



MONEY IN POLITICS

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Progress and lasting challenges - the role of money in politics in Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine in 2017

Regional report

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¹ Disclaimer: The views and opinions expressed in this report are those of the author and do not necessarily reflect the official policy or position of SAOG, Council of Europe, International IDEA, IFES, NIMD, OSCE-ODIHR, TI Georgia.

INTRODUCTION

This brief report reviews current trends regarding political finance in Azerbaijan, Belarus, Georgia and Ukraine. The findings are based on the country studies by national experts, and the summaries about each country below rely on the statements by these authors. This overview is intended to serve as an introduction to participants at the Regional Conference *Money in Politics - Lasting Challenges and International Practices in Eastern Europe*, and participants are encouraged to read the country studies for further details.

REGIONAL TRENDS

There have been remarkable changes in the legal frameworks on political finance in Eastern Europe in recent years. New or amended rules have been introduced in most countries in the region, and the formal oversight body has been fully or partially changed in countries such as Georgia, Moldova, Montenegro, Serbia and Ukraine.

These changes can be illustrated by the compliance rates of different countries with recommendations by the Group of States against Corruption (GRECO). As of the second compliance report (published only a few years after the original evaluation reports on political finance), an average of 59% of the recommendations to East European countries were deemed to be fully implemented.² Among the countries discussed in this paper, Georgia, Moldova and Ukraine have seen significant changes in recent years.

What do these legal changes mean in terms of the actual transparency and control over the role of money in politics? The answer seems to lie in the fact that formal regulations do not automatically ensure compliance. All the countries share a major challenge to secure more effective oversight and implementation, which can support increased transparency and oversight. Moving forward requires significant assistance to the formal oversight institutions, bodies that must also show significant political courage to take a proactive role. In addition, civil society and the media have crucial roles in monitoring and raising awareness about the role of money in politics and its impact on average citizens. Finally, commonly forgotten are the political parties and politicians themselves, the judiciary responsible for enforcing sanctions, and state institutions targeted with pressure to abuse their resources in relation to elections.

ARMENIA

The most recent changes to the legal framework around political party and campaign finance in Armenia took place in late 2016, with most provisions taking effect in April 2017 (though some will only take effect in the future). Several restrictions on donations exist, including annual limits on amounts that can be donated to a political party, and a ban on corporate donations to election campaigns (though not to political parties). Public funding is provided to political parties, while election campaigns have to abide by certain spending limits.

While it is obviously too early to judge what the impact of the new framework will be, earlier elections have seen abuses of administrative resources and violations of campaign finance

² Ohman, Magnus (2016) *The remarkable case of GRECO*. Paper presented at the 24th World Congress of the International Political Finance Association, Poznan 2016, page 6. While this compliance rate was lower than in Northern Europe (74%), it was much higher than among West European countries (33%).

regulations.³ The mandate to oversee compliance lies with the Oversight and Audit Service (OAS) of the Central Election Commission (CEC). Electoral contestants submitted financial reports ahead of the 2017 parliamentary elections that were published by the OAS, though it has been noted that “while no violations of campaign finance were identified by the OAS, it did not proactively examine the accuracy of the reports”.⁴

An interesting question is the intention behind the existing regulatory framework, and the author of the country study on Armenia is arguing that the current system is used by the regime “to weaken the opposition and prevent the emergence of new and powerful political actors” (page 5).

AZERBAIJAN

Azerbaijan has seen limited legal reform in the political finance area in recent years, with public funding of election campaigns being removed in 2010, but regular public funding of political parties being introduced in 2012. The list of prohibited sources of income is largely in line with European practice, and Azerbaijan uses limits on the amounts that can be donated. There are reporting requirements for political parties (annually) and for election campaigns.

In practice, control and transparency regarding political finance is limited, and there are various reports of abuses of state resources in relation to election campaigns. Opposition parties play a limited role in Azeri elections and find it difficult to raise funds. The oversight mandate remains with the CEC in Azerbaijan.⁵ However, this institution has limited capacity and has not taken a proactive role in overseeing the compliance of political parties with the existing regulations. The partisan composition of the CEC raises the issue of whether the body may carry out the “independent monitoring” called for by international organisations.⁶ Of special concern is that the CEC does not make the financial reports submitted by election campaigns available to the public. Civil society groups are less free to monitor the role of political actors (and of the CEC) than in some other countries in the region, due to legal and practical restrictions on civil society activities.

BELARUS

“Belarus is a country where state structure favours executive branch of power and governing parties enjoy a privileged position” (Belarus country study page 7). Unlike the other countries in the region, the president and the vast majority of MPs are technically independents. Opposition political parties find it difficult to raise funds from permitted sources, and indeed even to function. Their financial situation has worsened in recent years after public funding of election

³ See for example OSCE/ODIHR *Election Observation Mission Final Report, Republic of Armenia, parliamentary elections 6 May 2012*, page 12.

⁴ International Election Observation Mission, *Republic of Armenia, Parliamentary Elections, 2 April 2017, Statement of Preliminary Findings and Conclusions*, page 2. Available at <http://www.osce.org/office-for-democratic-institutions-and-human-rights/elections/armenia/309156?download=true>

⁵ <http://www.msk.gov.az/>

⁶ See for example Article 14 of the Council of Europe Recommendation 2003(4) on common rules against corruption in the funding of political parties and electoral campaigns, and Article 212 of the Venice Commission & OSCE/ODIHR Guidelines on Political Party Regulation-

campaigns was abolished in 2013. Although GRECO has reviewed the political finance regulations in Belarus, this is the only country where the authorities have refused to accept that the GRECO evaluation report be made public.⁷

Donation and spending limits exist, as well as reporting requirements. The mandate to oversee compliance with these rules lies with the CEC, though as its members are either appointed by the President or by the Council of Ministers, the independence of this institution is in some doubt among various observers. There are also numerous reports about abuse of state resources in Belarusian elections, which according to the OSCE/ODIHR Election Observation Mission to the 2016 elections “resulted in unequal opportunities for candidates”.⁸ In various cases, public and state-subsidised organisation have been reported to campaign in favour of certain candidates.

It seems that the current political finance regulations in Belarus do not serve to support equal opportunities for different political forces or transparency in the role of money in politics.

GEORGIA

Georgia has undergone several phases of legal reform in the political finance area, including a major change in 2011 that saw the oversight mandate changed from the CEC to the State Audit Office (SAO). The country now has a significant amount of political finance regulations, and the Money, Politics and Transparency overview of political finance in 54 countries around the world listed Georgia first regarding the legal provisions with a score of 93 out of 100 (compared to 43 for Germany, 47 for Hungary, 82 for Poland and 71 for the US).⁹ The rules include restrictions on permitted donors, donation and spending limits and reporting requirements that comply with or sometimes go beyond European standards.

The practical experience has been somewhat different. The SAO and its Financial Monitoring Service has taken impressive steps in increasing transparency, for example through the publication of a searchable donor database.¹⁰ Many steps have also been taken in increase confidence among stakeholders in the oversight system. Unfortunately, many submitted reports are incomplete, and there is major gap in the funding of the dominant political party and all others. A major concern is that the oversight of abuses of state resources is not the mandate of the SAO (or of any other permanent, independent institution), but lies with the Interagency Task Force on Free and Fair Elections which is set up for each election. This system has not proven effective against abuses of state resources in Georgia so far. Very encouraging is however the active role played by civil society in raising awareness and advocating for reforms and enhanced enforcement.

⁷ For the GRECO Third Round Evaluation Reports, see <http://www.coe.int/en/web/greco/evaluations/round-3>

⁸ OSCE/ODIHR *Election Observation Mission Final Report, Parliamentary Elections, 11 September 2016, Republic of Belarus*, page 13.

⁹ See <https://data.moneypoliticstransparency.org/>

¹⁰ <http://monitoring.sao.ge/en>

MOLDOVA

Moldova has suffered from several scandals in recent years connecting the political sector to financial mishaps. The regulatory system regarding political party and campaign finance was changed in Moldova in 2015, with further legal amendments being adopted in 2016 and early 2017. The new rules included the provision of public funding for political parties as well as rules for increased transparency and oversight. The introduction of public funding had been long discussed in Moldova, and now reportedly amounts to around 40% of the total income of eligible political parties. Unfortunately, provisions to connect the public funding of Moldovan political parties to the gender equality among their candidates, while included in early drafts of the legislation, were not part of the legal reforms finally adopted by parliament.

The regulatory reforms meant that the CEC was given the mandate to oversee ongoing political party finance regulations, in additions to its previous role in monitoring compliance with campaign finance rules. The share of political parties that submitted their annual report increased after the mandate was shifted to the CEC. However, there are still concerns regarding the accuracy of many of these reports. Issues also remain regarding the compliance with campaign finance regulation. In the 2016 presidential elections, both international and citizen election observers found that the rules and their enforcement did not guarantee the transparency and accountability of the process. Another concern is the abuse of state resources in relation to Moldovan elections, and there are indications that this practice has become more widespread in recent elections, while gift giving (vote buying) may be becoming less common.

UKRAINE

The EuroMaidan events in 2013 and subsequent developments meant a major political change in Ukraine. One thing that did not change immediately was the role of money in the political system, in either law or reality. A major legal change took place in late 2015. Among other things, this included restrictions on permitted private sources of donations, contribution caps and public funding. The task of overseeing political finance regulations (what little existed) had previously been the task of the CEC, but this was now moved to an agency created through the new legal amendments – the National Agency for the Prevention of Corruption (NAPC).¹¹ This body was created during in early, although it does still not have a full set of members.

It is still too early to draw final conclusions about the reforms passed about 18 months ago. However, there are some positive signs, such as increased transparency of the major political parties, which now have to submit quarterly financial reports, and increased oversight by public and civil society institutions. On the other hand, there are worrying indications regarding the capacity and impartiality of the NAPC, which has to improve its public outreach and communication significantly. An electronic system for financial reporting and publication is being developed, slowly. It may be some time before problems such as oligarch influence and abuses of state resources are part of Ukraine's past. Essential in this is the transparency and oversight that can be achieved in the upcoming general elections, currently scheduled for 2019, which will be the first time that the new regulatory framework is tested in an electoral context.

¹¹ <https://nazk.gov.ua/>

COMMONALITIES IN COUNTRY RECOMMENDATIONS

While the recommendations in each of the country papers are specific to the particular country, there are some commonalities. Among these can be noted;

Transparency

- Ensure that a reporting system for political parties and election campaigns is in place that can support increased transparency without overburdening those required to report.
- Make sure that submitted financial reports are published in a timely manner

Oversight and enforcement

- Ensure that the public oversight body has the independence, mandate and resources to effectively enforce the political finance rules.
- Make sure that cases of potential violations are investigated effectively, and proportional sanctions imposed as appropriate.

Suitable regulations

- Introduce regulations that support equal opportunities and transparency
- This can include re-introducing or increasing public funding, allowing early (controlled) spending, and regulating third party spending

Abuse of state resources

- Public authorities should refrain from participating in electoral campaigns
- Compliance with rules against abuses of state resources should be monitored carefully and violations sanctioned

APPENDIX, OUTSTANDING GRECO RECOMMENDATIONS

The below table shows the GRECO recommendations on party funding that were deemed outstanding as of the latest compliance report (all the below recommendations were deemed “partly implemented”). Note that in some cases, including Ukraine, there has been significant legal changes since the most recent GRECO report. The wording of the recommendations has been abbreviated somewhat.

See further at <http://www.coe.int/en/web/greco/evaluations/round-3>

Country	Latest report	Outstanding recommendations
Armenia	2014	None, compliance procedure terminated
Azerbaijan	2016 ¹²	<p>I: Extend the accounting reference period for election campaigns so financial reports better reflect the resources and expenditure devoted to these campaigns</p> <p>IV: Party accounts should be disclosed for easy and timely access by the public; and find ways to support political parties in complying with these transparency regulations</p> <p>V: Ensure, as appropriate, independent auditing of political party accounts; and find ways to support parties in complying with such requirement</p> <p>VI: Ensure substantial and pro-active monitoring of financial reports on election funds, including verification of information submitted and investigation of financing irregularities; and strengthen independence of the election commissions in relation to campaign finance supervision</p> <p>VII: establish independent and substantial monitoring of the general financing of political parties, well-coordinated with the monitoring of election campaign funding</p> <p>VII: Clearly define infringements of regulations on transparency of election campaign funding and general party funding and introduce effective, proportionate and dissuasive sanctions for infringements, in particular, by extending the range of penalties available</p>
Georgia	2016	<p>I: Revise political finance legislation, establishing a more uniform legal framework, notably by aligning the (new) Election Code with the Law on Political Unions of Citizens (and vice versa)</p> <p>II: Establish standardised format for political party annual financial</p>

¹² A second addendum to the second compliance report exists, but is as of yet confidential.

		<p>declarations, so that financial information (on parties' income, expenditure, assets and debts) is disclosed in appropriate detail and ensure that information in the annual financial declaration (including donations above a certain threshold) is made public in a way which provides for easy access</p> <p>IV: Take measures to ensure that in-kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided at a discount, are properly identified and accounted for and membership fees are not used to circumvent the rules on donations</p> <p>VI: Take further measures to prevent the misuse of all types of administrative resources in election campaigns</p> <p>VIII: ensure that independent mechanism is in place for monitoring of party & campaign funding and provide this mechanism with the mandate, authority, and adequate resources for effective supervision, to investigate alleged infringements and, as appropriate, to impose sanctions</p> <p>IX: Harmonise provisions on sanctions in the Election Code, Law on Political Unions of Citizens and Code of Administrative Violations; ensure that effective, proportionate and dissuasive sanctions can be imposed for all infringements and on all persons/entities on which these laws place obligations and clarify the procedure for initiating and imposing sanctions, including appeals/judicial review, and assess whether there is a need to do so in respect of the Election Code</p> <p>X: Increase the limitation period for administrative violations of party and campaign funding regulations</p>
Moldova	2015	IX: Ensure that all infringements of party funding rules in general and financing of election campaigns are clearly defined and made subject to effective, proportionate and dissuasive sanctions, which can be imposed after the Constitutional Court has validated the elections; and the limitation periods applicable to these offences are sufficiently long to allow the competent authorities effectively to supervise political funding
Ukraine	2015 ¹³	I: harmonise campaign financing provisions in the Law on Parliamentary Elections, the Law on Presidential Elections and the Law on Local Elections

¹³ An addendum to the second compliance report exists, but is as of yet confidential.

	<p>II: Find ways to ensure that transparency regulations of the election laws are not circumvented by indirect contributions to election funds, via parties' or candidates' "own funds", or by contributions which do not pass through the election funds, including funding by third parties and donations in kind</p> <p>VI: Clearly define content and form of annual accounts of political parties, following a uniform format and accompanied by adequate source documents; ensure that income (specifying, in particular, individual donations above a certain value together with the identity of the donor), expenditure, debts and assets are accounted for in a comprehensive manner; consolidate the accounts to include local party branches as well as other entities which are related directly or indirectly to the political party or under its control; and require that the annual accounts are subject to the scrutiny of an independent monitoring mechanism and made easily accessible to the public, within timeframes specified by law.</p> <p>VIII: Ensure that an independent mechanism is in place for well-coordinated monitoring of party and campaign funding which is given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.</p> <p>IX: Ensure that all infringements of the rules on financing of political parties and election campaigns are clearly defined and made subject to an appropriate range of effective, proportionate and dissuasive sanctions; any party representatives and election candidates themselves are liable for infringements of party and campaign funding rules; and the limitation periods for these offences are sufficiently long to allow the competent authorities to effectively supervise and investigate political funding.</p>
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