



Office for Democratic Institutions and Human Rights

GEORGIA

PARTIAL REPEAT PARLIAMENTARY ELECTIONS
28 March 2004

OSCE/ODIHR Election Observation Mission Report, Part 2



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TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION AND ACKNOWLEDGMENTS	3
III.	BACKGROUND	4
IV.	LEGAL FRAMEWORK	6
A.	THE LEGAL BACKGROUND	6
B.	THE LEGAL FRAMEWORK FOR ELECTIONS	6
V.	ELECTION ADMINISTRATION	8
A.	STRUCTURE AND COMPOSITION OF THE ELECTION ADMINISTRATION	8
B.	THE ORGANIZATION OF ELECTIONS	9
C.	CANDIDATE REGISTRATION	11
D.	VOTER REGISTRATION	11
VI.	THE ELECTION CAMPAIGN	12
VII.	THE MEDIA AND ELECTIONS	13
A.	MEDIA MONITORING	14
VIII.	DISPUTES, COMPLAINTS AND APPEALS PRIOR TO ELECTION DAY	16
IX.	PARTICIPATION OF NATIONAL MINORITIES	16
X.	PARTICIPATION OF WOMEN	17
XI.	CIVIL SOCIETY AND DOMESTIC OBSERVERS	17
XII.	VOTING, COUNTING AND VOTE TABULATION	18
A.	GENERAL ASSESSMENT	18
B.	VOTING PROCEDURES	19
C.	THE VOTE COUNT	20
D.	TABULATION AND ANNOUNCEMENT OF RESULTS	20
XIII.	POST-ELECTION EVENTS, DISPUTES, COMPLAINTS AND APPEALS	22
A.	CANCELING THE RESULTS IN KHULO AND KOBULETI DISTRICTS AND CALLING REPEAT ELECTIONS	22
B.	ANNOUNCEMENT OF FINAL RESULTS	24
XIV.	RECOMMENDATIONS	25
A.	GENERAL	25
B.	LEGISLATIVE FRAMEWORK	25
C.	ELECTION ADMINISTRATION	26
D.	VOTER REGISTRATION	26
E.	THE CAMPAIGN AND THE MEDIA	27
F.	NATIONAL MINORITIES	27
G.	ELECTION DAY	28
H.	THE AUTHORITIES OF THE AUTONOMOUS REPUBLIC OF ADJARA SHOULD GUARANTEE:	28
	ABOUT THE OSCE/ODIHR	29

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I. EXECUTIVE SUMMARY

In response to an invitation from the Central Election Commission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) observed the 28 March 2004 Repeat Parliamentary Elections in Georgia. The OSCE/ODIHR assessed the parliamentary elections in terms of its compliance with the 1990 OSCE Copenhagen Document and other election related commitments.

The 28 March partial repeat parliamentary elections in Georgia during the pre-election period demonstrated notable progress and were the most democratic since independence. In this respect, the election process was brought in closer alignment with OSCE commitments and other international standards for democratic elections. However, developments during the post-election period, including irregularities observed during the tabulation of results, implausible voter turnout, the mishandling of some complaints and the selective cancellation of election results posed a challenge to the integrity of election results in some districts.

The political will of the Georgian authorities to address shortcomings in the electoral process will be increasingly tested in a more competitive and pluralistic political environment. Therefore, future elections will be more genuine indicators of Georgia's commitment to democratic elections.

Conditions in the Autonomous Republic of Adjara were once again not conducive to democratic elections. Intimidation and physical abuse of opposition supporters and journalists underlined the democratic deficit in Adjara evident during this election process, effectively creating a dual standard for elections in Georgia.

The Central Election Commission (CEC) administered these elections in a credible and professional manner. However, at times the CEC appeared to exceed its authority, for example, by extending legal deadlines or modifying other legal provisions through decrees. Several aspects of the election process were improved over previous elections, although some CEC decisions in the post-election period cast doubts about its impartiality.

Voter registers were further improved and consolidated in a computerized database. Data from Adjara, where voter registration was hampered by the lack of cooperation of the local authorities, was supposed to be added to this database after the election. However, further efforts are needed to complete voter lists, correct remaining errors, and improve their accuracy.

¹ This report should be read in conjunction with the OSCE/ODIHR Election Observation Mission Report, Part 1, on the 2 November 2003 parliamentary elections in Georgia.

The lack of political balance on election commissions remained a source of concern. Some District Election Commissions (DECs) and Precinct Election Commissions (PECs) failed to maintain appropriate distance from the ruling parties, and some local authorities interfered in the work of lower-level election commissions. President Mikheil Saakashvili's offer to reduce the number of his appointees on DECs and PECs from five to three addressed some of these concerns. However, these changes came late in the electoral process and should have been extended to the CEC.

While the ruling National Movement–Democrats currently dominate political life, a total of 16 parties and electoral blocs participating in the elections represented a wide political spectrum and provided voters with a degree of choice. With the exception of Adjara, contestants were free to campaign. However, most parties took a passive approach, which resulted in a very low-key campaign. Only in the final week of the campaign parties became more active.

A wide and diverse range of media were free to cover the campaign and electoral preparations. However, State TV failed to provide sufficient airtime for debate and the exchange of political views, and showed a clear bias in its news broadcasts focusing overwhelmingly on the authorities and the parties supporting them. Private broadcast media were more balanced, but again tended to concentrate on government activities. Adjara TV once again displayed a clear bias in favor of the Adjara authorities.

On election day, voting was conducted in a calm and peaceful atmosphere, and most polling stations visited by international observers were assessed as good or very good. PECs operated in a collegial manner and seemed to have benefited from additional training provided by the CEC. However, observers reported problems such as multiple voting and ballot-box stuffing in some districts, most notably in Marneuli, Gardabani and Tkibuli. The application of and checking for anti-fraud ink was inconsistent in some regions. Significant irregularities occurred, once again, in Kvemo Kartli. Counting was assessed less positively than voting, with 15% of observers assessing it as poor or very poor.

The tabulation of results at district level was marred by irregularities in a number of DECs. In some cases, election material was delivered unsealed or inadequately secured, protocols were completed or changed at the DEC level, and in at least one case, DEC members "negotiated" the results. The handling of election-related complaints at some DECs was also inadequate.

An analysis of PEC results made available by the CEC showed a number of anomalous or implausible results in a significant minority of districts. Such anomalies included: rapid increase in voter turnout during the last three hours of voting; implausible voter turnout, in some cases exceeding 100%, and sometimes coupled with a share of the vote for the ruling parties in excess of 95%; and instances of an unusually high percentage of invalid votes.

A total of 52 polling stations were invalidated by DECs due to irregularities. The CEC cancelled the results in two districts in Adjara (Kobuleti and Khulo) and ordered repeat elections for 18 April, which did not take place due to security reasons. The CEC's decision to cancel the results and repeat elections in entire districts appeared to be based on questionable legal arguments.

Overall, the following elements marked positive developments for the election process:

- Improvements to the administration of the election process;
- Enhanced professionalism and openness of the CEC;
- Commendable efforts to improve, computerize and consolidate the voter lists, although they remain incomplete;
- With the exception of Adjara, a peaceful and free pre-election period, although there was a late and very limited campaign;
- Freedom of expression enjoyed by the media, with the exception of Adjara;
- Efforts made to increase the participation of national minorities in the elections, including the printing of bilingual ballot papers and voter information materials; and
- Improved training for lower-level election officials.

However, some aspects of the process need to be addressed in order to remedy issues of concern and continue forward progress, including:

- The continuing lack of a clear separation between State administration and political party structures, and the ongoing potential for misuse of State administrative resources;
- Inability to ensure the balanced composition of election commissions at all levels;
- The interference by some local authorities in the functioning of a number of lower-level commissions, thereby lessening their independence;
- Continuing irregularities in some polling stations, as indicated by implausible and anomalous results;
- Irregularities at a relatively high number of DEC's during the tabulation process, and the failure of some DEC's to properly address complaints after election day;
- The adoption of some decisions by the CEC, such as the cancellation of results in two entire districts, which seem of questionable legality and could be perceived as politically motivated;
- The failure of the State TV to provide a balanced coverage of the election campaign, and a forum for political debates with exchange of views;
- The unwillingness to lower the 7% threshold for seat allocation when constitutional amendments were adopted; and
- In contrast to the 2 November Parliamentary elections, a reduced scrutiny by domestic observers in the pre-election period. However, on election day domestic observers were present in substantially more polling stations than in the previous election.

The complete lack of commitment by the authorities of Adjara to guarantee sufficient conditions for the conduct of a meaningful democratic election in that area remained a concern.

The OSCE/ODIHR stands ready to assist the Georgian authorities to address remaining shortcomings in their election process, and to support their efforts to correct these outstanding issues in order to hold genuine democratic elections.

II. INTRODUCTION AND ACKNOWLEDGMENTS

On 15 February 2004, upon the invitation of the Ministry of Foreign Affairs, the OSCE/ODIHR established an Election Observation Mission (EOM) in Georgia to observe the

28 March 2004 repeat parliamentary elections. The EOM was headed by Ambassador Michael Wygant (U.S.A.).

The EOM consisted of 40 election experts and long-term observers (LTOs), as well as national experts and support staff, deployed in Tbilisi and 12 regional centers. During approximately eight weeks it observed all aspects of the election preparations, the campaign, the media, election day, and the post-election processes. Observers were not deployed in Abkhazia and parts of South Ossetia where elections were not conducted.

On election day, the OSCE/ODIHR EOM was joined by representatives of the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), and the European Parliament (EP) to form the International Election Observation Mission (IEOM). Mr. Bruce George (UK), President of the OSCE PA, was again appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the OSCE short-term observers. Mr. Mátyás Eörsi (Hungary) led the PACE delegation, and Mr. Demetrio Volcic (Italy) led the EP delegation.

On election day, the IEOM deployed some 440 short-term observers from 43 OSCE participating States, including 27 Parliamentarians from the OSCE PA, 15 from PACE, and four from the EP. The Council of Europe Secretariat deployed an additional 21 observers. Embassies and diplomatic missions of OSCE participating States in Tbilisi also contributed generously to the number of short-term observers. On election day, the IEOM observed voting in over 1,300 of the 2,860 polling stations across Georgia, and counting in 129 polling stations. Observers also followed the tabulation of election results in 46 of the 75 District Election Commissions (DECs).

Following the closing of the EOM, the ODIHR maintained a small presence to monitor the post-election complaints and appeals process and well as the scheduled re-runs in two districts in Adjara.

The OSCE/ODIHR wishes to thank the Ministry of Foreign Affairs, the Central Election Commission, the office of the President, and other authorities at all levels for their assistance and cooperation during the course of the Mission. The OSCE/ODIHR also wishes to express appreciation to the OSCE Mission to Georgia, the “Ambassadorial Working Group,” and embassies and diplomatic missions of OSCE participating States accredited in Georgia. It also wishes to thank numerous international and national NGOs for their assistance and cooperation.

III. BACKGROUND

As a result of the 28 March partial repeat parliamentary elections, the fourth Parliament since independence in 1991 was elected. Following the flawed 2 November 2003 parliamentary elections, the Supreme Court annulled the results of the proportional component. However, inexplicably, apart from two districts, the results of the majoritarian component were not challenged, despite many of these being equally flawed. In addition, no action was taken against, or contestation made, of the referendum regarding the reduction of the number of members of Parliament to 150, which was held simultaneously with the 2 November elections. On 28 March, only the proportional component of the elections was repeated, together with two majoritarian contests (in Bolnisi and Chiatura districts).

Following the resignation of former President Shevardnadze in November 2003, the political environment has changed dramatically. The parties that led the November events – the National Movement and the Burjanadze–Democrats – consolidated their executive power and joined forces. During the 4 January 2004 extraordinary presidential election, Mikheil Saakashvili, joint candidate of the National Movement and the United Democrats, was elected President with 96.2% of the vote. The interim President, Nino Burjanadze, returned to the post of Speaker of Parliament and Zurab Zhvania became State Minister. The Citizens Union of Georgia, the former ruling party, disappeared from the political scene. The fragmented opposition attempted to consolidate itself by creating electoral blocs: the New Rights (NR) formed a coalition with Industry Will Save Georgia (IWSG) while the National Democratic Party (NDP) united with the Traditionalists.

The 28 March repeat proportional elections were held within a substantially changed governmental structure. On 6 February 2004, the outgoing Parliament passed far-reaching constitutional amendments that increased the power of the Executive and introduced the post of the Prime Minister.² In relations *vis-à-vis* the Parliament, the President now has considerable discretion to dissolve the legislature, while he can retain the government even in cases where the Parliament has expressed its lack of confidence.

An analysis of the amendments conducted immediately prior to their adoption by the Council of Europe's Venice Commission found many of the Constitutional changes to be problematic. Although the Georgian authorities claimed that circumstances required an expeditious consideration and approval of the amendments, the manner in which they were adopted, ignoring a constitutional provision requiring a one-month public debate, raised serious concerns which were also voiced by representatives of Georgian civil society. Following the adoption of the amendments, President Saakashvili nominated Zurab Zhvania as Prime Minister.

Throughout the pre-election period, the authorities conducted a high-profile anti-corruption campaign against businessmen suspected of involvement in illegal business activities and tax evasion, as well as against public officials of the previous regime. The campaign included the arrests of several well-known figures, some of which were shown on television.

The situation in the Autonomous Republic of Adjara remained tense, especially after a state of emergency was imposed on 23 November. The state of emergency decreased civil liberties, and consequently limited even further the campaign opportunities for parties in opposition to Adjaran leader Aslan Abashidze. Relations between the Georgian government and the Adjaran authorities deteriorated following the November events. On 14 March, President Saakashvili was denied entry into Adjara, where he intended to campaign. The Georgian government reacted by imposing economic sanctions on Adjara, and tensions mounted significantly. The situation seemed to improve after an agreement was reached during a meeting between Saakashvili and Abashidze on 18 March. However, the partial implementation of the agreement did not significantly reduce the tension prior to the elections.

² The presidential powers were also increased with regard to other areas, in particular the judiciary.

As in previous elections, voting did not take place in Abkhazia and in Java and Tskhinvali districts, which have not been under the *de facto* control of the Georgian authorities since armed conflicts in the early 1990s.

The international community provided significant funding and technical assistance for the parliamentary election, mainly through the OSCE Election Assistance Program, which provided a crucial contribution to realizing this election.

IV. LEGAL FRAMEWORK

A. THE LEGAL BACKGROUND

The Parliament of Georgia consists of a unicameral “supreme representative body.” Under the Constitution of Georgia, the Parliament comprises 235 members, 150 of whom are elected through a proportional-representation system, while 85 members are elected through a majoritarian system based on single-mandate electoral districts. However, the Constitution foresees a bicameral Parliament “when conditions are appropriate and self-government bodies have been established throughout the territory of Georgia,” with a Council of the Republic elected by proportional vote and a Senate comprising representatives elected from the federal units and five members appointed by the President.³ To date, the Senate has not been created.

The proportional component of parliamentary elections is based on a list system. Each political party or electoral bloc participating in an election submits one candidate list for the whole republic. For parliamentary elections to be valid, at least one third of registered voters must participate. In order to qualify for the allocation of mandates, a candidate list must “receive at least 7% of the vote of those who participated in the elections held under the proportional system”.⁴

B. THE LEGAL FRAMEWORK FOR ELECTIONS

Elections in Georgia are governed principally by the Unified Election Code (UEC) which provides an adequate foundation for democratic elections. The UEC was adopted on 2 August 2001, amended on 25 April 2002 and twice in August 2003, a few weeks before elections. While many of these amendments constituted improvements to the law, the formation and composition of election commissions was at the time a serious point of contention.

In the lead up to the 28 March repeat elections, the outgoing Parliament failed to adopt a number of technical amendments proposed by the CEC. Although there are areas in which amendments to the UEC would have been desirable, it is generally not advisable for election legislation to be amended when an election process is underway. Nevertheless, once the new Parliament has been installed, there are key electoral issues that remain to be addressed. However, it is crucial that future amendments to the UEC ensure the integrity of the numerous checks on the conduct of elections that are currently contained in the law.

³ The Constitution of Georgia, Article 4.

⁴ The Constitution of Georgia, Art. 50.2

Legal provisions that have proved to be crucial in improving elections include, *inter alia*:

- Provisions on transparency - The UEC contains an entire chapter on transparency measures that proved essential as a check against possible abuse. The extensive access granted to observers to monitor all aspects of the electoral process is one of the most positive elements. These measures must by no means be jeopardized in future amendments to the Election Code and the limited shortcomings should be addressed. For instance, the restriction on a single observer per organization and polling station can undermine effective observation, especially in cases where intimidation is a concern.
- Anti-fraud measures - provisions such as the inking of voters, the use of transparent ballot boxes and envelopes, the posting of results on the Internet, and the introduction of a polling-day record book have served as obstacles to fraud. Furthermore, anti-fraud measures proved key to minimizing the problems generated by the absence of a centralized voter list, which is envisaged in the UEC but has yet to be realized, and the loopholes created by same-day voter registration. Many of the anti-fraud provisions included in the legislation were adopted in accordance with OSCE/ODIHR recommendations from previous elections.
- Complaint mechanisms - the successive amendments improved complaints procedures that became clearer and more precise. Like in many other OSCE participating States, election-related complaints can be filed with both the election commissions and the courts. However, in the UEC of Georgia, the channels that have been established for this purpose are very clear, and conflicts of jurisdiction do not arise. The cardinal rule that each administrative decision can be appealed to a court is respected, and due to the progress in judicial reform in Georgia, court decisions are generally respected. However, while the legal provisions are commendable and their implementation continued to improve, weaknesses remain to be addressed.

Despite the overall positive assessment of the UEC, serious shortcomings persist in both the legislation and, more markedly, in its implementation.

With regard to the legislative shortcomings, the most egregious pertain to the failure of the UEC to conform to the Constitution. For instance, Article 100.2 of the UEC allows a party or bloc to cancel the nomination of a candidate even “after the authority of the elected MP is recognized.” This appears to conflict with the Constitutional provision that an elected MP cannot be recalled (Art. 52.1 of the Constitution) and directly contravenes the OSCE Copenhagen commitments.

Furthermore, while there are key elements of the UEC that can serve to further ensure the conduct of democratic elections, such provisions are to be found in the general provisions, as opposed to the transitional provisions, and have yet to take effect. This includes provisions for more independent and professional election commissions, which provide, *inter alia*, for election commission members to be certified professionals and for them to renounce party membership while serving on election commissions. Because of the absence of a newly elected Parliament, and therefore the continuing need to rely on the transitional provisions of the Election Code, several such positive provisions were not in force for the 28 March elections.

The implementation of the UEC by the election administration, as well as all other actors, indicates progress. However, in the future, the implementation of the UEC will require a substantially improved effort in order to bring the election process more fully in line with OSCE election related commitments.

V. ELECTION ADMINISTRATION

A. STRUCTURE AND COMPOSITION OF THE ELECTION ADMINISTRATION

The election administration has a three-tiered structure comprising the CEC, 75 DEC and 2,860 PECs. The CEC and DEC are permanent bodies, composed of members appointed by the President and political parties. Zurab Chiaberashvili was confirmed as CEC Chairperson by President Saakashvili. In addition to the Chair, for the 28 March election, the CEC had 14 other members as follows:

- Five members appointed by the President;
- Three members appointed by the Union of Democratic Revival; and
- One member appointed by each of the following parties: Industry Will Save Georgia (IWSG), Sportive Georgia⁵, the New Rights, the National Movement, the Labour Party and the Christian Conservative Party.⁶

DECs and PECs have the same composition as the CEC, although PECs may be formed with a minimum of 9 members.

The composition of the election administration remained a key issue of concern for opposition parties, particularly those without the right to make appointments to commissions. In general, parties mistrust election commissioners appointed by their political rivals, and regrettably the UEC fails to require commissioners to carry out their tasks impartially. While the legal framework regulating the political balance of the administration remains unchanged since November 2003, the governing parties inherited the right to appoint the majority of members at all levels.

To lessen the political imbalance on election commissions and address concerns raised by political parties and the international community, the President offered to reduce from five to three the number of his appointees on DEC and PECs, but not on the CEC. These seats were offered to opposition parties who did not have the legal right to representation on the commissions. *Ertoba* (Unity), the NDP–Traditionalists bloc and to a lesser extent the Socialist Party benefited from this “redistribution” of commission members. However, due to the lateness of the decision, the lack of clarity about its implementation, and other ongoing changes of commissions’ personnel, some confusion and inconsistency was apparent at DEC and PEC levels.

⁵ On 27 February, IWSG formed an electoral bloc with the New Rights and thus lost one of the two CEC seats granted to the party. The seat was awarded to Sportive Georgia as part of the IWSG-led bloc that came fifth in Tbilisi in the 2002 local elections. Observers reported that many DEC members from IWSG continued to serve, albeit as Sportive Georgia representatives.

⁶ Formally, the Christian Conservative Party is represented by virtue of the fact that it was one of the parties that scored best in the 2002 local elections in Tbilisi. *De facto*, nominees of the United Democrats fill these seats.

CEC decrees require the votes of two-thirds of the members to be adopted. Therefore, members appointed by the ruling parties were unable to adopt decrees without the support of at least two of the seven members appointed by opposition parties. In practice, many CEC decisions, including the adoption of decrees, were taken by consensus or near consensus. Nevertheless, the Labour and Revival appointees often served as “the opposition” on the CEC and most DEC, while the New Rights, IWSG and Sportive Georgia generally supported the CEC majority.

Since the 4 January presidential election, ten DEC Chairs were replaced, but the CEC Chair replaced only two of the six DEC Chairs in Adjara. At district level, the National Movement–Democrats enjoyed a strong majority of senior positions, including Chair, Deputy Chair and Secretary positions on DECs and PECs. In Adjara, in contrast to the rest of Georgia, many DEC commission members, including the majority of Chairs, were either supportive of the local authorities or unable to assert their independence from them. Nevertheless, the local opposition (united in the “Our Adjara” movement) was able to gain majorities on some PECs and could thus secure many Deputy Chair and Secretary positions.

B. THE ORGANIZATION OF ELECTIONS

In the absence of amendments to the UEC after the presidential election, the CEC used its legal authority to introduce a number of improvements to the electoral process. In marked contrast to previous elections, the CEC implemented a number of recommendations made by the OSCE/ODIHR in previous reports, including:

- Broadcasting public service announcements on voting procedures and the importance of voter marking (inking);
- Introducing ballots and voter information in minority languages (Azeri, Armenian and Russian);
- Adopting a decision on the method for calculating the number of registered voters;
- Consolidating the voter lists into a central, computerized database;
- Providing an additional period for citizens to register to vote and for a period of public display of newly-printed voter lists;
- Improving training for lower-level election officials, particularly regarding the procedures to complete results sheets (protocols);
- Improving the secrecy of the vote by introducing a requirement that voting booths be adequately screened.
- Adopting a more user-friendly PEC protocol with an improved layout; providing protocols in Azeri and Armenian as well as Russian is also desirable in future elections;
- Including data on those who registered on election day in summary protocols, thereby improving transparency;
- Adopting a DEC protocol that included a matrix of PEC results, thereby enabling parties to verify the calculation of results at district level;

In addition, the CEC:

- Introduced a more streamlined and professional election apparatus at the central level;
 - Demonstrated a willingness to hold accountable those responsible for election violations;
- and,

- Improved procedures for filing complaints on election day.

The greatest challenge faced by the CEC was the organization of democratic elections in Adjara, where the local authorities did not willingly cooperate. Indeed, the CEC was not in full control of the process there. However, belatedly the CEC attempted to exert its authority over the six districts in Adjara, e.g. by dismissing two DEC Chairs (in Shuakhevi and Khelvachauri districts). The tense pre-election environment in Adjara had a negative effect on electoral preparations. Between 14–19 March a number of citizens were dissuaded from registering to vote, and some PEC members from parties in opposition to the local authorities were fearful of carrying out their duties.

The CEC met frequently, generally taking decisions in a transparent manner. All CEC members were able to present their views and the media attended all sessions. The CEC gave frequent press briefings. In many instances, the numerous decrees and other subordinate legal acts adopted by the CEC constituted improvements necessary for the proper implementation of the UEC.

However, the CEC, on occasion, adopted decrees conflicting with the UEC, and could be deemed to have exceeded its authority. For example, it frequently amended legally established deadlines, employing a legal basis of questionable applicability. In addition, at times the CEC apparatus sent written instructions to DEC chairs regarding issues of general application without referring these documents to CEC members or adopting a CEC decree. The organization of the out-of-country vote was left completely unregulated, as well as the role of 75 CEC “Representatives” to the DEC level that was not foreseen in the UEC.

Notwithstanding these shortcomings, few CEC decrees were subject to legal challenge. One noticeable exception was the decision by *Ertoba* to challenge CEC Decree #41 that clarified the base figure (i.e. 100%) against which the 7% threshold is calculated. In previous election reports, the OSCE/ODIHR had recommended that this issue be resolved in advance of an election. While the law appears clear, former CECs had determined this base figure as the voter turnout (i.e. signatures of voters on the voter registers), rather than marked ballot papers or valid votes. This method ignores the votes of voters and consequently may be at odds with the Georgian Constitution (Art 50.2). The decision by the Tbilisi District Court, on the eve of the election, to uphold *Ertoba*'s appeal meant that once again there was no certainty regarding the calculation of the representation threshold.

Apart from Adjara, prior to election day international observers expressed improved confidence in the majority of lower-level commissions. However, while most DEC chairs functioned efficiently, the transparency of their work and their independence remained an issue. It is of concern that the National Movement–Democrats appeared to hold the majority of DEC Chair positions. Frequently, DEC Chairs appointed PEC Chairs without including any other DEC members in the decision-making process, and some opposition parties complained that they had been discriminated against. In 18 districts, observers received credible allegations of bias in favor of the National Movement–Democrats or Revival by the DEC Chairperson.

Other shortcomings included the failure to inform all DEC members of sessions, to keep minutes of sessions and record decisions properly. International observers noted the presence of campaign material in the premises of nine DEC chairs, all for the National Movement–Democrats. The failure to maintain a clear separation in the roles and functioning of the

election administration on the one hand and party activists, senior local government officials and domestic observers on the other, remained a significant obstacle to the development of a professional, impartial, and independent election administration.

C. CANDIDATE REGISTRATION

Registration of political parties and movements for the proportional part of parliamentary elections is a three-stage process. Parties initially register for an election with the CEC; they must provide at least 50,000 support signatures or have a representative in the outgoing Parliament at the time when elections are called. In a second stage, parties which registered can announce to the CEC that they will form an electoral bloc, and finally, parties and blocs submit candidate lists to the CEC.

For the 28 March elections, a total of 47 parties and movements registered with the CEC. Ten among them formed a total of five electoral blocs. The deadline for forming electoral blocs was extended twice and expired on 21 February. Ultimately, 14 parties and the five electoral blocs submitted candidate lists. Thus, 19 candidate lists were registered for the elections, representing a wide political spectrum and offering voters a degree of choice. However, three parties withdrew from the elections at a very late stage. This led to confusion among PECs on election day, inconsistent information being given to voters and a lack of uniformity in allocating votes cast for these parties during the tabulation of results.

D. VOTER REGISTRATION

For the 4 January 2004 presidential election, approximately 1.8 million voters were pre-registered across Georgia, excluding Adjara where no pre-registration took place. In addition, some 390,000 voters registered to vote on election day, bringing the total number of registered voters to over 2.2 million.⁷

The number of registered voters under-represented the number of eligible voters, partly because an active system of voter registration was instituted in December and again in March. Under an active system, citizens unwilling or unable to register are excluded from the lists.

After the presidential election, the CEC began the consolidation of handwritten voter lists into a single computerized database. The accuracy of this data was verified, and many errors were eliminated.

The CEC produced voter lists according to the language in which they were originally compiled, which increased the transparency of the process for non-Georgian speaking voters. However, a shortage of staff with the appropriate skills and relatively poor source data challenged the CEC's ability to prepare accurate lists in minority languages within the deadlines foreseen, and delays occurred. While observers expressed increased confidence in the voter lists, particularly compared to November 2003, shortcomings were noted, including:

- A relatively large number of entries with incomplete data;
- Some DEC's and PEC's informed observers of duplicate entries and deceased persons included in the lists;

⁷ According to the final results of the presidential election published by the CEC, 2,231,986 voters were registered to vote, of whom 1,963,556 voted.

- Potentially significant numbers of eligible voters lacked identity documents. The use of temporary identity documents only partially solved the problem and may lessen the integrity of an election as their issuance is open to abuse;
- Concern was expressed that some voters were registered at polling stations in places other than their official residence;
- While most PECs displayed voter lists from 8 March, a significant minority (37%) did not start the public display on time, while some (15%) were not open when visited by observers or did not display lists publicly (10%).

Nevertheless, observers reported that in general, during the period of checking and re-registration, PECs followed the procedures correctly. However, excluding Adjara, only some 20,000 additional voters were registered, indicating the passivity and lack of interest on the part of voters. This attitude persisted despite the efforts of the CEC to raise public awareness.

The re-opening of the registers was particularly important in Adjara, where no registration had taken place prior to the 4 January election. Indeed, voter registration in Adjara remained one of the most contentious issues of the 28 March election. Due to the exploitation of inflated numbers of registered voters in Adjara during the November election, the CEC was reluctant to use the lists produced by the Adjara authorities. Moreover, the compilation of voter lists did not follow procedures employed in the rest of Georgia.

Five DECAs in Adjara transferred voter lists used for the presidential election. While entering these records into the central database of electors, it became apparent that the quality of the data was generally very poor. Frequently, vital information such as voters' addresses was omitted, making it impossible to produce meaningful printed voter lists. This left the CEC with no option but to begin a complete re-registration of voters. The uncertain and tense pre-election environment in Adjara affected the voter registration process there. The CEC announced that 103,838 voters registered in Adjara between 8 and 21 March.

After the election, the CEC announced that some 145,000 voters had registered to vote on election day, bringing the total number of registered voters to 2,343,087.⁸

VI. THE ELECTION CAMPAIGN

The campaign for the 28 March elections was very low key. While the majority of parties used their free airtime on State TV, and some placed paid advertisement in the media, direct contact with the electorate was limited. Although, with the notable exception of Adjara, parties were free to campaign throughout most of the country, there were few public meetings or party rallies. In marked contrast to the campaign for the 2 November elections, observers noted only a few billboards and posters, mostly put up during the last week of the campaign. However, international observers did report some degree of door-to-door campaigning.

Several opposition parties said their campaign funds were limited, and some interlocutors indicated that most parties spent their campaign funds for the November elections. International observers reported that opposition party offices in many towns were not operating. The passive approach of many opposition parties was surprising given indications

⁸ The figure of election-day registrants is based on preliminary results data, and excludes up to 100 polling stations. The total number of registered voters was announced by the CEC on 18 April.

that most of them would have difficulties passing the 7% threshold. However, the Freedom Movement, headed by Konstantin Gamsakhurdia, son of the first president of independent Georgia, opened new branch offices, and also claimed to have sufficient funds from donations to run an election campaign. The Freedom Movement campaigned actively after Gamsakhurdia's arrival in Georgia from Switzerland, the country in which he has been resident.

During the last week of the campaign, President Saakashvili and Speaker of Parliament Nino Burjanadze visited several regions of the country to campaign for the National Movement–Democrats. While it is unclear whether the provision in the UEC barring “heads of bodies of state executive authority” from campaigning (Art. 73.5b) applies to the President and the Speaker of Parliament, the active involvement of the Imereti Governor, the Kutaisi Mayor, the Imereti Regional Chief of Police and the Head of the Nikia Municipal Authority in campaign events in Kutaisi contravened Art. 73.5d and 73.5e. These articles bar “public officials of the Ministry of State Security, the Ministry of Internal Affairs and Defense [...]” and “Heads of bodies of local governance” from campaigning.

Campaign appearances and associated travels of leading State officials also raised the question whether such activities were compatible with Art. 76 of the UEC on the Prohibition on Use of Official Position During Election Agitation and Campaign. This provision specifically forbids the use, for campaign purposes, of “material and technical resources of organizations which are funded from the State budget.”

International observers noted several instances where campaign material, usually for the parties supporting the new authorities, was displayed in the premises of lower-level election commissions or in local government offices. For example, observers noted National Movement campaign material, or campaign material from Saakashvili's presidential election campaign, in several local authority offices in Kvemo Kartli region, and in DEC premises in Tianeti, Tkibuli, Gardabani, Liakhvi, Khoni, Ambrolauri and Dusheti, and campaign material of the Labour Party and *Ertoba* in the Dusheti Culture House. In addition, in several places, local government officials were directly involved in campaign activities as heads of campaign staff or district party offices.

In Adjara, the situation differed significantly from the rest of Georgia. A state of emergency had been in place in Adjara since 23 November, apart from four days around the time of the presidential election. Opposition gatherings were violently suppressed or attacked by supporters of the Adjaran authorities, including a public meeting on 20 February during the visit of the Council of Europe's Secretary General, Walter Schwimmer, to Batumi. Offices of parties in opposition to the Adjaran authorities and of non-governmental organizations (NGOs) were ransacked, opposition activists and journalists were assaulted or abducted, and members of election commissions were intimidated. While incidents of violence and intimidation also marred previous elections in Adjara, the intensity and frequency with which they occurred this time was higher. Overall, the environment in Adjara was once again not conducive to a meaningful democratic contest during this election process.

VII. THE MEDIA AND ELECTIONS

Media in Georgia continue to operate in a pluralistic environment and generally enjoy a high degree of freedom of expression, particularly in Tbilisi. Television is by far the most

influential and important source of information in the country, and private broadcasters have increasingly overtaken the State media in providing the public with varied and comprehensive information. Despite the general freedom enjoyed by the media, during the pre-election period media freedom became the object of public discussion and political confrontation, while serious restrictions of journalists' activities in Adjara raised concerns.

The simultaneous cancellation of talk shows on the most popular private TV stations in early February raised concern among opposition parties about undue government interference in the editorial policies of independent media. However, none of the media in question confirmed allegations about direct or indirect pressure, claiming instead that the programs were being revised in view of the pre-election campaign.

The premises of Iberia TV and the "Omega Tegi" printing house were searched by the office of the Prosecutor General as part of a wider investigation into the Batumi-based Omega group, which owns both companies. Opposition parties denounced the search as a government attempt to put pressure on independent media. Although Iberia TV continued to broadcast, the legitimacy of the law enforcers' action was in fact put in doubt by the lack of a specific Court search warrant against the outlet's premises.

Outside Tbilisi, few allegations of undue interference from local authorities in the work of the media were reported. In several cases, local government bodies own local broadcasters and reportedly intervened in determining editorial policies. For instance, the employees of a private TV station in Kutaisi allegedly received pressure from the President's envoy in the region, who reportedly threatened to close down the company for non-payment of rent arrears. In Bolnisi, the dismissal of the director of a local broadcaster partly owned by the *gamgebeli* led to protests by journalists charging infringements on the freedom of speech.

Fundamental principles of freedom of expression were not granted in Adjara since the local authorities declared a state of emergency in November. Journalists operated in a very difficult environment, being systematically intimidated and in several cases physically assaulted. Adjara TV, directly controlled by the Adjaran authorities, remained an instrument of propaganda. On the other hand, State TV-1 and private broadcasters could be received in the region, theoretically promoting a diversity of views.

A. MEDIA MONITORING⁹

As a result of a low-key campaign and the failure of most political parties to mount visible and effective campaigns, the media could not provide the public with comprehensive information on all aspects of the election process.

Election-related issues were regularly reported, but were frequently eclipsed, by widely publicized anticrime operations carried out by the Prosecutor General's Office. The attention to government institutions was considerable, particularly on broadcast media. President

⁹ On 16 February, the EOM began a quantitative and qualitative analysis of the political campaign and election-related contents of selected broadcast and print media. Four TV stations and five newspapers were analyzed on a daily basis: TV — State *TV-1* (8 hours per day), *Rustavi-2* (8 hours per day), *Adjara TV* (news); and *Imedi TV* (news); newspapers — *Sakartvelos Respublika* (partly State-funded) *Akhali Taoba* (private) *Rezonansi* (private), *Alia* (private); and *24 Saati* (partly State-funded; *24 Saati*, which belongs to the same holding as *Rustavi-2*, won a state tender for the publication of official documents and decrees, previously an exclusive of *Sakartvelos Respublika*).

Saakashvili in his double role of Head of State and leader of the National Movement enjoyed a large degree of visibility. The coverage of almost daily press conferences, though, went far beyond the need and duty to inform the public on government activities. The climax was reached during the standoff between the central authorities and the Adjara leadership.

While the ruling parties dominated the scene, other political parties received little coverage on broadcast media, with the exception of the Revival Party, whose leader Abashidze was a key figure in the Adjara dispute. Nevertheless, the EOM is not aware about complaints concerning access to media. On the contrary, media representatives claimed that politicians were rather reluctant to participate in televised debates.

State TV-1 complied with the legal provisions for allocation of free airtime, although these slots were transmitted well out of prime time. Due to the large number of contestants, State TV-1 ensured six minutes every day to each contestant, and contestants could be provided with technical assistance if requested. Most of the contestants used this free airtime, although major parties favored paid advertising. Unfortunately, State TV failed to provide a forum for political debates, which are crucial to informing the electorate.¹⁰

While an apparent passivity characterized the performance of State TV during the campaign, significant signs of bias also emerged. The transmission of political spots of “Our Adjara” during the pre-election campaign, making clear reference to the November events and the political parties involved, raised concern about the impartiality of State TV.

This was all the more of concern since the spots were broadcast free of charge, following their arbitrary classification as “social advertisements” by the Ministry of Economics’ Antimonopoly Commission Service. Moreover, a one-hour documentary about Adjara, aired two days before election day, alleged involvement of Abashidze’s entourage in criminal activities without providing any evidence, and was widely perceived as indirect campaigning in favor of the National Movement–Democrats.¹¹

Outside free airtime, State TV-1 failed to provide balanced and fair coverage, giving extensive and overwhelmingly positive coverage to the current authorities by allocating 46% of the total airtime to the President and 20% to government officials. In addition to the time devoted to the National Movement–Democrats (14%), the pro-governmental faction received 80% of the total airtime, an unacceptably high percentage. The Revival Party received some 9% of the coverage, half of which was negative. All other parties shared the remaining 11%.

The private televisions monitored demonstrated a similar picture, with the authorities and the ruling parties dominating the scene. The open support of Rustavi-2 for the current ruling parties was confirmed during the parliamentary election campaign, when the broadcaster provided a positive picture of all activities of the government. Rustavi-2 devoted 38% of its news coverage to the President, about 19% to the executive branch, and 14% to the National Movement-Democrats.

Similarly to State TV-1, the Revival Party received a fair amount of time, but one third of it was negative. Airtime in other informative programs as well as talk shows was distributed

¹⁰ State TV-1 free-of-charge airtime was broadcast from 15:15 to 17:15 hrs. In addition, TV-1 never resumed night talk shows, and no other informative program was broadcast.

¹¹ State TV-1, 26 March 2004, 22:00 hrs. – Untitled.

more evenly among major parties, although the National Movement–Democrats enjoyed an advantage, receiving 20% of the time on such broadcasts. Imedi TV’s news coverage was more balanced, although the parties’ low-key campaign once more favored the pro-governmental faction’s visibility. Its share was 63% of airtime, while opposition parties received 27%.

Adjara TV, owned by the authorities of the Autonomous Republic of Adjara provided positive and exhaustive coverage of the Adjaran authorities and the Revival Party, while allocating mostly negative coverage to the President and Georgian government officials. Moreover, the outlet confirmed its bias during the standoff between the Georgian government and the Adjaran authorities, addressing the public with alarmist propaganda. Adjara TV also broadcast paid advertisements by Revival.

The print media generally provided more balanced coverage than the television stations monitored by the EOM. With the exception of State-funded newspapers, criticism of the authorities, as well as of opposition parties, was present, and the distribution of space among political forces was more balanced than on television.

VIII. DISPUTES, COMPLAINTS AND APPEALS PRIOR TO ELECTION DAY

Few formal complaints were filed prior to election day with either the election administration or the courts. At the central level, the CEC received approximately a dozen complaints, two of which were connected to the 28 March elections. The Tbilisi District Court, which has jurisdiction over the CEC, heard only eight cases appealing CEC decisions, two of which were admitted. The EOM monitoring of the case concerning the calculation of the 7% threshold, raised some serious concerns regarding the independence of this decision. Throughout the pre-election period, court cases regarding the majoritarian seats continued to be heard at both the appellate and the Supreme Court level, indicating the continuing problems caused by second-round contests based on the flawed 2 November elections.

While the absence of complaints could be an indication of an improved process, the lack of competitiveness, and the general apathy which characterized the campaign, may have played a role in the low number of complaints. Civil society organizations which in the past had served as a check on both the administration and political parties were less active, and did not challenge a single action or omission prior to election day.

IX. PARTICIPATION OF NATIONAL MINORITIES

Georgia has two large minority populations – Azeris and Armenians, accounting for 6.5 and 5.7% of the population, respectively¹² – and a variety of smaller national minorities totaling 3.6% of Georgia’s population. Most minorities are concentrated in certain regions; Armenians are concentrated in Samtskhe Javakheti, while the Azeri population live mainly in Kvemo Kartli and parts of Kakheti. There are no relevant political parties representing national minorities, but some parties included representatives of national minorities on their candidate lists. Overall, however, less than 3% of candidates belonged to national minorities, and no

¹² According to the 2002 population census.

candidate list adequately reflected their share of the population. In the new Parliament, eight deputies are members of national minorities, five Armenian and three Azeris.

In addition to providing ballot papers in Azeri and Armenian in areas with a concentration of national minorities, as well as protocols in Georgian and Russian, the CEC also provided PEC manuals and voter education material in minority languages. Training of election commissions was provided in minority languages as well; however, in some instances, training in Azeri-populated areas was conducted in Russian, and commission members reportedly had comprehension difficulties. Generally, national minorities were underrepresented on election commissions, even in areas where they are in the majority.

X. PARTICIPATION OF WOMEN

Georgian politics remain dominated by men, with limited representation of women in the government and political party leadership. The Speaker of Parliament and former Interim President, Nino Burjanadze, is the woman holding the highest public office. Only 17 women (7.2%) were members of the outgoing Parliament. Out of the 75 majoritarian candidates elected, only two are women (2.7%). In the newly created Cabinet of Ministers five of 20 members are women (four prior to the appointment of the new foreign minister), and none of the newly appointed regional governors are women.

Of a total of 2,700 candidates registered for the 28 March elections, 849 were women (31.4%). Their share on individual lists varied widely, however, between 13.3% on the National Movement–Democrats list, and 62.8% on the list of the Party of Democratic Truth. Only the National Movement–Democrats list was headed by a woman, Maia Nadiradze.

Following recent changes to the composition of election commissions, one woman, nominated by Sportive Georgia, sits on CEC. On the DEC's visited by international observers prior to election day, 79% of the Chairpersons and 77% of the Deputy Chairs were male, while 63% of the secretaries were women. In polling stations observed, some 38% of PEC Chairs were women, less than in previous elections.

Following the 28 March repeat elections, a total of 22 women will be members of the new Parliament (9.4%), a modest increase of five. Of these, 19 were candidates of the National Movement–Democrats, and three of the Rightist Opposition.

XI. CIVIL SOCIETY AND DOMESTIC OBSERVERS

Following the presidential election, the Fair Elections Foundation (FEF) split from the International Society for Fair Elections and Democracy (ISFED). This fragmented the domestic election observation effort. The split also created confusion among some observers, some of whom were initially uncertain for which organization they had volunteered. EOM observers reported a degree of competition between the two organizations in certain regions. Both organizations have a solid reputation as impartial observers, although a few allegations to the contrary were received.

In a welcome development, the two organizations held a joint press conference to present their findings and conclusions after election day. Overall, the scrutiny of the election process

by domestic observers remained limited during the pre-election period, but also in the post-election day phase.

In total, some 30 domestic observer organizations were registered to observe the election and deployed observers. However, only four mounted large-scale programs: ISFED, FEF, and New Generation New Initiative (NGNI, *Taoba*), while the Georgian Young Lawyers Association (GYLA) concentrated on observing PECs in specific regions.¹³

ISFED conducted a parallel vote tabulation (PVT), enabling the public to compare it with the preliminary results announced by the CEC. FEF lodged a number of complaints with election commissions particularly in Adjara and Kvemo Kartli, which were subsequently used as a basis to nullify the election results in two districts (Khulo and Kobuleti). However, similar numbers of complaints were not lodged in other regions where comparable violations were alleged (e.g. Samtskhe Javakheti and Shida Kartli). GYLA lodged many complaints in Marneuli, Bolnisi and Tsalka and appealed against the CEC's decision to nullify the results in Khulo and Kobuleti.

XII. VOTING, COUNTING AND VOTE TABULATION

A. GENERAL ASSESSMENT

International observers reported from more than 1,300 polling stations in Georgia. The election took place in 75 districts, but due to severe weather conditions voting was postponed in the Kodori Gorge.

Voting was conducted smoothly in a calm and peaceful atmosphere. Disturbances or unrest occurred at 63 polling stations visited (4%), but in general, few serious violations were reported. Violent incidents were observed at just 13 polling stations visited (less than 1%).

PECs generally operated in a collegial manner and had benefited from the additional training provided by the CEC. Observers assessed the voting process as excellent or good in 79% of polling stations visited.¹⁴ But again, as in previous elections, significant voting irregularities took place in Kvemo Kartli.

As with the previous extraordinary presidential election, observers' opinions were less favorable of the counting phase, with 15% assessing the count process as very poor or poor.¹⁵ Observers followed the complete tabulation of results in 46 DEC's, with the process being assessed as excellent or good in 63%.

Observers noted campaign material prominently on display at just over 15% of polling stations visited.

¹³ NGNI had previously observed elections in Georgia, but this was the first time that the organisation deployed a very large number of observers.

¹⁴ Observers assessed the process as adequate in 17% of polling stations, poor in just over 3% and very poor in less than 1%.

¹⁵ In 28% of the polling stations visited, observers assessed the process as excellent, in 39% as good and in 18% as adequate.

B. VOTING PROCEDURES

Most PECs worked diligently and cooperatively to follow the correct voting procedures. Observers reported, however, that in 41% of PECs not all PEC members were present for the opening of the polling station and that almost 30% of polling stations did not open at the appointed time of 08:00 hrs.

Observers noted that many PECs were unaware of the late withdrawal of three parties from the elections. Observers reported that this resulted in confusion and inconsistent application of marking of the withdrawn parties on ballot papers in a substantial number of polling stations.

Election day registration occurred in most polling stations. Registration without the proper residency check was observed in less than 2% of polling stations visited. In 48% of polling stations visited, at least one person was refused the right to vote on the basis of either failing to provide the required identification documents or not meeting the residency requirement.

The application and verification of anti-fraud ink was once again inconsistent in many regions of the country, particularly in Kvemo Kartli, Samtskhe Javakheti, Samegrelo Zemo Svaneti and Guria, Adjara and Imereti. In 9% of cases, observers found that voters were rarely or never checked for traces of ink, and in 6% voters were rarely or never marked with ink prior to voting. This inconsistency reduced the effectiveness of an important anti-fraud measure.

In almost 94% of polling stations observed, voters' identification was usually or always properly checked. However, in a few cases the less rigorous verification of identification and inking increased the likelihood of multiple and proxy voting. Observers noted cases of identical signatures on voters lists, especially in Marneuli and Gardabani.

In just over 11% of polling station visited, observers expressed concerns about ballot secrecy, reporting instances of badly positioned and inadequate booths, group voting and the showing of marked ballots. As stated in previous reports on Georgian elections, the UEC was partly responsible for this failure, as by law voters were obliged to show the reverse of folded ballots to PEC members to verify the presence of PEC signatures (before the ballots are placed in envelopes). This practice, combined with the poor-quality paper used to produce ballot papers, reduced the secrecy of the vote.

Observers reported instances of ballot stuffing in several districts, particularly in Marneuli (PECs 11, 18, 19, 26, 36, 40, 52, 56 and 57), Gardabani and Tkibuli. In addition, widespread proxy voting in Kvemo Kartli raised questions about the integrity of the results and led to the annulment of some PECs.

Observers reported unauthorized persons present in just over 8% of polling stations visited, and in 20% of these cases, such persons were directing or interfering in the voting process.

Compared to the recent extraordinary presidential election, observers reported an increase in the presence (in 93% of polling stations visited) and diligence of domestic observers during both voting and counting.

C. THE VOTE COUNT

Observers attended the count at 129 polling stations, and in 95% of cases they were able to observe all stages of the count process without hindrance. Their assessment was generally positive with few minor incidents.¹⁶ In 67% of counts attended, the observers assessed the conduct of the count as excellent or good.¹⁷ The atmosphere at the count was assessed as excellent or good in 74% of polling stations.¹⁸ The PECs' organization of the count and understanding of procedures was assessed as excellent or good in 60% of cases, a slight improvement on the previous election.¹⁹ However, the fact that in almost 12% of polling station counts, observers reported poor or very poor confidence in the accuracy of the results, raises concern.²⁰

As in the previous election, a relatively high number of PECs failed to correctly follow the complicated counting procedures.²¹ It is disappointing that this failure to follow the procedures are no better, and in some cases worse than in the previous election. Observers reported the presence of unauthorized persons during the counting in 21% of PECs monitored, and in almost 20% of these PECs, such persons were interfering in the process, a cause of serious concern.

In 30% of counts observed, the PEC had difficulty in completing the protocol. Whilst still a high figure, it shows a marked improvement over the previous election, and would seem to indicate that the more user-friendly protocol and the additional training by the CEC had a positive effect. However, once again, observers reported that only one half of PECs displayed the election result publicly.

D. TABULATION AND ANNOUNCEMENT OF RESULTS

On election night, EOM observers followed the tabulation process at 46 DEC, where large numbers of domestic observers were also present. Most DEC were relatively well organized and EOM observers assessed the process in generally positive terms. Some 12% of observers reported that the transparency of the tabulation of the results at the DEC level was poor or very poor, while 10% lacked confidence in the accuracy of the results processing. The following shortcomings were also noted:

- In a few instances, election materials were not transferred directly from PECs to the DEC, but were taken to local authorities or party offices first (e.g. Marneuli, Tsalka, Zestaponi, Zugdidi and Kobuleti);

¹⁶ In only one PEC was a violent incident observed during the count.

¹⁷ 18% of counts were assessed as adequate, 9% as poor and 6% as very poor.

¹⁸ Observers assessed the atmosphere at the count as adequate in 17% and poor or very poor in 9% of polling stations.

¹⁹ Only 54% were rated as excellent or good in the 4 January 2004 extraordinary presidential election.

²⁰ Observers indicated adequate confidence in the accuracy of the results in 14% of cases and excellent or good confidence in 74% of cases.

²¹ 21% did not determine the number of unused ballots and envelopes prior to the opening of the ballot boxes; 17% did not check for the validating stamps and signatures on the envelopes; 56% failed to count and announce the number of envelopes in the ballot box; in almost 20% of cases there was no checking of the ballots for the signatures and the PEC stamp; and in one third of PECs they did not mark as void ballots found outside of envelopes or without signatures/stamp. Furthermore, the determination of ballots' validity was inconsistent in almost 10% of PECs.

- Some DEC members did not offer full co-operation to EOM observers, for example by denying them access to results protocols (e.g. Isani, Gldani, Tsalka, Kazbegi, Tskaltubo, Oni and Batumi);
- Unauthorized persons in some of the DEC premises (e.g. Samgori, Chugureti, Baghdati, Khoni, Tkibuli, Tskaltubo, Zugdidi and Batumi) were observed directing the process;
- Election materials arrived unsealed or inadequately secured in some instances (e.g. Samgori, Chugureti, Gldani, Tianeti, Dmanisi, Tsalka Zugdidi, Kobuleti and Khulo). Observers noted that election material did not arrive in sealed packages in 24% of DEC members where they observed;
- The stamping, completing or changing of PEC protocols at the DEC rather than at the PEC (e.g. Gldani, Tianeti, Bolnisi, Dmanisi, Dusheti, Tkibuli, Oni, Martvili, Senaki, Zugdidi, Kobuleti and Shuakhevi). Observers noted protocols being completed at DEC members in 31% of observations and corrections being made in 40% of observations; and
- DEC members “negotiating” the results, rather than basing these on genuine votes (e.g. Tkibuli).

CEC “Representatives” were usually present in DEC members (83%) and generally played a positive role in proceedings. However, some appeared to be partisan in their approach, e.g. in Gori. The CEC began to announce partial preliminary results late on 29 March and continued to release updated data until 31 March when it announced preliminary final results.

The CEC made PEC protocols available on its website and the EOM analyzed these. The results in a relatively significant number of districts contained at least some anomalous or implausible PEC results. These include:

- A relatively large number of polling stations claimed a rapid increase in voter turnout between 17:00 and 20:00 hrs. The most extreme example is PEC 9 in Abasha which claimed to have processed a voter every eight seconds. Extraordinary increases were also noted at PECs in Nadzaladevi, Sagarejo, Lagodekhi, Marneuli, Gardabani, Mtskheta, Kazbegi, Kaspi, Gori, Kareli, Akhalkalaki, Tskaltubo, Martvili, Zugdidi, and Kobuleti;
- Over 200 polling stations with 95–100% turnout, of which 41 had 100% turnout and 28 had in excess of 100% turnout. This phenomenon was particularly noted at polling stations in the following districts: Marneuli, Tsalka, Gori, Kareli, Adigeni, Akhalkalaki, Ninotsminda, Lentekhi, Tkibuli, Abasha, Senaki, Martvili, Zugdidi, Batumi, Keda, Kobuleti, Khelvachauri and Khulo, with many of these polling stations having sizeable numbers of registered voters;²²
- A number of PECs with very high voter turnout and, at the same time, a large number of votes for the National Movement–Democrats. The party received 95–100% of the vote in 28 polling stations across the country, with the greatest incidence in Marneuli, Tsalka, Gori and Ninotsminda. In Khulo, examples were noted where Revival enjoyed similar shares of the vote;
- Other anomalies include: at least 30 polling stations where over 20% of voters used the mobile ballot box (by law, the share of voters using the mobile ballot box should not exceed 2% of registered voters at a polling station); at least 20 polling stations (excluding Adjara) where more than 15% of voters registered on election day, with most anomalies in Tsalka, Gori and Zugdidi. In Khulo (Adjara) the results indicate extremely high numbers

²² The last five districts are in Adjara, where considerably fewer voters were registered prior to election day. Therefore, as many voters registered on election day, the turnout will appear higher in these districts.

of voters registered to vote on election day compared to pre-registered voters. In at least 15 polling stations, the number of ballots invalidated during the count was greater than 10%, the highest recorded being 52% in Gurjaani, PEC #44.

In most DEC's, election participants were able to express their views on complaints in an open and transparent manner. However, the handling of complaints at some DEC's was inadequate:

- In Nadzaladevi, complaints were dismissed because they did not affect which party won at particular PEC's;
- In Gori, the DEC was closed for most of the day on 29 March, thus preventing the Rightist Opposition bloc from submitting complaints within the legal timeframe;
- In Lagodekhi, the DEC failed to recount ballots or examine voter lists even where allegations of multiple voting were made (e.g. PECs 18, 19, 20 and 21);
- Failure to investigate the substance of complaints before DEC's took a vote on whether to cancel results or not, often with little supporting evidence (e.g. Marneuli);
- Summary dismissal of complaints without reviewing their substance (e.g. Bolnisi, Gori, Tskaltubo and Kobuleti);
- Possible selectivity in deciding that some PEC's with higher results for opposition parties should be cancelled whilst ignoring other questionable results (e.g. Gori, Kareli, Tkibuli and Shuakhevi). This failing calls into question the independence and impartiality of the DEC's in question;
- Scheduling meetings to obstruct observation of DEC sessions dealing with complaints (e.g. Dusheti);
- Denying to EOM observers that complaints had been lodged (e.g. Batumi and Keda).

The results of 52 PEC's were cancelled by DEC's, mostly in Gardabani, Marneuli and Gori. These PEC's did not hold repeat elections.

XIII. POST-ELECTION EVENTS, DISPUTES, COMPLAINTS AND APPEALS

A. CANCELING THE RESULTS IN KHULO AND KOBULETI DISTRICTS AND CALLING REPEAT ELECTIONS

On 2 April, the CEC decided to annul the district-wide election results in Khulo and Kobuleti and repeat polling in these two districts on 18 April. In addition, the CEC dismissed the entire membership of the two DEC's and created two temporary groups composed of CEC members and CEC staff members to organize the repeated elections.

On 12 April, the CEC temporary groups were dispatched to Adjara but they rapidly encountered active resistance. On 13–14 April, the temporary groups were forced to leave the Adjaran territory by crowds of people. On the same day, the CEC Chairman was prevented from entering Adjara at Choloki checkpoint on the administrative border. On 16 April, at a press conference, the CEC Chairman declared that for security reasons elections in Kobuleti and Khulo would not be held on 18 April. Nevertheless, the elections were not officially cancelled.

The CEC based its decision to annul the district-wide election results in Khulo and Kobuleti and repeat polling in these two districts, respectively on Art. 105.13 and 105.12 of the UEC.

Prior to election day, the EOM attempted to clarify with the CEC Chair whether the CEC had the authority to cancel DEC results. During these discussions, he indicated that it was certainly a questionable issue. While UEC Art. 105.13 grants the CEC the right to examine the PEC documentation, re-count ballots and sum up results based on PEC protocols, the UEC does not specifically grant the CEC the authority to annul the results in an entire district.

In fact, the CEC simply cancelled the entire district results without hearing testimony or investigating the circumstances at each PEC or establishing with any certainty if the number of votes at the annulled polling stations was sufficient to meet the criteria outlined in Art. 105.12. Furthermore, the CEC did not examine the electoral material. Elsewhere, where results were annulled this was done by DEC's or local courts.

Notwithstanding the fact that violations took place in Khulo and Kobuleti districts, the decision to annul their results and call a repeat polling appeared inconsistent with the fact that major violations in other districts did not result in the annulling of DEC results there. Moreover, the legal arguments used and legal basis were weak. The EOM believes that Art. 105.12 relates to majoritarian elections rather than the proportional contest. The citing of this article rather than Art. 105.16 (which specifically mentions its applicability to proportional elections) raises the question as to whether Georgia is a single electoral unit for the proportional election or 75 "fragments." This issue is not adequately defined in the UEC.

However, Art. 15 refers to "single-mandate election districts," suggesting that the term election district is used when referring to majoritarian contests. Should Art. 105.16 be applied, then elections should also be repeated elsewhere, as more than 10% of voters within a district were affected by the annulling of results. Thus, it appeared that the CEC adopted different and legally questionable procedures just for these two districts.

GYLA and Revival appealed the CEC decision to invalidate the election results and to set repeat elections in Khulo and Kobuleti. In the course of the hearing it became apparent that CEC Order 82/2004 was based on a questionable decision-making procedure. The CEC could not prove that it made the decision to annul the district results on a PEC-by-PEC basis. The Tbilisi District Court upheld the CEC decision and challenged GYLA's and Revival's authority to bring the case. The Court decided that according to Art. 22 of the Administrative Procedural Code, neither GYLA's nor Revival's appeals were admissible because their legitimate rights or interests were not damaged.²³ Both GYLA and Revival appealed this decision at the Supreme Court, that ruled against GYLA and Revival in a closed session.²⁴

The decision to dismiss the case, based on the plaintiffs not having the legal right to appeal, was highly questionable. The UEC does not clearly state that observers can appeal a CEC decision to invalidate DEC results since there is no provision in the UEC that the CEC can overrule a DEC in such cases. Consequently, the decision of the CEC had to be questioned, not the rights of observers. The dismissal of such an important and well-founded case cast doubts on the Court's independence and neutrality. The Court's ruling could have created a precedent which limits the rights of observers. This case contributed to the impression that the

²³ During the hearing, the Court's panel addressed the plaintiffs several times with regard to their legal right to appeal the CEC order.

²⁴ According to Art. 408.3 of the Civil Procedures Code, the Court's panel can decide to hold a closed session if a public hearing is not considered to be necessary.

law was applied in a non-transparent and inconsistent manner. It is also regrettable that the proceedings were held *in camera*.

B. ANNOUNCEMENT OF FINAL RESULTS

On 18 April, the CEC announced the final results of the 28 March repeat parliamentary elections. Including the majoritarian component of the elections, the final results are as follows:²⁵

Parties and Blocs	% Vote (proportional)	Seats (proportional)	Seats (majoritarian)	Total Seats	Seats %
National Movement – Democrats	66.24%	135	18	153	65.10%
Bloc “Rightist Opposition – Industrialists, Novas”	7.56%	15	8	23	9.78%
Georgian Labourist (Labour) Party	6.01%	0	3	3	1.27%
Political Movement “Freedom”	4.39%	0	0	0	0%
Union of Democratic Revival	3.86%	0	6	6	2.55%
Bloc “National-Democratic Party – Traditionalists”	2.55%	0	0	0	0%
Bloc “Jumber Patiashvili – Political Union Ertoba”	2.47%	0	0	0	0%
For New Georgia	N/A	0	19	19	8.08%
Abkhazia MPs elected 1992	N/A	0	11	11	4.68%
Independents	N/A	0	21	21	8.93%

The total number of registered voters was 2,343,087. Voter turnout was 1,498,012 (63.9%)²⁶, and the number of invalid ballots 33,329 (2.2%). A total of 52 PECs were invalidated by DECAs due to irregularities.²⁷ With the Kobuleti and Khulo DECAs (#81 and 84), the total number of PECs invalidated amounts to 147.

The decision to repeat polling in Khulo and Kobuleti, the anomalous manner of calculating the final results (i.e. being based on “voter turnout” rather than “votes”) as well the practice of not subtracting the “voters” in annulled polling stations from the total turnout while annulling their “votes” could have potentially affected party representation in Parliament. It also cast doubts on the real independence and impartiality of the CEC.

²⁵ Summary Protocol of the Central Election Commission.

²⁶ Excluding Kobuleti and Khulo districts, where the elections were annulled.

²⁷ #4 Krtsanisi (1 polling station); #12 Gurjaani (2); #18 Akhmeta (1); #21 Gardabani (14); #22 Marneuli (13); #23 Bolnisi (3); #28 Dusheti (2); #32 Gori (7); #33 Kareli (4); #37 Akhaltsikhe (1); #52 Bagdati (1); #57 Tkibuli (1); #82 Shuakhevi (1); #83 Khelvachauri (1).

On the day following the announcement of the final results, the CEC Chairman resigned from office, and was shortly afterwards appointed by President Saakashvili as the Mayor of Tbilisi. CEC Secretary Dimitri Kitoshvili was elected Acting Chair.

XIV. RECOMMENDATIONS

The OSCE/ODIHR is offering the following recommendations for consideration. They should be read in conjunction with the recommendations contained in the OSCE/ODIHR Final Reports on the 2 November Parliamentary Elections, Part 1 (published on 28 January) and the 4 January Extraordinary Presidential Elections (published on 28 February).

A. GENERAL

1. Greater and more sustained effort should be undertaken by the authorities, as well as by the governing parties, to guarantee full and uniform implementation of the election law.
2. Assistance to continue strengthening the judiciary and to attain and ensure complete independence of the judiciary should be undertaken.

B. LEGISLATIVE FRAMEWORK

3. Although the Unified Election Code provides an adequate basis for democratic elections, certain amendments to the UEC are required. Consideration should be given to the OSCE/ODIHR and Council of Europe recommendations. In order for Georgia to consolidate democratic development in respect to elections, the new Parliament should finalize the UEC and remove the Transitional Provisions of the Code. Amendments to the UEC should be incorporated well in advance of the next election.
4. In accordance with the Constitution of Georgia, Art. 100 of the UEC should be amended, as a matter of priority, to prevent parties/blocs from recalling MPs, especially after they have been elected and duly installed in office. The withdrawal of mandates of elected MPs by parties that nominated them, runs counter to democratic principles and OSCE Commitments.
5. The UEC should be amended to incorporate an unambiguous method for determining the basis on which the threshold for allocation of mandates is calculated. The amendment should ensure that the votes, not the turnout, are the basis of the threshold calculation and define what constitutes "a vote of a participant".
6. The UEC should oblige DEC's to complete a protocol which includes all individual PEC results within the district (in spreadsheet format) as an integral part of the DEC protocol, thereby enabling parties and observers to audit the results.
7. The legal provision that parties and candidates may withdraw from the election up to two days before election day is problematic. A more realistic deadline should be set, e.g. candidates and parties can formally withdraw only before the ballots have been printed. No amendment to ballots should be made by hand due to the real possibility of human error.

8. The UEC should be amended to ensure full equality between independent and party candidates, especially with regard to candidate registration procedures and appeals procedure where discrepancies currently exist.

C. ELECTION ADMINISTRATION

9. The authorities should make a determined effort to ensure a clear separation in the respective roles and functioning of the election administration on the one hand and party activists, senior local government officials and domestic observers on the other. Currently, this problem represents a significant obstacle to the development of a professional, impartial, and independent election administration.
10. The UEC or the CEC should ensure that no party or bloc has a preponderance of DEC and PEC chair positions.
11. Where the CEC issues an instruction to lower-level commissions of general applicability, the substance of the instruction should be set out in a CEC Decree, so that CEC members have the opportunity to express their views.
12. The CEC should avoid adopting Decrees on polling procedures close to election day as it is unlikely that all PECs will receive the information in time and therefore procedures may be applied inconsistently.
13. Training for lower-level commissions should be intensified and should be available to all DEC and PEC members, not only to the Chair, Deputy Chair and Secretary.
14. The Chairs of PECs should, as a rule, be resident in the PEC territory.
15. It is strongly recommended that where PEC or District results are annulled, the number of voters (participants) as well as the number of votes are subtracted from the final results, unless polling is repeated. If this is not done, annulling polling station results can negatively affect a party close to the representation threshold. It is advisable that the law distinguishes between “invalid votes” and “nullified votes.”
16. The UEC should clarify the issue of whether voting is on the basis of a single national constituency for the proportional contest. In addition, the UEC should clarify the circumstances in which elections or part of an election can or should be repeated in the proportional contest. The UEC should also clarify which provisions apply to the majoritarian contests and which to the proportional election to avoid misapplication.

D. VOTER REGISTRATION

17. Further consolidation and correction of the voter lists should be carried out. Registers should be updated on an ongoing basis in order to maintain and improve their quality and inclusiveness. A program to remove duplicate entries and deceased persons should be put in place.
18. Although not foreseen in the Election Code, election day registration was justified in the circumstances, but should not be repeated in future elections.

19. The use of voter certificates needs to be reviewed to ensure that procedures are put in place to avoid abuse and the possibility of multiple voting.

E. THE CAMPAIGN AND THE MEDIA

20. State media should be obliged to treat all contestants equally, not only in special election programs, but also during all other programs, including its news broadcasts.
21. Authorities and electoral bodies must ensure that administrative resources are not abused and guarantee equal conditions for all election contestants. Campaign activities must be clearly separated from official and State activities.
22. The authorities should move ahead with plans to transform State TV into an independent public service broadcaster which will provide citizens with impartial and politically balanced information on election contestants.
23. The public media should develop a neutral, objective and informative editorial line; its reporting should be balanced, including coverage of government activities during an election period.
24. State media should be required to provide comprehensive information on all aspects of the election process through a variety of programs, outside free-of-charge slots, in order to create a forum of discussion for all contestants.
25. The CEC regulation requiring broadcast media to submit all information on paid advertising during an election campaign should be implemented in an effective manner, in order to guarantee transparency and verify whether the principle of equality is respected by both public and private media.
26. The UEC should define clearly if obligations regarding State media are applicable to local media as well as national ones, and stipulate more clearly which media are considered "State media."
27. The creation of an independent self-regulatory body such as the Media Council should foresee a diverse membership with a professional and non-partisan composition, including media professionals and representatives of civil society with different political views.

F. NATIONAL MINORITIES

28. Adequate training of lower-level election commissions is necessary, as well as the availability of PEC protocols and all other materials in Azeri and Armenian languages, in those areas where minorities reside.
29. Efforts should be made to ensure better representation of national minorities on election commissions, especially in areas where they are in the majority.

G. ELECTION DAY

30. Measures should be taken to enhance the secrecy of the vote. Marked ballots should not be handled by election administrators before being deposited in the ballot box.
31. In order to increase transparency, the UEC should be amended to include a provision that a copy of the summary protocol must be posted at each polling station.

H. THE AUTHORITIES OF THE AUTONOMOUS REPUBLIC OF ADJARA SHOULD GUARANTEE:

32. An environment conducive to meaningful democratic elections. All parties and candidates must be able to freely operate and campaign in Adjara, and rights of association, assembly and expression must be respected.
33. That journalists have full freedom of movement and are not hindered in their work. Adjara TV must become more balanced and responsible in its coverage.
34. That election commissions in Adjara cooperate with the CEC in order to guarantee that elections in Adjara are held under the same conditions as in the rest of Georgia.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, legislative support, and trafficking in human beings. The ODIHR implements a number of targeted assistance programs annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States and to discuss particular thematic areas.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihhr).