

ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process

Participating State: Georgia

UPR Working Group Session and Date of Review: 37th Session, 01/2021

Background

1. Georgia has been a participating State in the Organization for Security and Co-operation in Europe (OSCE) since 1992 and has thus undertaken and recently reaffirmed a wide range of political commitments in the human dimension of security, as outlined in relevant OSCE documents.¹

2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Georgia, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assistance activities as well as monitoring and providing assessments, advice and recommendations relating to the implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Georgia and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Georgia.

Election-related activities

Presidential Election, 28 October and 28 November 2018

4. Following an invitation from the authorities of Georgia, ODIHR established an Election Observation Mission (EOM) to observe the 28 October 2018 presidential election and remained in the country to follow the second round on 28 November. The full EOM report is available at <https://www.osce.org/odihr/elections/georgia/412724?download=true>.

5. The Statement of Preliminary Findings and Conclusions issued for the first round of the election concluded that “the election was competitive and professionally administered. Candidates were able to campaign freely and voters had a genuine choice, although there were instances of misuse of administrative resources, and senior state officials from the ruling party were involved in the campaign. Substantial imbalance in donations and excessively high spending limits further contributed to an unlevel playing field. While public broadcasters provided all candidates a platform to present their views, the sharp polarization of the private media, negative campaigning and harsh rhetoric, and lack of analytical reporting limited the voters’ ability to make a fully informed choice. Legal changes that increased the representation of the ruling party at all election administration levels and the

¹ <https://www.osce.org/odihr/76894>; <https://www.osce.org/odihr/76895>.

insufficient transparency in the selection of non-partisan members undermined the perception of impartiality. Nevertheless, election day generally proceeded in a professional, orderly and transparent manner, despite some procedural issues during counting, as well as many citizen observers and media acting on behalf of political parties and party supporters potentially influencing voters outside polling stations.”

6. The Statement of Preliminary Findings and Conclusions issued for the second round concluded that the run-off was “competitive and candidates were able to campaign freely, however one side enjoyed an undue advantage and the negative character of the campaign on both sides undermined the process. Elections were well administered; yet, the lack of regulation of key aspects of the second round did not provide legal certainty. The campaign was marred by harsh rhetoric. Increased misuse of administrative resources further blurred the line between party and state. Private media continued to demonstrate sharp polarization and clear bias, while the public broadcaster did not ensure editorial independence and impartiality. On election day, voters actively took part and the process was assessed positively, although the observed tracking of voters reinforced concerns about potential intimidation.”

7. This report offers recommendations to support efforts to bring the electoral process in Georgia further in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to eliminating gaps and ambiguities from electoral legislation, ensuring more balanced political representation in election commissions, establishing an effective and timely mechanism to address complaints on the misuse of administrative resources, preventing possible dissemination of hate speech and xenophobia, ensuring efficient oversight and transparency of campaign finance, simplifying the complaints procedures, eliminate restrictions on standing and ensuring that voters cast their ballot free of fear of retribution. ODIHR stands ready to assist the authorities to improve the electoral process and to address the recommendations contained in this and previous reports.

Local Elections, 21 October and 12 November 2017

8. Following an invitation from the authorities of Georgia, ODIHR established an EOM to observe the 21 October 2017 local elections and remained in the country to follow second round contests on 12 November.

9. The Statement of Preliminary Findings and Conclusions issued for the first round concluded that “fundamental freedoms were generally respected and candidates were able to campaign freely in the 21 October local elections. Efficient administration of the elections and accurate voter registration contributed to the quality of the process. The entire context of the elections was shaped by the dominance of the ruling party. There were cases of pressure on voters and candidates, as well as a few violent incidents. Although partisan, increasingly free and active media fostered greater political debate. Election day generally proceeded in an orderly manner, although minor procedural errors were noted during the count.”

10. The Statement of Preliminary Findings and Conclusions issued for the second round concluded that the 12 November run-offs in six districts “were well administered and the candidates were able to campaign freely. As in the first round, fundamental freedoms were generally respected. Restrictions on campaigning through media and on candidates’ right to withdraw negatively affected the competitiveness of the run-off contests and highlighted the wider need to improve the legal framework. In between the two rounds, the high number of

complaints dismissed on procedural or formalistic grounds undermined candidates' and voters' right to an effective remedy and public confidence in dispute resolution. Election day proceeded in a smooth and professional manner, with voting, counting and tabulation assessed in positive terms by observers, although indications of possible intimidation and pressure on voters raised concern." The full EOM report is available at <https://www.osce.org/odihr/elections/georgia/373600?download=true>.

11. This report offers recommendations to support efforts to bring the electoral process in Georgia further in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to a need for a thorough review of the Election Code to address undue restrictions, and gaps and inconsistencies, re-considering the formula for the composition of election commissions to ensure more balanced political representation, improving procedures and increasing the transparency of the recruitment process for lower-level commission members, introducing a binding gender quota, in addition to financial incentives, ensuring a clear separation between the state and party and guaranteeing that public sector employees are not subject to pressure to engage in election campaigns, enhancing the effectiveness of campaign finance oversight, enhancing a genuine and independent public service mandate, refraining from registering party activists as citizen observers and media representatives, reviewing legal framework for electoral dispute resolution.

Parliamentary Elections, 8 and 30 October 2016

12. Following an invitation from the authorities of Georgia, ODIHR established an EOM to observe the 8 October 2016 parliamentary elections and remained in the country to follow second round contests on 30 October.

13. The Statement of Preliminary Findings and Conclusions issued for the first round concluded that the 8 October elections "were competitive, well-administered and fundamental freedoms were generally respected. The calm and open campaign atmosphere was, however, impacted by allegations of unlawful campaigning and some incidents of violence. The election administration and the management of voter lists enjoyed confidence. The media is pluralistic, but some monitored broadcasters lacked balance in their campaign coverage. Debates offered a useful platform for contestants to present their views. Voting proceeded in an orderly manner, but counting was assessed more negatively due to procedural problems and increased tensions."

14. The Statement of Preliminary Findings and Conclusions issued for the second round concluded that the 30 October run-offs "were competitive and administered in a manner that respected the rights of candidates and voters, despite the lack of a legal framework for the second round. In the period between the rounds, contestation of the first round results dominated political discourse. Further, the principle of transparency and the right to effective redress were often not respected in the investigation and adjudication of election disputes by election commissions and courts. All this weakened confidence in the election administration. In the short and subdued campaign, media coverage was more balanced than for the first round. Election day procedures were conducted in a smooth and professional manner and assessed positively by observers, as election commissions were better prepared and adherence to procedures improved." The full EOM report is available at <https://www.osce.org/odihr/elections/georgia/297551?download=true>.

15. This report offers recommendations to support efforts to bring the electoral process in Georgia further in line with OSCE commitments and other international obligations and

standards for democratic elections. Priority recommendations relate to ensuring uniform application and provide further clarity on the legal framework, re-considering language and residency requirements for candidacy, removing legal loopholes and strengthening provisions prohibiting the misuse of administrative resources and campaigning by public officials, overseeing, preventing and promptly intervening in case hate speech is suspected, further elaborating criteria for accreditation of citizen observers and media representatives, amended the legal framework to provide explicit provisions for possible second round contests.

16. In March 2016, ODIHR and the Venice Commission issued a Joint Opinion on Amendments to the Election Code of Georgia with regard to the delimitation of constituencies and the raising of the threshold of valid votes to win in the single mandate constituency, from 30 to 50 per cent. The full Joint Opinion is available at <https://www.osce.org/odihr/elections/georgia/227496?download=true>.

17. This Joint Opinion concludes that: “ODIHR and the Venice Commission positively note the amendments related to the redrawing of single-member constituencies and to the threshold to elect members of parliament under the majority system. The amendments pertaining to the redrawing of constituencies represent an important step forward to hold elections respecting *inter alia* the principle of equal suffrage.

18. Deviations among the number of voters in constituencies that previously undermined the principle of equal suffrage have largely been addressed in line with previous recommendations by ODIHR and the Venice Commission in relation to paragraph 7.3 of the 1990 OSCE Copenhagen Document and other international obligations and standards. Nevertheless, the Election Code could benefit from certain revisions to ensure the effectiveness of these new provisions, as well as their full compliance with OSCE commitments and other international obligations and standards.

19. In particular, the amendments do not provide a specific method for establishing constituencies (...), do not specify criteria for permitted deviations in the number of voters, and do not sufficiently address the issue of managing future boundary reviews.

20. Despite the reduction in deviations in the number of voters, significant concerns were noted related to how the boundary delimitation process was undertaken and managed by the government. In particular, many electoral stakeholders criticised the initial stages of creating the constituencies as lacking transparency, impartiality and broad engagement. Later stages of consultation on the proposed boundaries suffered from a lack of stakeholder engagement, which further undermined the inclusiveness of the process.”

21. The increased threshold was adopted sufficiently ahead of the next parliamentary elections and was broadly supported by electoral stakeholders. No concern was raised on the additional percentage of votes required to secure an electoral victory and the potential need for a second round of voting. Moreover, although this could increase the workload of the Central Election Commission (CEC) and require more financial and human resources, confidence was expressed in the Parliament to provide the CEC with the additional required resources.

22. In February 2020, ODIHR issued its Opinion on the Draft of the Amendments to the Election Code of Georgia. The full Opinion is available at <https://www.osce.org/odihr/elections/georgia/445522?download=true>.

23. This Opinion concluded that: “While acknowledging ongoing discussions with respect to the constitutionality of the proposed amendments as well as emphasizing that it is up to the national courts to make a final judgement on constitutionality of the legislation. The choice of the electoral system is a sovereign decision of the state, so long as the chosen electoral system is consistent with the state’s obligations under international law. International standards do not prescribe the choice of electoral systems. The choice of an electoral system, whether it should be a majoritarian, proportional, hybrid, or alternative system, should be subject to a broad inclusive debate, which allows relevant stakeholders to bring forward positive and negative effects of the reform. Any proposed changes have to be carefully considered, including their adoption by a large consensus among political parties.”

24. In light of international standards and good practices, ODIHR made the following recommendations to enhance the proposed amendments:

- a) Amend the provision on how voters are required to mark the ballot to ensure that ballots where the will of the voter is clearly expressed are not considered invalid;
- b) Reconsider the provision that disregards the votes for the party lists of voters who voted in favour of a winning independent candidate in the majoritarian race in that district;
- c) Ensure the deadline for the CEC to summarize final election results does not go beyond the period necessary for this purpose and is in line with deadlines for election disputes;
- d) Revisit the method for selecting the sub-district in which by-elections will be held to provide a politically neutral mechanism;
- e) Undertake analysis and, if necessary, include additional provisions to ensure as equal a distribution of seats between the new multi-member constituencies as possible;
- f) Review the draft law to omit provisions which are not being amended, clarify which provisions are replaced, and ensure consistency of the amendments with the current provisions of the Election Code.

25. The follow-up of prior recommendations is assessed by the 2019 EOM as follows: from the final report on the 2017 local elections, recommendations 10, 14, 15, and 21 are mostly implemented, and recommendations 1, 3, 12, 13, 16, 25, and 26 are partially implemented. From the final report on the 2016 parliamentary elections, recommendation 11 is fully implemented, recommendation 14 is mostly implemented, and recommendations 1, 2, 4, 9, 13, 18, 20, 28, 30, 32, and 35 are partially implemented. From the final report on the 2013 presidential election, recommendation 6 is fully implemented, recommendations 19 and 20 are mostly implemented, and recommendations 8, 11, 13 and 15 are partially implemented.

26. After each of the abovementioned electoral cycles ODIHR elections experts met with electoral stakeholders to present the EOM final reports. The reports’ findings and recommendations were presented to, among others, officials from the Ministry of Foreign Affairs and the CEC, as well as members and leaders of Parliament. ODIHR experts also presented these reports in regular post-election conferences in Tbilisi, which gathered most relevant stakeholders from state authorities, political parties, media and civil society. In summer 2020, ODIHR participated in all sessions of the Working Group on electoral reform led by the Speaker of the Parliament. The scope of issues under review of the Working Group

covered a wide range of topics, from the electoral system and threshold to campaign coverage rules and political party regulations. Other areas were the principle of composition of the election administration and the conduct of Election Day.

Legislation Reviewed by ODIHR and the Monitoring of the Appointment Process for Supreme Court Judges by ODIHR

27. Upon request by authorities of a participating State, an OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension to assess their compliance with international human rights standards and OSCE commitments.²

*ODIHR Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia (17 April 2019)*³ and *Reports on the Nomination and Appointment of Supreme Court Judges in Georgia 2019 (June –December 2019)*

28. The Opinion was issued on 17 April 2019 following a request by the Public Defender of Georgia. Although the amendments, adopted on 1 May 2019, reflect some of the recommendations made by ODIHR, most of the identified shortcoming and key concerns remain unaddressed.

29. Following a further request from the Public Defender of Georgia, between June and December 2019 ODIHR experts monitored the nomination and appointment process of Supreme Court judges, and released two reports,⁴ which reiterated shortcomings mentioned in the legal opinion, found that the legal framework does not prevent the influence of partisan politics in the process, nor guarantees that decisions are taken on the basis of objective, merit-based criteria. Further, the parliamentary vote on the judicial appointments amidst a political crisis, brings into question the genuineness of authorities' aim to have an open, transparent process that builds public confidence in the judiciary.

30. Thus, based on the analysis in the Legal Opinion and the findings of the monitoring reports, it was recommended to:

- a) Establish extensive human rights experience to ensure higher standards for the candidate pool;
- b) Repeal of the use of secret votes for shortlisting and nomination of candidates, to be replaced with a wholly transparent, merit-based selection process;
- c) Include a requirement for reasoned decisions based on clearly defined selection criteria;

² The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org.

³ The OSCE/ODIHR Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia (17 April 2020) is available at <https://www.legislationline.org/documents/id/22307>.

⁴ ODIHR, *Report on First Phase of the Nomination and Appointment of Supreme Court Judges in Georgia, June – September 2019*; and *Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia, June – December 2019*.

- d) Introduce enhanced protections against conflict of interest in the selection process and to sufficiently prevent the influence of partisan politics in the process;
- e) Amend timelines to allow a thorough examination of candidates' merits prior to shortlisting and schedule hearings that allow for sufficiently substantive interviews;
- f) Establish an explicit right to appeal decisions;
- g) Ensure adequate regulations and procedures are adopted to supplement the legislation on key aspects of the nomination and appointment process, including on assessment;
- h) Ensure inclusive, extensive and effective consultations and involvement on initiatives for legal reform of the judicial system.

*Joint ODIHR-Venice Commission Opinion on the Draft Amendments to the Law on the Prosecutor's Office of Georgia (4 November 2015)*⁵

31. The opinion was issued on 4 November 2015 following a request from the First Deputy Minister of Justice of Georgia. The main objective of the recent reform of the Prosecutor's Office was to depoliticise the Office and completely separate it from the Government, which is overall in line with the key recommendations contained in the Joint Opinion. At the same time important concern remained: more needs to be done to enhance public credibility and perception of its independence, which would require an enhanced public oversight and representation from civil society among its members.

⁵ The ODIHR-Venice Commission Joint Opinion on the Draft Amendments to the Law on the Prosecutor's Office of Georgia (4 November 2015) is available at <https://www.legislationline.org/documents/id/19883>.