



Evaluation of the 2019-2020 Election Reform

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Introduction

Implementation of election reform was one of the key issues for holding the 2020 parliamentary elections in a fair and equal election environment. In view of problems identified in legislation and practice during different elections over the years, implementation of election reform was the principal requirement of election stakeholders. Even though due to existing problems the need to implement changes in the election legislation was clear, the authorities have not demonstrated the will to pursue a substantial reform.

As the 2020 parliamentary elections approach, the necessity of election reform has reappeared on the agenda. Through efforts of local stakeholders and international partners, on 13 June 2019, first meeting of the task force on election issues (hereinafter, the task force) was held at the Parliament of Georgia, which was clearly a positive occurrence.

The task force was composed of representatives of political parties, international partners and NGOs, including ISFED. The purpose of the task force was to take into account the recommendations prepared by OSCE/ODIHR following the observation of the 2018 presidential election.¹ Members of the task force also had an opportunity to present their own recommendations. International Society for Fair Elections and Democracy and Transparency International - Georgia submitted joint recommendations about legislative changes.²

The task force meetings were held on the following dates:

- 8-10 July 2019;
- 5-6 August 2019;
- 25-26 October 2019;
- 30 March 2020;
- 2 April 2020;
- 14 April 2020;
- 28 April 2020.

Notably on November 14, after the Parliament of Georgia voted down the initiative to transition to a fully proportional system as promised by Bidzina Ivanishvili and the Georgian Dream, which made the political environment in the country extremely tense, the task force stopped operating for an indefinite period.³ It resumed operation following the March 8 agreement reached between the government and the opposition.

¹ Georgia, Presidential Election, 28 October and 28 November 2018: Final Report, ODIHR Election Observation Mission Final Report, 29 February 2019, Warsaw, https://www.osce.org/files/f/documents/9/4/412724_2.pdf
See Annex 1 on implementation of recommendations;

² Recommendations for improving the election environment, 2019, <http://www.isfed.ge/eng/rekomendatsiebi/Recommendations-for-Improving-Electoral-Environment-ISFED-TI>
See Annex 2 on implementation of recommendations.

³ Evaluation of pre-election environment for the 2020 parliamentary elections, International Society for Fair Elections and Democracy, p.3, 1 July 2020, <http://www.isfed.ge/eng/angarishebi/2020-tslis-saparlamento-archevnebis-tsinasaarchevno-garemos-shefaseba>

Draft laws on amendments to the organic law of Georgia “the Election Code”, to organic law of Georgia “on Political Associations of Citizens” and to “the Criminal Code of Georgia” were registered in the Parliament of Georgia on June 24. The amendments were discussed within 1 week under a fast-track procedure and were adopted with the third reading by the Parliament of Georgia on July 2.

As to the working process within the task force, discussions took place in a constructive environment. Members of the task force were able to present their recommendations and express their position about issues of discussion. However, ambiguity of the decision-making procedure was a problem in the working process. Even after lengthy discussions and majority of the task force members agreeing on certain issues, corresponding changes were not reflected in draft laws that were presented. These issues included, for instance, election administration composition procedure, electoral dispute resolution, campaigning through social networks, etc. Following a meeting it was unclear as to what the ruling party would include in the draft law that it would prepare. In that respect, the working process lacked foreseeability.

The present document summarizes recommendations presented by ISFED and Transparency International - Georgia on the most important issues of the election reform and amendments introduced in the legislation.

Composition of the Election Administration

Existing practice and procedure of election administration composition has long been criticized. According to ISFED, in the long-term perspective, election administration should be composed of only so-called professional members, in order to prevent political parties from appointing their members. Such approach will help dispel any suspicions about political bias of election administration.

In addition, in the short-term perspective, for the 2020 parliamentary elections, ISFED and Transparency International - Georgia have advocated for making the following changes:

- appointment of political party members in the election administration should be based on the parity principle (one political party-one member);
- number of the commission members should be reduced;
- additional criteria should be introduced for selection of commission members;
- Term of office of PEC members should be revised, in order to improve the process of competition for the selection of PEC members; and more

One of the most important issues in this area is appointment of election administration members by political parties based on the principle of parity, as requested also by political

parties represented in the task force.⁴ Even though the initiative was supported by majority of participants, the ruling party did not consider this request. Initial draft of amendments offered to increase the number of election commission members by one, with the caveat that one party may not appoint more than 3 members. The proposal didn't meet the challenges that exist with respect to composition of election administration and it was criticized. Despite lengthy discussions, the ruling party didn't demonstrate the political will to change the procedure of election administration composition in the short-term or long-term perspective. Therefore, in the final version of the draft amendments, current procedure of election administration composition remains unchanged.

Based on the experience from previous elections, the process of selection of PEC members is one of the most serious problems. There are certain irregularities in the process and its objectivity is questioned. This is the challenge that becomes relevant during every election and it warrants improvement of legislative regulations. However, also with respect to this issue, the ruling party didn't agree to make any substantial changes that are required for objective competitions.

Even though no substantial reform has been implemented in the area of election administration composition, several positive changes have been reflected in the Election Code:

- introducing conflict of interest provision concerning selection of election commission members;
- introducing an additional criterion for selection of commission members, according to which an individual may not be appointed as a commission member if s/he has been appointed by a political party as an election commission member (at any level) in the last general elections;
- In the process of selection of a PEC member, a decision is made by majority of the entire PEC membership, provided it is supported by at least 3 DEC members selected by the CEC for the term of 5 years.

These changes should help address certain problems associated with selection of election commission members.

Use of Administrative Resources

Use of administrative resources is one of the most challenging issues in the election campaign period. Such facts occur at every election but on a different scale, depending on how competitive the elections are. A common practice of using administrative resources is, for instance, involving employees of budget organizations in a pre-election campaign. Usually

⁴ Based on changes implemented in 2020, the number of members to be appointed by a political party depends on the number of votes received by the party in parliamentary elections. According to this rule, the Georgian Dream is entitled to appoint 3 members in each commission, at every level. According to the previously existing regulation, a party could appoint only one member and only the parties that received funding from the budget had this right.

administrative resources are used in favor of the ruling political force because it is the only political force that has access to such resources. Based on the previous experience, ISFED and Transparency International - Georgia offered the following recommendations:

- Participation of employees of budget organizations in campaigning during working hours and/or when they are directly fulfilling official functions should be prohibited by law.
- Deputy ministers and governors should not have the right to participate in campaigning without any restrictions.

Following lengthy discussions about the issue, in order to address the problems that exist with respect to using administrative resources, the following amendments were introduced in the Election Code:

- employees of legal entities of public law, non-profit (non-commercial) legal persons founded by the State or local self-governments, as well as public school teachers should be prohibited from participating in a pre-election campaign during working hours or when they directly fulfill official functions;
- from the 60th day before and including Election day, central or local self-government authorities are prohibited from airing on broadcasters materials that contain information about their implemented or planned initiatives.

Both changes are important new regulations and will likely have a positive impact on decreasing instances of use of administrative resources. On the one hand, employees of budget organizations will no longer be involved in campaign events during working hours and on the other hand, advertisement of government agency initiatives will not be used to advance party interests, which was often the case during election period.

Campaigning through Social Networks

Recent elections have demonstrated the increasing influence of social networks on election process. Campaigning through social media, especially through Facebook is becoming more and more intensive. In this respect, during previous elections, campaigning by civil servants during work hours using their personal social media accounts was a problem. According to para.4”h” of art.45 of the Election Code, civil servants are prohibited from campaigning during working hours and/or when they are directly fulfilling their official functions. The purpose of this prohibition is to protect neutrality and apolitical nature of civil service. Civil servants should remain politically neutral and refrain from using working hours funded from the budget for political activities. However, the existing legislative regulation has led to a different interpretation - in particular, according to the position of the election administration, the said provision of the Election Code does not apply to campaigning through a personal account. Such interpretation encourages campaigning through social media by civil servants during

working hours. To avoid this, the following recommendation was offered to improve interpretation of campaigning:

- any action implemented through social networks, including through personal accounts/pages also amounts to election campaigning.

Despite active discussions, including about sharing international experience, the ruling political force decided that campaigning through social networks was not an important problem and it didn't need to be clearly regulated by the law. Therefore, it is likely that in the upcoming elections this will contribute to the increase of campaigning by civil servants through social media and encourage activities that not only amount to violation of campaigning rules and cast a shadow on the principle of apolitical nature of civil service but also amount to the use of administrative resources.

Electoral Disputes

In recent elections, election administration's electoral dispute resolution standard has markedly worsened. In the process of consideration of complaints, the election administration and especially DEC's fail to comprehensively examine materials, irrespective of seriousness of the violation concerned. On the most part, decisions are made based on statements of PEC members, even when the case involves rewritten summary protocols, imbalance between the number of voters and the number of votes received by election subjects and other substantial violations. With such approach, DEC's are avoiding review of voting results, which creates suspicions about integrity of election results and reduces trust toward elections and the election administration. The problem can be resolved by implementing changes in the Election Code that will clearly require the election administration to review voting results under certain circumstances. The two NGOs submitted the following recommendations concerning this and other issues related to electoral disputes:

- The commission should be required to open corresponding election documents and review voting results if votes received by election subjects have been rewritten in the summary protocol, if the number of voters or the number of invalidated ballots, or the sum of votes received by election subjects and invalidated ballots is more than the number of votes cast or in other cases, based on a reasoned decision of the election commission;
- It should be possible to appeal in court refusal of authorized agency to draw up a protocol of administrative offences;
- An organization with observer status should be able to be named as a claimant in all disputes;
- For more clarity, definition of disruption and interference with functions and activities of an election commission should be defined; and more.

Despite lengthy discussions and the fact that superficial consideration of electoral disputes by DEC, without reviewing voting results, was identified as problematic by other participants also, which needs to be regulated, the ruling political force did not take into account this and other recommendations on electoral disputes.

In addition, with respect to electoral disputes, the timeframe for authorized agencies and in particular, the CEC and the Communications Commission to react to facts of violation has been reduced, which is a positive change. The timeframe for considering complaints involving use of administrative resources and other types of violations and preparing a protocol of offences has been reduced from 30 to 10 days. In addition, a two-day period has been set for considering certain types of violations. This should facilitate timely response to violations, which is especially important in view of the limited timeframes of election campaign.

Media Regulations

Media plays a crucial role in the process of ensuring fair and free election environment. Media is the primary source of information for voters. In order for voters to make a conscious and informed decision about their political choice, they should have the opportunity to receive comprehensive information about ongoing political processes in the country and activities and platforms of political actors. Therefore, it is important, especially in the election period, to have pluralist, objective and independent media outlets. To eliminate problems related to media coverage of election processes, ISFED and Transparency International - Georgia submitted the following recommendations to the task force:

- It should be clearly determined that electoral subjects are prohibited from giving their free airtime to another electoral subject;
- A broadcaster may not be responsible for verifying credibility and objectivity of results of a public opinion poll.

Draft amendments prepared by the ruling political force, sent to the task force prior to the second meetings, contained a number of problematic provisions, which according to NGOs was directed against freedom of expression and would only have a negative effect on media coverage of elections, as well as on expression of political opinions, worsening the existing high standards.⁵ In particular, the draft envisaged the following new regulations:

- Regulation of hate speech: the existing legislation does not define hate speech. In addition, the Election Code does not contain prohibition of calls for national strife and religious or ethnic confrontation. The proposed formulation was incomplete, which

⁵ Working on changes in the electoral legislation should continue, 20 August 2019, <http://www.isfed.ge/eng/gantskhadebebi/saarchevno-kanonmdblobis-tsvlilebebze-mushaoba-unda-gagrdzeldes>

would have created a broad opportunity for its misinterpretation and for its use against freedom of expression of political actors and election stakeholders.

- Holding media responsible for contents of a political advertisement. If an advertisement was against applicable regulations, the broadcaster should have refused to air it; otherwise, a fine amounting to double the cost of placing the advertisement would have been imposed on the broadcaster. In addition to imposing an unfair burden on the broadcaster by requiring it to verify contents of the advertisement, the regulation also created the risk of a broadcaster becoming a censor.
- Political anti-ad may not have been over 25% of the electoral subject's advertisement video. This directly limited political subjects' freedom of expression. Even though anti-ads are a problem, it should be up to a political subject to decide how to carry out their election campaign. Anti-ads are illustrative of poor political culture, however it shouldn't become the reason to limit expression. In addition, it was unclear how anti-ads would be measured.

In light of this, the proposed draft received considerable criticism and negative feedback. Following intense discussions at several meetings of the task force, all three problematic issues were removed from the draft.

Eventually, the following key amendments were introduced in the Election Code:

- Changing paid advertisement rates is allowed only once, no later than 35th calendar day prior to voting;
- within its commercial airtime, an election subject may not place a video advertisement that advances goals of another electoral subject. An electoral subject's advertisement should not contain elements of positive advertisement in favor of another electoral subject, including its representative, sequence number and symbols;
- For paid political advertisements, a broadcaster may not allocate an airtime to an electoral subject beyond of what the electoral subject has paid for, and for free political advertisements, a broadcaster may not allocate an airtime to an electoral subject beyond what is allowed by the law. Otherwise, it will constitute an illegal donation;
- After the 2020 parliamentary elections, free airtime will be equally distributed among parties and electoral blocs that were able to overcome the constitutional threshold of 1% in the most recent parliamentary elections. If a free airtime is provided to an election bloc, it should be equally distributed between parties within the bloc; Following the 2024 parliamentary elections, free airtime will be equally distributed among parties that obtained at least 3% of votes in the most recent parliamentary elections.
- Prohibition to air a political advertisement on Election Day was specified the following way: within 8 hours prior to the election and until 20:00 of Election Day, placement of

a paid and/or free pre-election political advertisement and election subject platforms, and airing them on TV and radio broadcasters is prohibited;

- Prohibition of making automated calls for election purposes and sending text messages to voters within 8 hours prior to the election and until 20:00 of Election Day.
- For determining a qualified electoral subject, which entails giving a free commercial time to such subject, a broadcaster that commissions a public opinion survey must abide by the requirements of the law;
- Additional technical criteria that a video advertisement should meet were determined.

We welcome the fact that electoral subjects are prohibited from using their airtime in favor of another electoral subject. This issue was problematic during the previous elections, when the so-called “technical candidates” registered as candidates with the sole purpose of using their commercial time in favor of another candidate, while they didn’t have the goal of winning the election. Such practice runs against the principle of equal distribution of airtime among electoral subjects and threatens fair and competitive electoral environment because it gives an unfair advantage to individual candidates. Because regulations that exist in that respect caused difference of opinion, it became necessary to regulate the issue more clearly.

To ensure equal approach toward electoral subjects, it was important to specify that allocation of a paid commercial airtime beyond what the electoral subject paid for or allocation of free commercial airtime beyond what is allowed by the law amounts to an illegal donation.

Phone calls or messages urging voters to support certain electoral subjects in elections were problematic in previous elections. Such practice was criticized as an attempt of pressure. The adopted amendment will help eliminate such practice.

Even though with respect to a public opinion poll it was determined that a broadcaster, who has not commissioned such opinion poll, is required to abide by the requirements prescribed by the law, including to verify credibility of methodology and objectivity of findings, if such survey is used for allocating free airtime to an electoral subject, it is still unclear as to how the broadcaster should verify the findings. Such activities fall outside the scope of a broadcaster’s competencies. Violation of the requirement is subject to a fine of GEL 5,000 for broadcasters and GEL 1,500 for other media outlets. Such provision may force broadcasters to refrain from using a public opinion poll.

It is unclear what the purpose of limiting the possibility of changing paid advertisement rates is. Such regulation may harm broadcasters’ financial interests. In case of changing rates, the most important issue is to guarantee equal treatment of electoral subjects and to not allow discrimination. Therefore, expediency of such limitation is unclear.

Campaigning Outside Polling stations

For years so-called party coordinators have been a serious problem on Election Day. They stay outside a polling station and collect information about voters that arrive. Such activity is perceived as exerting influence on voters' will and it violates the requirement of free electoral environment. The practice has been criticized at every election by NGOs and international observation missions.

The following new regulations have been introduced to address the issue:

- within 25 meters from the entrance of a polling station, it will be prohibited to place a campaign material; such material will be removed/taken down/dismantled;
- At a polling station or within 25 meters from its entrance, physically restricting movement of voters will be prohibited; Chapter X of the Election Code that prescribes liability for violations will not be applicable to such cases.
- Here it was also specified that these prohibitions do not apply to conducting exit polls.

We welcome the proposed regulations because they help improve freedom of environment on Election Day, in order to prevent any inappropriate influences on voters. However, on the other hand there are questions about their effective use. For instance, what does "physically restricting movement of voters" mean and does it entail elimination of the practice associated with activities of so-called coordinators on Election Day. Effectiveness of the norm is questioned due to the fact that it is not subject to measures of responsibility prescribed by the Election Code. Practice will show if these changes are effective.

Vote Buying

Vote buying is one of the most serious violations. It used to be regulated by the following three legislative acts:

- Election Code that becomes effective during an election campaign period;
- The Law of Georgia on Political Association of Citizens, which is not limited in time but it applied to vote buying incidents within the range of 100 laris and prescribed administrative liability;
- The Criminal Code of Georgia, which is also not limited in time but only applied to vote buying incidents over 100 laris.

The new regulations abolished administrative responsibility for vote buying prescribed for incidents within the range of 100 laris, and moved it to the Criminal Code.

In practice, investigation of vote buying incidents and prosecution of perpetrators was always problematic and investigations were mostly unsuccessful. At this stage, it is unknown how moving the liability entirely to the Criminal Code will influence prevention of such facts and/or taking of further actions, especially in consideration of the fact that in order for an

action to be qualified as vote buying, the Criminal Code requires establishing “electoral goal”. This requirement may be narrowly applied, making it impossible to hold perpetrators responsible.

Party Financing

Changing party financing rules have long been discussed. Significant disparity among financing received by different political parties was a major problem. In addition, the 2016 parliamentary elections demonstrated that ambiguity of the norm concerning which party was entitled to an additional funding to create a faction in parliament was another problem. Due to lack of clarity, the CEC wrongly interpreted the norm. As a result, additional funding was allocated to a party that fell short of requirements provided by the law. In view of existing problems related to party financing, it was necessary to implement substantial reforms and change the financing rule entirely. In light of this, the following was recommended:

- Party financing should be determined by applying regressive coefficient(s) only to votes received;
- Additional funding for creating a faction should be removed.

The move to the so-called regressive principle of financing is an important new regulation and it will help decrease the disproportionate distribution of state financing among parties. It will also rule out any misunderstandings and the possibility of different interpretation. Based on the new regulations that have been adopted:

- A party that overcomes 1% threshold in the most recent parliamentary elections will receive funding (the threshold used to be at 3%);
- For the first 50,000 voters a party will receive 15 laris per vote and for every subsequent vote it will receive 5 laris.

One of the most important problems during election campaign period was campaigning against electoral subjects by third persons, which remained beyond regulation. Therefore, prescribing a sanction for third persons violating the rules of campaigning against an electoral subject is a positive fact.

Gender Quotas

Introducing mandatory gender quotas for increasing women’s representation in politics has been discussed for a long time.⁶ A draft law introducing mandatory requirement for parties to ensure 50% gender balance for parliamentary and local elections by drawing up lists where

⁶ „Why are gender quotas needed?” International Society for Fair Elections and Democracy, July 2020, <http://www.isfed.ge/geo/politikis-dokumentebi/ratom-aris-sachiro-genderuli-kvotebi>

every other candidate is of the opposite sex was introduced in parliament but unfortunately, the initiative was voted down.

The amendments to the Election Code provide for temporary gender quotas for parliamentary elections until 2032 and local self-government elections until 2028. Even though the amendments do not require parties to ensure 50% gender balance, it is still an important step forward to ensure women's empowerment in politics and changing of political culture in this regard. In particular, according to the new regulations introduced:

- For the 2020 election of the Parliament of Georgia, every four candidates on the party list should include at least one representative of the opposite sex;
- For the 2024 and subsequent parliamentary elections, until 2028, every four candidates on the party list should include at least one representative of the opposite sex;
- For the 2028 and subsequent parliamentary elections, until 2032, every three candidates on the party list should include at least one representative of the opposite sex;
- For local self-government elections to be held until 2028, at least every other candidate on a party list should be of the opposite sex.

To sum up, certain amendments to the Election Code and the organic law on Political Associations of Citizens are positive changes that will help create an equal and competitive electoral environment. However, whether the new regulations will be used effectively in practice is an important question. At the same time, issues that have been completely left out from the legislation remain a problem. This concerns substantial reform of election administration composition rules, including holding transparent and objective competitions at PEC level, electoral dispute resolution and campaigning by civil servants during working hours through social media. Therefore, it is likely that these problems will reappear at the upcoming elections and it will be necessary to address them once more.