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INTERNATIONAL SOCIETY FOR
FAIR ELECTIONS AND DEMOCRACY



**TRANSPARENCY
INTERNATIONAL
GEORGIA**

Amendments to the Election Code of Georgia - Assessment and Recommendations

International Society for Fair Elections and Democracy
Transparency International – Georgia

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I. Main findings

On June 28, 2021 Parliament of Georgia with the third hearing adopted amendments to the Election Code aimed at improving electoral legislation. The working process lasted for a few months and the final version of the amendments also reflected provisions enshrined in April 19, 2021 agreement among different political parties.

According to ISFED and Transparency International Georgia (TIG), the adopted amendments do regulate some important issues better and with more fairness, however, the legislation does not address certain shortcomings that are necessary to improve independence and non-partisanship of the electoral administration as well as electoral system for local self-government elections and other regulations.

In addition, the adopted amendments mostly address legislative framework for the upcoming election and do not ensure stability and sustainability of the electoral legislation. This further underlines the importance of continuing fundamental reform of the Election Code. Among the positive changes, we would like to note the following:

- Rules for establishing election commissions at all three levels are relatively fairer. The number of commissioners appointed by parties increased and each party can only appoint one commissioner. Instead of a simple majority, professional members of the Central Election Commission (CEC) are elected for the full term (5 years) by 2/3 of the members of Parliament.
- Electoral threshold for municipality/city Assemblies (Sakrebulo) decreased and the proportion of Sakrebulo members elected through a proportional system increased. As such, the will of the voter will be more proportionally reflected in the final allocation of mandates; a threshold of 40% of voters was introduced for a majoritarian candidate to win the seat in the first round.
- The changes ban amending the summary protocol of Precinct Election Commission (PEC) in the days after the election day; District Election Commissions (DEC) will not be able to amend the protocols without recounting the ballots; it is mandatory for the commissions to recount 10% of polling stations;
- Restriction on campaigning during working hours was extended and covers all civil servants as well as employees of general public educational institutions and kindergartens;
- A special registry of persons authorized to submit complaint to higher election commissions will be established and it will be possible to submit the complaint electronically; in addition, certain time frames for consideration of complaints and appeals increased as well.

The following amendments are assessed negatively:

- A different rule for appointing professional CEC members (including Chairperson) will be in force until 2021 local elections. Namely, a mechanism against so-called political deadlock during the appointment process is altered: in case it is impossible to elect a professional member with 2/3 majority of the parliament, the member is appointed by a 3/5 majority; in case if the latter threshold is also unattainable, a member of the CEC is appointed by the Parliament through a simple majority. The voting should have taken place at least four weeks apart. However, for 2021 elections, the four-week period is reduced to one week, which has significantly diminished the space for political

compromise and, in fact, gave the parliamentary majority a possibility to easily appoint the candidates of its choice without consent from the opposition;

- In addition, temporarily the following regulation is in place: if more than nine parties cross the threshold for parliamentary elections, those parties who receive more funding from the state will have a preference in appointing election commission members. This is contrary to the general rule that gives preference to parties receiving more votes. This temporary rule gave an opportunity to more than one party within a bloc to appoint commission members while a party, which participated in the elections individually and cleared the threshold was denied the right to appoint members to the election administration.
- A party loses its right to appoint a member to election commissions if all members of parliament fielded by the party left the party as of 19 April 2021 and were united in a different party. In such case, the new party is bestowed with the right to appoint members. This provision is specifically tailored to the case of the Alliance of Patriots of Georgia. As a result, the party lost its right to appoint members to election commission and this right was transferred to European Socialists. The latter was founded by members of parliament elected on the ticket of the Alliance of Patriots.
- On election day PEC members appointed by parties will not be able to act as voter registrars. This puts commission members in unequal position; in addition, this restriction may impede the proper enforcement of electoral procedures.

II. Introduction

Local self-government elections are scheduled to take place in Georgia in October 2021. As a result of April 19, 2020, [agreement](#) among political parties brokered by the European Union (EU), the local self-government elections received additional meaning: results of the local elections would decide whether extraordinary parliamentary elections were held next year. This would happen if the ruling Georgian Dream – Democratic Georgia (Georgian Dream) party received less than 43% of votes nationwide. However, on July 28, the ruling party [withdrew](#) from the agreement and relieved itself from the responsibility to comply with remaining provisions.

October 31, 2020 Parliamentary Elections preceded those processes. The elections were marked with significant challenges and shortcomings with regard to election legislation of Georgia. This resulted in a fundamental disagreement between the ruling party and the opposition on a number of key issues and put the state in the severe crisis. Georgia's international partners took active steps to resolve the current crisis and resume political dialogue. Following their efforts, the ruling party and majority of the opposition parties engaged in the working group on electoral reform under the Parliament of Georgia. The group aimed to elaborate legislative amendments that would encompass recommendations and opinions of international and domestic observer organizations as well as political parties. The working groups commenced its activities in February 2021 with participation of only a handful of parties and observer organizations, as majority of the opposition parties refused to recognize the election results and take their parliamentary mandates. In March 2021, the working group presented the initial draft of legislative changes. Following the April 19 agreement, other opposition parties also engaged in the process – as a result, legislative package incorporated additional amendments. The document was finalized on June 28, when the Parliament of Georgia approved the changes with third hearing.

It should be noted that the process of discussing the draft law on amendments to the Election Code with the second reading by the Legal Issues Committee of the Parliament of Georgia was

held in inappropriate conditions. The committee meeting started at 16:00 o'clock on June 21 and the process continued until 5:00 AM of the next morning. As such, MPs, non-governmental organizations (NGOs) and other stakeholders were not able to participate meaningfully in the discussions. Particularly noteworthy is the fact that during the second reading, at the sitting of the Committee, the initiator and rapporteur of the bill raised several issues that had not been previously discussed within the Working Group on Electoral Reform and, consequently, were not part of the initial version of the bill. It is also noteworthy that the version of the bill presented by the rapporteur at the session was not available to NGOs.

A space for discussion opened by the electoral reform allowed International Society for Fair Elections and Democracy (ISFED) and Transparency International – Georgia (TIG) to fully monitor the process of electoral reform. During the first and the second hearings of the bill, the organizations presented interim [assessment](#) and [recommendations](#) for further improvement of the election legislation related to electoral system for local elections, composition of electoral administration, election complaints and other issues. The organizations also informed the public about issues not envisaged by the current amendments but which we believe are critical to improve the electoral environment in the country and increase the credibility of the election results. It should be noted that the Venice Commission Democracy through Law (Venice Commission) and the OSCE Office for Human Rights and Democratic Institutions (OSCE / ODIHR) issued [two joint opinions](#) on the bill.

The document presents final joint assessment by ISFED and TIG of the main changes made by the Parliament of Georgia to the Election Code. In addition, the document discusses recommendations that should be taken into account after the 2021 local self-government elections.

III. Composition of Election Administration

Elections in Georgia are administered by a three-tier election administration that includes 1) Central Election Commission (CEC); 2) District Election Commissions (DEC); and 3) Precinct Election Commissions (PEC). Prior to the amendments the election commissions at all levels were composed in the same manner and proportion – out of 12 members, six were appointed by political parties and six were selected on a professional basis. As a result of the amendments to the Election Code, the composition of the commissions at all three levels has increased to 17, of which nine members will be appointed by the parties and eight members will be selected on a professional basis.

It is too early to assess positive impact of those amendments on effective work of the election administration and the degree of public confidence, however, in general, those amendments should be considered positive. The main reason for this is that the influence of political parties on election commissions has relatively weakened and one party is likely to have less leverage to pursue its own political interests. In addition, the process of selecting professional members of election commissions has somewhat improved, thus increasing a possibility of appointing truly impartial individuals. Implementation of the new rules in practice remains the main challenge of the reform.

It should also be noted that the transitional provisions in the law have somewhat weakened the positive effects of these changes.

It should also be noted that the new model of composing the election administration is acceptable given that it has been agreed upon by a large number of political parties, which is

very important for the credibility of the election process. The proposed model more or less reflects the political reality following Georgia's 2020 parliamentary elections. Therefore, the changes should be considered as a tool to eliminate the short-term problem, and the reform of the election administration should continue in the future in order to further improve and professionalize it.

1. Appointments to the CEC

As already mentioned, prior to recent amendments, out of 12 CEC members, six were appointed by political parties and six – including the chair – by Parliament of Georgia on professional basis. Both professional and party appointments were problematic under this rule. Parties received the right to appoint six members in proportion to the votes received in the parliamentary elections thus allowing one party to appoint more than one member. As a result, out of six party appointed CEC members, three were appointed by Georgian Dream. Professional, non-partisan members were nominated by president and appointed by parliament by a simple majority of votes. This low threshold ruled out the need for consensus among parliamentary forces. Therefore, the ruling party fully controlled appointment of nine out of 12 members, including that of the CEC Chair.

The recent legislative amendments transformed CEC composition. Instead of the Chair and 11 members, the CEC will not comprise no more than 17 members, including the Chair. Parties will appoint nine members while eight members, including the Chair, will be nominated by President and appointed by Parliament. Parity is ensured with regard to party nominated members - one party is allowed to nominate only one member. In addition, Parliament will not be able to appoint the CEC Chair and members for five years by a simple majority. Instead, support of 2/3 of the full composition is required. However, as the law allows for the possibility for professional members to be appointed for six months with less threshold, the importance of this reform is somewhat diminished. The rules governing establishment of a competition commission, through which the president selects candidates for CEC membership / chairperson, have also been amended.

1.1. Competition Commission

Per recent amendments, the first step in recruiting professional CEC members is the creation of a competition commission by the President and the announcement of a competition for a vacant position. According to the previous edition of the law, President was not obliged to set up a competition commission to select candidates for CEC Chair - the law required the president to only consult with non-governmental organizations. As for the selection of a CEC member, a competition commission was set up, however the Election Code only defined that that half of the commission members should be staffed by representatives of local non-governmental organizations. No decision-making procedures were put in place. For example, a commission set up to select professional CEC members in 2019 consisted of six members – three NGO representatives and three employees of President's Administration. The commission set up in this way had an obvious problem of representation and credibility. In addition to staffing the commission with employees from the Presidential Administration, there were serious questions about non-governmental organizations represented in the commission¹.

The Venice Commission recommended greater representation of the members of the Competition Commission, determination of the number of members, imposition of additional

¹ For details on this issue, see the shortcomings identified in the competition for professional members of the CEC, ISFED, 2020, <https://bit.ly/3Bw17hb>

requirements on non-governmental organizations involved in the work of the Commission, and regulation of the decision-making process.²

The new amendments regulate the rules for the formation of the commission in more detail, in particular, according to the new version of the law, the competition commission must consist of at least nine and not more than 11 members. The competition commission may include only representatives of those non-governmental organizations registered in Georgia who have at least seven years of experience working on election issues, democracy or human rights and information about their activities - both financial and substantive - is publicly available. The commission may also include representatives of higher education institutions holding elective academic positions.

According to the previous edition of the law, the president had complete freedom in this regard and, as mentioned above, in 2019 staffed the commission with her own administration staff.

In addition, the law now defines several procedural issues related to decision-making by the competition commission, namely:

- Results of voting for each candidate are public;
- Members of the competition commission are obliged to justify their decision in writing;
- Decisions are made by the majority of the full composition.

The new rules for the composition of the competition commission are a step forward compared to the opaque procedures provided for in the old version, although it still does not guarantee the impartiality of the competition commission and the selection of the best candidates. For example, in accordance with the new rules, the President established the competition commission comprised of 11 members in July 2021. Five members were invited from five reputable NGOs with relevant experience while six members were selected from universities. It is unclear for the society what were the criteria the President used to select university representative. Out of six members, three represented the same university, while other NGOs and universities were represented by one member each. Several big public and private universities were not represented at all. At the same time, some professors were from fields distant not only from elections, but political sciences in general. Therefore, even under the amendments, the President still enjoys the opportunity to staff the commission in such a way as to ensure the support of the majority of the commission and the desired outcome.

1.2. Appointment of CEC Chair and professional members

Similar procedures govern the appointment of CEC Chair and members. According to the previous edition of the law, qualifying requirements for the Chair and members were identical. Under the new changes a candidate for the position of the Chair is no longer required to hold a certificate of election administrator.

According to the previous edition of the law, the CEC itself selected the Chair from candidates nominated by President with 2/3 majority of the full composition. In case the CEC failed to

² EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), Urgent Joint Opinion on revised draft amendments to the Election Code, CDL-PI(2021)011, 18.06.2021, §23, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)011-e)

appoint the chair within five days, the Parliament of Georgia appointed the Chair with majority of votes of full composition. The Parliament applied the same rules when appointing other professional members of the CEC. As already mentioned, the ruling party has never had a necessity to secure the support of 2/3 of the CEC or parliament.

The current edition of the law creates an opportunity for more than one party to engage in the process of selection of CEC Chair and members and allows for the agreements to be reached via consensus. Parliament elects the CEC chairperson and professionally appointed members by 2/3 of the full composition (100 votes). Given the current political configuration, this threshold precludes appointment of professional CEC members and Chair by one party only, as has been the case so far, and requires parliamentary parties to agree on candidates.

The purpose of the law is to elect CEC chair / member by a high quorum, however, cases, when such a high quorum is unattainable, are covered as well. In such case, the law envisages a mechanism against so-called political deadlock: if none of the candidates has the support of the 2/3 of the members of Parliament, the same candidates must be re-voted no earlier than four weeks after the initial vote. For the repeat vote the 2/3 threshold is required again. In case if the candidates fail to receive sufficient votes again, another voting take place no earlier than four weeks and this time the support of 3/5 of the parliament (90 votes) will be enough. If this attempt fails as well, the Parliament will be able to appoint a CEC member with the support of a majority (76 votes) no earlier than 4 weeks later.

An important circumstance is that the candidate elected by only 2/3 (100 votes) will be appointed for a full term - five years, in other cases the term of office is six months.

1.2.1. Transitional rule of appointing CEC Chair and professional members

The new edition of the law establishes a temporary rule for electing / appointing a person to a vacant position in the CEC before the 2021 municipal elections.³ These regulations are in place only until 2021 local self-government elections; however, they may still damage the election environment and substantially contradict the spirit of the political agreement.⁴ The issue concerns the procedure and terms of election of CEC members on a professional basis by the Parliament, in particular the so-called mechanism against the political deadlock. As already described above, in case of inability to elect a professional member of the CEC by 2/3, he / she shall be approved by 3/5 of the Parliament, and if this quorum is not met, the CEC member shall be appointed by a majority of votes. The period between each voting should be at least four weeks. However, for one time only, for the upcoming local elections, the mandatory minimum time between each voting has been reduced from four weeks to one week.⁵ This significantly reduced the space for compromise between the parties and, in fact, allowed the parliamentary majority to easily choose a candidate acceptable to it without the consent of the opposition.

The Venice Commission negatively evaluated this transitional provision when commenting on the draft law. In its June 18 opinion, the Commission noted: “the significant reduction of the period between different rounds of voting, from four weeks to one, in the transitional provision, should be reconsidered as it may be detrimental to reaching consensus between the ruling and

³ Transitional provisions are given both in the Article 196¹ of the Election Code and in the Article 228² of the Rules of Procedure of the Parliament

⁴ A way ahead for Georgia (so-called Charles Michel’s document)

https://eeas.europa.eu/sites/default/files/210418_mediation_way_ahead_for_publication_0.pdf

⁵ Paragraph 2 of the Article 228² of the Rules of Procedure of the Parliament.

opposition parties.” At the same time, the Commission said that “such a transitional rule might put at risk the success of the reform aimed at guaranteeing a balanced composition of the election administration”.⁶

This expectation was reinforced in practice as none of the candidates appointed to three vacant positions in the CEC managed to secure votes of parliamentary opposition and on August 2 they were appointed for a six months term by majority of votes.

1.3. Party appointed CEC members

According to the old version of the law, parties appointed six out of 12 CEC members.⁷ The right to appoint CEC members was proportional and depended on the number of votes parties received in the parliamentary elections.⁸ Consequently, one party could nominate more than one member to the CEC, but no more than three. As a result of this rule, the ruling party appointed three out of six party-nominated members at all levels of election administration.

As a result of the amendments, the number of party-appointed CEC members increased to no more than nine. Proportional appointment was replaced with parity - one party can only nominate one member. A party that cleared electoral threshold in parliamentary election can appoint a member. If more than nine parties clear the threshold, parties with more votes receive the right to appoint the members.⁹ If current rule applies to the CEC composition in the future as well, number of party-nominated members may be less than nine based on results of the next parliamentary elections – this will upset the balance between party-nominated and professional members that is currently envisaged by the legislative amendment.

Based on the actual activities and needs of the commission, 17 members may be too many. However, in general the changes are evaluated positively - because the prospects of the election administration coming under the one-party influence are relatively reduced and the possibility of multi-party involvement in the functioning of the administration increases. However, this step forward is obscured by the rules adopted under the Transitional Provisions that regulate some of the above-mentioned topics differently and leave the possibility for unreasonable influence of one party on the election commissions, at least in the short run. In addition, we believe that in the long run it is advisable to move to a fully professional model. However, given the current reality, it is still premature, due to the lack of confidence in the selection process of professional members.

⁶ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), Urgent Joint Opinion on revised draft amendments to the Election Code, CDL-PI(2021)011, 18.06.2021, §21, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)011-e)

⁷ This proportion applied to CEC as well as DECs and PECs.

⁸ The rule for calculating the number of members in the commission was as follows: the number of votes received by the party list was multiplied by six and divided by the sum of the number of votes received by the parties specified in this article. The whole part of the received number was the number of CEC members that the party had the right to appoint. The party had no right to appoint more than three members to the CEC. See Election Code, June 22, 2021, Article 13, Paragraph 2.

⁹ A transitional provision sets out a different rule from this rule, which we will discuss in the following sections.

1.3.1. Transitional provisions for appointing CEC members by parties

The final version of the law, much like the transitional provisions governing CEC composition, provides temporary rules for the appointment of CEC members by parties that differ from the general rules and apply only once. Two provisions are particularly noteworthy:

1. The first concerns the case where more than nine parties have crossed the parliamentary election threshold; in such case the right to appoint members to election commissions will be granted to parties receiving more state funding, unlike a general rule, whereas such a right is granted to parties receiving more votes.¹⁰ This transitional provision allowed an opportunity to more than one party within a bloc to appoint commission members while a party, which participated in the elections individually and cleared the threshold was denied the right to appoint members in the election administration.

Table #1 shows the amount of annual state funding received by the parties as a result of the 2020 elections. Despite the fact, the Georgian Labor Party came 9th according to the election results, the party European Democrats has more state funding as it was in the bloc with the United National Movement. Consequently, European Democrats and not the Labor Party received the right to appoint a member to the CEC.

Table N1. Annual state funding obtained by the parties as a result of the 2020 elections		
N	Party	Amount of Funding (GEL)
1	Georgian Dream – Democratic Georgia	5,140,020
2	United National Movement	2,199,635
3	European Georgia – Movement for Liberty	1,124,409
4	Alliance of Patriots of Georgia	1,043,120
5	Giorgi Vashadze – Strategy Aghmashenebeli	939,925
6	Lelo for Georgia	803,560
7	Aleko Elisashvili – Citizens	777,990
8	New Political Center - Girchi	497,406
9	European Democrats	460,000
10	Labor Party of Georgia	289,710
11	Movement State for People	240,000

¹⁰ Paragraph 2 of the Article of the 196¹ Election Code

12	Republican Party of Georgia	204,000
13	Law and Justice	104,436
14	Progress and Freedom	12,000

We believe that obtaining the right to appoint a member to the CEC should depend on the voter support secured by a party. As it is impossible to measure a contribution of support votes by a party in an electoral bloc, thus the electoral bloc – like other electoral subjects – should have a right to appoint only one member to the CEC.

2. The second issue concerns the rule according to which a party loses its right to appoint a member to the commission if all MPs who were elected on its ticket – as of April 19, 2021 – left the party and united in another party. In such a case, the right to appoint a commission member is granted to the new party. The provision directly responds to the case of the Patriots’ Alliance of Georgia – the party lost its right to nominate commission member and the right was transferred to a new party – European Socialists. The latter was established by members of parliament elected on the ticket of the Patriots’ Alliance.

The Venice Commission, at an early stage of the bill, negatively assessed both regulations and stated that they should be revised.¹¹

2. Composition of District and Precinct Election Commissions

According to the previous edition of the Election Code, DEC – like CEC – were composed of 12 members, whereas the CEC appointed six professional members and six were nominated by political parties. The CEC appointed the members by a majority of vote, whereas political parties appointed members by the rule similar to their nomination of CEC members - proportionally to election results. In practice that meant that six out three party-nominated members were appointed by the ruling party.

As a result of the amendments, the composition of DEC is now similar to that of the CEC and includes 17 members. The CEC appoints eight members and nine members are appointed by the political parties that have the right to appoint members to the CEC. The CEC appoints eight professional members with 2/3 of votes (instead of simple majority).¹² However, if the CEC fails to elect DEC members with 2/3 of the vote, a repeat vote is held and the members are appointed by the majority of the full composition of CEC. Wording the norm in this way means that the rule for electing non-partisan members of DEC remains essentially the same and, in many cases, they will still be elected by a majority of the CEC. However, unlike the old version of the law, in this case, there is still a possibility to weaken one-party dominance in DEC based on two factors:

- Alongside with DEC members appointed on professional basis, additional nine members are nominated by political parties (including eight opposition parties);

¹¹ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), Urgent Joint Opinion on revised draft amendments to the Election Code, CDL-PI(2021)011, 18.06.2021, §26, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)011-e)

¹² The CEC appoints five DEC members for five years, and the other three members for a term of the election period.

- As a result of the reform of the CEC composition rule, there is a possibility that none of the parties in the commission will have a majority, therefore, even if composition of DEC is decided by a majority of the CEC (instead of 2/3), it may be not a one-party decision.

It is clear that weakening of one-party dominance in election administrations depends on many probabilities, and the changes do not guarantee its realization; however, the amendments undoubtedly increase the multiparty component in the commissions, which should be assessed positively.

Despite several positive changes, in this case too, no steps have been taken to increase the effectiveness of the recruitment process of DEC members. For number of years, in the competition for DEC members, a significant proportion of members appointed by the CEC on professional basis had prior party experience. Of the 182 members who won the seats in DEC through competition in 2016, 67 had served as party appointed election commissioners before. This once again underlines the need to revise the rules of composition of all levels of election commissions and the need to introduce additional criteria by law.¹³ To address this issue, one of the requirements when appointing professional members to a district election commission should be that the candidate should not have been appointed by a party to an election commission of any level during the last general election. Such a regulation reduces partisanship of professionally elected members or their affiliation with a particular political party.¹⁴

PECs are established in a similar way to the composition of DEC, with the difference that DEC play the role of the CEC. As for the timeframes for setting up PECs, this remains a problem as it is impossible to conduct a full-scale competition to select professional members, including the interview stage, and identify the best candidates in such a short period of time, while adhering to the principles of transparency and publicity. The current rules governing set up of PECs do not allow for much choice in terms of prolonging the selection process and require systemic and fundamental changes.

As for the views of the Venice Commission on this issue, it also acknowledges that the transition to a fully professional model of election administration would be detrimental without a fundamental reform. At the same time, the Commission is critical of increasing the number of district and precinct commission members to 17, as this may complicate decision-making.¹⁵

IV. Rules of formation of the City Council

As part of the electoral reform, the rules for electing a local self-government representative body - Sakrebulo - changed to some extent as well. However, the electoral system remained the same. It is true that the implemented changes improve the electoral system of the self-governing bodies and contribute to a fairer transformation of the votes received in the elections into Sakrebulo mandates, but the steps taken are insufficient to completely eliminate the shortcomings of the electoral system. The changes also affected the numbers of Sakrebulo deputies to be elected, although the criteria on the basis of which the number of members in each Sakrebulo was determined were vague. Preparation and discussion stages of the legislative

¹³ See: <https://isfed.ge/eng/politikis-dokumentebi/saarchevno-administratsiis-dakomplektebis-reforma>

¹⁴ Ibid

¹⁵ VENICE COMMISSION and ODIHR, Joint Urgent Opinion on revised draft amendments to the Election Code, CDL-PI(2021)015, 30.04.2021, §41, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)005-e)

package did not take into account the optimal model of the municipal election system and the best international practice.

1. Election system

Local and international organizations criticized the mixed electoral system for local self-government elections for years. Violation of the principles of equality and proportionality of the vote remained a problem. In particular, in some cases there was a huge difference between the sizes of the majoritarian constituencies; in many municipalities, the number of members elected by the majoritarian system was unreasonably high. Consequently, the system disproportionately converted votes into mandates.

According to the updated version of the Election Code of Georgia, local self-government elections should be held again on the basis of a parallel mixed electoral system – part of the seats in Sakrebulo will be allocated based on the results of proportional elections and part – on the basis of a majoritarian system. However, the ratio of proportional and majoritarian seats and the type of majoritarian component have changed. Instead of a half-half model in Tbilisi Sakrebulo (25 proportional, 25 majoritarian), 80% of the members will be elected through proportional system. The same share of Sakrebulo members in other self-governing cities should be elected under proportional system, where previously the share of proportional seats was equal to 60%. The share of proportional seats in Sakrebulo of self-governing communities has increased to 2/3 of the total membership. Prior to that, the average was 49%.

The amendments also reduced the electoral threshold for Sakrebulo elections. The minimum threshold for Tbilisi Sakrebulo elections was set at 2.5%, and in the case of all other municipalities – at 3%. Prior to this amendment, election subjects in all municipal councils were required to gain at least 4% of the votes to win seats through party lists. Lowering the threshold will allow more political parties to enter the local representative body. However, due to the small number of seats to be distributed in some constituencies, a political party with a minimum threshold of votes will win only one seat in the Sakrebulo.

The increased share of proportional representation in local self-government bodies and the reduced electoral threshold, as a whole, will significantly reduce the level of disproportion between the seats allocated in municipal councils and the votes received by election subjects, and will ensure a more equitable balance of power.

It should also be noted that the amendments to the Election Code still leave a possibility for the largely winning party to receive seats as a bonus and do not adequately respond to the challenge of balancing the principles of proportionality and personal connection of voters with candidates. Under these conditions, the increased share of members elected by party lists increases the role of political parties at the local level, leaving relatively few possibilities for independents or groups of non-partisan activists to win a seat in the representative body.

Local majoritarian constituencies are also significantly increasing in size, reducing the possibility of a direct contact between candidates and voters. This is especially problematic in the case of those local majoritarian constituencies, which unite villages populated by different ethnic groups.

Amendments to the majoritarian component of the Sakrebulo elections were added to the draft amendments to the Election Code before the second reading. Under the new rule, instead of winning a relative majority of votes to win in a local single-member constituency, candidates

are required to gain more than 40% support. In the event that neither candidate receives the required number of votes to win, a second round is held between the two candidates with the best results. If more than two candidates get the same best result or the next few candidates after the one with the best result get an equal number of votes, all of these candidates will run in the second round of the election. The candidate receiving the most votes in the second round wins. If the candidates received an equal number of votes, the candidate who received more votes in the first round will be considered elected. If these votes are equal, the winner will be the candidate who has registered earlier. This change will help increase competition in local majoritarian constituencies.

For the 2021 local government elections, unlike all previous constituency elections, political parties will no longer be able to form electoral blocs. This change restricts the freedom of political parties to determine their own electoral participation strategy, which may be related to the need for greater coordination at the local level.

2. Size of Sakrebulo

According to the new version of the Election Code of Georgia, the composition of the Tbilisi Sakrebulo remained the same - 50 members, while the number of members of the representative bodies of other self-governing cities increased from 25 to 35. In the case of self-governing communities, the number varies and ranges from 18 to 45 members.

Prior to the change, the size of the representative body in the municipalities depended on the number of administrative units. Given that there is no clearly defined common standard governing assignment of number of administrative units in self-governing communities, their number, size and number of united settlements is not uniform. It is unclear what criteria were used in the new version of the Election Code to determine the number of Sakrebulo members in different municipalities. Authors of the bill did not comment on this. In general, different criteria can be used to determine the size of representative bodies. For example, there is Taagepera cube root rule¹⁶, based on which we can say that in some cases, by changing the size of the Sakrebulo and taking into account the number of voters, the representation approached the optimal rate (For example, the number of members of the Tsalka Sakrebulo decreased by 15, which provides a very optimal representation due to the demographic characteristics of the municipality). However, in some cases, when representation was insufficient, the number of Sakrebulo members did not increase. As a result, the size of Sakrebulos of the self-governing communities, in some cases, is not based on equitable representation of municipal voters and settlements. For example, while Ozurgeti Municipality is significantly behind Marneuli Municipality in terms of area, number of voters and settlements, it has 12 more Sakrebulo members than Marneuli.

3. Gender quotas

An amendment to the Election Code of 2 July 2020 stipulated that for the general municipal elections to be held before 2028, one in every two candidates on the list submitted by political parties should be of the opposite sex. Under the 2021 amendment, political parties are required to include one member of different sex in each of the three candidates on the list submitted for Sakrebulo elections. It should be noted that this change in the bill appeared suddenly during the second reading, while the issue was not raised at all during the first reading. The change

¹⁶ Cube root from the number of voters registered in the municipality. For more on Taagepera's cube root rule see: Taagepera, Rein. "The size of national assemblies". *Social Science Research*, 1 (4), (1972): 385-401

was not based on a sufficiently inclusive discussion. According to the authors of the bill, the new norm guarantees almost the same representation of women in the city councils as with the 2020 amendment. This is explained by the fact that the change in the electoral system, in particular, the increase in the share of proportionally elected members in the Sakrebulo, should compensate for the reduction of the quota.

V. Summary protocols of the results of the elections, verification of the results

Legislative changes also addressed the issue of amending election summary protocols, which was problematic in the last parliamentary elections. In particular, it is prohibited to correct the PEC summary protocol after the election day. Also, DEC will not have a right to amend the data in summary protocols without re-counting the ballots. In addition, DEC is obliged to recount 10% of polling stations across the country. These changes as a whole should have a positive impact on confidence in the election results

More specifically, a legislative amendment was made to the Article 75 of the Election Code of Georgia, which sets out the rules for voting and summarizing election results by DEC. Results summary protocol drawn by PEC could be amended through DEC ordinance that is based on the decision of the DEC to open sealed packages received from the PEC, and recount of the number of voters' signatures and ballots.

As already noted, the introduction of such a norm in the Election Code was triggered by the number of amendment protocols drawn up by DEC after the closure of PECs and the sealing of documents during the 2020 parliamentary elections. In most cases the amendment protocols were issued without recounting ballots, based on explanations (often only oral explanations) of PEC members. This significantly damaged the confidence in the process of summarizing the results in DEC.

The amendments made to the Article 21 of the Election Code should be positively assessed. According to the change, DEC is obliged to open the relevant election documents and recount the voting results in case PEC submits a summary protocol (without an amendment protocol), where the number of votes cast for an election subject, the total number of voters participating in the elections and / or the number of invalid ballots has been corrected.

The law is still silent on unbalanced protocols, which is one of the main problems in the current practice, and the 2020 parliamentary elections were no exception. Therefore, given the low level of public confidence in the electoral process, we consider it important for this issue to be regulated by the Election Code.

According to the implemented changes, DEC is obliged to recount the results of five randomly selected polling stations from the polling stations in the territory of its constituency no later than the 6th day after the election day. Counting the results of a randomly selected PEC is an additional mechanism to verify the accuracy of precinct data and, if proper rules are followed, will help increase confidence in the results. Nevertheless, as there are different numbers of precincts in different constituencies, it was important to develop criteria based on which PECs with more or less equal number of voters would be recounted and the principle of random selection of precincts could be further clarified.

According to the Article 75 of the Election Code, all DEC members present at the commission's meeting, have to sign the voting/election results summary protocol. In case a DEC member does not agree with the results of the summary protocol, he/she may note in the

protocol what he/she does not agree with and attach a dissenting opinion in writing. Even in the case of dissent, a member of the DEC is obliged to sign the summary protocol.

In a similar way, Article 71 of the same code also obliges all PEC members to sign the summary result protocol to confirm their presence in the polling station. If a PEC member does not agree with the results entered in the summary protocol, he/she may also submit a dissenting opinion in writing. In this case too, the PEC member is still obliged to sign the results summary protocol.

Notwithstanding this provision of the Election Code, the amendments introduced to the law the concept of “legal force” of the summary protocol of the voting results and established that the results summary protocols drawn by DEC and PECs are in force, if majority of members of the relevant commission signed them.

The summary protocol is the main legal act determining the election results and its legitimacy; and drafting and amendment of summary protocols is strictly regulated by the current legislation. The signatures of the members of the commission are essential, as this confirms that the particular member was present at the voting and tabulation process and that the data entered in the protocol correspond exactly to what he / she saw, or - if it does not - he / she may attach a dissenting opinion to the protocol. The amendments worsen the standard and should be considered a step backwards. It is unclear what the purpose of such a provision is, which, on the one hand, allows for the possibility for any member of the district / precinct election commission not to sign the summary protocol, and on the other hand, obliges them to sign the same protocol in any case.

VI. Restriction of the use of administrative resources for elections

Several positive changes restricting the use of administrative resources for elections have been added. The circle of persons who are restricted from campaigning during working hours expanded, the list of persons working in the field of education who are restricted from campaigning has been clarified, the ban on campaign gatherings on official grounds has been added to the law.

According to the amendments to the Election Code, ban on pre-election campaigning now covers public servants. The new edition of the norm expands the circle of people who are employed in the civil service and are banned from participation in campaigning during working hours and/or when they are directly performing their work duties. According to the previous provision, the restriction only applied to civil servants – those who are indefinitely appointed to a public service position within the civil service by the state, an autonomous republic, a municipality, a legal entity of public law. Accordingly, this regulation did not apply to civil servants who worked under an employment or administrative contract. The concept of a civil servant is much broader and also includes officials employed under administrative and employment contracts, including a representative of the mayor and other persons employed in an administrative unit within the municipality.

The amendments also clarified that the ban on participation in pre-election campaigning during working hours also applies to: directors, educators, caregivers, teachers and other persons employed in pre-school and educational institutions and general education institutions,

The new amendments also prohibit the gathering of civil servants, employees of LEPLs, directors, educators, caregivers, teachers, and other employees of state-established preschools and educational institutions and general education institutions.

In their monitoring reports, observer organizations repeatedly reported on gatherings of public school and kindergarten teachers to attend pre-election meetings, which may have contained signs of misuse of administrative resources and pressure. These changes should have a positive impact on reducing the use of administrative resources, as non-political officials are now prohibited from engaging in pre-election campaigning during working hours and / or when performing official duties.¹⁷

The new version of the law still ignores the need for effective regulation of campaigning on social networks by public servants during working hours.

VII. Restrictions imposed around polling stations on election day

Amendments were introduced to Paragraph 12 of the Article 45 of the Election Code, which prohibits the placement of campaign material within 25 meters from the entrance to the polling station. Such materials are subject to removal / dismantling / seizure. The current law also prohibits to physically obstruct the movement of voters in the polling station or within 100 meters of the polling station. On election day it is also forbidden to gather people or register voters within 100 meters from the polling station.

The amendments do not specify what kind of gathering of people at a distance of 100 meters is prohibited. The provision leaves space for different interpretations by the parties and adaptation of the provision to specific political interest.

VIII. Rules and timeframes for appeal

According to the new edition of the law, a special database of persons authorized to submit complains to higher election commissions will be established and it will be possible to submit complaints electronically; certain timeframes for discussion of complains and appeals increased as well. Overall, these changes are welcome.

The 2020 parliamentary elections revealed many problems with regard to legislative framework governing election disputes. The days following the elections showed that election administration applied different practices when determining who has the power to appeal to election commissions; DEC's set different requirements for accepting complaints¹⁸; DEC's refused to consider complaints without substantiating their decisions and in violation of the requirements of the General Administrative Code, thus avoiding discussing significant violations and fulfilling the obligation to make a legal assessment.¹⁹

Taking into account the extremely tight deadlines for submission of election disputes, the form of the complaint was not adjusted for the specifics of this type of lawsuit and tight deadlines and there was no possibility to submit the complaint electronically. This created a serious

¹⁷ For more details see Assessment of the 2021 Electoral Reform, International Society for Fair Elections and Democracy, Transparency International – Georgia, 2021, <https://www.transparency.ge/en/post/assessment-2021-electoral-reform>

¹⁸ District Election Commissions dismiss complaints without consideration on merits, Transparency International – Georgia, 4.11.2020, <https://bit.ly/3e83M7x>

¹⁹ This practice is criticized in OSCE/ODIHR Final Report on 2020 Parliamentary Elections , ODIHR Limited Election Observation Mission Final Report, Chapter XI, <https://www.osce.org/files/f/documents/1/4/480500.pdf>

obstacle for election subjects and observer organizations. It should be noted that the strictly prescribed hours mostly hindered the appellants, while those hours were often violated by the court itself and the decision was not delivered to the party in a timely manner.

As a result of the amendments, the CEC is obliged to create an electronic registry of persons authorized to represent stakeholders in election disputes. The aim of the registry is to establish a database of representatives of organizations with the power to appeal to election commissions -thus the registry should relieve the observer or party representatives from the burden of proving that they really represent their own organizations. If implemented in full, the problem of dismissing the complaint without consideration for this reason will be eliminated, which should be considered as a step forward.²⁰

With regard to the electronic registry of persons authorized to submit election disputes, the Venice Commission emphasizes that the absence of a person in the registry should not automatically restrict his / her right to appeal.²¹

The possibility of submitting a complaint electronically to the DEC and the CEC should be positively assessed. However, the law does not provide for the possibility of filing a complaint until 24:00 of the day.²² According to the amendments to the Election Code, the procedure for submitting an electronic complaint is determined by an ordinance of the CEC, therefore, it is necessary for the CEC to extend the hours for receiving an electronic complaint until the midnight.²³

The increase in hours when an appeal may be submitted is especially important in the light of the fact that the deadline for appealing the decision of the PEC to DEC has not increased.

The new version of the law also increases certain timeframes for submission of appeals and their consideration, namely:

- DEC will have four days to review complaints instead of two, due to the fact that often reviewing a complaint also involves recounting ballot papers;
- The Court of Appeals will have two days instead of one to hear complaints;
- It will be possible to appeal the decision of the district election commissions to the CEC within two calendar days after the receipt of the decision instead of one day;
- The CEC will have two days instead of one to review the above-mentioned complaint;
- The CEC decision can be appealed in court within two calendar days instead of one.

²⁰ According to the law, the CEC should determine the rules for maintaining the electronic registry through an ordinance

²¹ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), Urgent Joint Opinion on revised draft amendments to the Election Code, CDL-PI(2021)011, 18.06.2021, §38, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)011-e)

²² The Venice Commission also recommends extending the appeal deadline to the end of the day VENICE COMMISSION and ODIHR, Joint Urgent Opinion on revised draft amendments to the Election Code, CDL-PI(2021)015, 30.04.2021, §65, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)005-e)

²³ According to the current rules, the deadline for filing a complaint is 18:00 of the working day. This is determined by the CEC resolution on the Instructions of submitting and considering application/complaints to election administration. <https://www.matsne.gov.ge/ka/document/view/1602635?publication=12>

IX. Conclusion and main recommendations

ISFED and TIG agree that the legislative changes do address some important issues more fairly and better, however, they largely serve to establish a legal framework for the forthcoming elections and fail to ensure the existence of stable, long-term, optimal electoral legislation. Therefore, further reform of the Election Code should continue. In addition, it is very important that the relevant authorities and individuals enforce the legislation effectively and in good faith, so that many good regulations do not remain unimplemented.

Main recommendations

1. Election Administration

In the long run, a large-scale reform of the electoral administration system is needed, which will be based on the principle of full professional composition. However, given the current reality, switching to such a model is premature, due to the lack of confidence in the selection process of professional members. Prior to the reform, it is possible to improve the current model in the following ways:

- To ensure the impartiality and objectivity of the competition commission set up to select members of the CEC on a professional basis, it is important to regulate the composition and performance of the commission in detail;
- When selecting members of the District Election Commission on a professional basis, it is important to establish additional criteria, which will eliminate the possibility to select professional DEC members from candidates who were members / representatives appointed by political parties or were affiliated with a political party during last general election;
- As the short deadlines set for the composition of precinct election commissions make it impossible to conduct a full-fledged competition and the existing system does not allow for a large choice in terms of extending the current deadlines, this issue also requires systemic and fundamental changes;
- Members of the Precinct Election Commission appointed by political parties should not be restricted from performing the function of voter registrar at the polling station.

2. Electoral System

- Size of local self-government Sakrebulo should be revised. It is necessary to establish clear criteria on the basis of which the number of Sakrebulo members in each municipality is determined;
- When determining the size and boundaries of local majoritarian constituencies, it is important to reasonably balance the principles of relative equality in the size of constituencies and the consideration of different geographical as well as socio-cultural peculiarities. In addition, it is important to exclude the danger of gerrymandering when determining the boundaries of the districts;
- With the increased share of Sakrebulo members elected through party lists, the role of political parties at the local level increases, leaving individual independent candidates with relatively few opportunities to run for office. As such, it is desirable that the electoral system of proportional representation is used in such a way that, in addition to reducing disproportion, it also takes into account the right of independent candidates to be elected to a representative body. Initiative groups may be allowed to submit electoral list in order to solve this problem.

3. Misuse of administrative resources

- In order to limit the use of human administrative resources for elections and to further improve the standard, in addition to public servants, deputy ministers and state representatives in the regions should be restricted from campaigning during working hours;
- It is necessary to further clarify the definition of campaigning in the Election Code and add the following sentence to the Paragraph Z¹ of the Article 2:
 - Pre-election campaigning also includes any action carried out through social networks, including a personal account / page.