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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

AND

THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

JOINT OPINION ON THE ELECTION CODE OF GEORGIA as amended through March 2010

Adopted by the Council for Democratic Elections
at its 33rd meeting
(Venice, 3 June 2010)
and by the Venice Commission
at its 83rd Plenary Session
(Venice, 4 June 2010)

on the basis of comments by
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INTRODUCTION

1. At the request of Georgian authorities, the European Commission for Democracy Through Law ("the Venice Commission") of the Council of Europe and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe ("OSCE/ODIHR") have prepared the following comments and recommendations on the Unified Election Code of Georgia ("the Code"). The most recent joint opinion of the Venice Commission and OSCE/ODIHR is dated 28 October 2008 and contains commentary on amendments through July 2008.[1]

2. The Code was further amended in December 2009 and March 2010. OSCE/ODIHR and the Venice Commission received a request from the Permanent Representation of Georgia to the Council of Europe on behalf of the Parliament of Georgia on 10 February 2010 to review the December 2009 amendments. Therefore, the current review focuses primarily on these amendments. However, in the meantime, parliament enacted additional amendments in March 2010 that this review also takes into consideration. The present review was carried out on the basis of an unofficial English translation of the Code as amended through March 2010.

3. This opinion does not warrant the accuracy of the translated text that was reviewed, including the numbering of articles, paragraphs, and sub-paragraphs. Any legal review based on translated text may be affected by issues of interpretation resulting from translation. Further, while discrepancies in translation have been reconciled as best as possible, the accuracy of relevant terminology cannot be guaranteed.[2]

4. This opinion is offered for consideration by the authorities of Georgia, in support of their efforts to develop a sound legal framework for democratic elections. The extent to which any amendments to the Code can have a positive impact will ultimately be determined by the political will of state institutions and officials responsible for implementing and upholding the Code.

5. OSCE/ODIHR and the Venice Commission have previously commented on the legal framework for elections in Georgia, including within the context of final reports of OSCE/ODIHR election observation missions to Georgia. This opinion should be viewed as complementary to earlier comments and recommendations provided by OSCE/ODIHR and the Venice Commission.

6. This opinion is based on:

- An unofficial translation of the Code as of 28 December 2009 (CDL-EL(2010)009);
- Law on making changes and amendments in the Election Code of Georgia adopted by the Parliament on 28 December 2009 (CDL-EL(2010)008);
- The Venice Commission Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev;
- The Joint Opinion of the Election Code of Georgia (CDL-AD(2006)023, 16 June 2006);

[1] Joint Opinion on the Election Code of Georgia as revised up to July 2008, CDL-AD(2009)001, 9 January 2009. All previous joint opinions on the election legislation of Georgia can be found at: http://www.osce.org/odihr-elections/18745.html and at: http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=40&L=E.

[2] For example, while the Code refers to "precinct election committees" or "PECs," translated amendments from 28 December 2009 use the terminology "regional election committees." For consistency, this opinion holds with previous opinions, using the term "precinct" as well.

- The Joint Opinion of the Election Code of Georgia (CDL-AD(2009)001, 9 January 2009);
- OSCE/ODIHR Election Observation Mission Final Report Georgia Parliamentary Elections, 21 May 2008, (9 September 2008);
- OSCE/ODIHR Election Observation Mission Final Report Georgia Extraordinary Presidential Elections, 5 January 2008 (4 March 2008);
- Existing Commitments for Democratic Elections in OSCE Participating States (2003);
- Parliamentary Assembly of the Council of Europe, Report on the Parliamentary Elections, 21 May 2008;
- Parliamentary Assembly of the Council of Europe, Report on the Extraordinary Presidential Elections, 5 January 2008; and
- Regional and international documents as articulated by the United Nations, Council of Europe, and OSCE.

7. The present Opinion was adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd plenary session (Venice, 4 June 2010).

EXECUTIVE SUMMARY

8. The Code as amended up to March 2010 is generally conducive to the conduct of democratic elections and addresses a number of previous recommendations. The Code takes steps to ensure that:

- Elections are conducted in a transparent and open manner;
- Media provisions allow for equitable access for candidates;
- Voting is accessible to persons with disabilities and persons who cannot vote in their allotted polling station; and
- Ballots are available in minority languages.

9. In addition, following the amendments, the Code contains useful provisions and details on appropriate sanctions for infringements of the Code and for improper conduct on the part of election commission members.

10. However, serious concerns remain as some provisions fall short of OSCE commitments and electoral norms articulated in the European Convention on Human Rights (ECHR), the Venice Commission Code of Good Practice in Electoral Matters, and the case law of the European Court of Human Rights (ECtHR). In particular, authorities in Georgia should give additional consideration to issues concerning:

- Overly stringent restrictions on the active and passive suffrage rights of citizens;
- The formation of electoral districts that undermine the principle of equality of suffrage;
- The absence of provision for allowing independent candidates to run for office;
- Overly long residency requirement for candidates in local elections;
- Continued shortcomings in the process for resolving electoral complaints and appeals; and
- Disproportionate and potentially problematic sanctions related to violations of campaign finance regulations.

These remaining issues are discussed below.

11. Amendments adopted in March 2010 introduced a limited number of changes and refinements that primarily relate to the conduct of local and mayoral elections. Some of them

reconsidered the changes introduced by the December 2009 amendments in a positive direction.

ELECTORAL SYSTEM

Election Districts for Parliamentary Elections

12. The parliament of Georgia consists of 150 members. Seventy-five (75) members are elected under a proportional representation system based on lists of candidates presented in a single nationwide constituency. Seventy-five (75) members are elected in single-mandate election districts.

13. The Code does not provide criteria to be used in forming single-mandate election districts and it does not require that those districts be of equal or comparable size, thus failing to guarantee one of the main principles of electoral rights - equality of the vote.[3] In fact, in the May 2008 parliamentary elections, the number of voters in election districts ranged from 6,000 to 140,000 voters. Such large differences in voting populations deny the equality of the vote. Thus, using the wide variances from 2008, it would be possible for one candidate to be elected by 1,800 votes where another candidate might require 70,000 votes.

14. Some deviation in the number of voters in each election district may be unavoidable due to geographic or demographic factors. As an example, citizens living in isolated mountain areas would wish to have their interests represented by their own member of parliament. The Venice Commission Code of Good Practice in Electoral Matters stipulates that the maximum permissible departure from the distribution criterion should seldom exceed ten per cent, and never 15 per cent, except in very exceptional circumstances. **The Venice Commission and OSCE/ODIHR recommend that the Code be amended to require single-mandate election districts to be of equal or similar voting populations. The Code should specifically address how election districts are to be established in all types of elections.[4] The Election Code should require that those responsible for creating electoral boundaries should be independent and impartial. The delimitation process should be transparent and involve broad public consultations. The Code should also foresee periodic review of boundaries taking into account population changes.[5]**

Independent Candidacy

15. Under Article 93 of the Election Code, independent candidates are precluded from running for parliament as only electoral blocs and political parties may nominate candidates (referred to as "majoritarian candidates" per Article 3 of the Code). Furthermore, amendments introduced on 28 December 2009 remove the possibility for a voter initiative group (of at least 5 voters) to nominate candidates to local self-government elections (Article 116). With these amendments, independent candidates are further restricted from serving in local-self government, with voter initiative groups only able to nominate candidates for the office of President of Georgia. **The Venice Commission and OSCE/ODIHR recommend**

[3] Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits OSCE participating States to "guarantee universal and equal suffrage to adult citizens." *See also* General Comment No. 25, Paragraph 21, of the United Nations Human Rights Committee. The United Nations Human Rights Committee has adopted a General Comment (General Comment No. 25) interpreting the principles for democratic elections set forth in Article 25 of the International Covenant on Civil and Political Rights. *See* the Venice Commission Code of Good Practice in Electoral Matters, I. 2.2., iv.

[4] It is noted that the Law on Local Self-Government Bodies provides that in the City of Tibilisi districts have been restructured to equal or similar populations.

[5] Code of Good Practice in Electoral Matter (CDL-AD(2002)023rev), I 2.2 v.: "In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods."

that in line with Paragraph 7.5 of the OSCE Copenhagen Document the Election Code reinstates the possibility for independent candidates to run in both types of elections.[6] It is moreover recommended that this option be arranged in such a way as to make it reasonably possible for the independent candidates to meet its requirements (e.g. the required number of signatures) in practice.

Electoral System Choice

16. The choice of an electoral system is a sovereign decision of a state, provided the system conforms with principles contained in the OSCE commitments, the Venice Commission Code of Good Practice in Electoral Matters and other international norms, including requirements for transparency, universality and equality of suffrage of voters and non-discrimination among candidates and political parties. The Venice Commission and OSCE/ODIHR have previously recommended, both in joint opinions and final reports of election observation missions, that consideration be given to reform of the electoral system. This recommendation must be reiterated as it is a serious issue where an electoral system may allow 1,800 votes to gain a mandate in one electoral district but may require 70,000 votes in another electoral district. **The Venice Commission and OSCE/ODIHR recommend that the electoral system for parliamentary elections be reviewed in order to ensure the equality of suffrage.[7]** The Parliament could consider the work of the Venice Commission on selecting an appropriate electoral system[8] with a view to identifying an optimum relationship between genuine representation and stability of government, while respecting the principle of equal suffrage.

CANDIDACY AND SUFFRAGE RIGHTS

Guarantee of Suffrage Rights

17. It is a universal civil and political right that every citizen can on a non-discriminatory basis and without unreasonable restrictions: (1) take part in the conduct of public affairs, directly or through freely chosen representatives; (2) vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (3) have access, on general terms of equality, to public service in his or her country.[9] The Code does not fully satisfy these basic principles as it contains some provisions that unduly deny the right to vote and limit candidacy rights.

Restrictions on the Right to Vote

18. Article 5.2 provides, in part, that persons, who are in a penitentiary institution in accordance with a court judgment, are not eligible to take part in elections. Thus, the right to vote is denied based on any conviction regardless of the nature of the underlying crime. The right to vote is a fundamental human right, which means that only convictions for specifically identified serious criminal offences should lead to suspension of voting rights.[10] **The Venice**

[6] Paragraph 7.5 of the 1990 OSCE Copenhagen Document requires that OSCE participating States respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination. *See* as well the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I. 1.3.

[7] *See* the Venice Commission Code of Good Practice in Electoral Matters, II. 4.

[8] *See* Venice Commission Report on Electoral Systems: Overview of Available Solutions and Selection Criteria (CDL-AD(2004)003) (particularly Section 4).

[9] *See, e.g., International Covenant on Civil and Political Rights,* Art. 25.

[10] The European Court of Human Rights has held that a blanket restriction on the voting rights of prisoners "irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances" was a violation of Article 3 of Protocol 1 of the European Convention on Human Rights. *See Hirst v.*

Commission and OSCE/ODIHR recommend that Article 5 be amended to exclude from voting rights only those persons who are in prison on a conviction for such a serious criminal offence that the forfeiture of political rights is indeed proportionate to the crime committed. Such criminal offences are to be clearly defined in the Code, to avoid any doubts as to what constitutes a serious criminal offence.

Restrictions on the Right to be Elected

19. Residency requirements to run for office in Georgia include: 15 years for the office of President (Article 80(2)) and 10 years for parliament (Article 92(1)). The 28 December 2009 amendments have raised the residency requirement for local-self government elections to a total of 5 years (Article 109(1)). These residency requirements are problematic and may represent an undue restriction on the right to passive suffrage. While residency is generally accepted as a valid restriction upon candidacy rights, the United Nations Human Rights Committee[11] has expressed concerns with overly long residency requirements and the Venice Commission Code of Good Practice in Electoral Matters[12] states that a length of residence requirement may only be imposed for local or regional elections and that the requisite period of residence should not exceed six months, except in order to protect national minorities. **The Venice Commission and OSCE/ODIHR recommend that in accordance with the Venice Commission Code of Good Practice in Electoral Matters, requirements on length of residency should be reconsidered.**

20. Articles 92(3) and 107[1], which are the provisions for the denial of the right of passive suffrage to "drug addicts" and "drug users" and require elected members of parliament to undergo a "drug test" with a possible loss of mandate in case the test is failed, are problematic. These two articles are ambiguous and subject to abuse as they fail to (1) provide reference to the relevant legislation pertaining to what chemical compounds are "drugs" under the law, (2) define what quantity of a particular chemical compound ("drug") measured in the body of a tested person is indicative of "use" of a legally defined "drug", or (3) specify how many positive "drug" tests during what period of time are equivalent to "drug addiction".[13] **As recommended in previous Venice Commission and OSCE/ODIHR opinions, these articles of the Code should be critically reassessed or removed altogether.**

21. Significantly, the December 2009 amendments to the Code remove the provision in Article 111 which prevented a member of parliament from being a candidate for local-self government. As noted in previous joint opinions, while restrictions may be placed on the ability for an individual to hold multiple mandates at one time, such a restriction should not be extended to candidacy. This amendment is positive.

Signature Requirements

22. Concern previously expressed by the Venice Commission and OSCE/ODIHR regarding the number of signatures that a non-parliamentary party needs to submit to the CEC in order to be able to put forward candidacies and party lists has been partially addressed. The signature support requirement in Article 117(3) has been reduced from 50,000 to 30,000 signatures. This reduction is positive. However, it is generally recommended that the number of required signatures does not exceed 1% of the electorate within the respective electoral

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United Kingdom (No. 2), Application no. 74025/01, 6 October 2005 and *Frodl v. Austria*, Application no. 20201/04, 8 *April 2010.*

[11] UNHRC General Comment No. 25, para. 15.

[12] Venice Commission, Code of Good Practice in Electoral Matters, I. 1.1.c.4.

[13] Further, "addiction" to a particular chemical compound would be considered a disability, either physical, mental, or a combination of both. Such a prohibition on "drug addicts" might be considered discrimination and a violation of international standards protecting citizens with disabilities in the exercise of suffrage rights.

unit for which the elections are held.[14] **The Venice Commission and OSCE/ODIHR recommend that Article 117(3) be considered for further amendment, and that the required signatures do not exceed 1%, of the respective electoral unit for which elections are held.**

23. The provisions for checking signatures by the CEC would benefit from additional procedural clarifications, as a safeguard against possible abuse and to ensure objectivity in application. Article 42(2) can be used to invalidate valid signatures if accompanied by a certain percentage of invalid signatures. Such a process can lead to abuse where an election commission may have the goal of finding enough invalid signatures for the sole purpose of rejecting a candidacy, instead of finding enough valid signatures to register the candidacy.[15] **It is recommended by the Venice Commission and OSCE/ODIHR that Article 42.2 be amended accordingly.**[16]

Cancellation of Candidacy

24. Article 100(2) of the Code permits a party or bloc, under some circumstances, to cancel the registration of a candidate. In the translated Code, it appears that the candidate's registration could be cancelled after he/she is elected. This provision is inconsistent with Paragraph 7.9 of the 1990 OSCE Copenhagen Document. The Venice Commission has also been critical of legal provisions that establish what is known as the "imperative mandate".[17] **The Venice Commission and OSCE/ODIHR recommend that this provision be removed from the Code.**

25. Article 100 provides that candidates may withdraw from a parliamentary election and that nominating parties can cancel their decision to nominate a candidate to a parliamentary election up to two days before election day. Article 84(4) provides that presidential candidates can withdraw as late as 12:00 of the day before election day. Unless the withdrawal of candidacy is linked to exceptional circunstances (such as health conditions), no amendment to ballots should be made by hand due to the possibility of human error or abuse.[18] **As recommended in the previous Joint Opinion,[19] the Venice Commission and OSCE/ODIHR recommend that a more realistic deadline be set, one which expires before the ballots have been printed. Additionally, there should be a formal process for candidate withdrawal for all types of elections that clearly specifies what actions, including election commission decisions, must be taken for the withdrawal to be effective. Circumstances for withdrawing candidacy should be clearly and exhaustively stipulated in the law.**

[14] Venice Commission Code of Good Practice in Electoral Matters, I. 1.3. ii.
[15] The Venice Commission Code of Good Practice in Electoral Matters (I.1.3, § 8) recommends that "The signature verification procedure must follow clear rules, particularly with regard to deadlines, and be applied to all the signatures rather than just a sample; however, once the verification shows beyond doubt that the requisite number of signatures has been obtained, the remaining signatures need not be checked."
[16] Venice Commission Code of Good Practice in Electoral Matters, I. 1.3. ii. and I.1.3.iv.
[17] *See* Opinion 423/2007, CDL-AD(2007)018, paragraph six.
[18] Article 51.13 (numbered as Article 54.15 in the 28 December 2009 amendments) provides "If any of the election subjects is removed from the elections, at the time of issuing the ballot paper, the stamp "Removed" shall be affixed opposite the name of such election subject". Article 84.4 provides "If a candidate withdraws their candidacy for the Presidency of Georgia, the name of this withdrawn candidate shall be stamped with the round seal "Withdrawn" on the ballot paper".
[19] Joint Opinion on the Election Code of Georgia as revised up to July 2008. CDL-AD-AD(2009)001.

ELECTION COMMISSIONS

General Comments

26. Although there is no standard model for composition of election commissions, the electoral law should guarantee that election commissions are established and operate in a manner that is independent and that commission members act impartially.[20] Moreover, in practice, a commission and its members should abide by these standards. Although the Code provides the basics for such principles, in some respects the Code can be improved to provide a greater assurance of their implementation.

Election Commission Structure and Nomination

27. The Central Election Committee (CEC) is comprised of 12 commissioners and the Chairperson. Five members of the CEC are elected by the parliament upon nomination of the President of Georgia, while seven members are appointed by political parties as prescribed by Article 26(1). The 28 December 2009 amendments require that the CEC Chairperson be nominated by the President and elected by the six CEC members appointed by parliamentary political parties (excluding the members appointed by the party with the largest share in parliament). Further, following December 2009 amendments, Article 22[1] provides that only members of Precinct Election Commissions (PECs) that were appointed by opposition political parties have the right to nominate secretaries of PECs. These amendments are positive, showing an effort to address previous concerns.

Protection from Termination

28. The terms of offices of election commission members should not be terminated on a discretionary basis, as it casts doubt as to the independence of the members. Termination for disciplinary reasons is permissible provided that the grounds for this are clear and restrictively specified in the law. Article 21 provides that parliament can terminate early the terms of office of non-party appointed CEC members. In addition, Article 37 sets out the potential forms of disciplinary action that DECs can employ against PECs, including termination of authority. While these provisions list relevant sanctions, they should do more to ensure that the sanction of termination is not abused and is only applied with careful consideration to proportionality. **It is recommended by the Venice Commission and OSCE/ODIHR that the Code protects election commission members from arbitrary removal by setting out under what grounds a removal is justified as compared to what grounds require a lesser sanction.**

29. Article 21(1g) provides that the authority of a commission member terminates if the party, which appointed the member, "recalls" the member.[21] In light of Article 19(3), which states that members of election commissions are independent and are not representatives of his/her appointing subject, the rationale for recall is questionable. In fact, there is no justification for allowing discretionary recall of an election commission member because the possibility of such recall will undermine the impartiality, independence and stability of election administration. The amendment introduced in June 2006 to the Article 21(5), which currently states that "recalling precinct election commission member during the last 15 days before the vote is prohibited" attests to the legislator's intent to ensure the stability of precinct elections commissions. Nevertheless, this amendment does not address the fundamental problem that gave rise to the recommendation. **It is recommended that the Code be**

[20] Existing Commitments for Democratic Elections in OSCE Participating States, par. 4; Venice Commission Code of Good Practice in Electoral Matters, II. 3.1.

[21] Article 21.5 prevents "recall" of a precinct election commission member during the fifteen days before voting. Article 37.6 uses the term "withdrawal" of the member instead of "recall", but the concept is the same.

amended to provide legal protection to members of election commissions in order to prevent their removal by the bodies, which appointed them and to enhance their ability to perform their duties independently, impartially, and professionally.[22]

Majority Voting Requirements

30. The 28 December 2009 amendments require that, while all election commission decisions be made by a majority, decisions on "annulling the results of the elections...[and] counting of ballots and special envelopes" be agreed upon by 2/3 of the commissioners present (Article 22(7). Likewise, per Article 27(5), the selection of the CEC chairperson must be made by 2/3 of the selection committee (or four of the six party-nominated CEC members tasked with this selection). The adoption of this qualified majority requirement is positive, **especially so with respect to the critical issue of annulling election results and counting of ballots (Article 22(7)).**

Training for Commissioners

31. The establishment of a Center of Development of Election Systems, Reforms, and Training (Article 17[1] of the 28 December 2009 amendments), which is tasked in part with training of election commission members, has the potential to enhance the professionalism of election administration and help standardise the training received by commission members. The impact and role of this body can be assessed in future elections.

ELECTION TIMELINES

Amendments to the Election Calendar

32. The 28 December 2009 amendments have made changes to the electoral timeline. For instance, candidates for local self-government must now submit registration requests 57 days prior to election day (as opposed to 38) (Article 117(1)); list of voters who are on a special voters list due to military service must be submitted 30 days prior to election day (increased from 10) (Article 10(4[1])); and DECs must define election precincts 50 days, rather than 38 days, prior to elections (Article 16(4)). These changes to the electoral calendar are generally positive and should serve to increase the effectiveness of electoral administration.

VOTERS' LISTS

33. The CEC is responsible for the maintenance of a centralised and computerised voters register (Article 9(4)). Article 9(5) provides that various government agencies (Ministry of Justice, local self-government units, Ministry of Refugees, *et al.*) are responsible for furnishing the CEC with updated voter information. Per the 28 December 2009 amendments, this is done four times during a calendar year and the CEC is obliged to update the electronic database of registered voters (Article 9(6)). In addition, for a three-week period prior to the elections, PECs are tasked with making additions and corrections to voters lists (Article 9(8)).

34. Political parties, election blocs, election observers and voters are provided with an opportunity to scrutinize the preliminary voters list and to request changes (Article 9(7)). Article 9(13) states that, "The Central Election Commission and the appropriate election commissions shall ensure publicity and accessibility of the general list of voters under procedures established by Georgian legislation". It is recommended that for greater clarity, instead of general reference to the "Georgian legislation", specific reference to the relevant numbered articles be inserted in this provision. In addition, to contribute to updating the

[22] Venice Commission Code of Good Practice in Electoral Matters, II.3.1.f.

voters' list, **the Venice Commission and OSCE/ODIHR recommend that Article 9 provides that the voters' list be posted at election commissions for public scrutiny (as required in Article 66,(2)) also in minority languages, particularly in those areas where other election materials are provided in minority languages.**

OBSERVERS

General Comments

35. The presence of international observers from OSCE participating States to observe elections is provided for in the Copenhagen Document.[23] In addition, it is recognised that domestic observers should be allowed (as part of their fundamental right to participate in the electoral process) to observe election processes. In general, the Code adequately addresses these requirements, generally offering broad rights for observers and requiring election commissions to prepare and conduct elections in a transparent manner. However, the Code could be improved to further facilitate observation efforts.

Application Procedures

36. The March 2008 amendments made the registration process of domestic and international observers more uniform with each other. Article 69(3) stipulates that a domestic observer organisation shall apply to the appropriate election commission ten days before election day (rather that 30 days as previously required), while international organisations must register at the CEC at least seven days prior to election day.

37. However, while the Code provides that domestic observers are permitted to observe at all levels of the election administration, the badges of domestic observers are to state the name and number of the election districts and precincts where the observer has reported he/she will observe (Article 69(9)). Although the Code allows for domestic organisations to register for observation on the territory of the entire country, these provisions for reporting districts and precincts are requirements that could be applied in a restrictive manner and might hinder efficient observation. By contrast, international organisations do not have the obligation to specify where they intend to observe the elections and their badges specifically state that the observer has the right to observe any precinct of any election district (Article 69(10)). To facilitate effective observation for both domestic and international organisations, domestic organisations should be allowed to make their decision about locations where to observe the electoral process without any constraint**. The Venice Commission and OSCE/ODIHR recommend that that the Code be amended so that domestic observers are not required to report in advance where they intend to observe the elections and that their badges expressly state that they are permitted to observe at any PEC, DEC, or CEC.**[24]

38. **Furthermore, the procedure for registration of observers for domestic organisations should be aligned with the procedure applied to international organisations**, including timelines and decisions issued. [25]

Rights of Observers

39. Article 70 provides a list of rights of observers. While Article 70(1)(f) allows observers to be present during the "consolidation" of the votes, this provision does not expressly provide

[23] 1990 OSCE Copenhagen Document, para. 8.
[24] *See* the Guidelines on an internationally recognised status of election observers adopted by the Council for Democratic Elections at its 31st meeting (Venice, 10 December 2009) and by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009); CDL-AD(2009)059), III, 1.4, vi, i).
[25] *See* The Guidelines on an internationally recognised status of election observers, III, 1.4.

that observers have a right to observe all aspects of the process taking place at DECs during the tabulation of results, which proved to be a problem in the 2008 presidential and parliamentary elections. **It is recommended by the Venice Commission and OSCE/ODIHR that Article 70 be amended to expressly provide the above-noted rights to accredited observers.**[26]

40. During the process of counting, two observers are chosen from among those present at the polling station to "stand near" the counters (Article 60(1) and Article 61(3)). While these articles do not preclude other observers from being present, the need for these provisions is unclear. Ideally and space in a polling station permitting, all observers should be allowed to observe the process of counting from a similar distance, giving all the opportunity to view and assess counting results equally. **The Venice Commission and OSCE/ODIHR recommend that these provisions be amended to ensure that all observers can effectively observe the counting process.**[27]

41. Newly introduced Article 126[31] provides for significant fines (500 Georgian Lari, approximately 215 EUR) to be imposed on observers, as well as election subjects and mass media representatives, for violating the conduct requirements towards them set forth in Article 70(2)b-d. Introduction of such sanctions can potentially have positive impact on the conduct of those following an electoral process and enhance the implementation of the law.

ELECTION CAMPAIGN PROVISIONS

"Vote Buying"

42. Article 73(9) prohibits what is commonly called "vote buying." It was observed during the 2008 parliamentary elections that this vote buying provision was extensively interpreted by the courts to ignore both the letter and spirit of the law and to offer broad latitude for candidates and campaigners to unduly influence voters through vote buying. Following the December 2009 amendments, this article was changed and now expressly prohibits the giving, or promise of, goods, money, or other material means to Georgian citizens by candidates or their proxies or through a third party. The sufficiency of regulation provided by the current formulation and its implementation can be assessed in future elections.

Use of Public Resources

43. Article 76[1] allows the use of administrative resources for campaign purposes – that is, the provision allows use of state-funded buildings, communication means, and vehicles provided that equal access is given to all election subjects. On the face of it, this provision appears to adhere to the equal opportunity principle. However, in practice such equality may quickly be undermined as political parties in government have easier access to such resources (government facilities, telephones, computers, and vehicles). Moreover, paragraph 2 of Article 76 allows public servants to use their official vehicles for purposes of campaigning provided the fuel costs are reimbursed.

44. In addition, Article 76[1], para. 2, allows political officials[28] to combine campaign activities in support (or against) electoral subjects with the conduct of their official duties, thus blurring the line between the state and political parties. These provisions fall short of OSCE

[26] *See* The Guidelines on an internationally recognised status of election observers, III, 1.4, vi, ii); III, 1.5, i.
[27] *See* The Guidelines on an internationally recognised status of election observers, III, III, 1.5, i.
[28] Under the Election Code, political officials include, among others, the President, ministers, deputy ministers, members of parliament and heads of local self-government bodies. Beyond these, there are varying interpretations among stakeholders as to which other public officials are legally considered to be political officials.

commitments.[29] The above provisions give an unfair advantage to some electoral contestants. **It is thus recommended to review the provisions allowing political officials to combine campaigning with official duties, in particular by limiting the number of officials who could benefit from this provision (as described and listed in Article 3). The Election Code should expressly prohibit direct or indirect use of all types of administrative resources – financial, material, technical, and human resources – for campaign purposes by election subjects, public officials, or other campaigners.**

45. Positively, amendments to the Code have introduced Article 73(10[1]), which stipulates that institutions of the state are not allowed to launch any additional social and welfare programs during an electoral campaign apart from those envisaged in their annual budgets.[30] In addition, amendments to Article 76(3) require that printed campaign materials are not paid for from the state/local budget. These amendments are generally positive steps in attempts to regulate the potential abuse of state resources. The implementation of these provisions can be assessed in practice during the next elections.

46. The Code does not include any general campaigning curfew or any prohibition against election-day campaigning in and around polling stations. The only time ban on campaign activities is in Article 73(3), which prohibits the transmission of free and/or paid electoral advertisements through television within 24 hours prior to the election date. (A ban on the publication of some opinion polls 48 hours before elections is stated in Article 73(12)). Undue influence in the last 24 hours before an election can take place in various contexts, such as agitation at the actual polling place or its vicinity and door-to-door campaigning on the day of voting. During the 2008 parliamentary elections, campaigning activities and materials were, in fact, observed on election day both inside and in the vicinity of polling stations. **It is recommended by the Venice Commission and OSCE/ODIHR that consideration is given to including a general prohibition against any type of campaign activity during the last 24 hours prior to elections**. **Campaigning and campaign materials in and around polling stations on election day should be banned.**

MEDIA

Framework for Regulation

47. Provisions regulating the media during election campaigns are found in Articles 73 and 73[1]. Although these provisions appear to provide an adequate framework for fair campaign conditions for electoral contestants, problematic elements remain. The Code stipulates that the requirements of equitable treatment apply only to "qualified" election subjects.[31] "Unqualified" election subjects must demonstrate public support through opinion poll results in order to enjoy free airtime/space. This potentially limits the ability for new political parties to compete on an equal basis**. It is recommended that Article 73[1] be thoroughly reviewed to address this concern. In accordance with Para 3.4 of the Venice Commission and OSCE/ODIHR Guidelines on Media Analysis, public media "should**

[29] Paragraphs 5.4 and 7.6 of the 1990 OSCE Copenhagen Document; the former calls for a clear separation between the State and political parties and the latter commits the state to "provide…necessary legal guarantees to enable [political parties] to compete with each other on the basis of equal treatment before the law and by the authorities."

[30] There is some discrepancy in language between translated versions. Verbatim, the English version of the 28 December 2009 amendments states that any such additional programs should be prohibited "From the election day to summarizing the election results…." However, previous translations of Article 73 use the language "From the moment of publication of relevant legal Act that announces the elections until the publication of the final results…" The original version of Article 73(10[1]) should be verified that the reviewers' assumption of this article text is correct. If the article does correctly state "from election day to summarizing of results", then the provision is not effective and will not prevent the abuse of state resources, and should be revised accordingly.

[31] "Qualified" election subjects are parties and/or candidates of parties that received at least four per cent of votes in the last election parliamentary elections or at least three per cent of votes in last local elections.

provide parties and candidates in elections with equal access and fair treatment."[32] **This should be reflected in Article73[1].**

Common Advertising Rates

48. The standard of equality of campaign conditions for all electoral contestants includes the right to have access to the same commercial rate for electoral ads offered to political parties and candidates and that the times and locations of the advertising be similar. Although such equality is guaranteed in print space (Article 73(15)(c)), this guarantee does not appear in the Code or media-related laws in regard to electronic media. **It is recommended that the Code be amended to include a requirement for all electoral contestants to be granted equal conditions, rates and similar transmission times for paid campaign advertising.**[33]

News Coverage and Other Programs

49. Articles 73 and 73[1] could also be improved as they are currently limited to providing conditions for contestants to convey messages through free airtime and do not extend to coverage of contestants in the news or other programs. Council of Europe's Committee of Ministers Recommendations states that "Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates."[34] **It is recommended by the Venice Commission and OSCE/ODIHR that these articles be amended to require that public media provide comprehensive information on all aspects of the election process through a variety of programs, outside the current free-of-charge slots, in order to create a forum for discussion for all contestants. It is also recommended that these articles be amended to require that public media should be obliged to treat all contestants on equitable terms, not only in special election programs, but also during all other programs, including its news broadcasts. It is further recommended that private broadcasters be encouraged to produce informative programmes, and discussion programmes with parties and candidates. Where they do so, they should comply with the same conditions as public broadcasters. Articles 73 and 73[1] should be amended to reflect this principle.**

CAMPAIGN FINANCE

General Comments

50. Articles 46 through 48 regulate campaign contributions and election campaign funds. These articles are generally positive steps for transparency and accountability in elections. However, some issues remain. As Articles 46-48 were not substantively amended by the 28 December 2009 amendments,[35] relevant recommendations of the previous Venice Commission and OSCE/ODIHR opinions are reiterated.

[32] Guidelines on Media Analysis during Election Observation Missions by OSCE/ODIHR and the Venice Commission (CDL-AD(2009)031), para. 57.
[33] Council of Europe, Committee of Ministers, Recommendation CM/Rec(2007)15, 7 November 2007.
[34] *Ibid*, para II, 2.
[35] Article 46(2) is the only amended provision. While the language of this article was amended, the purpose and intent (requiring the opening of election funds for all election subjects aside from "majoritarian" candidates, who open funds voluntarily) was left unchanged.

Election Campaign Funds

51. Article 47(3) provides that "the funds deposited without indication of the data provided for by the paragraph 2 of this article shall be considered anonymous", and shall thus "be transferred immediately to the State budget of Georgia". This measure runs the risk of being disproportionate. It curtails the right to property (First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms) in an excessive way in order to prevent improper deposits while, at the same time, there seem to be far less drastic means to achieve the same end with no lesser level of efficacy. **The Venice Commission and OSCE/ODIHR recommend that Article 47(3) be accordingly amended.**

52. Article 48(4) states various duties of the election campaign fund manager, such as monthly reporting to the CEC on sources and amounts of contributions. This contributes to transparency and is welcomed. However, the provision requires financial reporting only on a monthly basis, which was seen to be inadequate in practice during the 2008 parliamentary elections. **It is recommended by the Venice Commission and OSCE/ODIHR that this provision be revised to ensure that the financial report is submitted to the Financial Monitoring Group of the CEC, and published some time in advance of election day. This provision should also include an obligation to report on expenditures (not only contributions) in the pre-election period (not only post-election.)**

Reporting and Audit Requirements

53. Article 48(6) addresses post-election reporting which contributes to transparency and legality of elections. However, **it is recommended that the provision be amended to require that the final audit report submitted by election contestants be made public and that all such reports are accompanied by relevant supporting documentation.**

54. Article 48(8) foresees an initial warning by DECs or the CEC to electoral subjects for failing to meet regulations on campaign fund management. However, the reference in the provision to the "legislation of Georgia" determining the responsibility of an election subject and campaign fund managers in case of inaccurate data is ambiguous. **It is recommended that Article 48 include specific reference to applicable legal provisions.**

Monitoring Body

55. Article 48(101) requires the CEC to establish a financial monitoring group, tasked with monitoring the financial reports which all election subjects are required to submit during an election period to election commissions. In the 2008 parliamentary elections, the effectiveness of this monitoring group was limited, due to the fact that its mandate is not defined in the Code, with the result that there was confusion about the scope of its responsibilities. **It is recommended that the Code clearly define the role and responsibilities of this financial monitoring group.**

Sanctions

56. Sanctions related to violations of campaign finance regulations seem disproportionate and potentially problematic. In particular, Article 48.8 states:

Election subjects who receive the necessary number of votes determined by this Law and do not submit an election campaign fund report within the established deadline, or in violation of the requirements of paragraphs 2, 3, 4, 5 and 7 of Article 46 of this Law, paragraphs 4 and 5 of Article 47, paragraphs 4, 5 and 6 of this article, is proven, the relevant district/municipal court considers and decides the issue of the consolidation of the results of the elections without taking into account the votes received by these election subjects.

57. Such a sanction, amounting to cancellation of votes received by a contestant when consolidating the results, on the mere basis of a late delivery of campaign accounts, is disproportionate and could easily be abused in order to "cancel" an electoral subject once the results are known. It is also not clear how courts, which are normally not in charge of consolidating the results, would handle such cases. The Code does not seem to indicate that the contestant, whose votes are cancelled, would benefit from the same type of protection as he/she would in a fully-fledged court process. Finally, the Code does not specify whether courts could act on their own motion, or whether election commissions would have to submit cases to the court. **The Venice Commission and OSCE/ODIHR recommend that the provisions of Article 48.8 be reviewed to address the above concerns and that contestants be guaranteed a possibility of an appeal.**

VOTING AND TABULATION OF RESULTS

Special Provisions for Disabled Voters and Minority Voters

58. The Code contains positive provisions to assist disabled voters and voters with limited physical abilities. Article 11 provides that voters with limited physical abilities or medical conditions be included in the mobile ballot box list. As for the location of the polling stations, Articles 49(2) and 49(3) contain special provisions to facilitate polling station access for disabled voters, including requirements for polling stations to be on the ground floor of buildings whenever possible. With regard to the preparation of ballot papers for the election precincts, Article 54(2) stipulates that the CEC shall ensure the use of technology that will enable voters with vision problems to fill in the ballot papers independently. Article 66(5) requires that the public TV broadcaster shall, when publishing information by an election commission, 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 appropriate special technology. These are positive features that address the specific needs of some persons with physical disabilities.

59. Article 51(1) (Article 54(1) in the 28 December 2009 amendments)[36] obliges the CEC to print ballots in languages other than Georgian where necessary for local populations. This is a positive provision. The Parliament should also consider, as it enacts legislation, to facilitate the participation of all societal groups in elections, by introducing a requirement that other election materials, such as PEC manuals and the Code, also be printed in minority languages.

Military Voting

60. Article 16(3) addresses the establishment of special polling stations, including in military units. While it is acceptable for the electoral law to have special provisions ensuring that a member of the military is able to exercise the right to vote while on active duty, this provision must be written carefully, as voting by the military can be subject to abuse. This recommendation has been included in previous opinions. **The Venice Commission and OSCE/ODIHR again recommend that while the Code should and does permit special polling stations to be set up within military units located in remote areas, far from the inhabited areas, the provision should be accompanied by an express indication that this is strictly exceptional and that, whenever possible, military voters should vote either at their place of residence or in civilian polling stations (located near their base).**[37]

[36] This discrepancy in the numbering of articles in the 28 December 2009 amendments should be addressed to ensure that no articles were omitted during translation and to reconcile the conflicting article numbers.
[37] Venice Commission Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I. 3.2.2. xi.

Mobile Voting

61. Mobile voting should only be allowed under strict conditions, avoiding all risk of fraud.[38] Article 11 is clear that it is only those persons who are physically unable (for health or other reasons) to travel to the polling station that can be included on the mobile voters' list. However, Article 59(3) implies that other voters who "cannot reach the polling station" may apply for inclusion on the mobile list up to 2 days prior to elections. The vague nature of this provision is susceptible to abuse. **It is recommended by the Venice Commission and OSCE/ODIHR that Article 59(3) be revised to clarify who can apply to use the mobile ballot box, in line with the provisions of Article 11. Mobile voting should be available only to those in hospital or who have illnesses or physical disabilities, which prevent them from visiting a polling station.**

Voting Procedures

62. Article 49(9) states that "for the purpose of enhancing secrecy of the ballot, photo and video shooting shall be forbidden in the polling-booth". The contribution of the provision towards securing free and fair elections is obvious and welcomed. However, Article 49(6)(e) allows that "Video surveillance and recording may be used with the purpose of prevention of violations in the election process and reacting on them—so-called 'video eye'." This provision is problematic. The use of recording devices in the polling station, even if it does not infringe on the secrecy of the ballot, may appear to do so and can also intimidate some voters. As such, this provision may have a chilling effect on suffrage rights, potentially leading to intimidation, fear, and coercion. **The Venice Commission and OSCE/ODIHR recommend that Article 49(6)(e) be removed in its entirety. Given provisions for observation and efforts to ensure transparency in the voting process, its intended purpose to prevent electoral violations cannot be justified.**

Determination of Election Results

63. Articles 60 through 63 contain detailed provisions on opening of ballot boxes, determination of results of voting, compilation of summary protocols of voting, and the consolidation of the election results. However, there is a concern with how the ballots in mobile ballot boxes are evaluated.

64. Article 61(4) requires that all ballots in a mobile ballot box be invalidated if the number of ballots in the mobile ballot box exceeds the number of signatures in the supplementary list of voters using the mobile ballot box. It would go against the principle of proportionality for one hundred legitimate and valid mobile ballots to be invalidated just because one extra ballot is found in the mobile ballot box. The better practice may be to note any discrepancy in the number of mobile ballots in the protocol, thereby preserving an evidentiary basis for later consideration should there be the mathematical possibility that an extra ballot in the mobile box could have affected the result**.** Furthermore, since similar provisions do not exist to invalidate regular ballot boxes (Article 61(4)), this provision amounts to unequal treatment of voters requiring use of the mobile ballot box. **It is recommended by the Venice Commission and OSCE/ODIHR that given the safeguards provided for in Article 59 (4) and (8), this requirement in Article 61(4) be removed.**

Publication of results

65. Article 64^3 regulates the DEC protocol on the voting results in an electoral constituency. The text of Article 64^3 does not expressly require that the DEC protocol provide information

[38] Venice Commission Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I. 3.2. vi.

for each polling station within the DEC. While the DEC is required to provide copies of PEC protocols, **it is recommended by the Venice Commission and OSCE/ODIHR that Article 64[3] be reviewed and amended as necessary to ensure that the DEC completes a protocol which includes results from individual PECs within the district as an integral part of the DEC protocol, thereby enabling parties and observers to audit the results.**

66. Article 64[4](4) stipulates that "the CEC provides for placing the results of the protocols on its web-site". This transparency mechanism is welcome as it allows both observers and political parties to check the accuracy of the results and of their consolidation. In previous opinions, the Venice Commission and OSCE/ODIHR recommended publication by the CEC of the *preliminary* results per polling stations immediately after they are received from DECs. According to the authorities, this is already done by the CEC.

Invalidation of Results

67. The provisions regulating the invalidation of election results should be clarified. Indeed, the inadequacy in the area of invalidation of election results has been shown by the experience of past elections.[39] Some of this confusion derives from the fact that the power to invalidate appears to be within the authority of the DEC as per Articles 34(2), 38(2), and 64[3](4). However, Article 105(12) appears to extend some invalidation powers to the CEC as well. **It is recommended by the Venice Commission and OSCE/ODIHR that all articles which relate to invalidation of election results be thoroughly reviewed and amended to ensure their clarity and consistency, and that they expressly state the authority of the CEC in regard to invalidation of results. It is also recommended that these articles clarify the circumstances in which elections, or part of an election, can or should be repeated. In addition, while cases of possible invalidation may be heard by election commissions in first instance, it is recommended that the proceedings offer possibilities to appeal to a competent court.**[40]

68. Article 125(1) provides: "A district electoral commission may annul vote results in an electoral precinct where this law was grossly violated." This provision amounts to granting DECs an extraordinary discretion in annulling the election in a precinct since judging whether the law has been "grossly" violated is a question of subjective appreciation. **The Venice Commission and OSCE/ODIHR recommend that this provision, as well as similar text in Article 105(12), be reviewed.** The Venice Commission Code of Good Practice counsels that an election commission "should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats."[41] Further, Articles 125(2) and 105(12) allow for invalidation of results in a district if the number of invalid votes equates to more than one half of the total number of voters. This invalidation may be overly broad, as it could affect precincts where no discrepancies occurred simply because other precincts in the same electoral district had significant problems.

Recount of Ballots

69. Article 29(1)(m) grants the CEC the power to order a recount of ballots from a polling station. However, neither Article 29(1)(m) nor any other provision in the Code provides any criteria for when a recount is required. **It is recommended that the Code be amended to state what circumstances justify a recount. Further, it is recommended that the Code specify the procedures to be used during the recount. It is further recommended, that**

[39] OSCE/ODIHR Final Report on Georgia Parliamentary Elections, Part 2, 28 March 2004, page 23, for a detailed explanation of the CEC's decision concerning the Khuol and Kobuleti constituencies.
[40] Venice Commission Code of Good Practice in Electoral Matters, II.3.3.
[41] Venice Commission Code of Good Practice in Electoral Matters, II.3.3.e. *See* also European Court of Human Rights, *Namat Aliyev v. Azerbaijan*, Application no. 18705/06, 8 April 2010, about cases of gross violations, which may justify the cancellation of results even in the absence of a proven possible effect on the result.

the Code should provide that reasonable notice of the recount be given and that this notice be relayed to relevant stakeholders, including accredited observers.

LEGAL PROTECTIONS

General Comments

70. Previous joint opinions and final reports of election observation missions have commented extensively on shortcomings in the Code related to the resolution of election complaints and appeals. Recommendations have been made to encourage simple, understandable, and transparent procedures that will ensure both effective remedies and the adjudication of electoral disputes before an impartial tribunal in a fair and public hearing. The 28 December 2009 amendments do make changes in the relevant articles but without introducing any significant improvements other than increasing some deadlines. Thus, the Code continues to require improvements in this area. Although previous recommendations are not restated here, some additional comments are warranted by the 28 December 2009 amendments.

Election Day Complaints

71. Article 64 and new Article 64^1 define the process by which complaints and appeals can be submitted on voting and counting. These articles require that a "claim/appeal" presented to a PEC be immediately registered and the complainant be provided with a receipt of such registration (Article 64(1)). Deadlines for the filing of such complaints may, however, be overly stringent. Article 64^1(1) requires that complaints related to voting be made before the "closure of the ballot box," and complaints on counting procedures be made "from the time of the opening of the ballot box until drafting of the concluding protocol." While expediency in the conclusion of election related disputes is laudable, such stringent deadlines may serve to silence legitimate complaints, in particular those concerning voting procedures that are not discovered until after voting has ceased. **It is recommended that such deadlines be revised to allow for the filing of complaints directly to the PEC until completion of protocols.**

72. Article 64(2) sets out the information that must be included when a "claim/appeal" is filed with the PEC. While Article 64^2(5) states that complaints not filed with all requisite data will not be considered, there is a process for correction and re-submission of such complaints (Article 64^2(2),(3),(4)). The possibility for correcting mistakes and resubmission of complaints is a positive feature. Nonetheless, it requires that corrections be made "within the terms defined by the officer of the election committee." To ensure objectivity and fairness in the application of this provision, **it is recommended by the Venice Commission and OSCE/ODIHR that amendments be introduced with specific guidelines as to the process for correction, as opposed to leaving this decision to the discretion of the relevant election commission member. Moreover, Article 17(6) could be amended, requiring complaints and appeals decisions, in particular those by the DECs and the CEC, to be included in a report to the Parliament.**

Administrative Sanctions

73. The 28 December 2009 amendments include new Articles 126^{18} - 126^{32}. These articles set out the monetary fines imposed for a range of election offences. While these provisions attempt to ensure objectivity and transparency in the punishment of electoral violations, it is recommended that each sanction be periodically reviewed to ensure that proportionality in punishment is maintained.

CONCLUDING REMARKS

74. Overall, the amendments made to the Election Code of Georgia in December 2009 and March 2010 constitute an improvement. Nonetheless, a number of provisions in the current Code are of serious concern or raise questions due to the fact that the text of the Code is ambiguous or lacks clarity in some areas. Among these issues are: overly stringent restrictions on the active and passive suffrage rights of citizens; the formation of electoral districts that undermine the principle of equality of suffrage; the absence of provision for allowing independent candidates to run for office; overly long residency requirement for candidates in local elections; and shortcomings in the complaints and appeals process.

75. As previously recommended in the OSCE/ODIHR Final report on the 21 May 2008 parliamentary elections in Georgia, the Georgian Parliament could, rather than adopting further amendments to the current Code, constructively enact a new Code in the near future and at least one year ahead of the next nationwide election. Adoption of a new Code can help systematise and streamline the provisions, as well as eliminate ambiguities and inconsistencies between the Code's various articles, which possibly have resulted from frequent amendments in the past years. This new Code could take into account past and the present recommendations made by OSCE/ODIHR and the Venice Commission. This would be best accomplished through an open and transparent process of consultation with key election stakeholders that aims to reach a broad consensus.

76. Relevant public authorities should be fully informed of their obligations under the Code, and public servants and officials at all levels should be fully informed of the restrictions related to an electoral campaign that apply to them. Enhanced enforcement of the election-related laws by all levels of the election administration, Ministry of Interior, General Prosecutor, and the courts is also required. Therefore, as in former opinions, the Venice Commission and OSCE/ODIHR reiterate that good faith implementation of electoral legislation remains crucial.