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## GEORGIA POLICY ALERT #6

### 2021 Local Elections in Georgia and the existing legal and political framework

*Changes to the electoral legislation made in line with the April 19 Agreement pledged to ease the political crisis and restore trust in electoral reform. Changes included increasing the number of non-partisan appointees throughout election commissions and limiting the party's ability to withdraw members of the district election commissions. Legislation tightened control on voters' will by banning the presence of unauthorized persons by the polling stations and partially met the OSCE recommendations on the extension of time frames for submission and review of applications for members of the precinct commissions. However, it is not expected that the existing legislative provisions will minimize political polarization and the rolling out of electronic voting and counting requires much more effort than suggested.*

Local regular elections are set to take place on 2 October 2021. Elections are primarily regulated by the 1995 Constitution, the 2011 Election Code, the 2014 Local Self-Government Code and acts of the Central Election Commission (CEC).

#### **Election Administration**

Elections are managed by three levels of administration comprising the CEC, including 73 district election commissions (DECs) and 3,664 precinct election commissions (PECs).<sup>1</sup> Changes to the electoral legislation were made in line with the April 19 Agreement pledged to ease the political crisis in the country. This was done in a bid to undertake an 'ambitious electoral reform' to restore public confidence in the electoral process. Currently, all levels of the election commission are composed of not more than 17 members including eight non-partisan appointments and nine appointments by political parties. In addition, the CEC chairperson is nominated by the president and elected by the parliament with a two-third majority. A transparent appointment of non-partisan members on the DEC and PEC levels, however, required a genuinely merit-based process for the appointment and remains to be implemented.<sup>2</sup> Amendments, on the other hand, significantly limited the party's ability to withdraw a DEC member, thus meeting a long-standing OSCE/ODIHR recommendation.<sup>3</sup>

The high number of CEC members, compared to the previously existing 12 members, had been met with some criticism since it makes it difficult for the election administration to reach decisions on a consensus basis. While a lower number of CEC members would have been preferred, the current

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<sup>1</sup>Excluding some PECs. Source: ISFED email correspondence. 3 August 2021.

<sup>2</sup>Venice Commission, *OSCE/ODIHR, Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, CDL-P (2021)011 para 32.

<sup>3</sup>ibid.

proposal was acceptable as a political compromise accommodating all the parliamentary parties.<sup>4</sup> Signatories to the political agreement committed to ensuring that one of the partisan members of the CEC representing an opposition party would be a deputy chairperson. This has been achieved by revising the Election Code accordingly.<sup>5</sup> At the same time, the Venice Commission argued that the amendment may weaken the position of the deputy chairmen and should be reconsidered.<sup>6</sup> In another change, proposed amendments tightened regulations on controlling a voter's will and banned physically obstructing the movement of voters within 100 meters of the polling station on the election day. Civil society argued that selecting a CEC Chairman and its members with multi-party support was of particular importance to increase candidates' legitimacy in the height of the political crisis.<sup>7</sup> However, neither the selection commission set up by the President nor the Parliament ensured that these conditions were met and that candidates were selected in whom the public or a broader political spectrum would have high confidence.<sup>8</sup>

### **Election Dispute Time frames**

Amendments partially meet the OSCE recommendations on the extension of time frames for the submission and review of applications for PEC membership. The time limits set by the law for appealing election disputes and hearing cases have been extended to four days, however, those for appealing the decisions on PEC and DEC levels remained the same.<sup>9</sup> Contrary to the Venice Commission/ODIHR recommendations, legislation still restricts the legal standing of those who can appeal the decision.<sup>10</sup> Changes, however, allowed for the electronic submission of complaints which can be lodged on behalf of a party or an observation mission.<sup>11</sup> In a welcome change, amendments introduced an obligation for DEC to open respective election materials and recount the votes in cases where the number of votes received or the number of voters and/or invalid papers were corrected by the PEC in the

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<sup>4</sup>Venice Commission, *OSCE/ODIHR, Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, CDL-P (2021)011 para 19.

<sup>5</sup>See Article 11 of the Election Code of Georgia.

<sup>6</sup>Venice Commission, *OSCE/ODIHR, Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, CDL-P (2021)011, para 28.

<sup>7</sup>According to ISFED, the decisions on appointing some members of the Commission most likely were made in advance.

It was also suggested that the decisions of the majority of the members about a particular candidate were not properly substantiated. See ISFED, *Interim report on monitoring pre-election period of the local municipal elections in Georgia*, August 2021.

<sup>8</sup>ISFED, *Interim report on monitoring pre-election period of the local municipal elections in Georgia*, August 2021.

<sup>9</sup>According to the OSCE, it is essential to extend the deadlines for appeals, including submission deadlines, and ensure that technical formalities do not interfere with the process.

<sup>10</sup>The right to submit complaints to election commissions should not be limited to persons registered in an electronic registry of persons authorised for election disputes. Such a possible registry may be used to facilitate the complaints process, but it must not exclude common citizens from their right to complain. CDL-PI(2021)011. para 38.

<sup>11</sup>Article 77(5) of the Election Code of Georgia.

summary protocols.<sup>12</sup> Deadlines for the DEC and CECs to prepare their summary protocols of results based on lower-level summary protocols have been substantially extended due to these new obligations to conduct recounts in certain circumstances. This has also led to an extension of deadlines for adjudication of post-election complaints.<sup>13</sup> Each DEC will be required to randomly select five polling stations in each electoral district no later than the sixth day after the election day and conduct recounts.<sup>14</sup> Whilst heralded as a positive change that will increase trust towards the elections,<sup>15</sup> the legislation lacks a selection mechanism or fails to provide clear criteria for which actions are required if discrepancies are uncovered. In a bid to increase transparency and access to information, the CEC additionally started to broadcast its sessions through its official Facebook page.<sup>16</sup>

### **Legislative guarantees to decrease existing political polarization**

Amendments provided that the number of local council members elected by the proportional and majoritarian system divides the total number of seats between the proportional and majoritarian contests.<sup>17</sup> The division between proportional and majoritarian seats has been changed in favor of a significantly higher share of proportional seats in each municipality. In addition, amendments lowered the electoral threshold in proportional contests from 4 to 3 per cent for all localities (except Tbilisi), and another change lowered the threshold for Tbilisi municipality from 4 to 2.5 per cent. According to the Venice Commission/ODIHR, in the absence of international standards for electoral thresholds, lowering the threshold potentially increases political pluralism whilst 'aligning mandates closer to the voters' will and reducing "wasted" votes. On the other hand, a proposal by the President of the Council of Europe offered a 4/1 ratio of proportional and majoritarian mandates for the 5 largest cities and 2/1 for all others.<sup>18</sup> Whilst a 3 per cent threshold was set in the proportional system in the regions and a 2.5 per cent threshold in Tbilisi. The proposed changes do not necessarily minimize political

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<sup>12</sup>Article 21 (d1) of the Election Code of Georgia. *DECs would avoid initiating recounts of ballots and largely relied on explanatory notes and amendment protocols provided by the PECs.*

<sup>13</sup>It was also advisable to establish a mandatory recount in cases where the recorded number of invalid and valid ballots exceeds the number of voter signatures. Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, CDL-PI(2021)005, para 59.

<sup>14</sup>Article 21 (d 2.) of the Election Code of Georgia. Legislation, however, does not provide for a selection mechanism or establish what actions are required if there are discrepancies uncovered.

<sup>15</sup>ISFED and Transparency International: Changes to the Election Code: Assessment and Recommendations. [https://drive.google.com/file/d/1\\_7gT5Ftl7H7jQff13D0A9MMBE\\_ja\\_\\_2/view](https://drive.google.com/file/d/1_7gT5Ftl7H7jQff13D0A9MMBE_ja__2/view). August 2021. p.18.

<sup>16</sup>The live sessions became possible after ISFED wrote to the CEC on 14 May 2021.

<sup>17</sup>Under the current legislation, the number of seats for the proportional contests is fixed, while the number of majoritarian seats is fixed for the five self-governing cities but partially variable for the remaining municipalities, dependent on the number of registered voters in the municipality. ODIHR Opinion Nr ELE-GEO/408/202. para 71. *Ibid.* para 71.

<sup>18</sup>'A Way ahead for Georgia'. *Proposal by President of the European Council Charles Michel to the representatives of Georgian political parties.* <https://euneighbours.eu/en/east/stay-informed/publications/way-ahead-georgia-proposal-president-european-council-charles>. 23-04-202. p.3

polarization. As suggested by civil society, introducing a proportional system where mandate distribution is determined by the proportional system would have led to more tangible changes.<sup>19</sup>

### **Electronic voting and counting**

One of the main issues for political parties concerning the agreement's proposed electoral reforms was the use of electronic technologies. The CEC is now authorized to use electronic means to carry out voter registration at polling stations, voting, counting of votes and drawing up a summary protocol of the results. The new regulation allows video recording of the whole vote counting process at the polling stations with more than 300 voters.<sup>20</sup> The recording will be uploaded within five days after the election so that it can be viewed by the public. Whilst this is a welcome change, the International Society for Fair Elections and Democracy (ISFED) requested recordings to become available within a shorter timeframe or in parallel to election day.<sup>21</sup> At the same time, unabridged recordings are only available to investigative bodies. Other interested parties willing to challenge vote counting related matters are allowed to request a recording of a duration of ten minutes. This also invited some criticism over demands to have interrupted access to evidence.<sup>22</sup> The CEC aims to introduce new voting technologies on a pilot basis in predetermined districts for the 2 October election.<sup>23</sup> Civil society, however, is less convinced that it will have time to roll it out in time for elections.<sup>24</sup> With regard to the use of electronic rather than manual counting, the Venice Commission stressed the importance of legislative safeguards, with provisions in place so that the accuracy and soundness of hardware and software for counting ballots can be independently verified. Notwithstanding which voting is used, procedures for auditing and inspection must be in place to ensure accuracy and reliability. In this respect, the Venice Commission/ODIHR stated that random audits of polling results explicitly preclude recounts in polling places where electronic ballot counting machines are used.<sup>25</sup>

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<sup>19</sup>Georgian Young Lawyers' Association.M.Matsaberidze. *What (not) to expect from the October 2 elections?* <https://www.gyla.ge/en/post/ras-ar-unda-velodot-2-oqtombris-archevnebisgan#sthash.U8btufpx.dpbs>.7 June, 2021

<sup>20</sup>There are 87.3 percent of PECs with over 300 voters and are regulated by the CEC decision. See announcement on its official facebook page <https://www.facebook.com/CentralElectionCommissionOfGeorgia/photos/a.416988922669/101587477584>. 29 July 2021.

<sup>21</sup>ISFED. *Interim report on monitoring pre-election period of the local municipal elections in Georgia*. 1 September 2021.

<sup>22</sup>Ibid.

<sup>23</sup>CEC official website, *Election Administration discusses introducing electronic vote counting at some election precincts* <https://www.cesko.ge/eng/list/show/124798-saarchevno-administratsia-khmis-datvliis-eleqtronuli-teqnologiis-danergvas-ramdenime-ubanze-ganikhilavs>- 30 August 2021.

<sup>24</sup>ISFED. *Assessment of simulation on conducting elections using electronic technologies*. Available in Georgian: <https://www.isfed.ge/geo/gantskhadebebi/eleqtronuli-teqnologiit-archevnebis-chatarebis-simulatsiis-shefaseba>. June 2021.

<sup>25</sup>Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, CDL-PI(2021)005, para 77.

## Anti-Covid measures

In light of the increasingly deteriorating Covid 19 situation, the Public Defender has made calls to postpone the elections, but the ruling party was quick to dismiss it as politically motivated. The CEC issued a resolution to prevent the spread of Covid 19 during the election day by introducing a number of measures for sanitary-hygienic requirements. It also provided rules for voting for Covid patients at medical facilities or for voters under quarantine. To ensure the participation of Covid patients, the CEC aims to establish one polling station within each municipality and at least ten polling stations in Tbilisi Municipality proper. Voters placed in medical facilities and in quarantine will take part in elections via a mobile ballot box.<sup>26</sup> According to the Venice Commission, in light of the limited time remaining before the 2021 local elections, a pilot project for certain electronic technologies is the only viable option for the next elections.<sup>27</sup> Careful consideration should be made in deciding on the nature and extent of the pilot project while taking into account that introducing electronic means in an urban context will be more feasible than in rural areas.<sup>28</sup> Yet, it is not advisable to implement new arrangements without opportunities to test and communicate clearly to the public.

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More reports on the local election campaign in Georgia can be found [here](#).

More information also available at [www.epde.org](http://www.epde.org)

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<sup>26</sup>The CEC.Resolution no 53/2021 of 23 August 2021.<https://matsne.gov.ge/ka/document/view/5246174?publication=0> available in Georgian.

<sup>27</sup>Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, CDL-PI(2021)005, para 80.

<sup>28</sup>*Ibid.*