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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**GEORGIA**

**URGENT JOINT OPINION**

**ON**

**REVISED DRAFT AMENDMENTS TO THE ELECTION CODE**

**Endorsed by the Venice Commission  
at its 127<sup>th</sup> Plenary Session  
(Venice and online, 2-3 July 2021)**

**on the basis of comments by**

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## I. Introduction

1. By letter of 9 March 2021, Mr Archil Talakvadze, then Chairman of the Parliament of Georgia, requested an urgent opinion by the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) on draft amendments (CDL-REF(2021)031, hereinafter “the initial draft amendments”) to the Election Code of Georgia (current version: CDL-REF(2021)009) which had been tabled in Parliament on 2 March 2021. According to the established practice, the opinion was prepared jointly by ODIHR and the European Commission for Democracy through Law of the Council of Europe (hereinafter “Venice Commission”). The Joint Urgent Opinion was issued by the Venice Commission on 30 April 2021 (CDL-PI(2021)005) and will be presented to the Venice Commission for endorsement at its 127<sup>th</sup> Plenary Session (Venice and online 2-3 July 2021). This is referred to hereafter as the “first Joint Urgent Opinion”.

2. The current electoral reform process in Georgia is embedded in months-long political negotiations brokered by international actors aimed at resolving the political crisis following the parliamentary elections of October 2020 and the boycott of Parliament by the opposition parties. On 19 April 2021, the two opposition parties who had entered into a Memorandum of Understanding with the ruling party in January, four additional opposition parties and two independent MPs signed an amended agreement with the ruling party (hereinafter “the political agreement”), committing to joining Parliament and pursuing several reforms, including the electoral reform. However, four parties, including the major opposition party,<sup>1</sup> did not sign the document. According to the political agreement, the parties shall support the above-mentioned amendment bill, with several “complementary or modifying amendments”. The parliamentary working group on electoral reform, which was joined by several opposition parties, subsequently revised the amendment bill. It was adopted by Parliament in the first reading on 25 May 2021 and is planned to be finally adopted in June.

3. By letter of 21 May 2021, Mr Kakha Kuchava, Chairman of the Parliament of Georgia, requested an urgent opinion by the Venice Commission on the revised draft amendments to the Election Code of Georgia (CDL-REF(2021)043rev, hereinafter “the revised draft amendments”). According to the established practice, this second Urgent Opinion has been prepared jointly by the Venice Commission and the ODIHR.

4. Mr Nicos Alivizatos, Mr Michael Frenco and Ms Katharina Pabel acted as rapporteurs for the Venice Commission. Ms Elissavet Karagiannidou was appointed as legal expert for the ODIHR.

5. On 8 June 2021, a joint delegation composed of Mr Alivizatos, Mr Frenco and Ms Pabel on behalf of the Venice Commission, and of Ms Karagiannidou on behalf of the ODIHR, as well as Mr Pierre Garrone, Mr Michael Janssen and Mr Serguei Kouznetsov from the Secretariat of the Venice Commission and Ms Kseniya Dashutsina from the ODIHR, participated in a series of videoconference meetings with members of the Central Election Commission, representatives of various political parties of Georgia, representatives of non-governmental organisations (NGOs) and the international community represented in Tbilisi. This Joint Opinion takes into account the information obtained during these meetings. The ODIHR and the Venice Commission are grateful to the Council of Europe Office in Georgia for the excellent organisation of the videoconferences.

6. This urgent joint opinion was issued pursuant to the Venice Commission’s Protocol on the preparation of urgent opinions ([CDL-AD\(2018\)019](#)) on 21 May 2021. It was endorsed by the Venice Commission at its 127<sup>th</sup> Plenary Session (hybrid, 2-3 July 2021).

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<sup>1</sup> It should be noted that the main reasons of that party for not signing the agreement were not related to the electoral reform and that that ultimately, its elected MPs decided to take up their mandates.

## II. Scope of the Joint Opinion

7. The present Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing elections in Georgia. It confines itself to examining the revised draft amendments to the Election Code of Georgia as officially submitted for review, and more precisely the changes which were made to the amendment law after the publication of the first Joint Opinion on 30 April 2021.

8. This Joint Opinion should be read in conjunction with the first Joint Urgent Opinion (CDL-PI(2021)005). The ensuing recommendations are based on international standards, norms and practices, as for example set out in the United Nations' International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and its additional protocols, as well as relevant OSCE human dimension commitments, and the Venice Commission's Code of Good Practice in Electoral Matters.<sup>2</sup> Where appropriate, they also refer to other reference documents and sources as well as relevant recommendations made in previous legal opinions published by the ODIHR and/or the Venice Commission.

9. This Joint Opinion is based on an English translation of the draft amendments and the relevant Georgian law. Errors from translation may result.

10. In view of the above, the ODIHR and the Venice Commission would like to make mention that this Joint Opinion does not prevent the ODIHR and the Venice Commission from formulating additional written or oral recommendations or comments on the respective legal act or related legislation pertaining to the legal and institutional framework regulating electoral legislation in Georgia in the future.

## III. Executive Summary

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

12. The Venice Commission and ODIHR acknowledge that the revised draft amendments to the Election Code have been prepared in close cooperation between the ruling party and several opposition parties. This is particularly noteworthy against the background of the parliamentary boycott by all elected opposition parties after the parliamentary elections of October 2020 and of the fact that most of the opposition parties had therefore not participated in the preparation of the initial draft amendments assessed in the first Joint Urgent Opinion of 30 April 2021. The political agreement of 19 April 2021, the return to Parliament by several opposition parties and the revision of the draft amendments to the Electoral Code on the basis of the agreement, with a view to bringing the national legislation into line with international standards and recommendations, are clearly to be welcomed – even though not all elected opposition parties have as yet signed the agreement and taken up their parliamentary mandates.

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<sup>2</sup> Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#).

13. The Venice Commission and ODIHR underline once again the importance of the stability of electoral law, which is a precondition to public trust in electoral processes and implies that electoral legislation, and especially its fundamental elements, should be amended well before the next elections. Given that the next local elections are to be conducted in October 2021, the timing of the current reform process is not ideal. It is, however, acceptable against the background of a quite broad political consensus on this reform, which brings the national legislation more in line with international standards and previous recommendations. That said, as has already been stated in the first Joint Urgent Opinion, the practice in Georgia of frequently amending the electoral legislation risks undermining the integrity of the electoral process and ongoing efforts to consolidate democracy. The call for a more comprehensive and systemic reform of the Georgian electoral law is therefore reiterated. Care should be taken to address the remaining concerns and outstanding recommendations in such a future reform, in order to prevent frequent changes and to achieve stability. In this perspective, it would be advisable that any future reform will not be limited to micromanagement but follow a more holistic approach. Moreover, the Venice Commission and ODIHR wish to stress once again that the ownership of the process can only take place by dialogue amongst all the stakeholders driven by a genuine desire to safeguard and enhance Georgian democracy. Legal opinions can facilitate this process taking place on the ground but are no substitute for it.

14. In the first Joint Urgent Opinion on the draft amendments to the Electoral Code, the Venice Commission and OSCE/ODIHR made four key and several other recommendations. The revised version of the draft amendments takes into account significant elements of the key recommendations, notably:

- a qualified (two-thirds) parliamentary majority vote has been introduced for the election of the chairperson and non-partisan members of the Central Election Commission (CEC), with a final anti-deadlock mechanism;
- the specific restrictions of the right for a party to appoint a member to an election commission, i.e. the conditions that the party is entitled to state funding and that at least one of the party members actually “carries out activities of the member of the Parliament” thus excluding parties boycotting Parliament, have been removed.

15. That said, some other elements of the key recommendations remain to be addressed:

- to require higher credentials for non-partisan CEC members and ensure a diverse membership in the selection commission that undertakes a transparent, merit-based nomination process;
- to further amend the draft provisions on the selection process of members of District Election Commissions (DECs) and Precinct Election Commissions (PECs), so as to ensure, inter alia, a transparent, genuinely merit-based process for the appointment of non-partisan members; moreover, the timeframes for submission and review of applications for PEC membership should be extended;
- to clearly set out in the law on what grounds the removal of party-nominated election commission members may be based; such removal should be permitted only exceptionally and on very specific grounds.

16. Several positive draft amendments to the Election Code have been kept in the bill after the publication of the first Joint Urgent Opinion, including those related to measures tackling misuse of administrative resources, strengthening the process for determination of the election results, and enhancing the electoral dispute resolution process. At the same time, a number of further recommendations formulated in the first Joint Urgent Opinion are still valid and should be taken into account in future reforms, inter alia those aimed at

- prohibiting both the presence of partisan representatives and campaign activity in the areas around polling stations on election day; those areas should be clearly defined (e.g. a perimeter of 100 meters from the room where the ballot box is placed);
- adopting a comprehensive regulatory framework that specifies clear and objective criteria for granting and conducting recounts and annulments to ensure transparent, fair and uniform practice in the counting and tabulation of results and handling of post-election disputes;
- facilitating the timely handling of election disputes in the courts by allowing electronic submission of complaints to the courts, submission until midnight on the deadline day, and the possibility for remote hearings;
- further extending the timeframes for submission and adjudication of complaints, to three to five days, and ensuring that technical formalities do not prevent due consideration of complaints;
- addressing previous Venice Commission and ODIHR recommendations requiring single-mandate electoral districts to be of an approximately equal population size;
- establishing a detailed and comprehensive regulatory framework for the use of new voting technologies (bearing in mind that in light of the limited time remaining before the 2021 local elections, it may be that a pilot project for certain electronic technologies is the only viable option for the next elections).

17. Finally, the revised draft amendments contain several new elements which warrant further revision, inter alia:

- the significant reduction of the period between different rounds of voting on candidates for non-partisan members of the CEC, from four weeks to one, in the transitional provisions of Article 2(12) of the amendment bill, should be reconsidered
- the new transitional provisions of draft Article 196(20) and (22) of the Election Code and of Article 2(2) and (4) of the amendment bill, concerning the parties' right to appoint CEC members, should be reconsidered;
- the composition and functions of the CEC consultation group should be regulated more closely in the law;
- the significant increase in the DEC and PEC non-partisan members should be reconsidered;
- the right to submit complaints to election commissions should not be limited to persons registered in an electronic registry of persons authorised for election disputes; such a possible registry may be used to facilitate the complaints process, but it must not exclude common citizens from their right to complain.

#### **IV. Analysis and Recommendations**

##### **A. Composition of election administration**

18. The key recommendations included in the first Joint Urgent Opinion were related to the election administration bodies, in particular to their composition and the election/appointment of their members and chairpersons. On the basis of the political agreement of 19 April 2021, the draft amendments have been revised in this respect.

##### **1. Central Election Commission**

19. According to the revised draft Article 10 of the Election Code, the CEC is composed of "not more than 17 members", seven of which are elected by Parliament, upon recommendation by the President of Georgia, while the parties appoint "not more than nine members". In addition, the chairperson is elected by Parliament upon recommendation by the President of Georgia. The high number of CEC members, compared to the current situation of 12 members, had been met with

some criticism in the first Joint Urgent Opinion<sup>3</sup> which stressed that this “may in practice pose a challenge for the election administration, particularly in reaching decisions on a consensus basis, a preferable approach under international good practice.”<sup>4</sup> While a lower number of CEC members would therefore be preferable, the current proposal seems acceptable as a political compromise which accommodates all the parliamentary parties.

20. The first key recommendation made in the first Joint Urgent Opinion<sup>5</sup> was composed of the following two elements:

- 1) to consider introducing a qualified (e.g. two-thirds) parliamentary majority vote or a double majority requirement (requiring a majority among MPs both of the ruling parties and the opposition parties) for the election of the chairperson and non-partisan members of the Central Election Commission (CEC), with a final anti-deadlock mechanism;
- 2) to require higher credentials for non-partisan CEC members and ensure a diverse membership in the selection commission that undertakes a transparent, merit-based nomination process.

21. The first part of this recommendation has been implemented by introducing a two-thirds parliamentary majority vote for the election of the chairperson and non-partisan (“professional”) members of the CEC, with a final anti-deadlock mechanism: if no two-thirds majority is reached in the first round of voting, a second (again two-thirds), third (three-fifths) and fourth (simple majority) round are possible.<sup>6</sup> While this can be a rather lengthy process (a period of at least four weeks must be kept between the different rounds of voting), the new provisions are clearly a positive step forward, in line with the aforementioned recommendation and with the political agreement. **In contrast, the significant reduction of the period between different rounds of voting, from four weeks to one, in the transitional provisions<sup>7</sup> should be reconsidered as it may be detrimental to reaching consensus between the ruling and opposition parties.** The authorities indicated in this respect that the parliamentary parties represented in the electoral reform task force had agreed on this reduction in view of the limited time left before the forthcoming local elections. However, the rapporteurs share the significant concerns raised by several other interlocutors that such a transitional rule might put at risk the success of the reform aimed at guaranteeing a balanced composition of the election administration.

22. Regarding the second part of the above-mentioned recommendation, the required work experience of candidates for CEC membership and for CEC chairperson has been raised from three to five years.<sup>8</sup> This is a positive development but not sufficient to ensure “higher credentials” for CEC members as recommended. As has been noted previously, the current provisions of Article 12 of the Election Code (as well as the draft amendments) establish particular low criteria for CEC members.<sup>9</sup> In this connection, **the previous recommendation aimed at requiring higher credentials for non-partisan CEC members and strengthening the selection process, by mandating interviews, increasing transparency, requiring substantiated decisions and granting the right to appeal, is reiterated.**

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<sup>3</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, [CDL-PI\(2021\)005](#), para. 41. The initial draft amendments provided for a fixed number of 17 CEC members.

<sup>4</sup> See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline II. 3.1 h and para. 80 of the Explanatory Report.

<sup>5</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 13.

<sup>6</sup> Draft Article 12(10) of the Election Code. If the vacancy still remains unfilled at the end of this process, the nomination procedure starts again. The term of office of a CEC member elected by less than two-thirds is limited to six months (Article 12(12)).

<sup>7</sup> Article 2(12) of the revised draft amendments.

<sup>8</sup> Draft Articles 10(4) and 12(4) of the Election Code.

<sup>9</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 33.

23. Concerning the selection commission which presents two to three candidates per CEC position to the President of Georgia, the draft amendments have been revised as follows. First, a maximum of 10 members has been introduced. Second, membership has been extended to representatives of non-profit legal entities with at least seven years of experience in election issues and the field of democracy and human rights, as well as representatives of higher educational institutions, who hold the position of at least an associated professor.<sup>10</sup> In contrast, under the initial draft amendments only non-profit legal entities with three years of experience in election observation could be represented in the selection commission. The revised amendments have the clear potential of ensuring a diverse membership in the selection commission, as has been recommended. That said, **it is recommended to define a minimum number of selection commission members, to specify how those members are selected and how decisions are taken by the selection commission.** The authorities took the view that further and more detailed regulation of decisions of the selection commission, which is a presidential advisory body, by law might not be reasonable. The Venice Commission and ODIHR are of the opinion that such further regulation would be an important safeguard which might, at the same time, increase citizens' and parties' trust in the process.

24. The second key recommendation made in the first Joint Urgent Opinion was to remove the specific restrictions of the right for a party to appoint a member to the CEC under draft Article 13(1)b) and c), i.e. the conditions that the party is entitled to state funding and that at least one of the party members actually “carries out activities of the member of the Parliament” thus excluding parties boycotting Parliament.<sup>11</sup>

25. This recommendation has been implemented by deleting those specific restrictions from draft Article 13(1) of the Election Code. The only remaining condition for a political party to be eligible to appoint one CEC member is that the party was registered by the CEC chairperson to run for parliamentary elections and was assigned a parliamentary mandate. Moreover, if the number of eligible parties is more than nine, “the party having the best results in the election shall have priority during appointment of the CEC member”.<sup>12</sup> These revised rules are significant improvements, in line with the recommendation and with international standards which provide that the central election commission should include representatives of parties already in parliament or having scored at least a given percentage of the vote; such membership should be premised on equality, which can be construed strictly or on a proportional basis, the latter taking account of the parties' relative electoral strengths.<sup>13</sup>

26. That said, **it is not clear why the revised draft amendments include different rules in the transitional provisions of Article 196 of the Election Code<sup>14</sup> (new paragraphs 20 and 22) and of Article 2(2) and (4) of the amendment bill whereby**

- in case of more than nine eligible parties preference is given to the party that receives more state funding; this is particularly worrying if state funding does not depend only on the number of votes or seats received but in their participation in parliamentary sessions;<sup>15</sup>

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<sup>10</sup> Draft Article 12(3) of the Election Code.

<sup>11</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 13.

<sup>12</sup> If several parties have “equal votes in the election”, the priority is given to the party that registered for the elections the earliest.

<sup>13</sup> See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guidelines I 2.3 and II 3.1.d and e.

<sup>14</sup> The provisions of this Article apply to the conduct of parliamentary elections before the parliamentary elections to be held through the proportional election system.

<sup>15</sup> See Venice Commission-ODIHR, Joint Opinion on amendments to the Election Code, the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament, CDL-AD(2021)008.



- in case all MPs of a party have left the party and joined another party, the right to appoint one CEC member is transferred to this party.

**These rules contradict the general provisions of draft Article 13(1) and should be reconsidered.**

27. The fourth key recommendation of the first Joint Urgent Opinion, to clearly set out in the law on what grounds the removal of party-nominated election commission members may be based,<sup>16</sup> has not been fully followed: positively, the revised draft amendments stipulate that parties may not withdraw their DEC members during the last three weeks prior to election day, rather than until the eve of election day and PEC members may be replaced until 20 days prior to election day, instead of 15 days; at the level of the CEC, the revised draft amendments maintain the provision of the initial draft, i.e. parties may not withdraw their members at the CEC from the day of call of the election until the final election results.<sup>17</sup> However, outside of those time periods, parties would still enjoy complete discretion to dismiss their commission members. This is contrary to international standards according to which the bodies appointing members of electoral commissions must not be free to dismiss them at will, as this practice can cast doubt on their independence.<sup>18</sup> **The Venice Commission and ODIHR reiterate their long-standing recommendation calling for the legislation to set out on what grounds a removal of party-nominated election commission members is justified in order to protect the tenure of commission members.**<sup>19</sup>

28. In the political agreement, the signatories furthermore committed to ensuring that one of the partisan members of the CEC representing an opposition party is deputy chairperson. This has been achieved by revising draft Article 11 of the Election Code accordingly. **At the same time, it is not clear why the position of a second deputy chairperson elected by Parliament out of the CEC members has been introduced. This amendment might weaken the position of the deputy chairperson representing an opposition party**<sup>20</sup> and should be reconsidered.

29. Another amendment based on the political agreement is the creation of a “CEC consultation group”<sup>21</sup> composed of a representative of the Public Defender’s office and international and local experts selected by election observation organisations. It is competent to submit recommendations on the dispute resolution process to the CEC and to carry out additional functions such as engagement in the process of recounting election results. **While the establishment of such a CEC expert group can be seen as a positive innovation, it is unsatisfactory that according to the draft amendments the composition and functions of the group are to be specified by CEC ordinance. These elements should be regulated in the law itself.**

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<sup>16</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 13.

<sup>17</sup> See draft Articles 13(4) and 196(23), 19(7) and 29(9) of the Election Code and Article 2(5) of the amendment bill.

<sup>18</sup> Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline II 3.1 f and para. 77 of the Explanatory Report. Article 22 of the Election Code provides that once appointed to an election commission, a member is legally bound to act independently, even if appointed by a political party.

<sup>19</sup> See already Venice Commission-ODIHR Joint Opinion on the Draft Election Code of Georgia, CDL-AD(2011)043, paragraphs 42-43.

<sup>20</sup> It is to be noted, however, that according to draft Article 8(24) of the Election Code, in case of absence of the CEC chairperson the deputy representing the opposition parties shall perform his/her duties as a main rule.

<sup>21</sup> Draft Article 16<sup>1</sup> of the Election Code.

## 2. District Election Commissions and Precinct Election Commissions

30. According to the revised draft amendments, District Election Commissions (DECs) consist of not more than 17 members and Precinct Election Commissions (PECs) of 17 members, with virtually the same proportions between partisan and non-partisan members as in the case of the CEC.<sup>22</sup> The initial amendments had foreseen a fixed number of 17 DEC members, and a minimum of seven PEC members, with one additional member added for every 300 voters registered, on a non-partisan basis (in the case of PECs). The mixed model (partisan and non-partisan members) and the proportions are in line with the first Joint Urgent Opinion which argued, inter alia, that until systemic reform of the election administration was undertaken, shifting to a fully non-partisan model for PECs might not be advisable.<sup>23</sup> **At the same time, an increase to 17 members was found to be not practically appropriate both in the case of DECs and PECs.<sup>24</sup> The proposed increase – as compared to 12 DEC and PEC members under current legislation – should be reconsidered.**

31. The third key recommendation of the first Joint Urgent Opinion was to further amend the draft provisions on the selection process of DEC and PEC members, so as to ensure, inter alia, a transparent, genuinely merit-based process for the appointment of non-partisan members as well as the right for a party to appoint a member to an election commission – where applicable – without the conditions that the party is entitled to state funding and that at least one of the party members actually “carries out activities of the member of the Parliament”.<sup>25</sup>

32. The latter part of this recommendation has been addressed by the revised draft amendments<sup>26</sup> which refer to the above-mentioned provisions of draft Article 13 (see the preceding chapter on the CEC). Thus, the only remaining condition for a political party to be eligible to appoint one DEC or PEC member is that the party was registered by the CEC chairperson to run for parliamentary elections and was assigned a parliamentary mandate. This is an important improvement. **On the other hand, the first part of the recommendation aimed at ensuring a transparent, genuinely merit-based process for the appointment of non-partisan members remains to be implemented.**

33. In this connection, attention is also drawn to the further recommendation made in the first Joint Urgent Opinion, with reference to the ODIHR report from the 2020 parliamentary elections, **to extend the timeframes for submission and review of applications for PEC membership to ensure meaningful competition, and to further elaborate the selection procedures and criteria for the recruitment of PEC staff to guarantee a more open and inclusive process.**<sup>27</sup> This recommendation is still valid.

34. In line with the political agreement, according to the revised draft amendments non-partisan members of DECs and PECs are elected by two thirds of the members of, respectively, the CEC

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<sup>22</sup> See draft Articles 19, 20 and 24 of the Election Code. In contrast to the draft provisions concerning the CEC, those provisions determine a fixed number of nine partisan members of DECs and PECs.

<sup>23</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 44.

<sup>24</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, paras. 41 and 46.

<sup>25</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 13.

<sup>26</sup> See draft Articles 19(5) and 24(4) of the Election Code.

<sup>27</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 48.

or the relevant DEC, instead of by simple majority.<sup>28</sup> This move aimed at ensuring broader consensus on the composition of election commissions is welcome, as in the case of the CEC.

35. Under the revised draft amendments, the status of partisan and non-partisan members of election commissions is not identical. For example, while non-partisan PEC members are elected by two-thirds majority of the relevant DEC, they require in addition the support of at least three DEC members elected by the CEC for a five-year term,<sup>29</sup> i.e. the support of non-partisan members. Another example is the election of PEC chairpersons, deputy chairpersons and secretaries, from which partisan PEC members are excluded.<sup>30</sup> Moreover, partisan members may not participate in casting lots for identifying registrars of voters,<sup>31</sup> PEC and DEC summary protocols of polling results have legal force only if they have been signed by two-thirds of the PEC and DEC non-partisan members (i.e. elected by the corresponding DEC and the CEC respectively) and at least one partisan member.<sup>32</sup> The reasons for such differences in status are not clear. In this connection, attention is drawn to statements made in the first Joint Urgent Opinion according to which the low level of trust in election commissions was due to widespread perceptions that their non-partisan members were ostensibly ruling party loyalists.<sup>33</sup> Against this background, **giving more weight to non-partisan members of election commissions might not be the ideal solution. If this regulation is nevertheless maintained, it will be even more important to ensure a transparent, merit-based process for the appointment of non-partisan members, as recommended previously and above.**

#### **B. Other specific issues**

36. The first Joint Urgent Opinion commented on a range of other issues dealt with by the initial draft amendments, which were related to the **prevention of misuse of administrative resources, regulation of election day “agitation” and protection of voters from influence or bullying close to the polling station, amendments to protocols of polling results and conducting recounts, complaints and appeals, the local election system, as well as electronic voting and counting.** Most of the draft provisions on these issues have been kept in the revised draft amendments. Therefore, in such cases, **the corresponding remarks and recommendations made in the first Joint Urgent Opinion are still valid and remain to be addressed.**<sup>34</sup>

37. Regarding more specifically the issue of election dispute resolution, the first Joint Urgent Opinion<sup>35</sup> noted that voters in Georgia are not broadly granted legal standing to protect their electoral rights, and it raised concerns about the draft provision according to which any complaints submitted to a commission or court by an unauthorised claimant (i.e., one who does not have standing to submit that type of complaint) or any complaint that is not accompanied by the claimant’s identification is to remain unconsidered.<sup>36</sup> Attention was drawn to the principles that legal standing in election-related cases should be granted as widely as possible and that the procedure must be simple and devoid of formalism, in particular to avoid decisions on inadmissibility,

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<sup>28</sup> See draft Articles 19, 20, 24 and 25 of the Election Code. Those provisions also include mechanisms for situations where the two-thirds majority is not reached.

<sup>29</sup> See draft Article 24(2) of the Election Code.

<sup>30</sup> See draft Article 25(1) of the Election Code.

<sup>31</sup> See draft Article 61(2<sup>1</sup>) of the Election Code.

<sup>32</sup> Draft Articles 71(6<sup>1</sup>) and 75(5<sup>1</sup>) of the Election Code.

<sup>33</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 41.

<sup>34</sup> See the recommendations highlighted in para. 13 (E. to J.), and also the more detailed remarks and recommendations included in chapters VI.C. to H. of the Venice Commission-ODIHR Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005.

<sup>35</sup> See Venice Commission-ODIHR, Joint Urgent Opinion on Draft amendments to the Election Code of Georgia, CDL-PI(2021)005, para. 66.

<sup>36</sup> Draft Article 78(11) of the Election Code.

especially in politically sensitive cases.<sup>37</sup> It was noted that during the 2020 parliamentary elections, the majority of post-election complaints were denied consideration, many on technical grounds other than late submission,<sup>38</sup> and that this undoubtedly contributed to public mistrust in the election dispute resolution process and a lack of confidence in the election results.

38. In the revised draft amendments the above-mentioned provision is maintained, but only for complaints submitted to election commissions.<sup>39</sup> In addition, a new draft provision restricts the right to submit complaints to election commissions to persons registered in a new electronic registry of persons authorised for election disputes maintained by the CEC.<sup>40</sup> Even though the revised provisions do not directly apply to appeals to court, it should be noted that under Article 78 of the Electoral Code election-related complaints must first be submitted to the relevant election commissions whose decisions can then possibly be appealed to court. Thus, the new administrative requirements may indirectly hamper access to court. During the online meetings, it was explained to the rapporteurs that the new registry was meant to facilitate the identification of authorised complainants. However, it must be stressed once again that according to international standards, all candidates and all voters registered in the constituency concerned must be entitled to appeal, and legal standing in election-related cases should be granted as widely as possible and that the procedure must be simple and devoid of formalism, in particular to avoid decisions on inadmissibility.<sup>41</sup> **The right to submit complaints to election commissions should not be limited to persons registered in an electronic registry of persons authorised for election disputes. Such a possible registry may be used to facilitate the complaints process, but it must not exclude common citizens from their right to complain. Obviously inadmissible complaints by common citizens or complaints which may not substantially alter the final result may be rejected by a restricted composition panel.**

### C. Stability of electoral law and procedure

39. As has already been stressed in the first Joint Urgent Opinion, the electoral law must enjoy a certain stability, protecting it against party political manipulation. “Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.”<sup>42</sup> The practice in Georgia of frequently amending the electoral legislation risks to undermine the integrity of the electoral process and the state’s ongoing efforts to consolidate democracy.<sup>43</sup> It furthermore risks confusing voters, parties and candidates, and makes it difficult for the competent electoral authorities to apply the law, which may lead to mistakes in the electoral process and, as a consequence, distrust in the elected bodies.

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<sup>37</sup> See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline II. 3.3 b and Explanatory Report.

<sup>38</sup> One of the common grounds to deny consideration was the claimant’s failure to submit a power of attorney from the observer organisation they represented, even where the observer had his/her own accredited observer certificate.

<sup>39</sup> Draft Article 78(11) of the Election Code.

<sup>40</sup> Draft Article 78(1<sup>1</sup>) of the Election Code.

<sup>41</sup> Cf. ECHR *Davydov and Others v. Russia*, no. 75947/11, 30 May 2017, in particular par. 199; Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guidelines II. 3.3 b and f and Explanatory Report.

<sup>42</sup> See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, paragraph 63 of the Explanatory Report; see also paragraphs 58 and 64-67.

<sup>43</sup> The last major electoral reform package was adopted by parliament in mid-2020.

40. At the same time, as has also been noted in the first Joint Urgent Opinion, a number of specific recommendations by the Venice Commission and ODIHR are still pending. **The call for a more comprehensive and systemic reform of the Georgian electoral law is therefore reiterated.** Care should be taken to address the remaining concerns and outstanding recommendations in such a future reform, in order to prevent frequent changes and to achieve stability.

41. Moreover, concerns have been raised in the first Joint Urgent Opinion about the timing of the current reform process, given that the next local elections are to be conducted in October 2021. According to the Code of Good Practice in Electoral Matters, “[t]he fundamental elements of the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law”.<sup>44</sup> Exceptions to this principle are admissible if there is a broad consensus on the reform. Moreover, the principle “does not take precedence over the other principles of the Code” and it “should not be invoked to maintain a situation contrary to the standards of the European electoral heritage, or to prevent the implementation of recommendations by international organisations”.<sup>45</sup>

42. In the present situation, the Venice Commission and ODIHR acknowledge that the revised draft amendments have been prepared in close cooperation between the ruling party and several opposition parties. This is particularly noteworthy against the background of the parliamentary boycott by all elected opposition parties after the parliamentary elections of October 2020 and of the fact that most of the opposition parties did therefore not participate in the preparation of the initial draft amendments. The political agreement of 19 April 2021, the return to Parliament by several opposition parties and the revision of the draft amendments to the Electoral Code on the basis of the agreement, with a view to bringing the national legislation into line with international standards and recommendations (as has been detailed above in the chapter on election administration), are clearly to be welcomed – even though not all elected opposition parties have as yet signed the agreement and taken up their parliamentary mandates.

43. Finally, it must be stressed that “any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election.”<sup>46</sup> In this perspective, the timing of the current reform so shortly before the next local elections is not ideal, inter alia as concerns the planned changes to the election administration bodies. That said, it seems that most of the current election commission members will remain in place, and the provisions of the initial draft amendments whereby partisan members of all election commissions were to be replaced upon enactment of the bill have been revised in order to limit these immediate changes to the level of the CEC.<sup>47</sup> On the other hand, the increase in commission members at all levels will require an important number of new recruitments and reorganisation. In this connection, the above recommendation to reconsider the significant increase in commission members, at least in the case of DEC and PECs, gains even more importance. Finally, it is of high importance that the election administration at all levels make every effort to ensure a smooth and flawless election process, for the sake of the Georgian democracy as well as citizens’ and parties’ trust in the system.

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<sup>44</sup> See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline II. 2.b.

<sup>45</sup> See Venice Commission, Interpretative Declaration on the Stability of the Electoral Law, [CDL-AD\(2005\)043](#), items II.1. and 2.

<sup>46</sup> See Venice Commission, Interpretative Declaration on the Stability of the Electoral Law, [CDL-AD\(2005\)043](#), item II.5.

<sup>47</sup> See Article 3 of the revised draft amendments.