



Strasbourg, 24 June 2024

CDL-AD(2024)010

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

FOLLOW-UP OPINION

TO

**THE JOINT OPINION OF THE VENICE COMMISSION AND ODIHR ON
THE DRAFT AMENDMENTS
TO THE ELECTION CODE AND TO THE RULES
OF PROCEDURE OF THE PARLIAMENT**

**Approved by the Council for Democratic Elections
at its 80th meeting (Venice, 20 June 2024) and
adopted by the Venice Commission
at its 139th Plenary Session
(Venice, 21-22 June 2024)**

On the basis of comments by

**Mr Nicos ALIVIZATOS (Member, Greece)
Mr Michael FREND (Member, Malta)
Ms Katharina PABEL (Substitute Member, Austria)**

I. Introduction

1. By letter of 7 March 2024, Ms Zanda Kalnina-Lukasevica, the President of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, requested an Opinion of the Venice Commission on the amendments to the Electoral Code and to the Rules of Procedure of the Parliament of Georgia as adopted by the Georgian Parliament on 20 February 2024 (“the amendments”, [CDL-REF\(2024\)008](#)). This Opinion is a Follow-up Opinion to the Joint Opinion of the Venice Commission and ODIHR on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia ([CDL-AD\(2023\)047](#)).

2. Mr Nicos Alivizatos, Mr Michael Frendo and Ms Katharina Pabel acted as rapporteurs for this Opinion.

3. Given the fact that broad consultations had been organised on 15 and 16 November 2023 during a country visit to Georgia, in preparation of the initial Opinion, no additional country visit or online consultations with the authorities and other stakeholders were organised for the preparation of this Follow-up Opinion.

4. This Opinion was prepared in reliance on the English translation of the amendments. The translation may not accurately reflect the original version on all points.

5. This Follow-up Opinion was drafted on the basis of comments by the rapporteurs. The authorities of Georgia submitted their comments on the draft opinion on 30 May 2024. The Opinion was approved by the Council for Democratic Elections at its 80th meeting (Venice, 20 June 2024) and adopted by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

II. Background

6. On 5 October 2023, the Georgian Parliament adopted in 1st reading draft amendments to the electoral legislation which only concerned the composition of the Central Election Commission (CEC) and the election of the CEC Chairperson and its non-partisan members. Subsequently, the adoption process was suspended, the draft amendments were sent to the Venice Commission, and during its 137th Plenary Session (15-16 December 2023), the Venice Commission adopted the Joint Opinion of the Venice Commission and ODIHR on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia ([CDL-AD\(2023\)047](#)), which stated:

“53. The Venice Commission and ODIHR acknowledge the aim to eliminate at least some of the shortcomings of the current electoral framework ahead of the next parliamentary elections which are due to be held in October 2024, but they regret that several outstanding recommendations have still not been followed. This is particularly important as international good practice highlights the importance of the stability of electoral legislation and the impact that frequent changes can have on public trust. Frequent amendments furthermore risk confusing voters, parties and candidates, and making it difficult for the competent electoral authorities to apply the law, which may lead to mistakes in the electoral process and, as a consequence, distrust in the elected bodies. A more comprehensive reform could prevent such risks and provide the opportunity for a more structured and clear process.

54. The proposed amendments to the Election Code and the Rules of Procedure of the Parliament relate exclusively to the composition of the Central Election Commission (CEC) and the election of its (non-partisan) members and Chairperson. They are complicated and rather confusing, in particular because they include unprecise and multiple cross-references between both sources of law.

55. The timing of the current reform is certainly not ideal, as it concerns fundamental elements of the electoral law – namely membership of electoral commissions – and would be adopted less than one year before an election. On the other hand, it must be acknowledged that the adoption process was suspended after the first reading in Parliament so that the conclusions of the Joint Opinion can be taken into account, and that the reform would at least partly serve to comply with the standards of the European electoral heritage and to implement previous recommendations by the Venice Commission and ODIHR, by re-introducing the requirement of a qualified (3/5) majority for the election/appointment of the CEC Chairperson and (non-partisan) members and thus furthering the independence and impartiality of the CEC. This development is, in principle, welcome; at the same time, the proposed amendments are insufficient to ensure a consensus-based political process which is crucial for the independence and impartiality of the CEC and for public trust in this institution.

56. Following a political agreement of 19 April 2021 between the majority and several opposition parties, significant amendments – concerning *inter alia* the composition of the CEC – had been implemented in 2021 which were in principle welcomed by the Venice Commission and ODIHR. In the meantime, a series of further amendments have been adopted which moved away from this broad political agreement. In the view of the Venice Commission and ODIHR, the current draft amendments are a step in the right direction but need to be further developed.

57. The Venice Commission and ODIHR recommend:

- A. Changing the draft amendments to ensure that consensus on the appointment/election of the non-partisan members and Chairperson of the CEC is sought; this might imply requiring a 2/3 parliamentary majority in the first place and, in any case, an anti-deadlock mechanism which favours qualified majorities, before possibly resorting to simple (or absolute) majorities as an ultimate deadlock resolution; [paragraph 29]
- B. Considering lengthening the proposed limited timing between the different stages of the anti-deadlock mechanism; [paragraph 30]
- C. Transferring the nomination authority for the non-partisan members and Chairperson of the CEC back from the Speaker of Parliament to the President of Georgia; [paragraph 32]
- D. Requiring that any decisions by the Speaker of Parliament and the President of Georgia on nomination, rejection and appointment of a candidate for CEC member or Chairperson be reasoned; [paragraphs 33-34]
- E. Removing from the draft the abolishment of the deputy chairperson elected from among the opposition party-appointed CEC members; [paragraph 36]
- F. Modifying the draft amendments with respect to the term of office of the non-partisan members and Chairperson of the CEC, in order to ensure that appointments made on the basis of the anti-deadlock mechanism are significantly limited in time and cannot be prolonged. [paragraph 38]

58. The Venice Commission and ODIHR consider that the proposed re-introduction of a qualified majority requirement for the election/appointment of the CEC Chairperson and (non-partisan) members is crucial and urgent, and that compliance with the above key recommendations would justify, together with a broader support including by the opposition, a derogation from the one-year advance adoption in respect of the next parliamentary elections, required by the principle of stability of electoral law.

59. The Venice Commission and ODIHR furthermore reiterate their previous recommendations relating to the composition of election commissions, namely:

- G. Ensuring higher credentials for CEC members; [paragraph 40]
- H. Ensuring the transparent formation of the Selection Commission and its diverse, impartial and reputable membership and a transparent, merit-based nomination process for CEC non-partisan members and Chairperson; [paragraph 41]
- I. Clearly and restrictively setting out on what grounds party-nominated members may be removed; [paragraph 42]
- J. Strengthening the criteria, recruitment, and selection process for members of the lower-level election bodies (District Election Commissions and Precinct Election Commissions), so as to ensure, *inter alia*, transparent, genuinely merit-based processes for the appointment of non-partisan members. [paragraph 43]

60. These recommendations are included throughout the text of this Joint Opinion. Moreover, the Venice Commission and ODIHR once again stress that several other previous recommendations have not yet been followed and remain valid.

61. As Georgia works to further its application for membership to the European Union, ODIHR and the Venice Commission encourage the authorities to use this as an impetus to further enhance the democratic process. All States need to see democracy as a dynamic process that necessitates sustained dialogue, within an inclusive parliamentary process engaging civil society, and fosters a spirit of cooperation amongst all stakeholders in the interest of a common good.”

7. Following the adoption of the Joint Opinion, the Georgian Parliament adopted the draft amendments without any changes in 2nd reading at the plenary session of 9 February 2024, and in the 3rd and final reading – in an accelerated procedure – on 20 February 2024. On 5 March 2024, the President of Georgia vetoed the amendments. On 19 March 2024, the Georgian Parliament overrode the President’s veto, and on 25 March the law on the amendments was signed by the Speaker of Parliament and entered into force.

III. Analysis

A. Procedural aspects

8. The Venice Commission has consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements:

- 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations;
- 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and
- 3) the political commitment to fully implement such legislation in good faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.

9. In this regard, the Venice Commission has stated that “[i]f the process of changing the electoral rules is not sufficiently inclusive and transparent, that is if all relevant stakeholders are not involved in the proper way, new electoral rules risk being seen as intended more at favouring incumbents than at improving the electoral system”.¹

¹ Venice Commission and ODIHR, Türkiye - Joint Opinion on the amendments to the electoral legislation by Law No. 7393 of 31 March 2022, [CDL-AD\(2022\)016](#), para. 21.

10. Concerning the legislative process of the – now adopted – amendments to the Electoral Code and to the Rules of Procedure of the Parliament of Georgia, the Venice Commission and ODIHR have already expressed their concerns in the initial Opinion that the process did “not ensure the broadest possible consensus after extensive public consultations with all relevant stakeholders. They wish to reiterate that the legal framework for carrying out elections should be based on as wide a consensus as possible amongst all the parties participating in an election and that every effort should be made to achieve this shared confidence in the process; at the same time, the ownership of the process can only take place by dialogue amongst all the stakeholders driven by a genuine desire to safeguard and enhance Georgian democracy.”²

11. Those statements are still valid, all the more as the amendments have now been adopted without any changes, i.e. without taking into account any of the concerns raised by the President of Georgia, several representatives of the opposition and of the civil society, and by international organisations including the Venice Commission and ODIHR. Moreover, it should be noted that the amendments were adopted by 81 votes in Parliament (3rd reading of 20 February 2024) and the President’s veto was overridden by 78 votes (on 5 March 2024), while Parliament is composed of 150 members.³ Under these circumstances, the Venice Commission cannot conclude that the amendments were adopted by broad consensus after extensive public consultations with all relevant stakeholders and addressing prior recommendations.

B. Substantive aspects

1. Amendments concerning the composition of the Central Election Commission

12. As the draft amendments examined in the initial Opinion have been adopted without any changes, the previous assessment remains valid, and the Venice Commission reiterates the previous comments and recommendations relating to the composition of the CEC contained in the initial Opinion.⁴ The Commission once again refers to the Code of Good Practice in Electoral Matters, which states that “[w]here there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to the polling station level” to ensure that elections are properly conducted, or at least to remove serious suspicions of irregularity.⁵

13. Therefore, one of the key recommendations of the initial Opinion⁶ was aimed at ensuring that consensus on the appointment/election of the non-partisan members and Chairperson of the CEC is sought. The Opinion noted that one option to achieve this might imply requiring a 2/3 parliamentary majority in the first place and, in any case, an anti-deadlock mechanism which favours qualified majorities, before possibly resorting to simple (or absolute) majorities as an ultimate deadlock resolution. The amendments re-introduced the requirement of a qualified (3/5) majority,⁷ but with an anti-deadlock mechanism that provides for the possibility of two additional rounds of voting under which the candidates can be elected by simple majority. The Opinion,

² Venice Commission and ODIHR, [CDL-AD\(2023\)047](#), Joint Opinion on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, para. 15.

³ Article 37(2) of the Constitution.

⁴ See Venice Commission and ODIHR, [CDL-AD\(2023\)047](#), Joint Opinion on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, paras. 16ff., and the list of recommendations in paras. 57 and 59 (quoted above at para. 6).

⁵ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), Guideline II 3.1.b.

⁶ Quoted above at para. 6.

⁷ In June 2023, the 2/3 parliamentary quota for election of a candidate (as introduced in 2021) had been lowered to a simple majority introduced, and the six-month term of office for candidates elected by simple majority repealed, with all members/Chair elected for five-year terms.

stressed that this was clearly “insufficient to ensure a consensus-based political process which is crucial for the independence and impartiality of the CEC and for public trust in this institution.”⁸

14. During and after the adoption process of the initial Opinion, the authorities commented that the regulations introduced in June 2021 – i.e. 2/3 majority requirement and a multi-stage anti-deadlock mechanism⁹ – had failed and that the political agreement of 19 April 2021, on which those regulations were based, was no longer relevant. In this regard, the Venice Commission stresses that it did not recommend one specific solution (such as the regulations of June 2021), but that it is clearly up to the Georgian authorities to find an appropriate solution, as long as the final goal to facilitate consensus amongst political stakeholders on the CEC’s composition and leadership is met. The Commission reiterates its concerns that the current amendments are insufficient to ensure this. *Inter alia*, the new anti-deadlock mechanism for filling vacant positions¹⁰ bears the risk that the ruling party alone can elect the (non-partisan) CEC members and Chairperson.

15. The Venice Commission wishes to make it clear that while ensuring free and fair elections is a binding obligation under the European Convention on Human Rights and the case-law of the European Court of Human Rights, its recommendations as to how to ensure this goal provide guidance, while leaving it to the authorities to find alternative but adequate solutions in keeping with those standards, in full respect of Georgia’s sovereignty.¹¹

2. Other pending issues

16. The initial Opinion highlighted that further amendments to the electoral legislation of Georgia would be necessary “as not all previous recommendations of the Venice Commission and ODIHR have been addressed. The legislative issues that remained unaddressed in recent reforms broadly relate to, among others, constituency delimitation, restrictive residence requirements for presidential and parliamentary candidates and other undue criteria on voter and candidate eligibility, additional aspects regarding the formation of election commissions, provisions on the misuse of official position for campaign purposes, high donation limits for election campaigns affecting the level playing field, further regulation and oversight of campaign finance, further elaborating media campaign regulations, strengthening the framework for electoral dispute resolution to ensure effective legal remedy, recounts and annulments, and measures to prevent voter intimidation.”¹²

17. While it is understandable that such broader reforms have not been initiated in the meantime, less than one year before the upcoming parliamentary elections of October 2024, it is however worrying that a number of important recommendations have still not been addressed and that elections will again be held on the basis of a legal framework which is still affected by a number of shortcomings.

⁸ Venice Commission and ODIHR, [CDL-AD\(2023\)047](#), Joint Opinion on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, para. 55.

⁹ The anti-deadlock mechanism under Article 12 of the Election Code provided that if no two-thirds majority was reached in the first round of voting, a second (again two-thirds), third (three-fifths) and fourth (simple majority) round were possible. If the vacancy still remained unfilled at the end of this process, the nomination procedure would start again. The term of office of a CEC member elected by less than two-thirds was limited to six months.

¹⁰ Article 211.1(7) of the Rules of Procedure of the Parliament.

¹¹ Some declarations were made on the issue of sovereignty: see e.g. [Mamuka Mdinaradze: We will not take into account any conclusions of the Venice Commission or any other commission, which is directed against Georgia, its democratic elections and sovereignty | News agency «Interpressnews»](#).

¹² Venice Commission and ODIHR, [CDL-AD\(2023\)047](#), Joint Opinion on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, para. 52.

C. Stability of electoral law

18. As the Venice Commission has already stressed in the initial Opinion as well as in several previous Opinions, “the electoral law must enjoy a certain stability, which is a crucial aspect of legal certainty; on the one hand, such stability allows for the understanding of the electoral rules by all the stakeholders: the candidates, the voters, the electoral administration, the observers, the public; on the other hand, it represents a guarantee against party political manipulation.”¹³ The Code of Good Practice in Electoral Matters makes it clear that “[s]tability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.”¹⁴

19. The practice in Georgia of frequently amending the electoral legislation risks undermining the integrity of the electoral process and the state’s ongoing efforts to consolidate democracy. It furthermore risks confusing voters, parties and candidates, and makes it difficult for the competent electoral authorities to apply the law, which may lead to mistakes in the electoral process and, as a consequence, distrust in the elected bodies. Given that a number of specific recommendations by the Venice Commission and ODIHR are still pending, the call for a more comprehensive and systemic reform of the Georgian electoral law, well in advance of elections within an inclusive consultation process, is therefore reiterated. Care should be taken to address the remaining concerns and outstanding recommendations in such a future reform, in order to prevent frequent changes and to achieve stability.

20. Moreover, regarding the timing of electoral reforms, the Code of Good Practice in Electoral Matters¹⁵ recommends that the fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the Constitution or at a level higher than ordinary law. In reference to this recommendation, the Code’s Explanatory Note cautions that in adopting amendments, “care must be taken to avoid not only manipulation for the advantage of the party in power, but even the mere semblance of manipulation [...] Even when no manipulation is intended, changes will seem to be dictated by immediate political interests.”¹⁶

21. Exceptions to the one-year principle are admissible if there is a broad consensus on the reform. Moreover, the principle “does not take precedence over the other principles of the Code” and it “should not be invoked to maintain a situation contrary to the standards of the European electoral heritage, or to prevent the implementation of recommendations by international organisations”.¹⁷

22. In the present case, the amendments clearly concern fundamental elements of the electoral law – namely the composition of the electoral commissions, and they have been adopted less

¹³ Venice Commission and ODIHR, [CDL-AD\(2023\)047](#), Joint Opinion on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, para. 45. See also, *inter alia*, Venice Commission and ODIHR, [CDL-AD\(2022\)047](#), Joint opinion on draft amendments to the Election Code and the Law on Political Associations of Citizens, para. 28; Venice Commission and ODIHR, [CDL-AD\(2021\)026](#), Urgent Joint Opinion on the revised amendments to the Election Code of Georgia, paras. 39-43; Venice Commission and ODIHR, [CDL-AD\(2021\)022](#), Urgent joint opinion on Draft Amendments to the Election Code, paras. 23-24.

¹⁴ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), paragraph 63 of the Explanatory Report; see also paragraphs 58 and 64-67.

¹⁵ Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), Guideline II.2.b. See also Interpretative Declaration on the Stability of the Electoral Law, [CDL-AD\(2005\)043](#) and (*mutatis mutandis*) ECtHR, 8 July 2008, *Georgian Labour Party v. Georgia*, no. 9103/04, para. 88.

¹⁶ Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), paras. 64-65.

¹⁷ See Venice Commission, Interpretative Declaration on the Stability of the Electoral Law, [CDL-AD\(2005\)043](#), items II.1. and 2.

than one year before the next parliamentary elections scheduled for October 2024. That said, the initial Opinion noted that the proposed re-introduction of a qualified majority requirement for the election/appointment of the CEC Chairperson and (non-partisan) members was crucial and urgent. Therefore, it concluded that a derogation from the one-year advance adoption in respect of the next parliamentary elections, required by the principle of stability of electoral law, would be justified under the condition of compliance with the key recommendations issued in the Joint Opinion, together with a broader support including by the opposition.¹⁸ These two conditions have, however, not been fulfilled in the subsequent adoption process.

IV. Conclusion

23. On 5 October 2023, the Georgian Parliament adopted in 1st reading draft amendments to the electoral legislation which only concerned the composition of the Central Election Commission (CEC) and the election of the CEC Chairperson and its non-partisan members. Subsequently, the adoption process was suspended, the draft amendments were sent to the Venice Commission, and during its 137th Plenary Session (15-16 December 2023), the Venice Commission adopted the Joint Opinion of the Venice Commission and ODIHR on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, which contained six key recommendations as well as several further recommendations.

24. Following the adoption of the Joint Opinion, the Georgian Parliament adopted the draft amendments without any changes in 2nd reading at the plenary session of 9 February 2024, and in the 3rd and final reading – in an accelerated procedure – on 20 February 2024. On 5 March 2024, the President of Georgia vetoed the amendments. On 19 March 2024, the Georgian Parliament overrode the President's veto, and on 25 March the law on the amendments was signed by the Speaker of Parliament and entered into force.

25. By letter of 7 March 2024, Ms Zanda Kalnina-Lukasevica, the President of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, requested an Opinion of the Venice Commission on the amendments to the Electoral Code and to the Rules of Procedure of the Parliament of Georgia as adopted by the Georgian Parliament. This Opinion is a Follow-up Opinion to the above-mentioned initial Opinion of December 2023.

26. The Venice Commission is highly concerned that none of its recommendations has been taken into account by the Georgian authorities, not even partly. The Commission stresses once again that the – now adopted – amendments are clearly insufficient to ensure a consensus-based political process which is crucial for the independence and impartiality of the CEC and for public trust in this institution. One of the major concerns is related to the new anti-deadlock mechanism for filling vacant positions, which provides for the possibility of two additional rounds of voting under which the candidates can be elected by simple majority,¹⁹ and which bears the risk that the ruling party alone can elect the (non-partisan) CEC members and Chairperson.

27. Moreover, it is worrying that the amendments of such fundamental elements of the electoral law have been adopted less than one year before the next parliamentary elections due to be held in October 2024, contrary to the principle of stability of electoral law. In the initial Opinion, the Venice Commission had stressed that a derogation from the one-year advance adoption in respect of the next elections would only be justified under the condition of compliance with the key recommendations issued in that Opinion, together with a broader support including by the opposition. These two conditions have, however, not been fulfilled in the subsequent adoption process. It is striking that none of the concerns raised by the President of Georgia, several

¹⁸ See Venice Commission and ODIHR, [CDL-AD\(2023\)047](#), Joint Opinion on the Draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, para. 58.

¹⁹ Article 211.1(7) of the Rules of Procedure of the Parliament.

representatives of the opposition and of the civil society, and by international organisations including the Venice Commission and ODIHR, have been taken into account in this process.

28. Lastly, it is worrying that a number of important previous recommendations have still not been addressed and that elections will again been held on the basis of a legal framework which is still affected by a number of shortcomings. The Venice Commission recalls that the legislative issues that remained unaddressed in recent reforms broadly relate to, among others, constituency delimitation, restrictive residence requirements for presidential and parliamentary candidates and other undue criteria on voter and candidate eligibility, additional aspects regarding the formation of election commissions, provisions on the misuse of official position for campaign purposes, high donation limits for election campaigns affecting the level playing field, further regulation and oversight of campaign finance, further elaborating media campaign regulations, strengthening the framework for electoral dispute resolution to ensure effective legal remedy, recounts and annulments, and measures to prevent voter intimidation.

29. To conclude, the Venice Commission reiterates its recommendations issued in the initial Opinion, including the overall call for a more comprehensive reform – instead of frequent, limited changes – that meets international obligations and standards and addresses prior recommendations, and which is built on broad consensus after extensive public consultations with all relevant stakeholders. The Venice Commission also reiterates its final statements in the initial Opinion: As Georgia works to further its application for membership to the European Union, the Commission encourages the authorities “to use this as an impetus to further enhance the democratic process. All States need to see democracy as a dynamic process that necessitates sustained dialogue, within an inclusive parliamentary process engaging civil society, and fosters a spirit of cooperation amongst all stakeholders in the interest of a common good.”

30. The Venice Commission remains at the disposal of the Georgian authorities and the Parliamentary Assembly for further assistance in this matter.