



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 27 May 2011

Public
Greco Eval III Rep (2010) 12E
Theme II

Third Evaluation Round

Evaluation Report on Georgia on Transparency of party funding

(Theme II)

Adopted by GRECO
at its 51st Plenary Meeting
(Strasbourg, 23-27 May 2011)

I. INTRODUCTION

1. Georgia joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 5E) in respect of Georgia at its 5th Plenary Meeting (15 June 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2006) 2E) at its 31st Plenary Meeting (8 December 2006). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173)¹, Articles 1-6 of its Additional Protocol² (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out an on-site visit to Georgia from 15 to 17 December 2010, was composed of Mr Rovshan ISMAYILOV, Professor, Baku State University (Azerbaijan) and Mr Dimitar KUMURDJIEV, Legal Adviser to the National Assembly (Bulgaria), assisted in their work by the scientific expert, Mr Karl-Heinz NASSMACHER, Professor Emeritus, Carl von Ossietzky Universität (Germany). The GET was supported by Ms Tania VAN DIJK from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 15E, Theme II) as well as copies of relevant legislation.
4. The GET met with the Human Rights Defender/Ombudsman, officials from the Ministry of Justice and the Central Election Commission (including a former member of the Financial Monitoring Group and the Centre of Electoral Systems Development, Reforms and Learning). In addition, the GET met with representatives of political parties: the ruling party, *United National Movement*, and five parliamentary and extra-parliamentary opposition parties, the *Christian Democratic Movement*, *We Ourselves*, the *New Rights Party*, the *Republican Party* and *Industry saves Georgia*. The GET also met with one of the drafters of the Law of Georgia on Political Unions of Citizens and representatives of academia, the media (Imedi, Rustavi 2 and the First Channel of the public broadcasting agency), the Georgian Federation of Professional Accountants and Auditors, the Georgian Young Lawyers Association (GYLA) and the Georgian chapter of Transparency International.
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Georgian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and

¹ Georgia ratified the Criminal Law Convention on Corruption (ETS 173) on 10 January 2008. The Convention entered into force in respect of Georgia on 1 May 2008.

² Georgia has not ratified nor signed the Additional Protocol to the Criminal Law Convention (ETS 191).

addressed to Georgia in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2010) 12E-Theme I.

II. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Legal framework

7. The Constitution of Georgia of 1995 contains several provisions guaranteeing political rights and freedoms, including on the right to vote and be elected as well as freedom of assembly and association. Political parties are mentioned in Article 26 (paragraph 2), which provides: “Citizens of Georgia shall have the right to form a political party or other political association and participate in its activity in accordance with the law”. This is reiterated in Article 5 of the Organic Law of Georgia on Political Unions of Citizens (Hereafter: the LPUC), which provides “Every citizens of Georgia has a constitutional right to participate in forming and functioning of a party”. Political parties play a central role in the political system of Georgia, as only political parties and so-called election blocs (i.e. coalitions or joint lists of parties) and candidates (under the plurality system) who have been nominated by a political party or election bloc can participate in elections for the parliament and local councils (*Sakrebulo*s); it is not possible for independent candidates to stand for election (Article 96 and 97, Election Code). For presidential elections the situation is slightly different in that candidates can be nominated not only by political parties but also by a so-called ‘voter initiative group’ of at least five citizens (Article 81, Election Code).
8. A definition of political parties can be found in Article 1 of the LPUC: “a political union of citizens (hereafter referred to as a ‘party’) is a voluntary and independent association founded on citizens’ common vision on organisational basis and registered in accordance with the procedure established by this Law, which operates on the basis of the Georgian Constitution and legislation”.

Founding and registration

9. Pursuant to Article 12 LPUC, to establish a party a group of at least 300 citizens is to hold a founding meeting, where the statute of the party is to be adopted.³ Within a week of this meeting, an application for registration signed by the party leader(s) is to be submitted to the Ministry of Justice (Article 22 LPUC). The application for registration is to include the minutes of the party’s founding meeting (as verified by a notary), a list of at least 1000 party members signed by the party leader(s), the statute of the party, a document attesting the legal address and phone number of the party, copy/copies of the signature(s) of the person(s) authorised to represent the

³ The statute of the party is to include, pursuant to Article 13 of the LPUC:

- the title and abbreviation of the party, which must differ from those of other political parties (including those which have been liquidated in the last 4 years);
- the objectives of the party, and how they are to be attained;
- the rules on how to become a member of the party (and how to cancel membership of the party)
- the rights and obligations of the members;
- the organisational structure of the party;
- the rules on forming governing, executive and supervisory bodies, as well as their competence and tenure;
- the persons authorised to represent the party (in general or for specific purposes) and the scope of this authorisation;
- the rules on acquiring and using the party’s assets;
- the rules on amending the statute;
- the rules on re-organisation and liquidation of the party; and
- the description of the party symbols.

party (authenticated by a notary), examples of the seal, emblem and other symbols of the party, if any.

10. Upon submission of the required documents, the Ministry of Justice has one month to verify their accuracy and to reject or accept the registration of the party. Registration may only be refused if the statute or other documents of the party contradict the Constitution of Georgia or the LPUC.⁴ If the party is not notified in the specified time, the party shall be deemed to be registered (Article 23, LPUC). The list of registered political parties is published on the website of the Ministry of Justice.
11. Political parties acquire legal personality (as unions) upon registration with the Ministry of Justice. The LPUC provides that the party may establish units (branches, subsidiaries, youth organisations etc.) without separate legal personality (Article 21, LPUC). From the moment of its registration, a party is liable for its obligations (up to the value of its assets). Its members are not liable for the obligations of the party.
12. In October 2010, there were 215 political parties registered with the Ministry of Justice in Georgia.

Participation in elections

13. Georgia is a semi-presidential republic, with a multi-party system (with at the moment only one strong party). The Parliament of Georgia is unicameral. Its 150 members are elected for a four-year term: 75 members are elected by proportional representation in a single nation-wide constituency; 75 members are elected (in single mandate electoral districts) by a plurality (first-past-the-post) voting system (Article 91, Election Code).⁵
14. All citizens of Georgia, who are at least 18 years old, who have full legal capacity and are not detained in a state penitentiary institution following a court conviction, have the right to vote (Article 28, Constitution). For the parliamentary elections each voter is entitled to one proportional vote and one plurality vote. All citizens of at least 25 years old, who have the right to vote and who have been living in Georgia for at least 10 years and have knowledge of the Georgian language have the right to be elected to Parliament (Article 92, Election Code). As indicated in paragraph 1 above, political parties, election blocs and candidates have the right to participate in the parliamentary elections; candidates (for the plurality vote) may however only be nominated by political parties and election blocs (Article 97, paragraph 2 Election Code). Independent candidates are thus precluded from standing for parliament.⁶ Candidates who run under the plurality voting system are called majoritarian candidates in the English translation of the Election Code, which is the term that will be used hereafter.
15. The election threshold for the 75 seats elected through proportional representation is five percent (Article 105, paragraph 6 Election Code). Electoral lists are closed: the Election Code does not provide for the possibility of preferential votes. The 75 constituency seats will be filled by those candidates who received the most votes, but no less than 30% of the votes, in their electoral

⁴ A decision to refuse registration may be appealed by the party in court within a month of the decision having been taken.

⁵ The candidate with more votes than the other candidates, but not less than 30 percent of the valid votes cast in the electoral district in question, shall be considered to be elected. In case none of the candidates obtains 30 percent of the valid votes, a second round of elections shall be held, in which the two candidates with the most votes in the first round run against each other (Article 105, paragraph 5 and Article 106, paragraph 1 of the Election Code).

⁶ These rules are the same for the local councils (*Sakrebulo*): only political parties, election blocs and majoritarian candidates can participate in elections for the local councils (Article 116, Election Code) and majoritarian candidates may only be nominated by political parties and election blocs (Article 119, paragraph 1, Election Code).

district. The last parliamentary elections were held on 21 May 2008. The turnout for these elections was 53.9 percent (1,773,809 persons voted).

16. Georgia's head of state is the President, who is elected for a five-year term (Article 70, Constitution). The President may not be elected for more than two consecutive terms. The executive power is split between the President and the Prime Minister, who is the head of government, appointed by the President (Article 73, Constitution). The right to be elected President is provided to native-born Georgian citizens of at least 35 years, who have lived in Georgia for at least 15 years and reside in Georgia on the date of elections (Article 70, Constitution and Article 80, Election Code). As indicated in paragraph 7 above, political parties and voters' initiative groups of at least 5 persons have the right to nominate a presidential candidate (Article 81, Election Code): the nomination has to be supported by 30,000 signatures from the electorate. The presidential elections are held in a single constituency, covering the territory of Georgia. An absolute majority of the valid votes cast is necessary to be elected in the first round. If no candidate obtains an absolute majority in the first round, the two candidates who received the most votes in the first round run against each other in a second round (Article 87, Election Code). The most recent presidential elections were held in January 2008, in which seven candidates stood for election.⁷ Mikheil Saakashvili was declared winner after the first round with 53.47% of the vote and, consequently, remained in office for a second term. The turnout in the January 2008 presidential elections was 56.19 percent (1,982,318 of the 3,527,964 eligible voters went to the ballot box).
17. Finally, local elections of members of local self-government bodies (*Sakrebulo*s) are held every four years. Members of the *Sakrebulo*s are elected through a mixed proportional representation and plurality system, whereby each voter gets one proportional vote and one plurality vote. The right to be elected to a *Sakrebulo* is provided to citizens of Georgia of at least 21 years of age, registered in the *Sakrebulo* in question, who has lived in Georgia for at least 10 years and resides in Georgia on the day of elections (Article 109, Election Code). As indicated before, political parties and election blocs and the so-called majoritarian candidates who have been nominated by a party or election bloc can participate in local elections (Article 116, Election Code). The last local elections took place in May 2010.

Party representation in Parliament

18. In the last parliamentary elections, which were held on 21 May 2008, 12 political parties and electoral blocs (i.e. joint lists/coalitions of parties) participated in the elections.⁸ Of those 12 political parties and electoral blocs, five won seats in parliament. However, after the elections, several opposition forces declared that the elections had been rigged and for that reason twelve elected opposition representatives refused to take up their seats in the Parliament. Currently, the composition of the Parliament is as follows:

⁷ Mikheil Saakashvili (53.47 % of the vote), Levan Gachechiladze (25.69 % of the vote), Badri Patarkatsishvili (7.10% of the vote), Shalva Natelashvili (6.49% of the vote), Davit Gamkrelidze (4.02% of the vote), Gia Maisashvili (0.77% of the vote) and Irina Sarishvili-Chanturia (0.16% of the vote).

⁸ These were: 1) the United National Movement, 2) the electoral bloc 'The Joint Opposition' (National Council and New Rights), 3) Christian-Democrats, 4) Labour Party, 5) Republican Party, 6) the electoral bloc of the Alliance of the Rights and the Topadze Industrials, 7) the political union Christian-Democratic Alliance, 8) the political union of Citizens of Georgian Policy, 9) the electoral bloc of the Traditionalists – Our Georgia and Women's Party, 10) the political union Georgian Sportsmen Union, 11) the National Party of Radical-Democrats of All Georgia and 12) the political party Our Country.

Party / electoral bloc	Seats		
	Proportional	Majoritarian	Total
1. <i>United National Movement – for Victorious Georgia</i>	48	71	119
2. <i>Electoral bloc “The Joint Opposition” (National Council and New Rights)</i>	15	0	15
3. <i>Christian-Democrats</i>	6	1	7
4. <i>Labour Party</i>	6	0	6
5. <i>Republican Party</i>	0	2	2
6. <i>National Democratic Party</i>	0	1	1
Total	75	75	150

Overview of the political funding system

Legal framework

19. The rules governing the funding of political parties are contained in the abovementioned Organic Law of Georgia on Political Unions of Citizens (the LPUC), which entered into force in 1997. It was last amended in 2009, when changes were made in the provisions relating to the fund for the development of parties and NGOs. The LPUC regulates the establishment of parties, their funding and financial management and termination of their activities. It foresees a mixed system of funding in which political parties are provided with state funding and may finance their activities from certain private sources. In addition, the Election Code contains – apart from rules on the organisation of elections – several provisions on the funding of election campaigns of political parties (and election blocs) and majoritarian candidates (as nominated by parties/election blocs) for parliamentary and local elections, as well as those of candidates for the presidential elections. The rules on campaign funding in the Election Code are complemented by Ordinance No. 58/2003 on the reporting of the use of election campaign funds. As will be further described below, the provisions of the Election Code on the funding of campaigns of political parties (and election blocs) are (largely) aligned to those on the funding of political parties’ regular activities.

Public funding

Political parties (regular activities)

20. Political parties may receive direct public funding from the state if they received at least four percent of the votes in the last parliamentary elections or received at least three percent of the votes in the last local elections (Article 30, paragraph 3 LPUC).
21. Direct public funding consists of a number of elements:
- a general amount: political parties which in the last parliamentary elections received more than four percent of the votes or which in the last local elections received more than three percent of the votes are provided with 150,000 Georgian Lari (hereafter: GEL) (approximately €62,500) annually (Article 30, paragraph 2 LPUC); political parties or election blocs which in the last parliamentary elections received eight percent of the votes or which in the last local

elections received six percent of the votes are provided with 300,000 GEL (approximately €125,000) annually (Article 30, paragraph 6, LPUC)

- an amount per seat: political parties which have obtained seats in parliament are provided with an amount of 7,100 GEL (approximately €2,960) annually per Member of Parliament elected through the proportional representation system, for up to 30 members; if a political party obtains more than 30 seats through proportional representation it is eligible to receive 1,200 GEL (approximately €500) annually per Member of Parliament above the aforementioned 30 seats.
- An amount per vote: political parties which satisfy the criteria for receiving public funding (i.e. which during the last parliamentary elections received more than four percent of the vote or which during the last local elections received more than three percent of the vote) may receive 1.5 GEL (approximately €0.63) for every vote they received through the proportional system up to 200,000 votes and 1 GEL (approximately €0.42) for every vote through the proportional system above 200,000.

22. In addition, pursuant to Article 30¹ of the LPUC, political parties are eligible to receive funding from a fund specially established to contribute to the development of political parties and NGOs affiliated to political parties. The amount of money transferred to this fund is no less than half of the money that is provided in direct public funding under Article 30 of the LPUC (i.e. the general amounts, amounts per seat and vote, as described in the previous paragraph) annually, half of which is distributed among NGOs and half among political parties. The part for political parties is distributed in proportion to the general amounts (see above) they receive. This funding however may only be used by the political parties concerned to finance research, studies, conferences, official visits and regional projects. The fund is administered by the Centre of Electoral Systems Development, Reforms and Learning, which is part of the Central Election Commission.
23. In 2010, political parties received the following amounts of direct public funding (comprising general amounts, amounts per seat and amounts per vote) and funding from the fund for the development of parties and NGOs under Article 30 LPUC.⁹

Party	Direct public funding (in GEL)	Funding from the fund (in GEL)	Total (in GEL)	Total (approx. in EUR)
<i>United National Movement</i>	1,789,298.64	203,904.20	1,993,202.84	830,501
<i>Christian Democratic Movement</i>	334,629.75	203,904.21	538,533.96	224,389
<i>Labour Party</i>	391,338.00	101,952.10	493,290.10	205,538
<i>Christian Democratic People's Party</i>	440,144.76	32,287.85	472,432.61	196,847
<i>Industry saves Georgia - Topadze</i>	249,160.47	101,952.10	351,112.57	146,297
<i>Conservative Party</i>	199,390.51	85,808.17	285,198.68	118,833
<i>Republic Party</i>	186,431.72	77,736.20	264,167.92	110,070
<i>We Ourselves</i>	152,536.98	44,181.25	196,718.23	81,966
<i>Movement for Fair Georgia</i>	157,626.49	32,287.85	189,914.34	79,131

⁹ The GET was informed that, in addition, in 2010, 11 political parties received funding for the monitoring of electoral lists. This funding amounted to 1,200,000 GEL / approximately € 500,000 in total (of which the *Christian Democratic Movement*, *Industry saves Georgia – Topadze*, the *Conservative Party*, the *Republic Party*, the *People's Party*, *Georgia's Way*, the *New Rights Party*, *Georgian Dasi* and *The Freedom Party* each received 111,111.11 GEL / approximately € 46,300 and the *United National Movement* and *We Ourselves* each received 100,000 GEL / approximately € 41,670. Furthermore, it was reported that six parties had returned small amounts of public funding (ranging from 6.7 GEL to 86 GEL / approximately €1.60 to €36).

<i>People's Party</i>	121,776.11	44,181.25	165,957.36	69,149
<i>Our Georgia – Free Democrats</i>	133,702.52	24,215.88	157,918.40	65,799
<i>Georgia's Way</i>	108,817.31	36,109.28	144,926.59	60,386
<i>New Rights Party</i>	108,817.31	36,109.28	144,926.59	60,386
<i>Georgian Dasi</i>	86,607.48	22,656.01	109,263.49	45,526
<i>Freedom Party</i>	86,607.48	22,656.01	109,263.49	45,526
<i>Movement for United Georgia</i>	79,407.48	22,656.01	102,063.49	42,526
<i>National Forum</i>	79,407.48	22,656.01	102,063.49	42,526
Total	4,705,700.00	1,115,253.66	5,820,954.15	€2,425,396

24. Political parties are eligible to receive indirect public funding in the context of election campaigns (see below).

Election campaigns

25. No direct public funding is provided in the context of election campaigns.
26. Indirect public funding, in the form of broadcasting time, the use of halls and other premises and facilities for putting up campaign posters, is provided. Pursuant to Article 73¹, paragraph 1¹ and 4¹ of the Election Code, so-called 'qualified election subjects' are eligible for free broadcasting time. 'Qualified election subjects' are:
- political parties which have received at least four percent of the vote in the last parliamentary elections;
 - political parties which have received at least three percent of the vote in the whole country in the last local elections;
 - political parties having participated in the last parliamentary elections as part of an electoral bloc, which has received at least four percent of the vote;
 - political parties having participated in the last local elections as part of an electoral bloc, which has received at least three percent of the vote in the whole country;
 - candidates for presidential elections, who have been nominated by a political party, which receives funding from the state budget based on the results of the most recent parliamentary or local elections.

A "general broadcaster" and a "broadcaster, which allocates time to election advertising", are required to allocate to each qualified election subject – free of charge and equally – 90 seconds in every 3 hours; a "public broadcaster and a "community broadcaster, which allocates time to election advertising", are required to allocate to each qualified election subject – free of charge and equally – no less than 60 seconds every hour.¹⁰ In addition, Article 74, paragraphs 5 and 6 of the Election Code provides that buildings managed by state or local government bodies are to be provided free of charge to election committees, which – in consultation with the election subjects

¹⁰ The Law of Georgia on Broadcasting makes a difference between a "broadcaster" (a legal or natural person owning a license to broadcast television or radio programmes), "general broadcaster" (a broadcaster whose broadcasts cover at least two themes, *inter alia* news and a public-political theme), "public broadcaster" (a publicly funded legal entity of public law, created for the purpose of television broadcasts, which is independent from the government) and "community broadcaster" (a non-profit legal entity of public or private law, which ensures the participation of the public in its broadcasting). In addition, certain political parties which do not satisfy the criteria to be regarded as 'qualified election subjects' are nevertheless eligible for free broadcasting time if it appears from public opinion polls that they would gather a significant number of votes. To this end, paragraph 5 of the Article 73¹ of the Election Code provides that a broadcaster may nevertheless recognise a political party as a qualified election subject, if (according to "a relevant public opinion poll conducted on the whole territory of Georgia, within the terms defined in the present article") it has not less than four percent of the votes in five public opinion polls held during the election year, or in an opinion poll held no later than a month before the elections". Moreover, a public broadcasting agency (a legal entity of public law) is required to allocate time for election advertising to all other parties and election blocs in addition to the qualified election subjects (Article 73¹, paragraph 10, Election Code).

– makes them available for election subjects for the purpose of organising rallies and other election-related activities. Finally, municipalities are required to allocate specially placed stands (hoarding) for election posters (article 75, paragraph 4, Election Code).

27. The Election Code also contains a provision on the misuse of administrative resources in election campaigns: it prohibits the use of state-owned buildings (including those owned by municipalities and state-funded organisations) as well as communication means, information services and other equipment owned by bodies of the state or local self-government and means of transportation, if other election subjects cannot use them on the same terms (Article 76, Election Code). Printing election materials on the budget of the state or a local self-government body is also prohibited.

Private funding

Political parties (regular activities)

28. In addition to the abovementioned public funding, pursuant to Article 25 LPUC, political parties can be funded by the following private sources:
- membership fees;
 - donations from natural and legal persons;
 - income from the production and distribution of party symbols, lectures, exhibitions and similar events, publications and other activities described in the party's statute, provided that this income does not change the non-profit status of the party;
 - donations received as a result of public events.

In this context, the Law provides explicitly that a party may not engage in any business activities other than for the aforementioned aims (i.e. publication, production of party symbols etc.).

29. In addition to a list of permitted sources, the LPUC (Article 26) provides for a list of prohibited donations (whether monetary or in kind):
- donations by foreign entities (legal and natural persons), international organisations, except in relation to lectures, workshops and other public arrangements;
 - donations by state entities, legal persons of public law, state organisations and enterprises, in which the share of the state is more than 10 percent (except for cases provided by the Law);
 - donations by non-commercial legal persons and/or religious organisations, except in relation to lectures, workshops and other public arrangements;
 - donations by stateless persons;
 - anonymous donations.

If a party receives an anonymous donation (i.e. a donation provided by a legal entity without indication of its name and address or a donation by a natural person without indication of the name, address, ID-card number of the citizen of Georgia and personal numbers), it is to transfer this donation immediately to the state budget. Donations raised as a result of public events (collections, fundraising etc.) do not fall within the prohibition on anonymous donations, as long as they do not exceed 30,000 GEL (approximately €12,500) in total annually.

30. The LPUC also provides for ceilings on donations from individual donors. Pursuant to Article 27 LPUC, a political party may not receive (monetary or in-kind) donations with a total value of more than 30,000 GEL (approximately €12,500) from any given natural person (including individual entrepreneurs) per year or with a total value of more than 100,000 GEL (approximately €41,667) from a legal person per year. These limits, however, do not apply to membership fees. In this context, the LPUC explicitly provides that these limits include services provided for the party and on the party's behalf (Article 27, paragraph 3 LPUC). Furthermore, monetary donations and

membership fees are to be made via a bank transfer (with the exception of donations by natural persons of less than 300 GEL / approximately €125 a year). The LPUC explicitly provides that donations through intermediaries are prohibited (Article 27, paragraph 4 LPUC).

Election campaigns

31. Pursuant to Article 46 of the Election Code, an election campaign fund is to be set up by so-called election subjects¹¹ (which are (1) parties and election blocs, which participate in parliamentary election and local elections via the proportional system; (2) parties and election blocs to which majoritarian candidates are affiliated and which participate in parliamentary elections; (3) the parties, election blocs and voter initiative groups which have nominated candidates for presidential elections), for the purpose of funding their electoral campaign. Majoritarian candidates nominated by parties/election blocs to participate in local elections may do so voluntarily. An election fund is defined as “the sum of resources for the election campaign of an election subject and also all types of goods and services obtained free of charge (estimated at market price), with the exception of the cost of free broadcasting time as defined in legislation” (Article 46, paragraph 1 Election Code). An election subject is to open the account within 5 days of its registration with the relevant elections committee and may not use any other funds or open any other accounts than the campaign fund.
32. Article 47, paragraph 5 of the Election Code, provides for a list of prohibited donations. Accordingly donations from the following sources are prohibited:
- foreign states;
 - natural persons or legal entities of foreign states;
 - stateless persons;
 - international organisations and movements;
 - non-entrepreneurial legal entities and religious organisations;
 - Georgian entrepreneurial legal entities, partially owned by the state;
 - anonymous donations¹².
33. As is also the case for regular party finances, there is a ceiling on donations from individual donors. Election campaign funds of political parties and elections blocs, as well as candidates in the presidential elections, may not receive monetary and in-kind donations of more than 30,000 GEL (approximately €12,500) from any given natural person (including individual entrepreneurs) and not more than 100,000 GEL (approximately €41,667) from a legal person (Article 47, 3¹, Election Code). For election campaign funds of majoritarian candidates in parliamentary elections and candidates in local self-government bodies (*Sakrebulo*) the limits are 10,000 GEL (approximately €4,167) from a natural person and 30,000 GEL (approximately €12,500) from a legal person. These restrictions however do not apply to the sums given by the party from their own resources to the election fund of their election subject (Article 47, paragraph 3³, Election Code). All donations to the election campaign fund above 300 GEL (approximately €125) must be made via bank transfer (Article 47, paragraph 2, Election Code). Donations through intermediaries are prohibited (Article 47, paragraph 2 Election Code).

¹¹ Pursuant to Article 3 of the Election Code, election subjects are “members of representative bodies of public authorities or nominees for the positions in public authorities, parties registered by the relevant election committees, election blocs and voters’ initiative groups”.

¹² Donations are considered to be anonymous if they do not indicate the name and/or address of the legal entity in question or the first and last name, address, identity card number and personal number of the natural person in question (Article 47, paragraphs 2 and 3, Election Code).

34. There are no limits or restrictions on the expenditure a party or other election subject may incur in the context of election campaigns.

Taxation regime

35. Donations to political parties (or other election subjects) are not tax deductible. Donations received by political parties are not subject to income/profit tax. Political parties are subject to the same taxation requirements (profit tax, property tax and income tax for employees) as other non-profit organisations.

III. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

(i) Transparency (Articles 11, 12 and 13b of Recommendation Rec(2003)4)

Books and accounts

Political parties (regular activities)

36. The LPUC does not contain any accounting obligations for parties. However, pursuant to Article 41 of the Tax Code, all taxable entities – which include political parties – are required to keep records of income, expenditure and taxable assets, in accordance with the requirements of the legislation on taxes. These records are to be kept for a period of six years.

Election campaigns

37. As indicated above (see paragraph 31), election subjects (with the exception of majoritarian candidates in local elections) are required to set up election campaign funds, which are – in case of parties – to be administered separately from the parties' regular accounts. The Election Code does not refer to any accounting rules applicable to the election campaign fund, but does provide that the manager of the election fund is to record all transactions of the fund (Article 48, paragraph 5, Election Code). The GET learned on-site that the records of these transactions need only to be kept for the duration of the campaign.

Access to financial records

38. The auditors required to verify parties/movements' "annual financial declaration" have access to all financial records of political parties. The Georgian authorities further indicate that as political parties are required to publish a financial declaration (see paragraph 40 below) in the media and to submit this financial declaration to the Central Election Commission (hereafter CEC) and the tax authorities a separate procedure providing access to law enforcement authorities is not necessary.
39. Article 48, paragraph 11 of the Election Code provides that "information concerning election contributions shall be open, public and available for everyone. The CEC shall be obliged to give information to all interested persons concerning the election campaign fund of election subjects". In practice, this means that the CEC publishes the financial reports provided by election subjects on its website (but would not be able to ensure access to supporting financial documentation).

Reporting obligations

Political parties (regular activities)

40. Pursuant to Article 32 LPUC, political parties are required to publish an “annual financial declaration”, together with the conclusion of the auditor, in the press (i.e. a national newspaper), by 1 February of each year. Within 10 days of publication, the financial declaration (and auditor’s statement), is to be sent to the CEC and the local tax authorities. The “annual financial declaration” is to include information on:
- the income of the party, including membership fees, amount of donations (both individual donations and the total amount), details of the natural persons and legal entities who provided donations, funding allocated by the state as well as income from publications or other party activities;
 - expenditure of the party (including on elections – i.e. the amounts the party transfers to the election campaign fund – , financing of various activities, remuneration, official trips and other expenditure);
 - property of the party (buildings, number and types of vehicles, their total value, the amount of money on bank accounts).

Election campaigns

41. Pursuant to Article 48, paragraph 4 of the Election Code, the election campaign fund manager is to inform the appropriate election commission on a monthly basis of the source and amount of donations (as well as the date of their receipt).¹³ After the elections, election subjects are required to submit a report to the relevant election commission on the use of the election campaign fund (which is to be closed within 20 days of the elections) and the source of the donations to the election campaign fund (Article 48, paragraph 6, Election Code). Parties and election blocs, which pass the election threshold, and candidates, which have been elected, must do so within eight days of the elections; all others must do so within one month of the announcement of the results of the elections. The report by an auditor (an audit firm which operates on the territory of Georgia) is to be appended to the financial report. In accordance with paragraph 10 of Article 48 of the Election Code, the CEC has adopted Ordinance No. 58/2003, providing further details on what it is to be included in the reports:
- the period over which the donations were provided;
 - the total amount of donations;
 - the total number of donors (i.e. the total number of natural persons and the total number of legal persons);
 - information on individual donations, including the value of each donation, the type of donation (cash, in kind, credit or loan), the date it was donated, as well as the name and address of the legal person or, in case of a natural person, their name, address and identity card number and personal number;
 - information on services provided by donors, including the type of service (preview trailers, hoarding, polls, concerts, agreements, etc.), its value, the date of the service order and the period over which it was provided, as well as information identifying the donor (name, address etc.);
 - information on expenditure (subdivided into salaries; income tax; business trips; other goods and services; preview trailers – including the cost of their production; advertisements in

¹³ For elections through the proportional representation system, the CEC is the appropriate election commission; for elections through the majority system, the District Election Commission of the electoral district concerned is the appropriate election commission.

printed media and on hoarding – including the cost of their production; large public events – public meetings with citizens, rent for venues, organising concerts etc; the production of printed campaign materials; opinion polls, consultations and other election-related research; other costs; capital costs; total expenditures).

Third parties

42. Donors, whether natural or legal persons, are not subject to any reporting obligations as regards their donations to political parties or movements.

Publication requirements

Political parties (regular activities)

43. As already indicated in paragraph 40 above, pursuant to Article 32 LPUC, political parties are required to publish their “annual financial declaration”, together with the conclusion of the auditor, in the press, by 1 February of each year. In addition, Article 26, paragraph 6 of the LPUC provides that all information on donations (including the names and addresses of donors) is public and that the CEC is to ensure that the information is accessible.

Election campaigns

44. Article 48, paragraph 11 of the Election Code provides that “the CEC shall be obliged to ensure the publication of the mentioned information on its website within 2 working days of its adoption”.¹⁴

(ii) Supervision (Article 14 of Recommendation Rec(2003)4)

Political parties (regular activities)

45. The LPUC promotes a form of internal control over the finances of political parties, by requiring parties to set up an auditing commission, comprising 3 members, with the responsibility for auditing the finances of the party (Article 19, LPUC). In addition, parties are required to have an annual financial audit carried out of their activities (Article 33, LPUC). This financial audit is to be carried out by an independent auditor (Article 33, paragraph 2, LPUC). The conclusion of the auditor is to be appended to the “annual financial declaration”.
46. As regards external control, the CEC¹⁵ and the local tax authority are to receive the “annual financial declaration” of political parties within 10 days of their publication (i.e. by 10 February of each year at the latest), but neither institution monitors the information contained therein.

¹⁴ The reports of majoritarian candidates are forwarded by the relevant District Election Commissions to the CEC for this purpose.

¹⁵ The CEC comprises of 13 members, including the chairperson (Article 26, Election Code). Five members of the election committee are elected by the Parliament upon nomination of the President and seven members are appointed by the parties who receive public funding. The chair is elected by the other members of the CEC from candidates nominated by the President. CEC members from the party having won the highest amount of votes in the previous elections are to abstain. If none of the candidates proposed by the President receives the majority of votes, the chairperson is elected by the Parliament, which is what happened in January 2010. Therefore, currently six out of 12 members and the chairperson of the CEC are appointed by those in power. The five members appointed by the Parliament upon nomination of the President and the chairperson are to be non-partisan (Article 28, paragraph 4 and Article 27, paragraph 3 of the Election Code). Pursuant to Article 17 of the Election Code, the CEC is accountable to Parliament.

Election campaigns

47. Similarly to the LPUC, the Election Code promotes internal control over the funding of election campaigns, by requiring the election campaign fund to be audited and to have the conclusion of this audit appended to the report which the election campaign manager is to send to the relevant election commission (Article 48, paragraph 6 and 6¹ Election Code).
48. As regards external control, within five days of the announcement of the date of elections the CEC will set up the so-called Financial Monitoring Group, which is to monitor the funds used by the election subjects (Article 48, paragraph 10¹, Election Code). The Financial Monitoring Group comprises 5 members, who are representatives from the public (so-called “social representatives”, generally well-known persons), lawyers and licensed auditors. The statute of the Financial Monitoring Group and its rules of procedure are adopted by the CEC, which also provides material and technical assistance, as well as an assistant to help the Group in its work. The Group monitors the monthly interim financial reports submitted by election subjects¹⁶ and prepares a report for the CEC on these reports within two weeks of receiving them and the final reports on the use of the election campaign funds submitted by election subjects after the elections. The GET was informed that in the most recent local elections of May 2010, the FMG examined 27 financial reports on the use of election campaign funds.

(iii) Enforcement (Article 16 of Recommendation Rec(2003)4)

Political parties (regular activities)

49. The LPUC provides for two types of sanctions: confiscation of donations and loss of state funding. First of all, pursuant to Article 28 LPUC, all financial and in-kind donations received by the party in violation of the requirements of the LPUC (see paragraphs 29 and 30 above) are to be transferred to the state treasury within one month of receiving them. If a party fails to do so, the donation(s) in question will be mandatorily transferred to the state budget. Secondly, if donation(s) received by the party in violation of the LPUC have a total value of between 2,000 and 15,000 GEL (approximately €833 to €6250) the party will not receive state funding for a period of 1 year. If the overall value of prohibited donations is between 15,000 and 50,000 GEL (approximately €6,250 to €20,833) the party will not receive state funding for a period of 2 years, and if their value is more than 50,000 GEL (approximately €20,833) the party in question will not receive state funding for a period of 4 years.¹⁷ In addition, pursuant to Article 34 LPUC, if a political party fails to publish its “financial declaration” in time (i.e. by 1 February each year) it will not receive any state funding for a period of 1 year. None of these sanctions have, however, ever been imposed in practice.
50. In addition, the Code of Administrative Violations of Georgia provides for the possibility to impose administrative fines. Pursuant to Article 173¹⁰ of the Code of Administrative Violations, for the acceptance of a monetary or in-kind donation, prohibited by law, and/or concealment of this donation by an authorised person of the political party a fine of between 1,000 and 1,500 GEL (approximately €417 to €625) can be imposed; if the donation has a value of more than 5,000

¹⁶ This includes the reports submitted by election subjects to their District Election Commission, which in turn forwards the reports (without scrutinising them) to the CEC.

¹⁷ Article 28, paragraph 3 LPUC furthermore provides that if a party does not have the right to receive state funding, the sanction (loss of state funding for a certain period) will only be applied once a party has acquired that right.

GEL (approximately €2,100) a fine of 3,000 to 5,000 GEL (approximately €1,250 to €2,083) can be imposed.

51. Finally, criminal sanctions can be imposed on both the political party (as Georgian law provides for liability of legal persons) and natural persons within the party. Article 204 of the Criminal Code provides for a fine and up to two years' imprisonment for violating the obligation to keep accounts and related documentation and Article 204¹ of the Criminal Code provides for fines (and, in case of a repeat offence or if the offence has caused substantial damage, up to one year of imprisonment) for creation and use of accounting documents containing false or incomplete information.

Election campaigns

52. The Election Code provides for a number of sanctions for violations of the regulations on election campaign funding: written warnings, transfer of prohibited donations to the state budget, cancellation of election results (for the election subject in question), fines and suspension of state funding to political parties. In addition, fines and suspension of state funding can be imposed pursuant to the Code of Administrative Violations.
53. Election subjects, having received the required number of votes, which fail to produce the report on their election campaign fund within the deadline set by the law or which otherwise violate the requirements of Article 46, paragraphs 2 to 5, Article 47, paragraphs 4 and 5 and/or 48 paragraphs 4 to 6 of the Election Code¹⁸, will first receive a written warning by the appropriate district election commission or the CEC. They will be requested to remedy the identified violations and inform the relevant election commission thereof. If the appropriate election commission or the CEC considers that the violations are of a substantial nature and thus may affect the results of the election, the election commission can apply to the court to have the votes of the election subject cancelled (Article 48, paragraph 8, Election Code).
54. Furthermore, both the Election Code and the Code of Administrative Violations provide for various sanctions for acceptance and concealment of prohibited donations. First of all, Article 126²³ of the Election Code provides, in cases of acceptance of prohibited donations by the election campaign fund of a *political party*, for the transfer of the prohibited donation to the state budget (or confiscation thereof if it is a donation in kind) and, in case of concealment of such a donation, a fine of 1,500 GEL (approximately €633); if the political party receives state funding a fine of 3,000 GEL (approximately €1,250) can be imposed. In addition, Article 174¹³ of the Code of Administrative Violations provides that a state-funded party, which conceals the acceptance of a prohibited donation, can be fined five times the amount of the concealed donation. Secondly, the *authorised person of the political party* can be fined 1,000 to 1,500 GEL (approximately €417

¹⁸ These articles set out the following obligations: to open an election campaign fund (Article 46, paragraph 2); to open a special bank account and the transfer of funds thereto within 5 days of registration of the election subject (Article 46, paragraph 3); to submit details on the bank account and the manager and accountant of the election campaign fund to the relevant election commission within 2 days of opening the account (Article 46, paragraph 4); to not open more than one account for the election campaign fund and to not use the private accounts of the election subject for the campaign (Article 46, paragraph 5); to not use any other funding sources than those provided by the election campaign fund (Article 47, paragraph 40); not to accept donations from foreign states, foreign legal and natural persons, persons without citizenship, international organisations and movements, non-commercial legal entities and religious organisations and Georgian commercial entities partly owned by the state (Article 47, paragraph 5); to transfer illegal received donations to the state budget within 10 days of receiving them (Article 48, paragraph 4); to submit a monthly report and a final report on the use of the election campaign fund, which is to contain details on the source of donations, their amounts and transaction dates (Article 48, paragraph 4); to register all transactions of the fund (Article 48, paragraph 5) and to submit a final report on the use of the election campaign fund within the deadline prescribed by law (Article 48, paragraph 6).

to €625) for the acceptance and/or concealment of prohibited donations, pursuant to Article 174¹³ of the Code of Administrative Violations. Thirdly, the liability of so-called *persons in control of an election campaign fund* (i.e. the manager or accountant of the fund) for acceptance and/or concealment of prohibited donations to the election campaign fund is also provided for by Article 174¹³ of the Code of Administrative Violations. As before this would entail a fine of 1,000 to 1,500 GEL.

55. Similarly, both the Election Code and the Code of Administrative Violations provide for various sanctions in case of failure to submit a report on the use of election campaign fund. First of all, Article 126²⁴ of the Election Code provides for the imposition of a fine of 1,500 GEL (approximately €633) if a *political party* does not submit the report in question; if the party in question receives state funding a fine of 3,000 GEL (approximately €1,250) can be imposed. As before, the Code of Administrative Violations contains an additional sanction for parties receiving state funding: failure to submit an election campaign report results in the suspension of state funding, pursuant to Article 174¹⁴. Secondly, the liability of the *authorised person of the political party* for failure to submit a report on the use of the election campaign fund is provided for by Article 174¹⁴ of the Code of Administrative Violations: s/he can be fined 1,000 to 1,500 GEL (approximately €417 to €633). Thirdly, Article 48, paragraph 7 provides that an *election subject*, which does not submit a report on its election campaign fund, can be prohibited from running in future elections, subject to a court decision to this effect. The liability of *persons in control of an election campaign fund* (other than those of political parties) for failure to submit an election campaign report does, however, not appear to be provided anywhere. In this context, Article 48, paragraph 8 of the Election Code also provides that the liability of the election subject and manager and accountant of the election campaign fund for errors in the report on election campaign funds will be determined in accordance with legislation. The GET was, however, not told in which piece of legislation sanctions for inaccurate reports are included.
56. Finally, Article 126²⁷ of the Election Code provides that for the use of administrative resources in violation of the requirements of the Election Code (see paragraph 27 above) a fine of 1,000 GEL (approximately €417) can be imposed.

Statistics

57. The Georgian authorities were not able to provide any data on sanctions, neither as regards those imposed political parties for financial irregularities or other violations of the LPUC, nor regarding sanctions imposed for violations of the rules on the funding of election campaigns, as set out in the Election Code and the Code of Administrative Violations. During the on-site visit the GET heard that sanctions pursuant to the LPUC had never been imposed and that in the last 3 elections approximately 15 written warnings had been issued by the CEC.

Immunities

58. All the above-mentioned sanctions of the LPUC, Election Code and Code of Administrative Violations are administrative sanctions which can be imposed upon natural persons regardless of whether they enjoy immunity or not. As regards possible criminal sanctions (see paragraph 51 above), Articles 85 and 102 of the Election Code provide that presidential and parliamentary candidates cannot be detained, arrested or searched before the final results of the elections are

published by the CEC, unless the CEC approves a motion of the Minister of Justice to this end.¹⁹ Once elected, the President and Members of Parliament enjoy immunity from criminal prosecution (but not from investigation), regardless of whether the alleged offence was committed in connection with official duties or not.

Statute of limitation

59. Pursuant to article 38 of the Code of Administrative Violations, administrative sanctions – which include those provided for by the Election Code and LPUC – have to be imposed within 2 months of the moment the offence was committed (or in case of an on-going crime, no later than within two months of detection of the offence).

IV. ANALYSIS

60. The two main laws regulating the financing of political parties and election campaigns in Georgia are the Organic Law of Georgia on Political Unions of Citizens (hereafter: the LPUC) and the Election Code. The first law dates back to 1997 and regulates the creation and registration of parties, their funding and financial management; the second dates back to 2001 (but has been frequently amended since then, lastly in 2010) and regulates the participation in elections, as well as the funding of the campaigns of election subjects (i.e. political parties/coalitions of parties, presidential and so-called majoritarian candidates).²⁰ The GET was struck by how sensitive and polarised matters related to the financing of political parties and election campaigns appeared to be on-site. It heard numerous allegations of misuse of administrative resources and a lack of distinction between the state and the party, vote buying, intimidation/harassment of supporters of opposition parties and media bias (which have also been well documented by international observers to elections)²¹ and quid-pro-quo arrangements between donations and tenders. In this context, the GET did note that the 2010 local elections were regarded as a marked improvement upon the previous parliamentary and presidential elections of 2008, a trend that the GET can only hope will continue with the next elections in 2012.²²
61. The sensitivity of party and campaign funding issues is also reflected in the establishment of the current legal framework. Following a party funding scandal in the autumn of 2006, the government proposed amendments to the regulations on party and campaign funding. The proposed amendments were, however, severely criticised by the opposition parties, which further stalled the parliamentary debate. Only in October 2007, after intensive discussions between representatives of the ruling party and the opposition parties, under the auspices of the Council of Europe, was a reform package on the financing of political parties and electoral campaigns agreed upon (with the adoption of the so-called “Strasbourg Agreement”). The amendments subsequently made to the LPUC and the Election Code, *inter alia* on prohibiting anonymous

¹⁹ An exception is provided for situations where the candidate is caught in the act, in which case the Central Election Commission is to be notified immediately. The candidate is to be released from custody if the Central Election Commission issues a motion to that end.

²⁰ As indicated in paragraph 14 above, candidates under the plurality voting system are called majoritarian candidates, which is the term used in the analysis hereafter.

²¹ See, for example, the Final Report of the OSCE/ODIHR Election Observation Mission of the Extraordinary Presidential Election of 5 January 2008, <http://www.osce.org/odihr/elections/georgia/6664>, pp. 9-12; the Final Report of the OSCE/ODIHR Election Observation Mission on the Parliamentary Elections of 21 May 2008, <http://www.osce.org/odihr/elections/georgia/66639>, pp. 11-14 and the Final Report of the OSCE/ODIHR Election Observation Mission of the Municipal Elections of 30 May 2010, <http://www.osce.org/odihr/elections/georgia/70191>, pp. 11-14.

²² See the Final Report of the OSCE/ODIHR Election Observation Mission of the Municipal Elections of 30 May 2010, *loc. cit.*, p. 1.

donations, restricting certain sources of party and election campaign funding, establishing election campaign funds and disclosing campaign finance information, can be seen as significant improvements to the previous legislation. In addition, the system of public funding was revised, providing public funding to all political parties, which obtained more than four percent of the votes in parliamentary elections or more than three percent of the votes in local elections. As such public funding is not only provided to parties represented in Parliament, which is welcomed by the GET.²³

62. Turning more in detail to the legal framework, it is clear that the existence of two different laws regulating political party finance (one for finances in general and one for election campaigns) is – although not uncommon – not ideal, particularly considering how difficult it is to make a clear separation between campaign funding and party funding. While care has been taken to align the LPUC with the Election Code and vice versa (for example, by providing for similar donation caps), small inconsistencies nevertheless continue to exist.²⁴ For example, Article 26 of the LPUC allows donations from organisations and enterprises in which the state owns less than 10 percent of the capital, but Article 47, paragraph 5 of the Election Code prohibits any donation by a state-owned entity, irrespective of the amount of state ownership.²⁵ As will be described further below, the inconsistencies are more serious when it comes to the provisions on sanctions. In the opinion of the GET, the lack of consistency between the two laws undermines the understanding and proper implementation of the relevant provisions. The GET learned on-site that negotiations on reform of the electoral system (and thus a new Election Code) are currently underway: a round table has been set up comprising representatives of the ruling party and parliamentary and extra-parliamentary opposition parties to discuss various proposals (in consultation with the Venice Commission of the Council of Europe). The GET welcomes the fact that the opposition and the ruling majority are engaged in a dialogue to bring about further amendments in a constructive manner. The need for improvements in the regulations on campaign and party finance (not only as regards the Election Code, but also the LPUC) has been recognised by the Georgian government, which has included this topic in its Anti-Corruption Strategy and related Action Plan adopted in 2010. The GET recommends **to proceed with the efforts to revise existing legislation in the area of political finance, with a view to establishing a more uniform legal framework, notably by aligning the (new) Election Code with the Law on Political Unions of Citizens (and vice versa).**
63. Against this background, the following analysis focuses on three distinct areas of concern for the present evaluation, namely (1) transparency of political financing, (2) the supervision of such financing and (3) the sanctions applicable when funding rules are violated and their enforcement. In short, the GET is of the opinion that the Georgian legislative framework reflects some of the requirements of Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Election Campaigns. However, there are some clear shortcomings, particularly in the area of supervision of party funding. The

²³ The GET did note, however, that the general amount ('basic subsidy') was subsequently doubled for the parties (or election blocs), which have obtained more than eight percent of the votes in the last parliamentary elections or more than six percent of the votes in the last local elections.

²⁴ Some of these inconsistencies have already been highlighted by the Venice Commission. See Opinion on the Organic Law of Georgia on Changes and Additions to the Organic Law of Georgia on Political Unions of Citizens (Opinion No. 526/2009), by the European Commission for Democracy Through Law (Venice Commission), CDL-AD (2009)033, [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)033-e.pdf](http://www.venice.coe.int/docs/2009/CDL-AD(2009)033-e.pdf).

²⁵ In a similar vein, the same article of the LPUC allows international organisations and non-commercial and religious organisations to donate to political parties, if this is done in the context of lectures, workshops and/or other public arrangements, whereas the Election Code strictly prohibits this. Furthermore, pursuant to the Electoral Code prohibited donations have to be transferred to the state budget within ten days of their receipt, pursuant to the LPUC this is one month.

GET is hopeful that the issues raised and the recommendations issued in this report come as a timely contribution to the above-mentioned legislative process. In this context, it should however be emphasised that although the GET recommends additional amendments to improve the LPUC and the Election Code in its analysis below, genuine, impartial enforcement of existing legislation would be the biggest improvement of all.

Transparency

64. Both the LPUC and Election Code comprise positive elements aimed at strengthening the transparency of party and election campaign finances (and reducing the influence of big money over political decision-making): anonymous donations are prohibited (with the exception, however, of donations collected under the LPUC via fund-raising activities which may not exceed 30,000 GEL / approximately €12,500 a year in total), as are donations from foreign and state-owned bodies; there is a cap on private donations (with a total value of 30,000 GEL / approximately €12,500 per year from any given natural person and 100,000 GEL / approximately €41,667 annually from a legal person)²⁶; donations through intermediaries are prohibited and there is a requirement that all donations above 300 GEL (approximately €125) be made by bank transfer.
65. Concerning parties' regular finances (i.e. outside an election campaign), as described in paragraph 40 above, all political parties, regardless of whether they receive public funding or not, are to report on their financial situation by publishing a so-called "annual financial declaration" in the press by the 1st of February of each year and have to submit this declaration to the CEC (and the tax authorities) within ten days thereafter.²⁷ The declaration is to include all income, expenditure and assets of the party. In addition, Article 26, paragraph 6 of the LPUC provides that all information on donations (including the names and addresses of the donors) is public and that the CEC is to ensure public accessibility of this information. It would follow from this that at least information on donations is to be published in a significant amount of detail. However, the GET learned on-site that – in spite of these legal provisions – parties only publish a summary of their declarations: only the main categories of income and expenditure (amounting to not more than half a page of information) would be published. Even though the Central Election Commission (hereafter CEC) receives the complete "annual financial declaration", including information on all donations, it would appear that even this information fails to provide a sufficiently detailed picture of parties' finances (other than as regards individual donations, which are to be reported on in a significant amount of detail).²⁸ In this context, the GET also noted that no format for the "annual financial declarations" had been established (whereas such a format does exist for the reporting on the use of election campaign funds). Variations in items reported and the level of detail provided make scrutiny and – in particular – comparisons between parties and across time very difficult, if not impossible. In the opinion of the GET, it is crucial that the information contained in the "financial declarations" is sufficiently detailed, comprehensible and comparable and that it is released in an accessible manner, for example by publishing the

²⁶ These caps are lower for the election campaign funds of majoritarian candidates in parliamentary and local elections: 10,000 GEL (approximately €4,167) from a natural person and 30,000 GEL (approximately €12,500) from a legal person.

²⁷ It is noteworthy that in this respect Georgia differs from many other GRECO member states, whereby the information is first disclosed to a supervisory authority, only after which it is made public.

²⁸ Pursuant to Article 32, paragraph 1 of the LPUC, the yearly income is to include membership fees, the amount of donations, details of the natural persons and legal entities who have provided donations, funding allocated by the state and the income from publications and other party activities. Furthermore, expenditure of the party is to include election expenditure, the financing of various activities, remuneration, official trips and other expenditure. Finally, property of the party is to include information on buildings, the number and types of vehicles, their total value and the amount of money on bank accounts.

“declarations” on the website of the CEC. In light of the above, the GET recommends **(i) to establish a standardised format for the annual financial declarations to be submitted by political parties, seeing to it that financial information (on parties’ income, expenditure, assets and debts) is disclosed in an appropriate amount of detail and (ii) to ensure that information contained in the annual financial declaration (including donations above a certain threshold) is made public in a way which provides for easy access by the public.**

66. The situation is slightly different in the context of election campaigns. Article 47 of the Election Code requires so-called election subjects (political parties/election blocs, candidates for presidential elections and so-called majoritarian candidates in parliamentary elections) to set up an election campaign fund within five days of their registration.²⁹ The election subject is subsequently to appoint a manager of the fund, who is to report to the CEC on a monthly basis on donations made to the fund and is to submit a final report on the income and the expenditure of the fund, together with the opinion of an auditor. Election subjects, which/who “receive the necessary number of votes” (i.e. parties/coalitions which have passed the election threshold and/or candidates who have been elected) have to submit a financial report within eight days of the elections; all others within a month of the announcement of the election results. The GET welcomes, in particular, that with Ordinance No. 58/2003, issued by the CEC, a common format for the final report has been adopted, which requires that election subjects provide detailed information on their income and expenditure and that these reports be made public by the CEC.³⁰ However, it notes that Article 47, paragraph 3³ of the Election Code explicitly provides that the caps on private donations (see paragraph 33 above) do not apply to the contributions parties may make to the fund of their election subject. This makes it obvious that the lack of transparency in parties’ regular finances, as described in the previous paragraph, has considerable implications for the transparency in the funding of election campaigns.³¹ Furthermore, as election subjects typically have to be registered less than two months before the elections and the election campaign fund has to be opened within five days of the registration of the election subject, donations only have to be reported on once, a month before the elections. As detailed as the information on donations presently is, the GET finds this requirement to provide information on donations well in advance of the elections unfit for its purpose of providing the electorate with information that may be of importance to their voting decisions.³² Of a bigger concern to the GET is, however, that the current requirement upon successful candidates/parties to report on the election campaign fund within eight days after the elections may be too short. The GET understands that this deadline was introduced, to provide for the possibility to cancel the election results of an election subject (if is found that the infringement of political finance rules is “substantial and could affect the results of the election”, pursuant to Article 48 of the Election Code) in advance of final announcement of the results of the election. Nevertheless, it considers

²⁹ Majoritarian candidates in local elections are not required to set up an election campaign fund, but may do so voluntarily.

³⁰ See paragraph 41 above.

³¹ For example, the GET was told that in the 2010 local elections the United National Movement made a contribution of 12 million GEL (approximately €5 million) to the election campaign fund of the party. The party ultimately spent around 14 million GEL (approximately €5.8 million) in the elections. It would thus mean that – as full and detailed information on the financial sources of the United National Movement is not available – the source of more than 85 percent of the funding of the election campaign of this party was not transparent.

³² The Venice Commission and OSCE/ODIHR have also commented on this, indicating that reporting on only a monthly basis was seen to be inadequate in practice during the 2008 parliamentary elections. It was therefore recommended that information on both income and expenditure would be reported before the elections, ensuring “that the financial report is submitted to the Financial Monitoring Group of the CEC, and published some time in advance of election day. This provision should also include an obligation on expenditures (not only contributions) in the pre-election period (not only post-election)”. See Joint Opinion on the Election Code of Georgia (Opinion No. 571/2010) by the European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR, CDL-AD(2010)013, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)013-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)013-e.pdf), p 13.

that such a short deadline would entail a risk that not all expenditure yet to be paid is included in the report and the report may thus not provide a complete picture of the funding of an election campaign, in particular as within this time an auditor is also to certify the use of the fund and, at the same time, the fund only has to be closed twenty days after the elections. Consequently, the GET recommends **to assess whether there is a need to take measures (for instance, extending the reporting deadline for the submission of final reports by successful parties/election blocs and candidates) to ensure that all financial transactions of the fund are adequately reflected in the final reports on the use of the election campaign fund.**

67. Turning more in detail to the items to be reported, the GET noted that the LPUC does not contain a definition of what is to be regarded as a donation. Some clues are nevertheless provided, for example by Article 26, paragraph 1 of the LPUC which refers to prohibited “material and physical contributions”, and Article 27, paragraph 2 of the LPUC which provides that the caps on donations include “services provided for the party purposes and on the party’s behalf”.³³ Article 47, paragraph 1 of the Election Code is more comprehensive, stipulating that donations to the election campaign fund are “monetary means transferred to [the] account by natural or legal persons and all types of goods and services received for free”. However, this disregards donations, which are not free of charge, but received below market value. The discussions on site (*inter alia* concerning venues and office space provided under favourable lease rates) confirmed concerns that donations in kind might not be adequately reflected in the reports and that, in practice, uncertainties existed as to how donations in kind were to be valued. Related to this is the issue of loans, which both the LPUC and Election Code (as well as the Ordinance No. 58/2003, which prescribes the format for the submission of the election campaign report) fail to address. It appears to be unclear how loans are to be reflected in the financial reports and that, if they are granted under more favourable conditions than those applicable on the market or if they are written off entirely, they are to be regarded as donations, to which the above-mentioned caps of 30,000 and 100,000 GEL apply (the absence of accounting standards – more details below – does not help this matter either). Finally, as the LPUC provides neither for a definition of a donation or a membership fee nor an upper limit for membership fees, the parties themselves can decide what is to be regarded as a donation or a membership fee. Thus if a member pays a higher amount than the obligatory fee, this can still be recorded as a membership fee (and will thus be only reflected as a total amount in the report), and not as a donation (for the amount exceeding the obligatory fee), even if it exceeds the donation limit. In light of the above, the GET recommends **to take appropriate measures to ensure that (i) 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 (ii) membership fees are not used to circumvent the rules on donations.**
68. Discussions on site revealed that the retention of documents is also a (potential) problem. As will be further described in paragraphs 70 and 71 below, the GET was not able to obtain clear information on the accounting regulations applicable to political parties, but it was informed after the on-site visit that the provisions of the Tax Code on retention of documents – *inter alia* requiring tax subjects to maintain financial records relating to their income, expenditure and taxable assets for a period of six years – would also be applicable to political parties. However, it is not certain that these requirements would extend to supporting documentation of relevance for party funding (invoices, identity of donors etc.). As regards election campaign funds, the GET

³³ It should be noted that the English translation of the LPUC uses the terms ‘contribution’ and ‘donation’ interchangeably. It would, however, appear that is not meant to signify different concepts, as the Georgian text of the LPUC reportedly uses one term consistently throughout.

learned that financial documentation needed only to be kept for the duration of the campaign. The GET welcomes that the Chairman of the CEC adopted an ordinance in March 2011 requiring the CEC to permanently preserve financial reports on the use of election campaign funds (as well as the “annual financial declarations” of political parties). However, the fact that election subjects are allowed to destroy all supporting financial documentation relating to election income and expenditure straight after the end of the campaign, will obviously hinder any kind of (future) monitoring of or investigation into the funding of election campaigns. In light of this, the GET recommends **to ensure that all financial documentation relating to the funding of political parties and election campaigns is kept for an appropriate period of time.**

69. As indicated in paragraph 60 above, misuse of administrative resources during election campaigns was considered to be an important area of concern by almost all interlocutors met by the GET, something that not only affects the existence of a level playing field between candidates/parties, but which also undercuts the transparency of campaign financing. The GET noted that the Election Code contains various provisions on use of state resources and official positions, providing *inter alia* that state buildings, communication means and vehicles can only be used if equal access is given to all subjects, misuse will be subject to fines of 1,000 GEL (approximately €417) and that from the date of announcement of the elections, implementation of projects not previously foreseen in government budget is prohibited. These provisions were introduced into the Election Code after the 2008 presidential and parliamentary elections, in which allegations were rife about the (mis)use of *inter alia* budgetary funds for campaign purposes.³⁴ As indicated above, the 2010 local elections marked “evident progress towards (...) meeting international standards”, but concerns, in general, about the lack of distinction between the state and the governing party and, more specifically, the misuse of public resources for partisan purposes nevertheless persisted.³⁵ The GET noted, in this context, that despite the 2009 amendments to the Election Code, Article 76¹ of the Election Code allowed unlimited campaigning by certain high-level public officials.³⁶ The GET takes the view that further measures - which could include, for example, a limitation of the number of officials who may combine campaigning activities with their official duties, a clear prohibition in the Election Code on the direct and indirect use of all types of administrative resources (whether of a financial, material, technical or human nature, thus banning employees who perform official duties and are on the public pay roll from campaigning for a minister, political party or mayor), complemented by further guidance, if necessary, on the use of such resources as vehicles, buildings etc., and, in particular, the impartial enforcement of such a rule – are necessary.³⁷ Consequently, the GET recommends **to take further measures to prevent the misuse of all types of administrative resources in election campaigns.**

³⁴ The Final Report of the OSCE/ODIHR Election Observation Mission of the Extraordinary Presidential Election of 5 January 2008, *loc. cit.*, pp. 10-11 (reporting *inter alia* on the distribution of vouchers for such things utilities and medical supplies to pensioners and other vulnerable groups, indicating “that there is evidence that the distribution was used for campaign purposes”) and the Final Report of the OSCE/ODIHR Election Observation Mission on the Parliamentary Elections of 21 May 2008, *loc. cit.*, pp. 11-14.

³⁵ See the Final Report of the OSCE/ODIHR Election Observation Mission of the Municipal Elections of 30 May 2010, *loc. cit.*, p. 13, as well as Georgian Young Lawyers Association (GYLA), Monitoring Report of the Monitoring Mission of the May 30, 2010 Local Self-Governance Elections, pp. 5-6.

³⁶ Article 76¹ of the Election Code provides that certain high-level political officials – such as the President, ministers, deputy ministers, members of parliament and mayors – may engage in campaign activities during their official duties.

³⁷ In their Joint Opinion on the Election Code of Georgia, the Venice Commission and OSCE/ODIHR have also recommended to limit the number of officials who benefit from the provision allowing them to combine campaigning with official duties and to expressly prohibit direct or indirect use of all types of administrative resources for campaign purposes. See Joint Opinion on the Election Code of Georgia (Opinion No. 571/2010), *loc. cit.*, p. 11.

Supervision

70. As regards the system of supervision of parties' regular financing, the GET notes that – as in many other GRECO member States – parties are required to have a financial audit conducted of their activities (Article 33 LPUC) and that the opinion of the auditor is to be sent to the CEC and the tax authorities together with the “annual financial declaration” of the party (Article 32 LPUC).³⁸ The law furthermore provides that for the purpose of carrying out this audit, a party is “entitled” to address an independent auditor. Similarly, as regards the system of supervision of election campaign financing, Article 48 of the Election Code provides that an audit report is to be submitted together with the final report on the use of the election campaign fund. As regards this audit, the Election Code only provides that it has to be carried out by an auditor operating on the territory of Georgia.
71. The political parties met on site informed the GET that their auditors used international auditing standards, but were not able to identify what these standards entailed and were not able to provide further details on the rules relating to the independence of the auditors (as stipulated by the LPUC). Further discussions revealed that the regulation of audit activities in Georgia leaves much room for improvement: the 1995 Law on Audits is outdated (*inter alia* referring to licences, which have since been abolished), there is no quality control of the audit profession, there are no standards for non-commercial entities like political parties and there are no provisions regulating potential conflicts of interest of auditors. In practice, this has led – according to several interlocutors – to a situation in which the quality of the audits cannot be relied upon. In the opinion of the GET, further measures need to be taken to strengthen the audit process in respect of election campaign funds and the accounts of political parties (at least for parties receiving state funding). The GET learned, in this context, that a new law on audits had been developed, which would reportedly bring Georgian legislation in line with international standards. The GET is of the opinion that any future legislation will have to raise the quality requirements for the audit profession and provide a sufficient basis for the establishment of clear auditing standards applicable to party and campaign financing, including enforceable requirements as regards the independence the auditor (prohibiting an auditor from carrying out an audit of a party or election campaign fund, if s/he has any type of direct or indirect financial or other relationship with the party or fund or if s/he has a vested interest in the outcome of the audit and requiring auditors to be rotated after having served the party or fund for a consecutive number of years). Consequently, the GET recommends **(i) to apply, in consultation with the competent bodies, appropriate auditing standards to party and election campaign financing and (ii) to ensure adequate standards are in place as regards the independence of auditors entrusted with the verification of party accounts and campaign funds.**
72. The abovementioned problems regarding audit procedures are compounded by the fact that external control in respect of party financing is absent and in respect of funding of election campaigns rather limited. As described in paragraph 65 above, the “annual financial declarations” (and opinion of the auditor) are to be sent to the CEC and the tax authorities within ten days of their publication. However, the CEC acts as a mere depository of this information and does not have a mandate to verify the information contained therein. This is striking, as the LPUC does provide for prohibitions and restrictions for which important sanctions – such as the loss of state funding – can be imposed. However, it would appear that these provisions are only a paper tiger.

³⁸ The GET notes that Article 33 of the LPUC is slightly inconsistent in this respect, as following this article the auditor's opinion only has to be submitted to the Central Election Commission, but not the tax authorities

73. The situation is marginally better as regards supervision of election campaign funds. The final financial reports of election subjects on the use of the election campaign fund (as well as the interim report on donations) are to be checked by the Financial Monitoring Group, an *ad hoc* body set up by the CEC. The Election Code is silent as regards the precise role and mandate of this Group. Article 48, paragraph 10¹ of the Election Code only provides that a Financial Monitoring Group (FMG) will be established by virtue of a resolution of the CEC within five days of the announcement of the elections, that it will comprise so-called ‘social representatives’ (i.e. prominent public figures), lawyers and auditors and that its statute will be established within five days of the creation of the group. On site it became clear that the oversight conducted by the FMG is only of a formal nature. The members of the FMG check if all the reports contain the information required by law, if there is a match between the reported income and expenditure and if the donation caps are not exceeded (but only on the basis of the information provided by election subjects themselves in the reports).³⁹ The FMG neither has the resources nor the instruments (such as access to the accounting documents of election subjects) to carry out any substantive scrutiny of the content of the financial reports, to act on possible complaints of the public and/or to investigate allegations of irregularities in the financing of election campaigns.
74. The GET is of the opinion that – given the difficulty of separating campaign funding from regular party funding and considering that political parties may contribute without limits to election campaign funds – the monitoring of party and campaign funding would be more effective and credible if, whenever possible, it were to be carried out by a single body. It was clear that opposition parties were apprehensive of this monitoring (fearing that such monitoring might be partisan). In discussing which body could, nevertheless, monitor party and campaign funding, the GET noted a lack of trust in the CEC in its current set-up.⁴⁰ Yet, many interlocutors acknowledged that the current chairman had done a great deal to enhance trust in the CEC. One interlocutor suggested that it would in any case be better to give the authority to supervise funding issues to another body, so that problems surrounding campaign finance would not affect the legitimacy of the CEC in election matters. Several interlocutors interviewed favoured a reinforcement of the FMG (however, some interlocutors took the view that the FMG is unlikely to be independent as long as it is under the authority of the CEC), whereas others suggested giving the task of monitoring party finance to the Chamber of Control. The GET takes the view that (also given the concerns of opposition parties) any monitoring body – whether existing or yet to be created – must, above all, operate in an impartial manner (and also be seen to be operating in such a way). It acknowledges that the building-up of confidence in the (impartial) functioning of such a body in Georgia may require time, but from the onset it must be ensured that, at least institutionally, it enjoys an appropriate level of independence and freedom from outside interference in its work. Furthermore, such a body would need to be given sufficient resources to carry out pro-active and substantial control and – given the allegations mentioned in paragraph 60 above – the authority to act on (i.e. investigate) complaints (whether made by parties /other election subjects, citizens or the media) and other information from outside sources, as well as – if appropriate –the mandate to impose sanctions in case of violation of political finance regulations. In light of the above, the GET recommends **(i) to ensure that an independent mechanism is in place for the monitoring of the funding of political parties and election campaigns, in line with Article 14**

³⁹ The GET was told that if the account does not balance, the FMG would ask the election subject for an explanation, but the representative (manager/accountant) of the election subject would be trusted on his/her word.

⁴⁰ It should be noted that, even though the Venice Commission considered the 2009 amendments of the Election Code on the structure and nomination of the CEC and other election commissions as “positive, showing an effort to address previous concerns”, it also found that “the Code can be improved to provide a greater assurance” of the implementation of the principles requiring elections commissions to “operate in a manner that is independent”. In this context, the Venice Commission *inter alia* recommended “to enhance their ability to perform their duties independently, impartially and professionally” (See: Joint Opinion on the Election Code of Georgia (Opinion No. 571/2010), *loc. cit.*, pp. 9-10).

of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) to provide this mechanism 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.

Sanctions

75. The sanctions foreseen for violation of the articles of the LPUC and Election Code on the financing of political parties and election campaigns are scattered over three laws, the LPUC and the Election Code, as well as the Code of Administrative Violations (in addition to accounting offences which can be found in other laws). As described in paragraphs 49 to 56 above, apart from written warnings, these three laws provide for four different types sanctions: the confiscation (or “forced transfer”) of donations, fines, invalidation of election results and withdrawal of the right to state funding. However, even if the CEC estimated that it had issued 15 written warnings for late submission of reports over the last three elections, it would seem that the provisions on sanctions are largely a “dead letter”: in practice they are never enforced. The main reasons for this state of affairs are the above-mentioned lack of an effective oversight and investigative mechanism (cf. above) and – under the LPUC – the absence of a clear authority to impose sanctions.
76. The GET learned that Articles 126¹⁸-126³² of the Election Code on sanctions were only added to the Election Code in December 2009, to provide for more transparency in the punishment of electoral violations.⁴¹ Despite the improvements this has brought about, the GET has several misgivings about the current sanctioning system (aside from the above-mentioned lack of enforcement). First of all, the GET noted – as remarked earlier in respect of the LPUC and the Election Code – that the multiplicity of laws provides for a regime of inconsistent, incomplete and overlapping sanctions. For certain identical infringements different sanctions can be imposed on the same entity pursuant to different laws.⁴² For other infringements of the law no sanctions at all are specified⁴³ (or the sanctions which are specified cannot be imposed upon the entities on

⁴¹ The GET was told during the on-site visit that all provisions relating to financing of election campaigns were moved from the Code of Administrative Violations to the Election Code. In the opinion of the GET, this would be an improvement upon the existing situation. However, from the information provided after the visit it would appear that this has not happened.

⁴² For example, failure to provide a report on the use of the election campaign fund of a political party entails – pursuant to Article 126²⁴ of the Election Code – a fine of 3,000 GEL on the political party, if the party receives state funding; pursuant to Article 174¹⁴ of the Code of Administrative Violations, this would, however, lead to the potentially more severe sanction of the loss of state funding. Similarly, in case of acceptance of a prohibited donation by an election campaign fund of a political party, pursuant to Article 126²³ of the Election Code, this donation is to be confiscated and/or transferred to the State Budget, and in case of concealment of the donation in question a fine of 1,500 GEL can be imposed on the party (to be increased to 3,000 GEL, in case the party receives funding from the state). However, pursuant to Article 174¹³ of the Code of Administrative Violations concealment of prohibited donations by an election campaign fund of a political party results in a fine in an amount of fivefold the concealed donation.

⁴³ For example, Article 48, paragraph 8 of the Election Code provides for written warnings in case of various infringements of the campaign funding provisions and also provides that if the appropriate District Election Commission or Central Election Commission finds that the infringement is “substantial and could affect the results of the election”, the votes received by the election subject will be cancelled. However, if an election subject (or the manager or accountant of the election campaign fund) does not rectify the infringement upon receiving a written warning, but the infringement is not serious enough to affect the results of the election, it does not appear that any other sanctions (other than those applicable for the acceptance of prohibited donations and the failure to submit a report on the use of the election campaign fund) can be imposed for – for example – the use of funds other than those of the election campaign fund, the intentional inclusion of false data in the report or for donating through intermediaries. Similarly, the LPUC provides for sanctions for the acceptance of prohibited donations (which are complemented by Article 173¹⁰ of the Code of Administrative Violations on the concealment of such donations)

which the law places an obligation).⁴⁴ Secondly, the GET has serious concerns that the sanctions that can be imposed are not in proportion to the severity of the offence, as required by Article 16 of Rec(2003)4.⁴⁵ Finally, the GET finds that the procedure for imposing sanctions and appealing against such sanctions can be improved. Pursuant to Article 126³² of the Election Code, the CEC draws up a protocol that is signed by the chairman and forwarded to an administrative court, which ultimately decides on the sanction (and to which the imposition of a sanction can reportedly subsequently be appealed). However, because Article 126³² of the Election Code only refers back to Article 126¹⁸ to 126³¹, it is not evident that the procedure for the imposition of sanctions in other situations (and the procedure for appeal against a decision to impose these sanctions), such as the ones prescribed by Article 48, paragraphs 7 and 8 of the Election Code, would be identical (which is what the GET was told after the on-site visit). The LPUC by contrast does not contain any provisions on the procedure for enforcing its decisions and as there is no oversight mechanism, it is not clear who/which entity has the authority to initiate proceedings and impose sanctions for irregularities in the financial activities of political parties. In light of the above, the GET recommends **(i) to harmonise existing provisions on sanctions in the Election Code, Law on Political Unions of Citizens and Code of Administrative Violations; (ii) to ensure that effective, proportionate and dissuasive sanctions can be imposed for all infringements of the Election Code and Law on Political Unions of Citizens and on all persons/entities on which these two laws place obligations and (iii) to clarify the procedure for initiating and imposing sanctions pursuant to the Law on Political Unions of Citizens, including appeals/judicial review, and assess whether there is a need to do so in respect of the Election Code.**

77. In addition, the GET has some concerns about the statutory limitations for violations of the party and campaign funding regulations. The GET was informed that, pursuant to Article 38 of the Code of Administrative Violations, administrative sanctions – which include the sanctions imposed pursuant to the Election Code and LPUC – have to be imposed within two months of commission of the offence. In any case, the GET finds a two month limitation period too short, considering in particular the complexity of some of these offences, the difficulties in investigating them and the fact that certain offences – for example, the acceptance/concealment of a prohibited donation, which typically will only be uncovered after a political party has submitted its “annual financial declaration” – could only be discovered after the limitation period has elapsed. The GET therefore recommends **to increase the limitation period for administrative violations of party and campaign funding regulations.**

and for the belated publication of the “annual financial declaration”, but is silent on other possible violations of the act, such as submission of an incomplete “annual financial declaration” or one that intentionally contains incorrect or false data.

⁴⁴ For example, both the political party and the authorised person of the political party can be fined for failure to submit the report on the use of the election campaign fund. However, it does not appear to be possible to hold election subjects other than political parties or the persons in control of the election campaign funds of these parties liable for such omissions. Similarly, Article 27, paragraph 4 of the LPUC prohibits donations through intermediaries but – while it is possible to fine parties for accepting prohibited donations (which presumably includes a donation made through an intermediary, if this is ever discovered) – it is not possible to fine the donor who acts in bad faith.

⁴⁵ For example, Article 126²⁷ of the Election Code provides for a fine of 1,000 GEL (approximately €420) for misuse of administrative resources, which in situations in which the misuse is substantive might be rather low. On the other hand, Article 34 of the LPUC provides for loss of state funding for a year if a party fails to publish its “annual financial declaration” *timely*, which appears to be rather severe if publication is only a few days late.

V. CONCLUSIONS

78. The legal framework regulating the financing of political parties and election campaigns in Georgia – the Organic Law of Georgia on Political Unions of Citizens and the Election Code – reflects several of the principles contained in Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. The two laws comprise positive features aimed at strengthening the transparency of party and election campaign finances (such as the requirement to establish special campaign funds, rules requiring political parties and election campaign funds to report on their finances – including on donations in remarkable detail –, caps on donations and bans on anonymous donations). However, in practice, the annual financial declarations of political parties (and the published summaries thereof) fail to provide a sufficiently detailed picture of parties' finances, which also has implications for the transparency in the funding of election campaigns.⁴⁶ It consequently needs to be ensured that financial information on parties' income, expenditure, assets and debts is disclosed in an appropriate level of detail and that this information is made publicly accessible.
79. Above all, the fundamental weakness of the current system resides in the lack of effective monitoring which undermines the effectiveness in practice of the relevant rules. The current system – in which the Central Election Commission acts as a mere depository of the “annual financial declarations” of political parties and the Financial Monitoring Group only checks whether the financial reports of the election campaign funds contain the information required by law – falls short of the requirements of Article 14 of Recommendation Rec(2003)4. A direct consequence of this deficient supervision is a lack of enforcement of the rules (which in turn is also hampered by an inconsistent, incomplete and overlapping sanctioning regime). Establishing an effective supervisory mechanism and ensuring adequate, impartial enforcement of the rules on the funding of political parties and election campaigns must therefore be a matter of priority.
80. The need for improvement of the current regulations on campaign and party financing has been recognised by the government, which has included this topic in its Anti-Corruption Strategy and related Action Plan. Currently, negotiations on the reform of the electoral system (and thus a new Election Code) are underway. GRECO hopes that the issues raised and the recommendations issued in this report come as a timely contribution to the above-mentioned legislative process and provide further opportunity to increase public trust in the political system.
81. In view of the above, GRECO addresses the following recommendations to Georgia:
- i. **to proceed with the efforts to revise existing legislation in the area of political finance, with a view to establishing a more uniform legal framework, notably by aligning the (new) Election Code with the Law on Political Unions of Citizens (and vice versa) (paragraph 62);**
 - ii. **(i) to establish a standardised format for the annual financial declarations to be submitted by political parties, seeing to it that financial information (on parties' income, expenditure, assets and debts) is disclosed in an appropriate amount of detail and (ii) to ensure that information contained in the annual financial declaration (including donations above a certain threshold) is made public in a way which provides for easy access by the public (paragraph 65);**

⁴⁶ As political parties can make unlimited contributions to their election campaign fund, the lack of transparency in parties' regular finances affects the transparency of election campaigns.

- iii. **to assess whether there is a need to take measures (for instance, extending the reporting deadline for the submission of final reports by successful parties/election blocs and candidates) to ensure that all financial transactions of the fund are adequately reflected in the final reports on the use of the election campaign fund (paragraph 66);**
 - iv. **to take appropriate measures to ensure that (i) 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 (ii) membership fees are not used to circumvent the rules on donations (paragraph 67);**
 - v. **to ensure that all financial documentation relating to the funding of political parties and election campaigns is kept for an appropriate period of time (paragraph 68);**
 - vi. **to take further measures to prevent the misuse of all types of administrative resources in election campaigns (paragraph 69);**
 - vii. **(i) to apply, in consultation with the competent bodies, appropriate auditing standards to party and election campaign financing and (ii) to ensure adequate standards are in place as regards the independence of auditors entrusted with the verification of party accounts and campaign funds (paragraph 71);**
 - viii. **(i) to ensure that an independent mechanism is 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) to provide this mechanism 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 (paragraph 74);**
 - ix. **(i) to harmonise existing provisions on sanctions in the Election Code, Law on Political Unions of Citizens and Code of Administrative Violations; (ii) to ensure that effective, proportionate and dissuasive sanctions can be imposed for all infringements of the Election Code and Law on Political Unions of Citizens and on all persons/entities on which these two laws place obligations and (iii) to clarify the procedure for initiating and imposing sanctions pursuant to the Law on Political Unions of Citizens, including appeals/judicial review, and assess whether there is a need to do so in respect of the Election Code (paragraph 76);**
 - x. **to increase the limitation period for administrative violations of party and campaign funding regulations (paragraph 77).**
82. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Georgian authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2012.

83. Finally, GRECO invites the authorities of Georgia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.