



# NGOs' joint opinion on the amendments to the Organic Law - "Election Code of Georgia"

## Introduction

On June 5, the Parliament of Georgia registered the draft law, which envisages the amendments to the Organic Law - "Election Code of Georgia".

Among the amendments, we positively evaluate the regulations, which simplify the registration process of electoral subjects, observers and media organizations (the voluntary electronic registration has been introduced). Moreover, the regulations, which aim to improve the registration process of electoral subjects (including the coordination among the state agencies, receiving the updated information from the electoral subjects etc.) deserve a positive assessment. However, alongside with the abovementioned changes, the new rule related to the composition of election commissions, as well as the regulations which impose the certain limitations on the transparency and accountability of the Electoral Administration (the changes regarding the media coverage of sessions of election commissions, as well as, release of public information) have been assessed negatively.

Our suggestions on the proposed amendments are as follows:

### Composition of election commissions

According to the draft law, the appointment of election administration members by the parties will depend on the number of votes obtained by the party in the last parliamentary elections. This rule will substitute the incumbent one, according to which the appointment of the election administration member depends on the funding received by the party from the state budget. **Unlike the current rule, the proposed amendment allows a party to appoint more than one member in the Electoral Administration**, which, in turn, may not ensure a multi-party representation in the election commissions. **For example, according to the existing rule, "Georgian Dream" has only one out of the seven members appointed by the parties, but in case of adoption of the new rule, they will have four members.** The amendments have been prepared by the deputies of the ruling party and according to the project they will enter force after the results of the local self-government elections 2017 will be published.

The explanatory note of the draft law says that the amendment aims to improve the performance of the Electoral Administration as a stable institution. **However, it is problematic in terms of maintaining the credibility towards the Electoral Administration, ensuring equal election environment for the political forces as it aims to strengthen the position of the ruling party in the Electoral Administration.** It is noteworthy that civil society and experts, both within and outside the country, have long been discussing the necessity of amendments in the rules, regulating the composition of election administration. Such amendments aimed to protect this important institution from improper political influence [1].

**Instead of implementing the reforms to the directions as required by the procedure for formation of election commissions, the proposed amendment will further politicize the institution,** as the new regulation may lead to domination of the ruling party, compared with other parties, at all levels of the electoral administration.

It is remarkable that higher electoral administrations are involved in the selection process of professional members of the election commissions. Consequently, during the election of professional members, there is a risk that the people who are loyal to

the ruling party will be appointed, as the "Georgian Dream" might be represented by more members compared with other parties. Therefore, in order to maintain the balance it is vital to give the opportunity to as many political parties as possible to appoint members and to prevent the ruling party from being represented by a "majority".

Therefore, we believe that the proposed regulation for the CEC composition cannot guarantee confidence in the Electoral Administration and political pluralism in the election management process. Composing the Electoral Administration is an essential issue as it significantly determines the trust of the society towards the fair electoral process and the degree of legitimacy of the election results, as well as it influences the formation of democratic institutions.

In order to allow the Electoral Administration to perform its functions efficiently, it is important that the rule for filling the quota allocated to political parties in the CEC is based on fair and parity principle in order to prevent the increase of the influence of the ruling political party. If the above amendments are adopted, the political electoral environment will be narrowed. This is because those political parties, which will remain beyond the parliament/will not reach the election threshold, but at the same time, will have obtained over 3% of votes and receive state funding, will be nevertheless deprived of the possibility to appoint the CEC members.

**Recommendation: The Electoral Administration should be fundamentally reformed and higher bodies of the Electoral Administration (CEC, District) should be composed of only apolitical and independent members.** At the transition stage, we believe that:

- The rule of composition of the Electoral Administration should be linked to the election results, but not in such unacceptable way: one party should have the right to appoint only one member in the Electoral Administration and not several members as it is suggested by the proposed amendment.
- In addition, the work should continue to elaborate and to improve the norms regulating the selection process of the election commission members, in order to identify the best candidates among those who wish to enter the election committees.[2]
- We have prepared the joint detailed recommendations and are ready to cooperate with the Parliament on the actual and fundamental reforms of the

electoral administration.

## Procedures for electing the CEC Chairperson

The proposed draft law will also change the rule for electing the CEC Chairperson, which is regulated by Article 10 of the Election Code of Georgia. According to the current law, CEC members who are appointed by parties (except for a member appointed by the party obtaining the best results in the previous parliamentary elections) elect CEC Chairperson on the recommendation of the President of Georgia. If the CEC Chairperson is not elected by the members appointed by a party, then she/he will be elected by the Parliament of Georgia. The proposed legislative initiative envisages the election of the CEC Chairperson by two thirds of the CEC members or the Parliament. In case of election of the Head of the Electoral Administration by two-thirds of the CEC members, the ruling party's influence over the electoral process will increase, thus damaging the legitimacy of the results. However, likelihood of this happening is even higher according to the amendment on composition of CEC, which will increase participation and influence of the ruling in the CEC. Consequently, the participation and influence of other parties in the process of the CEC Chairpersons' election will be weakened, which will pose him/her as a political figure associated with the ruling team. This will affect the reputation of the Electoral Administration and damage the confidence of the public in it.

**Recommendation: We believe that the current regulation for electing the CEC Chairperson should be maintained.**

## Release of public information by the Electoral Administration

The proposed draft law envisages the amendments to the terms of issuing public information, namely, the public information may be released within ten days as provided by the Administrative Code, instead of two days:

**Article 8 (14)** - Electoral documents, except for the cases defined by the Georgian legislation, shall be available to public. It is the duty of an election commission to make electoral documents and election information available to all interested persons within two days after receiving such request, **and if such information requires more time to be issued in accordance with the General Administrative Code of Georgia.**

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Based on the above provision, the work of the parties involved in the electoral process may be affected. On the one hand, interested parties, including the media and observer organizations might face the risk of not receiving public information related to the elections, and on the other, there might be the risk of neglecting the transparency, efficiency and integrity of the Electoral Administration.

According to Article 40 (1) of the General Administrative Code of Georgia, "a public agency shall release public information immediately, including electronic information, no later than ten days if responding to a request for public information requires:

- a) Acquisition of information from its structural subdivision that operates in another settlement or other public agency or processing of such information;
- b) Acquisition and processing of separate and large documents that are not interrelated, or
- c) Consultation with its subdivision that operates in another area, or with another public agency.

Generally, administrative agencies, as a rule, use ten-day period for acquisition of public information.

In accordance with the Article 15 of the General Administrative Code of Georgia, "the official holidays prescribed by labor legislation of Georgia shall be excluded from the calculation of the terms provided in this code," and according to the Article 5 (1) of the Election Code of Georgia, "during elections, all the terms under this law, including the terms for judicial recourse and for delivery of a court judgment, shall be counted in calendar days (including weekends and holidays as defined by the labor legislation of Georgia)."

If the Electoral Administration is guided by the terms set forth by the General Administrative Code of Georgia, delivery of information to the parties involved in the election may be delayed, which may jeopardize the efficiency of their work. In particular, observer organizations might have problem in the acquisition of electoral documentation and / or information on the elections in a timely manner, which may prevent them from carrying out an observation activity. During the electoral disputes, it is very important to have a prompt issuance of information. It enables parties to protect their positions. Otherwise, they will be limited in the opportunity to obtain and

submit evidence within the specified period.

According to the current rule, the Electoral Administration shall be obliged to provide information within two calendar days, as the elections are conducted under time pressure and it is essential for the interested parties to obtain information from the Electoral Administration in a timely manner. Therefore, the Election Code, unlike the Administrative Code of Georgia, provides for a shorter period for the Electoral Administration, so that none of the election-related public information “may be delayed by unduly bureaucratic, legally unsubstantiated beliefs and attitudes.” [4] The two-day period for the issuance of public information is in compliance with the limited time-frame as it is established by the election law and **its prolongation should be deemed as inappropriate.**

**Recommendation: We believe that the timeframe for the release of public information provided by the Election Code of Georgia should remain unchanged.**

### **The right of attendance and coverage of the election commission sessions**

According to the draft law, it has been proposed that the rule for accreditation of the press and mass media outlets for the purpose of attending and broadcasting the election commission sessions during the non-election period shall be determined by a CEC decree. It is noteworthy that the General Administrative Code of Georgia provides for the regulation for holding sessions of a public body. According to the established regulations, sessions of the public agency shall be public. The session may be closed only on the grounds for reviewing personal data, state or commercial secrets.

Taking all the above into consideration, it is unclear what extra restrictions may be imposed by the CEC decree on attending public institution sessions, especially when it comes to press and mass media outlets. Moreover, in order to ensure transparency and accountability of the election commissions during non-election period, it is necessary to maintain the general rule according to which public body sessions shall be public, except for the cases prescribed by the General Administrative Code.

**Recommendation: The above change should not be adopted and the general rule on publicity of public agency sessions shall be maintained according to the restrictions established by the General Administrative Code.**

## Handing over the public version of the unified list of voters to the local self-governments

According to the proposed draft, the paragraph 7<sup>2</sup> shall be added to Article 31 of the Election Code of Georgia. According to it, in order to fulfill the requirements of Article 85(1), 85<sup>2</sup> and 85<sup>4</sup> of the Local Self-Government Code, and with the view to ensuring the participation of citizens (voters) in the implementation of local self-governance, the authorities of any self-governing city or self-governing community, upon the written request, **can be handed over the public version of the unified list of voters, without photos, registered within the boundaries of a relevant municipality.** The responsibility for the storage and non-disclosure of the unified list of voters containing personal data provided by the CEC shall be vested in the agency of a relevant self-governing city or self-governing community.[5]

This provision might be problematic for the following reasons:

In order to ensure the participation of citizens in the implementation of local self-governance, local self-government agencies should provide appropriate conditions and ensure effective implementation of the mechanisms for involvement of citizens, including the involvement mechanism – provision of general meetings in settlements and identification of the persons who:

- are registered as voters in respective settlements and have the right to participate in its activities as the general meeting members;
- have the right to a deliberate vote (owners of a real property located in the territory of a relevant settlement and other adult persons living in the settlement). [6]

Although according to Article 16 of the Administrative Code of Georgia, an administrative agency shall, within its authority and to the best of its ability, provide necessary legal assistance to the other administrative agency upon a written request of the latter, and taking into consideration that the CEC undertakes the responsibility for the formation, elaboration and publicity of the unified list of voters, as well as the CEC receives new data in the manner and intensity as established by the Election Code of Georgia from a variety of agencies on individuals with and without voting

rights in order to update the unified list of voters and the database of the above list [7], we believe that for the effective implementation of the above provision, this role must be assigned to the agency that has sufficient knowledge and keeps and processes relevant information in order to form the accurate unified list of voters.

**Recommendation: We believe that new data on individuals with and without the right to vote can be effectively processed by the District Election Commission, which according to the Election Code of Georgia, is a permanent territorial body of the Electoral Administration of Georgia and the formation of which within one or more self-governing units falls within the competence of the CEC. [8]**

### **Minor disciplinary offense**

Article 28 of the Election Code of Georgia will be amended as well. The paragraph 5 will be added to this provision, according to which in case of any minor disciplinary offense, a relevant higher election commission may release the offender from disciplinary liability and issue only a verbal warning.

We believe that "minor disciplinary offense/misconduct" is not a legal term and it is a subjective assessment. The introduction of the term may lead to the situation when a person, under the ground of a "minor disciplinary offense" might be released completely from the liability.

The term is vague and unclear and gives rise to a range of interpretations. Actually, it assigns indefinite discretion to the higher commission, and poses the risks of selective application.

The establishment of the above terms may encourage further misconducts.

**Recommendation: We disagree with the concept. The provision related to a minor disciplinary offense/misconduct shall not be introduced.**

**Registration of the person authorized to manage / represent any registered domestic observer organization as an electoral subject / representative of electoral subject**

The paragraph 7<sup>1</sup> shall be added to Article 40 of the Election Code of Georgia, according to which in case of registration of any person authorized to manage /represent any registered domestic observer organization as an electoral subject and / or representative of an electoral subject, no later than 5 calendar days from the registration, the domestic observer organization shall submit to the relevant election commission the document confirming that the person authorized for management /representation of any registered domestic observer organization registered as an electoral subject and / or representative of an electoral subject *has been terminated (will be terminated)* his/her authority. Non-submission of such document shall become the basis for annulment of the registration of such organization.

We consider that this initiative is favourable as it echoes the problem such as a political party monitoring using the mandate of the domestic observer organization, which is problematic and poses a serious threat to objective and impartial monitoring organizations.

Despite the positivity of the initiative, there is a problematic provision which envisages the submission to the relevant election commission of the document by the local observer organization confirming that the person's authority who is authorized to manage /represent any registered domestic observer organization registered as an electoral subject and / or representative of an electoral subject will be terminated in the future, i.e. there might occur cases when observer organizations may submit the document to the Electoral Administration confirming that the person authorized for management / representation will be terminated the authority, though in the future this may not happen due to subjective or objective reasons, in other words, the person's authority may not be terminated. Consequently, the organization may not be canceled the registration and may still take part in the elections. There is high likelihood for such facts to occur and recur. If such scenario takes place, the organizations will find themselves in an unequal position in comparison to those organizations whose authorized persons had been terminated the authority and had been informed upon this by the Electoral Administration.

**Recommendation: Only the document, confirming the termination of the representation/authorization right, must be submitted to the election**

## administration.

The same applies to Article 44, paragraph 4<sup>1</sup> of the draft law, which provides for the registration of media outlets.

## Selecting members of the commission to accompany mobile ballot box

According to the proposed amendments, Article 61, paragraph 2, subparagraph "d" of the Election Code of Georgia shall be formulated as follows: The Precinct Election Commission (PEC) Chairperson shall identify, by casting of lots, two commission members from among the commission members to accompany the mobile ballot box (if necessary).

According to the current provision, two members of the commission to accompany the mobile ballot box appointed by the PEC Chairperson through the cast of lots from among the members appointed by the parties may not be members of the election commission nominated by one electoral subject.

The proposed amendment no longer provides for the above regulation, which means that the members of the commission assigned by professional competence as well as appointed by the parties will be able to participate in the casting of lots. However, in certain circumstances, it may happen that both members of the mobile ballot box commission identified by the Election Commission Chairperson are the members of the election commission submitted by one electoral subject.

**Recommendation: Since it is likely that two members of the mobile ballot box commission identified by casting of lots may be submitted by the same electoral subject, the provision that the person accompanying the mobile ballot box cannot be a member of the election commission submitted by one electoral subject, should remain unchanged. [9]**

## Limitation of the election commission member's duties

The paragraph d)<sup>1)</sup> shall be added to the Article 61, paragraph 2, according to which, if a member of the commission for accompanying the mobile ballot box identified by

casting of lots refuses to perform the assigned duty, s/he shall be deprived of the right to participate in the casting of lots for the distribution of other functions among other commission members. The issue of assigning duties to such member of the commission shall be decided by the PEC Chairperson.

We believe that if a member of the Commission refuses to perform his / her duties, he / she shall be imposed a disciplinary sanction. The prohibition of participation in other casting of lots will be overly strict restriction imposed on such person and may limit his/her ability to efficiently fulfill the duties of the commission member.

**Recommendation: The above sanction is unjustified and should not be introduced.**

### **Sanction for interference with the duties of a commission member**

The Article 91<sup>1</sup> shall be added to the Election Code of Georgia, according to which the interference in the duties and activities of the election commission shall become punishable. Consequently, the sanction for such an action shall be 500 GEL.

The current law does not provide for any fine for the interference with the duties and activities of the election commission. The only sanction, which the Commission applies if such fact occurs, is the expulsion from the polling station. There have been cases, when the election commission under the grounds of disturbance and interference in the activity of the commission, had expelled from the polling station an observer, who acted within the law, expressed criticism and noted down some complaints against the Electoral Administration and illegal actions of its individual members.

Consequently, we believe that there is a risk that provision will be used against those persons who will note down complaints or express different opinions against the illegal actions of the Electoral Administration.

Recommendation: we believe that before the sanctions it is important to clarify the possible actions, which could be identified as the interference in the duties and activities of the election commission. Moreover, there is no need to impose a fine against the person who interferes in the duties and activities of the election commission; expulsion from the polling station is perfectly adequate for these actions.

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