' political participation and undermines the credibility of the representative system, generating a disconnection between parties and society. In this sense, if citizens do not trust political parties, it will be difficult for them to be motivated to make financial contributions to political organizations and campaigns. If to this is added the fact, already outlined, regarding the high costs of political campaigns, the result will be a context in which candidates, in order to obtain the resources demanded by the electoral contest, will *lobby* large business conglomerates or use illegal sources of financing, which, in the colombian case, often come from drug trafficking.

In Colombia, a country characterized by a marked inequality in the distribution of economic resources, where drug trafficking and criminal organizations of various origins have permeated social and institutional structures, fostering an environment prone to illegality (with the consequent deterioration of institutions and the functioning of the democratic political system), there have been multiple scandals related to the illegal and corrupt financing of campaigns and political movements (Roll, 2010). The way to respond to these acts of corruption in the political sphere has consisted, in addition to a lot of media rhetoric, in promoting legal reforms, especially in the field of financing. However, it should be noted that the changes to legislation have not achieved the objective of counteracting spurious practices in political financing, so that an atmosphere of illegality persists in which irregular, illegal and corrupt financing practices of political parties and campaigns are repeatedly observed, perhaps because what is often involved is simply a "rhetorical adherence" to the relevant regulatory system (Garzón Valdés, 1997, p. 49).

In order to avoid the risks derived from an inadequate political financing system, Colombia has created a wide range of institutions and rules of various kinds, such as: expenditure ceilings for campaigns and political parties, permitted sources and percentages of financing, procedures for accountability, sanctions applicable in cases of non-compliance, among others. This regulatory framework is justified to the extent that it ensures that money is only an instrument to ensure the proper functioning of the system, especially the means to strengthen democratic plurality, so that, on the contrary, it does not constitute a mechanism to corrupt the political system; that is, a way to illegitimately influence the shaping and manifestation of the popular will (Bernal, 1997). In short, the design of the financing system must ensure that "las agrupaciones participantes en el proceso democrático tengan las mismas oportunidades de financiación de las actividades que despliegan en busca del éxito electoral" (Bernal, 1997, p. 129), as well as guarantee the autonomy of candidates and elected political parties from possible interference by the economic powers, whether legal or illegal.

<sup>5</sup> In this sense, Zovatto (2016, p. 17) warns, "De manera más directa, las reglas de financiamiento —y en particular el monto y el método de desembolso elegido para los subsidios estatales, donde estos existen— pueden incidir decisivamente en la institucionalización de los partidos y en su consolidación como agrupaciones con vida permanente."

Starting from the premise that the problems of political financing are by no means reduced to the legal framework (Espinosa, 2015), this does not imply that it is not recognized that the existence of gaps and inconsistencies in this field increases the level of vulnerability to possible undue interference that, as said, distort the functioning of the democratic political system and facilitate the co-optation of public powers by groups or sectors with economic power, whose origin may be, as already said, legal or illegal. This is why the first part of the research reflected in this article focused on reviewing the evolution of the political financing system in Colombia, investigating the circumstances surrounding this evolution, the objectives that drove the legal reforms and identifying the gaps and contradictions.

## EVOLUTION OF THE POLITICAL FINANCING SYSTEM IN COLOMBIA

This section will focus on two clearly distinguishable stages: the stage prior to the constitutional reform of 1991, which introduced profound changes in the Constitutional model in force up to that time, and the subsequent stage, from which various laws have been issued on political financing which, among others, have had as a motivation to bring the legislation in this area in line with the postulates of the Political Constitution.

### **Stage immediately prior to the 1991 Constitution**

Law 58 of 1985 appears as one of the first legal instruments issued with the intention of establishing a more or less complete regulation of the political campaign financing system in Colombia. Among other aspects, ceilings were established on the amounts of these and limits were imposed on private donations (articles 9 and 12); measures were included for the control of the management of financing resources, such as the registration of accounting books and rendering of accounts (articles 6, 7, 8, 9 and 10) and mechanisms of indirect state financing were established, among them, free spaces in public radio and television media (articles 16, 17, 18, 19 and 20). Londoño (2013) notes that, despite the fact that the issuance of Law 58 of 1985 implied an important advance, it still considered politics as a private activity, which in his opinion explains “la flexibilidad en las normas relativas al financiamiento privado y el reconocimiento de este como la principal fuente de ingresos para la actividad político electoral” (p. 300).

### **Political Constitution of Colombia of 1991**

The entry into force of the 1991 Political Constitution represented a very important opening and modernization of the colombian democratic system, insofar as it proclaimed that Colombia is a Social State of Law, organized as a unitary, democratic, participatory and pluralist Republic (art. 1), one of whose essential purposes is to facilitate the participation of all citizens in the decisions that affect them (art. 2). To achieve this last purpose, the same 1991 political document recognizes citizens, among others, the right to participate in the formation, exercise and control of political power (art. 40); the right to found, organize and develop political parties and movements (art. 107), while providing for the manner in



which political parties or movements are to be recognized as legal entities (art. 108) and establishing the obligation for the State to recognize their legal status (art. 108). 108) and establishes the obligation for the State to contribute to the financing of politics, also leaving in the hands of the legislator the power to limit the maximum amounts of expenses that parties, political movements, candidates and electoral campaigns may incur. It also established the duty to account for the volume, origin and destination of their income (art. 109).

In line with the above, the colombian Constitution of 1991 established the prohibition for public officials to make economic contributions to parties, movements or candidates (art. 110) and constitutionalized the right of political parties and movements that have been recognized as legal entities to use the State's means of social communication (art. 111) and by raising their mixed financing (private and public) to constitutional rank, private financing (which predominated before the reform) ceased to be the only mechanism of political financing in Colombia. This new constitutional perspective of the political financing system derives from the recognition that the democratic participation of all political organizations must be developed under conditions of material equality and transparency, for which equal access to resources is essential.

It is not only a matter of offering competitors the necessary resources to defray the expenses involved in participating in elections and developing the activities of political parties and movements, but also to protect the political exercise from undue pressure from legal economic groups and, of course, from illegal organizations; objectives that have been recognized on various occasions by constitutional jurisprudence (Corte Constitucional, April 18, 2018, June 23, 2011, November 11, 2005, March 3, 1994) under the understanding that they are necessary to make effective the principles of participation, equality, transparency and political pluralism.

### **Law 130 of 1994**

After two failed bills,<sup>6</sup> in compliance with Article 152 of the Political Constitution, Law 130 of 1994 was issued, which establishes the “Estatuto Básico de Movimientos y Partidos Políticos”. This law regulated in a broader manner the issue of political financing. Perhaps what stands out most in this law is the purpose of developing the constitutional postulates in an attempt to foster the leading role of the State in the promotion of plural participation in the democratic contest. The obligation of the State to contribute, not only with the financing of the electoral process, but also with the financing of the permanent activity of the parties is reestablished. In order to materialize these objectives, different modalities were established under which the State may contribute to the financing of political organizations and campaigns, namely: direct and indirect public financing for the operation of the organizations and direct and indirect public financing for the campaigns, all charged to the General Budget of the Nation.

<sup>6</sup> In 1992, the first bill was passed to implement the constitutional framework for political financing, but it failed due to the absence of a consensus that would allow its enactment.

Thus, in the first place, there is the public financing destined to allow the political parties and movements recognized with legal status to cover their operating expenses, in accordance with the provisions of article 12 of the aforementioned law. Secondly, there is the indirect financing for the operation of political organizations, regulated in articles 25 and 28 of the statute in question, aimed at guaranteeing permanent access of political parties and movements to the State's social media. Thirdly, with respect to the direct financing of political campaigns, which implies the delivery of public resources to be used for the payment of expenses arising from the proselytizing activity prior to the elections (in accordance with the provisions of article 13 of Law 130 of 1994), the mechanism of the replenishment of expenses in proportion to the number of votes obtained in the elections by the respective candidates was established. Finally, with respect to indirect public financing, Law 130 of 1994 established two modalities: the postal franchise and access to the State's means of social communication during the electoral period.

The aforementioned Estatuto Básico de Movimientos y Partidos Políticos not only established the rules for public financing, but also dealt with some aspects related to private financing. With the purpose of ensuring that electoral contests take place under conditions of transparency and equal opportunities among candidates (Corte Constitucional, March 3, 1994), article 14 provides that “ningún candidato a cargo de elección popular podrá invertir en la respectiva campaña suma que sobrepase la que fije el Consejo Nacional Electoral,<sup>7</sup> bien sea de su propio peculio, del de su familia o de contribuciones particulares”. Article 28 establishes that when the private media grant free publicity to political organizations, such act will be considered as a donation and must be recorded in writing.

Finally, in addition to the limitations on private financing, one of the aspects also regulated by the Law is related to the duty to submit public reports on income and expenses. However, despite all the requirements and limits described, it soon became evident that they were insufficient (Londoño, 2013). This was clearly evidenced by what became known as “Proceso 8000”,<sup>8</sup> and other cases of corrupt financing of political campaigns that came to public light at the time. These events of corrupt financing exposed the gaps and ineffectiveness that this new legal framework had in terms of guaranteeing transparent competition between political parties and movements. According to Puyana (2012), “la falencia más evidente tenía que ver con la responsabilidad de los partidos frente a la investigación y la condena de sus militantes elegidos, tanto en corporaciones públicas como en cargos uninominales” (p. 23). As will be seen, it was much later, with the issuance of Law 1475 of 2011, that the restrictions in the area of private financing of political organizations and campaigns were strengthened and it was emphasized that the responsibility in this matter falls on political organizations and their representatives.

<sup>7</sup> National Electoral Council. Henceforth it will be abbreviated as CNE (editor's note).

<sup>8</sup> The “Proceso 8000” refers to a series of judicial processes and media scandals that began as a result of the verification of contributions of drug money that entered the presidential campaign of former president Ernesto Samper Pizano in 1994.



### **Acto Legislativo 01 of 2003**

In relation to the changes in the political financing system, the third article of Acto Legislativo 01 of 2003 increased the amount of public financing of political organizations and campaigns and established an additional obligation for the State, consisting of having to finance with public resources the expenses derived from the holding of popular consultations. Likewise, and for the first time, sanctions were established for the violation of the expenditure ceilings, which imply the loss of the investiture and of the public office of the violators.

### **Acto Legislativo 02 of 2004 and Ley Estatutaria 996 of 2005**

By means of Acto Legislativo 02 of 2004, article 197 of the Political Constitution of Colombia was amended to allow the possibility of reelection of the Republic President. Given this circumstance, in order to guarantee equality among presidential candidates, the same constitutional reform established several measures aimed at that purpose, among which the financing of campaigns for the Republic President, on a priority basis, with state resources, stands out. With the purpose of regulating the new constitutional provision, the Ley 996 of 2005 was issued, which dealt with the regulation of several matters concerning the financing of presidential campaigns. The most important of these refers to the possibility for candidates for the Presidency of the Republic to receive cash advances to finance their campaign activities (articles 10 and 11).

The implementation of the system of advances was undoubtedly a normative advance, since up to that moment the contributions were given as a replacement of votes, which necessarily implied that the elections had already taken place. In practice, this circumstance prevented the guarantee of equality among candidates, which was precisely the objective of the paragraph of article 152 of the recently reformed Political constitution in order to allow presidential reelection.

### **Acto Legislativo 01 of 2009 and Ley 1475 of 2011**

The Acto Legislativo 01 of 2009 was aimed at strengthening the system of accountability of parties and their members, improving the way in which the State contributed resources to politics and prohibiting certain sources of financing. Thus, through the amendment to Article 109 of the Constitution, on the one hand, the purpose of promoting equal opportunities in the access to politics by means of public financing of campaigns through advances, a mechanism that would no longer be exclusive to presidential campaigns but, with exceptions, for the generality of electoral processes in Colombia, was intended to become a reality. On the other hand, in order to avoid corrupt and clientelist practices, contributions from foreign individuals or legal entities were prohibited; likewise, any type of private financing that could have anti-democratic or public order purposes was prevented. Article 107 established that political organizations would be liable for any violation or contravention of the rules governing their organization, operation or financing, a provision that is consistent with the purpose of preventing and punishing acts of corruption in political activity.

During the development of the new constitutional mandates, the Ley 1475 of 2011 was issued, which, in our opinion, constitutes the most important progress that, so far, has been made in Colombia regarding political financing. There are many modifications and novelties introduced by this Law. The most relevant ones are highlighted below:

Article 22 introduces the payment of cash advances by the State for all types of political campaigns. As indicated, the system of vote replacement as the only mechanism of public financing for political campaigns proved to be insufficient, since it forced candidates and parties to seek on their own the resources to finance the respective campaigns, without the certainty that the State would subsequently repay in a timely manner the money invested in the campaign. It was then foreseen the possibility that the candidates could have access to a contribution in money prior to the electoral contest, of a maximum of 80% of the allowed ceiling of expenses for the corresponding election, regardless of the votes that were later obtained by the candidate receiving the advance (art. 22).

On the other hand, the same Ley 1475 of 2011 provided that “los partidos y movimientos políticos deberán responder por toda violación o contravención a las normas que rigen su organización, funcionamiento o financiación” (art. 8); it defined the subjects to whom the quality of directors of political organizations may be attributed (art. 9) and established the following as punishable offenses: allowing the financing of the organization and electoral campaigns with prohibited sources, violating or tolerating the violation of ceilings or limits on income and expenses of the electoral campaigns or failing to comply with the duties of diligence in the application of the constitutional or legal provisions that regulate the organization, operation and/or financing of political parties and movements (art. 10). In addition, the disciplinary regime was established for the directors who incur in such offenses (art. 11), the sanctions applicable to political organizations were specified (art. 12) and to candidates who exceed the expenditure ceilings (art. 26).

Since the private financing of politics has led to the violation of the principles of equality, transparency and political pluralism in the practice of electoral campaigns, the need arose to regulate and limit this possibility. This is why, in article 23, organizations and candidates were prohibited to obtain credits or collect resources originated in private financing sources for a value higher than the total expenses allowed in the respective campaign and limits were also set for donations, prohibiting the collection of contributions and individual donations higher than 10% of the total campaign expenses. The aforementioned limits and ceilings on campaign expenses are defined each year by the CNE, taking into account the real costs of the campaigns, the corresponding electoral census and the budget appropriation for the state financing of the same. For this purpose, the CNE, with the support of the Ministerio de Hacienda y Crédito Público, must periodically carry out the necessary studies and analysis in order to guarantee that the limits to the amount of expenses set reflect the real value of the electoral campaigns (art. 24).

In addition, unlike the provisions of the Ley 130 of 1994, the Ley 1475 of 2011 introduced a broad regulation regarding the sources of financing. Thus, in relation to

the contributions for the operation of political organizations, article 16 specifies the permitted sources of financing. In the same line, article 20 establishes the permitted sources of financing for political campaigns and article 27 sets out in detail the prohibited sources of financing.

Among the latter, those coming from anonymous sources, those derived from illegal activities or with anti-democratic purposes or with purposes that violate public order, as well as those coming from individuals or legal entities whose income in the previous year has originated in more than 51% in profits from state contracts or subsidies, or from persons who administer public or fiscal resources, who have licenses or permits to exploit state monopolies or games of chance, stand out.

On the other hand, regarding the presentation of reports and rendering of accounts, the Ley 1475 established the obligation for political organizations to submit their accounting reports to the CNE during the first four months of the year (art. 19). Likewise, for those campaigns whose expenses exceed 200 minimum monthly salaries, it is mandatory to appoint a manager to administer their resources and who will be responsible for submitting, in accordance with the regulations issued by the CNE, the corresponding income and expense reports within the month following the date of the vote. However, despite the progress of the Ley 1475 of 2011, there are still important gaps and shortcomings that facilitate and, in some cases, encourage irregular, illegal and corrupt practices in the financing of political organizations and campaigns.

### **Ley 1864 of 2017 and artículos 396A, 396B and 396C of the Código Penal Colombiano**

This tour through the regulatory evolution related to political financing in Colombia, will end with the mention of some of the modifications made in criminal matters by the Ley 1864 of 2017, which was issued with the aim of protecting the mechanisms of democratic participation contemplated in the colombian electoral system (Senado de la República de Colombia, 2016). With it, the crimes of “financiación de campañas electorales con fuentes prohibidas” (art. 396A), “violación de los toques o límites de gastos en las campañas electorales” (art. 396B) and “omisión de información del aportante” (art. 396C) were introduced to Title XIV, Crimes against mechanisms of democratic participation, of the Código Penal colombiano, crimes that, as its title already suggests, are aimed at protecting the correct financing of campaigns, leaving out the criminal protection of the financing for the operation of political organizations.

With the introduction of the crimes of illegal financing of political campaigns, the colombian legislator chose to attribute criminal consequences to certain situations that previously did not even have administrative sanctions. Thus, some of the events in which there is no applicable administrative sanction are precisely those contained in the crimes typified in articles 396A, 396B and 396C. With this, the legislator resorts to criminal law in order to solve certain gaps in the administrative legal sphere, which translates into a typical escape to criminal law, a legal sphere which, it should be remembered, should be an instrument of *ultima ratio* within the list of mechanisms of social control. In fact, in the legislative background it was stated that

the criminal types in question will fulfill the role of filling some of the gaps present in the administrative sanctioning regulation (Senado de la República de Colombia, 2016, pp. 12-14).

### REMAINING PROBLEMS IN THE COLOMBIAN POLITICAL FINANCING SYSTEM

Despite the reforms and changes incorporated in the colombian legal system, problems persist in the area of political financing and, therefore, irregular, illegal and corrupt practices continue to occur, which seriously affect the proper functioning of the democratic political system.

In the first place, it is worth highlighting the difficulties in the area of state financing, particularly in relation to direct public financing for political campaigns. Such difficulties reflect the inefficiency of the system and were evident in the 2014 and 2018 legislative elections. According to figures from the non-governmental organization Transparencia por Colombia (2014), in the 2014 legislative elections, out of a total of 44,989 million pesos approved in the General Budget of the Nation for political organizations for advances, only 14,727 million pesos were delivered. This explains, in part, the fact that only 20% of the candidates received contributions from the State for advances. The figures also indicate that the main sources of financing of the candidates were private, being the main item of this modality, own resources, that is, approximately 37% of the total income. In relation to the 2018 legislative elections, according to the Transparencia por Colombia (2018) report, the situation was not very different. In these, advances amounted to 16.18% of the total income of the campaigns; meanwhile, 36.82% corresponded to credits or contributions coming from the candidates' patrimony. Finally, regarding public financing via vote replenishment, Transparencia por Colombia (2014) highlights the slowness of the process of replenishment of expenses for votes obtained after the 2014 legislative elections, a process that is in charge of the CNE. Thus, it is clear that funding from public sources is a constitutional mandate that to date has not been adequately materialized. This causes an excess of dependence on private resources, increases the risks of resorting to illegal financing and makes the system prone to inequality, since, as previously mentioned, those who have more possibilities of accessing private resources will also be at an advantage over those who have fewer possibilities, thus unbalancing the electoral contest.

Secondly, one of the greatest difficulties that persists in the area of political financing in Colombia has to do with the system of control and accountability. There are three main aspects in which the problem lies:

1. The ineffectiveness that characterizes the CNE, since it is evident that there is a marked deficiency on the part of this body in the performance of its functions. Despite the fact that according to article 265 of the Political Constitution, the CNE is in charge, among others, of overseeing compliance with the norms that make up the

colombian political financing system, its composition and operation prevent it from fully complying with its functions in practice. On the one hand, despite the fact that the competencies entrusted to it by both the constitution and the law are neither few nor simple, it is an entity with few technical, human and financial resources (Espinoza, 2015). This is due, in part, to its lack of budgetary autonomy.

2. The composition of the electoral body has been, rightfully, criticized, since the mechanism for electing its members, in the opinion of some, negatively conditions the necessary independence of its members (Londoño, 2018).

3. Administrative liability for infringement of the rules on political financing. As explained in previous pages, administrative sanctions do not cover various situations that arise in electoral processes.

Third and finally, it must be said that the rules governing political financing in Colombia, despite the legislative efforts already outlined, are still dispersed and disjointed. It is sometimes unintelligible the web of norms that must be reviewed to understand all the rules governing political financing. In short, we are faced with a somewhat chaotic legal framework that leads to the fragility of the system in the face of clientelist and corrupt practices. The regulatory dispersion that characterizes the political financing system causes confusion among those in charge of its interpretation and application and makes control difficult. For the same reasons, citizens also fail to have sufficient clarity on how they can participate in the financing system (Restrepo, 2011).

## CONCLUSIONS

In order to ensure political plurality, an essential feature of a democratic system, it is essential to have diverse actors, particularly political movements and parties that represent the different interests present in society on an equal footing. The development of political activity requires money, which is why democratic states have established financing systems to help political actors exercise this activity under equal conditions. Given the need for money in political activity, it is necessary to regulate the sources, ceilings, contributors, etc., in order to neutralize the inappropriate use of resources and, therefore, reduce the risks that may affect the proper functioning of the democratic political system. That is why, through different legal reforms carried out in the last decades, Colombia has tried to structure a political financing system in which the sources, limits, requirements and controls of this activity are regulated.

However, to date, the system has shortcomings, since financing from public sources does not optimally comply with constitutional mandates. In addition, the disarticulation of regulations, the lack of an autonomous and independent electoral body with sufficient means and resources and the aforementioned regulatory gaps, as a whole, hinder the control and determination of responsibilities originated in the infringement of electoral rules. Taking into account all of the above, some of the ac-



tions that could be deployed to address the aforementioned shortcomings would be:

1. With the objective of complying with the constitutional mandate that requires political campaigns to be financed with public resources, it is important that the percentage of financing that arrives via advances be increased and that, in turn, the regulatory and bureaucratic obstacles that impede effective access to this type of resources be removed.

2. On the other hand, taking into account that in political campaigns the expenses related to electoral propaganda are considerably high (Transparencia por Colombia, 2014), it is pertinent to contemplate the possibility of total financing by the State, in terms of access to certain media; this would require that the issue of electoral advertising be regulated in a complete and equitable manner.

3. With respect to the expenditure ceilings for electoral campaigns, it is necessary to establish their real cost. Currently, the Índice de Costos de las Campañas Electorales is used to calculate the cost and ceilings; this index, conceived in collaboration with the Departamento Administrativo Nacional de Estadística as a short-term alternative, must be complemented with a field research that allows for a more precise identification of the real costs of the campaigns and the establishment of a new formula to calculate them, making them more in line with reality.

4. Likewise, it is necessary to introduce rigorous and effective follow-up and control criteria during the development of political campaigns. This implies, in general, a careful review of the procedures that make up the accountability process, so that each contribution made is recorded with the greatest possible detail and reviewed during the development of the campaign and not once it has concluded.

5. It is necessary to design mechanisms that help increase the level of citizen participation and control; practical channels must be implemented that truly encourage and allow the participation of citizens as overseers of political financing.

6. The process of investigation and application of sanctions must be improved, especially in cases of illegal campaign financing. This requires, in the first place, that the CNE be restructured, so that its internal configuration makes it truly independent from the political parties over which it must exercise control; secondly, that it be provided with the necessary resources to adequately perform its functions.

7. Finally, due to the risk they represent, it is important to implement strategies to monitor and control resources of private origin. For example, support could be increased between the control entities (Contraloría General de la República, Unidad de información y Análisis de la Dirección de Impuestos y Aduanas Nacionales, Fiscalía General de la Nación y Procuraduría General de la Nación) and the electoral authority; in addition, the channels of access to information on the background of those who participate in the political contest could be improved. It is also advisable to demand a proactive transparency attitude from private companies that finance political campaigns, so that they make public their contributions and their beneficiaries.



## REFERENCES

1. Bernal Pulido, C. L. (1997). Financiación de los Partidos y Movimientos Políticos en Colombia. *Derecho del Estado* (3), pp. 127-146.
2. Casas, P. & Zovatto, D. (2011). Para llegar a tiempo: Apuntes Sobre la regulación del Financiamiento Político en América Latina. En Gutiérrez, P. & Zovatto, D. (eds.), *Financiamiento de los partidos en América Latina* (pp. 17-67). Ciudad de México, México: IFE, IDEA, OEA, ONAM. Recuperado de [https://www.oas.org/es/sap/docs/deco/financiamiento\\_partidos\\_s.pdf](https://www.oas.org/es/sap/docs/deco/financiamiento_partidos_s.pdf)
3. Colombia. Corte Constitucional (Sala) [internet]. Sentencia C-089 de 3 de marzo de 1994. Disponible en: <https://www.corteconstitucional.gov.co/relatoria/> [consulted January 27 2020]
4. Colombia. Corte Constitucional (Sala) [internet]. Sentencia C-1153 de 11 de noviembre de 2005. Disponible en: <https://www.corteconstitucional.gov.co/relatoria/> [consulted February 12 2020]
5. Colombia. Corte Constitucional (Sala) [internet]. Sentencia C-490 de 23 de junio de 2011. Disponible en: <https://www.corteconstitucional.gov.co/relatoria/> [consulted February 11 2020]
6. Colombia. Corte Constitucional (Sala) [internet]. Sentencia C-27 de 18 de abril de 2018. Disponible en: <https://www.corteconstitucional.gov.co/relatoria/> [consulted February 11 2020]
7. Espinosa, J. R. (2015). *Apuntes para una reforma a la financiación electoral en Colombia*. Bogotá, Colombia: Scripto.
8. Garzón Valdés, E. (1997). Acerca del concepto de corrupción. En F. Laporta & S. Álvarez (eds.) *La corrupción política* (pp. 39-69). Madrid, España: Alianza Editorial.
9. Giraldo, F. (2007). Partidos y sistema de partidos en Colombia. In *La política por dentro. Cambios y continuidades en las organizaciones políticas de los países andinos* (pp. 123-159). Perú: Obra prima SRL. Recovered from: <https://www.idea.int/es/publications/catalogue/la-pol%C3%ADtica-por-dentro-cambios-y-continuidades-en-las-organizaciones>
10. Gutiérrez, P. & Zovatto, D. (2011). Introducción. En Gutiérrez, P. & Zovatto, D. (eds.), *Financiamiento de los partidos en América Latina* (pp. XV-XXI). Ciudad de México, México: IFE, IDEA, OEA, ONAM. Recovered from: [https://www.oas.org/es/sap/docs/deco/financiamiento\\_partidos\\_s.pdf](https://www.oas.org/es/sap/docs/deco/financiamiento_partidos_s.pdf)
11. Huntington, Samuel P (1994). *La tercera ola. La democratización a finales del siglo XX*. Barcelona, España: Ediciones Paidós.

12. Londoño Osorio, J. F. (2013). Evolución del Financiamiento Político, Un Proceso Incremental de Reformas. En A. Hernández Becerra (ed.), *Derecho Electoral de Latinoamérica. Memorias del II Congreso Iberoamericano de Derecho Electoral* (pp. 295-312). Bogotá, Colombia: Consejo de Estado.
13. Londoño Osorio, J. F. (2018). *Estudio sobre financiamiento político*. Bogotá, Colombia: Registraduría Nacional del Estado Civil, Centro de Estudios en Democracia y Asuntos Electorales, Centro de Análisis y Asuntos Públicos (CAAP).
14. Malem Seña, J. (2002). *La Corrupción: aspectos éticos, económicos, políticos y jurídicos*. Madrid, España: Gedisa.
15. Puyana, R. (2012). Las reformas políticas en Colombia, 2003-2011: ¿hacia partidos más responsables? En L. Wills Otero y M. Batlle (comps.), *Política y territorio. Análisis de las elecciones subnacionales en Colombia, 2011* (pp. 17-62). Bogotá, Colombia: PNUD, IDEA, NIMD
16. Restrepo, N. (2011). Balance Regional. Colombia 2011. En Gutiérrez, P. & Zovatto, D. (eds.), *Financiamiento de los partidos en América Latina* (pp. 185-224). Ciudad de México, México: IFE, IDEA, OEA, ONAM. Recovered from: [https://www.oas.org/es/sap/docs/-deco/financiamiento\\_partidos\\_s.pdf](https://www.oas.org/es/sap/docs/-deco/financiamiento_partidos_s.pdf)
17. Roll, D. (ed.) (2010). *¿Democracias prepago? El control de la financiación de la política, un reto para Colombia y Latinoamérica*. Bogotá, Colombia: Universidad Nacional de Colombia.
18. Senado de la República de Colombia (2016). *Informe de ponencia para segundo debate del proyecto de Ley número 017 de 2015 de Cámara y número 125 de 2016 de Senado* en Gaceta 872 de 2016. Recovered from: <http://www.secretariasenado.gov.co>
19. Transparencia por Colombia (2018). *Financiación de Campañas Políticas 2018*. Bogotá, Colombia: Transparencia por Colombia. Recovered from: <https://transparenciacolombia.org.co/2019/03/05/financiacion-de-campanas-politicas-2018/>
20. Transparencia por Colombia. (2014). *Análisis de la financiación de las campañas legislativas en Colombia 2014*. Bogotá, Colombia: Transparencia por Colombia. Recovered from: <https://transparenciacolombia.org.co/2014/11/26/analisis-financiacion-2014/>
21. Transparencia por Colombia. (2010). El financiamiento de la política en Colombia (Nº11). En *Serie KAS Papers Reforma Política 2010*. Bogotá, Colombia: Konrad Adenauer Stiftung. Recovered from: [https://moe.org.co/wp-content/uploads/2017/07/KAS\\_PAPER\\_11\\_Financiamiento\\_de\\_la\\_pol%C3%ADtica\\_en\\_Colombia\\_2010-3.pdf](https://moe.org.co/wp-content/uploads/2017/07/KAS_PAPER_11_Financiamiento_de_la_pol%C3%ADtica_en_Colombia_2010-3.pdf)
22. Zovatto, D. (2016). El financiamiento político en América Latina. *Studia Politicae* (4), pp. 7-52. doi: <http://dx.doi.org/10.22529/sp.2016-2017.40.02>