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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**COMMENTS  
ON THE UNIFIED ELECTION CODE  
OF GEORGIA  
AS AMENDED ON 14 AUGUST 2003**

**by**

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## **I. Introduction**

- 1) The purpose of the present comments is to express an opinion on the current electoral law of Georgia. In the face of the controversial parliamentary elections of 2<sup>nd</sup> November 2003 this is no easy task. One has to distinguish clearly between the electoral law on the one hand, and its implementation (or non-implementation) on the other. As such, the fact that the elections were characterized by serious irregularities does not automatically imply that the electoral law itself does not comply with international, democratic standards. The opinions expressed in this document are restricted to the electoral law itself, even though some practical experiences with the Election Code in the 2003 elections have been taken into account.
- 2) The Unified Election Code constitutes the legal framework of presidential, parliamentary and local elections in Georgia. The Election Code was adopted on 2<sup>nd</sup> August 2001, and has been amended several times since then.
- 3) The Unified Election Code, as adopted on 2<sup>nd</sup> August 2001, was considered by the Venice Commission to be an important step forward in securing democratic elections in Georgia. Notwithstanding the overall positive picture, however, some provisions were considered to be problematic in the Venice Commission's opinion (CDL-AD (2002) 9).
- 4) The amendments up until April 2002 neither improved nor worsened fundamentally the democratic character of the Unified Election Code. Though the amendments were regarded as being positive, most of them were rather of secondary importance (CDL-EL (2003) 5). The amendments did not refer to any of the points that were explicitly criticized by the Venice Commission's opinion (CDL-AD (2002) 9).
- 5) After an intense political debate, the Unified Election Code was substantially amended in August 2003 (CDL (2003) 99). The present comments evaluate these amendments against the background of both the former Election Code, as amended in April 2002, and the criticisms expressed by the Venice Commission (CDL-AD (2002) 9) and by the author's previous comments (CDL-EL (2003) 5).
- 6) The present document can only partly take into account the practical experiences with the Election Code in the context of the controversial parliamentary elections of 2<sup>nd</sup> November 2003. At the time of writing these comments, detailed information on the elections was scarce and was provided mainly by the media. Beside the "Statement of Preliminary Finding and Conclusions" of the International Election Observation Mission (2003), no comprehensive electoral observer report has as yet been made available.
- 7) The comments are based on:
  - a) The Unified Election Code of Georgia, as amended on 14 August 2003 (unofficial translation prepared by IFES and the OSCE, September 2003).
  - b) Unified Election Code of Georgia, as amended 25 April 2002 (unofficial translation prepared by IFES, 25 April 2002).
  - c) Council of Europe, European Commission for Democracy Through Law (Venice Commission): The Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report. Adopted by the Venice Commission at its 51<sup>st</sup> and 52<sup>nd</sup> sessions (Venice, 5-6 July and 18-19 October 2002). CDL-AD (2002) 23 rev.
  - d) Council of Europe, European Commission for Democracy Through Law (Venice Commission): Opinion on the Unified Election Code of Georgia, on the basis of comments by Mr Hjörtur Torfason (Member, Iceland), Mr Florian Grotz (Expert, Germany), Mr Richard Rose (Expert, United Kingdom), Strasbourg, 24 May 2002. CDL-AD (2002) 9.

- e) Council of Europe, European Commission for Democracy Through Law (Venice Commission): Comments on the Election Code and the Electoral Administration, by Mr Michael Krennerich (Expert, Germany), Strasbourg, 2 June 2003. CDL-EL (2003) 5.
- f) The Statement of the Council of Europe Parliamentary Assembly's pre-election delegation to Georgia, Tbilisi, 10 October 2003.
- g) International Election Observation Mission: Statement of Preliminary Findings and Conclusions, Tbilisi, 3 November 2003.
- h) Further documents and election observer reports indicated in the Appendix.

## **II. General Remarks**

- 8) On 2<sup>nd</sup> November 2003 parliamentary elections were held in Georgia for the fourth time since the country's independence. According to the International Election Observation Mission of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), and the European Parliament (EP), the parliamentary elections fell short of international standards for democratic elections. A major political crisis has followed these elections.
- 9) The Elections were conducted under the Unified Election Code which was substantially amended in August 2003. The amendments of the Election Code came lately, with election preparations already underway. The late adoption of the amendments constituted a severe handicap for properly implementing the electoral law.
- 10) The Unified Election Code, as amended in August 2003, provides, in principle, an adequate legal framework for free and fair elections. It is important to note that most problems with elections in Georgia are not caused by the electoral law, but its insufficient implementation. Irregularities in the 2003 parliamentary elections seem to reflect a lack of political will and administrative capacity for the conducting of free and fair elections.
- 11) As such, the democratic character of future elections in Georgia depends largely upon the responsibility of the political players and the improvement of the electoral administration, rather than upon further amendments to the electoral law, which is almost over-regulated by international comparison.
- 12) Nevertheless, in respect of some provisions of the Unified Election Code there is still room for improvement or, at least, debate.

## **III. The Election Code, as amended in August 2003**

- 13) By international comparison, the Unified Election Code of Georgia, as amended in August 2003, is a comprehensive law and contains many very detailed provisions. The extensive nature of the regulations seems to reflect the poor implementation of the electoral law in the past, as well as the high level of distrust of the politicians. By regulating electoral procedures in great detail the intention appears to be to ensure the unified implementation of the electoral law and at the same time prevent electoral fraud. Significantly, recent amendments have considerably expanded existing articles or have added new articles to the Election Code.
- 14) Substantive amendments refer to:
  - a) The General Provisions (Chapter I).

- b) The Registration of Voters (Chapter II).
- c) Election Districts and Precincts (Chapter III).
- d) The Election Administration (Chapter IV).
- e) The Registration of Election Subjects (Chapter V), especially for parliamentary elections (Chapter XIII).
- f) Election Funding (Chapter VI).
- g) The Polling (Chapter VII).
- h) Transparency of Preparation and Conduct of Elections (Chapter VIII).
- i) Adjudication of Disputes (Chapter IX).
- j) Transitional Provisions (Chapter XVIII).

These chapters were modified and expanded substantially. Among the amendments (and non-amendments) to the Election Code, the following issues should be stressed since they constitute important changes or issues that are worth discussing:

- 15) General provisions: Among the amendments to Chapter I of the Election Code, there are new provisions on the Publicity of Elections (Art. 8<sup>1</sup>) and on Electoral Right Guarantees (Art. 8<sup>2</sup>), which can be regarded as positive steps towards recognizing that the electoral process is to be open and public.
- 16) Electoral Commissions: The Election Code, in principle, provides for the “typical” three-tier commission structure: the Central Election Commission (CEC), the District Election Commissions (DECs) and the Precinct Election Commissions (PECs). However, this structure has been supplemented by special Central Election Commissions of the Abkhazian and Adjarian autonomous republics (Art. 17.4). Such a provision is rather uncommon by international comparison. It is understandable only against the specific political background of the elections in Georgia.
- 17) Composition of the Electoral Commissions: Prior to the adoption of the August 2003 amendments, there was a bitter political conflict surrounding the CEC composition. Political consent on the newly constituted CEC was only reached after a protracted dialogue. The late decision for reconstituting the CEC delayed the adoption of amendments to the Election Code and the election preparations in general (see International Election Observation Mission 2003).
- 18) Without a doubt, the CEC composition is one of the most delicate issues in the preparation of elections in Georgia. The politicisation and undue performance of the CEC has caused severe problems in the past. With regard to the legal provisions on the composition of the CEC in the Election Code, as amended in August 2003, one has to distinguish between provisions of Chapter VI (Election Administration) and of Chapter XVIII (Transitional Provisions). The latter was applied only in the 2003 parliamentary elections.
- 19) According to Art. 128 of the *Transitional Provisions*, the CEC is composed of 15 members. The Chairperson of the CEC is appointed by the President of Georgia as nominated by the OSCE. A further five members are appointed by the President of Georgia. Nine members are appointed by registered parties (three members by the party/election bloc with the second best result in the parliamentary elections, two members by the party/election bloc with the third best result, and one member by each of four parties/ election blocs with the best results in the local elections of 2002 in Tbilisi). The provisional composition of the DECs and PECs reflects to a certain degree the composition of the higher level commission (see Art. 128<sup>1</sup>

and Art. 128<sup>2</sup>). While no individual party was able to control the commissions' work in the 2003 elections, the composition of the election commissions was criticized for giving an advantage to representatives of the pro-presidential bloc and for excluding some competing parties. This was especially true with regard to the DEC and the PEC which were biased in favour of the government. However, the appointment of an independent CEC chairperson (Nana Devdariani) by the President from a nomination list, prepared by the OSCE and the Council of Europe, was welcomed by international observers (see International Election Observer Mission 2003). Nevertheless, in the course of the post-election conflict, the dismissal of the CEC chairperson was demanded by the opposition.

- 20) While the Transitional Provisions were valid for the 2003 parliamentary elections, Chapter VI of the Election Code prescribes the “*ordinary*” composition of the electoral commissions for further elections. Accordingly, the CEC shall be composed of at least 14 members: of two members appointed by the President of Georgia, of one member each appointed by the Supreme Council of the Abkhazian Autonomous Republic and the Republican Council of the Parliament of the Adjarian Autonomous Republic and of two members each appointed by any party/election bloc that has obtained at least 7% of the votes in the last parliamentary elections. (If the number of such parties/election blocs is less than five, the required minimum will be lowered) (see Art. 27). The DEC is composed of one member who is appointed by the CEC and those members who are appointed each by a political party/election bloc with at least 7% of the votes in the last parliamentary elections (If the number of such parties/elections blocs is less than seven, the required minimum is lowered) (see Art. 32). Similar, though not identical rules apply to the PECs (see Art. 36).
- 21) Originally, the Election Code of 2001 followed a “non-partisan approach” in order to secure de-politicisation of the CEC. However, these provisions have not been applied in practice (not even in the 2002 local elections). The Election Code, as amended in August 2003, follows a “political approach” and gives the President of Georgia, the autonomous republics and the political parties the right to appoint CEC members. Of course, a “political model” can be consistent with international standards if there is a balance between the political forces and if the CEC members act professionally, and not primarily as party representatives. No matter what model is chosen, the decisive point is whether the electoral commissions work independently and is regarded as legitimate by both the political contestants and the electorate. In the light of the recent political crisis in the aftermath of the 2003 parliamentary elections, however, the electoral administration's reputation seems to be rather poor. Not surprisingly, the opposition sought the dismissal of the CEC chairperson. The mistrust in the electoral commission is an unfavourable legacy for further elections. Nevertheless, it seems to be difficult to reach political consensus on another reform of the commissions' composition.
- 22) Independence of the electoral administration: Art. 18.3 stipulates that members of the election administration (that is, members of the election commission and staff), are not allowed to be party members for the term of their office in the election administration. Apparently, the provision aims to reduce the parties' influence on the election administration. Furthermore, Art. 21 sets out the conditions under which the term of office of commission members can be terminated prior to its expiration. From reading this article, it appears that only PEC members can be recalled by the appointing party (Art. 21.2 h). However, it must be admitted that, in practice, the members of the election commission have not acted politically independently up to now. Observers of the 2003 parliamentary elections expressed serious concerns over the political interference in the election commissions' work, in particular at the district and precinct level.

- 23) Prohibition of judges becoming members of the election commissions. Although not uncommon in the region, the Electoral Code contains a prohibition for judges and assistants to judges becoming members of the CEC or the DEC's (Art. 18.6 h). It might be sensible to reconsider such a provision. In some new democracies, the incorporation of judges into the electoral commissions contributes towards strengthening professionalism and impartiality. It should be remembered that the "Code of Good Practice in Electoral Matters" of the Venice Commission also recommends that the central electoral commission should include at least one member of the judiciary (CDL-AD (2002) 23 rev.)
- 24) Election funding: Chapter VI on election funding provides the CEC with an annual budget for the election administration. This seems to be appropriate since a permanent CEC needs to have a regular, permanent budget. Furthermore, if the budgetary funds allocated for the preparation and conduct of elections are not transferred to the account of the CEC in a timely manner, the CEC has the right to file a claim before the Supreme Court (Art. 43). In practice, however, the limited and late availability of funding for the CEC and as a result for the DEC's and PEC's was criticised by observers of the 2003 parliamentary elections. The lack of resources increased the DEC's' and PEC's' dependency on regional and local authorities.
- 25) Election Districts: Several amendments have been made to specify the procedure for establishing electoral districts (by the CEC) and election precincts (by the DEC's) (see Chapter III). However, the Election Code still does not contain any provision on a maximum deviation from the average ratio of registered voters (or inhabitants or adult citizens) per single-member district. Such a legal provision, however, is very common by international standards and was recommended by international experts. The principle of equal suffrage can be severely violated if the sizes of single-member constituencies (in terms of the number of registered voters) varies substantially. It would be important to define the maximum deviation permitted by law and to set out the necessary procedure to fulfil the requirement.
- 26) Voter lists: The amendments to the Election Code provide for the creation of a centralized, regularly updated national voter register. The Central Election Commission (CEC) shall be responsible for the formation of the general list of voters, for the computer processing and updating of the electronic database of the general voters list and for its being published on the Internet (see Art. 9 and Art. 29). This is a highly welcomed development which corresponds to international recommendations. However, the quality of the voters' lists has so far been poor. The inaccuracy of the voter lists remains a key problem of elections in Georgia. While the electoral law provides an adequate legal basis, in practice, the registration process is completely insufficient due to a lack of commitment, capacity and coordination by the institutions involved in the compilation of the voter lists. The improved legal conditions regarding the inspection of the voters' list have not been used sufficiently so as to correct the voter register. Due to inconsistencies, the voter registration process was altered completely by a CEC decision from 26 October 2003 (that is, shortly before the 2003 elections), ceasing improvements to the central voter register and allowing election commissions to use handwritten or computerized voter lists. This decentralization of voter lists resulted in confusion and a lack of uniformity. As in previous elections, the *de facto* disenfranchisement of some voters and the double registration of others violated the fundamental principles of universal and equal suffrage (see International Election Observer Mission 2003). Nevertheless, the Electoral Code may constitute the legal basis for an accurate, centralized voter register, if applied with enough time, effort, and capacity.
- 27) Candidate registration: The amendments to the Election Code have specified and improved registration procedures for election subjects, in particular with regard to parliamentary elections (see Chapter XIII). This includes also the possibility to correct registration

documents which fail to meet the requirements established in the law (see Art. 98). Significantly, the candidate registration process represented an important improvement in the 2003 parliamentary elections, compared to the 1999 contests, according to electoral observers. In general, the registration process was regarded as being free and fair. This was especially true with regard to the registration for the proportional contest by the CEC. Candidate registration for the majoritarian seats at the DEC level, however, was not always handled consistently in the 2003 parliamentary elections.

- 28) Required number of signatures for nomination: The Election Code, before and after the 2003 amendments, stipulates that the nomination of presidential candidates must be confirmed by the signatures of no less than 50,000 voters (Art. 81.2). The same requirement has to be fulfilled for those parties/election blocs participating in the parliamentary elections that do not have representation in Parliament (Art. 95.9). The nomination of parliamentary candidates in single-member-constituencies by a voters' initiative group has to be supported by at least 1,000 voters registered in the respective electoral district (Art. 97.6 a). Though the political parties in general had no problems in fulfilling the nomination requirements, it should be noted that the minimum number of 50.000 signatures is relatively high. Thus, it might be appropriate to reduce the number of required signatures.
- 29) Verification of the signatures: The Election Codes prescribes the following procedure for verifying the signatures necessary for the nomination of election subjects, which has not been changed by the 2003 amendments. "The election commission shall, at random and in an inconsistent manner, check the authenticity of 20% of the number of listed supporters. If not more than 10% thereof is deemed null and void, the election commission shall make an additional check of the same number of supporters applying the same procedure. If not less than 10% thereof is deemed null and void, the entire list shall be invalidated and the application for registration of the election subject shall be dismissed by the relevant ordinance of the election commission Chairperson" (Art. 42.2). This verification procedure would seem to be inappropriate. In principle, all signatures should be checked – at least until the required minimum number is reached. Corresponding to this, the "Code of Good Practice in Electoral Matters" of the Venice Commission stipulates that the checking process must in principle cover all signatures. Only if it is doubtless that the required number of valid signatures has been reached do the remaining signatures need not be checked.
- 30) Withdrawal of candidates: Before the latest amendments were adopted presidential candidates were allowed to withdraw their candidatures at any time before elections. This position was regarded as "definitely not acceptable" by the Venice Commission, since this could cause manipulation, confusion, speculation and suspicion (CDL-AD (2002) 9, item 68). In the meantime, the article has been amended slightly. According to the Election Code, as amended in August 2003, a candidate for the Presidency of Georgia can withdraw his/her candidature up until 12:00 of the day before the election (Art. 84.4). However, this still seems to be very late. In the case of parliamentary candidates, the nomination can be cancelled not later than two days before election day (Art. 100). The inconsistency of the deadlines, although rather small, has no justification. In any case, it might be appropriate to set up an earlier deadline and to define criteria for the withdrawing of candidates.
- 31) Election campaign (agitation): In general, the Election Code, as amended in August 2003, has made improvements with regard to provisions that aim to guarantee equal campaign conditions for election contestants. In particular, the rules for public and private TV companies and radio broadcasters, which until then had been few and far between, are now more specific. Furthermore, similar rules for newspapers have been introduced into the Election Code (Art. 73.11-18). As for the principle of equal access for parties and candidates

to public and private media, these procedures can be considered as an improvement. In practice, the media offered the electorate a diverse range of political opinions and provided a forum, also for the opposition, during the campaign for the 2003 parliamentary elections. Essentially, the electoral campaign was pluralistic by nature (International Election Observation Mission 2003). However, the misuse of state resources and public employees for campaigning is still a problem, although it is forbidden by law (see e.g. Art. 73.5, Art. 75.4, Art. 76)

- 32) Deadline for electoral agitation: The Election Code stipulates that election agitation begins at the time of the announcement of the elections (Art. 73.1, Art. 73.7), but does not provide for any general deadline for electoral agitation. Originally, Art. 73.3 only forbids election agitation on polling day. Now the same article only prohibits agitation via the press and other mass media on polling day. In many Western democracies, however, a general deadline for electoral campaigning (24 hours, 48 hours etc. before election day) is established by law. This might be appropriate in the Georgian case, too.
- 33) Opinion polls: The publication of election-related public opinion polls (other than those on the potential electoral participation) is prohibited from 48 hours prior to the poll and until 24:00 on election day (Art. 73.12). Originally, the Unified Election Code did not provide for any deadline for the publishing of election-related opinion poll results. Such time restrictions, however, are stipulated by law in many Western democracies. Furthermore it has now to be indicated whether the poll is paid for or not. These amendments are helpful.
- 34) Betting: According to the newly introduced Art. 73.11, any betting related to the elections is prohibited. It is uncommon to incorporate such a provision into the electoral law. However, election-related betting seems to be regarded as a problem within Georgia.
- 35) Improvements for persons with limited physical abilities. Several new provisions aim to improve the electoral conditions for persons with limited physical abilities and disabled persons. Art. 11 of the Election Code provides that voters with limited physical ability or medical conditions might be included in the Mobile Ballot Box List. As for the location of the polling places, Art. 50.2 contains special provisions if there are disabled voters using wheelchairs in the election precinct. With regard to the preparation of ballot papers for the election precincts, Art. 51.2 stipulates that the CEC shall ensure the use of such technology that will enable such voters with eyesight problems to fill in the ballot papers independently. As for the publication of information by the election commission via public TV broadcasting, the public TV broadcasting shall take account of the problems of those persons with limited ability in respect of their diminished hearing through the use of gesture-translation and/or using the appropriate special technology (Art. 66.5). It can be regarded as positive that the electoral law draws attention to the specific needs of persons with physical problems.
- 36) Safeguards against electoral fraud. In order to prevent electoral fraud, several provisions have introduced or specified safeguards which refer to the preparation, distribution and control of ballot papers and special envelopes (Art. 51, Art. 54) as well as to the use of PEC, DEC and CEC summary protocols of voting and election results (Art. 51<sup>1</sup>, Art. 60, Art. 63, Art. 64) and of Election Day Record Books in each election precinct (Art. 51<sup>2</sup>). Moreover, the law contains very detailed provisions with regard to the conducting of the poll (Art. 54), the voting by means of mobile ballot boxes (Art. 56), procedures to be carried out before opening the ballot boxes (Art. 57), the opening of ballot boxes (Art. 58), the vote count (Art. 59), and the determination and consolidation of election results (Art. 60 - Art. 64). In principle, these detailed provisions should be sufficient to enable the correct conducting of the polls, if applied properly. Nevertheless, there were still observations and allegations of



ballot-stuffing, use of pre-marked ballots, multiple voting, and destruction of ballot boxes in a number of polling stations in the 2003 parliamentary elections.

- 37) “Inking”: As a safeguard against multiple voting, a provision has been introduced whereby voters’ fingers are marked with indelible ink (with only a few exceptions). When entering the polling station, each voter has to pass the testing procedure for marking (Art. 52<sup>1</sup>, Art. 54.2a). “Inking” can be regarded as being an important step towards preventing multiple voting, especially if the voters lists are in a sorry state. Unfortunately “inking” is restricted by law to “inhabitant areas of Georgia where more than one election precinct has been established”. In the 2003 elections, therefore, the marking of voters was only applied in urban areas, restricting the usefulness of “inking” as a safeguard against multiple voting. In the author’s view the electoral law should provide for the application of inking throughout the country.
- 38) Order in the polling station: Several new provisions seem to aim to guarantee order in the polling station. They refer, for example, to the regulation of the voter flow in the polling station (Art. 54.2b), the election of supervisors from the observers (Art. 57.1, Art. 59.2), the identification of persons who have the right to stay at the polling place (e.g. Art. 67.3, Art. 69.8, Art. 71.3), and to the restriction of the number of domestic observers of each organization and of representatives of each election subject per election commission/ election precinct (Art. 68.3, Art. 71.2). Apparently, such provisions aim to prevent situations where unauthorized persons are present at the polling station and the polling places are overcrowded. If such provisions are not used to obstruct the electoral observation and monitoring, they might be helpful in organizing the conducting of the elections. According to the law the following persons have the right to be present in the polling place: members of the CEC, DEC and PECs, representatives of the CEC and the DEC, representatives of the election subjects, representatives of the press and other media, and observers. However, a large number of unauthorised persons have been present in the polling stations during recent elections.
- 39) Voting booths: According to an amendment to Art. 50.3 a), one side of each voting booth shall be open to enable observers to have each voter in a booth in their sight. With regard to the secrecy of the vote, this seems to be a far-reaching provision. However, it might be justified by experiences of electoral fraud. Moreover, before judging on this issue, the practical implementation and consequences of that provision must be evaluated by electoral observers.
- 40) Election observation: The Election Code provides election observers a large amount of freedom to carry out their activities. Recent amendments refer to, inter alia, the period of registration of observer organizations. It is perhaps positive that according to the revised Art. 69.5, the election commission is not entitled to dismiss the application for registration of observation organization, if this organization complies with the provisions of the law. A commission ordinance on the dismissal of application for registration can be appealed in the court.
- 41) Publication of election results: While the Election Code contains detailed provisions on the summary protocol of voting and the consolidation of the election results, there are no provisions on a prompt publishing of preliminary results at precinct or district level. Though representatives of election subjects are handed copies of the PEC’s summary protocol of voting (Art. 60.8), there is no provision in the law stipulating that preliminary election results have to be published by the PECs. On the basis of the summary protocols of the PECs, the DEC has to consolidate the election results at district level by the 4<sup>th</sup> day after election day. Not until then does the DEC have to put the data in the public display protocol,

which is to be displayed in an easily accessible place at the DEC (Art. 63.7), and hand over the summary protocol of voting to the representatives of election subjects (Art. 63.9). Based on the protocols received from the DEC and PECs, the CEC, finally, consolidates the results of parliamentary and presidential elections. It is obliged to do so no later than 18 days (before: 10 days) after election day. According to the revised Art. 64.3, however, parallel to entering of the summary protocols of election results from the election precincts, the CEC shall ensure the data from those protocols is placed on the web-site. Furthermore, the amended Art. 29.1 p) provides that the CEC should ensure computer processing of the voting/election results communicated by DEC and that they are immediately published on the Internet. In summary, whilst the Code provides for the publication of provisional results by the CEC, it fails to do so with regard to the DEC and PECs. Furthermore the law provides for a relatively long time period before publishing the final results.

- 42) Minimum turnout: As it is common in the region, the Election Code still contains a requirement for a minimum turnout for the election to be valid (Art. 86.1, Art. 87, 4, Art. 105.3, Art. 105.4, Art. 105.5, Art. 123.1). In the author's personal view, however, such provisions do not only complicate the electoral process, they also ignore the political will of those voters who went to the polls, if the minimum turnout is not achieved. Though a new article on the determination of the total number of voters was introduced in the Election Code (Art. 9<sup>1</sup>), the turnout rates remain arbitrary without the existence of accurate voter registration. Finally, the requirement might provoke attempts to fraudulently inflate turnout figures. Indeed, turnout figures seemed to have been inflated in a number of districts in recent elections, according to election observers.
- 43) Required majority: In contrast to international standards, the required majority for a presidential candidate is still based on the number of "votes of those voters taking part in the elections", that is, the total votes cast (valid and invalid votes) (Art. 86.2). Similarly, the 7% threshold in parliamentary elections has to be calculated on the basis of "the votes of the voters" (Art. 105.6). The CEC decision of 13 November 2003 to determine the "vote of the voters" only on the basis of the valid votes given to election subjects, does not, in the author's view correspond with the Election Code. In any case it would be appropriate to provide by law that the required majority/percentage should be based on the number of *valid* votes given to election subjects. This would correspond to previous recommendations (CDL-AD (2002) 9; CDL-EL (2003) 5).
- 44) Threshold: Furthermore, in the proportional part of the parliamentary electoral system, the threshold of 7% of the votes has been regarded as too high by the international experts of the Venice Commission. By international comparison, it might be appropriate to lower the threshold to 4%-5%.
- 45) Drug-users: A drug-addict or drug-user can not be elected a member of Parliament of Georgia (Art. 92.3). Before the recognition of the authority of the person elected as a member of Parliament, each elected candidate has to undergo a drugs test (Art. 107<sup>1</sup>). This provision is uncommon by international comparison. Of course, the author of these comments can not evaluate how severe the drug problem of politicians in Georgia is. In any case, if such an explicit provision is be regarded as necessary in Georgia, it is not clear why it refers only to elected members of Parliament, and not also to the elected presidential candidate.
- 46) Individual responsibility: Several provisions which explicitly state the individual responsibility for failure to comply with the electoral law have been incorporated in the law, e.g. with regard to the publishing of voters lists (Art. 13.1), the printing, safekeeping and distribution of ballot papers (Art. 51.5 and Art. 51.6), the marking of voters (Art. 52<sup>1</sup>.7), the

electoral agitation (Art. 73.19), the use of official posts during election agitation (Art. 76.5) etc. This can be regarded as an important step towards making clear that election violations will not be tolerated.

- 47) Election disputes. The Election Code, as amended in August 2003, contains clear and detailed provisions regarding the procedures for lodging and considering election disputes/appeals. Nevertheless, the choice of appealing either to an election commission or to a court, which had originally been criticised by the Venice Commission (CDL-AD (2002) 9, issue 63), has been maintained (see Art. 77.1 and 77.2). In practice, however, this seems not to have produced confusion or conflicts of competencies. According to the International Observation Mission (2003), "... the relatively large number of court cases indicated the willingness by parties to challenge decisions of the election administration through the legal system. It also showed a general confidence in the judiciary. With few exceptions the judiciary operated transparently, efficiently, diligently, and with respect for deadlines". Court decisions dealt with candidate registration, appointments to DEC and PECs, appeals against CEC decisions, and, after election day, with the rechecking of the protocols of voting.
- 48) Timeframes: Many of the amendments modify or specify the procedures and timeframes for electoral administration processes, as, for example, with regard to the drawing-up and revision of electoral districts and electoral precincts, the compilation and revision of voters lists, the terms of office and the appointment/elections of election commission members, the registration of election subjects, the registration of observation organisations, the preparation and distribution of ballot papers and special envelopes, the voting by means of mobile ballot boxes, the polling process, the publication and dissemination of information materials, the adjudication of electoral disputes, the consolidation of electoral results, the holding of by-elections, etc. In the face of the persistent delays in the 2003 election process, it seems that the timetable for the different procedures in the electoral administration process has not always been realistic in the Georgian context. However, delays are not necessarily caused by legal time constraints. It is also a problem of the late adoption of amendments to the electoral legislation, with election preparations already under way, and the lack of efficiency and responsibility on the part of the election administration. Improved pre-election planning appears to be absolutely necessary. The electoral administration has to elaborate a realistic agenda in order to prepare and organize the elections according to the law, well in advance of the next elections. Without detailed information on the elections, it is not possible to revise the timeframe which is set out by the law here. Thus, it might be helpful if the CEC were to investigate the delays and problems concerning the preparation of the 2003 parliamentary elections and suggest corrections to the legal timetable if necessary.
- 49) Post-election report. In view of the insufficient implementation of, and respect for the Election Code, and the severe delays and problems as regards the election administration process, it might be appropriate to introduce a provision in the law that obliges the CEC to provide a post-election report following each national election. The report might indicate problems in applying the law and in preparing for/conducting the elections and it might suggest measures to overcome these problems. It might also include an analysis of electoral violations and of measures taken against violators.

#### **IV. Conclusions**

- 50) Once again, it should be remembered that the purpose of the present comments is to evaluate only the electoral law, and not the conducting of the elections. Though the elections were

characterized by many irregularities, if it is applied properly, the Unified Election Code, as amended in August 2003, in principle provides an adequate legal framework for democratic elections. Irregularities in recent elections seem not to stem from the electoral law, but instead reflect a lack of political will and administrative capacity.

- 51) In order to enhance the democratic character of the elections in Georgia, it is important to respect the electoral law and to improve the electoral administration process. The electoral law alone cannot guarantee the holding of free and fair elections.
- 52) The Unified Election Code is already a very comprehensive law with many detailed provisions. It is almost over-regulated by international comparison. Nevertheless, some provisions might still be improved or, at least debated.
- 53) As for recent amendments, a number of new provisions of the Unified Election Code can be regarded as improvements, if applied in a proper way. The most significant among them are the following:
  - a) The amendment that provides the CEC with an annual budget.
  - b) The amendments which refer to the voter registration, in particular with regard to the formation of centralized, regularly updated general lists of voters.
  - c) The amendments which have specified and improved registration procedures for election subjects. This also includes the possibility to correct registration documents which fail to meet the requirements established in the law.
  - d) The provisions that aim to establish equal campaign conditions for election contestants, in particular with regard to equal access to the media.
  - e) The introduction of a deadline for the publishing of election-related opinion poll results.
  - f) The improvements of electoral conditions for persons with limited physical abilities and disabled persons.
  - g) The specific amendments which refer to the preparation, distribution and control of ballot papers, the use of summary protocols of voting and of Election Day Record Books, as well as to the conducting of the poll, the counting process, and to the consolidation of election results.
  - h) The introduction of indelible ink as a safeguard against multiple voting.
  - i) Several provisions that aim to guarantee order in the polling station.
  - j) The provisions for using the Internet for the publication of voters lists, the total number of voters and of electoral results by the CEC.
  - k) Several provisions which explicitly provide for individual responsibility for failure to comply with the electoral law.
- 54) The Unified Election Code, as amended in August 2003, contains some provisions which are uncommon by international comparison and must be seen (and perhaps justified) in the light of the specific background of Georgia. Among them are the following:
  - a) The right of the Abkhazian and Adjarian autonomous republics to both have their own CEC.
  - b) The right of the Supreme Council of the Abkhazian Autonomous Republic and the Republic Council of the Parliament of the Adjarian Autonomous Republic to each appoint one member of the CEC of Georgia.

- c) The prohibition of any betting related to the elections.
  - d) The explicit prohibition of drug-addicts or drug-users being elected a member of the Parliament of Georgia, and the introduction of respective drug-testing.
- 55) Though many amendments have been made, the actual Unified Election Code still does not refer to all points that were explicitly criticised by the Venice Commission's opinion (CDL-AD (2002) 9) and by the authors' previous comments (CD-EL (2003) 5). The following provisions (or non-provisions) can be regarded as being problematic or at least as debatable:
- a) The composition of the electoral commissions still leaves room for discussion. However, after having reached a political compromise on this issue before the 2003 elections, this delicate matter should be handled with care. No matter what model is chosen, the decisive point is whether the electoral commissions works independently and is regarded as legitimate by both the political contestants and the electorate.
  - b) There is no provision that determines the maximum deviation of electoral districts from the average ratio of registered voters (or inhabitants or adult citizens) per district. The principal of equal suffrage would be violated in the case of significant differences in the size of the districts (in terms of the numbers of registered voters).
  - c) The minimum number of 50.000 signatures for the nomination of presidential candidates and for parties/election blocs (without parliamentary representation) participating in the parliamentary elections is relatively high. It might perhaps be reduced.
  - d) The procedure for verifying the signatures necessary for the nomination of election subjects seems not to entirely appropriate. In principle, all signatures should be checked, at least until the required minimum number is reached.
  - e) The deadline for withdrawing candidates is very late and is not identical for presidential and parliamentary elections. It might be appropriate to set up an earlier deadline and to define criteria for the withdrawal of candidates.
  - f) There is no general provision that establishes a deadline for electoral agitation.
  - g) The application of indelible ink as a safeguard against multiple voting is restricted by law to "inhabitant areas of Georgia where more than one election precinct has been established". The restriction ought to be lifted, and "inking" applied throughout the country.
  - h) While the Election Code provides for the publishing of provisional results by the CEC, it fails to do so with regard to the DEC and PECs.
  - i) The required majority for a presidential candidate is based on the number of "votes of those voters taking part in the elections", that is the total votes cast (valid and invalid votes). Similarly, the 7% threshold in parliamentary elections has to be calculated on the basis of "the votes of the voters". The CEC decision of 13 November 2003 to determine the number of voters only by the valid votes given to election subjects, at the author's view does not correspond with the Election Code. In any case it would be appropriate to provide by law that the required majority/percentage should be based on the number of *valid* votes given to election subjects. This would correspond to international standards and previous recommendations.
  - j) With regard to the proportional part of the parliamentary electoral system, the 7% threshold is relatively high and might be lowered to 5%.

- k) In view of the insufficient implementation of, and respect for the Election Code, and the severe delays and problems as regards the election administration process, it might be appropriate to introduce a provision in the law that obliges the CEC to provide a post-election report following each national election. The report might indicate problems in applying the law and in preparing for/conducting the elections and it might suggest measures to overcome these problems. It might also include an analysis of electoral violations and of measures taken against violators.

## APPENDIX

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