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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW ON AMENDMENTS AND ADDITIONS
TO THE ORGANIC LAW
OF GEORGIA
ON POLITICAL UNIONS OF CITIZENS

The Law of Georgia

“on Changes and Amendments to the Law of Georgia on Political Unions of Citizens”

Article 1. Following amendments shall be introduced to the “Law of Georgia on Political Unions of Citizens” (Bulletin of Legal Acts of Georgia N):

1. To add article 5¹

“5¹. Party is proscribed from distribution of financial contributions, gifts or other material value to citizens through the assistance of candidates, representatives or other persons, sale of goods at preferential price, buying goods above market value, offering or distribution of any kind of goods for free (except cases envisaged by this Law) as well as interesting citizens by promising distribution of financial contributions, securities and other material values.”

2. The name of Chapter 3 be amended as follows:

“Chapter III. Property, funds and financial monitoring of party.”

3. In the article 25

a) The subparagraph b) of the first paragraph shall be amended as follows:

“b) Donations.”

b) To add paragraph 1¹

“1¹. Donations shall be considered as financial contributions transferred to the political party’s account by citizens, as well as any kind of free or discounted material values or services (except voluntary work), preferential loans.”

c) To add third paragraph

“3. Political party cannot take loan/credit from any natural or legal person, except commercial banks. Annual amount of the credit taken by party from commercial bank shall not exceed 100 000 GEL.”

4. To add article 25¹

“Article 25¹.

1. Annual amount of public funding, donations and overall amount of other legal income shall not exceed 0.2 % of the state GDP.

2. Political party shall transfer contributions exceeding the limit prescribed by paragraph 1 of the present Article to the state budget. “

5. In the article 26

a) To add paragraph a¹

“a¹) Legal persons, their consolidations or other types of organizational entities;”

b) The subparagraph “b” of the first paragraph be amended as follows:

“b) State body, state organization, legal person of public law, enterprises with state shares, except cases envisaged by this Law;”

c) The second paragraph be amended as follows:

“2. A donor shall indicate his/her name, address, number of the ID card of a citizen of Georgia (passport of a citizen of Georgia) and personal numbers.”

d) The 6th paragraph be amended as follows:

“6. Information on the donations of a political party, including the information on the data provided in paragraph 2 of the present Article is public. The Chamber of Control of Georgia shall ensure the accessibility of the mentioned information in accordance with the legislation.”

6) To add article 26¹

“Article 26¹

1. Restrictions on political party prescribed by this chapter should also apply to:
 - a) Legal person in case it is related, directly or indirectly, to a political party or are otherwise is under the control of a political party;
 - b) Legal person which by means of representatives or through the assistance of other persons encourages voters to support or abstain from supporting any political power.
2. Legal person is related, directly or indirectly, to a political party in case its expenditures are related, directly or indirectly, to activity and goals of political party.”

7) In the article 27

a) The first paragraph be amended as follows:

- “1. An overall amount of financial and material donations received by a party in a year shall not exceed 60 000 GEL from each citizen. Annual amount of membership fee shall not exceed 1200 GEL from each member of party.
2. A donor shall not be a citizen of Georgia, whose 15 % of annual income are obtained from legal person established by him/herself or his/her participation which took part in simplified procurement procedures.
3. A donor may make a donation in favor of several political parties though overall amount shall not exceed the limit prescribed by this Law – 60 000 GEL.

4. The restrictions defined in paragraph 1 of the present Article concern all kind of donations, including the services provided for the party purposes and on party's behalf (with party's name).
5. The party membership fees, as well as donations from the natural persons shall be paid only on account.
6. Making donation on behalf of other persons in order to avoid restrictions prescribed by law, shall entail the transfer of donations to the state budget as well as responsibility of person who violated the aforesaid regulations in accordance with the law."

8) To add article 27¹

"Article 27¹

1. Political party shall submit the information on donations within 3 days to the Chamber of Control of Georgia, which ensures its publicity.
2. If by receiving donation the regulations of the present Law are violated, an authorized person shall inform the donor thereon and return the donation within 3 days. Unless the donation is return within 7 days from its receipt, donation shall be transferred to the state budget as prohibited donation.
3. Failure to perform relevant obligations by an authorized person of a political party shall entail his/her responsibility prescribed by law."

9) The 11th paragraph of the article 30 be amended as follows:

"11. The party shall get the public funding only based on the prior written consent which shall be submitted to the Chamber of Control of Georgia annually, not later than 25 November. If party fails to submit the written consent for receiving the next year's public funding in time, the Chamber of Control of Georgia shall inform the party in a written form the next day after expiration of the deadline. The party is authorized to submit the relevant consent within 3 days from receiving warning from the Chamber of Control of Georgia. If the party fails to submit the relevant consent in the timeframes set by the Chamber of Control of Georgia, it shall loose the right to receive next year's public funding. The Chamber of Control of Georgia shall inform the party thereon in a written form. The Chamber of Control of Georgia shall transfer the money back to the state budget within 5 days after the relevant party loses the right for public funding."

10) In the Article 32

a) The first paragraph shall be amended as follows:

- "1. Each party shall, before February 1 of each year, submit its financial declaration together with an auditor's (auditing firm's) conclusion to the Chamber of Control of Georgia. The party shall send copies of the published declaration and auditor's (auditing firm's) conclusion to the local tax body in accordance with party's legal address. The declaration shall indicate the yearly income (including the membership fees and amount of donations, identity of persons paying membership fees, data of donors, the finances allocated by the state as well as finances received as a result of publications or other party activities) and expenditure of the party (spent on elections, financing of various activities, remuneration, official trips and other expenditures) as well as a report on its

existing property (owned buildings, quantity and type of means of transportation, their total value, the amount of money the party has on the bank accounts).”

b) The 4th paragraph shall be amended as follows:

“4. Chamber of Control of Georgia shall provide information on party’s financial declaration to all interested persons, as well as publish the declaration on the relevant web-page within 5 working days after its receipt.”

c) To add 5th, 6th and 7th

“5. Part shall include expenditures of all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party within its financial declaration.

6. Annual financial declaration form of political party and audit standards are elaborated by Chamber of Control of Georgia.

7. Party shall keep financial declarations and all documents related thereto during 6 years as well as perform other obligations related to keeping of accounting documents prescribed by tax legislation.”

11) In the Article 33

a) The second paragraph be amended as follows:

“2. For the purpose of conducting financial audit, a party is entitled to address any independent auditor, who complies with the standards elaborated by the Chamber of Control of Georgia.”

b) The third paragraph be amended as follows:

“3. The conclusion of an independent auditor on the financial status of a party shall be submitted to the Chamber of Control of Georgia.”

12) Article 34 be amended as follows:

“If a party fails to timely submit its financial declaration to the Chamber of Control of Georgia, the latter one shall warn the party in a written form and request to remove in inaccuracy within 5 days. Unless the party submits its financial declaration to the Chamber of Control of Georgia within 5 days, it shall not be entitled to receive public funding indicated in Article 30 of this Law for subsequent 1 year.”

13) To add article 34¹

“Article 34¹

1. Chamber of Control of Georgia carries out monitoring of legality and transparency of party funding.

2. Chamber of Control of Georgia is authorized to:

a) Elaborate financial declaration form;

b) Determine audit standards for political party funding;

- c) Verify completeness, correctness and lawfulness of financial declaration and election campaign fund;
- d) Ensure transparency of party funding;
- e) Consult interested persons on issues of party funding;
- f) Request information on party's finances from political parties, administrative bodies and commercial banks in case of necessity;
- g) Respond to violations of party funding regulations and apply sanctions prescribed by law;
- h) Address court with motion on party's account sequestration in case of failure to perform obligations prescribed by this chapter;
- i) Address prosecution bodies in case of detection of a crime.”

Article 2

The present Law be enacted immediately after publishing.

President of Georgia

Mikheil Saakashvili

**Explanatory Note
to the Draft Organic Law of Georgia
on the Amendments to the Organic Law of Georgia
on “The Political Unions of Citizens”**

a) General Information on the draft law

a.a) Grounds for the adoption of the law

Council of Europe Anti-Corruption subcommittee – GRECO¹ (Group of States against Corruption) assesses anti-corruption legislation and practice of state-parties. Assessment is carried out on the basis of Evaluation Rounds conducted on different themes and followed by the issuance of recommendations to ensure eradication of gaps, inaccuracies and discrepancies identified by assessments.

As anti-corruption reforms are top priority of the Government, great importance is paid to harmonization with Council of Europe standards regarding fighting against corruption. In May 2011 Georgia successfully concluded Second Evaluation Round of GRECO - out of the 14 recommendations issued to Georgia, in total 13 recommendations have been implemented satisfactorily and only 1 recommendation remains partially implemented.²

Anti-corruption sphere has multiple dimensions and comprises issues related to the political party financing as well. GRECO 3rd Round Evaluation Report issued in July 2011 concerns criminalization of corruption and transparency of political party funding.

Analytical Department of the Ministry of Justice of Georgia serving as a Secretariat of the Anti-Corruption Council of Georgia³ is responsible for elaboration of legislative initiatives in line with GRECO recommendations.

After publication of GRECO 3rd Round Evaluation Reports, Secretariat commenced with implementation of GRECO recommendations on incriminations.⁴ Within the framework of the Criminal Legislation Working Group and in cooperation with non-governmental and international organizations draft law on the Amendments to the Criminal Code of Georgia was elaborated and submitted to the Parliament in the beginning of the Fall Session.

After implementation of GRECO recommendations on incriminations, Secretariat turned to the political party financing issues. The process was surpassed by the meeting with non-governmental organizations represented in the Anti-Corruption Council⁵, where GRECO 3rd Round Recommendations, Council of Europe Committee of Ministers Recommendation (2003)4 on Common Rules against Corruption in the Funding of Political parties and Electoral Campaigns⁶ and Report of Non-governmental Organizations on Political Party Funding⁷ were discussed.

Elaboration of draft law was a result of numerous important inaccuracies in the current political party financing regulations which were identified by Council of Europe, OECD and local non-governmental organizations and will of the Government to remove them.

¹ http://www.coe.int/t/dghl/monitoring/greco/default_EN.asp

² [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)9_Add_Georgia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)9_Add_Georgia_EN.pdf)

³ http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=647

⁴ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_One_EN.pdf)

⁵ Georgian Young lawyers Association; Transparency International - Georgia

⁶ [http://www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)4_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf)

⁷ <http://transparency.ge/post/report/politikuri-partiebis-dapinansebis-kvleva>

a.b.) Aim of the draft law

Aim of the draft law is enhancement of political party funding system, prevention of political corruption, insurance of high level of transparency and accountability and support of political competition through bringing Organic Law on “Political Unions of Citizens” in compliance with international standards, implementing Council of Europe recommendations and considering comments and observations of non-governmental organizations.

a.c.) Main concept of the draft law**Donations from Legal Persons**

Under Council of Europe Committee of Ministers Recommendation (2003)4, States shall: (a) establish limits on donations; b) ensure transparency of donations and avoid secret donations; and (c) prohibit donations from foreign donors.

Under the Venice Commission Guidelines for Financing of Political Parties⁸, it is recommended that states while imposing limits on maximum amount of donations also consider imposition of prohibition of donations from legal persons.

In general, financing of political parties by legal persons involves certain corruption risk factors. In particular:

- Limit on donation can be avoided by establishing several legal persons;
- Legal persons, through another legal persons, may be holder of shares in other legal persons making difficult to identify the real donor and impossible to ensure transparency of funding;
- In case of liberal economy, shares in the legal person may be owned by a foreign national or even a foreign state – possibility of foreign country to intervene in internal political processes.

Problem related to donations from legal persons is also highlighted in the Report of Transparency International - Georgia⁹ - “Financing of politics by business always involves the risk of corruption, which makes it necessary to have proper legal regulations of donations”.

Recommendations provided by Transparency International – “It is therefore necessary to formulate the law in a way that would prevent the same individual from donating over GEL 100 000 to a single party through different legal entities that she/she owns.”

In the light of abovementioned, Secretariat of the Anti-Corruption Council considers that it is necessary to have strict regulations on donations from legal persons so that the avoidance of donations limit and foreign country interference into domestic political processes be avoided, as well as it is also necessary for the prevention of political corruption.

Analysis of the legislation of European countries showed that big number of states imposes prohibition on donations from legal persons. Such prohibition operates in Baltic States, Poland, Greece, Portugal, France, Belgium and other states.

Consequently, Anti-Corruption Council considers it reasonable to prohibit donations from legal persons and therefore amendments are introduced in the Articles 25, 26 and 27.

⁸ [http://www.venice.coe.int/docs/2000/CDL-PP\(2000\)006-e.pdf](http://www.venice.coe.int/docs/2000/CDL-PP(2000)006-e.pdf)

⁹ <http://transparency.ge/post/report/politikuri-partiebis-dapinansebis-kvleva>

It shall be also noted that legal persons has no active or passive voting right as this is prerogative of citizens. And in case if a person standing behind these legal persons wishes to donate to a political party, he/she can easily do that in accordance with the specific conditions prescribed by law.

Non-monetary contributions and credits

Under GRECO Recommendations, issues related to political party credits/loans shall be regulated. On the one hand, loans received by political parties shall be properly identified and accounted and on the other hand, when the terms or conditions of loans deviate from the customary market conditions, they shall be considered as donations. In addition, right of a party to receive a loan shall not be used as a way to avoid maximum limit of donations.

Regulation of this issue varies in European countries. In Latvia, for example, receiving loans by political party is prohibited, while in Portugal relates to a group of states where receiving of loans by political parties is possible only through banking institutions.

Under the regulation provided for by the present draft: (a) loans can be received only from commercial banks; (b) maximum amount of loan is 100 000 GEL per year; (c) Loans granted under favorable conditions will be considered as donations in terms where their percentage rate differs from ordinary market rate or where they deviate from the customary market conditions. Same rule will apply on good and services received below the market value.

Legal persons connected with political parties

Issues related to legal persons connected with political parties shall be regulated separately as it is possible to avoid limitations on financing through these types of legal persons and instead of expending and adequately declaring/accounting them, do this through "its" organization.

As stated by the Council of Europe Committee of Minister Recommendation (2003)⁴, limitations imposed on political parties regarding donations and accounting, shall also apply to all legal persons which are related, directly or indirectly, to a political party or are otherwise placed under the control of a political party.

The draft law contains Article 26¹ regulating this issue and also offering definition of connection with a political party – cases where expenditures of legal person are related to the activities and aims of a political party.

Donations from citizens

Under GRECO Recommendations, it is necessary to regulate issues related to membership fee payment so that they are not used for avoiding maximum limit of donations. To this end it is necessary to establish maximum limit of membership fee - the draft law proposes 1200 GEL per year.

It is also important to exclude donation of amounts exceeding the limit prescribed by law through different manipulations. For example, if one person donates to several parties and these parties unite their funds for elections and register for elections as one electoral block – it will be the avoidance of maximum limit. Therefore, it is important to establish the maximum limit of donations according to the citizen instead of political party – a citizen can donate to political party maximum 60 000 GEL per year or can provide a service of the same value.

The draft foresees bank transfer as a method of donations to ensure transparency and better accounting of party finances.

Persons participating in simplified state procurement

Council of Europe Committee of Ministers states shall limit donations from legal persons which provide goods or services for any public administration. To this end decisions related to state procurement are important and risk of political corruption in this process shall be taken into consideration.

As the present draft foresees prohibition of donations from legal persons, it is necessary to regulate issues related to those citizens who own shares in companies participating in state procurement.

Since the December 2010 Electronic System of State Procurement has been launched in Georgia¹⁰, all tenders are carried out with due respect of principles of transparency, impartial mechanism for dispute settlement is created and involvement of non-governmental sector in these processes is ensured. However, in certain cases provided by law, tenders may be exercised through simplified procedure – requiring more careful regulation while considering risks of corruption.

In the light of the abovementioned, the draft foresees that a citizen cannot donate to political party if more than 15% of his/her annual income are from the simplified procedure of state procurement in the benefit of the company which was created by him/her or his/her participation.

Monitoring body

Under the GRECO Recommendations, (i) an independent mechanism shall be ensured in place for the monitoring of the funding of political parties and election campaigns, in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) this mechanism shall be provided with the mandate, the authority, as well as adequate resources to effectively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.

In addition, the Venice Commission Guidelines for Financing of Political Parties also provide for the recommendation on the independent monitoring body.

The draft law proposes the Chamber of Control as a monitoring body who is chaired by the persons elected by the Parliament for 5 years term – position defined by the Constitution, an independent and inviolable person.

Chamber of Control as party financing body is also recommended by the Transparency International – Georgia.

According to the draft law, the Chamber of Control is authorized to: (a) elaborate standardized format for financial declaration; (b) define adequate auditing standard of financing of electoral subjects; (c) check the accuracy, legality and completeness of the financial declaration and report of electoral campaign fund; (d) ensure the transparency of political party funding; (e) consult the interested persons on political party funding; (f) request the information on political party funding in case of necessity from political parties, administrative bodies and commercial banks; (g) address the violations of political party funding regulations and apply sanctions prescribed by law; (h) address the Prosecution Service in case of detection of crime.

¹⁰ https://tenders.procurement.gov.ge/public/#state_last_events

With these amendments besides establishment of monitoring body, two more GRECO recommendations concerning standardized format for annual financial declarations and development of modern auditing standards will be implemented as well.

In addition, it shall be noted that political party funding monitoring is carried out in Belgium and Finland by a body similar to the Chamber of Control of Georgia.

Other amendments

The draft law also comprises norms aimed at the eradication of several discrepancies, establishment of adequate mechanism to address the violations and regulation of other more technical issues.

b) Justification for financial implications

b.a.) Source of funding for adoption of draft legislation

State budget.

b.b.) Effect of draft legislation on the revenue part of the State budget

Adoption of the draft law will have no effect on budgetary revenues.

b.c.) Effect of the draft legislation on budgetary expenditures

After the adoption of the draft law need for the increase of financing of Chamber of Control may arise for the purpose of ensuring effective implementation of functions imposed on it.

b.d.) New financial obligations of the State

The state assumes no new financial obligations.

b.e.) Expected financial consequences for those to whom the draft law applies

The draft law shall not entail the above financial consequences.

b.f.) The rule (principle) for defining the amount of tax, fee or other type of payment set forth by the draft law

c) Compliance of the draft law with international legal standards

c.a.) Compliance of the draft law with the EU Directives

Adoption of the draft law does not contradict with the EU Directives.

c.b.) Compliance of the draft law with obligations derived from Georgia's membership in international organizations

Adoption of the draft law will ensure full compliance of Georgian legislation with political party funding related standards of Council of Europe, Organisation of Economic Cooperation and Development and will support the implementation of obligations derived from the membership to international organisations.

c.c.) Conformity of the draft law with bilateral and multilateral treaties of Georgia

d) Consultations obtained in the process of drafting this legislation

d.a.) State, non-governmental and/or international organization / entity, experts that participated in drafting legislation, where such expertise was sought

Georgian Young Lawyers Association (GYLA), Transparency International – Georgia, as well as other bodies represented in the Anti-Corruption Council of Georgia.

d.b.) Assessment of the draft law by an organization (entity) and/or expert involved in drafting thereof, where such exists

d.c.) Author of the draft law

The Ministry of Justice of Georgia is the author of the draft law.

d.d.) Initiator of the draft legislation

The Government of Georgia.