



## Statement of NGOs

27.01.2012

We, the below signatory organizations, declare that the December 2011 amendments to the organic Law of Georgia on the Political Union of Citizens and the Criminal Code of Georgia, jeopardize freedom of expression and freedom of property and will have a restrictive effect on civil-political activities. Furthermore, most of the legal prohibitions imposed are unreasonable, the sanctions disproportionate and it creates an uneven election environment.

More specifically, the new law introduces the notion that a natural or legal entity “related to a party”, will be subject to the very same prohibitions and regulations that apply to political parties. For instance, natural or legal entities who are deemed as such, have no right to receive income from entrepreneurial activities, whereas income received from any other activities may not exceed GEL 60, 000 per year. Natural or legal entities related to a party also have no right to receive a credit from natural or legal entities. Additionally, transparency of their financial activities will be monitored by the Chamber of Control of Georgia.

In compliance with the law, the definition of natural and legal entities related to a party is rather extensive, allowing for the establishment of a relationship between a party and a citizen/legal entity in almost any individual case. Furthermore, the ambiguous and extensive nature of norms, make selective and subjective enforcement of the law inevitable. The law also fails to regulate procedures in the decision-making process that determine whether a natural or legal entity is related to a political party, and fails to regulate the rules for appealing the decision.

The law imposes significant restrictions on natural persons for expressing their political opinions, whereas civil servants and officials are subject to minimum restrictions when implementing policies of agitation.

The law negligently regulates issues related to the seizure or sequestration of property that poses an actual threat to property rights. For instance, the law allows for the transfer of funds into the ownership of state even when the receiver of these funds may be unaware of their unlawfulness.

These norms, together with the recent amendments to the Criminal Code of Georgia, impose criminal liability for “vote buying”, provide for unreasonably restrictive regulations that may affect each and every citizen. Due to the ambiguity of the law, the risk of inconsistent and selective application is high, whereas there are no liabilities envisaged for cases when activities with an effect of vote buying are funded from the state or local budget.

We believe that the Parliament of Georgia should immediately begin preparation of relevant legal amendments in order to eliminate the aforementioned deficiencies that create an unfair election environment, create the potential for imposing unjustifiable restrictions on any organization or natural person and the likelihood of subjective enforcement of the law inevitable.

### **What are our plans?**

We will continue working with lawmakers to address the shortcomings in the law. In order to inform the public, we will plan meetings with local and international organisations, diplomatic representatives, and other interested parties. In addition, we plan to take part in a large-scale public awareness campaign with other representatives of civil society and the media, to be launched by the end of the month.

### **Who is subject to restrictions envisaged by the law?**

The circle of natural and legal entities that may be “related to parties” and are subject to significant restrictions is unjustifiably broad. The noted category includes:

#### *a) a legal entity, if he or she*

- is directly or indirectly related to a party, which means that the expenses of the legal entity are directly or indirectly related to activities and the aims of a party;
- is otherwise controlled by a party;
- has declared political aims and objectives;
- calls on voters by means of a representative to support or refrain from supporting any political force;
- calls on voters by means of another individual to support or refrain from supporting any political force.

#### *b) In addition to legal entities, the regulations also apply to a natural person, if he or she*

- possesses declared political and election aims and objectives;
- is related to a person with declared political and election aims and objectives;

- is in business relations with a person with declared political and election aims and objectives, and has political and election aims;
- is in business relations with a person with declared political and election aims and objectives, who carries out activities that affect the expression of the will of the citizens of Georgia in elections, plebiscite and referendum and these actions are carried out for the purpose of evading regulations of this law.

In view of this extensive list, it is safe to conclude that if the Chamber of Control wishes so, most Georgian citizens and legal entities in Georgia could easily be subject to the aforementioned restrictions. Furthermore, it is important to note that the recommendation of the Committee of Ministers which serves as the basis for the noted regulations concerning the imposition of restrictions on persons related to parties, deals solely with legal entities and does not envisage subjecting natural persons to this regime.

#### What are the restrictions that legal and natural persons will be subject to?

- **Restriction of entrepreneurial activities** – organizations deemed as persons related to parties will be prohibited from pursuing entrepreneurial activities, except for auxiliary entrepreneurial activities, within the range of GEL 60, 000 per year;
- **Limit on other annual incomes** – a person related to a party may receive the maximum income of GEL 60, 000 per year as a result of various activities allowed by the law; it also implies **an opportunity to receive a grant**. In the legal entries, the right to receive a grant is not explicitly spelled-out. Even with the best interpretation of the law, if we assume that the right to receive a grant exists, its amount may not exceed GEL 60, 000 per year.
- **The maximum amount of incomes of parties and natural and legal entities related to them was determined at 0.2% of GDP**. We believe that such regulations lack justification, as it is unclear what mechanisms can be used by political parties to determine the joint annual income of all persons (natural and legal entities) indirectly or directly related to them, which is necessary as the law stipulates that any amount above the limit will be forcefully transferred to the state budget.
- **Loan/the right to receive a credit** – natural and legal entities related to a party are deprived of the right to receive a credit from natural and legal entities.
- **Donation cap** – if donating natural persons receive their income from a common source, the total amount of donations made for a single election subject may not exceed GEL 500, 000 per year. For violation of the requirement, liability can be imposed on both the donor and

the party or a person related to the party, which is illogical due to the fact that it is impossible for the beneficiary of the donation to know in advance a) whether the donating natural persons receive part or all of their income from a single source, as this information is not indicated when donations are made; b) whether an individual donor has exceeded his/her annual limit of GEL 60, 000 for donations.

### **Chamber of Control**

- **In terms of controlling party funding and determining persons related to parties, the Chamber of Control was delegated with an unlimited authority.** According to the law, the Chamber of Control of Georgia is authorized to request information from persons about the origin of property transferred to persons related to parties or received from persons related to parties. The Chamber of Control is also authorized to take further actions on violations of law regulating party funding and utilize sanctions envisaged by the law. The public is still unaware of the means that the Chamber of Control intends to realize the delegated authority, while the following is still ambiguous a) what is the meaning of indirect relation of a legal entity with a political party and/or an indirect relation of expenses of a legal entity with a political party; b) when are legal entities controlled by a political party; c) what are the circumstances under which political aims and objectives can be qualified as declared; d) when a natural person will be deemed as a person related to a party; e) when a legal entity is in business relations with a political party, while a legal entity is already prohibited from making donations to a party etc.
- **Natural persons will be accountable to the Chamber of Control.** The new regulations authorize the Chamber of Control to request information related to party funding from a natural person related to a political party. Furthermore, the law does not provide the means by which the Chamber of Control decides how a natural or legal entity is associated with a party; and it is not clearly determined whether this person has the right to appeal such a decision. We believe that in view of the noted conditions, most Georgian citizens and legal entities in Georgia, if the Chamber of Control wishes so, may be easily subject to these notions and correspondingly, to restrictions envisaged by the law. Furthermore, according to international practice, the imposition of restrictions on persons related to parties applies to legal entities only.<sup>1</sup>

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<sup>1</sup> Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns (Adopted by the Committee of Ministers on 8 April 2003), Article 6, 11.

- **The Chamber of Control is delegated with the right to seize property** – the law delegates the Chamber of Control with the right to sequester the property of a party and a natural person or/and a legal entity related to it (including bank accounts); however, a number of issues remain unregulated. For instance, a) the law does not offer, as an exception, short terms for the court’s examination of a dispute involving property sequestration. In view of the fact that court disputes may go on for months or years sometimes, sequestration of property that remains in force throughout the period will inflict significant damage to natural persons as well as private companies and non-governmental organizations; b) under the law, the measure of sequestration can be applied against the whole property of a party and persons related to it, as opposed to the property commensurate to the disputed amount, which we deem as wrongful; c) there is no list of criteria that should be taken into account for the imposition of sequestration in every individual case.

#### **The criminal liability of voters**

- **New regulations provide for the liability of voters and in certain cases, they can be held criminally liable.** Namely, a voter, who receives or demands money or any other gift from a political party or a person directly or indirectly related to it, can be sentenced to **up to 3 years** of imprisonment. The noted regulation is unreasonably strict, particularly in view of the fact that the norm is ambiguous. Liability will be imposed on a voter, regardless the price of a monetary gift or any other gift.