



## Illegal funding of politics – combating abuse of state resources and illegal campaign finance

Dr Marcin Walecki  
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### Introduction

On July 7, 2009 IFES organized a Technical Discussion Group event on political finance in Tbilisi with the participation of leading Georgian and international experts. Emphasis was put on the importance of reforms in this area to increase transparency and combat corruption and abuse of state resources. Discussions highlighted the significant role of the Central Election Commission of Georgia, which should be a strong independent entity and key political finance regulator. In addition, a number of amendments to the Electoral Code and the Organic Law of Georgia on Political Unions were presented after the IFES meeting. The following recommendations are based on the review of the minutes from the event and proposed amendments which were distributed after the discussion took place:

- The CEC should create a permanent monitoring group composed of specialized professionals. Unfortunately, recently proposed changes do not favor this option, which is a major weakness of the proposed amendments<sup>1</sup>. Workshop participants acknowledged that in Georgia laws concerning political finance have become far more extensive and complex in recent years. However, there has been a failure to provide regulatory bodies with the additional financial and human resources needed to carry out their additional functions. Short periods (2003-2006) of enthusiasm for legal reform were usually followed by a loss of interest and lack of adequate funding for the CEC. Financial resources given to the CEC for administering campaign regulations need to increase to keep pace with new complex laws and subsidies. While there is no “silver bullet”<sup>2</sup> without strong independent monitoring, strong non-partisan enforcement, and meaningful, transparent public funding, most attempts to limit irregular funding of politics will fail.

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<sup>1</sup> The following amendments have been suggested to the **Paragraph 10<sup>1</sup> of article 48**:

“10<sup>1</sup>. Within 5 days after the appointment of the election date, based on an ordinance of the CEC, for the monitoring of fund accounts used by subjects of the electorate for elections involving a group of social representative, within the period before the next elections, by the order of the CEC a financial monitoring group will be established which is composed of lawyers, independent auditors and representatives, and this group will study the information and holdings presented at election commissions. The statute of a financial monitoring group is established by the CEC that is presented by the same group no later than 5 days after creation of the group”.

<sup>2</sup> i.e. a “magic, cure-all” solution

- The CEC should be capable of issuing proper regulations and guidelines and providing programs and trainings in order to establish a specialized, professional body of auditors that will ensure the transparency in funding of political parties and election campaigns. In fact, proposed amendments will allow the CEC to determine the standards and regulations dealing with the audit of political parties.<sup>3</sup> Yet, it is not clear if this provision will also include electoral committees as regulated by article 48.6 of the Electoral Code.
- In terms of amendments to the Organic Law of Georgia on Political Unions, financial disclosure for political parties would work better if the relevant provisions of the Electoral Code were to be used (see Art. 48.11, 11. *Information about election contributions is open, public and accessible. The Central Election Commission of Georgia is obliged to provide all interested persons with the information on the amount, source and date of deposited funds existing in election campaign funds, as well as to ensure publication of this information on corresponding website*). The proposed amendment (and its publication in the printed media) might create an unnecessary burden for smaller political parties and will not necessarily increase transparency (access will not be universal as in the case of Internet-based disclosure). Disclosure through a web site on the Internet is more effective and cheaper.<sup>4</sup>
- In terms of combating the abuse of state resources, clear criteria should be established to distinguish illegitimate from legitimate campaign activities, and to apply them consistently.
- The CEC should issue a detailed list (see appendix II), with examples of what activities constitute prohibited use of public office expenditures for campaign purposes. The government should come up with a code of conduct for government officials that should be adopted before election campaigns commence.
- There is a growing necessity for professional auditors to provide professional oversight over funding of political parties and electoral campaigns. This issue should receive particular attention as political parties receive substantial public subsidies. Public control should be increased if one is serious about combating illegal funding of politics in Georgia.
- In its' recent report<sup>5</sup> Transparency International Georgia has recommended that: *The authorities must also consider the possibility of introducing a cap on the overall size of a campaign fund*. The issue of spending limits is certainly worth discussing, however with the current capacity of the CEC it would unrealistic to expect that any serious limits would be enforced. Moreover, the negative, recent experiences of Armenia, Belarus, Poland, and Russia show that limits should be realistic (i.e. not too strict) in order to provide free political competition.

## Administrative Resources

### <sup>3</sup> 6. Self-regulation of accounting calculation and financial plural accounts

Professional organizations of independent accountants and parliamentary commissions of accounting calculation standards provide self-regulation of financial plural accounts and accounting calculation for private juridical subjects. Paragraph 1 of this article does not comment on political parties (considered by the organic law of Georgia) for which accounting calculations and financial plural accounts are determined by CEC regulation”.

<sup>4</sup> The following amendment has been suggested to the Paragraph 1 of article 32:

“1. A political party before April 1<sup>st</sup> of every year is obliged to publish its financial declaration in the printed media, together with the report of an auditing company or an individual auditor. The annual income of the party is indicated in the declaration (amounts of membership fees and donations, data on natural and juridical persons, those who execute donations, also sums determined by the government, and sums accepted as a result of organizing different events) and plural expenses (for elections, financing different events, salaries, business trips and other expenses), and also a report on estate condition (real estate, number and brand of cars in possession, their total cost, amounts of bank accounts)”.

“1<sup>1</sup>. The Party is obliged to present financial report once in the quarter, without conclusion of auditing company, as well”.

<sup>5</sup> TI July, 22 Georgia’s Electoral System: Recurrent Challenges

In terms of administrative resources, they are a natural and necessary attribute of any state. Yet, any democratic regime needs to observe the principle that the administrative resources controlled by those holding public office are to be used only to promote the public interest.<sup>6</sup> Abuse of state resources has been prohibited by international law and recognized by a number of international organizations as one of the major challenges to democratic transition. General Comment No. 25 on the right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25 of the UN CCPR), states that:

Persons entitled to vote must be free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or the threat of violence, compulsion, inducement or manipulative interference of any kind.

Furthermore, through the Document of the Copenhagen Meeting of the Conference of the Human Dimension and other instruments, Georgia has recognized the special importance of political pluralism in achieving shared goals for co-operative development of the human dimension. The 1990 Copenhagen documents requires from the participating states:

(5.4) — a clear separation between the State and political parties; in particular, political parties will not be merged with the State;

(7.6) — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) — ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution.

As observed by the OSCE the fair and free atmosphere needed for effective political campaigning requires the state to provide election contestants with the equal opportunity to convey their messages to the electorate. The government and all state bodies must provide equal access to public facilities (including indoor and outdoor meeting venues), services, and assistance and must not discriminate among the contestants in terms of the application of laws, regulations, or administrative procedures.

If left unchecked, the misuse of administrative resources in a long run may lead to a monopoly of power by one political party or political group. Thus, modern liberal democracy commits itself to political equality and fairness in the use of administrative resources. These principles are anchored in a wide range of norms, rules and laws governing not only electoral campaigns but the overall exercise of public office. These include laws that:

- prohibit the use of the resources of public office for personal or partisan benefit;
- establish the independence and professionalism of civic service;
- restrict the use of budget funds for partisan purposes;
- restrict the influence of the ruling party on the public and private media;
- ensure equal access of political parties/candidates to campaigning facilities during elections, including state subsidies;

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<sup>6</sup> Open Society Justice Initiative, *Handbook for Monitoring Campaign Finance*, OSJI 2004

- establish independent and specialized monitoring bodies in charge of controlling the allocation of public resources and political campaigns (e.g. Supreme Audit Office, Parliamentary Committee, CEC).

In particular, any support for candidates, political parties, and their election campaigns must be provided in an equitable manner. In its guidelines, the Council of Europe states that “Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to [inter alia] public funding of parties and campaigns.”

In order to make it more difficult to abuse public office for political purposes, the following steps are recommended:

- Establishing clear criteria to distinguish *illegitimate* from *legitimate* campaign activities and to apply them consistently. The CEC should issue a detailed list, with examples, of what activities constitute prohibited use of public office for campaign purposes (see examples of regulations issued by the Election Commission of India).
- Clear, strict and explicit provisions should be introduced prohibiting any state executive body or civil servant from engaging in the electoral campaign activities of any party/candidate, including advisory activities. At the very least, internal guidelines for Ministers and their departments need to be developed to promote ethical, i.e. non-partisan, conduct within the executive branch.
- The regulations on compulsory leave for election candidates who are public officials should be re-evaluated to assess their rationale and effectiveness in preventing the misuse of public office for electoral purposes.
- State and municipal authorities should be subject to the obligation that they *proactively* ensure that official public events during the campaign period are not used in any way for campaign purposes. The role of the CEC Monitoring Group in enforcing electoral code should be made more proactive. In particular, the CEC should be allowed to supervise and check the activities of candidates who were nominated while serving as a public official and the activities of the office where they are/were employed.
- The duty of the CEC to respond to complaints about violations of electoral regulations should be made more explicit. The CEC should (1) proactively monitor reporting in the media or by election monitoring missions/organizations on state executive bodies or related civil servants engaging as a party/candidate in campaign activities, (2) check such reports for their accuracy and (3) initiate proceedings where appropriate.
- The role of the courts in enforcing campaign legislation should be reviewed in order to make it a more attractive option for parties/candidates. In particular, provisions should be considered that would ensure a case is resolved (including appeals) during the campaign period.
- In order to lessen the risk of misuse of state-controlled companies for the benefit of parties/candidates, provisions should be adopted to make senior management positions in public companies incompatible with the direct involvement in politics.

#### **Additional issues to be addressed:**

##### **Capacity in judicial bodies**

It is not enough for the bodies responsible for administering political finance regulations to do their work internally. Once they find preliminary evidence of malpractice, it usually is necessary for them to turn to law enforcement agencies to conduct further detective work. If police authorities obtain sufficient evidence, the authorities responsible for public prosecutions must decide whether to bring a case to trial. Finally, the courts conduct the trial,

and higher courts thereafter deal with appeals. In many countries, the court systems are extremely slow-moving. Moreover, there is little enthusiasm to give priority to cases involving leading members of the governing political party.

### **Constraint against prosecuting governmental bodies for legal infringements**

In many countries, one of the most significant forms of legal infringement of political finance laws is that committed by governmental bodies on the orders of politicians of the ruling party. Typically, governmental resources (personnel employed on the public payroll, publicly owned vehicles, office equipment and telephones, and public information services) are used for partisan campaign activities. When this occurs, it is usually impossible for the political finance regulators to take action against the government—for both political and legal reasons. Governmental bodies often enjoy legal privileges which render them immune from prosecution. In 1979, the Chief Electoral Officer of Canada pointed out that: *Under a departmental policy going back to 1962, the federal Department of Justice has declined to become involved in investigations or prosecutions under the Canada Elections Act because of the sensitive political position of the Attorney General of Canada in whose name any prosecutions would have to be conducted.*

### **Political constraints and lack of authority in regulatory bodies**

Political Finance Regulators might be reluctant to enforce political finance laws for two reasons. The first is because of the method by which it is appointed (political loyalists beholden to the president of the country or to other leading members of the government). Second, even if the commissioners have a spirit of independence, they may be reluctant to challenge the government or the legislature due to the fear that the commission's budget will be cut in retaliation for any prosecutions for political finance offenses. Many countries, especially transitional democracies such as Georgia, have great problems in enforcing party finance regulations. But this is not surprising because their capacity to enforce other kinds of laws and regulations is also weak. Where governance capabilities are limited, the enforcement of party finance regulations is rarely a high priority.

## APPENDIX I

### Abuse of State Resources in Poland

Research conducted by Dr Marcin Wałęcki on party financing in Poland concluded that the misuse of state resources had constituted an important source of funds for governing parties in Poland in the 1990s.<sup>7</sup> The tradition of using state enterprises and banks to channel money to parties was highly developed under the communist regime, and although such practices were radically restricted in 1989, they have re-emerged as a system that includes the following:

- Rampant political party patronage in the state administration and in the management of state-owned enterprises, resulting in public contracts being awarded by state enterprises and agencies to public relations companies to carry out election campaign-related activities on behalf of parties or candidates.
- Money being channeled from state enterprises to parties: state enterprises would purchase the services of public relations companies at several times the market price, and the PR companies would transfer a cut to the parties or candidates with whom they were affiliated.

Research included estimates of political parties' income received from the use of state employees, financial resources of state enterprises, and official subsidies provided to members of parliament. Individuals in various ministries were interviewed to determine the total number of political advisors employed within the public administration—estimated at approximately 1,000. Interviews with some of these appointees indicated that, during a campaign year, a majority of their working time was spent on party matters. The cost to the state—and the *de facto* income to the governing parties—was estimated by multiplying the number of advisors by their estimated wages (U.S. \$500–1,250 per month), plus the cost of office facilities (space, computer equipment, mobile telephones, etc.), estimated at \$1,000–2,000 per year. Research gave a figure of \$18 million captured by the governing parties in the year 2001. Research also estimated that, in Poland, various forms of misuse of administrative resources could account for up to 67 percent of total party income in 2001.

#### Examples of Administrative Resources:

- Senior state officials, in their capacity as employees of the state, publicly endorsing a particular candidate or party.
- State employees engaged in campaign activities for one particular party or candidate during working hours.
- State and municipal premises used for campaign purposes by one party or candidate.
- State enterprises, institutes, think tanks, and state-supported organizations engaged in campaign activities on behalf of a particular party or candidate to conduct electoral research, develop and produce campaign materials, or pay for campaign staff and their activities.
- Access to the logistical infrastructure of public offices and agencies, such as telephones and fax machines, office supplies, computers, and Internet access.
- Public (state or municipal) vehicles loaned free of charge to a particular party or candidate for campaign purposes
- Nonelection-related public events organized by state or municipal agencies at public expense, in order to promote a particular party or candidate.
- Unplanned disbursement of public funds during an election campaign period without clear explanation—for example, increases in state employees' salaries, increases in social payments such as pensions, and discounts on public transportation or other public services and utilities

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<sup>7</sup> Marcin Wałęcki, *Money and Politics in Poland*, (Warsaw ISP) 2005

- Institutional advertising, i.e., boosting the image of incumbent parties or politicians by increasing advertising of government activities

## **APPENDIX II**

### **100 ways to Abuse State Resources**

#### **Institutional resources**

Institutional resources are material and personal resources pertaining to public office. Material resources of the state range from vehicles to offices, office equipment and other infrastructure. These may be used by incumbent political forces to provide themselves with advantages *vis-à-vis* non-incumbents. For example, ordinary public officials may be used as election campaign staff for a political party. Furthermore, senior public officials affiliated with a political party may use their official position to benefit the party or its candidates.

Incumbent parties and politicians may use the institutional resources of the executive authorities they control to promote their partisan interests. This could include the use of public premises, office equipment and public employees as campaign staff.

A) Announcements of support for the party/candidate by senior state officials. Such announcements may be found in the following.

- public speeches
- banners and posters
- leaflets
- media articles
- interviews
- official TV programs (e.g. presidential exposés)

B) Engagement of state employees in campaign activities during office hours. Such activities may include the following.

- collecting signatures for a candidate/party
- working as members of a campaign staff for a political party/candidate
- developing electoral materials
- conducting electoral research on behalf of a candidate/party
- preparing campaign materials
- distributing campaign materials

C) Use of public premises for campaign purposes where other candidates do not have equal access to them.

- staff offices
- meetings with voters and donors
- rallies
- storage of campaign material

D) Engagement of state companies, institutes, think tanks, state enterprises or state-supported non-profit organizations in campaign activities.

- conducting electoral and opposition research for one particular party/candidate
- public opinion polling for one particular party/candidate
- developing, publishing or distributing campaign materials
- conducting campaign activities (e.g. calling voters, sending mass emails and SMS messages)

E) Organization of campaign events with the compulsory attendance of employees of state institutions, companies, institutes, think tanks, state enterprises or other publicly funded entities.

F) Use of the logistical infrastructure of public offices or premises by a party/candidate where other parties/candidates do not have access to the same facilities.

- Telephones
- fax machines
- office supplies and equipment
- Internet
- Databases and other confidential information about voters

G) Use of public vehicles free of charge or at discount rates for the following.

- candidates' travel
- campaign staff members' travel
- transportation of campaign materials
- transportation of citizens to meetings and rallies
- transportation of selected citizens to elections

H) Campaigning by officials in their official capacity in the course of public office-related business trips.

- meetings with voters
- election-related appearances in the local media

I) Use of public non-election-related events organized by state or municipal offices at public expense to promote a particular party/candidate. Often free food and drinks are offered to voters.

- public holiday events and public festivals
- meetings of employees of public institutions and state enterprises
- parents' meetings
- sports events, film festivals, and public concerts
- events for war veterans and pensioners
- international festivals and exhibitions

J) Production and use of official reports on public office-related activities in a way that is clearly designed to benefit a particular party/candidate.

### **Financial resources**

Abuse of public funds is among the most important category of administrative resources used to promote the electoral prospects of parties/candidates.

A) Direct distribution of public funds to voters

B) Direct distribution to voters of goods and services paid for from public funds

C) Unauthorized overspending on a budget item legitimately earmarked for elections without a clear explanation of the additional expense

D) Expenditure of an authorized component of the election budget on purposes not expressly authorized and legitimated

E) Appearance of extra subcategories in election budget items without a clear explanation

F) Sudden payments of public funds in the course of the election campaign that were not included in any relevant budget item or other plan and without a clear explanation

- increase in salaries for state employees, pension payments, maternity payments
- increase in child support payments, welfare payments, student grants, transport compensation
- increase in military (soldiers) allowances
- increase in allocations for prisons
- discounts on transport services, housing services, electricity, heating, etc.

G) Introduction of publicly funded projects that were not announced in advance and were not included in the state or municipal development plan:

- building or renovation of state or municipal housing
- building or renovation of public roads
- building or renovation of public premises
- building or renovation of health services premises
- building or renovation of public education premises
- building or renovation of public culture and entertainment facilities, parks, etc.
- building or renovation of social service facilities (pensioners. or veterans homes, orphanages, etc.)
- building or renovation of student housing
- introduction of environmental projects (cleaning of rivers, forests, etc.)
- introduction of health service projects (free vaccination, etc.)
- distribution of free medicine
- distribution of free education materials
- organizing public festivals
- organizing cultural events (exhibitions, concerts, sports events, etc.)

H) Allocation of public funds to state companies, institutes, think tanks, state enterprises and state supported non-profit organizations that were not announced in advance and not provisioned in the approved budget

I) Direct allocation of public funds to incumbent parties/candidates from nonspecific budget items (e.g., long-term investment development)

J) Use of public non-budgetary funds for purposes not related to the defined purposes of the funds.