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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

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

based on comments by

Mr Hjörtur TORFASON (Member, Iceland)
Mr Michael KRENNERICH (Expert, Germany)

Introduction

1. *In 2001 the Parliamentary Assembly of the Council of Europe asked the Venice Commission to co-operate with Georgia in the field of the revision of the Election Code (Resolution 1257(2001) and Recommendation 1533(2001). On 15 January 2002, the Georgian authorities submitted the Unified Election Code of the Republic of Georgia as adopted on 2 August 2002, to the Venice Commission for an opinion. During the 50th Plenary Session (Venice, 8 – 9 March 2002) the Venice Commission adopted an opinion on the Election Code of Georgia (CDL-AD (2002) 9).*

2. *The Council for Democratic Elections adopted the comments on the election code and election administration in Georgia drawn up by Mr Krennerich (CDL-EL (2003) 5). The document took account of the Venice Commission's opinion on the election code and of the Parliamentary Assembly and CLRAE observation reports (see CDL-AD (2002) 9, Parliamentary Assembly Docs 8605, 8742, Resolution 1257(2001) and Recommendation 1533(2001) and CG/Bur (9)17). During its 55th Plenary Session (Venice, 13-14 June 2003), the Venice Commission took note of the comments on the election code and election administration in Georgia and confirmed their transmission to the Georgian authorities, the Parliamentary Assembly, the CLRAE, the Secretary General of the Council of Europe and ODIHR, in view of the next parliamentary elections in Georgia.*

3. *Regarding a number of amendments introduced to the Election Code of Georgia in 2003, the Commission continued its co-operation with Georgia on this issue. Moreover, on 25 June 2003 the Georgian authorities asked the Commission to give comments on the amended Unified Election Code of the Republic of Georgia. The following document was prepared on the basis of comments provided by Messrs Torfason and Krennerich, who worked on the text of the Election Code as amended until 14 August 2003, presented to the Commission in an unofficial (IFES and OSCE) English translation in September 2003 (CDL(2003)99).*

4. *The Venice Commission adopted the comments of Messrs Torfason and Krennerich on the Election Code of Georgia (CDL (2003) 100 and 101) during its 57th Plenary Session (Venice, 12 – 13 December 2003). It asked the Secretariat to finalise, with the approval of the rapporteurs, the current opinion based on the rapporteurs' comments and to transmit it to the Georgian authorities.*

I. General remarks

5. The Unified Election Code of Georgia, adopted on 2 August 2001, integrated the previous laws on presidential elections, parliamentary elections and elections for the bodies of local self-government into a single piece of legislation and thus unified the rules for elections at all levels within a comprehensive statute. In the Opinion of 24 May 2002 (CDL-AD (2002) 9) by the Venice Commission, the adoption of the Code was properly viewed as representing a major and important step forward in securing democratic standards for elections for representative government in Georgia.

6. In reviewing the Code and its subsequent amendments, however, it is proper to note that one has to distinguish clearly between the electoral legislation on the one hand, and its implementation (or non-implementation) on the other. As such, the fact that the 2 November

2003 elections in Georgia were characterised by serious irregularities¹ does not automatically imply that the electoral law itself does not comply with international democratic standards. The views expressed in this Opinion 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.

7. Before proceeding to examine the Unified Election Code in detail, there is reason to recall the general technical aspect that the text of the law is very extensive and complex and involves risks of serious problems arising during its application. This reinforces the view that the democratic character of future elections in Georgia does largely depend on 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. In principle, the Code as amended in August 2003 provides an adequate legal framework for free and fair elections, and many of the amendments are positive. Nevertheless, in respect of some provisions of the Code there is still room for improvement or, at least, debate.

II. The Unified Election Code, as amended in August 2003.

A. The nature of changes

8. The Code has from the outset contained nine Chapters (I-IX) of provisions applicable to elections in general, followed by two Chapters (X-XI) on elections for the President of Georgia, three Chapters (XII-XIV) on elections for the Parliament of Georgia and three Chapters (XV-XVII) on elections for organs of local self-government (*Sakrebulo* - representative bodies and *Gamgebeli* - mayors). The Articles of these Chapters bear numbers from 1 to 126. There is a chapter (Chapter XVIII: Articles 127-129) on transitional provisions and a concluding chapter (Chapter XIX: Articles 130-131) proclaiming the entry into force of the Code and the repeal of prior legislation. In the process of amendment, this structure of the Code has been maintained, including in most cases the division of the subject matter of each Chapter among its Articles, so that where the amendments have required additional Articles under a further heading, these have been given numbers on the basis of the number of the related initial Article.

9. 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 in the electoral process in general. The recent amendments have considerably expanded existing articles or have added new articles to the Unified Election Code of 2002. Substantive amendments relate to:

- a) The General Provisions (Chapter I, Articles 1 - 8);
- b) The Registration of Voters (Chapter II, Articles 9 - 14);
- c) Election Districts and Precincts (Chapter III, Articles 15 and 16);
- d) The Election Administration (Chapter IV, Articles 17 – 39(1));

¹ On 2 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. The proportional part of the elections as well as the results in several one-member constituencies were later cancelled.

- e) The Registration of Election Subjects (Chapter V, Articles 40 - 42), especially for parliamentary elections (Chapter XIII, Articles 95 (1) - 102);
- f) Election Funding (Chapter VI, Articles 43 - 48);
- g) The Polling (Chapter VII Articles 49 - 64);
- h) Transparency of Preparation and Conduct of Elections (Chapter VIII, Articles 65 - 76); and
- i) Adjudication of Disputes (Chapter IX, Article 77);

10. The amendments to the Code will be discussed mainly in the order of its Chapters and Articles. Firstly, it should be noted that the various amendments relate to specific provisions and issues within the Code and do not alter its fundamental validity or potential as a legal framework for free and fair elections. Secondly, while the delicate issue of Central Electoral Commission (CEC), District Electoral Commissions (DEC) and Precinct Electoral Commissions' (PEC) composition stands somewhat apart, the rest of the amendments are of a positive nature and contribute to the clarification of matters in the respective fields. Thirdly, while some of the amendments relate or correspond to recommendations made and points criticised by the Venice Commission and other international institutions, several issues remain problematic or debatable. It follows that the various points and recommendations expressed in the Commission's previous opinion (CDL-AD (2002) 9) and recommendations (CDL-EL (2003) 5) remain fully valid in so far as they are not answered by the amendments.

B. The General Provisions (Chapter I, Articles 1 - 8).

11. Among the amendments to Chapter I of the Election Code, in Article 5 on universal suffrage, the former paragraphs 1 and 2 have been joined and reworded so as to address both the active and passive electoral right, and to make reference to the Articles in the Code under which the voting right or eligibility as candidate may be restricted in accordance with the Constitution, i.e. subject to special registration or method requirements, such as in the case of persons unable to vote in their precinct on election day on account of disability, being at sea or living abroad at the time. This appears to be in line with comments in the Venice Commission opinion. There are new provisions on the Publicity of Elections (Art. 8¹) and on Electoral Right Guarantees (Art. 8²), which can be regarded as positive steps towards recognising that the electoral process is to be open and public.

C. Registration of voters (Chapter II, Articles 9 - 14).

12. The provisions of Art. 9 and related clauses on voter registration (including in Art. 29, on the powers and duties of the CEC, a new para. 2.w) have been amplified and reworded with a view to stating clearly that there will be a general and centralised register or list of voters established by the CEC which is to be regularly updated (with reference to February and August of each year). The commission also will be responsible for computer processing of the voter list and publishing it on the Internet. The revision of the Chapter to this effect represents an important positive step and is largely in line with the recommendations of the Venice Commission.

13. As a general remark it can be said that the provisions of the Chapter as amended clearly provide a sufficient basis for a satisfactory register if properly implemented.

- Voter lists

14. 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 drawing up of the general list of voters; for the computer processing and updating of the electronic database of the general voters list; and for its publication on the Internet (see Art. 9 and Art. 29). This is a most welcomed development which corresponds to international recommendations. However, the quality of the voter 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 voter lists 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 of 26 October 2003 (that is, shortly before the 2003 elections), stopping improvements to the central voter register and allowing election commissions to use handwritten or computerised voter lists. This decentralisation 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, centralised voter register, if applied with enough time, effort, and capacity.

D. Election districts and Election Precints (Chapter III, Articles 15 and 16).

- Election Districts

15. 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 provisions 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.

- Election prescints

16. The text in Art. 15 on the establishment of election precincts (entrusted to the CEC, as under Art. 29.3.a of the original Code) has been amplified, but mainly to provide for time limits and publication rather than to provide guidelines. There is no change as regards the question of equality of apportionment of single-mandate parliamentary districts (maximum deviation in the ratio of registered voters per district), so the previous comments by the Venice Commission on the matter remain pertinent.

17. The text of Art. 16 on election precincts, providing that their establishment is entrusted to the relevant DEC)s, has also been developed. However, the allowable maximum of 2,000 voters per precinct (Art. 17.2) has not been lowered, and the recommendation of 2002 for its reconsideration still appears pertinent.

E. The Election Administration (Chapter IV, Articles 17 – 39(1)).

18. The extensive Chapter IV deals with the organisation, powers and functions of the Electoral Commissions in considerable detail, clearly intended to promote transparency and confidence. It has now been reinforced and amplified by several revisions and additions to have a more positive effect.

- Composition of the Electoral Commissions

19. Without a doubt, the CEC composition is one of the most delicate issues in the preparation of elections in Georgia. The politicisation and poor 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.

20. While the Transitional Provisions were valid for the 2003 parliamentary elections, Chapter IV of the Election Code prescribes the “ordinary” composition of the electoral commissions for further elections. The Georgian election administration appropriately is intended to operate at three levels as a centralized system, having a Central Election Commission (CEC), District Election Commissions (DECs) and Precinct Election Commissions (PECs). It is now further provided (Article 17.5 and 31¹) that the Abkhazian and Adjarian autonomous republics also shall have their own CECs. Their task will be to organise elections for the state representative authorities and elective government authorities of the autonomous republics. In elections under the Code, the DECs within the territory of each republic will be subordinate to its CEC.

21. The CEC shall be composed of at least 14 members: of which the President of Georgia appoints two members, the Supreme Council of the Abkhazian Autonomous Republic and the Republican Council of the Parliament of the Adjarian Autonomous Republic appoint one member each and each party/election bloc that has obtained at least 7% of the votes in the last parliamentary elections appoints two members. (If the number of such parties/election blocs is less than five, the required minimum will be lowered) (see Art. 27). The DECs are composed of one member who is appointed by the CEC and those members who are appointed by each 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).

22. 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 are regarded as legitimate by both the political contestants and the electorate. However, in the light of the recent political crisis in the aftermath of the 2003 parliamentary elections, the electoral administration’s reputation seems to be rather poor. Not surprisingly, the opposition sought the dismissal of the CEC chairperson after the last parliamentary elections.

- Independence of the electoral administration

23. 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. In Art. 19 on rights and responsibilities, a new para. 3 also appropriately declares that an EC member is not a representative of the election-subject which may have appointed him/her, and that in his/her activities, the member shall be independent and subject only to the Constitution and the law. 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.

24. The new Art. 39¹ with provisions concerning the nomination of candidates for election as members of the election commissions, including a right for NGOs (non-governmental and non-commercial entities) and voter initiative groups to nominate candidates for DEC and PEC memberships, would seem to be a positive new element contributing to the strengthening of the independence of the electoral commissions.

25. It should also be noted that the provisions concerning the selection by the ECs of their administrative officers (Chairperson, Deputy and Secretary) have been developed in a new Art. 22¹ (replacing 22.2). The principle of election by majority has not been abandoned, but full majority by roll-call is required in the first instance.

- Prohibition of judges becoming members of the election commissions

26. Although not uncommon in the region, the Election Code contains a prohibition for judges and assistants to judges to become members of the CEC or the DEC (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) 23rev.).

F. The Registration of Election Subjects (Chapter V, Articles 40 - 42), especially for parliamentary elections (Chapter XIII, Articles 95 (1) - 102)

27. The provisions for candidate registration procedures have been amplified for added clarity, and now allow for giving a short respite to the applicants to correct inconsistencies in their documents, in line with suggestions from the Venice Commission. This also is reflected in Article 98 on parliamentary election registration. However, some provisions of Chapters V and XIII and related Articles can still be commented upon.

- Candidate registration

28. 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 of correcting registration documents that 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 elections, 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 election by the CEC. Candidate registration for the majoritarian seats at the DEC level, however, was not always handled consistently in the 2003 parliamentary elections.

- Required number of signatures for nomination

29. 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.

- Verification of the signatures

30. The Election Codes prescribes the procedure which has not been changed by the 2003 amendments, for verifying the signatures necessary for the nomination of election subjects, as follows: "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 (CDL-AD (2002) 23) stipulates that the checking process must in principle cover all signatures (point 1.3, item iv). Only if there is no doubt that the required number of valid signatures has been reached, do the remaining signatures not need to be checked.

G. Election Funding (Chapter VI, Articles 43 - 48).

31. 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 with 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 and PECs, was criticised by observers of the 2003 parliamentary elections. The lack of resources increased the dependency of the DEC and PECs on regional and local authorities.

32. As to campaign funding, the provisions of Art. 46-48 are progressive and conducive to transparency, and remain unchanged.

H. The Polling (Chapter VII Articles 49 - 64).

33. This Chapter includes several amendments contributing to increased clarity of the law on orderliness of the voting: provisions for safeguards against electoral fraud have been strengthened, as to the voters and as to election officials and other people (observers, etc) present at polling stations.

- Voting booths

34. According to an amendment to Art. 50.3 a), one side of each voting booth shall be open to enable observers to see each voter who is in a booth. 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 this issue, the practical implementation and consequences of that provision must be evaluated by electoral observers.

- Safeguards against electoral fraud

35. 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. 51¹, Art. 60, Art. 63, Art. 64) and of Election Day Record Books in each election precinct (Art. 51²). 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.

36. 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. 52¹, Art. 54.2a). "Inking" can be regarded as being an important step towards preventing multiple voting, especially if the voter 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.

- Publication of election results

37. 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 the prompt publishing of preliminary results at precinct or district level. Though representatives of election-subjects are handed copies of the PECs' 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 fourth 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 (previously: 10 days) after election day. According to the revised Art. 64.3, however, parallel to the summary protocols the entering of the dates 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.

- *Voters with limited physical abilities*

38. The new amendments to the Chapter VII introduce a number of improvements 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 stations, 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 vision 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.

39. Art. 58.4, clearly provides that ballots from mobile ballot boxes shall be counted separately, as suggested by the Venice Commission.

I. Transparency of Preparation and Conduct of Elections (Chapter VIII, Articles 65 - 76).

40. The issue of the transparency of the preparation and conduct of elections is essential for organising fair elections. The August 2003 amendments introduced some substantial improvements to the Code; however, some issues are worth commenting upon.

- *Election campaign*

41. In general, the Election Code, as amended in August 2003, has made improvements with regard to provisions that aim at guaranteeing 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).

- *Deadline for electoral “campaigning”*

42. The Election Code stipulates that election campaigning 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.

- *Opinion polls*

43. 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 established by law in many Western democracies. Furthermore, it must now be indicated whether or not the poll is paid for. These amendments are helpful.

- *Betting*

44. 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 in Georgia.

- *Election observation and order in the polling station*

45. 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 organisations. It is perhaps positive that according to the revised Art. 69.5, the election commission may not dismiss the application for registration of an observation organisation, if an organisation complies with the provisions of the law. A commission ordinance on the dismissal of application for registration may be appealed to a court.

46. The Code tries to introduce certain limitations as to persons who have the right to be present at the polling station for public order concerns. 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 station (e.g. Art. 67.3, Art. 69.8, Art. 71.3) and to the restriction of the number of domestic observers of each organisation and of representatives of each election-subject per election commission/election precinct (Art. 68.3, Art. 71.2). Apparently, such provisions aim at preventing situations where unauthorised persons are present at the polling station, and the polling stations are overcrowded. If such provisions are not used to obstruct the electoral

observation and monitoring, they might be helpful in organising the conducting of the elections. According to the law the following persons have the right to be present in the polling station: 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.

J. Adjudication of Disputes (Chapter IX, Article 77).

47. The provisions of this Chapter (Article 77), containing timeframes and rules for handling disputes over breaches of the election law and the election process, have been reviewed and partially revised and expanded in the interest of added clarity and efficiency. 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.

K. Some additional observations on the amended Election Code.

- Withdrawal of candidates

48. 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.

- Minimum turnout

49. 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). Although a new article on the determination of the total number of voters was introduced in the Election Code (Art. 9¹), 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.

- Threshold

50. In the proportional part of the parliamentary electoral system, the threshold of 7% of the votes has been regarded as too high by the Venice Commission. By international comparison, it might be appropriate to lower the threshold to 4%-5%.

- Drug-users

51. A drug-addict or drug-user may not be elected as 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. 107¹). This provision is uncommon by international comparison. Of course, the Venice Commission can not evaluate how severe the drug problem of politicians in Georgia is. In any case, if such an explicit provision is to 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.

III. Conclusions

52. The Unified Election Code, as amended in August 2003, is a very comprehensive law with many detailed provisions that represents in principle a solid basis for holding fair and democratic elections. It is almost over-regulated by international comparison. Nevertheless, some provisions might still be improved, or, at least debated.

53 It may first be mentioned that the amendments of August 2003 include 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 appoint one member each 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 as members of the Parliament of Georgia, and the introduction of respective drug-testing.

54. Secondly, even though many of the amendments are positive, the present Unified Election Code still does not refer to all points that were explicitly criticised by the Venice Commission's opinions (CDL-AD (2002) 9 and 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. No matter what model is chosen, however, the decisive point is whether the electoral commission 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 principle 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 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 campaigning.
- 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”. For example, the CEC decision of 13 November 2003 to determine the number of voters only by the valid votes given to election subjects, does not seem to 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.

55. Finally, as this Opinion deals with the Unified Election Code alone, it is proper to note that an eventual amendment of some of the provisions listed above (especially under (b), (c) and (j)) would also call for an amendment of the Constitution of the Republic of Georgia.