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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

in co-operation with
The Legal Policy Research Centre (LPRC) in Kazakhstan

CONFERENCE ON

"INTERNATIONAL STANDARDS OF FINANCING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS"

Okan Intercontinental Hotel, Astana, Kazakhstan
1 December 2008

REPORTS

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OPENING REMARKS

Mr Gianni BUQUICCHIO
Secretary of the Venice Commission

Dear President, ladies and gentlemen,

It is a pleasure for me to welcome you on the occasion of this Conference on international standards on financing of political parties and election campaigns.

The European Commission for Democracy through Law – Venice Commission – has been co-operating with Kazakhstan for more than a decade. Kazakhstan is an observer State of the Venice Commission. Our co-operation has been developing constantly and I am particularly glad that we moved from general exchanges of views to a more focussed co-operation on concrete issues. I am sure that this positive example will be very useful and inspire neighbouring countries who wish to establish good co-operation with the Venice Commission and other European Institutions.

From our side, we believe that Kazakhstan is a reliable partner open to a frank and sincere dialogue and we are looking forward to Kazakhstan's chairmanship of the OSCE in 2010. Kazakhstan has conducted a number of reforms, however, there are still many issues to be dealt with and I hope that we will co-operate in these areas in the future. I also think that civil society has an important role to play in the process.

Today we will have an opportunity to discuss the complex issue of financing of political parties and election campaigns, which is challenging for any democratic country. It includes a number of problems, such as sources of financing of political parties and electoral campaigns, respecting the principle of equality when distributing public funding, fighting against corruption and many other issues.

It is true that in many countries the main legislation governing the funding of political parties was passed only very recently. As a result, there is still fairly little case-law – in particular from constitutional authorities – in this field, and public authorities rarely take initiatives to clarify what may not be clearly regulated by existing legislation.

The Venice Commission has been working on legal questions concerning political parties for over a decade. At the outset, this work was part of the general assistance activities that included drafting constitutions, constitutional laws and other legislation, provided by the Commission to emerging democracies in Eastern Europe.

Since the end of 90s this work became focused on more specific problems of legislation on political parties below the level of constitutions. In 1998 the Commission adopted its first comprehensive report on the *prohibition of political parties and analogous measures.* This report was followed up with guidelines and an explanatory report in 1999.[1]

[1] CDL-INF(2000)1. This document as well as the documents mentioned below are published on the website of the Venice Commission at http://www.venice.coe.int.

Since then the Commission has adopted a number of texts on political parties, notably:

1) Guidelines and Report on the Financing of Political Parties;[2]
2) Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues;[3]
3) Report on the Participation of Political Parties in Elections.[4]

The Venice Commission has also adopted a number of opinions on legislation on political parties in countries such as Armenia (CDL-AD(2003)005), Azerbaijan (CDL-AD(2004)025), Moldova (CDL-AD(2003)008), and Ukraine (CDL-AD(2002)017).

Although these texts are not binding, they provide a comprehensive list of standards and possible best practices that exist in Europe, such as:

1) The right of an individual or a group of individuals to create an association with the aim of participating in the political life of the country, is an integral part of the human rights list protected by the European Convention on Human Rights (ECHR), the UN Convenant on Civil and Political Rights of 1966 and other international instruments;
2) Any activity requirements for political parties, as a prerequisite for maintaining the status as a political party and their control and supervision, have to be assessed by the same yardstick of what is 'necessary in a democratic society';
3) Any interference of public authorities with the activities of political parties, such as, for example, denial of registration, loss of the status of a political party if a given party has not succeeded in obtaining representation in the legislative bodies (where applied), should be motivated, and legislation should provide for an opportunity for the party to challenge such decision or action in a court of law;
4) In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned, etc.

It is clear that the various systems, which are established by individual states to organise political party financing in the best possible way, differ considerably. But the underlying concerns are the same everywhere and the objectives are fairly similar.

The constant aim is to meet the requirements inherent in the inevitable cost of democracy. If the democratic process is to function well, it is necessary both to limit, as far as possible, and eventually even to reduce expenditure by political parties. If there is no reasonable ceiling for expenditure, there is a risk of corruption and other related undemocratic practices. At the same time, equality between parties has to be safeguarded, but this principle often appears to be jeopardised in favour of mainstream parties, which – because they obtain the highest scores and the largest number of seats – are allocated considerable public subsidies.

I would also briefly like to address the issue of financing of electoral campaigns. Free elections and freedom to associate in political parties are closely linked in any democracy, since political parties exist for the purpose of winning political power through free and fair elections. In a number of its opinions and research projects, the Venice Commission has examined the role of political parties in a democratic society and their participation in the electoral process of specific countries.

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2 CDL-INF(2001)008.

3 CDL-AD(2004)007rev.

4 CDL-AD(2006)025.

A number of guidelines that are useful in the financing of election campaigns form a part of the *Code of Good Practice in Electoral Matters,* which was adopted by the Venice Commission in October 2002.[5]

It is usually accepted that electoral systems, and party systems, greatly depend on specific – historical, cultural, political, social - national factors. In this context we should not forget the essential role played by civil society. I am pleased that an important number of representatives of the Kazakh non-governmental organisations are taking part in this Conference today.

We are glad that our discussions are taking place at the moment when possible amendments to the Kazakh legislation on financing of political parties and election campaigns are being discussed by Parliament and civil society. I am sure that our exchange of views here today will not only concentrate on different national experiences, but will also help the drafters of the law in identifying best examples and best practices in other countries, to take note of the proposals made by the participants and to include those in their final draft.

Let me remind you that the Venice Commission is at the full disposal of the Kazakh authorities for any co-operation on the proposed amendments to the legislation on financing of political parties and election campaigns.

Ladies and gentlemen,

Before concluding, I would like to introduce the members of the Venice Commission delegation who will be participating in this conference:

1) Mr Evgeny Tanchev, Judge at the Constitutional Court of Bulgaria, Member of the Venice Commission;
2) Mr James Hamilton, Director of Public Prosecutions, Substitute Member of the Venice Commission, Ireland;
3) Ms Barbara Jouan, Project manager within the Legal department of the National Commission on financing of election campaigns and general political financing (CCFP), France;
4) Mr Sergii Kalchenko, Senior Attorney, Moor & Krosondovych Law Firm, Ukraine.

I would like to thank the Legal Policy Research Centre and Mrs Tkachenko in particular for co-organising this activity.

Thank you for your attention.

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5 CDL-AD(2002)23rev.

OPENING REMARKS

Mr Alessandro LIAMINE
Regional political affairs adviser for Central Asia, European Union
European Commission for Kazakhstan, Kyrgyzstan and Tajikistan

Dear Ladies and Gentlemen,

I would like to warmly thank the organisers for inviting me at this event and give me the opportunity to say a couple of words on behalf of the Delegation of the European Commission to the Republic of Kazakhstan.

In my relatively long experience in Kazakhstan, this is the first time that I attend an event aimed at discussing an issue, which is proper to advanced democracies and which is still a matter of dispute in national legislations of many countries. Without doubts, this shows to what extent Kazakhstan is making progress in its transition process towards democracy and market economy.

It could be argued that a discussion of financing of political parties is premature in a country that still has to fully develop democratic institutions, including a truthful freedom of association and a genuine multi-party system. However, sometimes, in order to achieve greater reforms, we have to start from some practical issues that affect the daily life of a building democracy.

Last year, the Constitution of Kazakhstan was amended. Amongst other changes, the prohibition of State financing of political parties was lifted. This year, a few weeks ago, the Government of Kazakhstan presented a package of amendments, amongst other things, to improve the election legislation and the legislation on political parties. In this context, discussions on State financing of political parties have appeared. That is why I consider this conference particularly timely and well placed to meet the necessity to study international standards in financing political parties and define the best option suitable for Kazakhstan, taking into account its peculiarities.

It must be noted that the issue of funding of political parties is a relatively recent phenomenon and that in many countries of advanced democracy the specific legislation was passed only a few years ago. Therefore, there are not established international standards able to be simply transposed into the national legislation. There are many aspects open to discussion: whether parties should be helped only during the election period or on a permanent basis; whether the funding should be distributed on the basis of the sits won in the Parliament or on the basis of percentage of votes gathered; whether the public funding should exclude private funding or allow some mixed systems; and, last but not least, how to determine the ceiling of political parties' funding as well as the mechanisms to control the accounts of political parties.

There are different approaches and many nuances. However, these are all aimed at reaching the same goals, which are:
- The establishment of an equitable political competition;
- The independence from private capitals that can distort political competition;
- And transparency of financial reports of political parties and of their activities.

In conclusion, I would like to particularly praise the existing cooperation between the Venice Commission of the Council of Europe and the Republic of Kazakhstan. During these last two years much has been done, including the release of an official Opinion of the Venice Commission on how to improve the Ombudsman Institution of Kazakhstan. The presence today of a numerous delegation of the Venice Commission headed by its Secretary General Gianni Buquicchio shows to what high extent Europe wants to be engaged with Kazakhstan. The European Commission stands ready to further support this cooperation. However, to this end, it would be much appreciated to have more often tangible signs from the Kazakhstan side of its will to strengthen this cooperation. That is why I take this opportunity to call on behalf of the Delegation of the European Commission on the Constitutional Council, the Ombudsman, the Government and its single Ministries, the Parliament and the Presidential Administration of the Republic of Kazakhstan – all able to individually seize the mechanisms of the Venice Commission – to take advantage of the outstanding legal expertise of the Venice Commission and use it to develop national legislation taking full account of existing practice and open a new era of closer cooperation with the Council of Europe.

I trust that today's conference will enable Kazakhstan to take a step forward in this direction.

I thank you very much for your attention and wish to all of you fruitful discussion.

EUROPEAN STANDARDS ON FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS

Mr James Hamilton
Director of Public Prosecutions, Ireland

Introduction

Regulations on political parties and elections vary greatly from one country to another. They are, of course, varied because of the different historical experiences of different countries as well as the differences in social conditions within them. National history and political traditions in this field tend to be matters of national pride and to be resistant to outside change.

In many of the old democracies of Europe regulations concerning political funding are a recent phenomenon. Indeed, in some countries such as Switzerland the matter remains unregulated. Traditionally, the funding of political parties was left to private initiative. However, in recent years, as a result of scandals in a number of western democracies, classically involving a trade off between large donations to political parties in return for the corrupt awarding of contracts, there has been an increased tendency towards the provision of state funding for political activities together with limitations on the amount of private donations which may be made and requirements for transparency and publication concerning such donations. It is, of course, the case that modern methods of communication have made elections a much more expensive process in recent times.

Despite the fact that political parties are the lifeblood of democracy, it is also remarkable how frequently constitutions make no express mention of political parties. Of course, their activity is regulated by provisions relating to freedom of expression and assembly and the right to participate in democratic life.

Because regulation of the activities of political parties and questions concerning their financing is a relatively new phenomenon, there is very little case law in the international tribunals such as the European Court of Human Rights as well as in national courts.

The European Convention on Human Rights

The starting point for any consideration of standards must be Articles 10 and 11 of the European Convention of Human Rights which deal with freedom of expression and freedom of assembly and association as well as Article 3 of the (First) Additional Protocol to the Convention which guarantees the right to free elections. In the context of Article 11 the European Court of Human Rights has often referred to the essential role played by political parties in ensuring pluralism and democracy. As the court pointed out in *The United Macedonian Organization Ilinden & Others v Bulgaria* (application no 59491/00) (at paragraphs 60-61):

> "60. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. Subject to paragraph 2 of Article 10, it is applicable to not only " information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society" ….

61. Consequently, the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 paragraph 2 exists, the states have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts …."

Consequently, any limitations on the rights of political parties to raise funds must be prescribed by law and must be such as are necessary in democratic society and any limitations are to be strictly construed. Such limitations must be proportionate.

Standard Setting Instruments

Despite the variety of systems and practices in different states, there have been a number of attempts to set common standards in the area of financing of political parties and elections. Firstly, there is the Council of Europe's Recommendation Rec (2003) 4 of the Committee of Ministers on Common Rules against corruption in the funding of Political Parties and Electoral Campaigns of 8 April 2003.

Secondly, the European Commission for Democracy through Law (the Venice Commission) has been working on legal questions concerning political parties for more than a decade and has adopted a series of guidelines. The first of these dealt with the prohibition of political parties and analogous measures.[1] The second set of guidelines, adopted in 2001, dealt with the financing of political parties.[2] A third set of guidelines was issued under the title of the Code of Good Practice in Electoral Matters which was adopted in October 2002.[3] A fourth set of guidelines adopted in March 2004 dealt with a number of specific issues including registration of political parties, activity requirements for political parties, the involvement of public authorities with the activities of political parties, and the membership in political parties of foreign citizens and stateless persons.

Two other publications of the Venice Commission are worth mentioning: in March 2006 the Commission adopted a report on the participation of political parties in elections and at the same session it adopted an opinion on the prohibition of financial contributions to political parties from foreign sources.

In addition the Venice Commission has written numerous opinions on specific regulations concerning political parties and elections in various member states of the Council of Europe.

The European Union has also addressed the issue of the funding of political parties at the level of a regulation governing political parties at the level of the European Parliament and the rules regulating their funding.[4]

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1 CDL-INF(2000)1 dated 10 January 2000 available at http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp

2 CDL-INF(2001)8 adopted on 9-10 March 2001 available at http://www.venice.coe.int/docs/2001/CDL-INF(2001)008-e.asp

3 CDL-AD(2002)23rev adopted on 18-19 October 2002 available at http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.asp

4 Regulation (EC) no 2004/2003 of the European Parliament and of the Council (15 November 2003 L297/1).

The NGO Transparency International has published Standards on Political Funding and Favours adopted in 2005.

Finally, the United Nations Convention against Corruption calls on states "to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties.

Issues concerning the funding of political parties and election campaigns

I propose to summarize some of the principal issues which arise in relation to the funding of political parties and election campaigns and refer to the approach adopted in the various instruments already referred to.

Limitations on Private Funding

The first question is to what extent limitations on private funding of political parties are permissible.

The Council of Europe recommendation begins by stating that citizens are entitled to support political parties. However, it goes on to provide that states should ensure that any support from citizens does not interfere with the independence of political parties. It provides that measures taken by state's governing donations should provide specific rules to avoid conflict of interests, to ensure the transparency of donations and avoid secret donations, to avoid prejudice to the activities of political parties and to ensure their independence. It adds that states should provide that donations to political parties are made public, in particular, donations exceeding a fixed ceiling, that states should consider the possibility of introducing rules limiting the value of donations to political parties and adopt measures to prevent established ceilings from being circumvented.

The Venice Commission guidelines on the financing of political parties contain similar provisions. The right of political parties to receive private financial donations is asserted, but the guidelines also provide that limitations may be envisaged, including a maximum level for each contribution, a prohibition of contributions from enterprises of an industrial, or commercial nature or from religious organizations, and prior control of contributions by members of parties who wish to stand as candidates in elections by public organs specialized in electoral matters. Again, it requires that the transparency of private financing should be guaranteed and that to achieve this aim each political party should make public the annual accounts of the previous year, which should incorporate a list of all donations other than membership fees. It proposes the recording and making public of all donations exceeding an amount fixed by the legislature.

Transparency International's Standards contain similar provisions. They provide as follows:

> "political parties, candidates and politicians should disclose assets, income and expenditure to an independent agency. Such information should be presented in a timely fashion, on an annual basis, but particularly before and after elections. It should list donors and the amount of their donations, including in kind contributions and loans, and should also list destinations of expenditure. The information should be made publicly available in a timely manner so that the public can take account of it prior to elections."

Despite this, the Transparency International policy position notes that surprisingly few countries have good disclosure laws. It refers to a study by USAID which finds that of 118 countries studied, 28 had no disclosure laws and only 15 required parties and candidates to

disclose income and expenditure accounts and disclose the identity of donors to political parties.

Public Funding

A corollary of placing limitations of private funding is that in order to enable political parties to carry out their activities some public funding would be required. The Council of Europe Guidelines speak of the state's entitlement to support political parties, and goes on to provide that the state "should" provide support to political parties. This support should be limited to reasonable contributions and may be financial. Objective, fair and reasonable criteria should be applied regarding the distribution of state support. As with private support any state support should not interfere with the independence of political parties and the same principles on donations which apply to private donations should also apply to public donations concerning avoiding conflict of interests, ensuring transparency and avoiding prejudice to the activities of political parties.

The Venice Commission guidelines on the financing of political parties require public financing to be aimed at each party represented in parliament. The guidelines also provide that in order to ensure the equality of opportunities for the different political forces, public financing could be extended to political bodies representing a significant section of the electoral body and presenting candidates for election. The criteria for the level of financing should be objective. The financing of political parties through public funds should be on condition that the accounts of political parties are subject to control by specific public organs (for example by a court of audit). States are to promote a policy of financial transparency of political parties that benefit from public funding.

The European Union set certain minimum levels of support as a condition of the recognition of political parties at European Parliament level. These require parties to be represented in at least one quarter of member states by members of the European Parliament or the national parliaments or regional parliaments, and to have received in at least one quarter of the member states at least three per cent of the votes cast at the most recent European Parliament election. They must observe in their programme and activities the principles on which the European Union is founded, namely the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. Fifteen per cent of funding is to be distributed in equal shares between political parties and 85 per cent is to be distributed among those who have elected members of the European Parliament in proportion to the number of such elected members. It is a condition of the receipt of funding that political parties must publish their revenue and expenditure and a statement of its assets and liabilities annually, must declare their sources of funding by providing a list specifying the donors and donations which exceed €500, must not accept anonymous donations, donations from the budgets of political groups in the European Parliament or donations from any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it, and may not accept donations exceeding €12,000 in any year from any one donor.

Transparency International proposes that careful consideration should be given to the benefits of state funding of parties of candidates and to the encouragement of citizens participation through small donations and membership fees.

Funding for elections only or for political parties in general?

The question arises whether parties should be assisted with public funding solely during election periods, to enable them to face the high costs involved in an election campaign, or whether some form of regular permanent funding of political parties should be introduced. The matter is discussed in the report by M. Jacques Robert which is annexed to the Venice Commission's Guidelines on the Financing of Political Parties. He points out that the option of funding only election campaigns merely aims to avoid emptying the party's coffers every time an election takes place but the thinking behind it is to regard political parties as private organizations which have a free hand in raising the funds necessary for their day-to-day functioning but which require assistance during the holding of elections. Under the second approach, which funds political parties at all times, parties are regarded as officially recognized bodies, since they contribute to the state's ongoing democratic function, and it is therefore reasonable that the state should help to support their existence. Both models are found in democratic states although M. Robert notes that most of the major European democracies follow the second approach.

Limitation of Election Expenditure

The Council of Europe's Recommendation Rec (2003)4 provides that states should consider adopting measures to prevent excessive funding needs of political parties, such as establishing limits on expenditure on electoral campaigns. The Venice Commission Guidelines on the Financing of Political Parties provide that electoral campaign expenses should be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned. They also propose that the total amount of private contributions should not exceed the stated ceiling. There should be a possibility of prohibition of contributions from enterprises of an industrial or commercial nature or religious organizations.

Prohibition of Foreign Funding

Many states, though not all, prohibit financial contributions to political parties from foreign sources. There are historic reasons for this. In the period between the two world wars both Nazi Germany and the Soviet Union financed political parties in other countries which supported fascism or communism respectively. During the Cold War both the USSR and the United States frequently gave financial support to organizations which they saw as supporting their particular view of the world. In addition, some states which had ethnic minorities were frequently concerned about the possibility of foreign donations being used to undermine their national position. In other states, there are no prohibitions presumably because the issue simply never arose.

On 17-18 March 2006 the Venice Commission adopted an opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources. An analysis of the Member States of the Council of Europe showed that 28 of them had a ban on such contributions whereas 16 did not. The Guidelines on the Financing of Political Parties adopted by the Venice Commission in 2001 stated that donations from foreign states or enterprises must be prohibited. However, the Venice Commission does not consider that this should prevent financial donations from nationals living abroad.

The Council of Europe Recommendation (2003)4 provides that states should specifically limit, prohibit or otherwise regulate donations from foreign donors.

Transparency International has also proposed that " consideration should also be given to limiting corporate and foreign support, as well as large individual donations".

In its opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, with regard to the question as to whether such a prohibition can be considered "necessary in a democratic society", the Venice Commission concluded that each individual case had to be considered separately in the context of the general legislation on financing of parties as well as the international obligations of the state concerned and among these the obligations emanating from membership of the European Union. While it pointed out the historical situation which had existed between the two world wars and during the Cold War, it also pointed to the argument for a much less restrictive approach in modern Europe given the cooperation of political parties within the many supranational organizations and institutions of Europe today, such cooperation being "necessary in a democratic society". They commented that it was not obvious that the same could be said about the raising of obstacles to cooperation by restricting or prohibiting reasonable financial relations between political parties in different countries or at the national level on the one hand and at the European or regional level on the other. However, the Commission pointed to the reasons which could be used to justify such prohibition, such as financing used to pursue aims not compatible with the constitution and the laws of the country, or which undermined the fairness or integrity of political competition or could lead to distortions of the electoral process or posed a threat to national territorial integrity.

The Keeping of Accounts and Monitoring of Compliance with Financial Standards

Recommendation Rec (2003)4 requires the keeping of records of all expenditure on all electoral campaigns and of the keeping of proper books and accounts of political parties. All donations should be recorded and if over a certain value identified in the records. These accounts should be presented regularly and at least annually to an independent authority which should monitor them. This should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication. Infringement of rules should be subject to effective, proportionate and dissuasive sanctions.

The Venice Commission's Guidelines are to a similar effect. In particular they regard proportionate sanctions as being the loss of all or part of public financing for the following year. They also envisage the possible reimbursement of the public contribution, the payment of a fine or another financial sanction or the annulment of an election. Transparency International recommends that:

> "Public oversight bodies must effectively supervise the observance of regulatory laws and measures. To this end, they must be endowed with the necessary resources, skills, independence and powers of investigation. Together with independent courts, they must ensure that offenders be held accountable and that they be duly sanctioned. The funding of political parties with illegal sources should be criminalized."

Corruption

One should not lose sight of the fact that regulations concerning the public and private financing of political parties and elections do not exist in a vacuum for their benefit alone, but exist largely to prevent corruption by enabling private interests to purchase influence within the political system. It should be borne in mind that regulations concerning financing are only a part of the solution to this problem and in themselves may not be effective to achieve the necessary aim. Transparency International Standards on Political Funding and Favours draws attention to this fact and provides that donations to political parties, candidates and elected officials should not be a means to gain personal or policy favours or buy access to politicians or civil servants. They draw attention to the need for adequate conflict of interest laws that regulate the circumstances under which an elected official may hold a position in

the private sector or a state owned company, the need for periodic declarations of assets held by parliamentarians and party officials and their families, the need for time bars against elected politicians moving into corporate positions, and clear immunity rules all of which are described as “necessary to limit the influence of business on government.”

FINANCING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN FRANCE - THE ROLE OF THE FRENCH NATIONAL COMMISSION ON CAMPAIGN ACCOUNTS AND POLITICAL PARTY FINANCING (CNCCFP)

Mrs Barbara JOUAN
Legal service – Project Manager
CNCCFP

Mr President, Ladies, and Gentlemen,

It's a great pleasure for me to be with you today.
To start with, I would like to thank, on behalf of the President of the National commission on Campaign Accounts and Political Party Financing, the Venice Commission and the Legal Policy Research Centre in Kazakhstan for having organized this conference and invited a member of my commission.

I'm going to try to explain the financing of political parties and electoral campaigns in France through my experience of the electoral issues at the Commission in charge of controlling the financing of French political life.

After two decades of political-financing scandals involving French political parties and politicians, the Government decided to react and to undertake a reform of the political life financing.
Thus, at the end of the nineteen eighties, the Legislature sought to make the mode of political financing more transparent and to end the endemic corruption which was inherent in French political life. One organism is at the heart of the system that has been established: the Commission nationale des comptes de campagnes et des financements politiques (the National Commission on Campaign Accounts and Political Financing or CNCCFP), created by a law dated 15 January 1990.

The Commission comprises 9 members:
- three from the Council of State (Conseil d'État)
- three from the Final Court of Appeal (Cour de Cassation)
- three from the Audit Court.(Cour des comptes).

They are appointed by a decree of the Prime Minister on recommendation of their respective Vice-Chairman or First Chairman.
The President of the Commission is elected by the members and he names the Vice-President.
The 9 members are appointed for 5 years and cannot be replaced during that period.
The Commission is an independent administrative body which has a budget fluctuating between €3and €5 million depending on the year.
Its services together have 33 permanent agents including a legal service in charge of the electoral complaints.
The decisions of the commission have been subject to litigation since 2004 and can be appealed to the electoral judge, which is different in function of the election.

The Commission is charged with two major responsibilities:
- Monitoring the campaign accounts of candidates elected by direct universal suffrage – which excludes the Senatorial elections - within constituencies of at least 9,000 inhabitants;
- Verifying that political parties respect the regulations relative to their financing.

Financing of electoral campaigns

The control of the campaign accounts is the main part of the Commission's activity.

I. The legislative origins and evolution.

A. *Origins*

The Law of 11 March 1988 established rules applicable to the verification of electoral campaign finances for the first time. Many have seen this first Law as a pilot.
After which, the Law of 15 January 1990 organized the three basic rules of the financial control of political life:

- the limitation of candidates' expenses
- the reimbursement of candidates' campaign expenses
- the public subsidy to the political parties which meet the financial requirements.

These provisions have been incorporated in the Electoral Code, which is the reference for the Commission.
The Commission has been created by this law at the same time.

B. *Evolution*

After these two decisive Laws, the French legislator has passed different Laws which are come to improve the electoral architecture.
The Law of 19 January 1995 banned donations by legal persons.
The Law of 11 June 2000 instituted the gender principle in the composition of candidates' lists. Since then, the non-respect of this obligation has generated the reduction of the Public Funds for the political parties which didn't fulfil this obligation.
Since the Law of 3 December 2003, the Commission has been an Independent Administrative Body. That means that its decisions can now be appealed to the electoral judge – which is different in regard of the elections – and that the Commission is financially independent.
Obviously, there's a check on this financial independence: the budget of the Commission is voted by the parliamentarians and included in the Interior Ministry's budget.
Finally, the Law of 5 April 2006 has transferred the financial control of the Presidential Election from the Constitutional Council to the Commission.

We can sum up the spirit of those laws by three main points:

- Money shouldn't determine the outcome of the battle and favour the richest candidate, that's why the expenses are limited;
- A candidate mustn't be dependent on a generous donor, that's why the donations from natural persons can't exceed a certain limit and donations from legal persons are forbidden;
- The State reimburses the electoral expenses to counterbalance the obligations put on candidates.

II. The necessity of the financial proxy

Since 2003, each candidate must have appointed a financial proxy who must be registered with the relevant prefecture and who must open a unique bank account in which all the final transactions for the election are to be recorded.

All the incomes must go through this special account and all the expenses must be paid by the financial proxy.

The non respect of this obligation can generate the rejection of the candidate's campaign account.

The financial proxy is in charge of:
- Opening a special bank account;
- paying all the expenses;
- collecting all the incomes;
- delivering a receipt to the donors and ensuring that a single natural person didn't give more than €4,600 and that there are no donations from legal persons;
- choosing a chartered accountant who has to certify the campaign account;
- ensuring that there are no incompatibilities between the status of financial proxy, candidate and chartered accountant;
- Sending the campaign account to the commission by the end of a period of 2 months after the election.

III. The supervision of revenue

A candidate can finance his/her electoral campaign in different ways:
- He can finance by himself his campaign, either by his personal funds or by a loan. In any case, this income will be considered by the Commission as personal funds and as the base of the public reimbursement;
- He can get a donation from his political party – if he is endorsed by one, knowing that candidacy is free in France in accordance with international commitments, meaning that you don't have to be presented by a political party to be candidate – and in that case the donation is not eligible for public reimbursement;
- Finally, he can have donations from natural persons – here also, the source of financing is not eligible for public financing.

IV. The limitation of expenses

For each constituency, there's a ceiling on expenses which differs with the kind of election and the population of the constituency.

This ceiling is readjusted each 2 or 3 years by a coefficient which takes into account inflation. For instance, the ceiling of expenses for the last Presidential election was for:
- the 1st round: more than €16 million
- the 2nd round: almost €22 million

Exceeding the ceiling generates automatically the rejection of the campaign account by the Commission.

It's important to underline that the official campaign – which includes the ballot papers and the posters displayed on designated boards – is not taken into account in the ceiling on expenses.

V. The control of the campaign accounts by the Commission

The Commission applies the principle of equal treatment of candidates whatever the candidates' results.

The monitoring of the campaign accounts by the commission is divided in three distinct parts:
- the Commission assesses the electoral character of the expenses of the candidates;
- the Commission assesses the refundable character of the expenses of the candidates;

- the Commission delivers a decision for each candidate;

The definition of an electoral expense has been given by the Council of State as the expenses which have as their aim obtaining votes.

Moreover, the expense must have been engaged by the candidate or with his agreement.

Since then, the Commission and the electoral judges have elaborated a complex and important jurisprudence based on that definition.

Thus, the Commission and the electoral judges can estimate that some expenses are personal rather than electoral, such as the Constitutional Council did in 2002 with Francois Bayrou's suits.

The Council decided that out of €42,000 of expenses for suits, only €5,000 presented an electoral character.

It's obvious that the Commission and the electoral judges have a broad margin of appreciation.

The Commission also controls the refundable character of the electoral expense.

It's the way the Commission found not to reimburse gifts to the voters, which used to be a widespread and usual practice in France. Indeed, the Commission refused the reimbursement of the expenses that are considered as vote buying.

It's a position which can easily be criticized because there's no solid jurisprudence about that. But so far none of the candidates whose campaign account has been reviewed by the Commission has lodged a complaint with the electoral judge. The options are open though.

The Commission works with almost 200 reporters who have to undertake the first control of the campaign accounts.

Then, the accounts are sent back to the legal service of the Commission and there almost 20 lawyers are in charge of the 2nd control and the harmonisation of the decisions that the Commission has to deliver.

Once campaign accounts have been analyzed, the Commission may come to one of the following decisions:

- The Commission approves the campaign accounts;
- The Commission grants approval subject to adjustments, notably when expenses undertaken by the candidate are not related to the electoral process;
- The commission rejects the accounts due to non-conformity with legislative regulations (no audit by chartered accountant, account in deficit, spending limit exceeded, or a donation from a legal person...).

The Commission may also penalize a candidate for the non-submission or late submission of accounts.

In the case where an election has been contested – by another candidate, a voter or the State representative in the department/region - the Commission has 2 months from the deadline for submitting the campaign accounts to deliver decisions about all the candidates' campaign accounts in this constituency.

In the other cases, the Commission can deliver its decisions within a period of 6 months.

The decisions of the Commission have some consequences.

- Rejected accounts, accounts that have not been submitted or have been submitted late will cancel the candidate's right to reimbursement for campaign expenses, and, except in the case of Presidential elections, will result in the Commission automatically bringing the matter before the Election judge (Constitutional Council, the Council of State or the Administrative Tribunal), who may pronounce the candidate ineligible.
- Decisions concerning adjustments may reduce the total reimbursement due to the Candidate.

The Candidate may contest the Commission's decision through an automatic right of appeal before the Commission itself or through a judicial appeal before the Council of State.

- Candidates in Presidential elections may appeal the Commission's decisions to the Constitutional Court within one month of receiving notification of the decision. The sanction on ineligibility is not applicable to a presidential Candidate whose account has been rejected.

VI. The reimbursement of candidates' campaign expenses.

In order to be reimbursed, a Candidate must meet a certain number of criteria:

- Must have respected obligations: appointment of a financial proxy, respect of the electoral rules, and certification of the campaign account by a chartered accountant and submission of the campaign account in the legal time;
- His/her account must not have been rejected by the commission;
- Expenses for which reimbursement is demanded must be relevant to the electoral process;
- Must have obtained at least 5% of votes cast, with the exception of Presidential elections.

Once these criteria have been met, then the amount reimbursed by the State cannot exceed one of the three limits set out below:

- The amount of electoral expenses reimbursable as stipulated by the Commission;
- The amount contributed by the Candidate personally, with any adjustments taken into account;
- The maximum amount allowed by law, equal to half of the upper limit defined by each constituency;

In the special case of a Presidential election, the maximum amount is equal to:

- One twentieth of the upper limit of electoral expenses applicable to Candidates during the first round of voting, for those who have received less that 5% of votes cast;
- Half of the upper limit of electoral expenses applicable to Candidates during the first round of voting, for those who have received at least 5% of votes cast;
- Half of the upper limit of electoral expenses applicable to Candidates during the second round of voting.

Democracy costs money. Thus, in 2002, the French State paid almost €415 million for the organization of the presidential and the legislative elections, including €44 million for campaign expenses.

Financing of political parties

The Commission is also responsible for the control of political party financing.

There is not a special definition of a political party in France.

Article 4 of the Constitution of 1958 states that political parties and groupings contest votes in expressions of universal suffrage. “They are formed, and act, freely.” This text confers a total freedom of formation and management.

In 1988, for the first time the Legislature addressed the issue of finance with regard to political parties, without defining the concept of a political party.

The international definition of a political party is given by the treaty on the European Union **“**Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.”

In the absence of a legal definition of what a political party is, a double jurisprudential definition has been provided by the Council of State and of the Constitutional Council regarding the legislation of 1988.

Indeed, the Law of 1988 gave a financial approach of the political parties.

Thus, the electoral judges have been brought to define the conditions in which a political party can finance an electoral campaign or another political party, which is, according to the French understanding of the matter, the main role.

A political party which is allowed to finance an electoral campaign or another political party is one which:

- Benefits from public aid
- Or has appointed a financial proxy (an individual registered at the Prefecture or a financing company approved by the Commission)
- And that submits its accounts to the Commission each year by 30 June, at the latest, of the year following the financial year under review.

The political party which meets at least two of these three conditions can thus finance an electoral campaign or another political party.

The political party or grouping must respect criteria pertaining to the structure of accounts, which must be closed each year, audited by two chartered accountants (who must verify their consistency and the absence of financial contributions by legal bodies).

The control of the commission regarding political parties’ financial obligations is much less broad than the one concerning campaign accounts.

Thus, the Commission:

- Verifies that parties respect their accounting and financial obligations;
- Ensures that a summary of parties’ accounts is published yearly in the *Journal Officiel*;
- Sanctions or vetoes financing companies selected by parties;
- Issues receipts for donations for tax purposes and verifies that the relevant conditions are not violated relative to the Law of 1988;

- Verifies that specific obligations are adhered to by the financial consultants (individuals or financing companies) and if necessary, refuses to issue receipts for donations;
- Brings any matters presenting possible penal violations before the Public Prosecutor.

There are two types of financing:
- private financing
- public financing

The private financing includes:
- contributions from the members and elected officials of the political party;
- donations from individuals. The amount of a donation can not exceed €7500 per person and per year. The donation allows the donor to reduce his tax revenue up to 66% of its amount.

The public financing represents the main part of political party financing.

There are around 500 political parties in France. Out of this number, only 250 political parties have to submit an account to the Commission.

Out of these 250 political parties, only 50 ones are eligible for public financing.

This direct public financing – which represents roughly €80 million a year – is divided in half:
- The first half is based on the performance of the political parties in the general elections and represents €40 million of the total. Candidates must have obtained at least 1% of votes cast in at least 50 constituencies in mainland France or at least 1% of votes cast in the constituencies of Overseas Territories. The distribution of this first half is proportional to the number of votes obtained by each political party. One vote corresponds to €1.6 and the political parties which do not respect the gender principle have to pay a fine. For 2008, the political parties paid almost €5 million in fines for this reason.
    - The presidential party has received around €35 million and paid a fine of €4 million
    - The main opposition party has received almost €23 million and paid a fine of €500,000.
- The second half of direct public financing is based on the number of the parliamentarians who assign their support to one of the political party which benefit from the first half. The reattachment of a parliamentarian corresponds to €45,000.

The public financing is established for 5 years and each year, the parliamentarians must assign their support one of the political parties.

FINANCING OF ELECTION CAMPAIGNS IN THE NEW EUROPEAN UNION MEMBER STATES (MOSTLY COUNTRIES OF CENTRAL AND EASTERN EUROPE)

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Introduction - Elections, Representative Government and International Standards

Contemporary representative government evolved from three ideas and social processes - limitation of absolutism, legitimation of government by popular sovereignty and delegation of power for a limited period of time by the people to legislative assemblies to be checked by regular, free, fair and democratic elections.

Today not a single politician or scholar would contest that any democratic representative government should be founded on elections.[1] The triumph of democracy made elected representation as undeniable and irreversible constellation as the axiom that there can be no taxation without representation which laid foundations of parliaments and posed limitation on monarchial sovereignty and raison d'état during the middle ages.

It took centuries in human civilization to arrive to these axiomatic constitutional principles and by filling them with democratic content to transform the elections into cornerstone of procedural legitimation of democratic government.

Democracy, human rights and the rule of law[2] have been treated as the three main pillars of European constitutional heritage.[3]

Introduction of international standards in the elections is an important democratic safeguard aimed at preserving the genuine democratic character of representative government. Enforcing the standards will rule out partisan temptation to distort the popular vote, which has been present since earliest and most primitive forms of franchise and electoral procedures.

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1 "It is often assumed, either through bad faith or inattention, that only a mandatory can be a representative. This is an error. Children, fools and absentees are represented every day in the courts by men who hold their mandate from the law only, moreover the people eminently combine these three characteristics, for they are always *childish,* always *foolish, and* always *absent.* So why should their *tutors* not dispense with their mandates.", **J. De Maistre,** Considerations on France, Montreal, 1974, 70.

2 For difference between the principles of rule of law and rechtsstaat see **F. Neuman**, The Rule of Law, Berg, 1986, 179 -187**; F. Neuman**, Democratic and Authoritarian State, 1957, Free Press, 43-47; The Rule of Law, ed. A. Hutchinson, P. Monahan, Toronto, 1987; **E-W. Bockenforde**, State, Society and Liberty, Oxford, 1991,47-70; For international standards of the rule of law see The Rule of Law and Human Rights, Principles and Definitions, International Commission of Jurists, Geneva, 1966; **R. Grote**, Rule of Law, Rechtsstaat and Etat de Droit, in Constitutionalism, Universalism and Democracy, ed. C. Staarck, Nomos, Baden – Baden, 1999, 269-365; For different approach of the Scandinavian jurisprudence see **K. Olivecrona**, Law as a Fact, Oxford , 1939, 28 – 49.

3 See Explanatory Report, adopted by the Venice Commission at its 52nd Plenary Session, Venice,18-19 October 2002, I, 3 and 4, in Code of Good Practice in Electoral Matters, Science and Technique of Democracy, N 34, European Commission for Democracy through Law, Council of Europe, Strasbourg, 2003, 19; See also **D. Rousseau,** The Concept of European Constitutional Heritage, in The Constitutional Heritage of Europe, Science and Technique of Democracy N 18, European Commission for Democracy through Law, Council of Europe, Strasbourg, 1997, 16-35, 21-24.

Ever since antiquity rulers were tempted to take advantage by electoral abuse to distort the true reflection of voters preferences in order to ascend to or to prolong their stay in government.[4] Although deformations went hand in hand even with the most primitive modes of magistrates selection, the rules that determine the vote cannot in principle decide the outcome of the election alone and should not be over-exagerrated. Moreover, the adequate reflection of popular will in the outcome of elections, exclusion of subversion of majority preferences to minority of representation in the composition of parliament or in presidential elections should become an exponent in the history of governmental institutions museum.

Elections have been treated as an instrument constituting political institutions, particularly, the Parliament and the Presidents when they are elected by the people and/or as direct participation of the people in government. If the first – instrumental meaning is overexposed - the elections are interpreted in pure technical way.[5] The principal merit of this approach is the emphasis of the linkage between the nature of elections and the essence of the institutions brought in existence by the elections. The composition of representative assemblies has depended to some extent to the type of the electoral system. Political parties in power have been tempted to adopt an electoral system which might increase their representation in the political institutions. However, one should not rely on the electoral system to shape the electoral preferences and translate them into parliamentary seats. For the mechanism of the elections might distort the measuring of public preferences and bring a partisan bias to the allocation of parliamentary seats, but no electoral law based on democratic principles can make a party running low in the public opinion polls winner of the elections.

Casting the ballots or standing in elections has been treated as modes of direct participation in government by the people's voting rights. Free, democratic, pluralistic and competitive elections are foundation of modern constitutional regime where government is legitimated by the consent of the majority of governed. In this train of thought elections channel people's preferences like the other modes of direct democracy - imperative referendum, consultative referendum, popular initiative, plebiscite, recall, popular veto or ratificatory referendum.

Under the instrumental approach voting rights have been labeled as a public function or a duty performed by the voters in order to establish the representative government. Within the context of the second approach voters are holders of their sovereign rights in the elections and they are free in the way they might exercise them or abstain from exercising.

In political theory and legislative practice the active voting (casting of a ballot) and passive franchise (standing in elections) has been interpreted as:

- fundamental political right channeling citizens direct participation in government,
- public function founding mode of constituting representative government on the public good and by being a duty citizens should not refrain from,

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[4] The more primitive the electoral systems, the more primitive the distortions were. Maybe the most amusing story from the antiquity of the election malpractice is described by Herodotus when the Persian king was to be selected among seven of the nobility members. They decided to ride on their horses through the city and to consider elected the rider of the horse that will neigh after dawn when reaching a certain place. Darius groom was a sly (cunning) person. He hid the Darius horse favorite mare near the place where race was to be decided. The only horse that neighed when the seven nobles were passing the place was Darius' one, **Herodotus**, The Histories, New York, 1977, Book III, 240-241.

[5] The elections are but another technique like the appointment, drawing a lot, competition etc. in the democratic constitutional systems and usurpation, heredity or inheritance of power in a despotic regime. If we start speculating on a value neutral ground all these methods of forming the institutions have something in common and diferentio specifica as well. Using one of them one could reformulate the others by the chosen one using it as a matrix and adding differentio specifica.

- sui generis political right combining the freedom to take part in government and the obligation to form the representative institutions.[6]

In the international community efforts to propose coherent system of standards of democratic elections at supranational level began during the second half of the 20 century. The importance of free, fair and competitive elections to sustainable democratic government and human rights in the World and on the European continent has been firmly acknowledged. However, the process of consensus building on drafting, proposing and implementing instruments on International and European standards in the area of elections has not been fast and easy for they are related to the constitutional framework and institution building traditionally considered to be among the core issues of the nation state sovereignty.

The International and European standards have been drafted by different actors in the international lawmaking arena – universal, regional and non-governmental organizations. They have proposed and some of them have adopted provisions in the international treaties or soft law relating to the supranational standards of elections which are different in scope, parties which are members of the relevant organization and their legal binding effect.

The short list of International and European acting instruments, draft treaties and soft law containing provisions on supranational standards on the principles of democratic elections belong to several groups according to the legal binding effect they have[7].

Hard Core International rules

The hard core of International rules consists of provisions of International treaties adopted by UN, First Protocol to the European Convention on Human Rights and the relevant jurisprudence of ECHR.

Universal international standards concerning the principles of democratic elections consist in the UN treaty law provisions:

1. Art.21 of 1948 Universal Declaration of Human Rights
2. Art.25 (b) of 1966 International Covenant on Civil and Political Rights
3. Art.1 of 1952 Convention on the Political Rights of Women
4. Art.5 of 1965 (c), (d) Convention on the Elimination of All Forms of Racial Discrimination 5.Art.7 of 1979 Convention on Elimination of All Forms of Discrimination against Women.

Hardcore European rules

1. European Convention on Human Rights, Protocol I, art. 3 stating that " The High contracting Parties undertake to hold free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of opinion of the people in the choice of legislature".
2. Convention on the Participation of Foreigners in Public Life at Local Level, (art. 6 in relation to the right to vote in municipal elections).

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6 **С.Баламезов**, Конституцинно право, София, 1940, т.II, 86-90; **Е.Друмева**, Конституционно право, София, 1998, 219-221

7 This division of the survey is built on the conclusion that there is certain " hard core" of the principles of democratic elections which has been defined at in the explanatory report to the Guidelines on Election, see Explanatory Report, adopted by the Venice Commission at its 52nd Plenary Session, Venice,18-19 October 2002, I, 3 and 4, in Code of Good Practice in Electoral Matters, Science and Technique of Democracy, No. 34, European Commission for Democracy through Law, Council of Europe, Strasbourg, 2003, 19-20.

3. Jurisprudence of ECHR on European Convention on Human Rights, Protocol 1, art. 3.[8]

In December 2002 a Draft Convention on the Election Standards, Electoral Rights and Freedoms has been prepared and submitted by IFES to be debated and adopted by the Council of Europe with the aim to summarize the legally binding international law instrument. The Draft Convention is based on the experience of legal regulation and administration of democratic elections accumulated by the Council of Europe and member states. The ambition of the drafters has been to codify various rules and if adopted to convert European standards into binding hard law for the countries which are members of the Council of Europe.

Soft Law International and European rules

1. 2002 Guidelines on Elections adopted by Venice Commission[9]
2. 2003 Existing Commitments for Democratic Elections in OSCE Participating States[10]
3. 1994 Declaration on Criteria for Free and Fair Elections adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994).[11]

European Union law on Elections

Within the EU a body of community law has evolved since the treaty of Maastricht has established citizenship and voting rights of EU citizens in local and EU parliament elections. Beyond any doubt implementation of the international and European legal standards in the area of elections bears no similarity with the supranational and, direct, immediate and horizontal effect of community law, with countries like Netherlands that have opted the pure monistic system of transplanting international provisions in the municipal law, being an exception. Any comparison between these two phenomena is might relative and might be valid only for the 25 EU member states which are simultaneously with no exception members of the Council of Europe.

The list of EU law relating to elections consists of primary law - art. 8 b (1) of TEU,[12] Council directive 93/109/EC,[13] Council directive 94/80/EC,[14] Order of the Court of 10 June 1993, The Liberal Democrats v European Parliament,[15] Case C-41/92. These provisions and the relevant amendments in the national constitutions and electoral legislation introduced of the rights of voting and standing in the municipal elections and in the elections for European parliament of EU citizens having member state of residence different from their home member state. Participation of EU citizens in the local and European parliament elections in

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8 **P. van Dijk, G. , J. H. van Hoof,** Theory and Practice of the European Convention on Human Rights, Boston.

9 Code of Good Practice in Electoral Matters, Science and Technique of Democracy, No. 34, European Commission for Democracy through Law, Council of Europe, Strasbourg, 2003, 7-18.

10 Existing Commitments for Democratic Elections in OSCE Participating States, OSCE, ODIHR, Warsaw, October, 2003.

11 **G.S Goodwin –Gill,** Free and Fair Elections, International Law and Practice, Inter-Parliamentary Union, Geneva, 1994, X-XIV.

12 Official Journal of the European Communities C 325/5 24.12.2002.

13 Official Journal L 329 , 30/12/1993 P. 0034 – 0038.

14 Official Journal L 368 , 31/12/1994 P. 0038 – 0047.

15 Actions against Community institutions for failure to act - Act of the Parliament - Uniform electoral procedure - No need to give a decision. Case C-41/92.,European Court reports 1993 Page I-03153., Action in respect of failure to act - decision unnecessary **D. Simon**: Journal du droit international 1994, pp. 473-477.

the EU member states of residence has broadened the principles of universal and equal franchise bringing to solidarity and has been an important step in the process of creating ever closer union among the peoples of Europe. The draft Constitution of EU has reaffirmed the passive and active voting rights of EU citizens in municipal and European parliament elections went their EU member state of residence is different from their home EU member state.[16]

The brief survey of supranational and European instruments containing international legal standards on elections stimulates several speculations which need further discussion and analysis.

Proliferation of international standards is indicative to the progress in the peaceful cooperation, democratization and rule of law building in the international community. It is instrumental to the harmonization, unification, convergence and transplantation of the best values, principles, practices and techniques in the democratic elections legitimizing constitutional government. At the same time proliferation of the international standards on elections has been in compliance with the need to respect the national tradition. International treaties and soft law have been carefully creating unity by protecting diversity. No doubt that the process of increasing of the international standards should be preferred to the lack of international instruments on elections.

However, proliferation of international and European standards on elections has side effects that need to be solved.

Under the assumptions that a nation state is simultaneously a member of several international organizations and all of them have adopted different instruments in the area of elections the issue of compatibility between the provisions of the international organizations from one side and the multiple international instruments and domestic legislation arises. The ideal situation is when ambiguities can be resolved through the existing clear hierarchy of sources between and within the standards proposed by the international organizations.

Difference in the scope, in the detail of the standards and of the countries which they address is normal and will not raise any serious problems during the process of implementation of international obligations. EU law has stronger binding effect for the EU member states. Based on the community method however EU law has not the same intensively binding effect as the federal law. The conflicts between some of the treaty and soft law arrangements will not be contra productive, since hard law always prevails. However conflicting provisions from one and the same legal order might be an obstacle to the implementation of different standards in the municipal legal system.

Successful solution of ambiguity between provisions of EU law, hard and soft European law by applying the hierarchy in the area of supranational law to be transplanted in the municipal legal order might be illustrated by the new election act of Grand Duchy of Luxembourg. Adopted in February 2004 the act entitles non-Luxembourg nationals that have residency in the Luxembourg to vote and stand as candidates in the local elections taking place in 2005, regardless of whether they are EU citizens or not, without losing their voting rights in their country of origin.[17] Non-Luxembourg nationals entitled to active and passive voting rights in

[16] According to art. 8, 2, 2 of EU draft Constitution citizens of the Union shall enjoy the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State, Treaty establishing a Constitution for Europe**,** Adopted by consensus by the European Convention on 13 June and 10 July 2003**,** submitted to the President of the European Council in Rome 18 July 2003**,** 2003/C 169/01) Official Journal of the European Union EN 18.7.2003 C 169/3.

[17] Voting rights of non-Luxembourg nationals in local elections held in October 2005, http://www.gouvernement.lu/dossiers/elections/elections_communales_2005/dossier_en.

the local elections must be at least 18 years old on the date of elections, having their civil rights and must have been domiciled in the Grand Duchy of Luxembourg and have lived there for a period of 5 years when applying to be included on the roll. Under the Council directive 93/109/EC there the period of living of the EU citizens in the country of residence different from their home country has not been limited. According to the Convention on the Participation of Foreigners in Public Life at Local Level, art. 6 relating to the right to vote in municipal elections foreign residents are granted the right to vote and to stand in local authority elections, provided they fulfill the same legal requirements as apply to nationals and furthermore have been lawful and habitual resident in the state for the 5 years preceding the elections. Art. I on the Universal suffrage from the Guidelines on elections pointing the exceptions provide that nationality of the state is a requirement, but it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence. While not specifying the length of this period for foreigners the Guidelines have set the time limit of the residence requirement for nationals not to exceed six months before the local or regional elections take place. Though Duchy of Luxembourg has not ratified the Convention on the Participation of Foreigners in Public Life at Local Level in order to protect the national's interests in the local elections and to comply with of art. 8 b (1) of TEU and the Council directive 93/109/EC as EU member state it has opted for foreigner's residence requirement of five years.

In conclusion looking at the system of the emerging supranational standards in the area of elections it seems International organizations, Council of Europe and European Commission have been concentrating on promoting the macro conditions as values, principles safeguarding the genuine democratic content of free and fair elections. Only the most fundamental of micro conditions were treated by the European soft law. Detailed regulation of the election organization and choice of the electoral system have remained traditional competence of the nation states. Concrete techniques of election monitoring have also been developed and successfully applied within OSCE.[18] However, adopting Convention on the Election Standards, Electoral Rights and Freedoms by the Council of Europe will convert substantial part of the soft law in the Guidelines on Elections into treaty hard law and will be important stage in the harmonization process of the European standards in the area of democratic elections.

Financing Elections – Brief History and Facts of Abuse

Going back to antiquity an expression attributed to Ceaser was widely used " we will buy people with money and people will bring back money to us ". Distortion of the election results by bribing the majority of voters has been among the most primitive forms of financial abuse in the elections in Rome especially when the open voting was established. In regard of Senate it has been picturesquely depicted by the younger Plinius.[19]

Contemporary electoral campaigns are impossible without spending significant amount of finance. With the expansion of mass democracy and the gradual introduction of universal suffrage electoral campaigns include the activity practically of all persons willing to exercise their voting rights. While in the 19th century US in political slang the phrase "buying a new roof" was widely used at the second half of the 20 century it was replaced by the expression "buying an election". Money provides access to the basic tools of a modern democracy - for example, advertising, running political parties, selecting candidates, mobilizing voters and polling - and

[18] Existing Commitments for Democratic Elections in OSCE Participating States, OSCE, ODIHR, Warsaw, October, 2003, 24-25; Proceedings of the 2001 Symposium: International Elections Monitoring: Should Democracy is a Right? Election Monitoring, Technology and the Promotion of Democracy: A Case for International Standards, 19 Wisconsin International Law Journal, Fall,2001, 353-367.

[19] Письма Плиния Младшего, книги I -X (Plini Secvndi Epistvlarvm, Libri I –X), Москва, 1982, кн.III, 20, 58.

for this reason, political finance affects almost every aspect of democratic politics in constitutional democracies. Thus, the reform of political finance regimes is very high on the agenda in all democratic countries, as greater transparency in political finance and accountability on the part of party leaders are essential for democracy. For this reason, it is crucial to discuss the standards that every system of political finance should try to meet, and that will encourage parties to undertake more transparent and accountable financial operations. Spending of money on banned purposes such as vote-buying, has been another of most primitive forms of abusing money in elections and distorting political representation.[20] This costly set of campaigning methods has a long history. Vivid depictions may be found in the novels of nineteenth-century British prime minister Benjamin Disraeli. Today it seems to occur most frequently in relatively poor countries, although it is found residually in some large U.S. cities as well. Candidates are expected to treat ordinary voters to gifts of various kinds, often including food and especially free drinks (in colonial British North America, this was known as "swilling the planters with bumbo"). Significant vote buying in countries ranging from Cambodia, Malaysia, and Taiwan in Asia, to Cameroon, Kenya, Uganda, and Zimbabwe in Africa, to Antigua and Barbuda, Costa Rica, Mexico, and Suriname in the Americas, and even in Samoa in the Pacific occurred. In the last local and municipal elections various disputes were triggered on vote and other election finance abuses in Bulgaria.

Classical liberalism and contemporary conservative outcry for deregulation have proved totally inadequate to the issues of modern political parties and electoral campaign financing. In order to preserve constitutional democracy, the rule of law, political pluralism, the common democratic constitutional European heritage and combat political corruption. As it was brought by political scientists James Kerr Pollock wrote in 1932 that "the relation between money and politics has come to be one of the great problems of democratic government. Healthy political life is not possible as long as the use of money is unrestrained."[21]

Regulation of party and election finances in contemporary constitutional democracies has been shaped within the range of options where on the both ends as diametrically opposing opposites stood the two antipodes Libertarianism and Egalitarianism. While Libertarianism prevailed in the US the dominant pan European method was Egalitarianism. The classical 'libertarian' approach to the issue considers parties to be civil society organizations immune from state intervention in their activities. This approach would suggest that parties have the right to regulate their internal affairs, including funding matters, without limitations and restrictions imposed by the state. Yet because of the danger of corruption, purist versions of this approach have fallen out of favor even in 'libertarian' models. Libertarians generally believe that the social status quo should be taken as a given and that the state should not attempt to equalize the chances of actors possessing unequal initial resources. If a particular actor has superior financial resources that have been legitimately acquired, he or she can bring these resources to bear in political competition, and in electoral campaigns in particular. In the USA, this libertarian logic is constitutionally entrenched in the principle that 'money is speech'; this gives unlimited electoral expenditure protection under the First Amendment, as a form of political expression. Therefore, limits on expenditure are prohibited in the USA, and limits on private contributions are acceptable only to the extent that they serve anti-

[20] "Planters" meant farmers; "bumbo" was a rum punch. I am grateful to Phil Costopoulos for reminding me that George Washington was a leading practitioner of this kind of "treating." His papers in the Library of Congress reveal receipts for rum to be used in campaigning in July 1758 in his first-ever political contest, for the Virginia House of Burgesses: 160 gallons to treat 391 voters., See **Michael Pinto-Duschinsky**, Financing Politics, Global View, Journal of Democracy, v.13,N 4, October 2002, 72.

[21] **Marcin Walecki** in Challenging the Norms and Standards of Election Administration (IFES, 2007), pp. 75-93.

corruption purposes.[22] Within the libertarian approach election financing has been perceived as a means of democratic participation in almost the same way as money contributions have been treated in Buckley v. Valeo as a free speech defended by the First amendment of the US constitution. Egalitarianism considers that the differences of wealth and financial resources, should be neutralized in the context of political competition. In terms of political finance, this neutralization is done through a variety of instruments, which fall into two major categories: state aid to help equalize the resources of the major political actors and the introduction of expenditure and contribution limitations designed to decrease the influence of wealthy political donors. The German model of political finance relies mainly on the provision of generous state aid for purposes of equalization; the UK model, after the reforms of 2000, relies on expenditure limits with the same aim. Most West European models could be described as 'egalitarian' (although to different degrees) insofar they consider state intervention directly affecting the resources of political actors to be legitimate. East European states generally follow this pan-European trend, and also tend to opt for egalitarian regulation of political finance.[23]

Depending on the type of the electoral system introduced two varying models of party finance have been established. In principle majority voting systems opt for candidate centered model, while the proportional representation prefers party centered model where not the individuals running for office but political parties are recipients of resources.

In multiparty pluralistic elections the availability of credible alternative choices depends on the political parties having secure opportunities for financing election campaigns and routine operations.[24] The legal framework of parties and candidates campaign financing consists of constitutional principles, laws relating to the financing of parties and candidates, normative complexes in the electoral legislation or the parliamentary statutes on political parties in separate laws.

In contemporary political systems basically there are two forms of funding of parties and candidates: **public funding** and **private funding**, with contributions coming from national but sometimes also from foreign sources.

The legal framework may provide for electoral campaign financing on the basis of the following internationally-recognized standards:

- That there should be a transparent system of disclosure of the funding received by any party or candidate;
- That there should be no discrimination with regard to access to public funds for any party or candidate;
- That public funding should be made available to parties on an equitable basis; and
- That there should be a level playing field among the parties or candidates.

Public funding

Payment of direct financial subsidies to candidates or to political parties from public funds is gradually becoming the norm.

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22 **D. Smilov**, Party Funding, Campaign Finance and Corruption in Eastern Europe, in Political Finance and Corruption in Eastern Europe, ed. **D. Smilov and J. Toplak**, Ashgate, 2007, www.ashgate.com, 4.

23 Op.cit., 4-5

24 The following restatement of standards on contemporary election financing is based on the Electoral Standards Guidelines for reviewing the legal framework of elections Guidelines Series

http://aceproject.org/ero-en/topics/election-integrity/UNPAN016077.pdf/view.

The main forms of indirect public funding could be one or more of the following:
- Free broadcasting time;
- Various types of state payments and facilities made available to members of the legislature;
- Use of government facilities and public personnel;
- State grants to party foundations; and
- Tax relief, tax credits and matching grants.

The distribution of direct public funds for political parties or candidates may be based on several criteria. Some of the main criteria are:
- The grant may be a proportion of actual expenditure where the receipt of public money is conditional on the party or candidate also raising money from private sources.
- The grant to parties may be proportional to their votes in the previous general election.
- The grant may be proportional to the number of each party's seats in the legislature.

If the legal framework for elections provides for public funding, it should be provided on the basis of equity. This does not mean that all political parties and candidates are to receive an equal amount of campaign funds. Provisions for public funding should be clearly stated in the law and based on objective criteria that are not open to subjective interpretation by government authorities.

Additionally, the legal framework should ensure that state resources are not used or misused for campaign purposes by the party in power. The legal framework should specifically provide that all State resources used for campaign purposes, such as state media, buildings, property and other resources, are also made available to all electoral participants on an equitable basis.

Private funding contributions consist of the following main sources :
- Membership subscriptions;
- Donations to political parties or candidates by individuals;
- Funding by institutions such as large business corporations, trade unions etc; and
- Contributions in kind by supporters.

Where there are provisions in the legal framework for elections relating to private contributions to campaign expenses incurred on behalf of parties and candidates, these should be so designed as to ensure equality of freedom to raise private funds. Furthermore, these provisions may include limits on contributions in order to "level the campaign playing field" to a reasonable degree, taking into account geographic, demographic and material costs. However, the enforceability of such provisions must be kept in mind while framing or assessing such provisions.

Expenditure control

The legal framework may control the election expenditure of the parties and candidates in order to bring about some semblance of an equal chance of success. Certain financial limits may be prescribed for varying levels of elections: presidential, legislative and local. Parties and candidates are then periodically required to file statements and reports of election expenditure to the monitoring organization, which in most jurisdictions is the EMB. However, some jurisdictions do not restrict election expenditure (as is the case in the USA), regarding it as an unconstitutional curtailment of the fundamental right to freedom of speech and expression.

Reporting and disclosure requirements

Limitations on contributions or campaign expenditure are meaningless without transparent reporting and disclosure requirements. The legal framework should require periodic reporting at reasonable intervals of all contributions received and expenditure incurred by an electoral contestant. Penalties for failing to file reports or filing erroneous reports also should be clearly stated in the legal framework and should be proportional to the gravity of the offence. For example, candidates should not be disqualified from contesting elections or taking their seats, if elected, due to minor reporting irregularities. The legal framework should specifically identify the agency responsible for receiving, compiling and holding campaign contribution and expenditure reports. The legal framework should clearly specify where and when such reports are available for public inspection. The law should also permit the public access to campaign contribution and expenditure reports so that the contents will be available to other interested parties, candidates and voters. Often there are too many laws and too little enforcement. As an experienced authority in this field Michael Pinto-Duschinsky has keenly observed that it is dangerous to assume that the problems of political financing are amenable to simple legislative remedies. There should be more stress on the enforcement of a few key laws such as those on disclosure, and less on the creation of an ever-expanding universe of dead-letter rules.[25] Fourth, there is an urgent need for investigation into the facts of For political financing to be effective, the legal framework should provide mechanisms for monitoring and enforcing compliance with political finance laws.

Corrupt political financing usually refer to one of the following:

Political contributions that contravene existing laws on political financing.

Illegal donations are often regarded as scandalous, even if there is no suggestion that the donors obtained any improper benefit in return for their contributions.

The use for campaign or party objectives of money that a political officeholder has received from a corrupt transaction. In such a case, all that differentiates corrupt political funding from other forms of political corruption is the use to which the bribe is put by the bribe-taker.

Unauthorized use of state resources for partisan political purposes. This is a commonly noted feature of ruling parties' campaigns in established and developing democracies alike. Invitations to White House coffee receptions and sleepovers in the Lincoln bedroom were among the more innocent ways in which U.S. president Bill Clinton used a public resource to raise funds for his 1996 reelection campaign.

Acceptance of money in return for an unauthorized favor or the promise of a favor in the event of election to an office.

Contributions from disreputable sources.

Spending of money on banned purposes such as vote-buying.

[25] **Michael Pinto-Duschinsky**, Financing Politics: Global View, Journal of Democracy, vol. 13, No. 4, October 2002, at 85.

How the Principles of Financing the Elections Have Been Functioning in Central and East European EU Member States

Legal frameworks of election and party financing consisting of constitutional principles (rule of law, popular sovereignty, separation of powers, political pluralism), parliamentary statutes on elections and political parties, judicial decisions and rules established by the bodies managing the elections were shaped to the large extent of 3 normative sources :

- comparative standards and good practices established in the western constitutional democracies and established in the common constitutional heritage of Europe ;
- soft law of the Council of Europe;
- political criteria of the full EU membership and monitoring process from the EU on the progress achieved by the candidate countries to full EU membership.

These sources fuelled the development of the legal regulation of the election financing systems acted not in a simultaneous but rather on consecutive way. Initially after the abolishing of Communist party leadership role declared in the constitutions and defacto monopoly of political, economic and cultural life and by introducing political pluralism legal transplants were carried in 1990 by reception from the 1968 German pateigezets and the Austrian law on political parties. Financial regulations were also drafted with the adoption of the first electoral laws. In the first wave of the regulation of party and election finances on the enthusiasm of the emerging democracy libertarianism model was embraced and was predominant in political life of the emerging democracies in Central and Eastern Europe. Of course this model was adapted to the realities in the post communist societies where privatization was to start, the state run economy was in collapse and there was no private banking sector.[26] Electoral campaign context or landscape in CEE was completely different from that in the Western Europe and the US constitutional democracies.

Contributions from private funding was scarce and it was supplemented by public sources like borrowing of interest free loans.

In the area of party funding and campaign finance, the constitutions have been virtually silent, and left the regulation of this issue to the national legislatures.[27]

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[26] This Part of the present report relies mostly and draws from several sources CAMPAIGN FINANCE IN CENTRAL AND EASTERN EUROPE Lessons Learned and Challenges Ahead IFES Reports Janis Ikstens, Ph. D. Daniel Smilov, Ph. D. Central European University Marcin Walecki, M.A.St. Antony's College, Oxford University2002 IFES

www.ifes.org/publicationscfinst.org/Community/files/folders/organization_reports_studies

Political Finance and Corruption in Eastern Europe, the transition Period, ed. D. Smilov and J.Toplak,Ashgate,2007, www.ashgate.com; M. Walecki, Money and Politics in Central and Eastern Europe, M. Walecki, The Europeanization of Political Parties: Influencing the Regulations on Political Finance, EUI, Working Paper Max Weber Programme, N 2007/29; This part of the report is influenced by my practical experience and observation as an legal expert to the National Round Table, The Grand National Assembly Constitutional Committee, Parliamentary council on Legislation, Chairman of the Legal Council of the President of the Republic of Bulgaria and a constitutional justice. I am also indepted to the lessons I learned from being advised by foreign leading authorities in the area of constitutional law and as well from my own practice of constitutional and legal advising for Tajikistan, Kirgizstan, Albania and Baltic states on CEELI ABA, UNDP,OSCE and IFES, requests.

[27] The regulations related to the financing of political parties, presidential candidates and parliamentary campaigns may be conveniently listed under following categories, ranked by the frequency with which they occur in the post-communist countries:

(1) free radio and/or television broadcasting (for candidates and parties) 100%

(2) subsidies-in-kind (grants to party groups in the legislature, free postage for election literature, free use of public buildings, etc.) 94%

(3) disclosure regulations (requirements to submit for official scrutiny and to publish financial accounts) 88%

During the early 1990s legislators in most of the post-communist countries were not able to regulate the institutions of political parties on a specific or long-term basis, in particular the institution of political finances. The inadequacies of the early funding regime led to the growing dissatisfaction with the systems and their future reforms, before even a decade of democracy in post-communist Europe had past. The lack of complete regulations on political party financing had a significant influence on lowering standards in public life, and in the growth of political corruption. All the substantial issues related to the system of party funding were deferred to a much later date.

Regulations and Sources of Funding

In CEE, the regulatory frameworks have attempted, with varying degree of success, to: (1) prohibit certain sources; (2) limit individual or group donations to candidates or parties; (3) introduce direct and indirect state subsidies5.

Foreign donations

Due to their recent history, most of the post-communist countries were sensitive to external political influences. For this reason funding of politics from foreign sources was disliked by the legislators. Generally speaking, Political parties were, banned from receiving foreign donations in all Central European countries except Croatia, Bosnia and Herzegovina and the Czech Republic. Regulations concerning foreign contributions are mostly restrictive and negative, i.e. they limit foreign donations in both quantitative and qualitative ways. The most common limitation imposed is one of funding prohibitions on foreign governments. In Lithuania, Poland, Russia and Ukraine, political donations cannot be accepted even from companies with foreign investments. In Bulgaria, political parties may receive donations from foreign citizens up to $500 (donations from single individuals), and up to 2000 $ (donations from a group of people). However, no more than one donation may be received from the same person or the same group of people within a calendar year. In Lithuania, political parties and political organizations may be funded by Lithuanian citizens residing abroad, and political party organization divisions established in locations inhabited by Lithuanian communities. Finally, some countries, including Russia, ban political contributions from any stateless person.

Anonymous donations and contribution limits

In Central Eastern European countries, the regulatory frameworks have also attempted, with a varying degree of success, to prohibit certain sources and limit the amount of permitted contributions. Firstly, the two most common prohibitions on sources concern state enterprises and anonymous donations. Lithuania, Russia and Ukraine have also prohibited corporations with shares belonging to the State or Local Government from making political

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(4) complete or partial bans against foreign donations 82%

(5) direct public funding of parties and/or candidates 76%

(6) spending limits (on parties and/or candidates) 59%

(7) contribution limits (restrictions on the amounts permitted as donations to election campaigns or to parties) 47%

(8) tax relieves (income tax relieves, tax credits, matching grants on political donations) 24%

(9) bans on paid political advertising 18%

The statistics indicate that, in general, political money is a subject to greater regulation in post-communist countries than in established democracies. However, when it comes to regulations and subsidy systems in Central and Eastern Europe the issue of enforcement is the main weakness.

contributions. Moreover, in Lithuania, political parties and political organisations also cannot receive any donations from trade unions, charities, foundations and religious organisations. Secondly, of the CEE countries, almost half, including Bosnia and Herzegovina, Bulgaria, Latvia, Macedonia, Poland, Romania, Russia and Ukraine, have introduced limits on contributions to parties and/or individual candidates in the elections.

Most post-communist countries have opted to prohibit anonymous donations. However, Bulgaria, and Lithuania have taken the view that reasonable amounts of anonymous donations cannot undermine the democratic process. The Polish legislation makes an exception for the presidential elections - anonymous donations are to be deposited in bank accounts as separate from the rest of campaign funding. Bulgarian laws stipulate that anonymous donations must not exceed 25% of the total party income. In Lithuania, a single anonymous donation cannot exceed USD 25, but the total of these donations is not limited.

Setting limits on campaign expenditure is not an ideal legal mechanism that all regimes in the process of democratisation should utilize in attempting to regulate campaign finance. The regulation of political expenditure generally involves restrictions concerning direct vote buying or limitations on the expenditures of political parties or individual candidates (both parliamentary and presidential). Particularly in authoritarian regimes, imposing own and strict limits on campaign expenditure might marginalize opposition and as a result aid the non-democratic regimes. Furthermore, in some CEE countries the artificially low legal limits on permitted campaign spending makes the reporting of political party expenditure irrelevant. Limits on the permissible amount of campaign expenditure are a common feature in nearly two-thirds of the post-communist countries ; such limits are applied either by determining a ceiling or by applying a formula (for instance, a multiple of the average monthly wage).

In terms of regulating campaign spending, only 18% of the Central Eastern European countries have prohibited parties or candidates from purchasing advertising time on television. Only Bosnia-Herzegovina, and Slovakia have introduced a ban on paid political advertising, while Poland has introduced limits to such expenditures the opponents of the paid advertising ban claim that such regulations on the coverage of the campaign not only clearly limit the possibilities for media to inform comprehensively and objectively on elections but might marginalize opposition and as a result aid the non-democratic government by allowing it to take advantage of state controlled TV. They argue that in countries where there is a problem of interference with the election process and the use of public media for the advantage of particular electoral contestants, allowing limited paid advertising can contribute to more open and lively political discussion.

Public Funding

Public subsidies for political parties have already become a dominating feature of most democracies, being used in 78 per cent of Central Eastern European countries.12 However, the debate on direct subsidies continues to this day, in spite of the fact that their various forms have been in operation for decades.13For most of the post communist countries, public funding of parties and candidates (either in the form of reimbursement of electoral expenditures, or annual subventions) has been the only effort to diversify the sources of political money, and decrease the plutocratic influence in politics. Generally, two major types of model have emerged in the region – one with significant public funding, and one with predominantly private funding coming mainly from corporate sources, or wealthy individual donors. It should be noted, however, that both of these models exhibit sustained legislative efforts to equalise the chances of political contestants in financial terms: the countries without public funding, as a rule, feature various contribution and expenditure restrictions, free air-time on electronic media, and some forms of in-kind support for parties and candidates.

Formally, only Latvia, Moldova and Ukraine have not envisaged forms of public funding during the transition in 19910ies. Yet, countries such as Bulgaria and Russia provide only nominal financial support, covering a tiny fraction of political expenditures. In other countries, such as Albania, public funding has been introduced very recently, and any conclusions about the actual characteristics of the model will be premature. In the case of Belarus, where public funding of candidates in elections has been fully within the discretion of the president of the country – whether public funding in this case is an element of democratic government or an instrument to suppress and control the opposition is an open question. One possible explanation for refraining from giving direct state support to political contenders is a lack of state resources at the time of adoption of the relevant legislation, which led to a lesser involvement of the state. However, the absence of state subsidies may be related to an existence of one or two major parties that have access to rich corporate funding and try to frame political competition in a particular way.

Of course, it could be argued that public funding has disadvantages of its own and that it is an unsatisfactory solution - even if it may be seen as a necessary one - to the fundamental problem – the lack of popular participation in political life. One problem with the introduction of significant public funding, for instance, is the "étatisation" of the political parties, which become dependent on state subsidies, and progressively alienated from their voters.

On the other hand, in certain cases, the choice of a model without significant public funding has been dictated by the desire of the governing parties or politicians to preserve their advantages.

Disclosure and Enforcement

There are two ways of controlling political finance: (1) disclosure, and (2) legal enforcement; these are not exclusive of each other. Legal enforcement involves creating a system through which cash flow in politics is directly controlled. The system generally operates in a restrictive and negative way, i.e. it limits political donations in both quantitative and qualitative ways. Disclosure of political donors and reporting on political funds provides the necessary information to allow control over political money to be regulated by public opinion. The recent study by Pinto-Duschinsky has demonstrated that, in comparative terms, the Central and Eastern European countries have introduced more regulation in the area of public disclosure than Western Europe and the Americas. Different Central and Eastern European countries exercise dissimilar strategies in order to enforce public control of political money. In the first stage of democratic transition most of the post-communist countries adopted a more *laissez-faire* stand towards the control of political finance. Liberal regulations were a natural response to the former communist system, and represented a rejection of its restrictions. The extent of regulations varied considerably between different countries, as did their enforcement. The reporting of political expenditures is a common feature in almost all the countries reviewed in this study. The only two countries where political parties need not reveal their income and expenditure accounts are Albania and Belarus. However, there are different approaches to the control of political finance in Central Eastern Europe. In Bulgaria, Croatia and Macedonia political parties must disclose their overall accounts but need not identify individual donors. In the twelve or fifteen other countries covered by this article, both accounts and lists of donors must be revealed. Moreover, Lithuania has gone to the length of making financial records of parties and individual candidates available to a wider public on its Internet website. The Central and Eastern European experience confirms a general point – 'Too many rules. Too little enforcement.' First, theoretically well-intentioned regulations requiring the production of financial statements are not necessarily effective if they fail to cover all aspects of party funding. It is of little value to demand disclosure only of particular categories of political financing. This will merely encourage the use of sources of money not subject to disclosure. Second, the lack of an independent enforcement agency is a most serious weakness that undermines the working of a successful system. Moreover, penal

codes of several countries simply lack sanctions for violations of party finance rules, or they are rather symbolic.

The distinctive feature and most serious problem of Central and Eastern European countries is that elected officials frequently use government resources for their personal campaigns and for their political parties. So-called 'administrative resources' are based on special treatment by local administration, state-owned media, and directors of state owned enterprises and state-funded organizations. despite the pro-governmental bias leading to a growing gap in the funding of the governmental and opposition parties, electoral 'surprises' do happen in Eastern Europe on a regular basis. Instructive is the case in Bulgaria, where the financial might of the Socialist in 1997, and the UDF in 2001 did not save them from bitter electoral defeats. Meciar's party in Slovakia, and Tudjman's supporters in Croatia also lost key elections despite their long stay in power and the opportunity to accumulate huge resources. In some extreme cases, like the last parliamentary elections in Poland and Romania, the ruling parties could not enter the legislature at all. What is more, new major parties do appear all around the region, and in some extravagant cases they even manage to win parliamentary elections – King Simeon II's movement in Bulgaria is an interesting, although probably aberrant example. This evidence speaks against attributing too much influence to the mechanisms and abuse of party funding rules on the political process in the countries of Central and Eastern Europe.

Sparse laws

In most of the Central and Eastern European countries the party and election-related political finance legislation is fragmented across a number of legislative acts. Such regulations are not only confusing but, in most cases, contradictory and creating gaps. One possible option would be to integrate the various election laws and procedures into a single election code.

. **Unrealistically low spending limits**

The examples of regulations in many post-communist countries show that spending limits have proved in practice to be a fiction, having been introduced at an unrealistically low level. Not only have they failed to curb a political finance "arms race", but their failure has also undermined confidence in the whole system of political finance regulations. Such regulations limiting the scope of a campaign might marginalize opposition and aid the government. Interference with the election process throughout low spending limits can contribute to political censorship. In addition, the unrealistic spending limits corrupt the whole reporting system and make it difficult to assess the true levels of expenditure. Finally, when introduced, the limits should be index-linked. In order to discourage any of the parties to manipulate this figure, the limit should not be raised or lowered except on the specific recommendation of the independent enforcement agency.

. **Independent expenditure**

Another problem in controlling expenditure is independent political campaign spending. Most of the countries did not apply direct limits on independent groups spending money on behalf of a political party or presidential candidate during a campaign. The unrealistically low limits on campaign spending and funding restrictions on certain sources encourage parties to create a large number of small front organizations, so-called 'third-parties' through which campaign fundraising and expenditure can be channeled.

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Access to media

For post-communist countries, free access to the news media and fair coverage of the election are serious problems. There are many indications that opposition forces have limited access to the media and also, that independent media are harassed. These practices include: media outlets, critical of the government are subjected to harassment, including financial investigations; the state-controlled media demonstrate a serious pro-government bias. Such regulations on the coverage of the campaign not only clearly limit the possibilities for the media to inform comprehensively and objectively on elections, but might also marginalize opposition and aid the government by allowing it to take advantage of state-controlled TV. Interference with the election process and the use of public media for the advantage of particular electoral contestants should be investigated expeditiously and authorities should be forced to impose disciplinary action.

Conclusions

A decade after the collapse of communism, the time is ripe for a re-examination of the ways in which the right to vote and political representation in Eastern Europe have been institutionalised. Who are the actual beneficiaries of the competitive elections, which have been established in the region? Is the political process open to a plurality of interests? Are there systematically excluded minorities? Few of these questions can be answered meaningfully without a careful study of the regulations and practices of party funding and campaign finance, which have been developed in Eastern Europe. Without such an examination, one cannot be sure that the right to vote and political participation have a different fate from that of the quickly forgotten constitutional social commitments. From this perspective, the first troubling tendency in the region is that little attention is being paid to the issue of party funding and campaign finance as a constitutional matter affecting the very fundamentals of the democratic order. A clear demonstration of this is the fact that the CEE's constitutional courts, although being very active in other areas, have, with a very few exceptions, avoided the 'political' questions of party and campaign finance. Legislatures have enjoyed broad policy discretion in the adoption of rules on political finance, with no serious input or oversight either by civil society, or a judicial body. Not surprisingly, this situation has led to the production of legislation, which contains many provisions:

- Aiming mainly to express a certain ideology;
- Attempting to establish the dominance of the pro-governmental parties, and oppress the opposition;
- Creating loopholes and lack of transparency to maximise the advantages of the major parties or political actors.

The ideology expressed by the predominant majority of the political parties and campaign finance laws in the region contains a bias towards egalitarianism and regulation. The review of such laws has found that all of the countries covered provide for free airtime during campaigns, most have schemes of public funding and require some public disclosure of political funds. Contribution limits, and spending limits are common, though by no means universal. All these measures and techniques are traditionally employed to equalise the chances of different contestants in the political process in financial terms, and to reduce the impact of personal and corporate wealth on politics. In comparative terms, Central and Eastern European countries have introduced more regulation in the area of public disclosure than Western Europe and the Americas. Finally, the American-style libertarian argument of 'money is speech' has been entirely absent from the Eastern European political scene – radical libertarian principles of legitimation have not been used in the area of party funding and campaign finance, despite the prominence of neo-liberalism in parts of the region. The demonstrable ideological bias in favour of egalitarianism and regulation probably has a historical explanation: the combined effect of the communist legacy and the influence of

political and legal ideas from Germany, Austria, and France. Yet, if one looks beneath the common ideological surface of the developing models, one finds different patterns of funding of politics.

Eastern European countries have failed to develop a diversified system of funding sources. In most CEE countries, money for politics comes principally from corporations or large individual contributors. Small donations are as a rule not encouraged in the CEE by forms of tax credit, by matching grants (which make state subsidies dependent upon parallel private fundraising), or by targeted tax relief on small political donations. Despite the low levels of income from membership subscriptions, there are no legislative efforts to encourage the parties to extend their membership base – state subsidies are as a rule tied only to electoral performance and parliamentary representation.

The egalitarian expectations for a well egulated system of political finance reflecting just social principles, which the majority of Eastern European party funding models create, lead the public to bitter disappointment in the cases of irregularities, and to all-too quick conclusions that the ‘system is rotten as hole’. The series of unending 'reforms' in a number of post-communist countries illustrate the complexity of such attempts. Success of any political finance reform requires the creation of a comprehensive and efficient regime consisting of three basic elements: 1) system of public financing, 2) adequate transparency, 3) an enforcing agency backed by legal sanctions.

Yet, it is hard to develop a satisfactory system of political finance for the inadequate enforcement. Laws on funding of parties and campaigns require effective supervision and implementation. Experience from Central and Eastern Europe shows contrast between very ambitious laws and absence of any enforcement of them. However, laws are more likely to be enforced if they are realistic. According to Paltiel: “Enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings. Anything less is a formula for failure.” However, strong enforcement mechanisms (including tax inspection and police) can be used by the non-democratic regime to deprive the opposition of the right to participate effectively in the electoral process. The creation of an oppressive political finance system that is not controlled by a non-partisan enforcement agency might undermine the whole idea of free and fair elections, as harassment is an inherent feature of such political conditions. It is strongly recommended that an entirely independent body responsible for overseeing party finance be created.

Independent enforcement demands an agency endowed with sufficient resources to supervise, verify and investigate. Yet, in some post-communist countries politicians prefer public money with as little public control as possible. The newly created political finance systems should not be left without a strong enforcing agency, if no additional financial resources are provided to meet new responsibilities. The agency’s budget should preserve its impartiality, independence and professional conduct. One of the fundamentals of the independence of the agency would be the stability of its financial situation. A mechanism should be developed which stresses its autonomy while at the same time retaining a degree of accountability to Parliament for the proper use of public funds.

Proposals for Reform

Most of the proposed reform measures have already been summarized in several groups.[28]

Policy Recommendations Related to the Lack of Transparency Standard Measures

In order to tackle the problems associated with lack of transparency, there are standard sets of measures recommended to the Eastern European countries by international donors and EU and Council of Europe structures. These typically include some combination of the following:

- stricter sanctions for violation of disclosure, contribution and expenditure rules;
- more detailed disclosure requirements;
- contribution and expenditure limits to cut the cost of politics; a ban on anonymous donations;
- sufficient public funding in order to alleviate financial pressure on parties;
- the creation of administrative watchdogs;
- the introduction of lobbying rules and registers;
- tighter regulation of party-related foundations and NGOs;
- conflict-of-interest legislation;
- registration of individuals and bodies exhibiting electoral expenditure above a certain limit;
- the involvement of civil society monitoring groups; and sponsorship of investigative journalists.

The problem with this set of measures is that it relies on an efficient state apparatus, as well as on a vigilant civil society and on professional, respected media. None of these really exist in Eastern Europe, in parts of it anyway. So-called 'weak states' could hardly afford the efficient enforcement of complex party-funding rules. In countries with huge gray economies, it is especially unrealistic to expect the introduction and enforcement of heavy sanctions and detailed rules. The countries of Central Europe, the accession countries in particular, are in a better position in this regard. In the rest of the region, it would probably be vain to seek ever-greater transparency of political finance. As far as civil society is concerned, one problem for the region at large is low mobilization and lack of trust in NGOs, particularly in the countries most affected by corruption and lack of transparency. For this reason, entrusting civil society with the monitoring of party funding may not be fruitful after all.

Policy Recommendations against Forms of Structural Bias and Governmental Favoritism (in particular, Russia, Ukraine, Macedonia, Serbia, Bulgaria, Albania, Slovakia, and Croatia)

a) Elimination of patronage appointments of directors in the economic sphere (public enterprises). Introduction of open competitions for managers;
b) Reduction of patronage practices in the public administration, and the introduction of genuine competitions for administrative posts;
c) Elimination of significant governmental involvement in judicial appointments;
d) C lose monitoring for abuses of administrative resources for partisan purposes;
e) R reduction of the number of licensing regimes in the economy;
f) Revision of the rules of public finance in order to avoid problems of 'authorized banking';
g) Parity between government and the opposition parties in the public electronic media, especially in cases where these public media control large sections of the electronic market;

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[28] D. Smilov, *Party Funding, Campaign Finance and Corruption in Eastern Europe,* Political Finance and Corruption in Eastern Europe, the transition Period, ed. D. Smilov and J. Toplak, Ashgate, 2007, www.ashgate.com.

h) Parity between government and the opposition in the bodies conferring licenses for private electronic channels;
i) A ban on economic activities by political parties, except for the running of publishing houses;
j) Public funding for opposition parties in order to reduce incumbency bias. The logic underlying these recommendations is to loosen the grip of the government over those areas of public life that should be relatively independent of government interference, such as the economy, the judiciary and the public media. The trouble with these recommendations is that they may require significant, sometimes even constitutional, changes. Another problem is that they do not impact merely on the issue of political finance; they would also affect the operation of the political regime as a whole.

Policy Recommendations related to the Lack of Representation

a) Public funding (up to at least half of the income of the parties), but;
b) Public funding given to parties through the matching of funds, by which *small donations and membership dues* are matched by the state;
c) Tax benefits (credits) encouraging small donors;
d) T targeted state support for developing 'direct mail' and other popular funding schemes;
e) A ban on corporate donations?

The rationale of these recommendations, most of which are formulated on the basis of the German political finance model, is to stimulate democratic participation. Public funding should be used as a stimulus for greater popular participation, and not only as a means of strengthening the political parties. Of special interest is the proposed ban of corporate donations. This would undoubtedly be unpopular in Europe, although is an established principle in the US. An already-mentioned difficulty for this suggestion in the eastern part of the continent is that it would necessitate a large pool of small donors in many countries, a problem on account of widespread poverty and low standards of living. However, it will be difficult to implement fund matching, tax benefits and direct mail solutions as well.

Non-orthodox Measures

If the observations in the previous section are accurate, there is a general sense of dissatisfaction with the impact of 'traditional measures'. Their potential already seems exhausted in the case of Eastern Europe, and some alternative measures to improve the transparency of political finance practices are called for. Here, some possibilities are suggested.

First of all, along with the comprehensive, holistic approaches of the party funding models in East European countries (those required by the Council of Europe recommendations, for instance), it may be productive also to adopt a number of ad hoc measures targeting particular pressing problems. Thus, when there is a massive privatization campaign, there should be special measures to prevent the giving of kickbacks from that privatization to government parties. For example, all firms applying to purchase state assets should, as a necessary precondition for the launch of the procedure, be obliged to disclose any political donations they may have made. In this way, the cost of enforcing the transparency measures would be divided between state bodies and the participants in the privatization auctions; these participants would also have an incentive to find out whether their competitors had complied with the rules. Such procedures could be envisaged for procurement tenders as well: if a competitor is shown to have violated the rules, he or she could be disqualified from the tender, and even banned from additional procurement tenders for a period of time. In the same vein, if the government adopts a decree that makes changes to important economic regulations (e.g. customs regulations), it should be obliged to provide a list of the companies affected that have made donations to governing parties

over the previous two years. If the government fails to list some of the companies, the decree should be subject to invalidation by the relevant (administrative) court or courts. Furthermore, if a majority in parliament adopts legislation with a bearing on the interests of corporations, a list of affected corporate sponsors of the majority party or parties should be disclosed and appended to the bill at the committee stage. If the parties fail to mention some of the donors, the opposition should be able to seek the suspension of any state subsidy for the majority party or parties for a period of time. Another possibility is for the opposition to be able to block the bill at the committee stage should a complete list of donors be lacking. Of course, these are general suggestions that need creative adaptation to the specificity of concrete constitutional models. But their main advantage is that they divide the costs of enforcing transparency regulation between the state and other interested parties. An additional, crucial, advantage of this approach is that it targets real problems (such as the purchase of government favors) rather than pursuing transparency for its own sake.

Secondly, the increasing of accountability within the political parties (internal democratization) should be considered. This is a problematic measure because it requires intervention in the internal affairs of political parties. Yet the problem is serious, because in Eastern Europe only a very narrow circle of people knows the real situation with regard to a political party's funding. Often, even members of the leadership have no idea of the actual funding practices. The pan-European party organizations of the social democrats, liberals and Christian democrats should introduce precise internal rules concerning transparency, as well as strict conditions for the acceptance and membership of East European partners. Especially in countries with severe problems with organized crime, such as the Balkan and former Soviet republics, West European partners should require the keeping and punctilious observance of blacklists of potential donors widely suspected of links with organized crime. In general, political parties should be obliged to devote serious *internal* attention to the problems of political finance; the initiatives for greater transparency should come from them, and not simply under pressure from the public (which in Eastern Europe has been very lenient to them anyhow).

Thirdly, it has been argued that the choice of electoral system has an impact on the level of corruption. Majoritarian systems, and systems of proportional representation with open lists, seem to create a greater degree of transparency. If this is so, it could be argued that 'candidate-centered' models of campaign finance increase immunity to corruption. This is also plausible intuitively, since candidate-based systems make individual candidates responsible to their voters, and transparent campaigning is an electoral asset in an age concerned with the issue of corruption. Even so, one should be careful not to exaggerate the advantages of this option, or to overlook its drawbacks. In candidate-based systems, campaigning tends to concern local issues, those affecting the narrow interests of the voters of a particular district. Also, in these systems campaigning may focus excessively on the personal integrity of candidates, at the expense of the public good. So although in candidate-based models there may be some benefit in terms of transparency and the occurrence of corruption, it comes at the cost of restructuring the problems of political competition. Since such a restructuring would seem to be detrimental to the public good, the promotion of such models should be approached with great caution. Proposed political finance standards in the area of disclosure include:

> i. Any political finance system should require comprehensive disclosure of all financial transactions.
> ii. Receipts: the party or candidate should disclose the amount and nature of each contribution (i.e. whether cheque, cash or non-monetary ["in kind"]), and the identity, address and employer/business of each contributor.
> iii. Expenditures: the law should require disclosure of all spending, including the date and amount of expenditure and its recipient, and all debts and liabilities incurred by the committee.

iv. Loans/advances: the law should also require the disclosure of loans and advances received by the party, including the lender's identity and business/employment, the date and amount of the original loan or advance, and the date when the loan or advance was repaid.
v. Timing: ideally, election reports should be submitted and published from one week to 10 days before an election, and following an election (usually 30 days after the election).

B. Internal (political party) Control
i. Political parties should be encouraged to adopt their own procedures to eliminate dishonest politicians and prevent their financial misconduct. Detailed and persistent internal control mechanisms can provide a crucial foundation for efforts to contain the abuses that are always liable to occur, regardless of the sophistication of legal frameworks.
ii. Political Finance Regulators should encourage political parties to comply with requirements for professional and accurate bookkeeping.
iii. Political parties (or even candidates) should consider appointing specific officials — "financial officers" — who might: 1) keep complete and accurate records of financial activities, 2) submit reports about financial activity to the relevant bodies, 3) approve all contributions for compliance with legal restrictions; and 4) follow accepted accounting procedures in performing record-keeping and reporting duties.
iv. The law should require each party or candidate to authorize one particular committee, and designate one specific individual, serving as the financial agent ("treasurer"), to be responsible for all receipts and expenditures of that political entity.
v. Any political party or its committee should use only one bank account, which is fully reported and disclosed to the PFR, for all financial transactions. By permitting only one conduit for all financial activity, the law thus enables the PFR to effectively "follow the money" and track political finance activity.

C. Enforcement / Regulatory Regimes
i. An ideal enforcement mechanism should not only include a controlling body but might require a comprehensive system consisting of all the components found in a system of justice, namely: investigation, Challenging the Norms and Standards of Election Administration 91 prosecution, adjudication, and sanctions.
ii. The status of the body entrusted with overseeing a political finance system clearly has an impact on the effectiveness of control of the political finance system, as well as on public confidence in it. There is also an important factor of independence which should always be taken into consideration.
iii. The effectiveness of any system will also depend on the cooperation of the various stakeholders, and relies on the monitoring mechanisms provided by parties' financial agents, auditors, banking institutions, government bodies, anti-corruption watch-dog organizations, and the media.
iv. An effective political finance regulatory system also incorporates four other elements that aid the enforcement function: Auditing; External Complaints; Investigation; and Sanctions.
v. In order to function properly, the enforcement agency must also remain independent and possess adequate resources to monitor and investigate party/candidate finances. Its autonomy and independence must be supported by its budget, but it, too, should be accountable to Parliament for the proper use of public funds.
vi. An accountable system of political finance presupposes that other democratic institutions are sufficiently organized to discipline political actors, and may need to be reconsidered where such conditions do not exist. In countries where a strong and independent PFR is feasible, the following recommendations could enhance enforcement:

1. Obligations, offences and penalties must be clearly identified in law. The PFR should outline clearly who is to be held accountable for which infringement of the law.
2. Lawmakers must anticipate that parties and candidates will seek ways to get around limits and disclosure requirements. Therefore violations and the corresponding penalties should be clearly provided for in the law. At the same time, it should be recognized that penalties such as fines or imprisonment are not the only response, or even the best response, to some types of infractions. Other avenues, particularly administrative sanctions, can often be more effective.
3. The system should encourage political parties and candidates to monitor their own financial activities, prevent financial misconduct, and comply with the requirements of professional bookkeeping and reporting.
4. Sufficient resources - in the form of training, consultations, and professional personnel offered to the regulated community – are also necessary to enable timely and effective reviews and audits.
5. Enforcement requires that an enforcement agency has the capacity to monitor for compliance, review and audit financial reports, investigate alleged infractions, negotiate and, where necessary, apply the appropriate penalties.
6. Public trust and participation are fundamental to any effective enforcement regime. External complaints should be encouraged and treated seriously. Political Finance

D. Engaging External Stakeholders

i. An effective political finance regulatory strategy must also engage external stakeholders in the process of monitoring political finance. External complaints of suspected wrongdoing are essential to detect violations. In an ideal system, civil society organizations, journalists, and even individuals who believe that a violation has occurred, or is going to occur, should be able to file a complaint to the regulatory agency.

ii. The complaints process can require a formal, written document satisfying specific criteria for a proper complaint, or can have a more liberal character, with the enforcement agency taking action based on press articles or informal allegations. In transition regimes, and particularly in post-conflict societies, voters who are in the best position to observe questionable campaign practices may be the most reluctant to come forward with a formal complaint, since they often fear reprisals. Therefore, in order to encourage individuals to share information some political finance systems even give the enforcement agency the discretion to act on information it receives anonymously.

iii. It is essential that countries invest in public awareness campaigns, media training, and other forms of educating external stakeholders on political finance regulations and on the process for filing complaints.

Appendixes: International Standards

While the general issues of voting rights and elections have been provided in the international hard law financing of the electoral campaigns and political parties is treated in the soft law provisions.

I. Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns *(Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that political parties are a fundamental element of the democratic systems of states and are an essential tool of expression of the political will of citizens;

Considering that political parties and electoral campaigns funding in all states should be subject to standards in order to prevent and fight against the phenomenon of corruption;

Convinced that corruption represents a serious threat to the rule of law, democracy, human rights, equity and social justice, that it hinders economic development, endangers the stability of democratic institutions and undermines the moral foundations of society;

Having regard to the recommendations adopted at the 19th and 21st Conferences of European Ministers of Justice (Valetta, 1994 and Prague, 1997 respectively);

Having regard to the Programme of Action against Corruption adopted by the Committee of Ministers in 1996;

In accordance with the Final Declaration and the Plan of Action adopted by the Heads of State and Government of the Council of Europe at their Second Summit, held in Strasbourg on 10 and 11 October 1997;

Having regard to Resolution (97) 24 on the twenty guiding principles for the fight against corruption, adopted by the Committee of Ministers on 6 November 1997 and in particular Principle 15, which promotes rules for the financing of political parties and election campaigns which deter corruption;

Having regard to Recommendation 1516 (2001) on the financing of political parties, adopted on 22 May 2001 by the Council of Europe's Parliamentary Assembly;

In the light of the conclusions of the 3rd European Conference of Specialised Services in the Fight against Corruption on the subject of Trading in Influence and Illegal Financing of Political Parties held in Madrid from 28 to 30 October 1998;

Recalling in this respect the importance of the participation of non-member states in the Council of Europe's activities against corruption and welcoming their valuable contribution to the implementation of the Programme of Action against Corruption;

Having regard to Resolution (98) 7 authorising the Partial and Enlarged Agreement establishing the Group of States against Corruption (GRECO) and Resolution (99) 5 establishing the Group of States against Corruption (GRECO), which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field;

Convinced that raising public awareness on the issues of prevention and fight against corruption in the field of funding of political parties is essential to the good functioning of democratic institutions,

Recommends that the governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns which are inspired by the common rules reproduced in the appendix to this recommendation, – in so far as states do not already have particular laws, procedures or systems that provide effective and well-functioning alternatives, and instructs the "Group of States against Corruption – GRECO" to monitor the implementation of this recommendation.

Common rules against corruption in the funding of political parties and electoral campaigns

I. External sources of funding of political parties

Article 1Public and private support to political parties

The state and its citizens are both entitled to support political parties.

The state should provide support to political parties. State support should be limited to reasonable contributions. State support may be financial.

Objective, fair and reasonable criteria should be applied regarding the distribution of state support.

States should ensure that any support from the state and/or citizens does not interfere with the independence of political parties.

Article 2 Definition of donation to a political party

Donation means any deliberate act to bestow advantage, economic or otherwise, on a political party.

Article 3 General principles on donations

a. Measures taken by states governing donations to political parties should provide specific rules to:
– avoid conflicts of interests;
– ensure transparency of donations and avoid secret donations;
– avoid prejudice to the activities of political parties;
– ensure the independence of political parties.

b. States should:
i. provide that donations to political parties are made public, in particular, donations exceeding a fixed ceiling;
ii. consider the possibility of introducing rules limiting the value of donations to political parties;
iii. adopt measures to prevent established ceilings from being circumvented.

Article 4 Tax deductibility of donations

Fiscal legislation may allow tax deductibility of donations to political parties. Such tax deductibility should be limited.

Article 5 Donations by legal entities

a. In addition to the general principles on donations, states should provide:

i. that donations from legal entities to political parties are registered in the books and accounts of the legal entities; and
ii. that shareholders or any other individual member of the legal entity be informed of donations.

b. States should take measures aimed at limiting, prohibiting or otherwise strictly regulating donations from legal entities which provide goods or services for any public administration.

c. States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties.

Article 6 Donations to entities connected with a political party

Rules concerning donations to political parties, with the exception of those concerning tax deductibility referred to in Article 4, should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party.

Article 7 Donations from foreign donors

States should specifically limit, prohibit or otherwise regulate donations from foreign donors.

II. Sources of funding of candidates for elections and elected officials

Article 8 Application of funding rules to candidates for elections and elected representatives

The rules regarding funding of political parties should apply *mutatis mutandis* to:
– the funding of electoral campaigns of candidates for elections;
– the funding of political activities of elected representatives.

III. Electoral campaign expenditure

Article 9 Limits on expenditure

States should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns.

Article 10 Records of expenditure

States should require particular records to be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate.

IV. Transparency

Article 11 Accounts

States should require political parties and the entities connected with political parties mentioned in Article 6 to keep proper books and accounts. The accounts of political parties should be consolidated to include, as appropriate, the accounts of the entities mentioned in Article 6.

Article 12 Records of donations

a. States should require the accounts of a political party to specify all donations received by the party, including the nature and value of each donation.
b. In case of donations over a certain value, donors should be identified in the records.

Article 13 Obligation to present and make public accounts

a. States should require political parties to present the accounts referred to in Article 11 regularly, and at least annually, to the independent authority referred to in Article 14.
b. States should require political parties regularly, and at least annually, to make public the accounts referred to in Article 11 or as a minimum a summary of those accounts, including the information required in Article 10, as appropriate, and in Article 12.

V. Supervision

Article 14 Independent monitoring

a. States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns.
b. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.

Article 15 Specialised personnel

States should promote the specialisation of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns.

VI. Sanctions

Article 16 Sanctions

States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions

II. International Electoral Standards Guidelines for reviewing the legal framework of elections

Guidelines Series
http://aceproject.org/ero-en/topics/election-integrity/UNPAN016077.pdf/view

11. Campaign finance and expenditure

The legal framework should ensure that all political parties and candidates are equitably treated by legal provisions governing campaign finances and expenditures. One of the main characteristics of a democracy is the holding of multiparty elections. The availability of credible alternative choices depends on the existence of robust political parties. In turn, political parties require a secure base for financing their election campaigns and their routine operations. Thus it is an acceptable practice for a legal framework to provide for the campaign financing of parties and candidates. Laws relating to the financing of parties and candidates are sometimes found not in the electoral legislation but in separate laws. Basically there are two forms of funding of parties and candidates: public funding and private funding, with contributions sometimes coming from foreign sources.

The legal framework may provide for electoral campaign financing on the basis of the following internationally-recognized standards:

- That there should be a transparent system of disclosure of the funding received by any party or candidate; guidelines_original_korr 4 02-08-27 11.09 Sida 65
- That there should be no discrimination with regard to access to public funds for any party or candidate;
- That public funding should be made available to parties on an equitable basis; and
- That there should be a level playing field among the parties or candidates.

Public funding

Payment of direct financial subsidies to candidates or to political parties from public funds is gradually becoming the norm. The main forms of indirect public funding could be one or more of the following:

- Free broadcasting time;
- Various types of state payments and facilities made available to members of the legislature;
- Use of government facilities and public personnel;
- State grants to party foundations; and
- Tax relief, tax credits and matching grants.

The distribution of direct public funds for political parties or candidates may be based on several criteria. Some of the main criteria are:

- The grant may be a proportion of actual expenditure where the receipt of public money is conditional on the party or candidate also raising money from private sources.
- The grant to parties may be proportional to their votes in the previous general election.
- The grant may be proportional to the number of each party's seats in the legislature. If the legal framework for elections provides for public funding, it should be provided on the basis of equity. This does not mean that all political parties and candidates are to receive an equal amount of campaign funds. Provisions for public funding should be clearly stated in the law and based on objective criteria that are not open to subjective interpretation by government authorities. Additionally, the legal framework should ensure that state resources are not used or misused for campaign purposes by the party in power. The legal framework should specifically provide that all State resources used for campaign purposes, such as state media, buildings, property and other resources, are also made available to all electoral participants on an equitable basis.

Private funding contributions

The main forms of private funding are:

- Membership subscriptions;
- Donations to political parties or candidates by individuals;
- Funding by institutions such as large business corporations, trade unions etc; and
- Contributions in kind by supporters.

Where there are provisions in the legal framework for elections relating to private contributions to campaign expenses incurred on behalf of parties and candidates, these should be so designed as to ensure equality of freedom to raise private funds. Furthermore, these provisions may include limits on contributions in order to "level the campaign playing field" to a reasonable degree, taking into account geographic, demographic and material

costs. However, the enforceability of such provisions must be kept in mind while framing or assessing such provisions.

Expenditure control

The legal framework may control the election expenditure of the parties and candidates in order to bring about some semblance of an equal chance of success. Certain financial limits may be prescribed for varying levels of elections: presidential, legislative and local. Parties and candidates are then periodically required to file statements and reports of election expenditure to the monitoring organization, which in most jurisdictions is the EMB. However, some jurisdictions do not restrict election expenditure (as is the case in the USA), regarding it as an unconstitutional curtailment of the fundamental right to freedom of speech and expression.

Reporting and disclosure requirements:

Limitations on contributions or campaign expenditure are meaningless without transparent reporting and disclosure requirements. The legal framework should require periodic reporting at reasonable intervals of all contributions received and expenditure incurred by an electoral contestant. Penalties for failing to file reports or filing erroneous reports also should be clearly stated in the legal framework and should be proportional to the gravity of the offence. For example, candidates should not be disqualified from contesting elections or taking their seats, if elected, due to minor reporting irregularities. The legal framework should specifically identify the agency responsible for receiving, compiling and holding campaign contribution and expenditure reports. The legal framework should clearly specify where and when such reports are available for public inspection. The law should also permit the public access to campaign contribution and expenditure reports so that the contents will be available to other interested parties, candidates and voters.

Monitoring and enforcing compliance

Often there are too many laws and too little enforcement. For political financing to be effective, the legal framework should provide mechanisms for monitoring and enforcing compliance with political finance laws.

Campaign finance and expenditure Checklist

- Does the legal framework ensure that all political parties and candidates are treated equitably through provisions governing campaign contributions and expenditures?
- If the legal framework for elections allows public funding or the use of state resources for campaigns, does it regulate such use on the basis of equitable treatment for all political parties and candidates?
- Are limitations on funding of campaigns reasonable, clear and capable of objective application?
- Does the legal framework for elections require periodic reporting on campaign contributions and expenditure?
- Does the legal framework for elections provide for public access to reports on campaign contributions and expenditure?
- Does the legal framework for elections provide for adequate and effective enforcement of the political finance laws?
- Does the legal framework for elections provide for equality of freedom to raise private funds without unreasonable limitations?

THE LEGISLATIVE FRAMEWORK ON THE FINANCING OF POLITICAL PROCESSES: SOME ASPECTS OF UKRAINIAN EXPERIENCE

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This report basically pertains to ***two*** major ***aspects*** related to a whole scope of issues on the financing of political processes in Ukraine, namely the legal framework on the financing of activity of political parties during the ***between-elections*** periods, and the special features of legal regulations on the financing of activity of political parties, electoral blocks, and individual candidates during the ***electoral processes***. At the same time the issue of ***practical*** implementation of relevant provisions of the electoral laws of Ukraine in a light of the case law of the Ukrainian courts is discusses as well.

1. Current state of legislative regulation on the financing of political party

1.1. State financing

As regards the issue of current Ukrainian legislation and practise, some ***historical*** events should be recalled first.

1.1.1. Historical Overview

It has to be noted that the state financing of activity of political parties in Ukraine was ***introduced*** by adoption of the Law of Ukraine "On Amending Relevant Legislative Acts of Ukraine in Relation to Introduction of the State Financing of Political Parties in Ukraine" (hereinafter – Law on State Financing) on November 27, 2003. Correspondingly, the Law of Ukraine "On Political Parties in Ukraine" (hereinafter – Law on Parties), Budget Code of Ukraine, and other laws were changed and amended too. In particular, Article 1 of the Closing and Transitional Provisions of the Law on State Financing envisaged that this Law should enter a ***legal force*** starting from January 01, 2005. At the same time, Article 3 of the Closing and Transitional Provisions provided that the state financing would commence starting from January 01 of a year that ***follows*** a ***year*** when the next ***regular*** parliamentary election is held. Also, it stated that a reimbursement of political parties (parties that formed electoral blocks) for their expenses related to pre-electoral campaigning in the course of electoral process, would be arranged in accordance with results of the next regular election.

Taking into consideration that since adoption of the Law on State Financing the next regular election was scheduled for March 26, 2006, it was expected that a reimbursement of parties for relevant expenses would commence starting from January 01, 2007. Moreover a ***procedure*** of reimbursement ***was*** anticipated by Article 98 of the Law of Ukraine "On Election of People's Deputies of Ukraine[1]" (hereinafter – Law on Parliamentary Election). For instance, Article 98.1 envisaged that parties and blocks which obtained ***3%*** and ***more*** of the number of voters who participated in voting are ***eligible*** to be reimbursed for their ***factual*** expenses for pre-electoral campaigning events, but with ***no more*** than ***100,000*** amounts of

[1] The ***People's Deputy*** of Ukraine is a term envisaged by the Constitution for a ***member*** of the Ukrainian ***Parliament***.

minimal wages for each party (or, block).[2] Also, Article 98.2 authorized the Central Election Commission (hereinafter – CEC) to adopt a decision regarding a reimbursement for political parties for their expenses based on relevant financial reports to be submitted by parties (electoral blocks of political parties).

It is worth to mention that subsequent to results of a regular parliamentary election held on March 26, 2006 the CEC adopted the resolution and determined the particular amount of the following ***costs*** that would be transferred to the winners of the election:

- ✓ Party of Regions – 35,000,000.00 UAH.
- ✓ Block of Yulia Tymoshenko – 13,500,885.00 UAH.
- ✓ Our Ukraine Block – 35,000,000.00 UAH.
- ✓ Socialist Party - 35,000,000.00 UAH.
- ✓ Communist Party – 8,352,358.00 UAH.

Again, it was expected that according to the amended Law on Parties and Law on Parliamentary Election the above sum of costs would be transferred to the parties starting from January 01, 2007.

However, a legal force of the relevant norms regarding the state financing of political parties was ***suspended*** for the year of ***2007*** by the Law of Ukraine "On the State Budget for the Year of 2007" adopted by the Parliament on December 19, 2006. What is more, one year latter, namely on December 28, 2007, while adopting the Law "On the State Budget for the Year of 2008" the Parliament ***canceled*** the relevant norms of the laws on Parties and Parliamentary Election devoted to the state financing ***at all***. As a result, so far the above mentioned costs were ***not*** transferred to the potential recipients.

A further development of a whole story was not less interesting. On May 22, 2008 the Constitutional Court of Ukraine ruled out that ***amendments*** to the Law on Parties and the Law on Parliamentary Election introduced by the Law "On the State Budget for the Year of 2008" were ***unconstitutional***. Meanwhile, ***neither*** the parliamentarians while discussing and adopting the laws concerned, ***not*** the Constitutional Court' judges while ruling the said decision dated May 22, 2008, ***questioned*** a legal nature of the state financing of political parties, as well as the grounds and reasons for the introduction of a system of the state financing. Some experts believe that a ground why the parliament first suspended a legal force of the relevant provisions for the year of 2007, and further terminated them, was just a ***subjective*** point of view of some politicians, including the Minister of Finance. At the same time, the Constitutional Court, taking into consideration a legal character of a law on the state budget ruled out, that due to its specific purpose and sphere of legal regulation, a law on the state budget ***may not*** implement the changes to other laws, suspend a legal force or terminate other laws. In order to amend or to suspend the current laws, the Parliament should adopt separate laws instead of including relevant norms into a law on the state budget.

As a result of the decision of the Constitutional Court a ***controversial*** situation was created for a whole legal framework indeed. On the one hand, the relevant provisions of the Law "On the State Budget for the Year of 2008" which ***used*** to terminate norms of the Law on Parties and the Law on Parliamentary Election ***lost*** their ***legal force***, since they were found as unconstitutional. On the other hand, a legal force of those norms of the Law on Parties and the Law on Parliamentary Election on the state financing was ***not recommenced***, since the Constitutional Court is ***not*** a body of the ***legislative*** power. Unfortunately, so far the

[2] Beginning from January 1, 2008, the amount of a ***minimal wage*** is set up by the Law "On the State Budget" at the level of ***605.00*** Ukrainian Hryvnias (hereinafter - UAH) that is approximately equivalent to ***$100.00*** – ***110.00*** as of the middle of November 2008.

Verkhovna Rada has not adopted any relevant laws on the matter afterwards to ***replace*** the norms which lost their legal force, and failed to establish a proper mechanism of legal regulation of the relevant relations.

Taking into consideration the above mentioned circumstances, for the ***purposes*** of ***this*** report we will later on discuss the relevant norms of the Ukrainian laws on Parties ***as of*** the period ***when*** those norms ***were*** in a ***legal force***, namely ***before*** adoption of the Law of Ukraine "On the State Budget for the Year of 2007" on December 19, 2006.

1.1.2. Legal framework on the state financing

Article 17.2 of the Law on Parties anticipates[3] that ***each*** political party which received the state financing of activity, envisaged by a party' charter[4] (or, so-called "charter's activity") ***shall*** publish an annual ***report*** for the amount and areas of spending the costs allocated by the State Budget of Ukraine, as well as for the property of political party. At the same time Article 17^1.1 of this Law envisages the forms of the state financing. Particularly, it states that the following ***two*** areas of activity are financed by the state costs:

- ✓ Party charter's activity that is ***not related*** to participation in ***electoral*** processes.
- ✓ ***Reimbursement*** of the political party for the expenses related to financing of pre-electoral ***campaigning*** during the regular or extraordinary ***elections***.

It is to be noted that Article 17^3 anticipates ***criteria*** of eligibility for receiving the state financing for performing a ***charter's*** activity. For instance Article 17^3.1 states that party has the ***right*** to ***receive*** the state financing of its charter's activity provided that electoral list of candidates of this party obtained ***3 %*** and ***more*** of the number of voters who participated in voting. At the same time, Article 17^3.2 anticipates that party which formed electoral ***block*** with other political parties has the ***right*** for the state financing in accordance with the terms and conditions envisaged by this law. As like as Article 17^3 Article 17^4 establishes the same rules for determining those parties which have the ***right*** to be ***reimbursed*** for their expenses for pre-electoral ***campaigning*** in compliance with the terms and conditions established by the Law on Parliamentary Election.

The norms of Article 17^5 relate to procedures of ***allocation*** and ***distribution*** of costs for the financing of the charter's activity of political parties (blocks). For example Article 17^5.1 states that the costs allocated by the State Budget for the financing of the charter's activity are distributed by the Ministry of Justice among political parties, including those parties that formed electoral blocks with other parties, ***proportionally*** to a ***number*** of ***voters*** who voted for electoral ***list*** of particular parties and blocks. Correspondingly, a procedure for distribution of costs allocated by the State Budget for the financing of charter's activity amongst the parties within electoral block shall be defined by ***congress*** of relevant parties.

1.2 Private financing

Correspondent provisions of the Law on Parties provide the normative regulation of so-called "***private***" financing of political parties. For instance, Article 14.2 states that political parties are ***non-profit*** institutions. Article 15.1 envisages a list of restrictions on the financing of political parties. In particular, it anticipates that the following ***entities*** and ***persons*** are ***prohibited*** to finance the party's related activity:

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[3] Even though it ***would be*** correctly to use a Past Tense for the following wording "Article 17.2 of the Law on Parties ***used to anticipate***…", ***instead*** of "Article 17.2 of the Law on Parties ***anticipates***", for the ***purposes*** of this ***report*** we intentionally use a Present Tense, since the legal norms concerned could be considered as rather ***frozen*** norms, than terminated ones.

[4] A ***charter*** is a term envisaged by the Law on Parties for a ***constitution*** (***statute***) of party.

- ✓ Bodies of the state power and local self-governance.
- ✓ State-owned and communal-owned enterprises, institutions and agencies, as well as enterprises, institutions and agencies, whose shares are partly owned by the state or the territorial communities, as well as by non-residents.
- ✓ Foreign states, citizens, enterprises, institutions, and agencies.
- ✓ Charitable and religious associations and organizations.
- ✓ Political parties that are not members of relevant electoral block of political parties.

Experts believe that the ***purpose*** of Article 17 of the Law on Parties is to make the relations devoted to financial issues as ***transparent***. Specifically this norm provides that political party ***shall*** publicize its annual financial ***report*** for the party's incomes, expenses, and property.

2. Specifics of legal regulation on the financing of electoral processes

The relevant norms are anticipated by ***three*** electoral laws, namely the Law on Parliamentary Election), the Law of Ukraine "On Election of President of Ukraine" (hereinafter – Law on Presidential Election), and the Law of Ukraine "On Election of Deputies of Verkhovna Rada of Autonomous Republic of Crimea, local councils, and mayor of cities, settlements, and villages" (hereinafter – Law on Local Election). It should be noted that a part of relevant norms provides for the same or, at least, a similar legal regulation of similar relations for different type of elections. However, several relations for different type of elections are regulated by the electoral laws on completely different manner. It is worth to provide a brief overview of the correspondent norms in force.

2.1 Parliamentary Election

Provisions of articles 48, 51, 52, and 53 of the Law on Parliamentary Election prescribe the rules for the financial support of activity of parties and electoral blocks in the course of electoral process. For example, according to Article 48.1 ***only*** the costs allocated by the State Budget of Ukraine and costs of the electoral funds of parties (blocks) may be disbursed for preparation and conduct of election. Meanwhile the said requirement has been recently taken upon by the current political opponents, namely supporters of Prime Minister of Ukraine, in their fighting against the intention of the President to hold the extraordinary parliamentary election this year. The major argument was that the State Budget for this year does ***not*** allocate the expenses for this ***particular*** purpose, and disbursement of any other costs would be ***de-jure*** a ***violation*** of the budgetary discipline.

Article 48.2 provides for the ***obligation*** of political party or electoral block to set up an ***electoral fund***. In addition to that it is ***prohibited*** by Article 48.3 to pay for production of the campaigning (***agitation*** related) materials or events out of ***other*** financial sources than corresponding electoral fund of party or block.

It is important to remark that relevant rules for setting up an electoral fund by opening the account, as well as transfers on and out of such account are provided by the Law on Parliamentary Election too. For example, Article 51.9 precludes that information about opening the account of relevant electoral funds shall be published by the CEC at the ***official*** editions of the Ukrainian Parliament and the Cabinet of Ministers. Article 51.10 anticipates that disbursement of finances out of the account of electoral fund may be performed via ***cashless*** payments only. At the same time a ***deadline*** for disbursement is at ***3 p.m.*** on the last day before the day of voting. Articles 52.1, 52.2, and 52.3 provide for requirement that political party (electoral block) shall nominate a person authorized to manage a relevant electoral fund and to report to the CEC for all disbursements (hereinafter – manager of electoral fund). Article 53.10 precludes that the CEC is the authorized state institution to ***monitor*** the receipts, recording, and expenditures out of the account of electoral funds.

Also, the norms of Article 53 anticipate a scope of legislative ***requirements*** for the sources of creation and spending costs out of the account of electoral fund. Namely, Article 53.1 states that party's or block's fund is replenished by party's ***own*** financial sources, as well as by a ***voluntary*** donation of ***natural*** persons. Notably, the amount of voluntary contribution ***may not*** exceed ***400*** minimal wages. The ***amount*** and quantity of party's or block's donations are ***not limited***. Article 53.3 provides that it is ***prohibited*** to foreign citizens and stateless persons, as well as to anonymous contributors to donate to electoral funds. Besides that it is worth to underline that a manager of electoral fund has the ***right*** to ***deny*** acceptance of donation from a natural person, as anticipated by Article 53.6. At the same time according to Article 53.8 a manager of electoral fund ***shall*** deny acceptance of contribution in case if such donation is prohibited by the Law. As stated in Article 53.12 when the electoral process is finished, the unspent costs shall be wired to a permanent bank account of political party or parties that formed a relevant electoral block.

It is worth to mention that several other norms of the Law on Parliamentary Election also regulate a financial "discipline" of party (or, block) during the course of electoral process. For instance, Article 66.4 states that financial ***support*** of conducting the campaigning events by party (block) or candidate may be arranged at the expense of a relevant electoral fund of party (block) ***only***. At the same time Article 66.6 envisages a ***ban*** on a usage of ***own*** costs of candidates or costs out of ***other*** sources (including, on the voters' ***initiative***) for conducting a campaigning related activities.

2.2 Presidential Election

As regards the legal framework on regulating the relevant relations during the presidential election, it should be marked that basically norms of articles 37, 41, 42, and 43 of the Law on Presidential Election provide for a ***similar*** rules as the Law on Parliamentary Election. For example, Article 37.2 states that candidate for President ***shall*** form his/her electoral fund. Also, Article 41.6 anticipates the requirement to disburse expenditures by ***cashless*** payments only. However, taking into account that the Law on Presidential Election precludes the electoral system of ***two*** rounds of voting, Article 4.11 states that in case of holding a second round of voting the disbursement of funds from the relevant electoral accounts is ***recommenced*** starting from the day when the CEC adopts a resolution regarding the particular two candidates who entered a second round of voting.

Article 43.1 anticipates that candidate for presidency, party (or parties that formed electoral block) which nominated a candidate has the ***right*** to make their contributions to relevant electoral fund, as well as natural persons who are eligible to donate their voluntary contributions. However, in distinction from the Law on Parliamentary Election, Article 43.2 of the Law on Presidential Election sets up a ***maximum*** amount for the electoral ***fund*** of candidate at the level of ***50,000*** minimal wages. Correspondingly, for two candidates who entered a second round of voting, a maximum amount is to be increased on ***15,000*** minimal wages. Also, it is anticipated by Article 43.3 that the amount of voluntary contribution from a natural person to electoral fund of ***one*** candidate ***may not*** exceed the level of ***25*** minimal wages.

It is important to note that the ***same*** category of persons are ***prohibited*** by Article 43.4 to donate moneys to electoral funds as it is precluded by Article 53.3 of the Law on Parliamentary election. However, it is worth to mention that Article 43.12 of the Law on Presidential Election provides that in case of ***termination*** of candidacy, the rest of moneys shall be wired out of electoral account to the State Budget. Also, according to Article 43.14 the information regarding amount of electoral fund of candidates, as well as the reports for relevant disbursements shall be published by the CEC at the ***official*** bulletins of the Parliament and the Cabinet of Ministers.

2.3 Local Election

Unlike the laws on Presidential and Parliamentary elections, the Law on Local Election ***does not*** anticipate the normative ***obligation*** for candidates, branch of political parties and blocks to necessarily open their accounts of relevant electoral funds. For example, Article 82.2 of the Law on Local Election states that local branch of political party (electoral block of local party branches), and candidates running for deputy seats at single mandate constituencies[5] ***have*** the ***right*** to set up the electoral funds for financing their electoral campaign (agitation). Also, it is interesting to mark that Article 84.8 provides for a deadline for disbursement of moneys out of account of electoral funds that differs from the correspondent rules established for the Presidential and Parliamentary elections. Specifically, the said norm states that all expenditures shall be completed ***one day prior*** to the voting day, meaning not later than on the ***last*** Friday's midnight.[6]

Even thought Article 86.1 provides for the ***same*** list of persons who are ***eligible*** to make their contributions and voluntary donations to the relevant electoral funds, and Article 86.6 establishes the ***same*** list of persons who are ***prohibited*** to donate moneys to the electoral funds as like as other two election laws discussed above, Article 86.2 anticipates the relevant ***limits*** of expenditures out of the electoral funds of local branch of political ***party*** and electoral ***block*** depending on particular ***number*** of ***voters*** belonging to a territorial community, or an administrative and territorial unit. In particular, it states that the maximum amount of the spending ***may not*** exceed:

- ✓ 20,000 UAH for the territorial communities with up to 20,000 voters;
- ✓ 50,000 UAH for the territorial communities, raions, and raion within the cities with up to 50,000 voters;
- ✓ 100,000 UAH for the territorial communities, raions, and raion within the cities with up to 100,000 voters;
- ✓ 250,000 UAH for the territorial communities, raions, raion within the cities, and oblasts with up to 500,000 voters;
- ✓ 500,000 UAH for the territorial communities, raions, oblasts with up to 1 million voters;
- ✓ 1,000,000 UAH for the territorial communities, oblasts with more than 1 million voters, and for the Autonomous Republic of Crimea.

The maximum ***amount*** of expenditures out of the electoral fund of candidate running at a single mandate constituency depends on a particular ***type*** of elections. For example Article 86.3 provides that a maximum sum of expenses of the electoral fund of ***candidates*** for the ***mayor*** of village, settlement, and city ***may not*** exceed a ***half*** of the ***sum*** anticipated by Article 86.2 for a relevant territorial community. Besides, Article 86.4 states that a maximum amount of spending out of the electoral fund of ***candidate*** for ***deputy*** of village or settlement council ***may not*** exceed ***50*** minimal wages.

It is worth to mention that Law on Local Election provides for other relevant restrictions and requirements too. Namely, according to Article 86.5 the voluntary contributions of ***the natural*** person ***may not*** exceed ***3*** amounts of a minimal wage. Also, as stipulated by articles 86.10 and 86.11 a manager of account of electoral fund ***shall*** deny receipt of payment arranged with the violations. A certain part of voluntary contribution donated by a natural person shall be ***wired back*** to that person provided that a total amount of donation ***exceeds*** the limit established by the Law.

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[5] More specifically, these are candidates for deputy of village and settlement councils, as well as candidates for mayor of cities, settlements, and villages.

[6] All types of elections are held on ***Sunday*** in Ukraine.

As like as the laws on Parliamentary and Presidential elections anticipate a scope of the relevant responsibility of the CEC, Article 86.12 of the Law on Local Election provides that a relevant Territorial Election Commission (hereinafter - TEC) is an authorized body to monitor receipts, recording, and disbursement of costs out of account of the electoral funds.

3. Legal liability for violation of legislation on financing of the electoral processes

The current Ukrainian election laws and other relevant laws in force anticipate a wide spectrum of legal liability for different form of violations of the legislative requirements regarding the financing of activity of political parties, including a liability for violation during the electoral processes. For example so-called measures of "constitutional legal liability" preclude a ***warning*** and a ***termination*** of registration of relevant participant of election. The CEC and relevant TECs are responsible to apply these measures. At the same time a criminal and administrative liability may be enforced by the courts of general jurisdiction in accordance with requirements established by the Criminal Procedure Code of Ukraine and the Code on Administrative Offences of Ukraine.

3.1. Financial Sanctions

As it has been already mentioned above, the Law on Parties as of December 19, 2006, anticipated the relevant sanctions for violation of financial discipline regarding the state financing committed by political party. For instance, Article 17^7 provides for grounds and procedure for ***termination*** or ***reduction*** of amount of the state financing of charter's activity. For instance Article 17^7.1 anticipates the following grounds for ***termination*** of the said amount:

- ✓ Reorganization (except merger and accession to other party), liquidation of political party, ban of political party, annulling a certificate on registration of political party.
- ✓ Establishment of fact by court per reference of the Ministry of Justice that the costs allocated by the State Budget for financing of the charter's activity were spent by political party for financial support of election related activity of party, or for the purposes not related to the charter's activities of party.

It is worth to mention that Article 17^8 of the Law on Parties relates to the issue of the state control of spending of costs allocated by the State Budget for financing of charter's activity of political party. For example, Article 17^8.1 provides that the state control of spending is conducted by the Accounting Chamber and by the Head Department of Control and Revision of Ukraine. Article 17^8.4 envisages that the Head Department of Control and Revision has the authority to submit to a court for termination of the state financing of charter's activity of political party provided that the Department established that the allocated costs were spent for the electoral related activities, or for the other purposes than the charter's activity.

Under Article 19.1 of the Law on Parties, if transgressing the Constitution of Ukraine, this and other laws of Ukraine, political party can be ***warned*** or ***banned***. At the same time, Article 19.2 of the edition of the Law on Parties as of December 19, 2006, stated that the above mentioned sanctions shall ***not be applied*** provided that the state financing of the charter's activity of political party is ***terminated***. Also, Article 20 of the Law on Parties envisages that a ***warning*** can be issued by the administrative body authorized to control the parties. According to Article 18.1.1 the Ministry of Justice of Ukraine is responsible to perform a ***control*** of activity of political parties. In addition, Article 21.1 anticipates that a ***ban*** of political party may be imposed by ruling of a court per submission of the Ministry of Justice or Prosecutor General. As a result of such ruling, Article 21.2 envisages that a ban entails the ***termination*** of the banned party's activities, the ***dissolution*** of its managerial bodies, local branches, and the ***termination*** of party' membership.

3.2. Termination of registration of participant of elections

Some experts consider a ***termination*** of registration of candidate or party as one of the ***most severe*** sanction among others. For example, the relevant procedure is envisaged by the Law on Parliamentary Election. In particular Articles 64.4.3 of this Law anticipates that the CEC shall announce a ***warning*** to party (block) or candidate provided that a ***court*** while resolving an ***electoral dispute*** found, that candidate or party (block of political parties) spent for conducting pre-electoral campaigning event the finances ***not out of*** party's / block's electoral fund. Correspondingly, according to Article 64.1.10 the CEC shall ***terminate*** the registration of candidate provided that candidate ***repeatedly*** committed a violation provided that he/she was ***warned*** before for committing the same violation, as stipulated by Article 64.4.3.

It leads to the conclusion that the Law on Parliamentary Election anticipates the conditions and procedure for ***termination*** of registration of ***individual*** candidate only, but ***not*** registration of electoral ***list*** of political party or electoral block. The most severe penalty for ***party*** or electoral ***block*** is announcing a ***warning*** by the CEC that also should be published at the national mass-media, as stipulated by Article 64.4 of the Law on Parliamentary Election.

The relevant provisions are envisaged by the Law on Presidential Election too. However, in distinction from the Law on Parliamentary Election, the CEC ***is not*** authorized to terminate a registration of candidate for President of Ukraine. Article 56.1 of the Law on Presidential Election provides that the CEC has the ***right*** to ***apply*** to the High Administrative Court of Ukraine for termination of registration under certain (so-called "technical") circumstances, such as: a personal request of candidate for termination of registration, a failure to collect the required number of signatures for support of candidacy, a termination of the Ukrainian citizenship of candidate etc. It means that under the current legislation, a ***termination*** of registration of candidate for President ***is not*** a form of legal ***liability*** for violation. The only form of legal liability for candidate is a ***warning*** that may be announced by the CEC. For example, Article 56.3.3 envisages that the CEC has the right to announce a warning to candidate or party (block) which nominated candidate, provided, that a ***court*** while resolving an ***electoral dispute*** found, that a candidate conducted a pre-electoral campaigning event ***not*** at the expense of candidate's ***electoral fund***.

A warning and termination of registration as ***sanctions*** for violations of the election legislation are anticipated by the Law on Local Election. It is worth to underline that the relevant TECs are ***empowered*** to announce a warning, as well as to terminate a registration. Specifically, Article 48.1 envisages that relevant TEC ***terminates*** a registration of candidate for mayor of village, settlement, or city, and candidate for deputy of village or settlement council provided, that a ***court*** while resolving an ***electoral dispute*** found, that candidate spent for conducting a pre-electoral campaigning event the finances ***not out of*** candidate's electoral fund, or a total amount of expenditures out of candidate' electoral fund ***exceeded*** the limit established by this Law. Correspondingly, Article 48.3 of the Law on Local Election anticipates a ***termination*** of registration of ***entire*** electoral ***list*** of branch of political party or block (means, termination of registration of ***all*** candidates) provided, that a ***court*** while resolving an ***electoral dispute*** found, that branch of political party or block conducted a pre-electoral campaigning event ***not*** at the expense of party' (block') relevant ***electoral fund***, or a ***total*** sum of expenditures out of electoral fund ***exceeded*** the limit established by this Law. At the same time, according to Article 48.5 in case of any ***other*** violation of the requirements of this Law by local branch of political party (electoral block) or candidate, a TEC is empowered to announce a ***warning*** to that participant of electoral process.

3.3. Criminal Liability

The Criminal Code of Ukraine envisages a liability for considerably wide catalogue of the relevant wrongdoings. For instance Article 159[1] of this Code, that entered a legal force on March 25, 2006 (meaning, ***one*** day ***prior*** to the day of the last regular parliamentary and local elections held on March 26, 2006) envisages a penalty for violation of requirements on the ***financing*** of electoral campaign of candidate, political party (electoral block). According to Article 159[1].1, a providing of the financial (material) support to candidate, party or block with the amount higher than ***400*** minimal wages ***contrary to*** the established procedure, or rendering unjustified discount for production of campaigning materials, are ***punished*** with a ***fine*** in amount of between ***100*** and ***300*** amounts of ***minimal income*** of citizen that is ***not subject*** for taxation[7], or with a ***deprivation*** of freedom for up to ***2*** years, or with a ***limitation*** of freedom for up to ***2*** years. Also, Article 159[1].2 provides that ***intentional*** spending of finances of relevant electoral fund of candidate, political party, or block in the amount higher than ***400*** minimal wages, and contrary to the procedure established by law, committed by candidate, proxy, or other authorized person, is punished with a ***fine*** in the amount of between ***100*** and ***300*** minimal incomes of citizen that is ***not subject*** for taxation, or with a ***deprivation*** of freedom for up to ***2*** years, or with a ***limitation*** of freedom for up to ***2*** years.

3.4. Liability for Administrative Offences

As well as the current Criminal Code, the Code on Administrative Offence of Ukraine was substantially amended with several relevant articles on the eve of the last regular parliamentary and local elections in 2006. For instance, Article 212[15] of this Code provides for so-called “administrative” liability for violation of the legislative requirements on providing the financial support for electoral processes. Particularly it states that commitment of such violation entails a ***fine*** in the amount of between ***50*** and ***70*** minimal incomes of citizen that is not subject for taxation in case if a delict committed by ***ordinary*** natural person, or a ***fine*** in the amount of between ***70*** and ***100*** minimal incomes of citizen that is not subject for taxation in case if a delict committed by ***official*** or ***officer***, ***provided*** that a violation concerned ***is not a crime*** anticipated by the Criminal Code. Also, it is remarkably to underline that according to Article 255 of the Code on Administrative Offenses, chairmen, deputy chairmen, secretary, and other ***members*** of relevant election commission are empowered to ***draw up*** a ***report*** (protocol, minute) on this particular administrative offence that should be further sent to a correspondent local court authorized to hear this category of cases.

4. Practice of election dispute resolution: violation of legislation on the financing of electoral processes

Taking into consideration that so far it has been ***no*** practical application of the legislative norms regarding the state financing of political parties in Ukraine, for the ***purpose*** of this ***report*** we examined the existed practice of application of the electoral laws only. Particularly, this section of the report is developed based on a substantial volume of decision of the Ukrainian courts as a result of resolving the ***electoral disputes*** during a series of parliamentary, presidential, and local elections between 2002 and 2007. In this regard it is worth to mention that there were ***no*** examples of the ***relevant*** violations during the 2004’s presidential, 2006’s regular and 2007’s extraordinary parliamentary elections, which were held based on ***purely*** proportional electoral system.

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[7] Beginning from September 02, 1996, a ***minimal income*** of citizen ***that is not subject*** for taxation, amounts to ***17*** UAH.

However, several disputes of this category related to the ***parliamentary*** election were resolved by courts in 2002 when a so-called "mixed", majority-proportional electoral system, was applied. For instance, in the course of electoral process at the single mandate constituency # 35 the Court of Appeal of Dnipropetrovsk Oblast ruled out that candidate Zh. used for financing his campaigning events the costs ***not out of*** his electoral ***fund***. Based on that court' ruling the Constituency Election Commission # 35 (hereinafter - CoEC) announced a ***warning*** to candidate Zh. Later on the Court of Appeal of Dnipropetrovsk Oblast while resolving other electoral dispute found that the proxy of candidate Zh. paid a ***hard cash*** for the rent of premises for holding a meeting of the candidate with voters. With the reference to the said court' decision the CoEC announces the ***second*** warning to candidate Zh. Eventually the CoEC adopted a resolution ***to terminate*** a registration of candidacy of Zh[8].

A certain number of relevant disputes related to violations of legislation on ***local*** election were resolved by courts during the processes of regular elections in 2002 and 2006. In particular, the Volchanskyi Raion Court of Kharkiv Oblast established that the candidate for the city mayor N. spent for the printing of his campaigning materials the amount of costs that ***exceeded*** the ***limit*** for the relevant expenses envisaged by the Law on Local Election. Moreover the court found that the candidate N. failed to open the account of his electoral fund at all, which meant that N. conducted his campaign ***not*** at the expense of his ***electoral fund***. As a result, the court found the fact of violations, and ***laid*** the relevant TEC under the ***obligation*** to ***terminate*** registration of candidacy of N.

A very interesting for research case was resolved by the Leninskyi Raion Court of the City Kirovohrad in the course of ***simultaneous*** processes of ***two*** types of elections in 2002: local and parliamentary. The story was that Mr. K. participated in both elections as candidate for Deputy of Parliament and candidate for the city mayor. The court ruled that K. failed to open his electoral fund as candidate for mayor, and financed his ***mayor's*** related campaigning events at the expense of the opened electoral fund of candidate for ***Deputy.*** As a result of the case hearing, the court found the fact of usage the costs for financing electoral campaign ***not out of*** the electoral fund of the candidate for mayor.

The relevant disputes were resolved by the courts during the 2006' local election too. For instance, the Court of Appeal of Donetsk Oblast squashed the decision of the Voroshylovskyi Raion Court of the City Donetsk, and established that the candidate for the city mayor B. used ***other*** sources for financing a service for printing out his campaigning materials than costs of his electoral ***fund***. Particularly the court found that a public association "Y.V.", chaired by the candidate's proxy, paid for printing work for that candidate.

In other case the Court of Appeal of Volyn Oblast upheld the decision of the Starovyzhivskyi Raion Court. The court of the first instance established that a local branch of the "P." Party formed the electoral block "B.L." with the branch of other parties. Upon that the block did not open its electoral fund, and the local branch of the "P." Party financed a printing of campaigning materials on support of the block. As a result the court ruled that it was a violation of the restriction to conduct all payments out of the account of electoral fund only.

5. General Conclusions

Analyzing a whole complex of legislative provisions regarding the financing of political processes in Ukraine and existed practice of application of these laws, the following conclusions could be drawn:

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[8] ***Then*** version of the Law on Parliamentary Election envisaged the responsibility of CoEC to ***terminate*** a registration of candidacy provided that previously CoEC had announced ***two*** warning to this candidate for committing violations of election legislation.

- ✓ In general, a substantial part of the relevant provisions on the ***state*** (or, public) financing of political parties as of December 19, 2006, ***comply*** with the recommendations provided by the Guidelines and Report on the Financing of Political Parties adopted by the Venice Commission on March 9-10, 2001. This statement especially relates to the right of parties / blocks represented by deputies at the Parliament to receive the state financing of their charter's activities, as well as for a reimbursement of party' / block' expenses for the campaigning related activities during the preceding electoral process. It also relates to the state control of spending the costs allocated by the State Budget that is performed by the relevant state authorities and agencies. Envisaged status of political parties in Ukraine as non-profit institutions ***corresponds*** with recommendations of the Venice Commission too.
- ✓ Unfortunately, even thought the state financing of political parties was introduced in Ukraine five years ago, the relevant provisions were not applied in practice so far due to the reasons discussed above. With regard to the last point, conclusion could be made that the Ukrainian political forces presented at the Parliament failed to take the decision of the Constitutional Court into account, and to bring the relevant norms in compliance with requirements of the Constitution. Experts believe that it was partly caused by the ongoing political crises in Ukraine.
- ✓ The current requirements of the Law on Parties regarding a private financing, including a list of persons and entities banned to support the political parties in Ukraine financially, basically ***comply*** with above mentioned recommendations of the Venice Commission as well.
- ✓ Regarding the current state of legislative regulation of the financing of election related activity of the political parties (blocks), some Ukrainian experts believe that the legislation is a sensible, justified, and quite simple for acknowledging by participants of electoral processes. The relevant norms are rather of a ***preventive*** character than of a punitive one. However, the relevant norms of election legislation ***correspond*** with recommendations of the Venice Commission ***only partly***. For example, the Law on Parliamentary Election does not envisage a limit (ceiling) of a total amount of all contributions which may not be exceeded.
- ✓ A negligence or intentional ignorance of the established legislative requirements committed by party, block, or individual candidate could entail for them an enforcement of different forms of legal liability. Such form of liability for violation of the electoral legislation, as a warning or termination of registration of candidacy could be initiated by their competitors via suing party or candidate-opponent with the court.

"MECHANISMS TO ENSURE THAT NEW PARTIES ENTER THE POLITICAL ARENA AND COMPETE UNDER FAIR CONDITIONS WITH THE BETTER-ESTABLISHED PARTIES" – A CASE STUDY OF POLAND

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Ensuring fair competition in the political market by a due financing model constitutes a problem not only for post-communist countries but also those that have a firm democratic system. There is no single, universal model guaranteeing proper financing and fair competition of political parties. Each financing model should take into account a country's constitutional traditions, legal frames, social conditioning, and cultural norms.

The objective of this brief case study is to depict how the system of financing of political parties in Poland has influenced the shape of the political arena, and, after the analysis, to suggest solutions that could enable fair competition between the already-established and the incoming political parties. Without undermining Poland's achievements in achieving democracy, one should notice that it has not avoided mistakes. It is common knowledge that one learns most from mistakes, preferably the mistakes of others.

In order to comprehend fully the case of Poland, however, let us go back to the turn of the decade (eighties – nineties). At that time, Poland introduced a liberal free-market reform, the Act on Freedom of Economic Activity, which paradoxically was legislated by the last communist government. It was a genuine revolution instigating practically absolute economic freedom that had been beyond the dreams of even the most economically liberal Western countries.

The communists chose such daring reforms so they could grant themselves property rights over the national estate. The new regulations enabled founding of the nomenclature companies whose main task was to parasitise on the national estate. This successfully hindered fair financial competition between the post-Solidarity, right wing groups, the liberal centre, and the post-communist parties that had taken over part of the income of the collapsing Communist Party and had the extra financial backup in the nomenclature companies.

The situation made the post-Solidarity parties face the dilemma of how to guarantee financing, which finally was found in the sphere of big business. Financing of the political parties by business was present equally on the local and national level, where the term "political capitalism" was coined. It may seem paradoxical, but such a system fostered considerable competition in the political arena. On one hand, the parties were vulnerable, but on the other hand, they strived to stay in the political market by means of competitive programmes. As a result, the parties kept appearing, only to disintegrate and finally to vanish from the political scene. With respect to that, although the Polish parties diverged from the Western models, the new political groupings could compete.

In 2001, the situation changed completely, due to moderations in the acts on political parties and the elections statute. These acts introduced financing of the parties from the national budget in the form of subsidies for political parties and grant-aids for electoral campaigns. The ratio legis of the legislature was to curb the existing political capitalism.

According to the current regulations, a subsidy may be granted to groups that have obtained a minimum of 3 percent of the votes nationwide, as well as to party coalitions that have obtained 6 percent of votes. Thus, the subsidies for the parties are not connected directly with crossing the electoral threshold, which is higher and equals 5 percent for the parties and 8 percent for electoral coalitions. Crossing the electoral threshold is relevant, however, in the case of the grant-aids on the electoral campaigns, which are offered to the parties for every parliament member.

In order to show the scale of the subsidies, it is worth adding that in the scale of last year, it amounts to more than 100 million PLN. Regardless of the subsidies, the parties receive grant-aids in the form of reimbursement of the expenditure on the electoral campaigns for every new parliament member, so that in the scale of all the parties during the 2007 elections, the total sum of grant-aids amounted to approximately 40 million PLN.

Budgetary financing of the parties was accompanied by rigorous limitations concerning financing of the political parties from outside sources and the obligation to present financial statements, which could be dismissed in the following cases:

1. Running business activity by a party;
2. Acquiring financial means form public collections;
3. Accumulating financial means beyond the bank account;
4. Accepting financial means from the banned sources (including foreigners or legal persons);
5. Financing the electoral campaign with the omission of the Electoral Fund and accumulating funds from the Electoral Fund beyond the indicated bank account.

What have been the results of the new regulations and have they really prevented corruption? The parties have received a huge injection of capital; however, it was invested mostly in the professional image campaigns of their leaders. Instead of the poor-quality leaflets and crooked posters, the streets of the cities started to fill with billboards and city lights. The political parties advertised in the press and fought wars using paid TV spots. They started to be obsessed with the image wars waged for the taxpayers' money. On the organizational level, they became more professional as they finally had the means to employ full-time workers.

The idea of introducing an expert fund and devoting from 5–15 percent of the subsidies to the Expert Fund seemed to be the least successful. According to the law, the financial means accumulated within the Expert Fund can cover the costs of legal, political, sociological, and socioeconomic expertise, and finance the editorial and educational activities related to statutory activity of a political party. The authors of this article hoped that due to such regulations, the parties would create their own intellectual backup and closely cooperating think tanks. Unfortunately, none of the parties succeeded in doing so; they easily found ways to bypass these regulations and instead of financing the expertise and think tanks, they pumped the money into electoral campaigns.

As a result, the corruption was limited partly – on the central level in particular – but the money often was used by the party leaders and consequently got blocked at the central level, without reaching the local candidates who not only failed to obtain support but were forced to contribute to common campaigns in the regions. Thus, some of the parties, de facto, introduced a scale of charges depending on their position on the electoral register. What is worth underlining here is the fact that in Poland, as in many other post-communist countries, there is a proportional system in which it is theoretically the elector's will that counts, not the position on the register. However, it is well known that in reality the names on the top of the list are more likely to be marked, so that in the political parties, the candidates compete for the top places on the list.

While the system hampered the corruption to some extent, from the democratic angle, it also blocked opportunities for new parties to form. The new mechanism of financing stabilized the political system, creating two strongly polarized groups of post-Solidarity origins: the liberal Civic Platform (PO) and the conservative Law and Justice Party (PiS), along with two less influential groups, the left wing parties of post-communist background and an agrarian party.

The basic result of financing the parties directly from the national budget is creation of an oligopoly. In such circumstances, it hardly is possible for the new parties to enter the political market as they cannot have other significant financial sources, and without money they cannot cross the 3 percent threshold for the parties to obtain funds from the budget. The legal regulations have created a vicious circle that hinders fair competition between newly-established parties.

The only chance for a change lies in pressure from public opinion and in the parties' activities that make use of the aversion of public opinion towards the idea of financing the parties from the budget. Such initiative has been demonstrated by the currently ruling Civic Platform, which twice within one year has threatened to cease financing the parties from the national budget and suggested that the citizens grant 1 percent of their taxes to a party chosen individually. Additionally, it proposed statutory limitation of expenses on electoral campaigns (mainly of the most costly billboards and TV spots).

The proposal, however, encountered strong opposition on behalf of the other three parliamentary fractions, because the sole party that might profit from the changes is the very Civic Platform, already enjoying popularity that, according to a recent survey, amounts to approximately 40 percent. Moreover, the electors of the Platform constitute a group of definitely higher income than the electors of other parties, which translates into higher receipts from the 1 percent of the tax. Not surprisingly, none of the other groups was interested in the Civic Platform's proposals, so the idea collapsed.

The example of Poland proves that financing the parties from the national budget does not by itself eliminate the issue of corruption and exerts negative leverage on such elements as the competitiveness of the groups – instigating oligopoly of the already-established parties and ossification of the existent system. Instead of democratizing the mechanism of financing from the budget, it strengthens the power of leaders who virtually have the budgetary grants and subsidies at their disposal. As a result, the money is spent on the leaders' expensive professional image campaigns, instead of on the development of the parties' local structures or on the construction of political programmes. This, in turn, results in shallow entrenchment of the parties in the social soil. The parties no longer are interested in expanding the membership base as the

contributions comprise an insignificant percentage of the party's income, and a bigger party is more problematic to manage.

The lack of real competition in the political market and the existent oligopoly eventually bring about the disintegration of a system, which does not motivate the parties to compete with their programmes, but let them focus on their leaders' expensive image campaigns. The mechanism of complete financing from the budget does not encourage competition, either. New players are prevented from entering the market: on one hand, they are deprived of grant-aids and subsidies, and on the other hand, they cannot obtain funds from outside sources.

The main elements guaranteeing fair competition and the access of the new parties to the market are as follows:

1) Transparency and openness

The transparency and openness of both financing sources and the party's expenditures are essential. Even though the parties are obliged to present financial statements, the state does not always possesses tools to supervise them properly. The transparency also should apply to expenditures, particularly to the structure of financing the electoral campaign. One cannot induce rigorous rules of financing if there are no tools for their enforcement.

2) Diversification of the sources of financing

A situation in which parties are financed almost 100 percent with budgetary subsidies is not reasonable. Parties miss motivation to attract new members and supporters, who could make small contributions to the parties' accounts or their electoral funds. Barack Obama's presidential campaign in the United States proved, however, how considerable financial means may be gained from insignificant contributions of supporters. During Obama's campaign hundreds of thousands of people – perhaps more than a million - contributed small amounts to his electoral fund. While it is true that such a result will be hard to obtain in post-communist countries, it is the healthiest model of financing parties. The parties should be financed, above all, by their members and supporters, and only then might reach for budget subsidies.

3) Fair and clear game rules for old and new players

If we choose budget financing, the state that should provide an opportunity for feasible competition by new parties by lowering a financial threshold, hence providing an opportunity to create new parties. One solution to this is to lower the financial threshold for parties that obtained 1–2 percent of the votes or to allow for financing from other sources. Otherwise, there will be no actual competition and the existing parties will degenerate further and will have no stimuli to provide their electors with a valuable programme, focusing instead on negative PR and image campaigns. If we choose budget financing, it also would be worth restricting campaign methods of the existing parties, e.g., by introducing a ban on financing a media campaign with the money of taxpayers.

4) Active role of the public opinion, non-governmental organizations and the media

Ensuring competition on the political market will not be possible with a passive attitude of public opinion, nongovernmental organizations, or the media. The media exert a real influence – they can, e.g., censure the phenomenon of political corruption and hypocrisy of the existing political groups, which actually do their best to defend against the competition of new parties. Every disclosed breach of rules on financing parties triggers their public condemnation. It is worth ensuring that budget funds are not spent only on image campaigns, but also on creating parties' programmes in such a way that the campaign would be more about the competition of the programmes rather than that of the leaders' images. Here, an active role can be in the hands of the think tanks that create the expert background for politics.

The four elements mentioned earlier may have a positive impact on fair competition between the existing parties.

Financing parties from the state budget could be justified if we agreed that parties are political institutions that have to come under state monitoringIf taxpayers are to finance them almost 100 percent, then the parties should be monitored by state organs rather than be private tools of party leaders.

The key question left unanswered is the one about the philosophy of political parties' functioning. Should they be private or public institutionsAnd this is influenced significantly by the financing system.

PROGRAMME OF THE CONFERENCE

The Conference is organised within limits of the program of the European Commission in Kyrgyzstan and Kazakhstan and Venice Commission in Europe with cooperation of Legal Research Policy Centre (Kazakhstan)

9.30 – 10.00 Registration of Participants

10.00 – 10.30 Introduction

Dulat KUSTAVLETOV, Vice Minister of Justice of the Republic of Kazakhstan

Giovanni BUQUICCHIO, Secretary of the European Commission

Alessandro LIAMINE, Regional political affairs adviser for Central Asia, European Union, European Commisssion for Kazakhstan, Kyrgyzstan and Tajikistan

Vera TKACHENKO, Director of the Legal Policy Research Centre

Session 1 FINANCING POLITICAL PARTIES: CONTEMPORARY APPROACHES AND PRACTICES

Moderator: Alessandro LIAMINE, Regional political affairs adviser for Central Asia, European Union, European Commission for Kazakhstan, Kyrgyzstan and Tajikistan

10.30 – 10.50 Sources of Funding of Political Parties – Prof. Galina Polunina, Finance Academy, the Government of the Russian Federation

10.50 – 11.10 "European standards of financing political parties and election campaigns", - James HAMILTON, Director of Public Prosecutions, Ireland, Barrister-at-Law, Full Professor in Law, Member of the Venice Commission

11.10 – 11.30 Discussion of Reports

11.30 – 12.00 Coffee Break

Moderator: Vera TKACHENKO, Director of the Legal Policy Research Centre

12.00 – 12.20 "Legislative framework for financing political parties and election campaigns in France", - Barbara JOUAN, Legal Advisor, Commission nationale des comptes de campagne et des financements politiques (CCFP), France.

12.20 – 12.40 "Financing of election campaigns in new member countries of the European Union",- Evgueni TANTCHEV, Judge of the Constitutional Court of Bulgaria, PhD Law, Full Professor in Law, Member o the Venice Commission

12.40 – 13.00 “Legislative regulation of financing political processes: some aspects of Ukrainian experience”, - Sergei KALCHENKO, Senior Attorney of the “Moor & Krosondovich” Law firm, Ukraine

13.00 – 13.30 Discussion of Reports

13.30 – 14.30 Lunch

Session 2 DEVELOPMENT TRENDS OF THE LEGISLATION ON FINANCING POLITICAL PARTIES AND ELECTION CAMPAIGNS IN KAZAKHSTAN

Moderator: Asylbek KOZHAKHMETOV, Chairman of the Republican NGO “Shanyrak”

14.30 – 14.50 “Implementing amendments entered in the Constitution of the Republic of Kazakhstan regarding the questions of government financing of non-governmental organizations, and some aspects of improving the election legislation”, - Dulat KUSTAVLETOV, Vice Minister of Justice of the Republic of Kazakhstan

14.50 – 15.10 “Kazakhstan legislation on financing political parties and election campaigns: main positions and trends”, - Yevgeniy ZHOVTIS, Director of the Kazakhstani International Bureau for Human Rights and Rule of Law, NDI expert

15.10 – 16.00 **STATEMENTS OF REPRESENTATIVES OF POLITICAL PARTIES**

16.00 – 16.30 Coffee Break

Session 3 LIMITING GOVERNMENT FINANCING AS ASSURANCE OF DYNAMIC POLITICAL PROCESS AND NEXUS BETWEEN THE PARTIES AND THE ELECTORATE

Moderator: Yevgeniy ZHOVTIS, Director of the Kazakhstani International Bureau for Human Rights and Rule of Law, NDI expert

16.30 – 16.50 “Existing models and criteria for distribution of government subsidies to parties. The role of indirect financing of political parties and election campaigns.”,- Barbara JOUAN, Legal Advisor, Commission nationale des comptes de campagne et des financements politques (CCFP), France

16.50 – 17.10 “The mechanics of providing new parties the access to the political arena and competition within fair conditions and with progressively more stable parties.”- Sergush TZHECHIAK, Chairman of the Politicos Fund, Political consultant, Expert of the OSCE Office for Democratic Institutions and Human Rights (OSCE ODIHR)

17.10 – 18.00 Conclusive Discussion