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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS

(OSCE/ODIHR)

GEORGIA

JOINT OPINION ON DRAFT AMENDMENTS TO THE ELECTION CODE AND THE LAW ON POLITICAL ASSOCIATIONS OF CITIZENS

Approved by the Council for Democratic Elections at its 75th meeting (Venice, 15 December 2022) and adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)

On the basis of comments by

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I. Introduction

1. By letter of 10 October 2022, Mr Shalva Papuashvili, Chairperson of the Parliament of Georgia, requested an opinion by the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") and the Venice Commission on draft amendments to the Election Code of Georgia and the Law on Political Associations of Citizens (CDL-REF (2022)057). As this opinion relates to the electoral field, it has been prepared jointly by ODIHR and the Venice Commission.

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

3. On 15-16 November, a joint delegation composed of Mr Frendo on behalf of the Venice Commission, and of Ms Morry on behalf of ODIHR, as well as Mr Janssen from the Secretariat of the Venice Commission and Ms Dashutsina from ODIHR, participated in a series of meetings with members of the Central Election Commission (CEC), the State Audit Office, the office of the President, the Chairperson of the Parliament, the Chairperson of the Working Group on Electoral Reform, the representatives of various political parties represented in the Parliament of Georgia, representatives of non-governmental organisations (NGOs) and the international community represented in Tbilisi. This Joint Opinion takes into account the information obtained during these meetings. ODIHR and the Venice Commission are grateful to the Parliament of Georgia 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. It was approved by the Council for Democratic Elections at its 75th meeting (Venice, 15 December 2022), and, following an exchange of views with Mr Givi Mikanadze, Head of the Electoral Reform Working Group of the Parliament of Georgia, it was adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022).

II. Scope of the Joint Opinion

6. The scope of this Joint Opinion covers only the legislative revisions 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.

7. The ensuing recommendations are based on international standards, norms and practices, as for example set out in the United Nations' International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and its additional protocols, as well as relevant OSCE human dimension commitments, and the Venice Commission's Code of Good Practice in Electoral Matters.[1] Where appropriate, they also refer to other reference documents and sources as well as relevant recommendations made in previous legal opinions and election observation reports published by ODIHR and/or the Venice Commission.

8. In view of the above, ODIHR and the Venice Commission 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 respective legal act or related legislation pertaining to the legal and institutional framework regulating electoral legislation in Georgia in the future.

III. Executive summary

9. ODIHR and the Venice Commission have consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements: 1) a 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. In particular, ODIHR and the Venice Commission stress that an open and transparent process of consultation and preparation of such amendments increases confidence and trust in the adopted legislation and in the state institutions in general.

10. Furthermore, the Venice Commission and ODIHR underline the importance of the stability of electoral law, which is a precondition to public trust in electoral processes and implies that electoral legislation, and especially its fundamental elements, should be amended well before the next elections. It should be further noted that past ODIHR election observation reports and ODIHR/Venice Commission Joint Opinions related to Georgian elections and election legislation have reiterated a recommendation to conduct a comprehensive, systemic review of the Georgian electoral law within an inclusive consultation process, to bring it further in line with OSCE commitments, international standards and good practices. The current amendments while aimed to partially address the EU recommendation for electoral reform[2] were not based on a comprehensive review of the Election Code and only address a selection of issues. This was and could still be an opportunity for comprehensive reform which in the Georgian context would contribute to stability of the electoral law and on-going efforts to consolidate democracy by eliminating the need for frequent amendments to the election legislation.

11. This Joint Opinion welcomes the positive changes in the draft amendments to the Election Code, which are in line with previous recommendations for strengthening the legislation. Among these are a reduced residency requirement for candidates for local elections, measures to enhance the impartiality of members of lower-level election bodies and citizen observers, additional grounds for triggering an automatic recount, and adjusted deadlines in the election dispute resolution process.

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[1] Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor (Code of Good Practice).

[2] On this recommendation, see paragraph 18.

12. Despite these welcome positive steps, some proposed changes raise concerns, and some previous recommendations that aim to further strengthen the legal framework and bring it in line with international standards and good practices have not been adequately addressed, while others remain outstanding.

13. In general, the Venice Commission and ODIHR recommend implementing the recommendations of their latest opinions as well as the election observation reports by ODIHR and the Parliamentary Assembly. The legislative issues that remain unaddressed in the draft amendments 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.

14. The Venice Commission and ODIHR therefore reiterate their recommendation that a comprehensive, systemic review of the electoral law be undertaken well in advance of the next elections within an inclusive consultation process. At the same time, it should be emphasised that a number of prior recommendations can be addressed through the implementation of existing legislation in good faith, effective implementation and enforcement of the rules, dependent in part on the political will of all actors, which is key to ensuring a fully democratic electoral process.

15. Concerning the issues in the draft under consideration, ODIHR and the Venice Commission make the following key recommendations for further improvement of the draft amendments to the Election Code:

A. Further strengthening the recruitment and selection process for the formation of election administration bodies by strengthening the selection criteria and procedures and enhancing transparency of the selection process.
B. Further reducing the residency requirement for mayoral and municipal council candidates in line with international standards.
C. Establishing a regulatory framework for the use of new voting technologies that is in line with international good practice and understandable to the general reader and includes the planning of any new use of electronic means well in advance, with effective voter education and election administration training undertaken, and all measures to foster public trust in the system put in place and implemented.
D. Establishing clear and comprehensive criteria for the conduct of recounts.

16. Furthermore, ODIHR and the Venice Commission recommend:

E. Ensuring a genuinely open, competitive and merit-based process for PEC member selection by the DECs and reflecting key principles and guarantees in the legislation.
F. Extending requirements for standardised training certification to party-appointed members and setting an expiry period for the certificates to ensure that selected candidates have up-to-date training.
G. Clarifying the legal criteria in deciding which electoral precincts will use electronic means.
H. At least for an interim period, retaining a maximum number of voters for precincts where electronic means are used as in the regular precincts, or at least not considerably increasing the maximum number of voters for such precincts. Duly informing voters in case of merging the precincts and re-assigning voters to new voting locations.
I. In order to establish public trust in the new voting technologies, ensuring that the conventional safeguards (such as the use of a control sheet in the ballot box and the inking of voters who have cast a ballot) remain in effect at electoral precincts using electronic means, and explicitly providing in the law that in case of discrepancies between

manual and electronic counts, the manual count takes precedence. Making it clear that the term "electronic voting and counting" used in the draft law refers to special paper ballots that are electronically scanned and counted, not to the use of electronic voting machines.

J. Consolidating efforts of all relevant authorities in adapting all polling premises to accommodate voters with mobility challenges and ensuring that adapted polling stations are close by to those that are yet to be adapted.
K. Giving consideration to extending restrictions on party affiliations of citizen observers to at least the past two elections.
L. Introducing a more comprehensive and systematic regulation on the prevention of misuse of administrative resources, in line with the recommendations made in previous Joint Opinions.
M. Further extending the deadlines for submission and consideration of complaints and appeals under Article 77(2) of the Election Code, in line with international standards.

17. These and additional recommendations are included throughout the text of this Joint Opinion.

18. 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.

19. 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.

IV. Background

20. On 3 March 2022, Georgia submitted an application to join the European Union (EU). The European Commission's Opinion on the application, published on 17 June 2022 and endorsed by the European Council on 23 June, issued a recommendation to grant Georgia European Union candidate status provided it fulfils 12 priority objectives as elaborated in the recommendation.[3] The priorities concern a range of issues including, among others, to address existing political polarisation, to strengthen the independence of all state institutions, to improve the electoral framework, to implement a systemic judicial reform, to intensify efforts to address high-level corruption, to strengthen the media environment, and to enhance human rights protection and gender equality.

21. Subsequently, various parliamentary working groups were established to work on the implementation of these recommendations, including a Working Group on electoral reform created under the Parliament's Legal Issues Committee, with seats reserved for MPs from parliamentary factions and groups, as well as the CEC and the State Audit Office (SAO), and with two seats reserved for civil society organisations. It held its first meeting on 18 August 2022. According to the Chairperson of the Parliament, the group was created as part of the Georgian government's efforts to address the European Commission's 12 priorities for granting Georgia EU candidate status. In particular, Priorities #1 and 2 state:

> "The Commission recommends that Georgia be granted candidate status, once the following priorities have been addressed: (. . .) address the issue of political polarisation, through ensuring cooperation across political parties in the spirit of

[3] 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.

> the April 19 agreement; guarantee the full functioning of all state institutions, strengthening their independent and effective accountability as well as their democratic oversight functions; further improve the electoral framework, addressing all shortcomings identified by OSCE/ODIHR and the Council of Europe/Venice Commission in these processes".

22. Three opposition parties boycotted the Working Group from the outset.[4] However, these parties did participate in the discussion of the draft amendments at the Legal Issues Committee of the Parliament.

23. ODIHR and the Venice Commission find regrettable the lack of full cross-party participation in the drafting process that would have been in the spirit of the EU recommendation to collectively address political polarisation and ensure political party cooperation.[5] While this could have hindered meaningful political dialogue on the issue of electoral reform, in a positive development, the opposition that had boycotted the Working Group subsequently submitted joint draft amendments to the Parliament, which are currently under a cross-party discussion on an informal level.[6]

24. On 18 August 2022 during the first meeting of the Working Group on electoral reform, one of the long-standing election observer organisations in Georgia, the International Society for Fair Elections and Democracy (ISFED), was not allowed to participate in the Working Group, with the ruling party citing the organisation's "loss of [political] neutrality".[7] The government's decision was criticised both by representatives of the civil society and the opposition.[8] In protest of the decision, a key civil society organisation involved in electoral reform, the Georgian Young Lawyers Association (GYLA), boycotted the Working Group. In the view of ODIHR and the Venice Commission, these developments limited the inclusiveness of the electoral reform process and raised concerns, also bearing in mind the European Commission's Priority 10 to "ensure the involvement of civil society in decision-making processes at all levels". Positively, when the draft was finalised and submitted to the Legal Issues Committee of the Parliament, both ISFED and GYLA participated in the meeting during which the draft amendments were discussed, and the draft was amended to address some of their suggestions.[9]

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[4] The Working Group included four members of the parliamentary majority, one member each from the political parties - Girchi, Citizens and European Socialists, one non-attached MP from the party "For Georgia". Representatives of United National Movement (UNM), Lelo, and Strategy Aghmashenebeli cited dissatisfaction with the manner of operation of the Working Group and the level of consultation, transparency, and inclusivity for the working methods of the new working group as reasons for not attending the meetings.

[5] See Venice Commission, Report on the role of the opposition in a democratic Parliament, CDL-AD(2010)025, paragraph 149, Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments; see also Resolution 1601(2008) of the Parliamentary Assembly of the Council of Europe on procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament.

[6] The joint draft, developed in consultation with NGOs, was submitted to Parliament by the UNM, Lelo, and Strategy Aghmashenebeli following the passing in first reading of the draft amendments endorsed by the Legal Issues Committee of the Parliament. The joint draft is on the agenda of the Legal Issues Committee. According to opposition interlocutors, while they do not fundamentally disagree with the draft amendments that passed the first reading in the parliament, they propose a number of additional amendments in their draft.

[7] The decision was made by the Chair of the Working Group and supported by the Speaker of the Parliament.

[8] In addition to a statement by ISFED, on 20 August 2022 four other civil society organisations - the Institute for Development of Freedom of Information, the Democracy Research Institute, the Georgian Young Lawyers Association, and the Social Justice Center - issued a joint statement which noted that "until the ban on ISFED is lifted, the signatories of this statement will suspend their participation in all of the working groups created under the initiative of the ruling party". Moreover, several opposition MPs made public statements criticising the ruling party's decision and claimed it illustrated a lack of willingness to engage in genuinely inclusive consultations on electoral reform.

[9] Both organisations also published opinions on the draft amendments.

25. The draft amendments to the Election Code, as endorsed by the Legal Issues Committee, were adopted by Parliament in its first reading on 5 October 2022.[10] The votes in favour came largely from MPs of the ruling majority, with the vast majority of opposition MPs boycotting the vote, indicative of the ongoing political polarisation.[11] However, political dialogue particularly within the parliamentary framework remains crucial to the maturing of a democracy. In this context, boycotting or hindrance of any parliamentary process by any political force, even when strictly within the law or parliamentary procedure, should be very carefully considered and, if at all, best used as an exceptional measure *in extremis* rather than as a means of political bargaining.

26. The Venice Commission and ODIHR stress that the legal framework for carrying out elections should be based on as wide a consensus as possible amongst all electoral stakeholders and that every effort should be made, particularly at this politically polarising yet crucial time in Georgia, to achieve this shared confidence in the process. They furthermore wish to reiterate the statements they made in the context of the 2021 reforms, namely that ownership of the process can only take place through dialogue amongst all stakeholders driven by a genuine desire to safeguard and enhance Georgian democracy.[12] In this respect, it is strongly recommended that that the ongoing efforts at consensus-building on the draft amendments continue amongst polticial factions, and that consideration of all proposals emanating from the various stakeholders in the process, including civil society organisations, be duly considered.

27. The draft amendments that are the subject of this Joint Opinion relate to various electoral matters including, among others, the formation of election administration bodies, candidate eligibility and nomination, electronic voting and counting, voting by wheelchair users, recounts, measures to ensure impartiality of election observers, and electoral disputes and offences. Some but not all of the proposed changes fall under the above-noted Priority #2 of the European Commission, to improve the electoral framework to address all shortcomings identified by OSCE/ODIHR and the Council of Europe/Venice Commission.

V. Analysis and recommendations

A. Preliminary remarks – stability of electoral law

28. The electoral law must enjoy a certain stability, protecting it against partisan political manipulation. International good practice highlights the importance of the stability of electoral legislation and the impact that frequent changes can have on public trust.[13] Frequent

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[10] According to the current parliamentary schedule, the amendments are planned to be adopted in its third reading no later than 13 December 2022.

[11] Out of 143 sitting MPs, 83 voted in favour (7 seats are vacant): 80 of the votes in favour came from the ruling majority: Georgian Dream (73 out of 75), People's Power (5 out of 9) and European Socialists (2 out of 4). In addition, 3 votes in favour came from the opposition: Girchi (2 out of 4) and Citizens (1 out of 2). The rest of the opposition (52 MPs) did not participate in the vote.

[12] See 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. It is also noted that other draft legislation to amend the parliamentary electoral threshold entrenched in the Constitution has been 'frozen' by the majority after the first reading. Another contentious issue is the composition of the CEC: The current CEC Chairperson and two of its members were (re)elected by parliament under a simple majority anti-deadlock mechanism for a six-month term. In August 2022, the President proposed new candidates which Parliament has not yet considered. Several interlocutors claimed that the delay is intentional and contrary to the Election Code which sets a 14-day deadline for Parliament to review the candidates submitted by the President. According to the representatives of the ruling party, despite the 14-day legal deadline, the Parliament's Rules of Procedures do not set a strict deadline for the Parliament to do so, and they are planning to review the candidacies soon.

[13] 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. This should be read considering the Interpretative Declaration on the Stability of the Electoral Law, CDL-AD(2005)043, where

amendments furthermore risk confusing voters, parties and candidates, and make 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. It is noted that past ODIHR election observation reports and ODIHR/Venice Commission Joint Opinions related to Georgian elections and election legislation have reiterated a recommendation to conduct a comprehensive, systemic review of the Georgian electoral law within an inclusive consultation process, to bring it further in line with OSCE commitments, international standards and good practices.[14] The current amendments while aimed to partially address the EU recommendation for electoral reform were not based on a comprehensive review of the Election Code and only address a selection of issues. To ensure better conformity of electoral legislation with international standards, the Venice Commission and ODIHR recommend a comprehensive reform which could contribute to stability of the electoral law and on-going efforts to consolidate democracy, by eliminating the need for frequent amendments to the election legislation.

B. Formation of election administration

29. Several of the draft amendments concern the formation of the District Election Commissions (DECs) and Precinct Election Commissions (PECs). Some of these proposed changes – described further below – are aimed at enhancing the impartiality and capabilities of the election administration and increasing public trust in the election administration and electoral process. To some extent, these draft amendments address key concerns and recommendations raised by citizens and international observers in past elections based on observations of a lack of impartiality and limited competence, particularly on procedures for counting and preparation of protocols summarising the results, in the lower-level election bodies. However, the draft amendments do not address long-standing ODIHR and Venice Commission recommendations on fundamentally strengthening the recruitment and selection procedures for the formation of election administration bodies, in particular, for the appointment of non-partisan members, and the transparency of these processes. These recommendations are reiterated.[15]

29. One proposal introduces additional disqualifications for membership on DECs and PECs, in Articles 20 and 24 of the Election Code, respectively. In particular, a person cannot be selected by the higher election body as a non-partisan member of these commissions if (a) he/she had been a party-appointed election commission member, election subject, or representative of an election subject for either of the past two ordinary elections or past extraordinary elections or (b) he/she was a party donor since the beginning of the year of the last ordinary elections or extraordinary elections.[16] This legislative effort to filter out party-affiliated individuals from the selection process for

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the Commission argues that the principle according to which the fundamental elements of electoral law should not be open to amendment less than one year prior to an election does not take precedence over the other principles of the Code of Good Practice in Electoral Matters. Therefore, such principle should not be invoked to maintain a situation contrary to the applicable international democratic standards nor to delay the associated necessary reforms.

[14] See previous ODIHR election observation reports on Georgia, as well as Joint Venice Commission and ODIHR Opinions.

[15] See, most recently, Venice Commission and ODIHR, CDL-AD(2021)026, Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, paragraph15. Outstanding recommendations on the issue of formation of election commissions include, among others, legislating higher credentials for non-partisan CEC members and a diverse membership in the selection commission that undertakes a transparent, merit-based nomination process; amending the criteria and selection process for non-partisan members of DECs and PECs so as to ensure, *inter alia*, a transparent, genuinely merit-based process for their appointment; extending the timeframes for submission and review of applications for PEC membership; clearly setting out in the law on what grounds the removal of party-nominated election commission members may be based, to be permitted only exceptionally and on very specific grounds.

[16] This draft provision appears to conflict with the last sentence of the existing Article 24(2) of the Election Code which states: “A person may not be elected as a PEC member if he/she was appointed in the last

non-partisan election administrators is a positive development which to some extent addresses the above-mentioned concerns raised in previous ODIHR election observation reports and joint Venice Commission/ODIHR opinions about the impartiality of professionally-appointed lower-level commission members.

30. Draft amendments to Articles 24 and 25.1 of the Election Code introduce a requirement for a person to possess a PEC member training certificate in order to be appointed as a PEC member and a DEC management certification in order to be appointed as a PEC head officer, respectively.[17] These are welcome measures that are in line with recommendations previously put forward by ODIHR.[18] However, the draft amendments establish some exceptions to holding these certificates, most notably for party-appointed PEC members.[19] In this respect, it should be noted that pursuant to international good practice, standardised training should be made available to all members of electoral commissions, including those appointed by political parties.[20] The Venice Commission and ODIHR therefore recommend that the requirement for a standardised training certification also apply to party-appointed members. In addition, an expiry period for the certificates should be established to ensure that selected candidates have up-to-date training. It should also be noted that despite past improvements to the quality of the training on election day procedures, previous ODIHR and Venice Commission recommendations to enhance the training remain applicable, particularly on counting and completing summary results protocols.[21] Institutional capacity and adequate resources should be guaranteed to ensure effective implementation of the certification process.

31. While the above-noted draft amendments are welcome developments, they do not address long-standing and reiterated ODIHR recommendations to ensure a genuinely merit-based selection process for non-partisan DEC/PEC members, by strengthening the selection criteria, improving and elaborating procedures for the recruitment and selection process, including by extending the timeframes for submission and review of applications, and enhancing transparency of the selection process. These recommendations are based on shortcomings identified in recent elections in the recruitment processes for lower-level commission members – conducted by the CEC for DECs and the DECs for PECs – resulting in a lack of genuinely open, transparent, and inclusive competitions.

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general elections as a member of an election commission of any level by a party." The draft amendment referring to the past two elections is not reflected with a change to the above-noted provision.

[17] As defined in the law, PEC head officers are the PEC chairperson, deputy chairperson and secretary, hereinafter referred to PEC management. The draft amendments provide that the certification will be conducted by the Centre for Electoral System Development, Reform, and Training (Article 17 of the Election Code); a CEC decree is to regulate the certification process and the examination tests are to cover issues solely from the election law and regulations in accordance with the functions of PEC members or PEC management (Articles 24 and 25.1 of the Election Code respectively), as the case may be; the CEC is to maintain a database of certificate holders (Article 14 of the Election Code). A proposed transitional Article 196.5 of the Election Code provides that PEC members and management are not required to submit the certificate before the scheduling of the 2024 parliamentary elections.

[18] The 2017 ODIHR election observation report recommended that PEC leadership positions be drawn from among trained and certified individuals with prior experience in administering elections. In its 2020 election observation report, ODIHR recommended that consideration be given to establishing a reserve pool of trained PEC members in each district to ensure a smooth replacement of PEC members and a professional conduct of voting and counting.

[19] In addition, under the draft amendments, PEC members in election precincts set up in exceptional cases and in foreign states are excluded from requiring the certificate. In this respect, the legislation could require that in those special cases, at least the PEC management must hold certificates and that applicants for member positions who possess certificates will be prioritised in the selection process. Furthermore, the CEC's power to determine by decree other cases where a PEC member is not required to possess the relevant certificate is overly broad, undermining the aim of the new provision.

[20] Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor,Guideline II.3.1(g) and paragraph 84 of the Explanatory Report.

[21] For instance, the April 2021 Joint Opinion recommended to provide supplementary training on completion of summary protocols of results, see Venice Commission and ODIHR, CDL-AD(2021)022, Urgent joint opinion on Draft Amendments to the Election Code, paragraph 60.

The recent ODIHR/Venice Commission Joint Opinions have reiterated these recommendations and also put forward recommendations for enhancing the process for selection of the CEC's non-partisan members.[22]

32. Another draft amendment (new Article 25.1 of the Election Code) substantially changes the process for appointing PEC management. Under the current law, PEC management is elected by the PEC members from among the PEC members elected by a DEC (that is, from among the non-party-appointed members), provided that the candidate receives the majority of votes of the PEC members elected by a DEC. The draft law instead grants DECs the power to directly elect the PEC management via an open competition in accordance with the same procedures for selecting PEC members laid out in Articles 24 and 25 of the Election Code and a CEC decree establishing the procedure, conditions and deadlines.[23] In light of the low public trust in the impartiality of PECs, as evidenced in past elections,[24] this measure may be aimed at bolstering trust by taking the process of selecting PEC management from an election amongst existing PEC members to an open competition at DEC level. However, it should be emphasised that, as with the process for PEC member selection by the DECs, the procedure, conditions and deadlines for the PEC head officer competition should ensure a genuinely open, competitive and merit-based process and one that is fully transparent. These key principles and guarantees should be reflected in the legislation.

33. Furthermore, a draft amendment to Article 25.14 of the Election Code provides that the powers of a newly elected PEC (and its members) commence on the 30th day before the election day. The existing version of this provision stipulates that the term of office of a PEC member shall commence at the first session of the PEC. At the same time, the existing Article 25(21) of the Election Code, which mandates the PECs to hold their first sessions "not later than 30 days" before the election day and Article 22(1)h.1 of the Election Code that grants DECs the power to convene the first PEC sessions, are to be repealed. While this change would ensure a consistent date of resumption of PEC powers, it does not eliminate the existing risk that some PECs may commence their operations too late to allow for effective implementation of their duties. The Venice Commission and ODIHR therefore recommend that the legislation also establish that all PECs hold their first session on the 30th day before the election day.

C. Candidate eligibility and nomination

34. The draft amendments include changes to candidate eligibility and the candidate nomination process which bring the provisions further in line with international good practice and may serve to enhance accessibility for candidates and political parties to participate in elections.

35. Under the proposed changes, the current five-year residency requirement for mayoral and municipal council candidates would be reduced to one year.[25] While international good practice allows a length of residence requirement to be imposed on nationals for local or regional elections only, the requisite period should not exceed six months (except to protect national minorities).[26] In line with this, ODIHR previously recommended that the five-year residency requirement be lifted.[27] The Venice Commission and ODIHR recommend that either the residency requirement be further reduced to six months or repealed. In addition, contrary to international good practice to not impose

[22] See 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.
[23] In a meeting with the CEC Deputy Chairperson, it was noted that the CEC had recommended this amendment to the parliamentary Working Group as a transparency and inclusivity measure.
[24] See 2021 ODIHR EOM report.
[25] Draft amendments to Articles 134(1), 141(6), 143(3) and (8), 144(5), 145(6), 158(8) and 167(1) and (9) of the Election Code.
[26] See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline I.1.1(c) and paragraph 6 of the Explanatory Report.
[27] See ODIHR Election Observation Mission Final Report on 2017 Local Elections.

residency requirements for elections at the national level, a 10-year residency requirement for parliamentary candidates and a 15-year residency requirement for presidential candidates remain in force.[28] In this regard, previous Venice Commission and ODIHR recommendations to lift the residency requirements for presidential and parliamentary candidates, as well as to repeal other undue eligibility criteria, should be addressed.[29]

36. The draft amendments significantly decrease the minimum number of candidates that a political party must include on its candidate lists for both parliamentary and local council elections. In this regard, for parliamentary elections, the minimum number of candidates to be included on party lists as provided for under Article 115(3) of the Election Code would be reduced from 100 to 76 (there are 150 parliamentary seats in total). For local council elections, the minimum number of candidates to be included on party lists as provided for under Article 143(3) of the Election Code would be halved, from nominating not less than the number of members to be elected under the proportional system, to not less than half the number. In this respect, it is noted that the choice of an electoral system is a sovereign decision of a state, provided the system conforms with principles contained in OSCE commitments, the Code of Good Practice in Electoral Matters and other international norms.[30] It is noted that this amendment may facilitate greater participation and representation of smaller or regional parties in elections at both the national and local level, in line with the principle of political pluralism.[31] In this respect, consideration could be given to further reducing or lifting the minimum number of candidates per list.

D. Electronic means in the election day process

37. The draft amendments introduce a new chapter VIII.1 of the Election Code on 'Voting by Electronic Means' which significantly expands the use of electronic means on election day, both in terms of the technology used and geography-wise. For the 2021 local elections, the CEC was authorised to use electronic means to carry out voter verification at polling stations, voting and counting of votes, and drawing up of a summary protocol of results and had wide discretion in terms of in which locations the technology would be used.[32] The CEC implemented limited use of electronic means in the 2021 elections, which only included a pilot of the ballot scanning for counting in one district in Tbilisi and selected polling stations in two other regions.[33] Under the current draft amendments, the processes for verification of voters at electoral precincts, voting and counting, and the drawing up of summary protocols are required to be conducted by electronic means in the electoral districts/precincts determined by a CEC decree, with the requirement for covering at least 70 per cent of the total number of voters nationwide. According to interlocutors, the term "electronic voting and counting" in the draft law, refers to special paper ballots that are electronically scanned and counted, not to the use of electronic voting machines. The draft would benefit from clearly stating that the voter marks her/his choice using a paper ballot, which will then be scanned. The proposed amendments do not include any criteria for the CEC to apply in deciding which electoral precincts

[28] In accordance with a 2017 constitutional amendment, all presidential elections are to be held indirectly following the 2018 presidential election. The Constitution establishes the residency requirement for presidential and parliamentary candidates.
[29] See ODIHR Election Observation Mission Final Reports on 2018 Presidential and 2020 Parliamentary Elections. Other undue eligibility criteria include a ban on dual citizens to be elected President and a Georgian language requirement for local election candidates.
[30] These include, among others, requirements for transparency, universality and equality of suffrage of voters and non-discrimination among candidates and political parties.
[31] In meetings with smaller parliamentary parties, ODIHR and the Venice Commission were informed that it is common practice for such parties to include many 'fictional' candidates on their lists in order to reach the required minimum. The proposed reduction will serve to prevent such malpractice.
[32] The transitional provision had only required the counting of ballot papers by electronic means in at least as many precincts as is necessary "to reveal the sociologically valid results of the constituency".
[33] In the 2021 elections, the CEC only implemented the use of electronic ballot scanners for counting which were used in the Krtsanisi district of Tbilisi, and in fourteen polling stations in Batumi and in three polling stations in Senaki during the by-elections held in 2022.

will use electronic means, and some interlocutors noted a lack of trust in the CEC to impartially exercise such discretion. In light of this, ODIHR and the Venice Commission recommend clarifying such criteria in the legislation, to bolster trust in the process and avoid any perception of selective application of the electronic voting and counting measures.

38. While use of electronic means may ease the process and reduce risks of human error or intentional violation, there are inherent complexities and risks associated with electronic voting and counting. As such, it is common practice for states to introduce new voting technologies on a pilot basis.[34] So far only limited pilot projects have been conducted in past elections, and having a robust testing of the technology well in advance of the upcoming elections is of key importance. In addition, a follow-up study of any pilot project is advisable, to be undertaken by the CEC, as a key tool toward effective planning and implementation of a more broad-based future use of election-related technologies. It is of utmost importance that any new use of electronic means must be sufficiently planned and prepared in advance, effective voter education and election administration training be undertaken, and all measures to foster public trust in the system be implemented.

39. It is also noted that the proposed changes allow for a maximum of 3,000 voters per electoral precinct where the elections will be held by electronic means (whereas other regular electoral precincts continue to have a maximum of 1,500 voters).[35] While electronic voter verification and counting of ballots may offer a more efficient process than conventional voter verification and manual counting, doubling the number of voters could be considered particularly high especially in the transitional period of using newly introduced electronic means. In addition, the time it takes for voters to scan their ballot is likely longer than it would be to insert the ballot directly into the box.[36] The Venice Commission and ODIHR therefore recommend that, at least for an interim period, the maximum number of voters for precincts where electronic means are used remains the same or does not considerably exceed the maximum number of voters for regular precincts. In any case, if some electoral precincts are to be merged and voters reassigned to new voting locations, it is imperative that those affected are duly informed.

40. Draft Article 76.6 of the Election Code provides that in the election precincts where there are no electronic ballot counters, the PEC will scan the ballot papers during the count. Further, the CEC is to upload these scanned ballots online, categorised by electoral precinct, no later than 10:00 on the third day after polling day. This measure enhances transparency for those polling stations that will not be using electronic counting. However, as highlighted below, transparency for the voting and counting process when using electronic means must be guaranteed and appropriate measures put in place. It should also be carefully considered whether the – rather long – three-day deadline for uploading the scanned ballots offers adequate time for stakeholders to effectively lodge potential post-election complaints in light of the established filing deadlines. Harmonisation of the provisions may be necessary.

41. The draft amendments exclude the use of two important safeguards in electoral precincts that use electronic means – the use of a control sheet in the ballot box and the inking of voters who have cast a ballot.[37] In light of the proposed hybrid nature of the election day process involving both electronic and manual methods depending on the electoral precinct, the elimination of inking as a safeguard against multiple voting across electoral precincts poses risks. In a positive

[34] See Recommendation CM/Rec(2017)5 of the Committee of Ministers to member States on standards for e-voting, Standard 27. See also previous joint opinions, e.g. Venice Commission and ODIHR, CDL-AD(2016)019, Joint Opinion on the Draft Electoral Code of Armenia as of 18 April 2016, paragraph 66.
[35] Draft Article 76.3(2) of the Election Code.
[36] Interlocutors noted that as a public trust measure, the draft amendments will be revised to require manual counts at each polling station in parallel to the electronic count.
[37] New Article 76.4(2) of the Election Code. In meetings with interlocutors, it was noted that, based on informal political agreement, the draft amendments would be revised to mandate inking of voters at all electoral precincts, including those using new technologies.

development, interlocutors noted that as a public trust measure, the draft law will be revised to require, at least for a transitional period, manual counts at each polling station in parallel to the electronic count.[38] In this case, it is important that the law explicitly provides that in case of discrepancies between manual and electronic counts, the manual count takes precedence. The Venice Commission and ODIHR recommend that until electronic means are implemented across all electoral precincts and public trust in the new voting technologies has been established, the conventional safeguards remain in effect at electoral precincts using electronic means. In addition, it is paramount that all necessary measures be taken to ensure that there is the same level of secrecy of the vote as is present in the conventional voting process.

42. The new draft chapter on the use of electronic means has five articles in total, and provides that the electronic means and the procedures and conditions for their use for verification of voters, polling and counting are to be defined by a CEC decree. The April 2021 ODIHR/Venice Commission Joint Opinion assessed the draft legal framework for the limited use of electronic means during the 2021 local elections. The Opinion noted that legislation should properly regulate the use of any newly introduced voting technologies and found that the draft law did not include any such regulation, and only provided that applicable rules and conditions are to be determined by the CEC. In light of this, the Venice Commission and ODIHR recommended that the draft amendments establish a regulatory framework for the use of new voting technologies taking into account international good practice.[39] This recommendation was not addressed and is as such reiterated here. For ease of reference, the international good practice for legislation regulating new voting technologies, as described in the April 2021 Joint Opinion, is repeated below.

43. Procedures and requirements for the use of information technology during electronic voting, counting and tabulation must be accurately reflected in the electoral legislation. Often, important parts can be found in other legislation, such as that relating to data protection. First, the regulation could either be done primarily in the electoral law itself or, alternatively, the legal framework could establish only general rules, leaving the detail to binding regulations issued by the electoral management body. While the latter is advantageous in terms of flexibility, it can give too much scope for election procedures to be adapted to the needs of the technology, instead of the other way round, and to circumvent important safeguards if time becomes scarce due to any delays in the implementation of the new voting technology system. Second, it is important that the electoral legislation explicitly state that the suffrage guarantees applicable to paper-based voting are also applicable to new voting technologies, even though the way of voting is different.

44. The Code of Good Practice in Electoral Matters provides that “electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent.”[40] With regard to the use of electronic rather than manual counting, the legal framework should provide safeguards, with provisions in place so that the accuracy and soundness of the hardware and software used for counting ballots can be verified independently. Whether manual, mechanical or electronic voting is used, procedures for auditing and inspection must be in place to ensure accuracy and reliability.

45. In addition to establishing minimum criteria for new voting technology use, specific areas that must also be addressed in the legislation include:

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[38] The law currently provides that random (manual) recounts are not to be conducted in electoral precincts where electronic counting is utilised.

[39] Venice Commission and ODIHR, CDL-AD(2021)022, Urgent Joint Opinion on Draft Amendments to the Election Code, paragraph 75.

[40] See Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline I.3.2.iv and paragraphs 42-44 of the Explanatory Report.

- The scope of access to new voting technologies that will be provided to observers, candidates and political parties;
- Adequate time-frames for key decisions related to new voting technologies, including procurement and testing;
- The procedural steps for audits and recounts where new voting technology is used;
- The primacy of the voter-verifiable paper record in determining the results in the event of legal challenges;
- Defining the contractual obligations of venders, certification agencies and suppliers;
- Accountability provisions for public officials and election administration;
- Criminal sanctions in case of new voting technology abuse;
- Complaints and appeals in regards to new voting technology use;
- Data-protection regulations.

46. The above-noted areas should be addressed in detail in a text in a manner that is understandable to the general reader. This is particularly important where the introduction of new voting technologies is likely to introduce legal challenges before and during elections. It should be emphasised that while the introduction of new technologies has its advantages, it risks undermining public trust in the electoral process and results, especially in politically sensitive environments, if not properly planned, tested, implemented transparently, subject to audits of voters and election officials educated on its use. Certainly, a shift from paper-based to electronic voting and counting should not be considered a panacea to the problems that occurred in recent elections. In addition, any introduction of electronic voting should take into account the Council of Europe's standards in the field of e-voting.[41] The authorities should consider seeking external technical assistance from experts experienced in legislative drafting for electronic electoral processes.

47. A draft amendment to Articles 63(19) and 65(2) of the Election Code requires voters to present an electronic identity card (or passport) in order to vote, whereas previously voters could vote with a non-electronic identity card. It is understood that this draft change is based on the proposed introduction of electronic voter verification machines in most electoral precincts, a measure widely supported by stakeholders.[42] While electronic identity cards were introduced in Georgia in 2011, it is not mandatory to possess one, and many citizens continue to use their non-electronic identity card (which does not have an expiry date), including for voting.[43] In effect, voters in possession of only the non-electronic card will be disenfranchised. It is imperative that the law ensure, to the greatest extent possible, that all eligible voters are able to cast a vote as a suffrage right. In light of this, consideration should be given to continue to provide voters with the option of using either type of card or otherwise incorporate a transitional provision that allows use of either card until a specified date. The transitional period should provide sufficient time for the relevant authorities to inform voters of this new voting requirement and allow citizens a reasonable time period to obtain

[41] See Recommendation CM/Rec(2017)5 of the Committee of Ministers to member States on standards for e-voting; Explanatory Memorandum to Recommendation CM/Rec(2017)5 of the Committee of Ministers to members States on standards for e-voting; Guidelines on the implementation of the provisions of Recommendation CM/Rec(2017)5 on standards for e-voting. For example, paragraph 33 of the 2017 CoE Recommendation on e-voting states: "The components of the e-voting system shall be disclosed for verification and certification purposes." Paragraph 95 of the Explanatory Memorandum to the 2017 CoE Recommendation on e-voting further states that the means to achieve that e-voting systems function correctly, and that security is maintained is independent evaluation of the system as a whole or of its components. See also the Committee of Ministers' Guidelines on the use of information and communication technology (ICT) in electoral processes in Council of Europe member States of 9 February 2022, CM(2022)10.

[42] However, the proposed requirement to use an electronic identification card would apply to all electoral precincts, including the up to 30 per cent of precincts that would not utilise electronic voter verification machines.

[43] Some interlocutors noted that a segment of citizens is opposed to the use of electronic ID cards.

the electronic card if they do not already possess one. In this respect, it is imperative that the relevant authorities conduct a timely information campaign and facilitate an easy access to obtain the required electronic card.

E. Voting by wheelchair users

48. Legal provisions that established a temporary procedure to facilitate voters using wheelchairs to participate in elections, which were in force during the 2020 parliamentary elections and 2021 local elections, would pursuant to the draft amendments become permanent norms applicable to all future elections. Specifically, draft Article 32.1 of the Election Code provides that voters using wheelchairs are entitled to vote at any adapted election precinct in the operation area of the respective DEC, for parliamentary elections, or in the territory of the relevant local majoritarian electoral district, for local elections. Such voters are to apply, in writing or verbally, to the relevant DEC or PEC not later than the 6th day before the polling day to change their polling station.

49. While efforts to make the process more accessible for the independent participation of all voters are welcomed, the above-noted mechanism to facilitate voting by wheelchair users does not conform to international standards for accommodating persons with disabilities in an electoral process. Paragraph 41.5 of the 1991 OSCE Moscow Document calls on participating States "to encourage favourable conditions for the access of persons with disabilities to public buildings and services". Further, Article 29 of the Convention on the Rights of Persons with Disabilities requires state parties to ensure that "voting procedures, facilities and materials are appropriate, accessible and easy to understand and use ".[44] These norms aim to ensure that persons with disabilities are able to vote, to the extent possible, in the same manner as other voters. It should be noted that this norm applies not only to wheelchair users but also to persons with disabilities who may otherwise have limited mobility and face problems to enter buildings because of stairs or other obstacles. Elderly persons in general may also encounter such difficulties.

50. A requirement to travel to a polling station that is not nearest to ones' residence, and potentially rather far, and being obliged to apply to change ones' polling station to be able to cast a ballot are unnecessary obstacles that are not faced by other voters.[45] To comply with international standards, states should aim to adapt all polling stations to ensure unimpeded accessibility to voters with mobility challenges. While the temporary provision that allows wheelchair users to transfer to an adapted polling station within their electoral district may be a reasonable approach to be used until all polling premises are made accessible, it cannot be regarded as an appropriate permanent solution. The Venice Commission and ODIHR therefore recommend that the temporary nature of such provisions be extended and that the relevant authorities consolidate their efforts toward adapting all polling premises to accommodate voters with mobility challenges. In the meantime, the authorities should ensure that adapted polling stations are close by to those that are yet to be adapted.[46] Consideration should also be given to extend the temporary measures to all voters with mobility challenges, not only wheelchair users.

F. Recounts

51. Under the draft amendments, Article 21 of the Election Code that covers DEC powers has been expanded to include additional circumstances under which a recount of ballot papers from

[44] See the 2006 UN Convention on the Rights of Persons with Disabilities.
[45] In a meeting with the CEC Deputy Chairperson, it was noted that wheelchair users in rural areas are more disadvantaged than those in urban areas, in terms of accessing polling stations.
[46] Despite efforts to improve accessibility, during the 2021 local elections, ODIHR and its partner observers regarded 59.6 per cent of the polling stations visited as difficult to access for wheelchair users. Previous ODIHR election observation reports have reiterated that the authorities should continue their efforts to create an enabling and inclusive environment and further facilitate access to the election process for persons with disabilities.

an electoral precinct must be automatically conducted by a DEC. In this respect, the draft law adds two specific circumstances: when the sum of the number of ballot papers deemed void and the number of ballot papers given to voters as recorded in the summary protocol of the voting results drawn up by a PEC (1) exceeds the total number of voters participating in the election by 5 or more than 5 or (2) is less than the total number of voters participating in the elections by 10 or more than 10.[47] These changes, which are in line with the advice provided by ODIHR and the Venice Commission in their April 2021 Joint Opinion, could serve to enhance the credibility of election results and may bolster public trust in the electoral process.[48]

52. It should be noted that a long-standing ODIHR recommendation, reiterated in the April 2021 Joint Opinion, to stipulate in the legislation clear and objective grounds on which recounts and annulments can be requested by electoral stakeholders and the grounds under which they must be granted has not been addressed by the draft law.[49] This represents a significant gap in the election legislation. In addition, based on observations of shortcomings in the automatic recount process during the 2021 local elections, ODIHR recommended to establish clear and comprehensive criteria for the conduct of recounts. This recommendation remains to be implemented. Some interlocutors also raised this concern, noting that the law should explicitly provide those recounts follow the same procedural steps as the initial counts.

G. Election observers

53. Two proposed amendments concern election observers – one serves to enhance the impartiality of citizen observers and the other broadens the rights of election observers. Regarding the latter, a proposed new paragraph under Article 40 of the Election Code provides that a CEC Decree will establish the procedure to register observer organisations for the purpose of attending sessions of the election commission during the non-election period. While the provision is drafted as a procedural matter, rather than explicitly granting a substantive right, it nevertheless appears to address a long-standing ODIHR recommendation to grant the possibility to civil society organisations to observe the work of the election administration outside of the electoral period.

54. According to proposed changes to Article 39 of the Election Code, a person cannot be a citizen observer if (a) he/she had been a party-appointed election commission member, election subject, or representative of an election subject in the previously held ordinary elections or extraordinary or (b) he/she was a party donor since the beginning of the year of the last ordinary or extraordinary elections.[50] This effort to filter out party-affiliated individuals from the range of possible citizen observers is a positive development. It goes a long way to implement a long-standing and reiterated ODIHR recommendation to address the practice of electoral contestants misusing citizen observation by registering their activists as citizen observers in order to bolster their presence in polling stations. Such practice has been observed to undermine the impartiality of the citizen observation exercise in past elections, including overt interference in election day proceedings.

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[47] The total number of ballot papers given to voters is determined by the number of ballot papers found in the ballot box and recorded in the protocol of results and the total number of voters participating in the election is determined by the number of recorded voter signatures.

[48] See Venice Commission and ODIHR, CDL-AD(2021)022, Urgent joint opinion on Draft Amendments to the Election Code, paragraph 59.

[49] See the 2017, 2020 and 2021 ODIHR EOM reports. The April 2021 Joint Opinion states: "Adoption of a comprehensive regulatory framework that specifies clear, objective criteria for granting and conducting recounts and annulments to ensure transparent, fair and uniform practice in counting and tabulation of results and handling of post-election disputes as reiterated in ODIHR election observation reports over the years, is recommended". See Venice Commission and ODIHR, CDL-AD(2021)022, Urgent joint opinion on Draft Amendments to the Election Code, paragraph 62.

[50] In a meeting with the CEC Deputy Chairperson, he noted that citizen observer organisations will have access to a database of ineligible persons based on the established criteria to ensure that their designated observers are accredited.

55. It should be noted though that the aforementioned draft provision applies only to the immediate previous elections, whereas a similar proposed restriction for election commission members, as noted earlier, applies to party affiliations from the past two elections. In light of the pervasiveness of this practice and its negative impact on the election day process, consideration should be given to extending these restrictions on party affiliations of citizen observers to at least the past two elections. This could serve to further alleviate the widespread misuse of the citizen observer mechanism by political parties and candidates and ensure that those who take on the role of non-partisan observers are genuinely able to perform their duties in an impartial and unobtrusive manner.

H. Electoral disputes and offences

56. Several of the draft amendments relate to deadlines for the submission and consideration of election-related complaints and electoral offences or increase the maximum liability for certain electoral offences. While some of these proposed changes bring the time limits in line with international good practice, the draft amendments do not comprehensively address the long-standing "need for robust reform of the election dispute resolution process to ensure straight-forward access to timely, transparent, and effective resolution of disputes" as highlighted in the April 2021 Joint Opinion.[51] The following are the specific draft changes that relate to electoral disputes and offences.

57. The draft law introduces a deadline for issuing a decision on whether or not to impose disciplinary liability on a PEC member based on a complaint, specified to be within 15 calendar days from the submission of the applicable complaint. While this significantly shortens the general 30-day deadline for imposition of disciplinary liability, in line with the General Administrative Code, and is in line with a previous ODIHR recommendation to shorten such deadline, the change does not provide for duly expedited resolution of such cases in accordance with international good practice.[52] It should also be noted that in the case of repeat votes, which are to take place within two weeks from the day of the vote, a 15-day deadline to impose disciplinary sanction against poll workers may not be timely. The Venice Commission and ODIHR therefore recommend, in line with international good practice, further shortening the deadline for deciding whether or not to impose disciplinary liability on a PEC member in response to a complaint.

58. A draft amendment to Article 88 of the Election Code revises the fine for the offence of misuse of administrative resources or the exercise of official duties or capacity during election campaigning, from GEL 2,000 to 2,000-4,000. This increase in the maximum fine is in line with a previous ODIHR recommendation to strengthen the legal framework to effectively combat the misuse of administrative resources. However, in light of significant shortcomings in the legal framework for prevention of misuse of administrative resources, including official position, this revision is considered a minor change. Of note, the same ODIHR recommendation stresses that campaigning by high-level officials, including mayors, should be strictly regulated, which has yet to be addressed. Referencing outstanding ODIHR and GRECO recommendations for significant measures to prevent the misuse of administrative resources, the April 2021 ODIHR/Venice Commission Joint Opinion recommended "a more comprehensive and systematic regulation on the prevention of misuse of administrative resources".[53] This recommendation is reiterated. It

[51] See Venice Commission and ODIHR, CDL-AD(2021)022, Urgent joint opinion on Draft Amendments to the Election Code, paragraph 64.
[52] See ODIHR Election Observation Mission Final Report Georgia Local Elections, October 2021. Guideline II.3.3.g of the Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor provides that "time-limits for lodging and deciding on appeals must be short (three to five days at each instance)".
[53] The Joint Opinion highlights that the legislation needs to address online social media campaigning by public servants during working hours, and the use of official government webpages for campaign purposes, notable problems in recent elections in Georgia. Its recommendation specifically notes that regulations

should be noted that a recent ODIHR recommendation highlights the need to effectively apply and enforce the legal framework for combatting the misuse of administrative resources and public office in an election campaign.[54]

59. Another draft amendment to Article 88 of the Election Code introduces a three-year limitation period for the imposition of liability for the offences of misuse of administrative resources or official position in an election campaign.[55] Interlocutors noted that this is intended to increase the existing two- and four-month limitation periods for sanctioning administrative offences by administrative bodies and courts, respectively, established by the Code of Administrative Offences.[56] While such an extended limitation period can be seen as a positive measure, it is important that it coincides with concerted efforts to strengthen the institutional framework to independently identify and conduct investigations into such offences and bring perpetrators to justice. A statute of limitation period should never serve to bolster impunity for those who misuse administrative resources or their public position. In addition, a long-standing and reiterated ODIHR recommendation stresses that law enforcement must effectively investigate instances of possible misuse of state resources for campaign purposes and recommends establishing an effective, impartial and timely mechanism to address complaints on such offences and, where appropriate, to impose sanctions.[57]

60. A draft amendment to Article 85(4) of the Election Code reduces the statute of limitations for imposing liability for violations of the campaign finance rules, from six years to three years.[58] It should be noted that the previous increase to six years had addressed a GRECO recommendation to extend the limitation period for violations of campaign finance rules.[59] The proposed decrease therefore represents a backtrack. As with the new three-year statute of limitations for imposing liability for the misuse of administrative resources and official position, noted earlier, it is important that this amendment coincide with concerted efforts to strengthen the institutional framework and capacity to identify and conduct investigations into campaign finance-related offences and bring violators to account. Reducing the statute of limitation period should not serve to bolster impunity for violators of campaign finance rules. In addition, long-standing and reiterated ODIHR and GRECO recommendations aimed at strengthening the campaign finance framework and its enforcement, including by establishing expedited deadlines for addressing complaints on campaign finance violations, have not yet been fully addressed.[60]

61. Furthermore, a draft amendment to Article 93(6) of the Election Code provides that during a non-election period and before the scheduling of an election, decisions on drawing up protocols on administrative offences related to misuse of administrative resources and official position for campaign purposes shall be made within 60 calendar days of receiving the request – as an

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"need to ensure that any misconduct of public sector employees is interlinked with (disciplinary) sanctions and other rules specifically related to them". See Venice Commission and ODIHR, CDL-AD(2021)022, Urgent joint opinion on Draft Amendments to the Election Code, paragraph 54.

[54] See ODIHR EOM Final Report 2021 Local Elections.

[55] This deadline is apparently separate from the existing 10-day deadline for deciding on requests to draw up an administrative offence protocol and for the court to impose liability for such offences, as established in Article 93(6) of the Election Code. Consideration should be given to clarifying in the law what this deadline is and if it affects existing deadlines for response to applications that request the drawing up of a protocol on such administrative offences and for the court to make a decision on the offences.

[56] However, the proposed change is not drafted as an amendment or exception to the Code of Administrative Offences which may create an inconsistency with the Election Code.

[57] See ODIHR Election Observation Mission Final Reports on the 2017, 2018, 2020 and 2021 elections.

[58] Similarly, a draft amendment to Article 34.2 of the Organic Law on Political Unions of Citizens reduces the statute of limitations for imposing liability for violations of the political party finance rules, from six years to three years.

[59] The GRECO report noted that a limitation period of six years, as was under discussion at the time, appeared to be reasonable.

[60] Cf. Greco Eval III Rep (2010) 12E, Theme II, and the corresponding compliance reports.

exception to the general 10-day deadline. Sixty days appears unduly long to decide on liability for such electoral offences even for those that took place outside an electoral period, especially if the offences are committed close to an election period. To ensure that all electoral offences are addressed in a timely manner, the Venice Commission and ODIHR therefore recommend reconsidering such an exception to the deadline for handling complaints on misuse of administrative resources.

62. Proposed amendments to Articles 73(3), 74(1) and 77(2) of the Election Code extend the deadline for appealing a decision/action of a PEC or PEC chairperson, including in response to a complaint, from two to three days and extend the deadline for the DEC to consider such appeals from two to four days.[61] These changes would address previous related ODIHR and Venice Commission recommendations[62] and bring those deadlines in line with international good practice: according to the Code of Good Practice in Electoral Matters, "time-limits for lodging and deciding on appeals must be short (three to five days for each at first instance)".[63] However, some other deadlines applicable to the handling of electoral complaints and appeals continue to fall outside the recommended timelines. In particular, the two-day deadlines for submission and consideration of an appeal to a first instance court against DEC decisions on appeals against PEC decisions, and the one- and two-day deadlines for submission and consideration, respectively, of a further appeal to an appeal court are unduly short.[64] In addition, the 10-day deadlines for the election commission to respond to applications requesting the drawing up of certain administrative offence protocols and for the court to make a decision on such protocols are unduly long.[65] The Venice Commission and ODIHR recommend revising these deadlines in conformity with international standards.

I. Other draft amendments

63. Draft amendments to Articles 64(5) and 66(7) of the Election Code extend the requirement for indelible inking of voters to include mobile voters. This measure, previously recommended by ODIHR, strengthens an important safeguard against multiple voting through alternative voting methods.[66]

64. The set of draft amendments includes an amendment to Article 25.1 of the Organic Law on Political Associations of Citizens which reduces the allowable maximum amount of annual party spending from 0.1 per cent to 0.05 per cent of the gross domestic product of Georgia of the previous year. At the same time, Articles 54(7) and (8) of the Election Code remain unchanged, which establish a maximum annual spending per electoral subject during the year of 0.1 per cent of the gross domestic product of the previous year. It appears that these provisions need to be

[61] The four-day deadline for DECs to consider complaints already exists in Article 77(2) of the Election Code based on an earlier amendment, but due to an apparent legislative oversight the reference to the same deadline in Articles 73(3) and 74(1) of the Election Code remained two days. It is these two-day deadlines that are currently being proposed to be changed to four days, apparently to harmonise the provisions. In addition, a draft change to Article 75(1) of the Election Code extends the deadline for DECs to summarise the election results from 14 to 15 days after the polling day, presumably to consider the extended deadline for DECs to consider complaints. A draft amendment to Article 125(1) of the Election Code reduces the deadline for the CEC to summarise the election results and draw up the final summary results protocol, from 26 to 25 days after the polling day.
[62] See e.g. Venice Commission and ODIHR, CDL-AD(2021)022, Urgent joint opinion on Draft Amendments to the Election Code, paragraph 67.
[63] Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, Guideline II.3.3.g.
[64] Under Article 77(2) of the Election Code.
[65] Under Article 93(6) of the Election Code.
[66] See 2021 ODIHR EOM report.

harmonised.[67] On a related point, it should be noted that a previous ODIHR recommendation to bring the high donation limits for election campaigns further in line with international good practices has yet to be addressed.[68] The Venice Commission and ODIHR reiterate this recommendation.

[67] In a meeting with a State Audit Office (SAO) representative, it was noted that the parliamentary committee was aware of the discrepancy and that it would be addressed in a corresponding draft amendment to the Election Code.

[68] See 2020 ODIHR EOM report. In a meeting with an SAO representative, it was noted that the issue of reducing donation limits was discussed in the parliamentary Working Group but was not agreed upon.