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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

DRAFT JOINT OPINION

ON AMENDMENTS TO THE ELECTION CODE

OF GEORGIA

AS OF 8 JANUARY 2016

on the basis of comments by

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I. Introduction

1. By letters of 14 January 2016 and 22 January 2016, Mr Konstantin Korkelia, Ambassador, Permanent Representative of Georgia to the Council of Europe, requested on behalf of the Georgian authorities, an opinion of the Venice Commission on two organic laws ([CDL-REF\(2016\)001](#) and [CDL-REF\(2016\)005](#)) amending the Organic Law of Georgia on "Election Code of Georgia" ([CDL-REF\(2016\)004](#)).¹
2. By letters of 19 January 2016 and of 16 February 2016, the Director of the Venice Commission confirmed the Venice Commission's readiness to review such amendments and proposed that the Venice Commission draft the opinion jointly with the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), given both institutions' regular cooperation in relation to legislation pertaining to elections.
3. This joint opinion has been prepared in response to the above-mentioned requests. The Organic Law of Georgia on changes to the Election Code on the redrawing of single-member constituencies ([CDL-REF\(2016\)001](#)) was adopted by the Parliament on 23 December 2015 and entered into force on 8 January 2016. The Organic Law of Georgia on changes to the Election Code on the threshold to elect members of parliament under the majority system ([CDL-REF\(2016\)005](#)) was adopted by the Parliament on 24 December 2015 and entered into force on 29 December 2015.
4. From 15 to 18 February 2016, a delegation made up of Venice Commission and OSCE/ODIHR experts participated in a working visit to Tbilisi. The delegation met with the Speaker of the Parliament, representatives from parliamentary and non-parliamentary parties, the Central Election Commission (CEC), the presidential administration, and civil society as well as international organisations working in the electoral field in Georgia.
5. The scope of this joint opinion covers only the amendments submitted for review and analyses them against relevant international obligations and standards, in particular those of the Council of Europe, and OSCE commitments, as well as good practice from other OSCE participating States and Council of Europe member states. It also refers to the relevant recommendations made in previous OSCE/ODIHR and Venice Commission joint opinions and previous OSCE/ODIHR and Council of Europe's Parliamentary Assembly reports from observation missions to Georgia.²
6. The joint opinion is based on a translation in English of the original amendments issued in Georgian, provided by the Georgian authorities. The English version of the Election Code as of 27 October 2015 was provided by the International Foundation for Elections Systems (IFES).
7. In view of the above, the OSCE/ODIHR and the Venice Commission would like to mention that this joint opinion is without prejudice to any written or oral recommendations or

¹ Election Code as of 27 October 2015.

² - Joint opinion on the draft election code of Georgia ([CDL-AD\(2011\)043](#));
- Joint Opinion on the Election Code of Georgia as amended through March 2010 ([CDL-AD\(2010\)013](#));
- Joint Opinion on the Election Code of Georgia as revised up to July 2008 ([CDL-AD\(2009\)001](#));
- Joint Opinion on the Election Code of Georgia as amended through 24 July 2006 ([CDL-AD\(2006\)037](#));
- Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005 ([CDL-AD\(2006\)023](#));
- Opinion on the Unified Election Code of Georgia as amended on 14 August 2003 ([CDL-AD\(2004\)005](#));
- Opinion on the Unified Election Code of Georgia ([CDL-AD\(2002\)009](#));
- [OSCE/ODIHR Election Observation Mission Final Report on the 21 May 2008 parliamentary elections](#);
- [OSCE/ODIHR Election Observation Mission Final Report on the 1 October 2012 parliamentary elections](#);
- [OSCE/ODIHR Election Expert Team Final Report on the 27 April 2013 parliamentary by-elections](#);
- Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Georgia (1 October 2012) [Election observation report](#) (Doc. 13068).

comments on related legislation that the OSCE/ODIHR and the Venice Commission may make in the future.

II. Executive summary

8. The OSCE/ODIHR and the Venice Commission positively note the amendments related to the redrawing of single-member constituencies and to the threshold to elect members of parliament under the majority system. The amendments pertaining to the redrawing of constituencies represent an important step forward to hold elections respecting *inter alia* the principle of equal suffrage. Deviations among the number of voters in constituencies that previously undermined the principle of equal suffrage have largely been addressed in line with previous recommendations by the OSCE/ODIHR and the Venice Commission in relation to paragraph 7.3 of the 1990 OSCE Copenhagen Document and other international obligations and standards.

9. Nevertheless, the Election Code could benefit from certain revisions to ensure the effectiveness of these new provisions, as well as their full compliance with OSCE commitments and other international obligations and standards. In particular, the amendments do not provide a specific method for establishing constituencies within the specifications described in the general guidelines of Article 110(1) of the Election Code, do not specify criteria for permitted deviations in the number of voters, and do not sufficiently address the issue of managing future boundary reviews.

10. Despite the reduction in deviations in the number of voters, significant concerns were noted related to how the boundary delimitation process was undertaken and managed by the government. In particular, many electoral stakeholders criticised the initial stages of creating the constituencies as lacking transparency, impartiality and broad engagement. Later stages of consultation on the proposed boundaries suffered from a lack of stakeholder engagement, which further undermined the inclusiveness of the process.

11. While the legislation establishes the boundaries for the 73 single-member constituencies, the detailed delineation of 30 constituencies located within the four largest cities has yet to be finalised. This task is under the responsibility of the CEC. Although legislation was adopted almost a year ahead of the next parliamentary elections, expected in October 2016, the process is incomplete. There remains limited time to finalise the redistricting and to ensure that all potential contestants as well as voters are sufficiently informed of all changes.

12. In light of the above, the OSCE/ODIHR and the Venice Commission make the following key recommendations for the improvement of the Election Code:

A. to ensure that fundamental provisions, including delimitation of boundaries, are finalised no less than one year before an election;

B. to define in the law the method for distributing single-mandate constituencies (if maintained after the forthcoming parliamentary elections) as well as to note a clear timeline for any future review of all boundaries;

C. to define in the law the maximum permitted deviation among electoral constituencies, and justification for any exceptional cases;

D. to ensure inclusive consultation to increase public confidence in the boundary delimitation process, in line with international obligations and standards and good

practice, which could include establishing an independent ad hoc or permanent commission in charge of drawing electoral constituency boundaries.

13. The Venice Commission and the OSCE/ODIHR stand ready to provide assistance to the authorities in their efforts to improve the legal framework for elections and bring it more closely in line with OSCE commitments and Council of Europe standards.

III. Analysis and recommendations

A. Background

14. The organic law amending the Election Code on the redrawing of constituencies stems from a decision issued by the Constitutional Court on 28 May 2015, which is referenced in the explanatory note of the organic law and focuses on the compatibility of the drawing of the former single-member constituencies for the majority component with the Constitution.³ This opinion takes note of the judgment of the Constitutional Court, which found that paragraphs 1 and 2 of Article 110 of the Election Code contradict Articles 14 and paragraph 1 of Article 28 of the Constitution and thus violate the principle of equal suffrage. However, a translation in English of the Court's decision has not been available to the delegation.

15. Over the last several years, extensive discussions have taken place among electoral stakeholders in Georgia on reforming the electoral system from a mixed system of proportional and majoritarian representation to a fully proportional system. Opposition parties and civil society representatives generally support an immediate shift of the electoral system. While the governing coalition also favours such a modification, it has not considered there to be sufficient time for such a change ahead of the next parliamentary elections, expected in October 2016. Draft amendments to the Constitution on shifting to an entirely proportional system were introduced, although not adopted by parliament.⁴ The 2016 parliamentary elections will therefore take place under the existing mixed system, with redrawn single-member constituencies.

B. Stability of the law

16. Following the judgement of the Constitutional Court, the redrawing of the single-mandate electoral constituencies was required. The amendments to the Election Code on redrawing the constituencies set out a two-stage process. The legislation defines the boundaries and the number of voters for 43 of the 73 single-member constituencies. The CEC is then mandated to distribute the number of voters and delimitate the remaining 30 constituencies located in the four largest municipalities consisting of two or more electoral districts.⁵

17. The remaining delimitation should be undertaken and finalised in conformity with a CEC ordinance, according to the law, no later than 1 June 2016. The CEC further noted during the expert visit that District Election Commissions would then have until 1 July to verify and finalise constituency boundaries under their respective control. Thus, the delimitation process would only be completed a few months before the expected elections in October 2016.⁶

³ Judgment no. 1/3/547, published on the website of the Constitutional Court of Georgia on 8 June 2015.

⁴ [CDL-REF\(2016\)003](#).

⁵ These include the cities of Tbilisi (22 constituencies), Rustavi (2), Kutaisi (3) and Batumi (3).

⁶ The Code of Good Practice in Electoral Matters underlines that the "fundamental elements of electoral law, in particular 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" (II. 2. b). See also the Interpretative Declaration on the Stability of the Electoral Law, adopted by the Council for Democratic Elections at

18. The adoption of the assessed amendments less than a year before the expected elections, along with the short timeframe envisaged for the CEC to carry out delimitation in the remaining constituencies is a matter of concern. These late changes might disadvantage some political parties and candidates and thus may be perceived as politically biased. Moreover, the late finalisation of boundaries may pose a challenge to ensure that voters are sufficiently informed as to the changes to their electoral constituencies.

C. Delimitation of single-member constituencies

19. The Organic Law of Georgia on changes to the Election Code on redrawing of constituencies addresses previous recommendations by the OSCE/ODIHR and the Venice Commission on the formation of electoral districts in line with the principle of equal suffrage.⁷

20. According to the figures included in the annex of the law, the deviation from the norm does not exceed 10% in 61 of 73 constituencies and does not exceed 15% in the other 12 constituencies. The Election Code requires the size of the constituencies to be in accordance with international standards and be equal in the number of voters. However, it does not provide clear rules for the delimitation of constituencies and does not specify any criteria for legally permissible deviations among electoral constituencies, and justification for any exceptional cases.⁸

21. The amendments are intended at implementing the Constitutional Court's ruling according to which the electoral districts should be redrawn to respect the principle of equal suffrage.⁹ To satisfy the Court's requirements, delimitation appears to be solely based on the number of voters. Deviations among the number of voters in constituencies that previously undermined the principle of equal suffrage have largely been addressed. However, the amendments do not provide a clear method for constituency delimitation, including a specific decision-making procedure for the CEC to decide on the boundaries of constituencies under its purview.¹⁰ Moreover, there lacks transparency on how the municipal districts previously used as a basis for delimiting the single-member constituencies were merged and split. Stakeholders also raised concerns over the process of disregarding other important considerations, such as existing municipal divisions as well as historical, geographical and demographic factors, and stated that the process could be used for obtaining short-term political objectives (gerrymandering).

22. Moreover, during the expert visit, significant concerns were noted related to the process of how boundary delimitation was undertaken and managed by the government. In

its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th plenary session (Venice, 16-17 December 2005; [CDL-AD\(2005\)043](#)).

⁷ See the United Nations International Covenant on Civil and Political Rights, Article 25(b); and paragraph 7.3 of the 1990 OSCE Copenhagen Document, which states that the participating States will "guarantee universal and equal suffrage to adult citizens". See also paragraph 21 of the 1996 United Nations Human Rights Committee General Comment 25, which provides that "[t]he drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely." See also the Code of Good Practice in Electoral Matters, I. 2.2: "Equal voting power: seats must be evenly distributed between the constituencies. [...] iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)."

⁸ Article 110(3) of the Election Code.

⁹ This ruling narrowly interprets the Code of Good Practice in Electoral Matters stating that maximum deviation should as a rule not exceed 10% and under circumstances 15%.

¹⁰ Point 3.3 of the Existing Commitments for Democratic Elections in OSCE Participating States, ODIHR, Warsaw, October 2003: "When necessary, redrawing of election districts shall occur according to a predictable timetable and through a method prescribed by law and should reflect reliable census or voter registration figures. Redistricting should also be performed well in advance of elections, be based on transparent proposals, and allow for public information and participation."

particular, many electoral stakeholders criticised the initial stages of creating the constituencies as lacking transparency, impartiality and broad engagement.¹¹ Later stages of consultation on the proposed boundaries suffered from a lack of engagement by stakeholders, which further undermined the inclusiveness of the process, contrary to OSCE commitments and international good practice.

23. The Code of Good Practice in Electoral Matters recommends that an independent committee in charge of drawing the electoral constituencies' boundaries be established. The governing coalition neither initiated a comprehensive consultative process nor convened an independent commission to delimitate the constituencies, which resulted in less transparency and weakened overall confidence in the impartiality of the process.¹²

24. Additionally, while the law provides for a regular review by the CEC of the delimitation of the districts under its responsibility, there lacks detail on the periodicity of review for the remaining single-member constituencies as well as overall sufficient regulation regarding a timetable to review the boundaries.¹³

25. Although it is not possible at this stage to establish any potential impact, the delimitation of single-mandate constituencies in areas with high concentrations of minority communities should ensure respect for the rights of national minorities. Boundaries should not be altered for the purpose of diluting or excluding minority representation.

D. Threshold for the majority component of the electoral system

26. The Organic Law of Georgia on changes to the Election Code on the majority/plurality system increases the threshold from 30 to 50% to declare a winner in single-member constituencies, making it an absolute majority system. The electoral system previously provided that members of parliament in single-member constituencies were considered elected if they had received more votes than any other candidate in the same constituency, but not less than 30% of the total number of valid votes cast. If a candidate did not receive the required amount of votes, then a run-off was required between the two candidates who received the highest number of votes. The amendments to the electoral threshold increased the percentage of votes required for a candidate to be considered elected in the first round to 50% of valid votes cast.

27. The increased threshold was adopted sufficiently ahead of the next parliamentary elections and was broadly supported by electoral stakeholders. No concern was raised on the additional percentage of votes required to secure an electoral victory and the potential need for a second round of voting. Moreover, although this could increase the workload of the CEC and require more financial and human resources, confidence was expressed in the Parliament to provide the CEC with the additional required resources.

¹¹ Paragraph 5.8 of the 1990 OSCE Copenhagen Document states that the legislation will be adopted at the end of a public procedure.

¹² The Code of Good Practice in Electoral Matters states that "this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities" (I. 2.2 2.vii).

¹³ According to the Code of Good Practice in Electoral Matters, "in order to avoid passive electoral geometry, seats should be redistributed at least every ten years, preferably outside election periods, as this will limit the risks of political manipulation." (paragraph 16 of the explanatory report).