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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(ODIHR)

GEORGIA

JOINT OPINION

**ON DRAFT AMENDMENTS TO THE ELECTION CODE AND TO THE
RULES OF PROCEDURE OF THE PARLIAMENT OF GEORGIA**

**Approved by the Council for Democratic Elections
at its 79th meeting (Venice, 14 December 2023) and
adopted by the Venice Commission at its 137th Plenary Session
(Venice, 15-16 December 2023)**

on the basis of comments by

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I. Introduction

1. On 22 September 2023, Mr Shalva Papuashvili, Speaker of the Parliament of Georgia, requested an opinion of the Venice Commission on draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia ([CDL-REF\(2023\)050](#), hereafter referred to as “the draft amendments”). As this Opinion relates to the electoral field, it was prepared jointly by the Venice Commission and ODIHR.

2. Mr Nicos Alivizatos, Mr Michael Frendo and Ms Katharina Pabel acted as rapporteurs for this opinion. Ms Marla Morry was appointed as the expert for ODIHR.

3. On 15 and 16 November 2023, a joint delegation composed of Mr Nicos Alivizatos, Mr Michael Frendo and Ms Katharina Pabel on behalf of the Venice Commission and Ms Marla Morry on behalf of ODIHR, accompanied by Mr Michael Janssen from the Secretariat of the Venice Commission, visited Georgia and had meetings with representatives of the Central Election Commission (CEC), the Chairperson of the Legal Issues Committee of the Parliament of Georgia and the Head of the Working Group on Electoral Reform, representatives of various political parties represented in the Parliament of Georgia, the Parliamentary Secretary of the President of Georgia, representatives of several non-governmental organisations and the international community represented in Tbilisi. This Joint Opinion takes into account the information obtained during the above-mentioned visit. The Commission and OSCE/ODIHR are grateful to the Georgian authorities and the Council of Europe Office in Georgia for the excellent organisation of this visit.

4. This Opinion was prepared in reliance on the English translation of the electoral legislation. The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 15 and 16 November 2023. It was approved by the Council for Democratic Elections at its 79th meeting (Venice, 14 December 2023), and, following an exchange of views with Mr Levan Makhashvili, Head of Cabinet of the President of the Parliament of Georgia, it was adopted by the Venice Commission at its 137th Plenary Session (Venice, 15-16 December 2023).

II. Background and scope of the Joint Opinion

6. The European Commission’s Opinion on Georgia’s application of 3 March 2022 to join the European Union (EU), published on 17 June 2022 and endorsed by the European Council on 23 June 2022, issued a recommendation to grant Georgia European Union candidate status provided it fulfils 12 priority objectives as elaborated in the recommendation, including the priorities to address existing political polarisation, to strengthen the independence of all state institutions, and to improve the electoral framework.¹ Based on the work of a parliamentary Working Group on electoral reform which was subsequently created under the Parliament’s Legal Issues Committee, the Parliament of Georgia adopted several sets of amendments to the election legislation in the course of 2022 and 2023. In his request for an Opinion the Speaker of Parliament made it clear that the current draft amendments, which only concern the composition of the Central Election Commission (CEC) and the election of its non-partisan members and Chairperson, are to be seen in this context.

¹ See [Opinion](#) on the EU membership application by Georgia. The priorities also form part of the EU-Georgia Association [Agenda 2021-2027](#), agreed in late 2021 and formally adopted in September 2022. See section 2. Priorities of the Association Agenda / 2.B. Short and medium-term priorities of the Association Agenda / 2.B.1. Democracy, Human Rights and Good Governance.

7. On 8 November 2023, the European Commission recommended that the European Council grant Georgia the status of a candidate country on the understanding that a number of steps are taken, including by addressing previous key recommendations of the Venice Commission and ODIHR in relation to electoral law as well as the recommendations in the upcoming Venice Commission and ODIHR Opinions in a timely manner, before the next elections take place.²

8. The Venice Commission and ODIHR emphasise that the scope of this Joint Opinion covers only the draft amendments to legislation officially submitted for review (“the draft amendments”). Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing elections in Georgia. In this connection, it must be stressed that the pending Venice Commission and ODIHR recommendations remain valid.

9. Moreover, the Venice Commission and ODIHR would like to make mention that this Joint Opinion does not prevent ODIHR and the Venice Commission from formulating additional written or oral recommendations or comments on the Election Code and the Rules of Procedure of the Parliament of Georgia or related legislation pertaining to the legal and institutional framework regulating electoral legislation in Georgia in the future.

III. Analysis and recommendations

A. General remarks

10. The Venice Commission and ODIHR have consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements:

- 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations;
- 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and
- 3) the political commitment to fully implement such legislation in good faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.

11. The Venice Commission and ODIHR note that electoral law in Georgia has frequently been amended in recent years. The Venice Commission and ODIHR have assessed the reforms in several Joint Opinions.³ While recognising positive developments and implementation of part of their recommendations, they repeatedly stressed the need for a comprehensive, systemic review of the electoral law well in advance of the next elections within an inclusive consultation process, thereby implementing the recommendations of their latest opinions as well as the election observation reports by ODIHR and the Council of Europe Parliamentary Assembly (PACE).

12. The most recent Joint Opinion of 2022 included a number of specific recommendations, some of which were addressed by the revised draft amendments to the Election Code adopted on 22 December 2022, while others were not followed. The legislative issues that remained unaddressed in recent reforms broadly relate to, among others, constituency delimitation, restrictive residence requirements for presidential and parliamentary candidates and other undue criteria on voter and candidate eligibility, additional aspects regarding the formation of election commissions, provisions on the misuse of official position for campaign purposes, high donation

² See [European Commission Georgia Report 2023](#).

³ See, *inter alia*, Venice Commission and ODIHR, [CDL-AD\(2022\)047](#), Joint opinion on draft amendments to the Election Code and the Law on Political Associations of Citizens; Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code.

limits for election campaigns affecting the level playing field, further regulation and oversight of campaign finance, further elaborating media campaign regulations, strengthening the framework for electoral dispute resolution to ensure effective legal remedy, recounts and annulments, and measures to prevent voter intimidation.

13. While further amendments to some specific provisions of the Election Code were adopted on 9 February and 13 June 2023, the repeated recommendations by the Venice Commission and ODIHR for a more holistic approach and for a comprehensive reform have still not been followed. The current draft amendments only deal with two specific issues, namely the composition of the Central Election Commission and the election of its non-partisan members and Chairperson. The legal framework governing elections therefore still contains gaps and shortcomings raised in previous Joint Opinions as well as ODIHR and PACE election observation reports. The next parliamentary elections are due to be held in October 2024.

14. During the interviews in Tbilisi the rapporteurs were informed that the above-mentioned Working Group on Electoral Reform concluded its work in June 2023. Contrary to the preceding reforms of 2022 and 2023, the current draft amendments were therefore not prepared by that Working Group, in which MPs from parliamentary factions and groups, the CEC and the State Audit Office, as well as some civil society organisations had been invited to participate. Rather, they were prepared in a rapid process on the initiative of the ruling party, following views expressed by the European Commissioner for Enlargement regarding the above-noted June amendments and the progress of implementing 12 priorities prescribed for Georgia. The rapporteurs were informed that neither opposition parties nor relevant state institutions such as the CEC nor civil society were consulted on the draft amendments.

15. On 5 October 2023, the draft amendments passed the first reading in Parliament. The adoption process was then suspended, so that the conclusions of the present Joint Opinion could be taken into account. While this is clearly a welcome development, the Venice Commission and ODIHR remain concerned that the legislative process described above does not ensure the broadest possible consensus after extensive public consultations with all relevant stakeholders. They wish to reiterate that the legal framework for carrying out elections should be based on as wide a consensus as possible amongst all the parties participating in an election and that every effort should be made to achieve this shared confidence in the process; at the same time, the ownership of the process can only take place by dialogue amongst all the stakeholders driven by a genuine desire to safeguard and enhance Georgian democracy.⁴

B. Composition of the Central Election Commission

1. General remarks

16. The Venice Commission and ODIHR have previously stated that there does not exist a specific international standard for the formation of election administrations; each country should therefore find the most appropriate model that complies with local traditions and good practices that have been developed, and based on the general guiding principles, most notably the independence and impartiality of the election administration, confidence of election stakeholders in the election management bodies, and transparency and accountability in the overall election process.⁵ As noted in the Code of Good Practice in Electoral Matters, “[w]here there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to the polling station level” to ensure that elections are properly conducted, or at least to

⁴ See e.g. Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, para. 20.

⁵ See Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, para. 25.

remove serious suspicions of irregularity.⁶ The proposed amendments can be seen as a welcome attempt to ensure this, but further improvements are necessary as outlined below.

17. Among the range of models for the formation of election-administration bodies which has been established in Venice Commission member States and OSCE participating States, central election administration bodies have been established based on multi-party representation. The membership of lower-level commissions generally replicates the principle followed in the establishment of the central commission. The main value of setting up the central election management body based on multi-party representation is to strengthen confidence and transparency in the process by allowing major political interests to take part in the administration of the election. In Georgia, election commissions have a mixed composition including both partisan and non-partisan appointments of members. While this model has been in place for many years, the number of commission members and the appointment processes have repeatedly been changed. The draft amendments under consideration once again modify the election and appointment procedures concerning the non-partisan members and the Chairperson of the CEC.

18. According to the rules currently in force in Georgia, elections are managed by three levels of administration, comprising more than 3600 Precinct Electoral Commissions, 73 District Election Commissions and, at the top of them, the CEC. As stated by the Council of Europe Parliamentary Assembly's report of 11 January 2021 on Georgia's last parliamentary election of 31 October 2020, the ruling party's dominant position in the above commissions negatively impacted the public perception of their impartiality and independence required by the Election Code, international standards and good practice.⁷

19. The Venice Commission and ODIHR underline that the fairness – and the perception of fairness – of the electoral procedures and, at the end of the day, the fairness of the elections themselves depend to a high extent on the election management bodies and their enjoyment of the public trust, i.e. the election commissions and the Central Election Commission in particular. Therefore, the highest level of impartiality and independence should be sought in both the composition and the functioning of those bodies. The best possible way to achieve this is to provide, *first*, that their members, including their Chairperson, are elected through procedures which seek consensus; and, *second*, that qualified majorities are required for the taking if not of all, at least of the most important decisions by the Commissions. In both respects, negotiations between stakeholders and, in particular, between political parties, are necessary to reach compromises and, if possible, consensual solutions. At the same time, as already stressed in previous opinions, alternative solutions should be provided in case an agreement proves impossible. Such solutions could either imply the requirement of smaller majorities (an alternative which needs to be handled with care since it may lead to single-party majorities), or the referral of the issue to another institution, such as the President of the Republic or a high-ranked judge, such as the President of the Supreme Court or of the Constitutional Court.

2. Previous reforms

20. The CEC is composed of not more than 17 members, including the Chairperson, who serve five-year terms. Up to nine of the CEC members are appointed by each of the political parties with parliamentary factions (one member appointed by each faction). The draft amendments to the Election Code and Rules of Procedure of the Parliament primarily relate to the procedures for the selection of the seven non-partisan members of the CEC and the Chairperson. The

⁶ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), Guideline II 3.1.b.

⁷ PACE, Observation of the parliamentary elections in Georgia (31 October 2020), [Doc. 15210](#), para. 21. See also the [ODIHR election observation reports](#) 2018, 2020, 2021.

process for filling of these non-partisan vacancies has been amended multiple times in recent years, most recently in 2021 and 2023, as follows:

21. In line with the EU-brokered 19 April 2021 political agreement between the majority and several opposition parties (so-called 'Charles Michel Agreement') – aimed at overcoming the political crisis with respect to the opposition's parliamentary boycott and enhancing public trust in key state institutions – the manner of nominating and electing the non-partisan CEC members and Chairperson was modified in June 2021. The amendments provided for the President of Georgia (rather than the Speaker of Parliament) to select (through an open competition and the establishment of an *ad hoc* Selection Commission) and nominate one candidate to fill each of these vacancies for election by Parliament. Under the 2021 amendments, each CEC member and the Chairperson were elected by a 2/3 majority of votes of all parliamentary deputies,⁸ with a final anti-deadlock mechanism of a simple majority vote of all deputies. The term of office of a member/Chair elected by less than two-thirds was limited to six months. The introduction of the 2/3 quota was consistent with the Urgent Joint Opinions of the Venice Commission and ODIHR on the draft amendments and subsequent revisions, dated 30 April and 18 June 2021, respectively, that recommended, and approved of, the introduction of a qualified majority in order to strengthen the CEC's independence and the public's trust in the election administration.⁹

22. However, the complex political reality after the 2021 amendments – lack of any negotiation on the selection of the CEC members/Chairperson toward seeking political consensus or the 2/3 qualified majority, anti-deadlock mechanism leading to the election by simple majority of the new members/Chairperson with a six-month limited term which was later prolonged due to the inability to fill the vacancies, lack of political support by the ruling party and opposition for the candidate nominated by the President of Georgia – led, in part, to the ruling party's withdrawal from the 2021 political agreement and to adoption of further legal amendments on 13 June 2023. By way of these amendments, the procedures described above were changed in two key respects. Firstly, the power to establish the Selection Commission and to nominate the non-partisan candidates for parliamentary election as member or chairperson of the CEC was returned to the Speaker of Parliament; the President of Georgia was granted one representative on the Selection Commission.¹⁰ Secondly, the 2/3 parliamentary quota for election of a candidate was lowered to a simple majority and the six-month term of office for candidates elected by simple majority repealed, with all members/Chair elected for five-year terms. These changes have essentially granted the ruling party full control of the selection and nomination process, to elect the CEC members and Chairperson without any opposition support. This was contrary to the recommendations of the Venice Commission and ODIHR put forward in their 2021 Urgent Joint Opinions.¹¹ If Parliament fails to elect any nominated candidate by a simple majority, the President of Georgia can nominate a candidate from among the applicants in the open competition.¹²

23. These changes faced opposition from some members of the civil society sector, who raised concerns that the new procedures undermined the CEC's independence and failed to address

⁸ Pursuant to Article 37(2) of the Constitution, Parliament is composed of 150 members.

⁹ See Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, para. 21; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, para. 34.

¹⁰ The Selection Commission submits one candidate for each vacant position of non-partisan member and Chairperson. The Speaker of the Parliament has the right to reject the candidates proposed by the Selection Commission and to relaunch the competition.

¹¹ See Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, para. 21; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, paras. 31 and 34.

¹² If this anti-deadlock mechanism fails to fill the remaining vacancies, a new competition is launched by the Speaker of Parliament and the procedures are re-conducted.

the lack of public trust in it.¹³ A presidential veto of the amended legislation was overridden by Parliament and the President's proposal for not less than a 3/5 majority quota – in order to maintain the need for consensus-based decisions “to strengthen trust in the elections and election administration” – was rejected. The amendments were adopted by the ruling party in the final reading.

3. The present draft amendments

24. On 5 October 2023, on the initiative of the ruling party following views expressed by the European Commissioner for Enlargement regarding the above-noted June amendments, new changes to the parliamentary quota and rules for election of the non-partisan CEC members and Chairperson passed the first reading with 81 votes. The draft amendments would increase the current simple majority quota of the full composition of Parliament for election of the non-partisan CEC members and Chairperson to a 3/5 majority quota, with an anti-deadlock mechanism that provides for the possibility of two additional rounds of voting under which the candidates can be elected by simple majority (draft Article 211.1(7) of the Rules of Procedure of the Parliament). Under this draft provision, each round of re-voting is to be conducted “not earlier than the beginning of the next week”.

25. Under the draft amendments, the authority to launch the open competition, to establish the Selection Commission and to nominate the candidates to Parliament for election will remain with the Speaker of Parliament (draft Article 211.1(2) of the Rules of Procedure of the Parliament). The inclusion of one representative of the President of Georgia on the Selection Commission is maintained (draft article 211.1(2) of the Rules of Procedure of the Parliament).¹⁴ Under the draft amendments, if the parliamentary voting fails to fill any of the vacancies, the President of Georgia may appoint a candidate from among the applicants in the open competition (draft Article 10(6) of the Election Code; draft Article 211.1(1) and (7) of the Rules of Procedure of the Parliament).¹⁵ If the President does not appoint a candidate within one week of receiving the list of applicants and their relevant documentation from the Speaker of Parliament, a new competition is launched and the procedures re-conducted.

26. The proposed increase from a simple majority quota to a qualified 3/5 majority represents a step in the right direction, bearing in mind previous Venice Commission and ODIHR joint recommendations in relation to earlier changes to the quota. In commenting on the proposed simple majority quota at that time, the April 2021 Urgent Joint Opinion noted that the election of the non-partisan CEC members and Chairperson by a simple majority could effectively result in all of these members and leadership being ruling party appointees and recommended that alternative mechanisms for nomination and/or appointment be explored in order to ensure broader consensus on the selections, guarantee the independence and impartiality of the highest election body, and garner increased public confidence in the election administration.¹⁶ The Opinion specifically recommended to consider the introduction of a qualified (e.g. 2/3) majority

¹³ In addition to criticising the move to a simple majority quota, civil society actors raised concerns about transferring the authority of the President of Georgia to nominate the non-partisan CEC members and Chairperson to the Speaker of the Parliament, asserting that not only did this undermine public trust in the selection process but that it may constitute a breach of Article 52(1)(d) of the Constitution of Georgia which empowers the President to “participate in the appointment of the Chairperson and members of the CEC in cases defined by the organic law and in accordance with the established procedure”. While it is not for the Venice Commission and ODIHR to assess the constitutionality of the law – which is the competence of the Constitutional Court of Georgia, in a given case – they note that despite the aforementioned transfer of competences the President still has a (limited) role in the appointment procedure (representation in the Selection Commission and involvement in the anti-deadlock mechanism).

¹⁴ The draft amendments would change the composition of the Selection Commission from 9 members to “not less than 7 and not more than 9 members” (Article 211.1(2) of the Rules of Procedure of the Parliament).

¹⁵ As under the current legislation, the term of office of the CEC's active Chairperson and members continue until a new chairperson/member is appointed (draft Article 10(7) and (9) of the Election Code.)

¹⁶ See Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, paras. 31 and 34.

parliamentary vote or a double majority requirement (requiring a majority among MPs both of the ruling parties and the opposition parties), with an anti-deadlock mechanism. The Opinion placed particular emphasis on reaching consensus on the CEC Chairperson as “an important matter for Georgian democracy” and urged that “every attempt should be made to find as wide a consensus as possible on the CEC chairperson”. The June 2021 Urgent Joint Opinion on the revised draft amendments at that time commended the proposed introduction of a 2/3 parliamentary majority which was eventually adopted¹⁷ (and which, as noted earlier, was subsequently changed in June 2023 to a simple majority quota).¹⁸

27. In the view of the Venice Commission and ODIHR, more should be done to facilitate consensus amongst political stakeholders on the CEC’s composition and leadership. Although a 3/5 parliamentary majority would require some opposition support in the selection process and therefore work in the direction of garnering greater consensus, re-establishing a quota of 2/3 majority might serve to further strengthen the efforts to seek political consensus on the selection of the non-partisan CEC members and Chairperson, and to further reinforce public trust in the CEC’s independence. As noted in the April 2021 Urgent Joint Opinion, on-the-ground consensus on the appointment of the non-partisan members and Chairperson should be sought, as the election administration does not currently enjoy a high level of public confidence.¹⁹ Moreover, the previous regulation requiring a 2/3 parliamentary majority had the benefit of broad political support and implemented the political agreement of the majority and several opposition parties of 19 April 2021.

28. It is true that further increasing the required majority (to 2/3, as before) might have the consequence that it is more frequently not reached and that the anti-deadlock mechanism comes into effect – which pursuant to the current draft provides for the possibility of two additional rounds of voting under which the candidates can be elected by simple majority (draft Article 211.1(7) of the Rules of Procedure of the Parliament). In other words, there is a higher risk that the ruling party alone could elect the (non-partisan) CEC members and Chairperson.

29. It must be noted that the proposed anti-deadlock mechanism is different from the previous one assessed by the Venice Commission and ODIHR in June 2021, which was directly based on the political agreement of 19 April 2021 and endorsed by the Venice Commission and ODIHR, and provided the following: If no two-thirds majority was reached in the first round of voting, a second (again two-thirds), third (three-fifths) and fourth (simple majority) round were possible; if the vacancy still remained unfilled at the end of this process, the nomination procedure would start again. The Venice Commission and ODIHR commented that, while this could be a rather lengthy process, those provisions were clearly a positive step forward, in line with previous recommendations and with the political agreement. In light of the preceding paragraphs, the Venice Commission and ODIHR recommend changing the draft amendments to ensure that consensus on the appointment/election of the non-partisan members and Chairperson of the CEC is sought. This might imply requiring a 2/3 parliamentary majority in the first place and, in any case, an anti-deadlock mechanism which favours qualified majorities, before possibly resorting to simple (or absolute) majorities as an ultimate deadlock resolution.²⁰

¹⁷ See Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, para. 21.

¹⁸ To some extent, the current proposal for a 3/5 parliamentary majority also addresses the earlier concerns raised by civil society actors and the President of Georgia in relation to the simple majority quota introduced in June 2023, that it eliminated the need to seek political consensus and undermined the CEC’s independence and public trust in it. That said, in meetings with some stakeholders concerns were voiced that the draft amendments do not go far enough, significantly falling short of the previous appointment model which emanated from the 2021 political agreement to encourage political consensus and failing to elaborate rules for the formation of the Selection Commission.

¹⁹ See Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, para. 34.

²⁰ In their comments on the draft opinion, the authorities stressed that the regulations introduced in June 2021 – i.e. 2/3 majority requirement and anti-deadlock mechanism as described above – have failed and that the political

30. In this connection, the proposed limited timing between the rounds of parliamentary re-voting (as early as the beginning of the next week) and between the time the Speaker of Parliament provides the President of Georgia with the list of applicants/documentation and the deadline by which (s)he must appoint a candidate before a new competition is launched (maximum one week) may also be detrimental to reaching consensus between the ruling and opposition parties.²¹ The Venice Commission and ODIHR recommend that consideration be given to lengthening these periods to allow sufficient opportunity for reaching consensus on the candidate(s).

31. Moreover, the fact that the draft amendments maintain the nomination authority of the Speaker of Parliament – which had been transferred from the President of Georgia by way of the June 2023 amendments amidst criticism by some civil society actors who viewed it as a politicisation of the selection process – misses an opportunity to further bolster public confidence in the CEC. This is because the presidential post in the Republic of Georgia is perceived as a non-partisan one, holding comparatively high public confidence; the President is prohibited from holding a position in a political party and serves as “the guarantor of the country’s unity and national independence”.²² In this connection, it is also noted that following constitutional reforms of 2017 the mechanism for electing the President will be changing in 2024: the President will no longer be elected by popular vote but indirectly, by an Electoral College.²³ In turn, notwithstanding the institutional role of the office of the Speaker of Parliament, the Speaker is still elected by absolute majority of MPs and thus typically by the majority party or political grouping.²⁴

32. During the interviews held in Tbilisi the authorities did not provide the rapporteurs with a clear explanation why the authority to nominate candidates for non-partisan members and Chairperson of the CEC had been shifted by the June 2023 amendments from the President of Georgia to the Speaker of Parliament. Transferring the nomination authority back to the President might be the additional move needed to gain broader support of the proposed amendments, particularly as under the draft changes the parliamentary quota does not return to the previous 2/3 majority, but only 3/5. In this respect, it is also noted that the proposed final anti-deadlock mechanism that grants authority to the President to appoint a candidate holds little weight, as it being invoked is highly unlikely given the initial anti-deadlock measure of a simple parliamentary majority. The Venice Commission and ODIHR therefore recommend transferring the nomination authority back to the President of Georgia, in line with the previous regulation which was based on the 19 April 2021 political agreement between the majority and several opposition parties.²⁵

agreement of 19 April 2021 was no longer relevant. The Venice Commission and ODIHR wish to make it clear that they do not recommend one specific solution to the current stalemate, but as mentioned before, they take the view that more should be done to facilitate consensus amongst political stakeholders on the CEC’s composition and leadership.

²¹ The Venice Commission and ODIHR raised this concern in connection with the proposed one-week periods between the rounds of parliamentary voting for the CEC members and Chairperson. See Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, para. 21.

²² Article 49(1) of the Constitution; as of 2024, Article 51(4) of the Constitution will prohibit the next-elected President from being a member of a political party.

²³ The sitting President is thus the last President to be elected by popular vote. Starting in 2024, the President will be elected by the 300-member Electoral College, consisting of all members of Parliament and of the supreme representative bodies of the autonomous republics of Abkhazia and Adjara, and members from the representative bodies of local self-governments.

²⁴ According to Article 40(1) of the Constitution, the Parliament of Georgia elects the Speaker for its term by a majority of the total number of its members by secret ballot, in accordance with the procedures established by the Rules of Procedure.

²⁵ As noted in the April 2021 Urgent Joint Opinion, alternative nomination mechanisms that do not include either parliamentary or presidential involvement might garner the broadest acceptance, although completely excluding the President of the Republic from the process would require a constitutional amendment: Article 52(1)(d) of the Constitution of Georgia grants the President of Georgia the power to “participate” in the nomination process for the non-partisan CEC members and Chairperson. Cf. Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, para. 30.

33. The current draft amendments maintain the existing selection procedure whereby the Speaker of Parliament shall make a decision on either nominating to Parliament a candidate for CEC member/Chairperson selected by the Selection Commission or on refusing the candidate and launching a new competition (current Article 211.1(4) and draft Article 211.1(5) of the Rules of Procedure of the Parliament). This regulation gives the Speaker the possibility to delay the procedure by refusing selected candidates and starting the whole process again. The Venice Commission and ODIHR recommend amending the draft in order to prevent any such potential abuse of powers by the Speaker of Parliament (or the President of Georgia, if the nomination authority is transferred to him/her as recommended above); at the very least, the rules should require him/her to give reasons for refusing the nomination of a selected candidate.

34. In the same vein, it is noteworthy that, under the current draft, in case of activation of the anti-deadlock mechanism the President of Georgia can in the end – if the different steps of voting by Parliament have proved unsuccessful – appoint any of the candidates participating in the competition (draft Article 211.1(7) of the Rules of Procedure of the Parliament). The Venice Commission and ODIHR recommend considering that the President's discretion at this stage of proceedings be narrowed down; it would be advisable, at least, to require that his/her appointment decision be reasoned.

35. Another key change proposed by the draft amendments is the reduction of the number of deputy chairpersons from two to one; in particular, the deputy chair elected by the party-appointed members from among the opposition party-appointed members is to be abolished (Articles 8(24), 10(1), 11(2), and 15(3)(a) of the Election Code).²⁶ In addition, Article 2 of the draft amendments to the Election Code terminates the authority of the standing CEC Deputy Chairperson who was elected from among the (opposition) party-appointed CEC members for a five-year term, as of the draft law coming into force.²⁷ This position and its appointment mechanism was initially established in accordance with the political agreement of 19 April 2021, as a measure aimed at addressing the political discord and bolstering public trust in the election administration, at the same time that the 2/3 parliamentary quota for election of the non-partisan CEC members and Chairperson was introduced in line with the agreement.²⁸

36. In light of the aim of establishing such a leadership post, it is difficult to understand the justification for its repeal, especially considering that lack of trust is a major challenge the election administration faces in Georgia. Taking into account the need to bolster trust in the independence and impartiality of the CEC, such a move with regard to the leadership of the central election body is not advisable at this time. In the present situation, the Venice Commission and ODIHR recommend removing from the draft the abolishment of the deputy chairperson elected from among the opposition party-appointed CEC members.

37. A further area of concern is related to the extension of the term of office of the CEC members and Chairperson currently in office. Based on the political agreement of 19 April 2021, draft amendments to the Election Code provided that when no qualified majority is reached, the CEC

²⁶ Under the current legislation, the CEC deputy chairperson elected from among the opposition-appointed members performs the duties of the CEC Chairperson in case of absence (Article 8(24) of the Election Code). Under the draft amendments, the single post of deputy chairperson remains elected from among the CEC members elected by Parliament or appointed by the President of Georgia, as the case may be (draft Article 11(1) of the Election Code).

²⁷ The draft amendments do not terminate the standing mandates of the non-partisan CEC members and Chairperson who were previously elected by Parliament for five-year terms under an earlier mechanism.

²⁸ Of note, in their June 2021 Urgent Opinion the Venice Commission and ODIHR were concerned about the introduction of a second deputy chairperson in addition to the deputy chairperson representing an opposition party (only the latter was referred to in the political agreement of 19 April 2021), as that amendment might weaken the position of the deputy chairperson representing an opposition party; see Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, para. 28. Against this background, the proposed abolishment of the position of the deputy chairperson representing an opposition party is even more worrying.

members and Chairperson would be elected with simple majority for a limited period of six months. However, following the approval of the draft amendments by the Venice Commission and ODIHR in their second 2021 Urgent Joint Opinion, these provisions were supplemented with the following provision: in case no new member or Chairperson are elected during the six-month period, the term of office of the member(s) in question or of the Chairperson is extended until a new member(s)/Chairperson is elected.

38. This led in practice to the following situation: the current CEC Chairperson, as well as some members, were elected under this anti-deadlock rule by simple majority, initially for a period of six months, but are still in office at the moment for lack of a political agreement. This regulation was highly unsatisfactory as it could lead to practically unlimited terms of office of persons elected by simple majority. The June 2023 amendments went even further, repealing the limited six-month term and granting the CEC members and Chairperson – all of whom are to be elected by simple majority – five-year terms which are extended until a new member/Chairperson is elected (Articles 10(3), 12(1) and 12(11.1) of the Election Code). The current draft amendments maintain the five-year term for all CEC members and the Chairperson regardless if elected by qualified or simple majority, with extensions until a new member/Chairperson is elected/appointed (draft Article 10(7) and (9) of the Election Code). The Venice Commission and ODIHR recommend modifying the draft amendments in this respect, in order to ensure that appointments made on the basis of the anti-deadlock mechanism are significantly limited in time and cannot be prolonged. The political agreement of 19 April 2021 included a reasonable formula in this regard, making it clear that such appointments would be temporary, with a term limited to six months, during which the standard appointment procedure should be re-launched.

39. It is further noted that a number of other key recommendations put forward and reiterated in recent Venice Commission/ODIHR Joint Opinions as well as ODIHR and PACE election observation reports relating to the composition and appointment of the CEC and lower-level election commissions remain unaddressed under the draft amendments. These related recommendations are referenced and reiterated below:

40. First, the draft amendments do not introduce higher credentials for CEC members and the Chairperson, as recommended in the 2021 Urgent Joint Opinions. The Venice Commission and ODIHR made it clear in the second Urgent Opinion that the increase of required work experience from three to five years – which is maintained in draft Article 10(4) of the Election Code – alone was not sufficient to ensure “higher credentials” for CEC members as had been recommended in the first Urgent Joint Opinion of the same year.²⁹

41. Second, the draft amendments (draft Article 211.1(2)-(4) of the Rules of Procedure of the Parliament) do not substantively address outstanding recommendations³⁰ to adopt legal provisions designed to ensure the transparent formation of the Selection Commission and its diverse, impartial and reputable membership and a transparent, merit-based nomination process for CEC non-partisan members and Chairperson.³¹

42. Third, draft Article 13(4) of the Election Code maintains the full discretion of parties to dismiss CEC members (and lower-level commission members) appointed by them, contrary to

²⁹ See Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, para. 22; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, para. 33.

³⁰ See Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, paras. 22-23; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, paras. 32-33.

³¹ That said, extension of the time period for the Selection Commission to submit nominations to the Speaker of the Parliament – from five to seven days under the draft provisions – is a positive measure that would allow for more in-depth examination of the candidates' suitability for the posts (draft Article 211.1(4) of the Rules of Procedure of the Parliament).

international standards, as set out in the 2021 Urgent Joint Opinions which recommended to clearly and restrictively set out on what grounds party-nominated members may be removed, in order to ensure their independence.³²

43. Fourth, various long-standing recommendations to strengthen the criteria, recruitment, and selection process for members of the lower-level election bodies (District Election Commissions and Precinct Election Commissions), so as to ensure, *inter alia*, transparent, genuinely merit-based processes for appointment of non-partisan members, remain unaddressed.³³

44. Finally, the Venice Commission and ODIHR note that the proposed amendments to the Election Code and the Rules of Procedure of the Parliament are complicated and rather confusing. The proposed amendments do not contribute to a better understanding and transparency of the electoral law. One of the reasons for this is that some provisions that were previously in the Election Code are now to be found in the Rules of Procedure of the Parliament. The division between these two sources of law appears arbitrary and leads to unclear regulations.³⁴

C. Stability of electoral law

45. As the Venice Commission and ODIHR have already stressed in their previous Joint Opinions, the electoral law must enjoy a certain stability, which is a crucial aspect of legal certainty; on the one hand, such stability allows for the understanding of the electoral rules by all the stakeholders: the candidates, the voters, the electoral administration, the observers, the public; on the other hand, it represents a guarantee against party political manipulation.³⁵ “Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.”³⁶ The practice in Georgia of frequently amending the electoral legislation risks undermining the integrity of the electoral process and the state’s ongoing efforts to consolidate democracy. It furthermore risks confusing voters, parties and candidates, and makes it difficult for the competent electoral authorities to apply the law, which

³² See Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, para. 27; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, para. 42. According to the Code of Good Practice in Electoral Matters, bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence. Discretionary recall is unacceptable but recall for disciplinary reasons is permissible - provided that the grounds for this are clearly and restrictively specified in law (vague references to “acts discrediting the commission”, for example, are not sufficient). See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline II 3.1 f and para. 77 of the Explanatory Report.

³³ See Venice Commission and ODIHR, [CDL-AD\(2022\)047](#), Joint opinion on draft amendments to the Election Code and the Law on Political Associations of Citizens, paras. 29-33; Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, paras. 30-35; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, paras. 40-48. See also the [ODIHR election observation reports](#) 2018, 2020, 2021.

³⁴ For instance, concerning the appointment of the CEC Chairperson, both draft Article 10(8) of the Election Code and draft Article 211.1(8) of the Rules of Procedure of the Parliament refer to the relevant regulations of the Election Code and the Rules of Procedure for the election/appointment of CEC members, without specifying those regulations of both legal acts. Such unprecise and multiple cross-references make the legislation difficult to read and understand.

³⁵ See, *inter alia*, Venice Commission and ODIHR, [CDL-AD\(2022\)047](#), Joint opinion on draft amendments to the Election Code and the Law on Political Associations of Citizens, para. 28; Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, paras. 39-43; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, paras. 23-24.

³⁶ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), paragraph 63 of the Explanatory Report; see also paragraphs 58 and 64-67.

may lead to mistakes in the electoral process and, as a consequence, distrust in the elected bodies.

46. At the same time, as has been mentioned earlier, a number of specific recommendations by the Venice Commission and ODIHR are still pending. The call for a more comprehensive and systemic reform of the Georgian electoral law, well in advance of elections within an inclusive consultation process, is therefore reiterated. Care should be taken to address the remaining concerns and outstanding recommendations in such a future reform, in order to prevent frequent changes and to achieve stability.

47. Regarding the timing of the current reform process, according to the Code of Good Practice in Electoral Matters, “[t]he fundamental elements of the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law”.³⁷ That said, exceptions to this principle are admissible if there is a broad consensus on the reform. Moreover, the principle “does not take precedence over the other principles of the Code” and it “should not be invoked to maintain a situation contrary to the standards of the European electoral heritage, or to prevent the implementation of recommendations by international organisations”.³⁸

48. In the present situation, it must be noted that the draft amendments clearly concern fundamental elements of the electoral law – namely the composition of the electoral commissions, and the next parliamentary elections are to be conducted in October 2024. As explained above, exceptions to the rule that amendments to the fundamental elements of an electoral system should be adopted at least one year prior to the elections include their adoption at the constitutional level or at a level higher than ordinary law. The ratio of this exception is that in such a case, the amendments would be supported by a broad consensus, including by the opposition. This implies that it applies only if such consensus is reached. A second exception is that the amendments follow recommendations by an international body.

49. It is the view of the Venice Commission and ODIHR that, for the new provisions to be in line with the principle of stability of electoral law, they should: a) be supported by a broad consensus encompassing the opposition, as far as possible and b) fully or at least significantly follow the recommendations of the Venice Commission, ODIHR and PACE or the Congress. In the present case, the new provisions would at least partly be written at a level higher than ordinary law – the Election Code is an organic law, whereas the Rules of Procedure of the Parliament are not;³⁹ adoption as an organic law requires a 3/5 majority in Parliament, while the Rules of Procedure of the Parliament, as an ordinary law, do not require a qualified majority.

50. As concerns compliance with international recommendations, as explained above the new provisions partly implement previous recommendations by the Venice Commission and ODIHR, by re-introducing the requirement of a qualified majority for the election of the CEC Chairperson and (non-partisan) members. However, they also fail to meet several other key recommendations, as explained in the preceding chapters of the present Joint Opinion. Compliance with such outstanding recommendations would also increase the support of these amendments by the opposition (and civil society). It follows that it is necessary to further develop the new provisions in line with the past and present recommendations of the Venice Commission

³⁷ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), Guideline II. 2.b.

³⁸ See Venice Commission, Interpretative Declaration on the Stability of the Electoral Law, [CDL-AD\(2005\)043](#), items II.1. and 2.

³⁹ According to Article 7(3) of the Organic Law of Georgia on Normative Acts, which deals with the hierarchy of normative acts, organic laws are at a higher level than ordinary laws and than the Rules of Procedure of the Parliament.

and ODIHR and to obtain a broader support for them in order to meet the principle of stability of electoral law.

IV. Conclusion

51. On 22 September 2023, Mr Shalva Papuashvili, Speaker of the Parliament of Georgia, requested an opinion of the Venice Commission on draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia. As this Opinion relates to the electoral field, it was prepared jointly by the Venice Commission and ODIHR.

52. The frequency of amendments to the electoral legislation of Georgia in recent years is striking. Moreover, further amendments will be necessary as not all previous recommendations of the Venice Commission and ODIHR have been addressed. The legislative issues that remained unaddressed in recent reforms broadly relate to, among others, constituency delimitation, restrictive residence requirements for presidential and parliamentary candidates and other undue criteria on voter and candidate eligibility, additional aspects regarding the formation of election commissions, provisions on the misuse of official position for campaign purposes, high donation limits for election campaigns affecting the level playing field, further regulation and oversight of campaign finance, further elaborating media campaign regulations, strengthening the framework for electoral dispute resolution to ensure effective legal remedy, recounts and annulments, and measures to prevent voter intimidation.

53. The Venice Commission and ODIHR acknowledge the aim to eliminate at least some of the shortcomings of the current electoral framework ahead of the next parliamentary elections which are due to be held in October 2024, but they regret that several outstanding recommendations have still not been followed. This is particularly important as international good practice highlights the importance of the stability of electoral legislation and the impact that frequent changes can have on public trust. Frequent amendments furthermore risk confusing voters, parties and candidates, and making it difficult for the competent electoral authorities to apply the law, which may lead to mistakes in the electoral process and, as a consequence, distrust in the elected bodies. A more comprehensive reform could prevent such risks and provide the opportunity for a more structured and clear process.

54. The proposed amendments to the Election Code and the Rules of Procedure of the Parliament relate exclusively to the composition of the Central Election Commission (CEC) and the election of its (non-partisan) members and Chairperson. They are complicated and rather confusing, in particular because they include unprecise and multiple cross-references between both sources of law.

55. The timing of the current reform is certainly not ideal, as it concerns fundamental elements of the electoral law – namely membership of electoral commissions – and would be adopted less than one year before an election. On the other hand, it must be acknowledged that the adoption process was suspended after the first reading in Parliament so that the conclusions of the Joint Opinion can be taken into account, and that the reform would at least partly serve to comply with the standards of the European electoral heritage and to implement previous recommendations by the Venice Commission and ODIHR, by re-introducing the requirement of a qualified (3/5) majority for the election/appointment of the CEC Chairperson and (non-partisan) members and thus furthering the independence and impartiality of the CEC. This development is, in principle, welcome; at the same time, the proposed amendments are insufficient to ensure a consensus-based political process which is crucial for the independence and impartiality of the CEC and for public trust in this institution.

56. Following a political agreement of 19 April 2021 between the majority and several opposition parties, significant amendments – concerning *inter alia* the composition of the CEC – had been

implemented in 2021 which were in principle welcomed by the Venice Commission and ODIHR. In the meantime, a series of further amendments have been adopted which moved away from this broad political agreement. In the view of the Venice Commission and ODIHR, the current draft amendments are a step in the right direction but need to be further developed.

57. The Venice Commission and ODIHR recommend:

- A. Changing the draft amendments to ensure that consensus on the appointment/election of the non-partisan members and Chairperson of the CEC is sought; this might imply requiring a 2/3 parliamentary majority in the first place and, in any case, an anti-deadlock mechanism which favours qualified majorities, before possibly resorting to simple (or absolute) majorities as an ultimate deadlock resolution; [paragraph 29]
- B. Considering lengthening the proposed limited timing between the different stages of the anti-deadlock mechanism; [paragraph 30]
- C. Transferring the nomination authority for the non-partisan members and Chairperson of the CEC back from the Speaker of Parliament to the President of Georgia; [paragraph 32]
- D. Requiring that any decisions by the Speaker of Parliament and the President of Georgia on nomination, rejection and appointment of a candidate for CEC member or Chairperson be reasoned; [paragraphs 33-34]
- E. Removing from the draft the abolishment of the deputy chairperson elected from among the opposition party-appointed CEC members; [paragraph 36]
- F. Modifying the draft amendments with respect to the term of office of the non-partisan members and Chairperson of the CEC, in order to ensure that appointments made on the basis of the anti-deadlock mechanism are significantly limited in time and cannot be prolonged. [paragraph 38]

58. The Venice Commission and ODIHR consider that the proposed re-introduction of a qualified majority requirement for the election/appointment of the CEC Chairperson and (non-partisan) members is crucial and urgent, and that compliance with the above key recommendations would justify, together with a broader support including by the opposition, a derogation from the one-year advance adoption in respect of the next parliamentary elections, required by the principle of stability of electoral law.

59. The Venice Commission and ODIHR furthermore reiterate their previous recommendations relating to the composition of election commissions, namely:

- G. Ensuring higher credentials for CEC members; [paragraph 40]
- H. Ensuring the transparent formation of the Selection Commission and its diverse, impartial and reputable membership and a transparent, merit-based nomination process for CEC non-partisan members and Chairperson; [paragraph 41]
- I. Clearly and restrictively setting out on what grounds party-nominated members may be removed; [paragraph 42]
- J. Strengthening the criteria, recruitment, and selection process for members of the lower-level election bodies (District Election Commissions and Precinct Election Commissions), so as to ensure, *inter alia*, transparent, genuinely merit-based processes for the appointment of non-partisan members. [paragraph 43]

60. These recommendations are included throughout the text of this Joint Opinion. Moreover, the Venice Commission and ODIHR once again stress that several other previous recommendations have not yet been followed and remain valid.

61. As Georgia works to further its application for membership to the European Union, ODIHR and the Venice Commission encourage the authorities to use this as an impetus to further enhance the democratic process. All States need to see democracy as a dynamic process that

necessitates sustained dialogue, within an inclusive parliamentary process engaging civil society, and fosters a spirit of cooperation amongst all stakeholders in the interest of a common good.

62. The Venice Commission and ODIHR stand ready to assist the Georgian authorities to further review election-related legislation, to bring it further in line with international standards and good practice.