

## **“Financing of political parties and election campaigns in the central and Easter Europe”**

### **Applicable Regulations in Georgia**

The report covers the issue of financing political parties and election campaigns. It consists of four chapters:

- 1. Legislative regulations concerning incomes of political parties and election campaigns;**
- 2. Legislative regulations concerning political parties and election campaigns' expenses;**
- 3. Reporting and sanctions;**
- 4. Practice/recommendations**

The document illustrates regulations connected to financing of political parties and pre-election campaign. It also places emphasis on developments undertaken at the end of 2011 in terms of improving election environment, according to which number of amendments and additions were introduced to the Election Code of Georgia and the Organic Law of Georgia on “Political Unions of Citizens”.

The proposed report examines amendments and additions to the electoral legislation in light of financing political parties/election campaigns. Specifically, according to the introduced amendments, legal entities were prohibited to finance political parties/election campaign, limits were imposed on incomes<sup>1</sup> and expenses, the right to take a loan/credit was defined and limitations were introduced for donors. In addition, according to the amendments, Georgian Chamber of Control<sup>2</sup> was delegated with a brand new authority to monitor funding of political unions.

Election Code of Georgia stipulated that limitations envisaged by the Organic Law of Georgia “on Political Unions of Citizens” shall apply to the election campaign expenses and sources of funding.<sup>3</sup> It should also be highlighted that transparency of election campaign costs is also ensured by this Law and political parties are obliged to submit reports about their election campaign expenditures to the Chamber of Control of Georgia.<sup>4</sup>

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<sup>1</sup> According to legislative amendments submitted to the Parliament within the scope of “This Affects you Campaign”, some limits were introduced on political parties’ expenditures.

<sup>2</sup> According to the Constitutional amendment, the Chamber of Control of Georgia changes its name and will become the State Audit Service.

<sup>3</sup> Save for paragraph 8, Article 54 of the Election Code of Georgia, providing that “In the process of financing election campaign by an election bloc, political parties entering this block may transfer resources of their political union’s fund, without limits, to the fund of the political union, that is registered in the bloc as the number first”.

<sup>4</sup> Prior to amendments introduced to electoral legislation in 2011, political parties were obliged to submit reports about election campaign expenditures to the Central Election Commission.

Furthermore, the document also reports the developments that took place at the end of 2011, activities of “This Affects You” campaign, amendments introduced to the Organic Law of Georgia on “Political Unions of Citizens”, activities of the Chamber of Control in terms of political parties’ funding and submitted recommendations.

## ⌚ Legislative regulations concerning incomes of political parties and election campaigns

### Political Parties’ Financing

Incomes of political parties are regulated by the Organic Law of Georgia on “Political Unions of Citizens”. According to it, a party’s property shall be made up of:

- ⌚ Membership fees;
- ⌚ Donations;
- ⌚ State funds when so prescribed by law;
- ⌚ Income received from producing and distributing of the party symbols, holding lectures and exhibitions and other similar events as well as publications and other activity as determined by the party’s statute, provided that such income does not change the non-profit status of the party, as well as contributions received from public events. The total income received by the activities shall not overcome GEL 60 000 per year.

Amendments of December 2011 specified that only Georgian citizens are entitled to be donors for political parties and to finance pre-election campaigns.<sup>56</sup> In addition, political parties, after being registered as election subjects, are also entitled to take credit from a commercial bank for election campaign, however, the overall amount shall not exceed one million GEL.<sup>7</sup>

According to the Law on “Political Unions of Citizens”, certain amount of funds shall be allocated annually from the state budget for financial support of political parties’ activities and for facilitating creation of healthy, competitive political system. The sum is distributed among political parties in a following way:

- ⌚ Is transferred to political parties directly, and

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<sup>5</sup> It should be noted, that according to the current legislative amendments, an individual born in Georgia and residing in Georgia for the last five years, possessing EU citizenship by the time of enactment of Article 185<sup>1</sup> can exercise active and passive suffrage in Presidential and Parliamentary elections until January 1, 2014 and all the rights and obligations envisaged according to the Election Code and the Organic Law of Georgia on “Political Unions of Citizens” granted to the Georgian citizen are applied to him.

<sup>6</sup> Organic Law of Georgia on “Political Unions of Citizens” provides that a donor shall not be citizen of Georgia, who receives more than 15% of his annual income from simplified state procurement implemented in his favor or in favor of the enterprise established by his participation.

<sup>7</sup> Organic Law of Georgia on “Political Unions of Citizens”

- ⦿ It transferred to the LEPL “Election Systems Development, Reforming and Training Center ”<sup>8</sup> (hereinafter referred to as “Fund”) for allocation to political parties.

It should be noted, that funds from the state budget shall go to the political parties, which during the last parliamentary elections overcame 4% barrier, or parties which during the last local self-government elections overcame the 3% election barrier. The amount of basic funding equals to GEL 150, 000 a year, however, if election subject (party/election bloc) succeeds in overcoming 8% threshold during the last parliamentary elections, or 6 % barrier during the last local self-government elections, the amount of basic annual funding will increase up to GEL 300,000. In addition, the law on state budget of the corresponding year may also envisage some additional funds for basic funding.

As for the amount<sup>9</sup>, to be distributed among political parties by the Fund, the sums are allocated to the political parties proportionally to the basic funding.

According to May, 2012 amendments introduced to the Law on “Political Unions of Citizens”, during the election year, additional funding is allotted from the state budget for financial support of political parties’ advertisement campaign with a view to cover the TV advertisement cost. Funding will be allocated to those political parties, which receive funding according to the results of the last general elections (the total allocated amount per election subject (according to the sum of political unions in the election subject) shall not overcome GEL 600 000)<sup>10</sup>.

In view of this, it can be concluded that political parties received funding from citizens’ donations, membership fees, incomes received within the scope of political parties’ activities allowed by law and in the instances provided for by law. As for legal persons, the Law on “Political Unions of Citizens” provides that it is prohibited to accept financial and material contributions from:

- ⦿ Natural and legal persons of other countries, international organizations and movements (except when /if lectures, workshops and other public arrangements are held for institutional development of political unions and does not imply support for or resistance to support any political power);
- ⦿ Legal entities, their unions and other types of organizations.
- ⦿ A state entity, legal entity of public law, a venture created with state share (save for the cases provided above);

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<sup>8</sup> According Article 30<sup>1</sup> of the Law on “Political Unions of Citizens”, aim of the Fund is to support and promote development of NGOs and political parties and to facilitate creation of healthy, competitive political system.

<sup>9</sup> 50% of amounts transferred to the Fund from the state budget are directed to the political parties, while the rest 50% is distributed among NGOs .

<sup>10</sup> Paragraph 12, Article 30 of the Law on „Political Unions of Citizens”.

- ⌚ Non-profit legal entity and a religious organization (except when/if lectures, workshops and other public events are held);
- ⌚ From citizens having no citizenship and donations received anonymously.

**Political parties <sup>11</sup>, which received financing from the state budget and the amount of funding**

N	Political Union	State Financing	Budgetary Funding	Financing from the Fund
1.	The New Rights	182 134.32	133 702.56	48 431.76
2.	United National Movement	1 950 967.68	1 757 240.52	193 727.16
3.	National Forum	100 937.72	79 407.48	21 525.24
4.	Movement for Fair Georgia	222 202.21	157 626.49	64 575.72
5.	Industry will save Georgia	353 819.32	256 956	96 863.52
6.	Georgian Way	182 134.32	133 702.56	48 431.76
7.	“Kartuli Dasi”	108 132.72	86 706.48	21 525.24
8.	European Democrats of Georgia	280 099. 20	215 523.48	64 575.72
9.	Conservative Party	222 202.2	157 626.48	64 575.72
10.	Labor Party	488 201	157 626.48	64 575.72
11.	Republican Party	182 134	133 703	48 432
12.	Christian-Democratic Peoples' Party	256 699	265 699	0
13.	Christian - Democratic Party	767 583	573 651	19 3932

<sup>11</sup> Annual financial declarations of political unions of citizens , reporting period 01.01.2011-01.01.2012  
<http://www.control.ge/about-the-ccg/cpu/>

14.	Our Georgia – Free Democrats	182 134.32	133 702.56	48 431.76
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According to the Georgia's state budget<sup>12</sup> of 2012, GEL 4 736 000 was allotted for political parties' funding.

The Law of Georgia on "Political Unions of Citizens"<sup>13</sup> establishes limits on donation to the political parties from Georgian citizens.<sup>14</sup> Specifically, the law stipulates that the overall amount of financial and material donations from each individual to the political party shall not overcome GEL 60,000 per year. It should also be mentioned that natural persons are entitled to transfer contributions to several political parties throughout a year, yet the overall amount of donations shall not overcome GEL 60,000.

The legislator also introduces limits on such contributions when donors receive incomes from the same source. In particular, Article 27 of the Law on Political Unions of Citizens provides that if donor natural persons receive incomes totally or partially from the same source (from natural persons or legal entities or persons related thereto), the total donation on behalf of one election subject throughout the year, shall not exceed GEL 500,000. Furthermore, the limit of donation from one natural person that shall not exceed GEL 60,000 shall also be observed.<sup>15</sup>

The donation shall be transferred through the licensed commercial bank operating in Georgia from the bank account of a donor. A person making a contribution shall indicate its full name and private number.<sup>16</sup>

It should be mentioned that information about donations to political parties, as well as about the donors (his/her full name, private number), including the information according to the place of registration, is public and the Chamber of Control ensures accessibility thereto, in pursuance to the established rule. It also bears obligation to ensure public access to the information on party donations on a monthly basis, through its web-page.

<sup>12</sup> <http://www.mof.ge/4623>

<sup>13</sup> The Election Code of Georgia makes limitation on the law on "Political Union of Citizens"

<sup>14</sup> The limit was established on the amount of contributions made by party members to the political party.

Specifically, the law on "Political Unions of Citizens" stipulates that annual membership contributions of each party member shall not overcome GEL 1200.

<sup>15</sup> It should be noted that significant amendments were introduced to the law on "Political Unions of Citizens" in the frames of "This Affects You" campaign. According to one amendment, if donors receive funding from the same source, however they are unaware of the violation of established limit, they would not be held liable and the Chamber of Control shall set five days term for elimination of the flaw.

<sup>16</sup> The Law of Georgia on "Political Unions of Citizens" (Article 34<sup>1</sup>, paragraph 2, clauses f) and g)) grants the Chamber of Control authority to request information about party finances, as well as to retrieve information about party financing and about the source of the donation when so required.

## **Funding of pre-election campaign**

Election Code of Georgia<sup>17</sup> specified that regulations of the Organic Law of Georgia on “Political Unions of Citizens” are applicable to the sources of election campaign funding. It means that the same rules are applied to pre-election funding and political parties’ financing.

It should be noted that Article 54 of the Election Code of Georgia does not envisage establishment of a separate legal entity for pre-election financing and stipulates that pre-election campaign is financed from the election fund (bank account) of the number first party/voters initiative group of the political union/election bloc. All the funds transferred to this bank account and goods and services received free of charge, are considered to be pre-election funds.

Transfer of one million GEL to election subjects is a novelty in pre-election financing. As a result of amendments introduced at the end of 2011, the Election Code<sup>18</sup> provided that election subjects overcoming 5% threshold will receive compensation of GEL 1, 000, 000 for covering pre-election campaign expenses, including GEL 300,000 to be specifically used for TV advertisement cost<sup>19</sup>.

## **⌚ Legislative regulations concerning political parties and election campaign expenses**

According to legislative amendment, the limit was established on annual party expenditures, in particular, the legislator specified that the overall annual expenses born by political party/election subject shall not exceed 0.2% of the Georgia’s Gross Domestic Product of a previous year.<sup>20</sup> It is also noteworthy that the sum implies expenditures born by a political party/election subject and other individuals on their behalf. It is defined by the Chamber of Control of Georgia and relevant parties/election subjects are informed thereon. The limit was also established on the total expenditures of the parties entering election blocs and on the funds spent on their behalf. (0.2% ).

The amendments also defined the formula for calculation of the upper threshold of overall annual electoral expenses of an independent single-seat candidate, which shall be determined under the following procedure: the upper threshold of expenses allowed for the parties in an electoral campaign (0.2% of the Gross Domestic Product of a previous year) shall be divided by an overall number of voters in the country, and the received number shall be multiplied by the number of voters in this electoral district.

It should be noted that Article 54 of the Election Code of Georgia does not envisage formation of a separate legal entity for pre-election expenses and stipulates that pre-election campaign is financed from the election fund (bank account) of the number first party/voters initiative group

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<sup>17</sup> Articles 54-55 of the Election Code

<sup>18</sup> Article 56 of the Election Code

<sup>19</sup> Article 56 of the Election Code

<sup>20</sup> [http://geostat.ge/?action=page&p\\_id=118&lang=geo](http://geostat.ge/?action=page&p_id=118&lang=geo)

of the political union/election bloc. Election subjects (the number first party/voters initiative group of the political union/election bloc) bear expenses for pre-election campaign through the bank account submitted to the Chamber of Control and limitations stipulated by the Law on Political Unions of Citizens apply to election campaign costs, as well as to the source of funding election campaign.<sup>21</sup>

## **Administrative Resources**

For Georgia, like many other countries, use of administrative resources in pre-election period is a problem. The past years' practice revealed that ruling party had easier access to state owned communication, transportation and other technical facilities than any other election subjects. Moreover, it was impossible to control exactly the duration and conditions of using certain administrative resources by the ruling party.

Monitoring implemented by GYLA illustrated ineffectiveness of the norms of Election Code that regulated use of administrative resources. Specifically, there were instances when opposition parties in contrast to the ruling party had no access to the same administrative resource. The report of the OSCE monitoring mission also verifies the fact. Furthermore, as the Venice Commission reports "on the one hand the provision reinforces the equal opportunity principle. Yet, application of the provision will not be possible because of ruling party's easier access to various resources (telephones, computers, vehicles and others.)"

Election Code of Georgia<sup>22</sup> provided for that an election subject might become entitled to use various state and municipal resources for pre-election agitation and campaign, only if all other election subjects (upon their will) are granted with the same opportunity to use such resources under the similar conditions.<sup>23</sup>

In 2010, multi-party group, working on elimination of flaws in election legislation, was established for improvement of election environment. GYLA, within the scope of monitoring mission, was actively involved in negotiation process of the group and jointly with other partner<sup>24</sup> organizations submitted number of recommendations<sup>25</sup> for improvement of election

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<sup>21</sup> When funding election campaign by an election bloc, parties entering this bloc are entitled to transfer, without limits, funds of their political union to the fund of the political union which is registered as number first in the election block(paragraph 8, article 54 of the Election Code).

<sup>22</sup> Election Code of Georgia, adopted in 2001

<sup>23</sup> [http://www.gyla.ge/index.php?option=com\\_content&view=article&id=92%3A2009-02-21-11-41-20&catid=41%3Aprojects-geo&Itemid=163&lang=ka](http://www.gyla.ge/index.php?option=com_content&view=article&id=92%3A2009-02-21-11-41-20&catid=41%3Aprojects-geo&Itemid=163&lang=ka)

<sup>24</sup> ISFED and TI-Georgia

<sup>25</sup> <http://www.gyla.ge/legislature/upload/docs/549%20daskvna.pdf>

environment. Recommendation for prohibition to use administrative resources in pre-election period was among them. Specifically, regulations were submitted on limiting use of state and municipal resources (save for state premises) in pre-election campaign.

In 2011 the Parliament of Georgia adopted the new Election Code. Prohibition to use administrative resources for pre-election agitation and campaign was an important innovation together with other amendments introduced to the document. Specifically, Article 48 of the Code limited use of state and municipal resources (save for state premises) for pre-election campaign, however, an exception was also envisaged and the restriction did not concern use of business vehicles by political officials (save for the state envoy – local governor and high officials of executive organ of the local – self government bodies who are not elected by direct elections.) Yet the Election Code still contains problematic norms in terms of use of administrative resources. GYLA, jointly with partner organizations submitted the second legislative proposal within “This Affects You” campaign, focusing together with other problems <sup>26</sup> on use of administrative resources.

### **Bribing of Voters**

Significant amendments were made at the end of 2011 and in the beginning of 2012 concerning bribing of voters and criminal and administrative liability of voters was introduced by the legislation. <sup>27</sup> While applicable article of the Penal Code concerning bribing of voters defined that bribing of voter from the moment of publication of the relevant legislative act on appointing of the elections until announcing of the final results of the election caused criminal liability, in the introduced amendments such period was taken out and Article 164<sup>1</sup> of the Penal Code of Georgia stipulated that it is prohibited for election purposes to offer, promise or provide directly or indirectly money, securities, other property, property right, service or other benefit or to accept them knowingly, and/or to enter the fraudulent or sham transactions with a view to avoid the limitations envisaged by law.

The Law on Political Unions of Citizens also regulated the issue of bribing voters<sup>28</sup> and defined that a party cannot give money, presents and other material or immaterial values to the citizen

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<sup>26</sup> <http://www.esshengexeba.ge/?menuid=9&lang=1&id=408>

<sup>27</sup> envisages restriction of freedom up to three years or fine. (For the legal entity (save for political party, that cannot be subject to criminal liability) – liquidation or deprivation of the right to activity or/and fine is envisaged as a criminal liability measure.

<sup>28</sup> It should be noted that the Election Code also regulates the issue of bribing of voters and envisages as a liability measure, annulment of election registration upon the decision of a court, for election subjects if the fact of bribing of voters, directly by the election subject or their representative, or by any other natural or legal person acting on their behalf is proved (Article 47)

of Georgia directly or indirectly via candidate or other person (except accessories of the party campaign – t-shirts, caps, hats, flags, etc), cannot sell or provide goods or other services at a low price, cannot purchase goods or services at a higher than market price, cannot provide any goods or services (except the ones envisaged by the law) free of charge, or attract citizens of Georgia by financial sources, stocks, material or immaterial values, services (including fraud labor or other relations). Violation of the requirement, as well as acceptance of illegal gift, income, service for electoral purposes, if the cost of property (service) does not exceed GEL 100 will cause fining of the party (party representative, legal entity) by the tenfold amount of the cost of the relevant property (service), as for natural persons they will be fined by double amount of the cost.<sup>29</sup>

## ⌚ Reporting and Sanctions

The law of Georgia on Political Unions of Citizens stipulates political parties' responsibility of annual auditing and submitting subsequent report to the Chamber of Control. Specifically, under Article 32 of the Law, every year before February 1, each party shall submit its financial declaration<sup>30</sup> of a previous year together with an auditor's (auditing firm's) report<sup>31</sup> to the Chamber of Control of Georgia (copies of declaration and auditor's (auditing firm's) report must be submitted to a local tax agency in accordance with party's legal address).

A declaration of a political party must indicate yearly income (the amount of membership fees and donations, identity of persons paying membership fees, finances allocated by the state as well as finances received from publications or other party activities) and expenditure of the party (spent on elections, financing of various activities, remuneration, official trips and other expenditures), as well as a property report (owned buildings, quantity and type of means of transportation, their total value, the amount of money available on its bank accounts).

The aforementioned information is public and the Chamber of Control of Georgia must provide information on party's financial declaration to all interested persons, as well as publish declaration on relevant web-page within 5 working days after its receipt.

If a party fails to submit its financial declaration to the Chamber of Control of Georgia in due time, the latter will warn the party in written and request remedying the flaw within 5 days. If a party fails to file its financial declaration with the Chamber of Control of Georgia within 5 days, it will lose the right to receive budgetary funding envisaged in Article 30 of this Law throughout the following year.

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<sup>29</sup> Paragraph 6, Article 34<sup>2</sup> of the Law of Georgia on Political Unions of Citizens

<sup>30</sup>The Chamber of Control of Georgia elaborates a template of annual financial declaration of parties and establishes audit standards

<sup>31</sup> A party whose annual overturn is less than GEL 1000 may file its financial declaration without auditor's report

As for pre-election campaign reporting<sup>32</sup>, all parties that participate in elections independently or within an election bloc shall submit their financial reports using the template elaborated by the Chamber of Control of Georgia every three weeks following the scheduling of elections. Further, an election subject shall publish information about source, amount and date of receipt of its donations pursuant to prescribed forms every three weeks following the moment of registration.

Not later than one month after the publication of final election results, elections subjects must submit to the Chamber of Control of Georgia a report on the funds used for elections by indicating sources of funds and together with the audit report (a report of an audit company), with a statement of the source of the funds deposited to the election campaign fund. The election subjects which, according to preliminary data, receive the necessary number of votes as prescribed by this Law must do the same but not later than 8 days after the Election Day. An audit examination may be carried out by an auditor (audit company) operating on the territory of Georgia.

If election subjects that obtain the necessary number of votes as prescribed by this Law and do not submit an election campaign fund report in due time, or if violation of applicable provisions is proved, the Chamber of Control of Georgia must first and foremost warn the election subject concerned in written and request remedying gaps and provide detailed written information about thereof. If the Chamber of Control considers that the violation is substantial and could affect the results of the election, it is authorized to apply to the Election Commission with a recommendation to apply to court with a request of consolidation of election results without taking into account the votes received by the election subject concerned<sup>33</sup>.

The Election Code prescribes a fine in the amount of GEL 1500 for failure to fulfill the legal obligation of submitting the report of election campaign fund (in an event of political unions that receive state funding, amount of fine is fixed at GEL 3 000)<sup>34</sup>.

### **Authority of the Chamber of Control of Georgia**

Pursuant to the new party funding regulations introduced in late December 2011, the Chamber of Control of Georgia was delegated with a brand new authority to monitor funding of political unions, which is different from the constitutional power of the Chamber of Control of Georgia –

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<sup>32</sup> Article 57 of the Election Code

<sup>33</sup> Paragraph 6, Article 57 of the Election Code of Georgia

<sup>34</sup> Article 85 of the Election Code

supervise the use and expenditure of state funds and of other material values and examine activity of other state bodies of fiscal and economic control.

The Chamber of Control of Georgia is a constitutional agency. Its constitutional authority is to supervise the use and expenditure of state funds and of other material values and examine activity of other state bodies of fiscal and economic control.

Pursuant to the amendments to the law of Georgia on Chamber of Control introduced in late December 2011, the Chamber of Control was delegated with a new authority – *monitoring financial activities of political unions of citizens* within the purview determined by the organic law of Georgia the Election Code of Georgia and the organic law of Georgia on Political Unions of Citizens. The Chamber of Control of Georgia is authorized to conduct an audit, seize property of natural persons, legal persons, and political unions of citizens (including bank accounts), draw up protocols of violation and make subsequent resolutions<sup>[4]</sup>.

Pursuant to new regulations introduced in the law of Georgia on Political Unions of Citizens, the Chamber of Control has been delegated with a broad authority. Specifically, for the purpose of monitoring of lawfulness and transparency of party's financial activities, the Chamber of Control of Georgia is now authorized to elaborate a template of a party's annual financial declaration; establish standards for party funding audit; verify that a party's financial declaration and report of election campaign fund is complete, accurate and lawful, conduct audit of financial activities of the party; ensure transparency of party funding; request information on party's finances from parties, administrative agencies and commercial banks, if necessary; request information from persons about the origins of property transferred to or received from property parties or persons determined in Article 26<sup>1</sup> of this law; act on violations of party funding regulations and apply sanctions prescribed by law; apply to prosecuting agencies if signs of crime have been detected<sup>35</sup>.

### **The Central Election Commission (CEC)**

Administration of elections in Georgia and uniform application of electoral legislation throughout the territory of Georgia is ensured by the Election Administration<sup>36</sup>. Pursuant to the Election Code, the Election Administration is an independent agency. Within the scope of its purview it is independent from other state agencies. The Central Election Commission

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<sup>[4]</sup> Para 2<sup>1</sup>, Article 17 of the Law of Georgia on Chamber of Control of Georgia December, 2008.

<sup>35</sup> Article 34<sup>1</sup> of the Law of Georgia on Political Union of Citizens

<sup>36</sup> *Election Administration of Georgia and Its Authority*, Chapter 2 of the Election Code of Georgia

(hereinafter, the CEC) is the supreme agency of the Election Administration. It is composed of 13 members, including 5 nominated by the President of Georgia and elected by Parliament and 4 appointed by political parties (qualified political parties).

## ⌚ Practice and Recommendations

Appearance of a new political force on political arena in Georgia in October 2011 resulted in putting in place of tight mechanisms of control for party funding by means of reforming applicable electoral legislation. Specifically, new regulations were introduced in the Election Code, the organic law of Georgia on Political Union of Citizens and the Criminal Code.

The new regulations defined the notion of a natural and legal person “related to a party”, who are now subject to same regulations that apply to political unions with respect to formation of their property and finances. For instance, persons “related to a party” had no right to receive income from entrepreneurial activities and were subject to the limit on maximum amount of income that can be received from any other activity – GEL 60 000 per year. Natural and legal persons had no right to borrow a credit. Transparency of their financial activities was to be monitored by the Chamber of Control of Georgia, etc.

The new regulations introduced an ambiguous and broad definition of a “related person”, allowing establishing relations with a party and a citizen/a legal person in any case. The ambiguous and broad definition of the term made selective and subjective enforcement of the law inevitable. Applicable procedures for deciding on a relationship of a person with a party and the rule for appealing were not regulated. Significant prohibitions were placed on a natural/legal person for expressing their political opinions. The law offered careless a careless regulation of matters pertinent to seizure of property, which posed a significant threat to property right.

Important changes were made in the criminal law, which we already discussed in the Chapter on vote buying. It is noteworthy that the law does not envisage any liability for funding activities with vote-buying effect from the state or municipal budgets.

Analysis of the new regulations suggests that amendments to the electoral legislation creates uneven election environment, jeopardizes freedom of expression and property rights, places prohibitions on civil and political activities, provides for unreasonable and disproportionate

sanctions. It is safe to conclude that the new regulations fail to ensure realization of free and fair elections<sup>37</sup>.

For improving the existing situation and pre-election environment, organizations specializing in elections and media representatives launched a campaign *It Affects You Too!*<sup>38</sup>. A number of activities were planned and carried out under the auspices of the campaign.

Submitting legislative proposals to the Parliament of Georgia (draft amendments to the organic law of Georgia on Political Unions and the Criminal Code of Georgia elaborated by the Georgian Young Lawyers' Association – GYLA, International Society for Fair Elections and Democracy – ISFED, Transparency International – Georgia and the coalition for Free Elections) was a significant part of the campaign. The Legal Affairs Committee of the Parliament of Georgia initiated the proposal and a number of stipulations in the legislation were reformulated. Specifically, the law on Political Union of Citizens no longer includes the notion of a person directly or indirectly related to a party; the circle of individuals subject to same prohibitions that apply to political parties was narrowed down and will be clearly defined; duration of prohibitions placed on such persons by the Chamber of Control will be determined; prohibitions for expressing political opinions no longer exist; limitations placed on income of parties have been removed; decision-making mechanism for the Chamber of Control has been expressly defined, as well as procedures for imposing sanctions and seizing property, etc.

Practice has illustrated that activities of the Chamber of Control of Georgia carried out in the name of full transparency and accountability of political parties were carried out by wrongful interpretation of a number of norms and by abusing authority in individual cases.

#### **Examples:**

1. One of the notable examples is the administrative proceedings initiated by the Chamber of Control of Georgia into the alleged fact of funding of political subjects by means of ostentatious and hypocritical agreement. Specifically, “with respect to the administrative proceedings ongoing in the Chamber of Control’s financial monitoring service of political parties into the alleged fact of funding of political subjects by means of abstentious and hypocritical agreement in March 2012, the Chamber of Control of Georgia started one of the most far-reaching measures. Starting from May 12, 2012, the Financial Monitoring Service of the Chamber of

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<sup>37</sup> GYLA's monitoring report – *Monitoring of Of Pre-Election Processes for Parliamentary Elections of Georgia in 2012*

<sup>38</sup> <http://www.esshengexeba.ge/?menuid=25&lang=1>

Control was summoning for almost two weeks members of different parties, volunteers or citizens for questioning in regions of Georgia – all 17 municipalities and self-governing cities. According to the information that was accessible for GYLA, the Chamber of Control summoned total of 227 citizens throughout the regions for questioning. It summoned not only individuals with declared political affiliation but also those who were thought to be supporters of opposition”.<sup>39</sup>

2. Another notable example is the action of the Chamber of Control against the Supporter of Georgian Football. Specifically, on June 2, 2012, the Chamber of Control’s Financial Monitoring Service found the non-commercial non-profit entity Supporter of Georgian Football guilty of receiving illegal donations in the amount of USD 200 000 by means of transactions made by various natural and legal persons. The Monitoring Service therefore imposed a fine on the Supporter of Georgian Football and seized its accounts under paragraphs 1 and 4 of Article 26<sup>1</sup> and paragraphs 1 and 3, Article 34<sup>2</sup> of the organic law of Georgia on Political Union of Citizens.

Fining under the aforementioned Articles requires that a) a person has a declared electoral goals and uses financial/material resources for achieving these goals; b) the Monitoring Service has issued through common administrative proceedings a relevant administrative act on application of prohibitions to the person concerned; and c) the person has received or concealed illegal donations (such as donations from legal entities, foreign nationals, etc.).

The given case does not meet any of the criteria, since a) the organization has not received donations or other contributions from individual or legal persons over the period and has not concealed this information; b) the organization has not used financial resources for electoral purposes, evident from its bank account statements (the organization’s financial turnover over the period from 30 May to 4 June equals to zero); c) further, the Monitoring Service has not issued a pertinent administrative act on application of prohibitions to the Supporter of Georgian Football.

The Court did not find violation of paragraphs 1 and 3, Article 34<sup>2</sup> of the law. The Monitoring Service demanded at the court hearing that the organization be fined for infringing paragraph 4 of the article 34<sup>2</sup> of the law by failure to fulfill the requirements and responsibilities prescribed by paragraphs 1 and 2 of the article 25<sup>2</sup> of the law, i.e. promising to transfer material or immaterial property to citizens of Georgia for campaigning purposes. The court granted the

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<sup>39</sup> GYLA’s monitoring report – *Monitoring of Of Pre-Election Processes for Parliamentary Elections of Georgia in 2012*

claim of the Monitoring Service - it imposed fine in the amount of GEL 5 000 on the non-commercial non-profit entity Supporter of Georgian Football and seized its bank accounts.

The Supporter of Georgian Football cannot be subject to sanctions established by paragraph 4 of Article 34<sup>2</sup> since the norm allows imposition of a GEL 5,000 fine on an entity only if the latter has declared electoral goals and uses adequate financial or other material resources to achieve the goals, upon which an administrative act should be issued by the Monitoring Service pursuant to Article 34<sup>1</sup> of the Law.

It should be reiterated that the administrative act has not been issued, and the organization has not used any financial resources for electoral goals. Subsequently, the court ruling to impose a GEL 5,000 sanction on the Supporter of Georgian Football and to seize its accounts is clearly inconsistent with applicable legislation.

3. On June 7, 2012, the Financial Monitoring Service of the Chamber of Control of Georgia found Bidzina Ivanishvili guilty and drew up two protocols of violation against him. This case involves making of an illegal donation in the amount of 14 865 013 in favor of the political union Georgian Dream – Democratic Georgia by Bidzina Ivanishvili on his own for the advancement of his political and electoral goals.

Tbilisi City Court found that Bidzina Ivanishvili committed the violation envisaged by the organic law of Georgia on Political Unions of Citizens and imposed GEL 148 650 131 on him based on both protocols (GEL 126 220 190 and GEL 22 429 941), whereas Tbilisi Appellate Court halved Bidzina Ivanishvili's fine in both cases and fixed the amount of fines at GEL 74 325 065 (GEL 63 110 095 and GEL 11 214 970).

Georgian Young Lawyers' Association monitored the trial and due to the complexity and the volume of the case, only its key aspects are focused here, including the right to defense, examining and granting motions, formal process of drawing up protocols of violation and evidence in the case brought against the defendant. It is safe to conclude that the defense was not allowed to realize the right envisaged by Article 252 of the Code of Administrative Offences. The court proceedings have revealed that short terms of trial and appealing are ineffectual and inadequate for effectual realization of defense and administration of justice. Frequently motions filed by the defense were rejected, unlike motions filed by the Chamber of Control. These circumstances question administration of justice based on universal equality before law and court. It should be noted that the Chamber of Control failed to submit to court a document that would prove relation of a natural person with a legal person.

## **Recommendation**

In view of the aforementioned circumstances, is safe to conclude that a number of issues remain problematic in the law of Georgia on Political Unions of Citizens and need to be further elaborated. Apart from that, relevant practice needs to be improved.

The law on Political Unions of Citizens stipulates that a protocol of violation and court's decision to seize property may be appealed within 48 hours. The term is rather short and inadequate for parties to realize the right to defense, for effectual consideration and settlement of a dispute. Further, the law fails to determine the starting point for calculating the term for appealing – after decision has been submitted or announced.

In practice, there are precedents when the provisions are not similarly interpreted in different cases. Except that, sometimes relevant bodies fail to provide adequate substantiation of the decisions that hinders fair trial guarantees.

**In this light, the following is recommended:**

*In practice:*

- ➲ Provisions should be equally applied, in order to avoid double standards;
- ➲ Chamber of Control as well as other relevant bodies should provide proper substantiation of decisions;

*In law:*

- ➲ The term of 48 hours for appeal envisaged by paragraph 13, Article 34<sup>2</sup> of the law on Political Unions of Citizens as well as term of adjudication of the case must be increased;
- ➲ The law on Political Union of Citizens must determine that a term for appealing must be calculated after a decision has been submitted to a party.