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# RECOMMENDATIONS FOR IMPROVING THE ELECTION ENVIRONMENT

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*International Society for Fair Elections and Democracy*  
*Transparency International - Georgia*

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## 1. INTRODUCTION

Since 2011, after the adoption of the new Election Code<sup>1</sup> by the Parliament of Georgia, some amendments have been introduced to election legislation that contributed to the elimination of legislative gaps, however, no fundamental changes were undertaken for improving the election environment.<sup>2</sup> Issues like the election system,<sup>3</sup> election disputes, staffing of the election administration, use of administrative resources, vote buying, media regulations, and others remain problematic.

This document submits recommendations of GYLA and its partner organizations, Transparency International Georgia and the International Society for Fair Elections and Democracy (ISFED), based on pre-election, election day, and post-election periods, practical and legislative gaps of the past years, as well as analysis of international practices. The recommendations will eliminate certain problems of election legislation and will ensure free and fair elections.

## 2. ELECTORAL SYSTEM

### Problems

There are several problems in the existing electoral system in Georgia,<sup>4</sup> including lack of proportion between votes and seat numbers. The so-called lost votes are another important problem. In light of these deficiencies, Georgia's electoral system has been criticized by international<sup>5</sup> and local NGOs on numerous occasions.<sup>6</sup>

In addition, connection between majoritarian candidates and voters is virtually non-existent, as illustrated by the failure of majoritarian Members of Parliament (MPs) to interact with constituents. Most majoritarian MPs rarely (if ever) meet with voters. Consequently, voters are mostly unaware of who their majoritarian MPs are.<sup>7</sup>

For the foregoing reasons, the Venice Commission and OSCE/ODIHR have recommended that the electoral system for both parliamentary and local self-government elections be reviewed.<sup>8</sup>

Although certain changes introduced in the legislative reforms in 2013 and 2014 have been positive, **overall no fundamental changes have been made in the election legislation that would have significantly improved the election environment, disappointing public expectations based on promises made by the new government.** The government has tried to justify its failure to make fundamental changes by citing lack of time ahead of the upcoming elections and complexity of changes to be made.

The government did not make any fundamental changes in the electoral system ahead of the 2016 parliamentary elections, and postponed it for future elections. The majoritarian system will be maintained for the 2016 parliamentary elections, while electoral boundaries will be equalized based on the Constitutional Court's decision, and a 50 percent threshold will be introduced.

New electoral boundaries will not be formed based on clear and unambiguous criteria; instead, inconsistencies evident in certain cases call into question the integrity of the approach and the credibility of individual decisions. We believe that the reform fails to address challenges in the existing electoral system.<sup>9</sup> Notably, these changes have been planned and implemented without adequate citizen participation, in violation of international standards for revising boundaries of electoral districts.<sup>10</sup> In addition, it is highly likely that the splitting and merging of districts will confuse constituents and create additional barriers. This raises suspicions about the integrity of the administration of the electoral process. For example, how the candidate runs the pre-election campaign, how the Precinct Election Commissions (PECs) located in the different municipal locations should have been equipped with the election materials, and how the counting should be set.

We believe that the recent changes address only part of the problems in Georgia's electoral system and fail to thoroughly eliminate all challenges in the existing mixed electoral system (for instance, they fail to ensure that votes are translated into seats in a proportionate manner, which is one of the most serious problems). Therefore, in order to solve the

<sup>1</sup> <https://gyla.ge/uploads/publications/2012/p190.pdf>.

<sup>2</sup> [http://www.electionportal.ge/uploads/reforms/13/Analysis\\_of\\_the\\_Amendments\\_Final\\_GEO.pdf](http://www.electionportal.ge/uploads/reforms/13/Analysis_of_the_Amendments_Final_GEO.pdf).

<sup>3</sup> GYLA, with its partner organizations ISFED and TI-Georgia, submitted recommendations in January 2015, which responds to current challenges of the election system in Georgia, and ensures the allocation of seats in proportion to votes, guarantees the one-vote equality principle, and decreases to a minimum the risk of losing votes. The Parliamentary Assembly of the Council of Europe also submitted its recommendation in its resolution adopted on October 1, 2014 (<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21275&lang=en>).

<sup>4</sup> ISFED: Why should the electoral system be changed in Georgia? 2014 <http://www.isfed.ge/main/783/geo/>.

<sup>5</sup> European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Joint Opinion on the Draft Election Code of Georgia, 2011.

<sup>6</sup> Joint Recommendations of GYLA, TI-Georgia, and ISFED (2011 and 2014).

<sup>7</sup> According to NDI's public opinion poll of April 2015, 65 percent of voters do not know who their majoritarian MP is. See: [https://www.ndi.org/files/NDI%20Georgia\\_April%202015%20Poll\\_Public%20Issues\\_GEO\\_VF\\_0.pdf](https://www.ndi.org/files/NDI%20Georgia_April%202015%20Poll_Public%20Issues_GEO_VF_0.pdf).

<sup>8</sup> European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Joint Opinion on the Draft Election Code of Georgia, 2011.

<sup>9</sup> <https://gyla.ge/ge/post/saiam-saarchevno-cvilebebtan-dakavshirebit-saqartvelos-parlaments-daskvna-tsarudgina>.

<sup>10</sup> Initial Report: OSCE Guidelines for democratic Elections. Part 3, p. 55.

existing challenges, it is important to abolish the majoritarian component of the existing electoral system and hold parliamentary elections in 2016 under a proportional system. Therefore, the new electoral regulations are inadequate to achieve a fair electoral system and environment in Georgia.<sup>11</sup>

## Recommendations

The government should adopt the election system that will be successful in solving today's systemic problems and improving the reflection of constituents' preferences by remedying the lack of proportion between votes and mandates. It is the only way to achieve an equal and fair electoral environment.

Consequently, to tackle the existing challenges **the government must abolish the majoritarian component of the existing electoral system and hold the 2016 parliamentary elections through a proportional voting system.** On May 30, 2015, eight civil society organizations (CSOs) and 14 political parties signed an agreement about election system reform during a conference initiated by the president of Georgia. The agreement envisages the abolishment of the majoritarian election system, and the administration of elections through a proportional voting system to guarantee fair elections in Georgia. In particular, the CSOs and the political parties proposed to have 75 MPs elected through a proportional voting system and the remaining 75 MPs through a regional proportional representation system.<sup>12</sup>

We believe that a proportional system is best suited to address the existing challenges. Notably, in its resolution about Georgia adopted on October 1, 2014, the CoE Parliamentary Assembly recommended discussions about a regional proportional representation system with the participation of all stakeholders.<sup>13</sup>

*Advantages of a proportional system include: the will of the voters is proportionally translated into seat numbers; the number of lost votes is minimized; equality of suffrage is ensured; geographic representation is ensured; representation of small parties is promoted; and women represented is increased.*

We believe that to improve the electoral system and create a free and fair electoral environment, the authorities should take into account the common vision of CSOs specializing in elections and the political spectrum, and hold the 2016 parliamentary elections using a proportional voting system. Never has there been such a broad consensus about an electoral system between political and CSOs in the history of contemporary Georgia, and it will be unreasonable for the authorities to disregard this consensus.

## 3. SPECIAL POLLING STATIONS

### Problem

The Election Code of Georgia allows the establishment of special polling stations in military units with more than 50 voters (e.g., military servicemen, officers, persons with special rank of the Ministry of Defense of Georgia), in hospitals and other inpatient facilities with more than 50 voters, etc.

The Election Code of Georgia (para. 4, Art. 23) envisions opportunities (as opposed to mandatory rules) for establishing special polling stations, whereas District Election Commissions decided to establish (or not to establish) special polling stations in areas with more than 50 voters on ambiguous grounds.

The provision does not provide an exhaustive list of places and circumstances where special polling stations may be set up. In particular, by stipulating that there are "more" cases where special polling stations may be set up, the provision creates room for abuse. The provision also stipulates that in a military unit (command) with no more than 50 voters, a polling station may be set up based on a substantiated written request of the unit commander. The stipulation is ambiguous, because it does not clarify what constitutes a "substantiated written request" or what serves as grounds for denying or accepting the request.

This provision raised many questions in the past. In addition to military units, it allows polling stations at police stations, in prisons, at the State Protection Service offices, etc. This leads us to the question of whether the "police" is a military unit. Are all police officers and personnel of the Special Protection Service or the Ministry of Defense considered military personnel? Based on the interpretation of the foregoing provision by the election administration and court, the term "military unit" also denotes police, while military personnel also denotes workers of the Ministry of Internal Affairs. The interpretation is founded in Article 1 of the Law of Georgia on Police, stipulating that "Georgian police is a system of law enforcement, special, police, and paramilitary agencies, exercising executive authority..." (old formulation).

We believe that the foregoing interpretation of the norm is wrong, because according to the law, "police" is a system of various types of agencies with different types of functions, *including* paramilitary agencies, i.e., not all agencies of police are "paramilitary." This is further evidenced by a number of presidential decrees, including the Decree on Conscription, establishing the number of recruits for the Ministry of Internal Affairs of Georgia (MIA) to be conscribed to paramilitary sub-units subordinated to MIA, meaning that not all police units are military units.

<sup>11</sup><https://gyla.ge/ge/post/saiam-saarchevno-cvlilebebtan-dakavshirebit-saqartvelos-parlaments-daskvna-tsarudginahttp://www.isfed.ge/main/934/geo/>.

<sup>12</sup> <http://www.isfed.ge/main/904/geo/>.

<sup>13</sup> <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21275&lang=en>.

In the 2008 and 2010 elections, all employees of penitentiary institutions voted according to their workplace (as opposed to their place of registration), because for ambiguous reasons they were required to work on Election Day. Consequently, in 2010, these voters participated in the election of Local Self-Government (LSG) bodies (both through proportional and majoritarian electoral systems) for territories where they did not live.

On Election Day of the 2012 parliamentary elections, OSCE/ODIHR observers noted that “some special ‘military unit’ polling stations were established in factories and Ministry of Defense repair shops; de facto, they only served civilian ministry employees, who had been reassigned from their regular polling station.”<sup>14</sup>

The above practice is based on the Organic Law of Georgia (para. 5d, Art. 31), stipulating that the employees of the Ministry of Corrections of Georgia (in addition to a few other agencies), whose service conditions require them to be located in a place other than their registration address, must be included on the general list of voters according to their workplace.

We must also highlight the recent positive trend that was identified during the last few years. Law enforcement officers were allowed to exercise their right to vote according to their place of residence (registration), including the 2013 presidential election. The number of special polling stations was greatly reduced: only 34 special polling stations were established for the presidential election in 2013, a significant decrease from 71 special polling stations in the 2012 parliamentary election,<sup>15</sup> whereas in the 2014 LSG elections, the Ministry of Defense drastically reduced the number of special polling stations to 9. Members of the Georgian military usually vote according to their place of residence, which is an important improvement from the earlier practice in which military servicemen voted according to their place of deployment.<sup>16</sup>

Nevertheless, the establishment of special polling stations and rules for voting by military servicemen through the majoritarian electoral system reemerged as a problem on the October 31, 2015, Parliament election of Georgia.

## **Recommendation**

In light of the foregoing, we believe that members of the military should vote in ordinary polling stations, according to their place of registration. In order to do so, they should apply to the relevant PEC 16 days in advance. If a member of the military cannot vote in their ordinary polling station because, for instance, s/he is unable to return home on Election Day, s/he may vote in a civilian polling station nearest to his/her duty station.

We believe that the establishment of special polling stations should only be allowed under strictly exceptional circumstances, e.g., when a member of the military is on active duty and therefore, unable to leave his/her military unit.

Therefore, the Election Code should provide an exhaustive list of cases and circumstances in which special polling stations may be established. The Code should also provide strictly defined criteria for setting up special polling stations,<sup>17</sup> in order to avoid any abuse of applicable legislation.

## **Voters on a Special List and Their Right to Vote**

### **Problem**

One of the most controversial issues is voting by military personnel deployed outside their place of registration. In particular, unlike voters on a special voters’ list, members of the military are able to exercise their right to vote outside their place of registration. During previous elections, numerous electoral subjects expressed their suspicion that movement of military forces to different polling stations ahead of Election Day aimed to artificially increase the number of certain political party supporters. It is difficult to implement civil monitoring of the re-allocation of military personnel.

### **Recommendation**

We propose the following solution: similar to local elections, military personnel should be able to vote in majoritarian elections according to their address of registration. In particular, unlike other voters on the special list of voters, military personnel should not be able to exercise their right to vote in majoritarian or local self-government elections while they are on active duty outside the district where they are registered.

In addition, changes must be made in the existing practice, for the above rule to also apply to penitentiary personnel. Therefore, we believe that special penitentiary personnel should also be included in the annex of the special list of voters.

<sup>14</sup> OSCE/ODIHR Election Observation Mission Final Report, Warsaw, December 21, 2012, p.16.

<sup>15</sup> GYLA election monitoring report of 2012 presidential elections.

<sup>16</sup> GYLA election monitoring report of 2014 LSG elections.

<sup>17</sup> For example, with regard to military personnel, the law should clearly stipulate that a special polling station shall be set up for military personnel of the Ministry of Defense of Georgia, who are unable to leave their place of deployment on voting day because of their service obligations (members of the military subjected to a special regime), and their total number is above 50.

## 4. COMPOSITION OF ELECTION ADMINISTRATION

### Problem

The professionalism, independence, and impartiality of election administrators greatly affects the operation, transparency, and trustworthiness of election administration.

The monitoring of the election cycle of the past few years revealed a lack of professionalism, independence, and impartiality when election commissions elected members representing various political parties in election administrations. Although in a number of cases no violation of election legislation was observed, others' behavior might have influenced the impartial and objective operation of the commissions that could have an adverse effect on the operation of election administration and the degree of its trustworthiness in general.

### Recommendations

#### Election Administration's Certificate

Two certification exams must be introduced with different complexity for individuals willing to become Central Election Commission (CEC), District Election Commission (DEC), or Precinct Election Commission (PEC) members. Applicants for membership in CEC and DEC should have good knowledge of the Constitution, election and administrative legislative, election procedures, and other relevant skills, while PEC applicants must have excellent knowledge of polling day procedures.

As a result of certification, a trustworthy database should be formed for each level of election administration, while election administration will be staffed prior to each election from the given list at random, taking into account each territory.

#### I. Central Election Commission (CEC)

- The CEC should consist of 7 members, elected by the no less than 2/3 of the total composition of the Parliament for 5- or 7-year terms (high quota).
- **Alternative:** 5 out of 7 members are elected by the Parliament by a majority of the total composition, 1 member is appointed by the President, and 1 by the Chair of the Supreme Court. This guarantees representation of all three branches of government in the formation of the CEC. Moreover, the CEC will have an individual with legal expertise.
- The CEC will elect its chair for the period of its authority.
- The Parliament (factions - groups with no less than 10 persons) and NGOs meeting the following requirements shall be entitled to nominate candidates:
  - Local, independent NGO with no less than 10 years of working experience on electoral or similar issues.
  - **Alternative:** No restrictions on nomination of candidates.
- The procedure for reviewing and listening to nominated candidates in the Parliament should be public. Members must be elected only through strict observance of established criteria. Special criteria should be set for CEC membership. In particular, the nominated candidate:
  - must have a university diploma;
  - possess at least five years of professional experience in the field that is important for a member of the Commission for fulfillment of his/her functions;
  - must hold a CEC certificate;
  - shall not be a political party member or a political party candidate for the past three years;
  - shall not be subject to disciplinary or administrative responsibility for violation of election legislation for the two consecutive elections since the day of confirming the fact by the relevant agency, including the period of the next election and an extraordinary election;
  - shall have the public trust; and
  - all the other provisions stipulated in the applicable Election Code.
- There might be a Commission that will filter submitted applications.

#### II. High Election Commission of Ajara Autonomous Republic

This Election Commission will be staffed according to the same principles as the CEC, though the organization nominating the candidate should operate (e.g., projects, local representation, election observation) in the territory of Ajara, and members should be elected by the High Council.



### III. District Election Commissions

- The DEC shall consist of 7 members: 4 shall be appointed for 5-year terms, and 3 will be designated no later than 5 days after the appointing elections, until the announcement of the final results of the relevant elections.
- Members will be selected at random from the DEC members' database. It will be implemented by the special computer program designed for this purpose.
- The chair of the DEC will be elected for a 5-year term.
- A candidate must meet the following requirements:
  - must have university diploma;
  - possess at least three years of professional experience in the field that is important for the member of the Commission for implementation of his/her functions;
  - shall hold the relevant DEC certificate;
  - shall not be a political party member or party candidate for the past two years;
  - shall not be subject to disciplinary or administrative responsibility for violation of election legislation for the two consecutive elections since the day of confirming the fact by the relevant agency, including the period of the next election and extraordinary election; and
  - all other provisions stipulated in applicable Election Code.

### IV. Precinct Election Commissions

- The PEC consists of 11 members, including some appointed by election subjects (all political parties overcoming the 2 percent barrier in the last national elections). Since the number of political parties may vary after each election, all other members must be selected at random from the PEC database. It will be carried out by the special computer program designed for that purpose.
- If the number of parties overcoming the barrier exceeds the set limit, the parties with the highest results will nominate PEC members.
- **Alternative:** In the PEC, like the CEC and DEC, all the members must be appointed under professional sign. In this case, the number of PEC members may be less than 11.
- PECs are formed during the election period.

## 5. ADMINISTRATIVE RESOURCES

In 2013, certain changes were carried out in election legislation in terms of limiting the use of administrative resources,<sup>18</sup> but evaluation of the past years' election cycle still revealed some problems, which prejudices equality of the election environment.

### **Introduction of the concept of passive agitation and setting restrictions to certain category of individuals on attending campaigning events.**

#### **Problem**

The improper interpretation of "agitation" and "participation" provided for in the Election Code created some problems with election subjects and other interested persons in the pre-election process.<sup>19</sup> For example, it was unclear if individuals who are not allowed to participate or carry out an election campaign, as per Election Code, had the opportunity to attend such events.<sup>20</sup> Furthermore, it was not determined if MIA representatives were allowed to attend pre-election events, and under which conditions.

It should be noted that in the pre-election period of 2013, the Interagency Commission for Free and Fair Elections took into account instructions from the Ministry of Interior, and issued a recommendation defining the concept of pre-election agitation, and stipulating conditions for participation.<sup>21</sup>

As it follows from MIA instructions, police officers were entitled to attend pre-election events only when they were not fulfilling their official duties and were not wearing uniforms.<sup>22</sup> Regional and district courts interpreted the issue

<sup>18</sup> [http://www.electionsportal.ge/uploads/reforms/12/analysis\\_interfaction\\_group\\_recommendations\\_GEO.pdf](http://www.electionsportal.ge/uploads/reforms/12/analysis_interfaction_group_recommendations_GEO.pdf).

<sup>19</sup> <http://www.osce.org/odihr/elections/110301?download=true>.

<sup>20</sup> Article 45 of the Election Code.

<sup>21</sup> <http://www.justice.gov.ge/Multimedia%2FFiles%2F rekomendaciebi%2Fpdf%2FRecommendations%2030%2009%202013.pdf>.

<sup>22</sup> As per Article 25 of the Constitution and Article 1.2 of the Law on Assembly and Manifestation, members of the armed forces and the Ministry

the same way, when they ruled that police officers dressed in civilian clothes were not prohibited from attending pre-election campaign events, since they were not fulfilling official duties.<sup>23</sup>

### **Recommendation**

“Agitation” must be defined as including both active and passive agitation, which also includes attending meetings conducted within a pre-election campaign.<sup>24</sup> Furthermore, the cases when certain category of individuals (law enforcement officers, religious organizations, etc.) are restricted from participating in campaigning events must also be specified.

### **Involvement of Public Officials in the Electoral Process**

#### **Problem**

The last election revealed that there are frequent cases when public officials are actively engaged in a pre-election campaign on behalf of the ruling party. For example, there was high involvement of public officials on the central and local level during the October 31, 2015, parliamentary elections.

Notwithstanding the fact that high involvement of political figures in the election process does not violate the law, it negatively affects an equal electoral environment.

#### **Recommendation**

According to the OSCE Copenhagen document, there should be a clear distinction between the state and political parties.<sup>25</sup> Legislation should draw a clear line between party activities and public service. In addition, freedom of expression of public officials must be respected.

We think that in order to promote a competitive electoral environment, the list of political officials who are entitled to participate in pre-election campaigns without restrictions should be limited. Accordingly, amendments should be made within election legislation restricting the participation of the Deputy Minister and the State Attorney–Regional Governor in pre-election campaigns during working hours.

## **6. INDEPENDENCE OF THE STATE AUDIT SERVICE**

#### **Problem**

According to applicable legislation, the State Audit Service monitors funding of political parties and election subjects. Existence of this agency is a positive fact, though according to the observed trends of the 2012 election cycle, more independence and impartiality of the Service should be ensured, with a view to avoid distrust of the mandate and operation of the Service.

GRECO’s third round report also voices the problem and calls on the state to create a security guarantee. Namely, according to GRECO recommendations, an entity implementing monitoring over political party and election campaign funding should be independent and impartial with a view to ensure its independence in terms of political funding supervision.<sup>26</sup>

#### **Recommendation**

For ensuring high quality independence of the Service, and protecting it from political influence, restrictions must be introduced on the political activity of the high officials of the Service (head and the deputy head of the Service), not

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of Interior (including police officers) have no right to assembly. Moreover, as per Article 45.4 of the Election Code, they are prohibited from pre-election campaigning. As per Article 11 of the ECHR, the Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, the police, or the administration of the State. In addition, Guidelines on Freedom of Peaceful Assembly (2nd Edition) drafted by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) ([www.osce.org/odihr/73405](http://www.osce.org/odihr/73405)) and the Council of Europe’s Commission for Democracy through Law (Venice Commission) is also important and states that legislation shall not restrict freedom of assembly of law enforcement officials (including police officers and militaries) or state officials, unless this restriction is linked directly to fulfillment of their official duties, and even in this case the restriction should be of the extent absolutely necessary for fulfilment of their professional duties.

<http://www.osce.org/odihr/elections/110301?download=true>.

It is applicable only after the Election Day Announcement.

Article 5.4. for law enforcement officials (including police officers and militaries) or state officials unless this restriction is linked directly to fulfillment of their official duties and even in this case the restriction should be of the extent absolutely necessary for fulfilment of their professional duties.

<sup>23</sup> <http://www.osce.org/odihr/elections/110301?download=true>.

<sup>24</sup> It is applicable only after the Election Day Announcement.

<sup>25</sup> Article 5.4.

<sup>26</sup> As per para. 74 of the Report “any agency implementing the monitoring shall act impartially” which was seriously impaired during the 2012 elections as indicated by the OSCE/ODIHR election observation mission. <http://www.osce.org/odihr/98399>.



only during their tenure, but also for some period before holding the post and after termination of authority. Namely, persons concerned cannot be nominated to any elective organization, and cannot be political party members or political officials during a certain period prior to occupying the post and for three years after the expiration of their authority. Such restrictions exclude linkage of the listed officials of the Service with any political party and minimize the risk of implementing activities under political influence, which is a guarantee of impartial operation of the Service.

## **7. VOTE BUYING**

### **Problem**

Legislative regulation of vote buying is ambiguous and unforeseeable. Definitions and relevant sanctions are found in three different legislative acts. The current regulations need to have internal consistency. It is important to harmonize interpretations and to remove vagueness from definitions, which currently allows broad and unreasoned interpretations. For example, we meet a problematic norm in Criminal Legislation, envisaging responsibility for “making fraudulent, sham or other transactions with a view to avoid restrictions set by legislation.” By this provision, the norm exceeds its purpose and stipulates responsibility for avoiding any restriction envisaged by law. Furthermore, an applicable version of the Criminal Law envisages a voter’s criminal responsibility for vote buying (fine or restriction of liberty up to three years). We opine that the legislator must decriminalize the foregoing and consider the national context rather than only the international one. Namely, it should pay attention to the social factors such as the unemployment problem, poverty indicator, low awareness of electorate, etc.

### **Recommendation**

We offer general principles for regulating vote buying:

- It is important to harmonize concepts of vote buying provided for in different legislative acts.
- Regulations provided for in the Law on Citizens’ Political Union and the Election Code must be applied in all cases without limitation in amount.
- Vote buying with more than 300 GEL and for election purposes (monetary limit will be provided for only in the Criminal Code) should be considered as a punishable act.
- Provision of Criminal Legislation envisaging responsibility for “making fraudulent, sham or other transaction with a view to avoid legislative restrictions” should be removed.
- Criminal and administrative responsibility of a voter should be excluded in case of vote buying.

## **8. ELECTION DISPUTES**

### **A. Streamlining Norms that Regulate Procedures for Appealing**

#### **Problem**

Although there are norms that regulate drafting and submission of complaints/appeals of violations of voting, counting, and tabulation procedures,<sup>27</sup> and provide general guidelines for appealing, the vagueness and ambiguity of procedures for appealing in the Election Code leave room for various interpretations both by the electoral commissions and courts, as well as by complainants/appellants. These factors promote inconsistent and uneven practice, as illustrated by the decision made by Gori District Court during the June 15, 2014, local self-government elections for executive and legislative bodies. The court refused to examine a complaint of GYLA’s observer seeking imposition of administrative liability on members of the PEC for violating procedures for counting and tabulating votes. The court stated that the complaint had been submitted in violation of the Election Code procedure because the “initial act about some issue is delivered by DEC or its head. The act must first be appealed with the Central Election Commission and later in Tbilisi City Court (para. 4 of Article 77 of the Election Code).” On the other hand, para. 1, Art. 74 of the Election Code stipulates that such complaints, including complaints that seek imposition of liability, must be examined and decided by the respective DEC; the subsequent decision of DEC can be appealed in court (Ruling no.3b/868-14 of Tbilisi Appellate Court’s Chamber of Administrative Cases, dated June 23, 2014).

#### **Recommendation**

Norms that regulate procedures for appealing must be reformulated to ensure their simplicity and foreseeability; in particular, the Code should provide clear procedures for drafting and submitting complaints/appeals for violations detected on voting day, to tackle the ambiguity of norms as grounds for varied interpretation of the norms and other problems.

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<sup>27</sup> Articles 72, 73, and 74 of the Election Code.

## **B. Calculating the Deadline for Appealing**

### **Problem**

The existing Election Code does not specify the deadline for submitting a decision made by the DEC to a complainant.

In light of stringent deadlines for appealing, calculating the deadline from the day DEC made its decision, as opposed to the day the decision was submitted to the complainant is a problem which prevents a complainant from filing a founded appeal against the decision.

### **Recommendation**

In order to improve the effectiveness of procedures for filing and examining an appeal, the deadline for appealing should be calculated from the day the decision of the DEC was submitted to the complainant as opposed to the day the decision was delivered.<sup>28</sup> In addition, it must be established that DEC decisions must be submitted to parties before 12:00 p.m. the day following the decision.

Making DEC decisions public (through the CEC website) should also be mandated, if the address of the party concerned is unknown or if he or she cannot be reached to submit the decision.

## **C. Categories of Claimants**

### **Problem**

An observer at an electoral precinct is a representative of an organization with the status of an observer. He or she represents the interests of the organization before the electoral administration or in court. In addition, Article 78 of the Election Code categorizes claimants by different types of claims that they are eligible to file, and a monitoring organization and its representatives (observers) sometimes falls under different categories. In particular, certain types of claims can be filed with the CEC or DEC by an organization with the status of an observer, while others can only be filed by a representative of an organization. For example, in disputes over PEC summary protocols, DEC decisions can be appealed in court by an organization with the status of an observer, while DEC decisions recognizing or not recognizing polling station results as null and void can only be appealed in court by a representative of an organization with the status of an observer stationed in the respective DEC. This hinders effective resource management by local monitoring organizations, particularly during the pre-election period and on Election Day, which are especially busy times for monitoring organizations.

It is equally important to revise provisions of Article 78 that prohibit monitoring organizations from acting as a claimant and filing certain complaints in court over election violations.<sup>29</sup>

### **Recommendation**

Such strict categorization of claimants should not exist. Organizations with the status of an observer should be allowed to act as a claimant for all complaints that can now only be filed by their representatives with an election commission, as stipulated by existing legislation. We believe that respective changes in the legislation will ease the already difficult work of observers in PECs or DEC.

It is also important to redefine categories of claimants in a way that allows local monitoring organizations to file all types of appeals envisaged by Article 78 of the Election Code (e.g., registration of a representative of an electoral subject).

## **D. Forms of Complaints and Appeals**

### **Problem**

Complaints and appeals about election disputes can be filed by filling out the forms adopted by the High Council of Justice. These forms are not responsive to the specific nature of election disputes; rather, they are used in civil and administrative proceedings where the deadline for filing an appeal is up to a month, compared to the stringent deadline of two days in election disputes. Filling out these forms or seeking legal consultation to fill them out is not an easy process for ordinary citizens and other individuals who have the right to appeal.

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<sup>28</sup> Joint Opinion on the Election Code of Georgia as amended through March 2010, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010) [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)013-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)013-e.asp), retrieved on 4 February 2011, para 71.

<sup>29</sup> Citing para.10, Art. 78 of the Election Code, the court rejected the complaint filed by GYLA's observer, explaining that by virtue of Article 41 of the Election Code, an observer has no authority to study and react on issues related to registration of an electoral bloc and to react (decision of Zugdidi District Court dated 10.06.2014, case no.020310014526651(3/41-14)).

## **Recommendation**

The procedure for appealing must be simple and straightforward, which can be achieved by creating special forms for the appeal for voters.<sup>30</sup> In view of the stringent deadline for appealing an election dispute, the Election Code must be amended in a way that will require the High Council of Justice to design simpler forms for all election disputes (e.g., appealing a decision, an action or inaction of an election administrator), keeping in mind that the deadline for appealing is extremely tight compared to other types of proceedings.

## **9. MEDIA REGULATIONS: MEDIA AVAILABILITY DURING THE SECOND TOUR**

### **Problem**

The Election Code fails to envisage necessary regulations for airing election campaigns or for having access to media by election subjects during the second tour of elections. At the second tour of the 2014 local self-government elections, the CEC and the National Communications Commission applied to the broadcasters for prolongation of information support to election campaigns with a view to ensure the conduct of pre-election campaigns in a competitive environment.<sup>31</sup>

### **Recommendation**

With a view to promote the realization of an electoral right, ensure informational support of the election campaign, and hold elections in a competitive environment, the informational support of pre-election campaigns during the second tour of elections should be regulated at the legislative level.

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<sup>30</sup> Code of Good Practice in Electoral Matters, Guidelines, and Explanatory Report, Venice Commission, para. 96.

<sup>31</sup> <http://www.cesko.ge/uploads/other/28/28702.pdf>.