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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS ON UNIFIED ELECTION CODE OF GEORGIA

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Chapter II Registration of voters

1. The basic principle should be to have a single list of voters published well in advance of election day. An initial list should be published giving names of individuals compiled on the basis listed in the law. Then, individuals whose names are not on that list can request inclusion at an appropriate address under terms laid down in line with published regulations. A revised and final list can then be published and issued to the PECs for use on election day. Individuals whose names are not on the revised list for a given PEC should not be allowed to cast a ballot, for this would open the door to many types of abuse and electoral fraud. Judged by these criteria, the arrangements outlined in Chapter II are unsatisfactory, opening the door to all types of abuse and/or fraud. Specifically:

Article 12. Voting license. The deadline for claiming a license should be several weeks before polling day, so that the individual's name can be registered on the revised and final list of voters furnished to the PECs.

Article 11 and Article 52 et sequentiae. The Soviet-era practice of mobile ballot box papers should be strictly limited because it takes up time and personnel of people who are expected to be in polling stations administering a ballot. Moreover, mobile votes remove the casting of the ballot from full public scrutiny. Provision should be made for the issuance of absentee ballots, subject to proper scrutiny and procedures that can be modelled of those on a variety of EU states.

2. If a military compound has a substantial number of electors, then it could be the subject of a separate PEC. Remote areas might even be allowed to vote the day before the official polling day at a PEC established there. Most EU countries make provision for absentee voting, and a review of these provisions can develop criteria appropriate to Georgian circumstances. Initially, a more restrictive approach to issuing absentee ballots should be used, in order to make sure that the procedures are administered in accord with the law. Total votes should be published separately at the precinct level for absentee or mobile votes.

Chapter IV Administration by election commissions

3. The following principles should be stipulated in law to apply at all three levels--the Central Commission, the District Commissions and the Precinct Commissions:

a. The chief officials, that is, the Chair, Deputy Chair and Secretary, should be chosen by a proportional representation system, for example, the single transferable vote. A simple majority vote is open to one-party domination and in the DEC and PECs, even a two-thirds vote is subject to domination in a similar way. This will require amendment of Article 22.2 and other similar clauses, and also of Article 27.6.

b. Major actions of a Commission should require the signature of the Deputy Chair as well as the Chair. As written, the law concentrates too much power in the hands of a single individual.

c. Where it would be inefficient to require two signatures before action is taken, explicit provision should be made for the deputy commissioner to file a written dissent if excluded from prior consultation and endorsement.

- d. All members of the Commission should have the right to be given documents about all actions authorized by the Chair in the name of the Commission, or actions taken by the Chair and countersigned by the Deputy Chair.
- e. Where a decision is taken by the Commission collectively in the presence of Commissioners, then any member should have the right to append a written dissent, as stipulated, for example, in Article 19.2.
4. Article 32.5. The provision for nominating members within one week is too short; one month is much more reasonable.
5. Article 36.2 PEC composition. The reference to 5 parties with the best results at the last parliamentary election is ambiguous. Does it mean the best results nationally? If so, this would exclude regional or local parties and situations in which the small size of the PEC (2000 electors) makes a party important locally that is not important nationally. Alternatively, if it refers to the five best parties in the precinct, it could exclude one or more nationally prominent party. The potential problem thus raised could be dealt with by rephrasing the law to allow for additional members to be nominated in those DEC or PECs where one of the five best parties in terms of votes within that district or precinct was not one of the five best nationally.

Chapter V Registration of election subjects

6. Article 41.5. Nomination papers should require for each individual who is a subject their ID number, date of birth and address, to avoid confusion of names.

Chapter VII Polling

7. In various articles in this chapter, e.g. Article 50.4. reference is made to the withdrawal of candidates. As a general principle, withdrawal of candidates should not be allowed, because it opens the door to manipulation by candidates and parties, and corruption. To avoid manipulative candidate registration followed by attempts to withdraw, or public proclamations by a registered candidate that s/he would like supporters to vote for another candidate or party, the Electoral Commission should have the power to impose a penalty, which could take one of two forms or both:

- a) Impounding any unspent funds in the candidate's election account at the bank AND a fine equal to the amount of money spent from the fund.
- b) Disqualification from standing as a candidate at a subsequent election, or only being allowed to stand if meeting more onerous standards, e.g. double the number of nominating signatures, a cash deposit, etc., etc.
8. Article 58.4 Ballots from mobile polling boxes should DEFINITELY NOT be mixed with ballots cast in person.
9. Article 62.2 The reference to "days" should be amended to refer to "working days".
10. Article 62.3 This sentence is badly translated in English and its meaning is not clear. The clause should be scrutinized by someone familiar with the language or in receipt of a better translation.

Chapter VIII Conduct of elections

11. Article 69.9 Observers should have their passport number or Georgian ID number on their license.

12. Article 72. The restrictions on activities of observers in 70.2 should also apply to media. There should also be rules to prevent a polling station being "packed" by media representatives, especially from a single paper/broadcasting outlet. Therefore, 72.5 should be amended to limit any one media to a maximum of 2 persons present at any one time. Moreover, the PEC should be allowed to establish, prior to the opening of the poll, a maximum number of media (with a minimum of 4 or 5)--and if more seek attendance, then those allowed present to be present should be determined by lot.

13. Article 73.11 The clause about opinion polls is clear, practical and fair and should not be altered.

Chapter X Presidency

14. Article 84.4 Withdrawal of candidate for presidency at any time prior to polling day. Definitely NO. This can only cause manipulation, confusion, speculation and suspicion. The penalty for a candidate endorsing voters casting their vote for another candidate should be disqualification from registration for a period of five years, that is, the next presidential election and all other elections for public office.

Chapter XI Second round presidential vote

15. Article 87. There should be allowance for a candidate who has finished first or second in the initial ballot to waive his/her right to contest the second round in favour of another candidate whose name is on the ballot and has finished third or fourth. This would deal with the contingency of a first or second place candidate having a low ceiling of support, and a third or a fourth place candidate having greater potential to attract a majority coalition in the second round. In no instance, however, should anyone be allowed on the second ballot who was not nominated on the first ballot and polled a reasonable number of votes.

16. Article 89. A minimum of 45 days would be appropriate for holding an extraordinary election. But this leads to a very tight timetable; in Russia, 90 days is allowed. My own recommendation would be 60 days. The law could be rewritten to provide for an election in 60 days.

17. 89.2, the immediate meeting of Parliament, is desirable. But 89.3 could lead to rancorous conflict if there is no agreement about the date of the election. It is better to fix it by statute than make the choice of date a matter of debate--and this is true whether the election is in 45 or 60 days.

Chapter XIII Registration of parliamentary candidates

18. Article 96.5,6. Provision should be made to notify a person whose name has been included on two lists to find out whether either is justified, and therefore can be made valid. In other words, a candidate should not be disqualified by being nominated with his/her permission

on one list and then falsely nominated on another. If two parties use the same name without permission, then s/he should be allowed to withdraw. This concern is partly but not wholly met by Article 98.3.

19. Article 100. Cancellation of nominations for individual Members of Parliament. Here again, the clause should be withdrawn as it opens the door to many types of abuse.

20. Article 105. The 7 percent threshold is too high, especially in the inchoate state of Georgian politics; see how disproportional the 1995 Duma election was with a threshold of 5 percent. And if the 1999 Russian Duma election had had a 7 percent threshold it would again have been very disproportional. A maximum of 5 percent is the most that can be justified. Moreover, there is a lot to be said for increasing the threshold by steps, e.g. 4 percent at the next election and 5 percent at the election after that. In the early days of democratic elections in the Federal Republic of Germany, the threshold was below 5 percent.

21. Article 106.1 A second round election in single member districts with majority (that is >50%) guaranteed for the winner is acceptable. But there are both theoretical and practical reasons to allow more flexibility in deciding which two candidates go into the second round, as has been the case in France. Specifically, the 1st and 2nd candidates in a district should be allowed to stand themselves or either could, if s/he desired, stand aside and nominate another candidate who was on the ballot and received a reasonable share of the vote. Whether this clause is often invoked depends on the situation.

22. Question What provision is made for deciding the boundaries for single-member districts? And to what extent can the number of electors or population of districts vary from the average, whatever that may be? It is normal to stipulate these provisions in the Election Code, including the establishment of an independent Boundary Commissioners, with provision for public hearings, and/or the CEC undertaking this task subject to special provisions for scrutiny and appeal.

Chapter XV Local government

23. Article 109. Multi-mandate districts elected by plurality votes (majority is an incorrect translation) can cause electoral confusion and encourage many abuses, as Japanese politics has shown. They can also produce very disproportional results. On the other hand, in local government party lists may not be appropriate. Therefore, I would recommend the Irish STV (Single Transferable Vote) form of proportional representation, in which voters state their preferences for individuals in rank order 1,2,3... This allows individuals to stand as independents. It also introduces a significant degree of proportionality.

24. (And Article 115) In smaller towns and villages a single multi-member constituency with up to 7 members would be appropriate. In large towns and cities where the council has, say, 10 or 12 members, then consideration should be given to having two districts to avoid voters having to rank up to a dozen candidates.

25. Article 121. Withdrawal of candidacy. This seems even more difficult to justify in a local election context. Withdraw.

Chapter XVII Transitional provisions

26. Article 127. The desire to maintain representation for Abkhazia is understandable, but it should be subject to a time limit. Representatives elected a decade ago have an uncertain mandate to represent the current population and their opinions-and this will be increasingly true as time passes. In a worst case analysis, the representatives could be there for life-and have a negative influence on claims to legitimacy and democracy of Parliament, as happened in Taiwan in the days of the KMT, when the Parliament was inherited from Peking. Allowing historic representatives to remain in Parliament for one more term would be reasonable. If necessary, a compromise of two terms could be accepted-as long as their terms were not allowed to be indefinite.