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## Ensuring Equal Rights in the Elections Process

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This publication was made possible through support provided by IFES. The opinions expressed herein are those of the authors and do not necessarily reflect the views of IFES.

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The collapse of the Soviet Union marked a fourth wave of regime change – to democracy *and* autocracy. The only certain outcome of this transition is the abandonment of Communism, and not, as expected, the ultimate establishment of the liberal democracy. Most of the post-Communist states are still hybrids, mixed polities or consolidated autocracies - only some can be classified as consolidated democracies.

The beginning of a democratic transition is often marked by competitive elections. In all modern democracies people participate by choosing their representatives in competitive elections; thus, such elections are critical instruments of democracy. As Hanna F. Pitkin argues, 'Our concern with elections and electoral machinery, and particularly with whether elections are free and genuine, results from our conviction that such machinery is necessary to ensure systematic responsiveness.'<sup>1</sup> Thus it would be difficult to consider any system as one of representative government unless it held regular elections which were "genuine" and "free". Free and fair elections are, in other words, a prerequisite of the existence of democratic regimes. Moreover, as Giovanni Sartori writes, the function of elections 'is not to make democracy more democratic but to make it possible.'<sup>2</sup> In analysing the effects of electoral competition one should not pass over the quality of the elections in silence. The degree to which elections are "free" and "fair" is significant for the evaluation of the progress made in democratisation.

Yet, merely institutionalising free and fair elections is insufficient for the consolidation of democracy. There are other institutions that must be in operation to meet Linz and Stepan's definition. Political parties, and not interest groups, play fundamental roles as key institutions of political society, particularly for a modern consolidated democracy. Political parties form the foundation of political society, providing a structure for political participation and organized competition. Elmer E. Schattschneider claimed that 'political parties created democracy and that modern democracy is unthinkable save in terms of parties.'<sup>3</sup> The existence of opposition parties in particular, competing in free and fair elections, was recognised by Samuel Huntington, who concluded that 'a primary criterion for democracy is equitable and

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<sup>1</sup> Hanna F. Pitkin, *The concept of representation* (London: University of California Press, 1967), p. 234

<sup>2</sup> Giovanni Sartori, *Democratic theory* (New York: Praeger, 1965), p. 108

<sup>3</sup> Elmer E Schattschneider, *Party Government* (New York, 1942), p. 1

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open competition for votes between political parties without government harassment or restriction of opposition groups'.<sup>4</sup>

Furthermore, scholars have identified "the right to vote in free and fair elections" as one of the requirements for democracy that forms a basis for evaluating the process of democratisation.<sup>5</sup> Regardless of the differences in the electoral systems, most 'unfair' elections result from the political finance irregularities connected with unequal participation. As Brown rightly argues concerning post-Communist countries, 'Where unfairness comes in at the level of the presidential elections, it is not primarily a matter of fraud – (...) but much more a question of access to money and the mass media.'<sup>6</sup>

Indeed, a fair and competitive electoral process is necessary for the whole process of democratisation. Jorgen Elklit and Palle Svenson define the concept of "fairness" as impartiality. They suggest that 'fairness involves both *regularity* (the unbiased application of rules) and "reasonableness" (the not-too-unequal distribution of relevant resources among competitors).'<sup>7</sup> Certain criteria for evaluation of the dimension of 'fairness' are suggested at particular stages of the electoral process and this is when political finance comes to prominence, influencing such criteria as: (a) the transparent electoral process; (b) the equal opportunity for parties and independent candidates to compete in elections; (c) a regulated electoral campaign; (d) equal access to the publicly controlled media; (e) equitable distribution of the public funds among the parties and the prevention of the fraudulent use of government facilities.

The concept of fairness is closely connected with the notion of "a level playing field". In fact, access to important political resources, such as political money, and equal opportunities indicate progress in democratic transition. If the necessary resources are too unequally distributed among the competitors or if the opposition is devoid of any access to relevant resources then the right to political equality and the right to participate are violated.

Moreover, there is another general problem for democratisation – namely, the limitation on "the right to compete for public office" – one of Dahl's and Brown's

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<sup>4</sup> Huntington (1993), p. 17. Also Lipset suggests that 'over time, in both new and revived democracies, conflict between the governing and opposition parties helps establish democratic norms and rules.' See Lipset (2000), p. 48

<sup>5</sup> Brown (2001), p. 546

<sup>6</sup> Brown (2001), p. 555

<sup>7</sup> Jorgen Elklit and Palle Svensson (1997), What Makes Elections Free and Fair?, *Journal of Democracy*, 8.3 (1997), p. 35. However, they affirm that, 'In fact, we know of no democracy that has distributed relevant political resources equally among political competitors.' Ibid. p. 34

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requirements of democracy. In regimes going through the process of democratic transition there is a need to secure political equality – in other words, the right to participate in government and the right to stand for election in fair competition with other citizens. The great importance of vast amounts of political money to fight presidential elections in Russia has been highlighted by Archie Brown who argues that 'it is highly doubtful whether Yeltsin could have made the remarkable transition from single-digit popular support in January 1996 to presidential victory in the summer of that year without a wholly disproportionate share of financial resources behind his successful campaign.'<sup>8</sup>

Further, consolidated democracy requires working democratic institutions, including political parties, which are accountable to the citizens. A flawed system of political finance undermines accountability and good governance, adding to institutional inefficiency of newly emerged democracies. A corrupt system of political finance not only separates the political elite from society but challenges the whole concept of representation. When political parties are viewed as ineffective and corrupt organisations, people hesitate to join or become associated with parties. As Larry Diamond and Richard Gunther suggest:

The combination of a more or less corrupt system of party and campaign finance with a stream of blatant scandals and a backlog of public aspirations for more responsive government that go unmet (while being amplified by a cynical media) generates growing public disillusionment with democratic politics and government. In short, parties may be the lightning rod for criticisms growing out of dissatisfaction with the broader functioning of democracy.<sup>9</sup>

Such problems as political apathy, antiparty rhetoric and attacks on democratic institutions may result from the limited legitimacy of politicians. Politicians might be too self-serving or excessively corrupt and non-accountable to gain the necessary respect and support that they need from the public. The low legitimacy of parties and elections is a serious obstacle to democratic consolidation. The decline of political parties may threaten the process of democratisation since it opens doors to populists. Citizens discontinue perceiving politicians, parliament and political parties as fundamental and desirable institutions of a democratic polity. In fact, anti-politicians feelings are common in post-Communist countries; in the whole post-Communist world those voters who do not trust politicians and political parties

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<sup>8</sup> Brown (2001), p. 556

<sup>9</sup> Larry Diamond and Richard Gunther (eds.), *Political Parties and Democracy* (Baltimore: The Johns Hopkins University Press, 2001), p. XIII

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constitute a clear and significant majority. And as they are key institutions and the main means of electoral competition, regimes are less democratically consolidated when these institutions are particularly discredited.

Thus, the renewal and reform of the electoral system is, and should be very high on the agenda in newly democratised countries. Greater transparency of elections and accountability of political leaders are essential for democracy before eventually reaching consolidation. Bearing all this in mind, it can be seen that a new approach forces parties and candidates to promote more transparent and accountable structures and operations. As Doherty points out:

The new age of mass media and technology has had two effects: diminishing the role of parties in disseminating political information and highlighting cases of scandals and partisan corruption. Political parties have been forced to address these weaknesses and the lack of credibility in a variety of ways. These include placing greater emphasis on issues of ethics in public office, modernizing and democratising party structures to allow for greater participation, and promoting greater openness and transparency in the operation of government and political systems generally.<sup>10</sup>

However, fighting illegal funding practices and political corruption is also the biggest challenge for the newly established democracies.<sup>11</sup> As Herbert E. Alexander argues:

It is natural that in democratic societies individuals and groups with abundant economic resources will try to use their wealth to influence the outcome of elections and the course of government policies. Money is only one element in the equation of power. People, not dollars, vote. But money helps to shape both voter behaviour and governmental decisions, and hence is subject to various forms of regulation.<sup>12</sup>

Yet, for certain post-Communist countries, financial resources alone are not the major problem. It is still possible for those who have comprehensive control over instrumental aspects of political life—the media, the security services, the administration and the enforcement agencies — to marginalize actors who may have sufficient resources for effective political competition. Thus, the advantages of office holding are not limited to illegal uses of public money, but to practices of systemic

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<sup>10</sup> Doherty (2001), p. 34

<sup>11</sup> According to Heywood, 'In newly-established democracies political parties often have to subordinate the drive for membership to the search for voters, further increasing the need to secure funding from all means available. In practise, several of the corruption scandals which have emerged (...) have involved political parties engaging in secret financing, rather than individuals seeking personal benefit.' See Heywood (ed.) 1997. *Political corruption*. Blackwell Publishers.

<sup>12</sup> Herbert E. Alexander, 'Approaches to Campaign and Party Finance Issues', in Karl-Heinz Nassmacher (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance* (Baden-Baden: Nomos, 2001), p. 198

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patronage and administrative pressure. So-called “administrative resources” are based on special treatment by the local government, the state-owned media, directors of state-owned enterprises and organizations funded by the state budget.<sup>13</sup> A favoured party or presidential candidate receives undocumented and “free” services, enjoys the use of state facilities, attends organized meetings with “working collectives” and so on. The administrative resource of power should be analysed in two dimensions—restricting and supporting. For instance, according to one Russian scholar, ‘[The] Kremlin’s priority today, unlike Yeltsin’s days, is not helping a “loyal candidate”—it is the preventing of an “unacceptable” one from winning’.

The final basic requirement of democracy, the rule of law, requires the creation of a legal framework, as ‘it is difficult even to envisage the various freedoms which are essential requirements of democracy without placing them in a legal framework.’<sup>14</sup> An important part of this is certainly the system of political finance and access to mass media - the set of rules that govern the distribution of money in politics and free broadcasting. Well-defined and established rules establish a hierarchy of norms that make actions by and upon political parties legitimate and predictable. Moreover, electoral systems in every democratising country should strike a balance between equality and liberty as both ‘serve the same democratic mission.’<sup>15</sup> Legislation should also introduce the regulations reducing economic inequality rather than trying to achieve perfect equality of political resources. Democracies seeking to regulate uses and abuses of money in politics should try to achieve a system that:

- provides enough money for competitive and energetic campaigns reaching the majority of voters,
- does not exclude emerging political forces,
- protects citizens from pressure to offer financial support to political organisations and candidates,
- preserves equal opportunities for all citizens who want to participate in government,
- offers equal opportunities for all citizens to access their representatives,
- prevents corruption by limiting undesirable and disproportionate influence

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<sup>13</sup> According to the Ukrainian Centre for Economic and Political Studies the administrative resource may be defined as the ‘influence of executives using their official powers on the political process, in particular , the conduct, results and other aspects of the electoral process, with the purpose of preserving their power.’ See UCEPS report No 12 (24) 2001, p. 33

<sup>14</sup> Brown (2001), p. 561

<sup>15</sup> Ewing (1992), p. 32

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over parties and candidates by their contributors,<sup>16</sup>

- preserves a level playing-field between government-supporting parties and oppositional ones.

But the progress cannot be promoted simply by introducing new regulations. The state, responsible for enforcement, must not only become stronger; it must simultaneously become more accountable. Without an accountable, democratic regime the efforts to strengthen enforcement in order to eradicate corruption and lawlessness might have the opposite effect - harsher political finance regulations, in the absence of rule of law, only make for selective enforcement.

Strong enforcement mechanisms (including tax inspection and the police) can be used by a non-democratic regime to deprive the opposition of the right to participate effectively in the electoral process. The creation of an oppressive electoral system that is not controlled by a non-partisan enforcement agency might undermine the whole idea of free and fair elections, as harassment is an inherent feature of such political conditions. The lack of an institutionally and financially independent enforcement agency is another serious weakness that might undermine the working of a successful electoral system in countries going through democratic transition. Where there is a selective, partisan enforcement of political finance and mass media regulations this serves to reduce electoral competition and can lead to long periods of one-party domination. Thus, certain disclosure mechanisms may not be appropriate in every political finance system during democratisation.

The context and level of democratization must also be factored in when examining disclosure. Keith Ewing points out that the evidence of compelled disclosure leading to harassment was provided in the United States in *Brown v. Socialist Workers' 74 Campaign Committee (Ohio)*<sup>17</sup>, 'with the result that Ohio disclosure laws were held unconstitutional to the extent that they applied to the Socialist Workers Party.'<sup>18</sup> Also, some Scandinavian countries have relatively non-transparent political finance regimes; they require no reports on campaign income and expenditure as these 'constitute a potential violation of the voters' right to privacy, secrecy of the ballot, and the parties' right to internal autonomy and freedom from interference'.<sup>19</sup> Thus, the delicate process of democratisation, when

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<sup>16</sup> For similar arguments see Alexander (2001), p. 198

<sup>17</sup> 459 US 87 (1982)

<sup>18</sup> Ewing (1992), p. 195

<sup>19</sup> Howard R. Penniman, 'U.S. Elections: Really a Bargain?', *Public Opinion*, 51 (June/July 1984) p. 52

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facing a struggle with political corruption, requires a certain degree of privacy and freedom from harassment. The creation of an oppressive electoral system which is not controlled by a non-partisan enforcement agency might undermine the whole idea of free and fair elections, as harassment is an inherent feature of such political conditions. It is true that during the transition period a party of power tends to use the state apparatus to its advantage.<sup>20</sup> Thus, while party finance enforcement with a strong authority might not be an optimal formula for all newly democratising countries, one must be careful when comparing disclosure regimes, or lack thereof, in established Western democracies and emerging democracies.

An accountable system of political finance presupposes other arenas to be well organized enough to discipline political actors. Where the rule of law does not exist and civil society and economic society are weakly organized they are incapable of disciplining their political actors to play according to the electoral rules. This might explain why there is so much political corruption connected with elections in post-Communist countries, despite media efforts to expose it, and why the problems facing the development of a transparent and accountable government seem so enormous and intractable. Although, even in Western democracies, where the rule of law, civil and economic societies are well established, political finance poses serious problems, albeit of a less dangerous character than in recently emerged democracies. The current dissatisfaction in Central Eastern Europe with the progress in democratic consolidation is to a large degree based on perceived problems relating to elections related political corruption. In country after country there have been explosions of discontent with political corruption, frequently associated with political finance, in particular. Leslie Holmes and Wojciech Roszkowski rightly suggest that 'Without relatively crystallised party-systems and comparatively clean political and economic systems, post-Communist states will not be able to attain the levels of stability and democracy that Western states have.'<sup>21</sup>

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<sup>20</sup> According to Adrian Karatnycky, 'legacy of illegality makes business interests highly susceptible to political and economic blackmail that compels loyalty to the regime. The selective prosecution of corrupt officials usually focuses on persons who have run a foul of the chief executive or are active in the political opposition. Such state blackmail often forces economic actors to support leaders and policies that are inimical to the interests of fundamental reform (...)'. See Adrian Karatnycky, *Nations in Transit: Emerging Dynamics of Change*, (Freedom House, 2001) <[www.freedomhouse.org/research/nitransit/2001/cover-materials/essay1.htm](http://www.freedomhouse.org/research/nitransit/2001/cover-materials/essay1.htm)>, accessed 8 August 2002, p. 6

<sup>21</sup> See Leslie Holmes and Wojciech Roszkowski (eds), *Changing Rules – Polish political and economic transformation in comparative perspective* (Institute of Political Studies Polish Academy of Science, 1997), p. 7. See also World Bank Report 11.10.1999. *Korupcja w Polsce (Corruption in Poland)*.