

What (not) to expect from the October 2 elections?

On June 28, the Parliament of Georgia approved the amendments to the Election Code [1] by 86 votes to 3.[2] It was based on the April 19 political agreement between the ruling party and the opposition,[3] developed due to a mediation process initiated by European Council President Charles Michel.

The electoral reform of 2021 envisages, inter alia, changes in the electoral system, the institutional framework of the electoral administration, the pre-election campaign, the voting process, its summarization, and electoral disputes. Nevertheless, some of

the recommendations made in the June 18 joint report of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)[4] remain unfulfilled,[5] and some changes raise additional concerns.[6]

In the 2020 elections, the ruling party had a disproportionately large representation and influence in the election administration, especially at the lower levels.[7] The opposition did not trust them. [8] The reason for this was, first of all, the arrangement of the election administration and the institutional framework, which ruled out the role of the opposition and helped to strengthen the capacity of the ruling party.[9] The new rules of the reform, according to the Charles Michel's Document, completely changed the institutional framework of the election administration and **increased the number of members to 17 at all levels (8 professional and 9 mixed party members) for this election**.[10] According to a joint assessment by the Venice Commission and the OSCE/ODIHR, this change is acceptable as a compromise option. However, the number of members of the election administration should preferably be smaller.[11] **GYLA shares this recommendation and, at the same time, supports the formation of an entirely professional consensus-based election commission of all levels of the election administration for the next parliamentary elections.**

7 professional members of the CEC are elected by the Parliament of Georgia on the recommendation of the President of Georgia with at least 2/3 of the total membership.[12] The purpose of introducing a high quorum is to select a candidate with multi-party support. **An anti-crisis mechanism** will be activated when electing a CEC member and chairperson. This means that if no votes are collected in the first round, the candidate will be voted in the second (2/3 majority), third (3/5 majority), and fourth (simple majority) rounds.[13] The introduction of this mechanism was provided for in the April 19 agreement to avoid a stalemate in the process.[14] However, in the joint view of the OSCE/ODIHR and the Venice Commission, **in the transitional period, reducing the voting process from four to one week may be detrimental to the consensus between the majority and the opposition parties while appointing a candidate. Therefore, these provisions should be revised.**[15] The international community believes that the success of the reform with this record, to ensure a balanced representation in the election administration, is at stake.[16] The anti-crisis mechanism was also identified during the selection process of professional members of the district commissions. Suppose a member of

the district commission is not selected by 2/3 of the CEC, in accordance with the established rule. In that case,[17] the candidate who will be supported by the majority of the total membership will be considered elected.[18] GYLA focuses on the so-called "Charles Michel's document," according to which 2/3 will be needed to elect professional members in the district election commission.[19] No anti-crisis mechanism is provided here. **Reducing the quorum required for decision-making contrary to this record calls into question the principle of staffing districts based on consensus. It runs counter to the above agreement between the opposition and the government.**

Upon the nomination of the CEC and the candidate for the chairperson, a **competition commission**[20] subordinated to the President is established. The commission is composed of representatives of non-governmental organizations and the academic field and has a recommendation function.[21] In conclusion, this initiative is positively assessed; however, international organizations have issued additional recommendations to ensure higher credibility.[22] During the discussion in the committee and the inter-party working group, the parties developed the following rules in accordance with these recommendations: a) introduction of a high standard of financial and content transparency of the non-governmental organizations that are members of the commission; b) opportunity to interview candidates by the commission; c) reflection of the information on the voting results and the substantiation of the members' decision in the protocol and ensuring their public access; d) the authority of the President to refrain from selecting a candidate nominated by the Competition Commission.[23] The recommendations of the Venice Commission and the OSCE/ODIHR have been implemented in this area.

To facilitate and ensure the credibility of the processes, GYLA participated in the activities of the Competition Commission, which was established by the Presidential Decree of July 1, 2021.[24] According to the decision of the President, the commission consisted of 11 members, 5 of which were represented by non-governmental organizations operating in Georgia, and 6 members were from the academic field.[25] The commission supported the nomination of two candidates for the position of the CEC chairperson by a majority and nominated 5 candidates for the position of a member of the CEC. **GYLA did not support any of the candidates for the chairperson and supported 3 candidates to become professional members.**[26] No other commission member NGO[27] supported any of the candidates running

for the chairperson.

Recent changes have abolished regulations according to which the party appointing a member of the election administration, in order to receive state funding "[the party] must have at least one MP acting as a member of parliament." Those conditions ruled out a boycott of a party. The international community has welcomed the removal of this regulation.[28] Nevertheless, **the transitional provision of the electoral reform is perceived by the opposition as a punitive initiative as the majority of the opposition parties have recently acted in the context of a boycott of parliamentary activities.** In particular, no more than 9 members of the CEC are appointed on a parity basis by parties that have overcome the threshold in parliamentary elections.[29] Under the interim mechanism, if there are more than 9 qualified parties, the party with more budget funding will be given preference when appointing a CEC member.[30] Some opposition members considered this norm unfair, as it excludes the possibility of a boycott of some opposition parties. In particular, with this regulation, the two parties, "Labor Party" and "European Georgia," will be deprived of a chance to appoint a representative in the election administration. According to the Venice Commission, **it is unclear what this norm serves when, under normal circumstances, the regulation linking the appointment of a member of the administration to budget funding and the appropriation of a mandate has been repealed.[31]** Another transitional provision of the electoral changes is of concern, according to which if all the deputies who passed the party list in the parliamentary elections as of April 19, 2021, will leave the party and join another party, then the latter is entitled to appoint one member of the CEC.[32] **According to GYLA, this record is tailored to one specific case[33] and is unfair.**

Beyond the above changes, it should be noted that the staffing of District Election Commissions (DECs) significantly limited the party's ability to withdraw a DEC member,[34] thus fulfilling a long-standing OSCE/ODIHR recommendation.[35] Another transitional change entails the abolition of the obligation to present the certificate of election administration officer for the members of the district election commissions appointed by the parties authorized for the elections to be held in October 2021.[36] According to the initiators of the draft, at the request of the opposition, this was ruled out at the district level only once. Parliament did not heed the international community's recommendation that the interview process is

mandatory when appointing members. At the parliamentary session, the initiator of the draft spoke about a large number of candidates and the natural barriers that accompany the introduction of mandatory interviews. At the same time, they said, today, the principle of voluntary interviews applies at all three levels of appointment. **Overall, the recommendation of the Venice Commission and the OSCE/ODIHR to amend district and precinct regulations to ensure, inter alia, a transparent and merit-based selection process for non-partisan members remains unfulfilled.[37]**

According to GYLA, to refine and improve the regulations at the stage of selection of precinct election commissions, the following is required: a) clearer regulation, which explicitly excludes the election of a person as a member of the precinct election commission who was appointed as a member of the precinct election commission by a political party during the last regular elections; b) to improve the process, it is desirable to increase the deadlines for receiving and reviewing the application at a lower level.[38]

The proposed amendments **tighten regulations on voter will control** on polling day and prohibit physically obstructing the movement of voters within 100 meters of the polling station on polling day, gathering people, or registering voters.[39] Also, a mechanism for enforcing this rule has been introduced.[40] In case of identification of a violation, **the police have the right to indicate it to the violator. In case of non-compliance, the person authorized by the Ministry of Internal Affairs draws up a report of the violation**.[41] On the recommendation of the Venice Commission and the OSCE/ODIHR, it is advisable to ban the presence of party representatives, as well as agitation activities at polling stations on polling day, preferably at a distance of 100 meters, and at the same time impose a general ban on agitation 24 hours before elections.[42] GYLA welcomes these changes; however, given that the harmful practice of influencing voters in the 2020 elections has been observed throughout Georgia and was one of the main challenges on Election Day, it believes that it is necessary to prohibit the presence of any unauthorized person at the same distance. At the same time, **GYLA recommends declaring the day before the elections a "Day of Silence".** The period of silence implies a ban on campaigning for a certain period to allow citizens to reflect.[43] At this time, it is not allowed to convince the voters.[44] This is seen as a mechanism with a cooling effect that should reduce tension and controversy after a hot campaign.[45] The so-called

"period of silence" does not apply in Georgia. Only on the polling day is it prohibited to agitate in the polling station[46] and to place paid and/or free pre-election advertisements on TV and radio,[47] which is insufficient.

There are several positive changes in the voting process, its summarization, and election disputes, such as the prohibition of PECs to make changes to the voting results summary protocol (inadmissibility of drawing up an amendment protocol after the precinct election commission sealing is stamped and the signatures of all commission members are made);[48] and in the event of a change by the district, the obligation to recalculate;[49] capability to file a complaint electronically with the district commission;[50] possibility to appeal in court against the refusal to draw up an administrative violation report.[51]

However, some changes may be problematic. For example, the proposed version **restricts the circle of disputing persons.** In particular, only those registered in the electronic register of persons authorized to conduct election disputes by the CEC have the right to submit an application/complaint to the Election Commission.[52] According to GYLA, the appeal procedures will be more flexible if they confirm the authority of the appeal when filing a complaint. **It is essential that the creation of a registry does not create an additional barrier to filing a complaint.**

In other cases, the changes fail to meet the challenges and are insufficient. For example, the time limits set by law for appealing election disputes and hearing cases have been extended to 4 days; however, according to the proposed wording, the time limit for appealing decisions of governing bodies to precinct and district commissions remains the same.[53] **GYLA believes that the proposed deadlines for the appeal are still small.** It is necessary to increase the time limit for appealing to 2 calendar days and other time limits to 3 calendar days. 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.[54]

There is an insufficient change in the mandatory recount, according to which the Precinct Election Commission is obliged to recount the voting results if it is not accompanied by the amendment protocol, the votes received by the subjects, the number of voters, and/or the number of invalid ballots are changed.[55] **GYLA believes that the precinct commission should be obliged to recalculate even if there is an imbalance.** Even a lack of a single ballot paper may call into question

the results of the precinct.

A mandatory counting rule for 10% of precincts across the country was established, [56] and **an advisory group was set up under the authority of the CEC**.[57] The primary function of the advisory group is to monitor the recount of voting results and make recommendations.[58] The statute of the CEC Advisory Group is determined by the CEC resolution,[59] and the composition is approved by an ordinance of the CEC. [60] The group is established during the election period and consists of a representative of the Public Defender's Office of Georgia, international and/or local experts selected by observer organizations.[61] The Advisory Group is established during the election period with a minimum of 9 and no more than 15 members.[62] On this issue, the Venice Commission and the OSCE/ODIHR were dissatisfied with the fact that the composition and functions were approved by the CEC by ordinance.[63] In their estimation, this should be regulated by law.[64] According to the initiators, the committee reviewed the terms, composition, and functions and wrote the law in as much detail as possible. This largely fulfilled the recommendations of the Venice Commission and the OSCE/ODIHR.

The changes affected gender quotas, and in this part, the topic of mandate abolition was identified. This means that in case of a vacancy in the party list, it will be occupied by the next member of the same sex, and if there is no longer a candidate of the same sex in the submitted party list, then the mandate will be revoked.[65] The introduction of this rule became necessary after the 2020 elections. Despite the established quotas, the parties "Girchi" and "Patriots Alliance" used the gap left in the law and avoided the requirement of gender quotas and gave the quota mandate to men instead of women. Despite this positive change, **the 2021 reform substantially changed the sex ratio in the proportional lists of local self-government elections.** It defined it in such a way that at least one in every three candidates on the party list must be of the opposite sex.[66] **Thus, the existing norm of the Electoral Code was significantly deteriorated, which obliged the parties to have every second candidate on the party list of different sex**. GYLA negatively assesses this step and believes that this will weaken women's representation at the local level and increase inequality.

An important innovation that these changes envisage is the piloting of electronic technologies for the 2021 elections. The CEC is authorized to carry out voter registration, voting, counting, and composing summary protocol procedures

electronically, including through a photo-search system, video-counting, scanning of ballot papers, and the use of barcode ballot papers.[67] The rules and conditions for the use of electronic means and the list of districts where elections will be conducted using them shall be determined by a resolution of the CEC.[68]

On June 12, 2021, elections were simulated at the CEC using new technologies.[69] Representatives of non-governmental organizations, political parties, and the media observed the voting.[70] GYLA was involved in the process as an observer. As a result of observing the election simulation, GYLA submitted recommendations to the CEC, according to which it is desirable: a) provide IT services at all polling stations during the piloting; b) review the functions of the members of the precinct commission; c) pay attention to the training of PEC members; d) technologies do not exclude the human factor; e) analyze the risks of voter will control. According to the recommendation of the OSCE/ODIHR and the Venice Commission, when piloting electronic technologies, it is necessary to pay attention to time, so it is likely that the use of some technologies is advisable only for the next elections.[71]

Finally, **the reform envisages a change in the electoral system at the local level**, which was defined in accordance with the April 19 agreement as follows: 4/1 proportion of proportional and majoritarian seats in five major cities and 2/1 proportion in all others.[72] At the same time, a 3% threshold was set in the proportional system in the regions and a 2.5% threshold in Tbilisi. According to GYLA, this model fails to adequately reflect the electorate's mood in the representative body and causes disproportionate representation in the City Councils. GYLA considers the best version to be a single-vote vote, the next priority being an entirely proportionate system. However, in the circumstances when the Michel's Document chose a mixed system, the organization considers the Dependent Model to be the best version. In the latter case, the results obtained on different principles affect each other and ensure their proportionality.[73]

The electoral reform of 2021 is promising; however, we can not call it the best solution to the existing challenges because the changes do not substantially change the game's rules. A clear example of this is maintaining a mixed electoral system at the local level, where the majoritarian component still occupies an important place. **The proposed proportions do not explicitly ensure a reduction in polarization and the involvement of broad sections of society in institutionalized politics.** In the transitional phase, introducing a system in which

the mandate distribution is determined by the proportional system of votes would lead to more tangible changes. In addition, just increasing the number of party members in the election administration and introducing the rule of consensus-oriented appointment will not increase the confidence of the election administration. **It is crucial to ensure a transparent, merit-based appointment process for non-partisan district and precinct election commission members.**

Some changes leave room for manipulation and/or create additional concerns, including setting limited voting deadlines for the appointment process of the CEC Chairperson and members in the transition period and maintaining conditions that de facto preclude boycotts; adjusting the norm to one specific case when appointing a CEC member; introducing a locking mechanism at the district level; insufficient regulation of voting day and election disputes. **At the same time, some innovations are exacerbating the current situation, such as reducing the gender quota ratio in local self-government elections.**

Other changes related to the pre-election environment show that it is sporadic and bypasses issues of crucial importance. The last few elections have shown that one of the challenges is holding elections in a calm and peaceful environment, where voters will be allowed to make rational, development-based choices. The parties' resources are constantly aimed at making citizens make decisions in conditions of tension, intimidation, and oppression. Tightening regulations in this area are welcome but **insufficient, as it bypasses the introduction of the most effective mechanism for resolving this issue - declaring a day of silence before election day. At this time, it will not be possible to reassure voters.** Also, the law does not provide for a regulation that explicitly prohibits unauthorized persons from being on the perimeter of the precinct.

As a result, the need for institutional and procedural reform of electoral legislation remains on the agenda. Real change transforms majoritarianism into a consensual democracy and creates fairer and more equal conditions for parties. In such a situation, the parties would have to reconsider their strategies and change their behavior in support of the electorate and adapt to the new reality, which would give us a basis for concluding that these elections would be better than in previous years.

[1] The parliamentary opposition factions United National Movement - United Opposition “Power is in Unity” and “Lelo - Partnership for Georgia” did not support the election changes.

[2] “Parliament adopted amendments to the Election Code by 86 votes”, the *official website of the Parliament of Georgia,* June 28, 2021, accessible: https://bit.ly/3ian3Xb, updated: 14.07.2021.

[3] “Future Road for Georgia”, EU Delegation to Georgia, official website, 19 April 2021, accessible: https://bit.ly/3frBggU, updated: 14.07.2021.

[4] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, CDL-P (2021)011 (Strasbourg: Council of Europe, 2021), accessible: https://bit.ly/3wCLHEX, updated: 14.07.2021.

[5] The report of the Venice Commission and the OSCE/ODIHR of 18 June 2021 has been prepared to evaluate the updated election draft and it should be considered in conjunction with the report of the Venice Commission and the OSCE/ODIHR on 30 April 2021. See Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 7, 8.

[6] Ibid., para. 15, 17.

[7] Latsabidze M. And Kighuradze K. Georgian Parliamentary Elections 2020 Election Observation Mission Pre-Election Environment, Election Day, and Post-Election Monitoring Report (Tbilisi: Georgian Young Lawyers' Association, 2021), p.5, the official website of the Georgian Young Lawyers’ Association, accessible: https://bit.ly/3kfjVMg, updated: 14.07.2021.

[8] Ibid.

[9] Ibid.

[10] Election Code of Georgia, Article 10, Part 1, Article 12, Part 11, Article 24, Part 2.

[11] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*

, para 19.

[12] Rules of Procedure of the Parliament of Georgia, Article 204, Paragraph 4, Subparagraph “d”.

[13] Ibid., Article 205, Paragraph 7.

[14] “Future Road for Georgia”, EU Delegation to Georgia, official website, 19 April 2021, accessible: https://bit.ly/3frBggU, updated: 14.07.2021.

[15] The Reform Working Group agreed on such an approach due to the short time remaining before the 2021 elections. See Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 21.

[16] Ibid.

[17] If the winner cannot be determined due to the equality of votes received by the candidates, these candidates shall be immediately put to the vote to determine the winner among them, and if the winner is still not identified, it shall be determined by lot. If it still fails to elect candidates, a new vote is held. See Election Code of Georgia, Article 20, Part 16.

[18] Ibid.

[19] “Future Road for Georgia”, EU Delegation to Georgia, official website, 19 April 2021, accessible: https://bit.ly/3frBggU, updated: 14.07.2021.

[20] Election Code of Georgia, Article 12, part 3.

[21] Ibid.

[22] For example, it is desirable that the criteria for membership of the Competition Commission provide for diverse membership; Involvement of representatives of political parties may also be considered, as well as interviews, increasing transparency, requesting reasoned decisions and granting the right to appeal. See Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 22.

[23] Election Code of Georgia, Article 12, Paragraphs 3, 7, 8.

[24] Decree of the President of Georgia N/01/07/01 of July 1, 2021, the official website of the President of Georgia, accessible: https://bit.ly/3wNXikN, updated: 14.07.2021.

[25] Ibid.

[26] “Nika Simonishvili - Candidates for the position of CEC chairperson are associated with the elections, which caused great distrust - the commission made a bad and low standard decision”, information portal “Interpressnews”, July 9, 2021, accessible: https://bit.ly/3rhEBod, updated: 14.07.2021.

[27] These organizations are Transparency International Georgia, International Society for Fair Elections and Democracy, Multinational Georgia, and Institute for Freedom of Information and Development.

[28] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 14.

[29] Election Code of Georgia, Article 10, Part 1.

[30] Ibid.

[31] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 26.

[32] Election Code of Georgia, Article 196^1, Part 4.

[33] Several members of the Patriots Alliance left the party and in January 2021 they were given the power of deputies on behalf of the party “European Socialists”.

[34] Ibid., Article 13, Part 4.

[35] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 27.

[36] Election Code of Georgia, Article 196^3.

[37] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 15.

[38] According to the official data of the CEC, the competition for the members of the

precinct election commissions in the last elections was held within 5 days in accordance with the deadlines set by the Election Code, and five days were also set for reviewing these applications and selecting members for 21,942 vacancies, which is insufficient.

[39] Election Code of Georgia, Article 45, Part 12.

[40] Ibid.

[41] Ibid., Article 93, Part 1^1.

[42] Venice Commission, OSCE/ODIHR, *Joint Urgent Opinion on Draft Amendments to the Election Code*, CDLPI (2021)005 (Strasbourg: Council of Europe, 2021), para. 56, accessible: https://bit.ly/3hFOk4R, updated: 14.07.2021.

[43] Taliuri L. And Alaverdashvili G. Guarantees of free expression of the will of the voters (Tbilisi, Georgian Young Lawyers' Association, 2020), p. 5, the official website of the Georgian Young Lawyers' Association, accessible: https://bit.ly/2U65saA, updated: 14.07.2021

[44] Ibid.

[45] Ibid.

[46] Election Code of Georgia, Article 45, Part 11.

[47] Ibid., Article 51, Part 16.

[48] Ibid., Article 70, Part 4^1.

[49] The correction of the data in the summary protocol is allowed by the district ordinance, however in such a case the box should be opened, and the results should be recalculated. Ibid., Article 75, Part 1^1.

[50] Election Code of Georgia, Article 77, Part 5^3.

[51] Ibid., Article 79, Part 9.

[52] Ibid., Article 78, Part 1^1.

[53] Ibid., Article 77, Part 2.

[54] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 16.

[55] Election Code of Georgia, Article 21, Subparagraph “d^1”.

[56] This change was approved under the Charles Michel Agreement of 19 April.

[57] Election Code of Georgia, Article 16^1, Part 3.

[58] Ibid.

[59] For this, a 2/3 majority of the CEC votes will be required.

[60] Election Code of Georgia, Article 16^1, Part 1.

[61] Ibid., Part 2.

[62] Ibid.

[63] Venice Commission, OSCE/ODIHR, *Urgent Joint Opinion on Revised Draft Amendments to the Election Code*, para. 29.

[64] Ibid.

[65] Election Code of Georgia, Article 203, Part 6.

[66] Ibid., Part 8.

[67] Ibid., Article 203^2, Part 1.

[68] Ibid., Part 2.

[69] *The official Facebook page of the Central Election Commission, June 12, 2021,* accessible: https://bit.ly/3kfNayl, updated: 14.07.2021.

[70] Ibid.

[71] Venice Commission, OSCE/ODIHR, Urgent Joint Opinion on Revised Draft Amendments to the Election Code, para. 16.

[72] In Tbilisi, Batumi, Kutaisi, Rustavi and Poti election districts, the proportion between majoritarian and proportional is ¼, in the rest - ½.

[73] The “German model” of the mixed electoral system is a type of Mixed-member proportional electoral system. It allows voters to elect both a majoritarian MP and a party list. In Parliament, the distribution of seats between parties/election blocs is determined by the proportional system. Tsveraidze T. Review of Electoral Systems (Tbilisi, Georgian Young Lawyers' Association, 2020), p. 13, official website of the Georgian Young Lawyers’ Association, accessible: https://bit.ly/3i9LDHC, updated: 14.07.2021.