

INTERIM REPORT No. 2
14–24 December 2007

I. EXECUTIVE SUMMARY

- The election campaign has somewhat intensified and continues to be conducted in a highly polarized political environment. The campaign of former President Mikheil Saakashvili has been notably more intense than that of other candidates. The campaign environment has been soured by allegations of use by Mr. Saakashvili of budgetary funds, unequal campaign conditions, intimidation, and vote buying. The OSCE/ODIHR EOM has received information and first-hand accounts, which indicate that some of these claims are credible.
- On 24 December, the Government released video recordings that appeared to show the head of candidate Patarkatsishvili's campaign headquarters plotting a post-election coup. Acting President Nino Burjanadze called for calm, pledged a democratic election, and warned that the government would respond to any attempt to destabilize the country.
- The Central Election Commission (CEC) adopted a number of important decisions, including on election-day procedures. It plans to publish preliminary election results within 24 hours of the close of the polls. The CEC has also launched an information campaign aimed at clarifying the purpose of video cameras installed in polling stations. Opposition political parties continue to voice concerns about remaining inaccuracies and incompleteness of the voter list.
- The OSCE/ODIHR Election Observation Mission's (EOM) long-term observers have substantiated that some opposition-appointed members of Precinct Election Commissions (PECs) were not informed about inaugural PEC meetings. Protocols of some of these meetings were subsequently invalidated by the CEC for procedural violations.
- The media have been airing regular talk shows and debates among candidates or their representatives. Only the former President and Arkadi Patarkatsishvili have thus far made use of paid TV advertisements. Initial OSCE/ODIHR EOM media monitoring results indicate a lack of balance in the news coverage of most monitored TV stations, with Mr. Saakashvili generally receiving the most coverage. Private Imedi TV appears to be more critical of Mr. Saakashvili than other monitored national broadcasters.
- Provisions for adjudicating election-related complaints and appeals have proven to lack clarity, and stakeholders express mistrust in the impartiality of courts and election commissions. The CEC initially did not decide on complaints as a collegial body, as required by law. Even after having started to consider complaints at its sessions, CEC members vote along party lines and not based on reasonable interpretations of the law.

II. THE ELECTION ADMINISTRATION

The Central Election Commission (CEC) continues preparations for the upcoming election, holding sessions almost every day. It has adopted a number of important decisions, including on the form and content of a ballot and different types of protocols, as well as on the modalities of voting abroad. The CEC has also adopted an instruction on election-day procedures.

However, this instruction is not comprehensive, and in places not consistent with the law, which could result in inconsistent implementation of procedures on election day.

The conditions under which CEC sessions are conducted are not always conducive to observation. The results of voting by commission members are not always announced, and it is at times unclear whether a decision was adopted. Many decisions are voted on along political party lines, and not based on reasonable interpretations of the law.

The CEC stated that it intends to publish the preliminary results within 24 hours of the close of voting. The CEC has purchased a new server to increase its technical capacity. The Georgian-language version of the CEC website is updated regularly.

Addressing widely raised concerns that video cameras in polling stations may undermine the secrecy of the vote, the CEC launched a voter information campaign aimed at explaining that the purpose of such cameras is to prevent and/or sanction malpractices. On 17 December, the CEC adopted a decision allowing some PECs to conduct early voting in case of adverse weather conditions. On the insistence of party-appointed CEC members, the PECs where early voting can be held (altogether 21) were specified in the decision.

Training of District Election Commission (DEC) and PEC members is ongoing. DEC members in general appear well organized. As reported by the OSCE/ODIHR EOM observers, the main challenge that many DEC members are facing, especially in urban centers, is connected to the new delineation of precincts, which was necessary due to the lowering of the total number of voters per precinct. While the CEC stated that it planned to produce a range of election materials in minority languages, only ballot papers have thus far been translated and are being printed.

Claims by some political parties that some DEC members did not notify all PEC members of their first meetings have been substantiated by the OSCE/ODIHR EOM observers in a number of cases. In DEC No. 23, for example, the majority of protocols from the first PEC meetings were only signed by seven or eight of 13 PEC members. The DEC confirmed that it only notified the PEC members that it has itself appointed. The United Public Movement (UPM) filed a complaint in this case, claiming that 23 polling stations were already closed by the time of arrival of their members. Cases where party-appointed PEC members were not notified of the first PEC meeting were also reported from DEC members No. 24 and 26.

The CEC annulled the protocols of the first meetings of 16 PECs in DEC members No. 12, 15, 28 and 61, due to the fact that these meetings were held in violation of prescribed procedures. Opposition parties claim that eight PEC protocols in DEC 28 were annulled due to election in these PECs of opposition-nominated members as chairpersons. On 15 December, the Freedom Party filed a formal complaint to Kutaisi City Court, claiming that DEC No. 59 accepted protocols regarding the appointment of PEC chairpersons, deputy chairpersons and secretaries despite deviations from procedures allowed in 89 of 120 PECs under its jurisdiction. The court did not admit the complaint on technical grounds, and the case has been appealed.

The OSCE/ODIHR EOM enjoys good cooperation with the CEC, and the CEC and lower-level commissions have provided the EOM with requested information.

III. VOTER REGISTRATION

The deadline for public scrutiny of voter lists expired on 13 December. The CEC is currently processing the information received from citizens during the scrutiny period. The CEC received about 1,500 calls per day on its hotline, the vast majority of which concerned voter lists.

Voter lists were posted for public scrutiny at all DEC and PECs visited by the OSCE/ODIHR EOM observers. However, election commissions did not always make corrections requested by voters. EOM observers witnessed cases where voters were turned away by PEC members and were advised to come on election day to be added to the voter list (DEC No. 32 in PECs No. 8 and 9).

Some opposition candidates continue expressing concerns with regard to the voter list. Political parties and NGOs have pointed to its incompleteness and remaining inaccuracies, such as possible multiple and/or incomplete records. Candidates have also raised the issue that citizens who have emigrated remain on the voter list; both the Constitution and the Unified Election Code (UEC), however, guarantee universal suffrage, and the UEC stipulates that citizens are included in the voter list at their place of registration.

Although the CEC announced that some 28,000 deceased persons have been removed from the voter list during door-to-door verification, the EOM observers received numerous allegations across the country that the number of such persons on the list remains high. The CEC, together with the Civil Registry of the Ministry of Justice, launched an initiative under which Civil Registry Offices can be notified about cases of deceased persons remaining in the voter lists, so that a note to that effect can be included in the list.

The CEC informed the EOM that within the legal deadline, it did not receive any complaints regarding inaccuracies in the voter list. On 17 December, the Labour Party submitted a complaint regarding such inaccuracies. Although it was filed after the legal deadline for voter list verification, the CEC announced that the cases listed in the complaint would be checked, and if any mistakes were found, changes would be made following court decisions.

IV. THE CAMPAIGN ENVIRONMENT

The election campaign continues to take place in a highly polarized political environment. Campaign activities have somewhat intensified during the reporting period. In several regions, however, the OSCE/ODIHR EOM long-term observers report very little visible campaigning, and it appears that in much of the country campaigning is low-key at times when candidates are not present. The main campaign activity has been rallies of candidates, most of whom have been touring the country. Campaign posters and door-to-door leafleting have been used to a limited extent. Campaign activities of Mikheil Saakashvili have been notably more extensive than those of other candidates, particularly in Tbilisi. For example, public buses in the capital have been covered with campaign posters for the outgoing President, which Mr. Saakashvili's campaign team asserts are paid advertisements.

Mr. Saakashvili's campaign has focused on social-welfare promises, his record as President, and claims to have improved the lot of Georgians, for example, by increasing salaries and pensions, and by ensuring a reliable electricity supply. He also stresses his aim to restore the country's territorial integrity. While other candidates also highlight social issues, a major element in their campaigning has been to attack Mr. Saakashvili, sometimes in strong terms.

For example, Shalva Natelashvili of the Labour Party was observed at a rally denouncing Mr. Saakashvili as the Anti-Christ. Levan Gachechiladze, candidate of the nine-party UPM, has stressed the heavy-handed crackdown on demonstrations in Tbilisi on 7 November, and has promised to show greater respect for human rights. He has also emphasized the UPM's proposal to transform Georgia from a presidential into a parliamentary republic.

Officials of Mr. Saakashvili's United National Movement (UNM) continue to assert that most opposition candidates are focusing on allegations of electoral violations, rather than on campaigning to win the election, allegedly in order to cast doubt over the election results. Some opposition candidates have stated that they will respect the outcome of a fair election, but persistently express doubts in the fairness of the process.

One candidate, Arkadi Patarkatsishvili, has been out of the country since before the election was called. Having been accused by the authorities in November of plotting to overthrow the Government, he insisted on receiving guarantees that he would not be arrested upon his return. The authorities retorted that he enjoyed the same immunity from arrest as every other candidate, and that no further guarantees would be forthcoming. As this immunity could be lifted by the CEC upon the request of the General Prosecutor, Mr. Patarkatsishvili considered this response to be unsatisfactory.

On 24 December, the Government released video recordings that appeared to show the head of Mr. Patarkatsishvili's campaign headquarters plotting a post-election coup. In a televised address the same day, Acting President Nino Burjanadze called for calm, pledged that the upcoming election would be democratic, and warned that the government would respond to any attempt to destabilize the country.

The campaign atmosphere has been soured by allegations by opposition candidates and some NGOs of a variety of violations. The distribution of vouchers for electricity, natural gas and medical supplies to pensioners and other vulnerable groups has been criticised as an alleged use of budgetary funds in support of Mr. Saakashvili's campaign. UNM officials continue asserting that the voucher distribution was planned before the election was called. However, there is evidence to suggest that the distribution has been used for campaign purposes, blurring the separation between state activities and candidate's election campaign. The vouchers themselves state that they represent a subsidy from the President. Healthcare vouchers for pensioners, as well as temporary employment scheme leaflets, feature visually outstanding number "5s" - the number under which the UNM has been running in elections since 2004. There have been widespread allegations that the distributors of vouchers have used the opportunity to campaign for Mr. Saakashvili. One recipient of a healthcare voucher the EOM interviewed confirmed that the distributor asked her whether she would vote for "Number 5". Another interlocutor offered details on the distribution of vouchers from a UNM office by Mr. Saakashvili's campaign workers.

Opposition candidates have also complained about unequal access to state-owned premises for campaign events. In numerous cases, they have been able to use state-owned premises. Nevertheless, the EOM confirmed that in one case, in Telavi, Mr. Gachechiladze was denied the use of a theatre, which Mr. Saakashvili was able to use the previous day. There have been widespread allegations that opposition candidates have experienced problems establishing campaign offices, due to pressure on landlords not to let the premises. The landlord of the UPM's office in Kareli told the EOM how he and his family were threatened with arrest if he continued to let the office.

There have also been widespread allegations of intimidation. A student in Telavi informed the EOM that he had been warned by a police officer that his career prospects and the future of his family would depend on whether he voted for Mr. Saakashvili. An opposition activist in Mtskheta informed the EOM that he had been warned that his future prospects depended on his supporting Mr. Saakashvili. A number of opposition activists have alleged that they had been kidnapped in an attempt to intimidate them. A UPM activist in Batumi told the EOM how he was held and mistreated during the night of 16–17 December. Opposition figures were convinced that the kidnapping was politically motivated.

Accusations of vote buying have been leveled against candidates Saakashvili and Patarkatsishvili, in a court case brought by the Georgian Young Lawyers' Association. Mr. Saakashvili is accused of two violations – for having bought a computer for a teenager and for distributing campaign leaflets containing free tickets to an amusement park. Mr. Patarkatsishvili promised, if elected, to spend 1.5 billion Lari (650 million Euro) of his own money to pay, among other things, the country's utility bills for 18 months, and for various social benefits.

At the initiative of the Acting President, an Inter-Agency Task Force on Free and Fair Elections (IATF) was established on 12 December under the Minister of Justice, with the aim of ensuring a fair election and liaising with observer organizations. This body has prepared responses to allegations of violations by opposition parties and others, and has declared its determination to react in case of proven violations.

V. THE MEDIA

Georgian Public Broadcaster (GPB) as well as national and regional private broadcasters have been airing regular talk shows and debates among candidates and their representatives, providing candidates with an important forum for an exchange of views and enabling voters to form opinions of the candidates. Two candidates, Irina Sarishvili and Giorgi Maisashvili, who fall into the category of “unqualified” subjects¹, refused to participate in the debates organized by public TV, stating they would only debate with Mikheil Saakashvili. Public TV has also offered time for free-of-charge presentations to all candidates; four candidates have used this opportunity so far. Candidates have also been able to utilize free airtime on private broadcasters.

By law, all candidates are entitled to buy airtime/space for political advertising under equal conditions. So far, only two candidates, Mr. Saakashvili and Mr. Patarkatsishvili, have used this opportunity. The former has placed paid political spots on all four nationwide TV channels, while the latter has placed advertisement only on Imedi TV affiliated with him. At least three candidates have publicly complained about the high prices for paid political advertising on national TV channels. The GPB official told the EOM that the public broadcaster's rates for political advertising are approximately ten times higher than rates for commercial advertising.

The OSCE/ODIHR EOM's preliminary media monitoring results indicate a lack of balance in the prime time news coverage of candidates on most monitored TV stations. Between 7 and 20 December, public TV devoted 41 per cent of its political and election news coverage to activities of Mr. Saakashvili. Ninety-nine per cent of this coverage was positive or neutral in tone. By comparison, the next most covered candidate, Davit Gamkrelidze, received some 17

¹ See OSCE/ODIHR EOM's Interim Report 1 available at http://www.osce.org/documents/odihr/2007/12/29018_en.pdf for details on the legal provision.

per cent of the coverage, followed by Levan Gachechiladze (16 per cent) and Shalva Natelashvili (13 per cent). The tone of coverage of these candidates was also mostly positive and neutral.

The two nationwide private TV channels, Rustavi 2 and Mze, have adopted a similar approach to public TV and devoted the bulk of their news coverage to Mr. Saakashvili. On 16 December, for example, public TV, Rustavi 2 and Mze broadcast live a 28-minute prime-time news item about a meeting of Mr. Saakashvili with employees of Tbilisi's Rustaveli Theater.

On another national television channel, Imedi TV, while Mr. Saakashvili received the highest share of prime time political and election-related news coverage, 34 per cent, it was much less than what he received on other three channels. In addition, while some 45 per cent of Mr. Saakashvili's coverage was positive in tone, as much as 15 per cent was negative. The next most covered candidates were Mr. Gachechiladze (18 per cent) and Mr. Patarkatsishvili (17 per cent). The tone of their coverage was mainly neutral or positive. Tbilisi-based local TV Kavkazia showed a different picture and provided more time to opposition candidates (Mr. Natelashvili, Mr. Gamkrelidze and Mr. Gachechiladze) and mainly neutral or critical coverage of Mr. Saakashvili.

The CEC is conducting, for the first time, its own media monitoring through a contracted commercial company Prime Time. On 18 December, the CEC published its first media monitoring results. To date, no official complaints about the media coverage of the election have been filed, and neither the CEC nor the Georgian National Communications Commission (GNCC) have taken action against any broadcasters in this respect. The public TV has aired regular TV program where members of a self-regulatory media council set up by Adam Michnik discussed the coverage of the election.

Imedi TV has filed a lawsuit against the GNCC requesting annulment of three sanctions it imposed in connection with November events.² On 14 December, Tbilisi City Court agreed to hear the lawsuit in connection with the warning and the temporary suspension of the license, but refused to consider annulment of the fine. Imedi TV's request for annulment of all three sanctions has been, *inter alia*, motivated by the fact that its license will expire in April 2008 and it could be automatically prolonged if the broadcaster is not fined by the GNCC.³ The case will be heard in substance on 16 January. In addition, Imedi TV informed the EOM that since 3 December, its accounting has been under examination by tax inspectors from the Ministry of Finance.

VI. COMPLAINTS AND APPEALS

A number of formal complaints have been filed to election commissions and courts against decisions of the election administration and about breaches of campaign regulations.⁴ Political parties and observers express mistrust in the impartiality of election administration and courts,

² The GNCC sanctioned Imedi TV with a warning and a fine, both issued on 7 November, and a temporary suspension of its license on 8 November, for allegedly calling for the violent overthrow of the Government. While the GNCC terminated the warning and the temporary suspension of the Imedi TV license on 4 December, Imedi TV has argued that the GNCC decisions were illegal from the moment of their adoption.

³ Article 39 of the Law on Broadcasting stipulates that a license may be prolonged automatically if the sanctions determined by Article 72.2 have not been applied.

⁴ The CEC received 15 complaints, Tbilisi and Kutaisi City Courts - 12 cases, and the Courts of Appeal - five.

believing that decisions would favour the UNM and its candidate. In practice, the procedural provisions for adjudicating complaints and appeals have proven to lack clarity, as complainants, election commissions, and courts grapple with interpreting and applying them.

The CEC has received complaints from various opposition parties and NGOs alleging misuse of administrative resources and vote buying by the governing party candidate requesting his de-registration. The CEC also received complaints regarding campaigning by political officials and appointees while on duty, with requests that these persons be fined.

Initially, the CEC was not deciding on complaints as a collegial body as required by law⁵; instead, the CEC Chairperson was alone responding to complaints via rejection letters. These letters failed to sufficiently state the facts and law on which decisions were based, and were, for the most part, not consistent, legally grounded or in accordance with the spirit of the law. Only on 19 December did the CEC begin to adjudicate complaints as a commission. Although the sessions are open and collegial, they lack full transparency. Members seemingly lack aptitude in the adjudication process, as issues, facts, and law are not clearly, thoroughly and properly considered and debated. Members tend to vote along political party lines, failing to base their decisions on reasonable interpretations of the law. For instance, the six opposition party appointees have so far consistently voted together in favour of finding the ruling party in violation of campaign laws, with seven other members voting against. Notably, so far all complaints against the governing party candidate and political officials and appointees have been rejected by the CEC.

In a case brought by the Georgian Young Lawyers Association (GYLA) against a CEC decision, Tbilisi City Court rejected that certain political appointees were illegally campaigning in support of Mr. Saakashvili while carrying out work duties; another case on the same issue is still to be heard.⁶ In another case, GYLA's request to Tbilisi City Court to de-register candidates Saakashvili and Patarkatsishvili on allegations of vote buying was denied.

Tbilisi City Court also heard a complaint by the UNM against a CEC decision not to permit Georgian soldiers in Kosovo and Iraq to vote abroad. The court ruled that the CEC decision lacked sound legal basis, and the judge criticized the CEC for voting on the decree based on political and not legal grounds. Notably, the CEC's lawyer admitted in court to the illegality of its own decision.⁷

The CEC, Public Defender, Interior Ministry, and General Prosecutor have received complaints on election-related and politically motivated crimes, with allegations of threats, kidnappings, and attacks on opposition supporters, some implicating law enforcement officials. Many cases were closed by the Interior Ministry due to lack of evidence, while several cases are still under investigation. The Public Defender reports that citizens are reluctant to provide witness statements.

On a positive note, there have been a number of initiatives, funded by international donors, to train prosecutors and judges on election law and best practices in investigation and prosecution of election-related crimes. Complaint hotlines have been established by the CEC, Interior

⁵ Article 29(u) of UEC provides that the CEC (as a commission) takes decisions on election-related applications and complaints. Notably, the CEC regulations fail to address in detail how submitted complaints are to be dealt with.

⁶ These cases allege prohibited campaigning by the Tbilisi Mayor and various Ministers. The Court has not yet released its written reasoned decisions on any of the cases.

⁷ Six CEC members appointed by opposition parties voted against the soldiers casting ballots, while seven other members voted in favour, with the decree failing to muster the required two-thirds majority.

Ministry, and NGOs, mandated to receive complaints, and/or provide legal assistance and advice to the public on election issues.

VII. DOMESTIC NON-PARTISAN OBSERVERS

Domestic organizations are actively engaged in the observation. While having the right to observe all stages of an election, domestic organizations have to declare in advance which district each individual observer would be present in on election day.

OSCE/ODIHR EOM was informed about cases when ISFED observers left the organization citing pressure as a reason. In Adjara, ISFED's district coordinator was intimidated by a UNM campaigner; an investigation was initiated and the person was suspended from the campaign. The Public Movement "Multinational Georgia" claimed that they had problems organizing trainings for their observers due to the reluctance of local authorities and private owners to provide premises. During the reporting period, GYLA was active in filing complaints with the CEC and courts regarding different aspects of the election campaign (See Complaints and Appeals).

IX. OSCE/ODIHR EOM ACTIVITIES

During the reporting period, the EOM continued its regular activities, meeting state officials, including the IATF, party representatives, candidates, election administration, court officials, representatives of mass media and civil society, and diplomatic missions. The head of mission has met, *inter alia*, the acting President, the acting Speaker of Parliament, the Chairman of the CEC, the Chairman of the Security Council, and the UN Secretary General's Special Representative. LTOs deployed throughout the country continue to observe electoral preparations and the campaign in the regions and are preparing for the deployment of short-term observers. In co-ordination with parliamentary delegations and their local representatives, the preparations for the deployment of observers from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe and the European Parliament are underway.