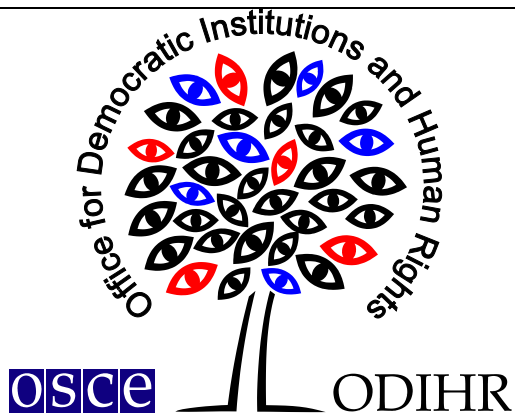


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## OPINION

### ON CERTAIN PROVISIONS OF THE LAW ON FUNDING OF AND CONTROL OF FUNDING OF POLITICAL CAMPAIGNS

on the basis of comments by

**Mr Richard KATZ (Chairman of the ODIHR Core Group of Experts on Political Parties)**

**Ms Barbara JOUAN-STONESTREET (ODIHR Core Group of Experts on Political Parties)**

**Mr Fernando CASAL BÉRTOA (ODIHR Core Group of Experts on Political Parties)**

**Ms Elissavet KARAGIANNIDOU (ODIHR Campaign Finance Expert)**

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## I. INTRODUCTION

1. On 20 July 2018, the Central Election Commission of the Republic of Lithuania sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for an opinion on the Law on Financing of and Control of Funding of Political Campaigns (the law on party and campaign finance) to assess their compliance with international human rights standards and OSCE commitments.
2. On 30 August 2018, ODIHR Director responded to this request, confirming the Office’s readiness to prepare a legal opinion on certain provisions of law on party and campaign finance, which will assess its compliance with OSCE human dimension commitments and international human rights obligations. Mr Richard Katz, Ms Barbara Jouan-Stonestreet, Mr Fernando Casal Bértoa, members of ODIHR Core Group of Experts on Political Parties and Ms Elissavet Karagiannidou, ODIHR Campaign Finance Expert, were appointed as experts for this Opinion.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.

## II. SCOPE OF THE OPINION

4. The scope of this Opinion focuses largely on Articles 7 to 13 of the Law on Financing of and Control of Funding of Political Campaigns (the law on party and campaign finance), submitted for review, as well as certain provisions from the Law on Political Parties and Article 35 of the Law on Municipal Elections. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the regulation of financing political parties and election campaigns.
5. The Opinion raises key issues and indicates areas of possible refinement. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the law. The ensuing recommendations are based on relevant OSCE commitments, Council of Europe and other international standards and obligations, and international good practices, including the [Joint Guidelines on Political Party Regulation \(2011\)](#) issued by ODIHR and the Council of Europe’s European Commission for Democracy through Law (Venice Commission). Reference is also made to the relevant findings and recommendations from previous ODIHR election observation reports and the Council of Europe’s Group of States against Corruption (GRECO) reports.
6. Moreover, in accordance with the OSCE commitments and the Council of Europe standards to mainstream a gender perspective into all policies, measures and activities, the Opinion also takes account of the potential impact of the respective laws on women and men.<sup>1</sup>
7. This Opinion is based on an official English translation of the law on party and campaign finance provided by the Central Election Commission of the Republic of Lithuania (CEC) on 20 July 2018. This must be read together with excerpts of the Law on Political Parties and Article 35 of the Law on Municipal Elections. Inaccuracies may occur in this Opinion as a result of incorrect translations.

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<sup>1</sup> See paragraph 32 of the [OSCE Action Plan for the Promotion of Gender Equality](#) adopted by Decision No.14/04, MC.DEC/14/04 (2004), which refers to commitments to mainstream a gender perspective into OSCE activities; and the [Council of Europe’s Gender Equality Strategy 2014-2017](#), which includes the realisation of gender mainstreaming in all policies and measures as one of five strategic objectives.

8. In view of the above, ODIHR would like to note that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation in the Republic of Lithuania in the future.

### **III. EXECUTIVE SUMMARY AND CONCLUSIONS**

9. The existing legal framework pertaining to financing political parties and campaigns largely promotes parties' independence from undue influence as well as ensures that contestants generally have the opportunity to compete in elections in accordance with the principle of equal opportunity.

10. At the same time, a number of aspects warrant improvement, including a clear definition of third parties, as well as stricter regulations on in-kind donations and reporting. In addition, the regulatory framework should be enhanced to ensure that the law on party and campaign finance and other relevant legislation effectively close potential loopholes that could be used to circumvent regulations on political and campaign financing. Moreover, legislators should ensure that the system of public funding does not disproportionately favour larger, established political parties to the detriment of smaller ones.

11. Furthermore, provided that the government is currently considering new amendments to the law on party and campaign finance, and given the impact that this draft opinion may have on the ongoing reform process, the relevant stakeholders are encouraged to ensure that future draft amendments undergo extensive consultation throughout the drafting and adoption .

12. As a preliminary remark, it should be noted that successful reform should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and 3) political commitment to fully implement the legislation in good faith. In particular, ODIHR stresses that an open and transparent process of consultation and preparation of the future amendments increases the confidence and trust in the adopted legislation and in the state institutions in general.

13. To further improve the compliance of the law on party and campaign finance with international standards and OSCE commitments, ODIHR makes the following key recommendations:

- A. When there is a credible ground to suggest that the permissible donations have been circumvented it is recommended that the CEC have an authority to request additional information from donors and committee members [par 32];
- B. In addition to the existing measures, the CEC could publish information on donors and donation amounts, including the aggregate value of small cash donations by each donor, in an easily accessible and searchable manner to allow for cross-checking and verification of information [par 36];
- C. There could be a clear distinction between contributions to the campaign of a campaign participant and campaigning directly by natural persons or legal entities that is independent of the campaign of a campaign participant. In addition, In order to eliminate the possibility of circumventing prohibitions on third party financing, Article 12.2 could be reviewed with an aim to more clearly define the term "third parties." The law could also prescribe comprehensive reporting requirements for third parties [par 47];
- D. Provided that election committees are formally related to contestants, in line with

international good practice, they could be subject to initial, interim and final reporting requirements of their incomes and expenditures. It is therefore recommended to amend the laws to this effect. [par 52]

14. These and a number of additional recommendations, which are included throughout the text of this Opinion (highlighted in bold), are aimed at further improving the compliance of the legal framework governing the funding of political parties and electoral campaigns in the Republic of Lithuania with OSCE commitments, Council of Europe and other international human rights standards and obligations, as well as recommendations contained in previous Opinions and ODIHR election observation reports.

#### IV. ANALYSIS AND RECOMMENDATIONS

##### A. International Standards Relating to Financing Political Parties and Election Campaigns

15. This Opinion analyses the law submitted for review with regard to its compatibility with international obligations and standards on the financing of political parties and election campaigns, as well as with relevant OSCE commitments.

16. These obligations and standards are found principally in the [United Nations \(UN\) Convention Against Corruption](#), and in Article 22 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and Article 11 of the [European Convention on Human Rights \(ECHR\)](#), which both protect the right to freedom of association. The right to freedom of opinion and expression is guaranteed under Article 10 of the ECHR and Article 19 of the ICCPR and underpin the principle of free association. Finally, the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR is also of relevance.

17. In addition, standards in this area can be found in the recommendations of the UN, the Council of Europe and the OSCE. These include [General Comment 25 of the UN Human Rights Committee](#) on the right to participate in public affairs, voting rights and the right of equal access to public service, Council of Europe Committee of Ministers' [Recommendation \(2003\)4](#) on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, the [Joint Guidelines on Political Party Regulation \(2011\)](#) issued by ODIHR and the Venice Commission, the [Joint Guidelines on Freedom of Association \(2015\)](#) issued by ODIHR and the Venice Commission, the [Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes \(2016\)](#) issued by ODIHR and the Venice Commission, the Venice Commission [Guidelines and Report on the Financing of Political Parties](#), the Venice Commission [Code of Good Practice in the field of Political Parties](#), the Venice Commission [Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources](#), and the Venice Commission [Code of Good Practice in Electoral Matters](#).

18. Similarly, OSCE commitments under the [Copenhagen Document](#) include the protection of the freedom of association (paragraph 9.3), of the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4).<sup>2</sup>

19. At the outset, it shall be noted that political parties are associations and as such they, and their members, enjoy freedom of association as defined by Article 11 of the ECHR and other

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<sup>2</sup> See also paragraph 5.8 of the 1990 OSCE Copenhagen Document which requires “legislation, adopted at the end of a public procedure...”

international human rights treaties.<sup>3</sup> In accordance with Article 11 of the ECHR, the freedom of association may only be restricted by law, for one of the listed purposes and to the extent “necessary in a democratic society.” Pursuant to Principle 7 of the Joint Guidelines on Freedom of Association, “associations shall have the freedom to seek, receive and use financial, material and human resources ...” However, this freedom is subject, *inter alia*, to requirements “concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.”

20. Attention is also drawn to Article 8 of Recommendation Rec(2003)4 of the Council of Europe’s Committee of Ministers, according to which “the rules regarding funding of political parties should apply *mutatis mutandis* to the funding of electoral campaigns of candidates for elections.”

21. In addition, according to the Joint Guidelines on Political Party Regulation (hereafter: *Guidelines*), “the regulation of political party funding is essential to guarantee parties independence from undue influence created by donors and to ensure the opportunity for all parties to compete in accordance with the principle of equal opportunity and to provide for transparency in political finance.”<sup>4</sup> These *Guidelines* also stress that legislation regulating political parties should attempt to achieve a balance between encouraging moderate contributions and limiting unduly large contributions.

22. Lastly, throughout the Opinion, reference is made to evaluation reports issued by GRECO as well as to the final reports and recommendations from ODIHR election observation activities.<sup>5</sup>

## **B. National Legal Framework**

23. The 2004 Law on Financing of and Control of Funding of Political Campaigns (the law on party and campaign finance) was substantially amended in 2012 and 2013, with additional changes made in 2014. The latter defined donation limits by natural persons (Article 10.2) and introduced an obligation for natural persons to declare income and assets before donating (Article 10.4).

24. In its Second Compliance Report GRECO welcomed “the further measures initiated which complement the substantial amendments to the Law on Financing and Financial Control of Political Parties and Political Campaigns of 2010, with a view to complying with the outstanding recommendations. In particular, the law has been further amended to prohibit the funding of political parties and election campaigns by legal persons.” The report concluded that all prior GRECO recommendations related to the transparency of party funding were at least partly implemented, and 9 of 12 were fully implemented, including an increase in administrative fines and broader possibility for sanctions for violations of campaign finance provisions. However, there are a number of aspects that would warrant improvement, including a clear definition of third parties, as well as stricter regulations on in-kind donations and their reporting.

25. Sufficient regulations in political finance play an important role as they contribute to transparency and accountability. It is thus important to establish political party and campaign finance regulations that are clear, equitable and enforceable. While this Opinion only comments

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<sup>3</sup> See the judgment of the European Court of Human Rights the *United Communist Party of Turkey and Others v. Turkey*, application no. 19392/92, 30 January 1998.

<sup>4</sup> See paragraph 159 of the Guidelines.

<sup>5</sup> In particular, reference is made to the GRECO reports on Transparency of Party Funding in Lithuania, including [the Evaluation Report](#), [the Compliance Report](#), and [the Second Compliance Report](#). See also all [ODIHR election observation reports](#) on Lithuania.

on aspects of enhancing the legislation pertaining to financing political and election campaigns, it must be emphasized that the effective implementation of the legislative framework is equally important.

26. ODIHR has been informed that the authorities are currently developing amendments to the law on party and campaign finance to further enhance its regulatory framework and stand ready to provide assistance if requested.

### C. General Remarks

27. There are some discrepancies with terminology. Article 2.21 of the law on party and campaign finance states that “public election committees” (election committees) are groups of voters registered with the CEC in accordance with the procedure laid down in the law (Article 5). Article 35 of the Municipal Election Law refers to “election committees” rather than “public election committees.” The same article also prescribes the registration procedure of election committees in the context of municipal elections. While this discrepancy could be a result of varied translation of the laws, *it is advisable to ensure that the terminology is harmonized between these two laws.*

### D. Public Funding

28. Article 7.1 of the law on party and campaign finance does not explicitly define public funding of the election campaign; however, it provides that campaigns of political parties shall be financed from their own, in addition to other sources. Article 19 of the Law on Political Parties defines political party funds as to include funds received from the state budget, which can be used for election campaigns. Hence, financing of political parties from the state budget is envisaged, provided that a party has received more than three per cent of votes cast in parliamentary, municipal council, or European Parliament elections, and proportional to the number of votes received. The state, however, retains a right to cease such funding for two years in case a political party has grossly violated the Law on Political Parties or has made a severe violation in the funding of a political campaign.<sup>6</sup> The CEC is responsible for determining the amount from the state budget allocated to a political party. For legal clarity and consistency, *a reference to public funding for political parties could also be included in the law on party and campaign finance.*

29. The Law on Political Parties details the formula of allocation of funds that is solely based on the number of votes received by a party and a coalition.<sup>7</sup> While this principle is based on an objective criterion, it favours larger parties, specifically those that have been elected. As provided by paragraph 187 of the *Guidelines*, “[l]egislation should ensure that the formula for the allocation of public funding does not provide one political party with a monopoly on or disproportionate amount of funding. *It is recommended to consider a more equitable distribution of funds that would not be based solely on the number of votes received.*

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<sup>6</sup> See Article 20.4 of the Law on Political Parties.

<sup>7</sup> According to Article 21.4 of the Law on Political Parties the amount a political party shall receive in funding from the state budget is determined as follows: “1) by Summing up only the votes of voters cast for the candidates of those political parties for which state budget appropriations may be allocated under paragraph 2 of this Article for funding activities of the political party, the number of all votes is determined; 2) a six-month financial coefficient of one voter’s vote is established by dividing the half of the state budget appropriations designated for funding activities of the political party by the number of votes of all the voters; 3) the six-month state budget appropriations allocated for the political party to fund activities of the political party is determined by multiplying a six-month financial coefficient of one voter’s vote by the number of votes of the voters who cast their votes for the candidates of this political party.”

30. Lastly, while not provided for in the legislation, public funding could be considered as a tool for promoting women's participation and providing financial incentives thereon. As stated in the Council of Europe Committee of Ministers Recommendation (2003)3 on the balanced participation of women and men in political and public decision making, the financial incentive for receiving public funds can be encouraged based on their compliance with requirements to promote women's participation.<sup>8</sup> ***Consideration could be given to link the allocation of public financing to measurable efforts to promote women's political participation.***

## **E. Private Funding**

31. In addition to public funding, Articles 7 and 8 of the law on party and campaign finance strictly regulate the means of funding. Contestants can finance campaigns through their own funds, as well as donations from natural persons. In addition, political parties can be financed through loans received from a bank registered in Lithuania or another European Union member State, as well as a branch registered in the European Economic Area but operating in Lithuania.

32. Article 10 of the law on party and campaign finance sets different limits of donations from each natural person. According to Article 10.2 one person can donate to each contestant an amount not exceeding 10 average monthly incomes and up to 10 per cent of his/her declared annual income during a calendar year. In order to fund their own political campaign, a candidate in a single-member constituency and candidates included in the lists nominated by the election committees (and referendum initiators) may donate an amount not exceeding 20 average monthly incomes. In addition, the law requires donors to declare their assets and income before donating. ***When there is a credible ground to suggest that the permissible donations have been circumvented it is recommended that the CEC have an authority to request additional information from donors and committee members.***

33. Article 10.9 of the law on party and campaign finance provides that appraising non-cash donations (in-kind) and estimating their fair value shall be laid down by the government or institution authorized by it. International good practice suggests that the valuation of in-kind donations should be determined based on market value.<sup>9</sup> In addition, if an individual or legal entity forgives an outstanding debt for goods or services, this should be considered as an in-kind contribution, subject to the limitations that apply to contributions and, where applicable, counting towards expenditure limits. ***It is recommended for regulations to provide comprehensive guidance on the reporting and valuation of in-kind donations in line with international good practice.***

34. According to Article 13.2 of the law on party and campaign finance a political party may donate to campaigns of its candidates or list of candidates. As per Article 7.1(1) campaigns of political parties can be financed from political party funds. However, according to Article 19 of the Law on Political Parties it is unclear whether parties can accept donations other than campaign donations. If this is the case, this would be an unreasonable restriction on the rights of a donor to support a party beyond simple membership.

35. Cash donations are possible, up to EUR 290, which must be transferred by bank transfer.

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<sup>8</sup> Such initiatives are in line with international standards and emerging good practice such as [the UN Convention on the Elimination of All Forms of Discrimination Against Women](#), [the Beijing Declaration and Platform for Action](#), [Council of Europe Recommendation Rec\(2003\)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making](#), as well as the [OSCE Ministerial Council Decision 7\(09\)](#) on Women's Participation in Political and Public Life. See also paragraph 191 of the Guidelines.

<sup>9</sup> See [ODIHR Handbook for the Observation of Campaign Finance](#) (2015) p 20.



The same article further states that donations not received by bank transfer shall be transferred to the specially designated bank account not later than the day the donation is received.<sup>10</sup> With this wording of the law, however, it is not clear whether this also applies to amounts less than EUR 290. ***Although no funding can be used for campaign purposes unless entered in the account records (including those entered by donations sheets), Article 10.5 could be amended to clearly stipulate that monetary donations under EUR 290, which were not received by bank transfer, need to be transferred to the political campaign account within a working day of receipt.***

36. The name of a person donating cash should be reported to the CEC within 10 days upon receipt of a donation in order to be published on the public list of donors on the CEC website (Article 10.6). ***In addition to the existing measures, the CEC could publish information on donors and donation amounts, including the aggregate value of small cash donations by each donor, in an easily accessible and searchable manner to allow for cross-checking and verification of information.***

37. Article 11 of the law on party and campaign finance provides for a possibility for small donations to one contestant, each not exceeding EUR12, using a phone, internet, bank transfer or other means. A special contract, valid during the campaign period, is required between the phone company and a contestant for receiving/collecting such donations. The provision (Article 11.9) of the service by telecommunications companies free of charge could be considered as an in-kind contribution made by a legal person and therefore as not permissible (since donations by legal persons are forbidden). Moreover, the issue of telecommunications companies collecting small donations on behalf of a given political campaign participant poses a problem of a financial intermediary between the donor and the political campaign participant (and its financial treasurer) as much as it does not allow for identification of a “donor-natural person”, which goes against the principle of unicity of the bank account. ***It is recommended to reconsider the regulation on collecting small donations via telecommunication companies, to ensure transparency of the donations.***

38. The law on party and campaign finance also limits the amount of small donations. For example, those exceeding 10 per cent of the permitted amount of political campaign expenses of one independent campaign participant (Article 11.10) shall be transferred to the state budget (Article 11.12). While this article aims to control the amount of donations, it could also be seen as problematic. Persons making such donations would not be aware that this donation exceeded the limit. If they had been aware of it, they might have chosen not to donate. In addition, limiting such donations could also be seen as a limitation on political participation and related rights. ***In this respect, the law could state that, if a donation exceeds the permissible limits, only the surplus amount should be returned to the donor.***

39. Similarly, Article 14.8 of the law on party and campaign finance foresees the transfer to the state budget of the surplus left in the campaign account before the submission of the campaign report.

40. According to Article 11.11 only the total amounts of small donations are published on the CEC website. This seems to contravene the prohibition of anonymous donations and principle of transparency. ***Consideration could be given to declaring the total aggregate amount of small donations received from the same donor, in view of preventing circumvention of the cap on small donations and ensuring greater transparency.***

41. The Law does not explicitly treat membership fees as contributions, but they are included

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<sup>10</sup> Article 10.5 of the Law on stipulates that cash donations from natural persons for the political campaign that are not received by bank transfer shall be transferred by the political campaign treasurer to the political campaign account not later than the next day after receipt of the donation.

under sources of funding of political parties, as envisaged by Article 19 of the Law on Political Parties. The same Article also sets the limits on such donations amounting to (1) up to 20 average monthly earnings valid in the fourth quarter of the previous calendar year, and (2) up to 10 per cent of the amount of the annual income declared by the party member for the previous calendar year. Lastly, if the total amount of membership fee paid by one party member for the political party exceeds EUR 360 during a year, a party member must declare their own assets and income. The ODIHR [observation report from the 2012 parliamentary elections in the Republic of Lithuania](#) provided that “[election assessment mission] interlocutors noted potential for misuse of membership fees as a way of circumventing the limits on donations and the ban on donations from legal entities.” ***It is recommended that the membership fees and their limits are included under Article 7 of the law on party and campaign finance as sources of campaign funding to make sure that donation limits are not circumvented.***

42. Article 7 treats the loans received by a political party as a donation and thus correctly applies same type of restrictions. However, loans may also be forgiven at a later date, in which case they are considered as in-kind donations, subject to the limitations that apply to contributions and expenditure limits. In addition, loans may also be guaranteed by third parties. For example, if the party received a loan then fails to pay it back, a third party may then pay the creditor directly, effectively giving the political party a donation. ***It is recommended to clarify this aspect in the law on party and campaign finance. Consideration could also be given to including a specific provision regulating loan guarantees, which would include reporting rules as to the receipt and repayment of such loans. The authorities could also consider capping the length of loans to the period of on-going oversight.***

43. Lastly, donating on behalf of others could potentially circumvent donation limits. Although a natural person is required to declare their assets and income before donating, this can be abused by intermediaries to request donations on their behalf. The law on party and campaign finance currently does not provide for such safeguards. ***In this respect, a ban and sanctions on knowingly donating on behalf of others is recommended to be introduced.***

## **F. Prohibitions**

44. Articles 7.3 and 8.3 of the law on party and campaign finance prohibit funding of campaigns from sources not specified in these articles. Article 12 further bans donations from anonymous donors. If a political party or a candidate receives donations from an undetermined donor, the person responsible to manage the accounts of the political party or the treasurer of the campaign must transfer the donation to the State budget.<sup>11</sup>

45. In order to avoid abuse through third party contributions, the law on party and campaign finance contains several safeguards: a natural person must declare their own assets and income before making a donation to a contestant (Article 10.4); at the same time the State Tax Inspectorate shall inspect whether or not a donor possesses enough income to make such a donation and whether the donation was taxed as required by law (Article 19.5).

46. In general, the involvement of third parties contributes to the expression of political pluralism and citizen involvement in political processes, thus a complete prohibition can be

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<sup>11</sup> As noted in paragraph 173 of the Guidelines donation limits “have historically also been placed on domestic funding, in an attempt to limit the ability of particular groups to gain political influence through financial advantages. It is central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on contributions from state-owned/ controlled companies and anonymous donors.”

considered as an undue limitation of freedom of expression.<sup>12</sup> In this respect, measures taken to ensure third-party involvement should be proportionate and take into account the overall goal of creating a level playing field for all political parties. As noted in paragraph 205 of the Guidelines, “[l]egislation should clearly state to whom political party funds may be released in the pre-election period and the limitations upon their use by third parties not directly associated with the party.”<sup>13</sup> It appears that the current law puts proportion limitations on third party contribution. The 2013 GRECO Second Compliance Report commended authorities for measures taken “namely the introduction of several new provisions aimed at reducing the possibilities for abuse of third party campaign financing, including the explicit prohibition of such financing.”<sup>14</sup>

47. However, the law on party and campaign finance does not explicitly prohibit such third parties to campaign for or against a candidate as long as they are not formally connected to electoral contestants. ODIHR [observation report on the 2016 parliamentary elections in the Republic of Lithuania](#) states that “interlocutors raised concerns over potential circumvention of the legal prohibition to directly finance electoral campaigns by third parties.” It further notes that “[t]he role played by these third parties, which are not obliged to report on their sources of funding and their expenses, was identified by some OSCE/ODIHR EAM interlocutors as potentially undermining the transparency of the campaign finance system.” *There could be a clear distinction between contributions to the campaign of a campaign participant and campaigning directly by natural persons or legal entities that is independent of the campaign of a campaign participant. In addition, in order to eliminate the possibility of circumventing prohibitions on third party financing in funding election campaigns and political party activities, Article 12.2 could be reviewed with an aim to more clearly define the term “third parties.” The law could also prescribe comprehensive reporting requirements for third parties.*

48. The law on party and campaign finance establishes a complete ban on donations by legal entities, but individuals affiliated with legal entities may still be able to donate. Prohibiting individuals related to legal entities from donating would constitute an unreasonable and disproportionate limitation of their freedoms of association and expression. However, it should be noted that it may be difficult, in practice, to prevent donations by individuals acting on behalf of legal entities. However, when links between individual donors and legal entities exist, the limits on donations should be established at a level so as to prevent undue influence by large donors, corporate or individual, on political contestants.

49. While international standards tend to be restrictive when it comes to foreign funding of political parties and electoral campaigns, they generally refer to the situation of foreign donors, in the interests of avoiding undue influence of foreign interests in domestic political affairs.<sup>15</sup> In order to establish whether the prohibition of financing from abroad is disproportionate in light of Article 11 of the ECHR, every individual case has to be considered separately in the context of the general legislation on financing of parties.<sup>16</sup> In Lithuania, foreign donations are prohibited unless

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<sup>12</sup> Please see the *Bowman v. United Kingdom*, judgment, ECtHR, (1998). For example, the ECtHR considered a case against the United Kingdom on whether a limit of GBP 5 on third-party campaign expenditures violated the right of freedom of expression under Article 10 of the ECHR. The Court ultimately concluded that the limit was set too low, but recognized the state’s legitimate purpose in restricting such expenditures.

<sup>13</sup> Similarly, as provided by the [ODIHR Handbook for the Observation of Campaign Finance](#), “[t]hird parties should be free to fundraise and express views on political issues as a means of free expression, and their activity should not be unconditionally prohibited. However, it is important that some form of regulation be extended to third parties that are involved in the campaign, to ensure transparency and accountability.”

<sup>14</sup> See [the GRECO 2013 Second Compliance Report](#).

<sup>15</sup> Article 7 of Rec(2003)4: “States should specifically limit, prohibit or otherwise regulate donations from foreign donors.” See also paragraph 172 of the *Guidelines*, where it is also stressed that “this is an area which should be regulated carefully”.

<sup>16</sup> See CDL-AD(2009)021, paragraph 160, which refers to the conclusion of the Venice Commission Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources, CDL-

they come from citizens of Lithuania and permanent residents of Lithuania holding other EU citizenship. In addition, permanent residents without citizenship (including stateless persons) can donate for municipal election campaigns. These provisions appear to provide for a proportionate restriction.

50. Lastly, while not envisaged by law, a prohibition on the misuse of administrative resources could be included in the law on party and campaign finance. As provided by paragraph 207 of the Guidelines “[t]he abuse of state resources is universally condemned by international norms. While there is a natural and unavoidable incumbency advantage, legislation must be careful to not perpetuate or enhance such advantages. Incumbent candidates and parties must not use state funds or resources (i.e., materials, work contracts, transportation, employees, etc.) to their own advantage. Paragraph 5.4 of the 1990 OSCE Copenhagen Document provides, in this regard, that participating States will maintain “a clear separation between the State and political parties; in particular, political parties will not be merged with the State.”<sup>17</sup>

## G. Election Committees

51. As per Article 35 of the Municipal Election Law, an election committee is established for the purpose of nominating and financing candidates and ceases to exist with the end of election campaign. Among others, the law requires information on property and non-pecuniary obligations of its members with respect to their activities in the committee. ***The law could be revised empowering the CEC to request election committee members to declare their financial interests, in view of disclosing any possible conflict of interest, including potential links to legal entities.***

52. The dissolution of the election committee is also envisaged in case of serious violation of the law on party and campaign finance. Having the dissolution provisions in place, coupled with the prohibitions on legal entity and third party contributions, it appears that safeguards were considered to regulate any donations coming from election committees after the campaign period. However, election committees can be used as an avenue for parallel or supplementary funding of campaigns or political party activities in spite of applicable restrictions on such funding.<sup>18</sup> This is particularly probable due to the absence of any obligation to report on such support. The international good practice requires third parties, not legally related to contestants, to be subject to the same reporting requirements as political parties.<sup>19</sup> ***Provided that election committees are formally related to contestants, in line with international good practice, they could be subject to initial, interim and final reporting requirements of their incomes and expenditures. It is***

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AD(2006)014, paragraph 34. The European Court of Human Rights stated in this connection “that this matter falls within the residual margin of appreciation afforded to the Contracting States, which remain free to determine which sources of foreign funding may be received by political parties”; that said, it needs to be determined in practical terms whether the measure is proportionate to the aim pursued: see the judgment in the case of *Parti Nationaliste Basque – Organisation Régionale d’Iparralde v. France*, application no. 71251/01, 7 June 2007.

<sup>17</sup> See also [the 2016 ODIHR and the Venice Commission Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes](#) which provides that “in order to prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns”.

<sup>18</sup> CoE Committee of Ministers Recommendation (2003)4 states that “[r]ules concerning donations to political parties, with the exception of those concerning tax deductibility [...] should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party.” See also Article 20 Regulation No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations.

<sup>19</sup> See paragraphs 205 and 206 of the Guidelines.

*therefore recommended to amend the laws to this effect.*

## **H. Reporting**

53. Article 2.1(11) of the law on party and campaign finance states that campaign expenditure shall mean expenses incurred for electoral purposes irrespective of the date of transaction. It thus implies that some electoral expenses, incurred before the start of the campaign period, will have to be accounted for and recorded in the campaign report. This offers the possibility for some political campaign participants to start campaigning before the start of the campaign (the same observation applies to the possibility to resort to political advertising between campaigns). It also allows the CEC to include expenses deemed as electoral, which were incurred before the start of the campaign, in the relevant campaign report. This is particularly relevant as Article 4 of the law on party and campaign finance defines the commencement of and length of the campaign period, knowing that some expenses can be incurred before the start of the campaign.

54. Articles 4 and 17 of the law on party and campaign finance prescribe reporting requirements. Financial accounting of a campaign shall be managed by the campaign treasurer with whom a person wishing to be registered as an independent campaign participant must conclude a property trust agreement. Campaign treasurers must submit to the CEC a financial report on campaign funds and expenses with all the supporting documents no later than 25 days after the publication of final election results. However, if funds received exceed 70 times an annual monthly income, the financial report must first be audited at the contestant's own expense, and submitted within 85 days after the publication of election results.<sup>20</sup> ***The lengthy deadline undermines the purpose of the transparency requirement and is recommended to be shortened.***

55. The law on party and campaign finance requires report, covering the time period from the call of elections until the start of campaign silence as well as from the announcement of final results until 100 days later. The CEC is required to publish on its website the campaign finance reports together with the auditors' reports within 100 days after the final results, i.e. immediately upon receipt. The law on party and campaign finance, however, does not prescribe a reporting requirement for the period from the start of election silence until the announcement of the final election results. ***It is recommended that reporting requirements cover the time from the start of campaign silence until the announcement of final results.***

*[end of text]*

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<sup>20</sup> Paragraph 200 of the Guidelines recommends that "reports on campaign financing should be turned in to the proper authorities within a period of no more than 30 days after the elections."