



ELECTION ASSESSMENT in the South Caucasus (2003-04)

ARMENIA
AZERBAIJAN
GEORGIA





ELECTION ASSESSMENT
in the South Caucasus
2003-04

Armenia
Azerbaijan
Georgia

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FOREWARD

These essays tell the story of elections that took place in 2003 in the three countries of the South Caucasus, Armenia, Azerbaijan and Georgia, seen through the eyes of nine regional participants and commentators. The authors therefore write with the immediacy and the vibrance that comes with close engagement, and sometimes take strong judgments based on their individual standpoints as the processes unfolded. While the political situations and dynamics in the three countries are very different, the studies reveal many common challenges for reformers seeking to entrench well-organised, transparent and sustainable election processes. The endeavours of ruling elites to resist or, when pressure for change is strong, dissemble and delay are highlighted. Even in Georgia, where the fall of a discredited regime has led to widespread celebration, a careful scrutiny of the landscape reveals a picture in which there are perhaps less checks and balances after the 'Rose Revolution' than there were before.

A strong presidency is common to the institutional framework of all three countries, a feature often attributed to the traditions of hierarchy within communities in the region. It is sometimes suggested that these traditions are linked to the concept of exchange of favours, in which leaders protect their followers and deliver benefits to them, and followers return the favour by giving something of value to the leader. The studies bring into focus the challenges of using presidential and semi-presidential constitutions to deliver accountable and effective democracy rather than solely to reflect older forms of organisation of society.

The need for a strong and trusted election administration is clearly high on the agenda throughout the region. The most common approach to this issue worldwide, especially strong in new democracies, is the establishment of an independent and permanent electoral management body. However, where the legacy of a partisan state bureaucracy is still strong, there is often a lack of confidence that it would yet be possible to put such a body in place. In such cases, an approach is often adopted in which representatives of competing political forces mutually police each other's activities, thereby ensuring independence.

The studies show however that the South Caucasus countries have yet to fully adopt either approach. While opposition and civil society pressure, supported on occasion by international recommendations, have emphasised the importance of trust in the election administration, the commissions in place in all three countries in 2003 retained structures under which the executive power could maintain control.

Election administration needs not only to be independent but also professional. Election administrators in the region face the challenge to build the capacity to run efficient elections on a basis that can be sustainable given the budget and the human resources that are realistically available. In this context, IDEA is pleased to have been able to support, with the assistance of the Government of the Netherlands, IDEA's member state, both the development of interactive training material to assist capacity building by regional election administrations in the South Caucasus and the implementation of training programmes by the Central Election Commission of Georgia.

The use of the media in influencing elections is increasingly recognised worldwide, and the Caucasus is no exception. Elections may be technically well administered may still take place in an environment where the messages of the political grouping in power predominate in the media. The voices of other contenders are completely drowned out in the period before the intense scrutiny of the election campaign period and often also during the campaign period itself.

The studies highlight the importance of the development of traditions in the drafting and interpretation of laws and regulations. An excessive reliance on legal formalism can result in restrictions which often particularly hamper opposition contenders. In countries where the assumption is that only that which is openly specified is permitted, it is vital that legislators and regulation drafters are encouraged to cover all the ground necessary to ensure the open competition on a level playing field that democratic elections demands.

I believe that these studies will form a valuable resource to promote continuing public debate among democracy builders in the region. What is however remarkable is the extent to which the issues they raise may find echoes and relevance in many other countries and regions where the quest for democratic elections and electoral environments continues.

Andrew Ellis

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Stockholm
November 2004

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International IDEA in the South Caucasus:

Challenges towards Sustainable Democracy

International IDEA (the International Institute for Democracy and Electoral Assistance) based in Stockholm, Sweden, created in 1995, is an intergovernmental organization with 21 member states across all continents. IDEA plays a crucial role in supporting and advocating home-bred, participatory democratic processes in the South Caucasus. Being an international, inter-governmental organization, it has proven to be impartial and was able to engage in a short period of time a wide network of reform oriented thinkers and practitioners from different regions of the South Caucasus in a dialogue process about the challenges facing the region. This process-oriented and participatory assessment of the challenges of democracy constitutes an important tool for domestic actors to put their concerns on the political agenda and advocate political change.

Beyond fostering participation and debates, International IDEA's intervention in the South Caucasus supports and facilitates development of democratic political agenda and constitution building as well as strengthens the capacities of relevant state administration, non-governmental organizations and political institutions.

The South Caucasus Programme of International IDEA has been started in autumn 2001 operating both at country level mainly in Georgia and at regional level including Armenia and Azerbaijan. International IDEA's Programme Office in Armenia is accredited with a diplomatic status. IDEA's main activities in the South Caucasus region include a process of democracy assessment in Georgia through local experts and activists (2002-03); research and dialogue on democracy at local level (2002-04); fostering regional dialogue on home made democracy building processes (2003-05); professional development of electoral administration - "BRIDGE South Caucasus" as well as Election Assessment in the region (2003-05); political and institutional reform agenda setting and Constitution building mainly in Georgia (2004-05); possible initiation of country project in Armenia (2005-07) on political reform agenda setting and professional development of electoral administration - provided complementary funding is available.

As a contribution to promoting sustainable democracy in Georgia and in the wider context in the South Caucasus region, International IDEA, in partnership with Georgian and regional actors, in autumn 2001 initiated a programme of 'democratic assessment through dialogue' at country and regional levels. The overall objective of the programme is to advance democracy by facilitating political dialogue and articulating a democratic reform agenda. At the first stage of dialogue process in Georgia (2002) IDEA has provided the national actors with a platform for thinking, reflection, analysis and debate to help them assess their country's political, social and cultural development over the past decade and up to the present. The emphasis of the programme is on dialogue which in 2003 resulted in series of 12 Discussion Papers and Agenda for Debate "***Building Democracy in Georgia***". They serve local and national actors together with International IDEA's support, to widen the discussion and debate on the issues and recommendations. In 2004-05 IDEA South Caucasus programme, in cooperation with Georgian NGO Caucasus Institute for Peace, Development and Democracy (CIPDD) will continue and finalize the dialogue process in Georgia with a regional dimension, focusing on generating a national political reform agenda through public participation, mainly on the two topics of "*State power at the national level: balance between its branches*" and "*Distribution of state power between the national and sub-national level*". In 2004 local experts and practitioners developed 2 policy papers on the respective topics, which will become main state policy options in the above mentioned areas.

Assistance to institution reform is being supplied as the outcome of the assessment in particular at election administration area through "BRIDGE (Building Resources in Democracy, Governance and Elections) South Caucasus" project, which is the regional version of the initial BRIDGE Project - a comprehensive capacity-building training curriculum for electoral administrators, created by the Australian Election Commission (AEC), International IDEA, and United Nations Election Assistance Division (UN EAD) in response to the need of electoral administrators from different countries. It was initiated in 2003 by International IDEA and implemented jointly by UNDP-Georgia, IFES-Georgia and IDEA South Caucasus Programme, through developing professional skills of electoral administration in Georgia. The next stage of "***BRIDGE South Caucasus- EMB Professional Development***" project (2004) had a regional dimension of network building, advocacy and training of facilitators in the South Caucasus and wider CIS. Throughout this phase a regional core group was created in the South Caucasus, which undertook preparation of regionalized and contextualized BRIDGE EMB training curriculum, as a strong

capacity building tool for electoral administrators in the South Caucasus countries, and wider in the CIS-Eastern European states. This curriculum in Russian was printed in 2004 and was the main tool at regional Train the Facilitator course. This course created a corps of facilitators, ‘catalysts’ in the region who have international accreditation and can deliver EMB training courses independently in their countries. In 2005 International IDEA will mainly focus on EMB Professional Development and institution building of the Central Election Commission (CEC) of Georgia, in cooperation with the CEC Georgia and the core group of people formed in 2004.

In September 2005 a similar national project, additionally including public outreach dimension, as well as political reform will be started in Armenia, provided additional funding available.

In the frames of the initiative of Election Assessment in the South Caucasus region, in December 2004 International IDEA’s South Caucasus Programme finalized publication of a discussion paper “***Election Assessment in the South Caucasus: Armenia, Azerbaijan, Georgia (2003-04)***” in English and in Russian, which provide one research work and two commentary papers by local experts and practitioners on national elections for each of the three South Caucasus countries, as material for discussion and debate.

Assistance to democracy building in the South Caucasus is carried out in the local government area through “Democracy at the Local Level: A Guide for South Caucasus” Project 2002-04. On the regional level, relevant people from the three countries increasingly participate in IDEA activities, thereby exchanging lessons learned between them and creating more solid regional co-operation among democracy actors. In 2003 IDEA published and widely disseminated the Russian regionalized version of IDEA Handbook “***Democracy at the Local Level: A Guide for the South Caucasus***”. Independent experts in three South Caucasus countries prepared country specific case studies reflecting upon the newly developed local governance systems in their respective countries. These case studies were integrated in the regionalized version of the handbook, which provide both: an introduction to basic tools for understanding and practicing local democracy, and an overview of the first decade of experience in the South Caucasus. The publication serves as a basis for discussion and debate on these crucial issues throughout the region.

The “***Pomegranate - Journal of Democracy for the South Caucasus***” in Russian and English, has been initiated and supported by International IDEA in November 2002 with its partners in Armenia, Azerbaijan and Georgia as a platform of reflection and exchange between the thinkers, activists and policy makers within a regional cooperation development perspective. The pilot No: 0 of the Journal was published in May 2003 in Yerevan, Armenia and widely disseminated.

In autumn 2003 International IDEA published regionalized version of IDEA’s Handbook “***Women in Parliament: Beyond Numbers***” in Russian. This initiative was a respond to local activists and experts concerned with equal gender participation in politics and predominance of men as parliamentarians, cabinet ministers, etc. in the region. It aims at sharing and making accessible IDEA’s expertise and knowledge in this field of democracy building in the region and promoting further dialogue and agenda development on this issue in the region.

Building on the successful completion of the first and second phases of Programme in the South Caucasus, IDEA will continue to work closely with Georgia and Armenia, as well as regional and international partners.

For more information on the programme and its activities, please contact the IDEA South Caucasus Programme Office in Armenia and consult the programme’s information website, which provides an overview and up-to-date information on the programme as well as a library of links to relevant documents and resources: www.idea.int/southcaucasus/.



ELECTION ASSESSMENT in the South Caucasus (2003-04)

ARMENIA



Discussion Paper 1

An Analysis of the 2003 Presidential and Parliamentary Elections in Armenia

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At the time when this case study was prepared, the author was UNDP Armenia Governance Consultant. He is currently deputy director of IFES/Armenia.

November 2003

The 2003 presidential and parliamentary elections in the Republic of Armenia drew intense criticism internationally, in addition to causing bitter resentment among the rival candidates and parties, and further intensifying public distrust of the electoral process. In order to analyse the extent to which the domestic and international outcry was justified, this case study examines the legal framework of the elections, assesses the capacity of the election officials to implement the legal provisions, and evaluates the ability of the candidates and parties to abide by the law. The behavioural patterns of the Armenian electorate are analysed in the socio-economic and cultural contexts. The paper also briefly describes the electoral assistance provided by international organizations. The concluding part suggests a limited number of recommendations intended to contribute to the improvement of the electoral process.

1. The Legal Framework

The Electoral Code adopted by the National Assembly—the Armenian Parliament—on 5 February 1999 replaced earlier, separate laws governing presidential, parliamentary and local elections. The preparation of the unified Electoral Code included an extensive consultative process with the Venice Commission of the Council of Europe and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) although, contrary to what was formally agreed, the National Assembly did not submit the final draft to the OSCE/ODIHR for official comments prior to its adoption.

Although the new Electoral Code does not embody all the recommendations made by the international partners, it was nevertheless a welcome and major step towards securing the integrity of the electoral process in a number of ways. For example, for the first time domestic observers were allowed to monitor elections and, also for the first time, a separate chapter was introduced into the Electoral Code on liability for violations. On the other hand, taking into account the fraudulent practices of the past, the code introduced some restrictions which affected the right of citizens to participate in elections. For instance, the use of mobile ballot boxes was no longer allowed since control over the voting process outside the polling station (the electoral precinct) was weak. Also, the practice of compiling supplementary voter lists at the polling stations on election day was abolished since this provision was frequently abused, allowing the same person to register several times at different polling stations and cast multiple votes.

The Electoral Code was amended several times in response to various emerging issues. Major amendments were introduced in August 2002 to address the concerns that emerged in the wake of the 1999 parliamentary and local elections. In addition to refining some technical aspects, the National Assembly was engaged at that time in political debate on: (a) the composition of the electoral commissions; (b) the structure of the electoral administration; (c) the ratio of proportional to majoritarian (single-mandate) seats in the National Assembly; (d) voting by the members of the armed forces; and (e) the participation of refugees in local self-governance elections.

The independence and impartiality of the electoral commissions had been a matter of concern in the past. Before the amendments, the Electoral Code provided a formula according to which three members of the electoral commissions at all levels were to be nominated by the government, with each party, party bloc or coalition that had a faction in the Parliament nominating a member. In addition, the top five parties or party blocs that collected the highest number of valid signatures, above a minimum of 30,000, to stand in elections to the National Assembly were also entitled to have commission members. One of the shortcomings of this formula was that usually the government nominees come from the parties that were already represented in the National Assembly, and the government would therefore be over-represented in the electoral commissions. In addition, verifying the validity of signatures was cumbersome, and if this procedure were carried out in a formalistic manner many parties would get on to the commissions or would be denied the chance to be represented on them depending on the arbitrary application of the provisions of the Electoral Code. The amended Electoral Code did away with this provision but still failed to propose a formula that would ensure a more balanced composition of the electoral commissions.

After thorough debate in the National Assembly, the electoral commissions were to be composed of three presidential nominees plus representatives of the parties and party blocs that had a political faction members in the existing or dissolved Parliament. Since three out of six parties that had factions in the Parliament were considered pro-presidential, the new Central Electoral Commission (CEC) formed in August 2002 had nine members, of which six were either presidential nominees or supporters of the incumbent president.

Probably the next most disputed issue was the ratio of proportional (party list) to majoritarian (single-mandate) seats in the Parliament. The advocates of the proportional system insisted that de facto the government is formed by the forces that win the majority of seats in the National Assembly and it is therefore essential that people vote for political forces with alternative policies, one of which will assume the political responsibility of forming the executive branch. They criticized the majoritarian system since it offered candidates with controversial reputations who controlled certain localities a greater opportunity to smooth their way to the Parliament. Another persuasive argument produced by the advocates of the proportional system was the hitherto weak political party structure in Armenia: the parties lack a sound and distinctive programme base or platform. The advocates of the majoritarian system pointed to its classic weaknesses, for example, it undermines regional representation, voters are unable to evaluate the personal merits of the candidates, and so on. As a result of these debates the previous ratio of 75 majoritarian to 56 proportional seats was reversed, with the officially stated intention of moving towards an exclusively proportional system as the political party system develops.

A sound electoral administration structure is central to the efficient conduct of elections. The Electoral Code adopted in 1999 created a three-tier election administration—the CEC, regional electoral commissions (RECs) and precinct electoral commissions (PECs). One of the previous links of the election administration chain—the community electoral commissions—was abolished in order to simplify the hierarchy and to avoid the potentially problematic influence of community administrations. There was, however, a great disparity in the workload of the 11 RECs. For instance, the Vayots Dzor Region, with only one majoritarian seat, was covered by a separate REC, whereas the Yerevan REC had to deal with 25 electoral districts where one-third of the total number of voters in the country are concentrated. The amended Electoral Code went to the other extreme. The 11 RECs were replaced in August 2002 with 56 territorial electoral commissions (TECs), corresponding to the number of majoritarian seats in the Parliament and with approximately 40,000 voters in each territory. To expedite the polling and vote-counting process the maximum size of the electorate was reduced from 3,000 to 2,000 voters per polling station (or precinct). Consequently, the number of polling stations was increased by more than 500.

Patterns of voting among the military in Armenia were largely thought to be determined by orders from the commanders, despite certain provisions of the Electoral Code intended to reduce military commanders' direct influence and to make the process more transparent. For example, separate polling stations are opened only if the military compound is located in an isolated area. In most cases, the soldiers are taken to polling stations located in communities within a radius of 50 kilometres. Apart from the logical concern that voting by the military can be manipulated, there were other illogicalities which the legislators also addressed. Before the recent amendments to the Electoral Code, soldiers were electing deputies to the National Assembly in the area in which they were based. This meant that conscripts drafted to the army from different areas of Armenia could determine who would represent that locality in the National Assembly for the next four years, or elect a town mayor without being residents of the town. The amended Electoral Code abolished these provisions, allowing the military to participate in presidential elections and vote for party tickets during parliamentary elections.

On the other hand, there was a serious problem with the participation of refugees in local self-governance elections. The Electoral Code before it was amended contained no provision allowing refugees to vote, while in some communities in Armenia refugees made up almost 100 per cent of the population. This meant that these communities could not form self-governance bodies. These issues surfaced in November 1999 during local elections and the elections were postponed by presidential decree in communities that had a refugee population of over 40 per cent. The amended Electoral Code explicitly states that refugees may vote only in elections to local self-governance bodies.

2. Electoral Administration

The Central Electoral Commission which ran the 2003 presidential and parliamentary elections was formed in August 2002. Five of the members were reappointed by their nominating parties. With the exception of the CEC secretary, the remaining eight members had almost no experience of organizing or administering electoral processes at the lower (TEC and PEC) levels prior to their nomination to the CEC, which was a serious obstacle to effective and efficient management.

As a rule, the CEC members acted more like proxies for a particular candidate or party than like members of an independent body dealing with a plethora of technical issues to ensure the integrity of the

electoral processes. The existing mechanism for nomination to the CEC is not viewed as a tool for appointing an independent electoral administration, but rather as an opportunity to be represented on the commission where the members can ‘defend’ the interests of the parties that nominate them by voting. Moreover, the parties expect the CEC members they nominate to champion their interests. For instance, after the 2003 parliamentary election, when one of the CEC members voted independently, he was expelled from the party because his vote was not in line with the party’s opinion on the fairness of the election results.

In addition to the unbalanced composition of the CEC, with six out of nine members representing the government and the pro-incumbent parties, the CEC did not follow a pluralistic approach which would allow each member to contribute actively to ‘corporate’ decision making apart from voting. Article 39.1 of the Electoral Code states that: ‘Activities of the electoral commissions are conducted based on the principle of partnership.’ This can hardly be true if the CEC’s actual work is looked at closely. Basically, decisions and resolutions have been drafted by the CEC lawyer upon the assignment of the CEC chairman. Despite the fact that the Electoral Code and the CEC charters provide some legal framework for members to contribute actively in this way, the CEC members, probably unintentionally, marginalize themselves, entrusting the drafting of decisions and resolutions to the lawyer rather than coming up with their own suggestions, which can be put into legal language by a lawyer later. This is a technocratic approach inherited from the former authoritarian society—the mentality which believes that only specialists should speak, people have little to say, you should not have an opinion if you are not a specialist, and so on.

The Electoral Code gives the CEC very broad authority for organizing, managing and supervising the electoral process. However, the CEC has not always made full use of its powers and authority in a coherent and prudent manner so as to ensure an orderly, democratic and transparent electoral process. Typically, the CEC has been more consistent in dealing with matters that are clearly regulated in detail by the Electoral Code, for example, the numbering of the majoritarian electoral districts for the National Assembly (Article 41.1.24) or approving the form of ballot boxes (Article 41.1.14). When it is given broadly defined prerogatives, it tends to be unreceptive. There are two plausible reasons for this: its members’ lack of competence in a wider context, and their politically motivated reluctance to take affirmative steps. For example, Article 42.1.8 of the Electoral Code states that the TEC ‘makes public the preliminary results of elections by precincts, based on the data of protocols issued by the Precinct Electoral Commissions’, while at the same time Article 41.1.7 specifies that the CEC ‘publishes instructions on the application of this code’. Despite international observers’ recommendations that instructions be issued for TECs to publish the elections results broken down by precinct, which would increase the transparency of the tabulation of the results, the CEC did not take a formal decision on this issue, arguing that the Electoral Code does not explicitly authorize it to adopt such a decision.

This was a clear example of politically motivated reluctance to take positive measures. The cases of professional incompetence or lack of awareness are less visible and but not less critical. For instance, contending candidates and parties have made the criticism that provisions designed to establish equal opportunities for campaigning through the mass media were violated or that the political forces in power were abusing state resources during the campaign period. According to the Election Law, the CEC is in charge of regulating and supervising such issues. However, even the CEC members nominated by non-incumbent parties, who perceive their functions as advocacy for their own parties, did not use their right (Article 4.15.1b of the CEC Charter) to convene an extraordinary session to discuss these issues.

Under conditions in which the Electoral Code is not able to cover all aspects of the elections, the integrity of this process becomes very susceptible to the quality of the decisions adopted by the CEC. CEC decisions enacted for the presidential and parliamentary elections can be grouped into four categories. The following is a rough classification of the CEC’s decisions based on their main features.

- Decisions that are precise and unbiased. Usually, these relate to minor technical matters that are clearly understood and easily implemented.
- Decisions that are vague and often reflect the already imprecise provisions of the Electoral Code. These decisions are difficult to apply or implement uniformly. However, inconsistency in their implementation does not lead directly to major distortion of the outcome of elections.
- Decisions of a restrictive nature: instead of further regulating the application of the Electoral Code they constrain the implementation of the legal provisions. Such decisions have a direct negative impact on

the transparency and accountability of the electoral process. Examples are the CEC decision restricting freedom of movement of proxies in the polling station or procedures for filing complaints that require verification of election results.

- Decisions that are casuistical and biased. Since the laws in Armenia are interpreted literally, the CEC has room to adopt decisions that do not contradict the letter of the law but are obviously not in line with the spirit of the law. For instance, Article 111.1 of the Electoral Code specifies that parliamentary candidates ‘who are employees of the state and local self-governing bodies of the Republic of Armenia are released from the performance of their official duties from the time of registration until the official announcement of the election results’. Contrary to the logic of this provision, the CEC issued official clarification allowing top state executives (i.e., ministers and their deputies) to stand in National Assembly elections while continuing to carry out their official duties. The CEC argued that ministers and their deputies are considered political nominations according to the Law on Public Service and therefore the restrictions of Article 111.1 are not applicable to them. (It should be noted that the Law on Public Service was adopted after the Electoral Code.)

The administrative and managerial capacity of the CEC is another area for attention. Bearing in mind the overall level of professionalism in all the state institutions, the CEC personnel are not less competent than the staff involved in public administration elsewhere in Armenia. However, shortcomings in their performance can have much more serious implications than failures of other state institutions: for example, if the Ministry of Culture fails to organize a concert it can be hardly be expected that there will be riots in the streets, whereas the failure of the CEC to verify the validity of declared assets can lead to the unlawful registration of a candidate for the presidency.

On the positive side, it should be noted that the CEC has managed to meet critical deadlines and that important preparatory work, such as the printing of ballot papers, the delivery of election materials to TECs, the transfer of funds and so on, has been completed on time. However, the CEC has not had the capacity to monitor and efficiently supervise the process. The increase in the number of commissions immediately subordinate to it, from 11 to 56, when the TECs were introduced was another serious challenge for the speedy communication of messages, timely reporting, accountability, and the oversight of the TECs’ work.

Until recently, the CEC’s technical and support personnel were considered part of the CEC politicized structure and the employees were not protected under the Law on Public Service, which guarantees a certain level of job security for civil servants. In fact, the composition of the CEC staff underwent substantial changes with every change in the CEC chairmanship. Apart from occasional study tours and participation in international conferences, the staff were never specifically trained to perform the duties required by their positions.

Clearly, bearing in mind the great volume and the broad spectrum of its activities close to or during the election period, the CEC has been understaffed. For instance, to monitor the fairness of electoral campaigning a separate unit of professionals would be needed. For such restructuring to take place, the CEC would need to demonstrate political will and reconsider the role it plays and should play in the electoral process.

Elections are always associated with high financial costs, which according to the Electoral Code should be covered exclusively by the state budget. With modest salaries earmarked for the election officials, the budget appropriations are just enough to keep the electoral process afloat. As a rule, international assistance through the provision of equipment, training, voter education and other supplies has covered the ‘secondary’ gaps in the provision for conducting elections.

It is interesting to look at the budgeting practice of the CEC, since it is fairly indicative of the model of relationships that it has established in the hierarchy of the electoral commissions. Budgeting is done exclusively by the CEC. The calculations are based on the number of polling stations and the number of voters in each electoral district. The TECs are not asked to provide estimates based on local factors. As a result, some TECs may receive insufficient funds to meet the basic requirements for the proper preparation and conduct of elections. Similarly, the CEC does not use any consultative mechanism with its subordinate commissions to identify their needs, learn about problems in implementation and discuss draft decisions. This rigid centralism has without doubt had a negative impact on the implementation of the CEC’s decisions by the subordinate commissions whose opinions and concerns are never voiced or heard.

While the budgeting process is highly centralized, the procurement of various supplies is left to the TECs, who are confronted with the problem of finding the necessary goods in remote locations. Here decentralization is hardly justified, since centralized procurement is bound to yield considerable savings and would ensure that a uniform set of election supplies are used in all polling stations. On the other hand, if a TEC or a polling station fails to meet the requirements of the law, the CEC blames the lower commissions openly. Again, this behaviour is typical for the CEC: it tries to disassociate itself from failures and violations by lower commissions.

The TECs are appointed by the same mechanism as the CEC, that is, the members are directly nominated by the president and the parliamentary factions. They are mandated to implement the Electoral Code and the CEC's decisions in their respective territories, as well as being empowered with decision-making authority, and enjoy greater autonomy during local elections and majoritarian elections to the National Assembly.

The TECs have some features in common with the CEC as well as features that are distinct in terms of their motivation, behaviour, perception of functions and performance capacity. Like the CEC, the TECs are more successful when doing very specific tasks and less effective when a series of coherent and coordinated activities are involved, for example, supervising the compilation of voter lists, verifying declared assets and oversight of electoral campaigning. These shortcomings, arising when longer-term electoral processes are concerned, are partly the result of the non-existence or vagueness of CEC decisions, the incompetence and/or shortage of support staff, and the absence of the political will to be objective and persistent.

On the other hand, being closer to the PECs and voters, the TECs understand the nuances and difficulties of elections much better than the CEC. In contrast to the CEC, the TECs tend to be less politicized during periods of heavy routine workload. However, it should be noted that their performance has been uneven for several reasons. As already mentioned, the amended Electoral Code abolished the 11 RECs and established 56 TECs. Some of the former REC members were involved in the newly created TECs and made an important contribution with their knowledge and experience to the professional and technical performance of some TECs. There were instances of TEC members trying to take professional action or make independent decisions on a number of politically sensitive matters. Unfortunately, these attempts triggered an immediate reaction from the central or regional authorities, leading to the TECs' freedom of action being constrained or to decisions they had adopted being cancelled. At the same time, there were cases of TEC members voluntarily acting as candidate and/or party proxies with a latent intention to satisfy the 'client'.

Although the functions of the PECs are purely technical, the Electoral Code does leave room for political manipulation. For instance, decisions on the validity of a ballot paper can be left to the discretion of PECs. The PEC members are nominated by the members of the TEC that covers their geographical area, and it is therefore to be expected that the political spectrum of the CEC and the TECs will be mirrored on the PEC level. This, however, is not always the case. The PEC members are usually nominated from the same pool of candidates, which includes school principals and teachers from the schools where the polling stations are located, or local community members who have been involved in electoral commissions before. Observers in their reports mentioned cases of PEC members being unable to give the name of the party that had nominated them. There have been cases of deceased persons being nominated to PECs.

These incidents suggest that political affiliation at the lowest level of electoral commission is weak, and the political parties, with a few exceptions, do not have solid regional structures with a dedicated membership. At the same time, the PECs are also viewed as the first and probably the most secure stage at which electoral fraud can be attempted. Since the nominating parties cannot withdraw candidates after they have been appointed, PEC members have been requested to write applications of resignation, either under pressure or (mostly) with direct offers of bribes. As a result, before the 2003 presidential and parliamentary elections there were significant changes in the composition of the PECs. If we consider that there are more than 17,000 PEC members and, according to some estimates, the changes in the PECs' memberships were as high as 30–40 per cent before the second round of the 2003 presidential election, artificially motivated resignations numbered in the thousands. The extent of this phenomenon suggests that the existing electoral structure, given the current capacity and political dependence of the law enforcement institutions, is extremely vulnerable to external pressures. However, these massive outbreaks of resignations cannot be

attributed to political pressures alone if there is no fertile ground for exerting these pressures. This is discussed in section 3 below on the socio-economic and cultural dimensions of the behaviour of the electorate.

3. Voting Patterns

Ideally, voting would reflect the citizen's choice based on a competent or informed evaluation of a candidate's personal and professional merits measured against the requirements of the office he or she is standing for. In addition, the voter would gauge the candidate's electoral platform or programme through the prism of his or her own political convictions. Sadly, this type of voting is not universal even in countries with strong democratic traditions and high levels of education. Voting is a mixture of primary and secondary motives formed through an interaction of the voter's social and cultural background, personality, and broadly defined beliefs and values.

The classification presented here is based on an analysis of the primary motives of the Armenian electorate. (A voter may also have secondary motives that belong in other groups in the classification.)

Pro-incumbent voters. These are the voters who are not necessarily comfortable with the existing situation but are ready to vote for whoever holds power. Continuity is important for them as they fear that change will entail negative consequences. These voters are convinced that if an alternative force accedes to power it may repeat the errors of its predecessor. Some of them may have a deeply rooted fear of opposing those in power; others may genuinely believe that whatever is done by the political elite is correct. This can be the voting pattern of a significant share of the voters, as is illustrated by the example of the constitutional referendum in 2003.

In parallel with the parliamentary election, on 25 May 2003 a referendum to adopt amendments to the constitution was taking place. These amendments were part of the election platform of President Kocharyan and of the commitments made by Armenia when it joined the Council of Europe. Although the opposition put forward alternative drafts, the presidential draft was the only one offered for the referendum. The incumbent forces did not make a visible effort to promote the constitutional amendments and there was almost no public campaign with the proposed text being distributed. The opposition parties, on the other hand, ran an active campaign against the presidential version of the amendments. (In the event, the amendments were not adopted in the referendum. The presidential draft received 559,687 votes or over 50 per cent of the vote but this fell below the threshold for constitutional amendments to be adopted, which is one-third of the total number of registered voters. It is extremely unlikely that even 10 per cent of those who voted for the amendments had ever read the text.) There were no reports of ballot-box stuffing or vote buying. Nevertheless, the presidential draft won the votes of the pro-incumbent electorate.

Personality-driven voting. These voters make their choice on the basis of the personality of the candidates. Sometimes they look at their background and evaluate their experience and professional qualities; quite commonly their evaluation is based on superficial criteria, such as physical appearance, dress or even accent. Personality-driven voting is especially strong during presidential elections when the individual characteristics of the candidates are construed within the voter's own perception of what a head of state should be like. These voters prefer strong and charismatic leaders and despise 'losers'. Even a candidate's success in business may appeal to the voters—a phenomenon that became evident during the majoritarian elections to the National Assembly in 2003.

Ideology/programme-driven voting. These voters prefer to make informed decisions. Their choice is based on an assessment of the candidates and of party programmes, and they are interested in knowing how different candidates or political parties will resolve issues that are important to them. Normally, these voters should be a target group for political parties competing for the proportional seats in the National Assembly.

The disaffected vote. For different reasons, these voters are not satisfied with their social and economic status and usually prefer a candidate who would be more critical of the incumbent powers. Obviously, this is the electorate of the opposition and these votes are easy to mobilize. The alternatives or programmes the opposition forces propose are often unimportant for them. They are the 'negative voters': instead of voting for something they vote against someone.

Interest-driven voting. These voters pursue long-term personal or group benefits. If they vote for the incumbent powers, they want to secure their status or business interests. If they vote for the opposition,

they expect to expand their own influence and get personal benefits from the reshuffling of persons in power and the redistribution of resources. Quite often they are engaged in attracting additional votes by legal and illegal means.

Vote selling. These voters expect short-term gains from elections. Some of them are objectively in a dire economic situation and would (reluctantly) sell their votes in exchange for cash, clothing or food. However, the majority of them view every election as an opportunity to benefit from a process in which they do not believe or which they do not understand. The expected gains can vary from a few dollars per family to the construction of a swimming pool for a condominium. If no benefits were offered, most probably they would not vote in elections at all.

Open/compulsory voting. This is direct intimidation during the casting of votes. Observers reported cases of open voting among the military during the 2003 presidential and parliamentary elections.

4. The Presidential Election

The 2003 presidential election was the fourth since Armenia gained independence in 1991. The first presidential elections took place in 1991, shortly after the collapse of the Soviet Union and the referendum on independence. Levon Ter-Petrosyan, one of the leaders of the independence movement, won 86 per cent of the votes without serious competition.

The situation was different in 1996, when the opposition was united behind a single candidate. Ter-Petrosyan was declared president on the basis of the results of the first round, with 51.75 per cent of the votes. The legitimacy of his victory was widely contested since there was a discrepancy between the number of ballot papers and the number of ballot coupons (special detachable stubs carrying voter information, and counted separately) which could have affected the outcome of the first round given the narrowness of the margin.

In March 1998, Robert Kocharyan was elected president for the first term in extraordinary elections announced following the resignation of Ter-Petrosyan. His resignation was triggered by several factors, in addition to his dubious victory in 1996. In the autumn of 1997, Ter-Petrosyan proposed an initiative for a settlement of the Nagorno-Karabakh conflict. His proposal was regarded as capitulatory and excessively concessionary, and was strongly opposed by then Prime Minister Kocharyan. In January 1998, the influential minister of defence publicly announced his opposition to the president's conflict settlement formula and alluded to his pivotal role in securing Ter-Petrosyan's victory in the 1996 election.

Armenia is a semi-presidential republic where the president constitutionally has significant control over the three branches of government. The president chairs the sessions of the Cabinet, although the formal head of the executive branch is the prime minister, who is appointed by the president without the need for approval by the National Assembly. The president can dissolve the Parliament and the constitution does not specify in which cases this power can be exercised. The president chairs the Justice Council which, *inter alia*, is in charge of the appointment and promotion of judges, and also appoints the Prosecutor General and four out of nine members of the Constitutional Court.

Taking into account on the one hand the fact that the constitution does not provide adequate checks and balances, and on the other hand that the institutions of state are underdeveloped, the personality of the president becomes extremely important. In addition to the legal and institutional imperfections which contribute to the disproportionate empowerment of the president, a certain veneration of the institution of the presidency is encouraged by a traditional perception of power that is specific to Oriental societies. Educated and shaped in an authoritarian environment, a significant part of the Armenian electorate vests the institution of the presidency with functions of patronage. It is viewed as a position of almost unlimited authority, sometimes with monarchic features. In return people expect the president to be involved in all aspects of their lives and to handle issues that would normally fall under the authority of local governments in mature democracies. In this context the origin of the person occupying this position becomes very important, and the electorate wishes to see a 'classy' elite at this level rather than a political team or a group of professionals.

In the first round of the 2003 presidential election, nine candidates were registered by the CEC. Well before the start of the electoral campaign, 16 political parties came together to sign a declaration of intent to propose a single opposition candidate for the presidential election. This plan, however, failed since they failed to forge a consensus on the joint candidate. Thus, two likely main opposition candidates—Stepan

Demirchyan and Artashes Geghamyan—were nominated separately by their parties, the People’s Party and the National Unity Party, respectively. The incumbent was nominated by citizens’ initiative, although this group included the governing Republican Party and the Armenian Revolutionary Federation (Dashnaktsutun, the ARF), which held several ministerial portfolios. More than a dozen other political parties, such as the traditional Liberal Democratic Party (Ramkavar Azatakan) and the newly created Armenian Democratic Liberal Union (ADLU) also supported the incumbent.

Although there were nine names on the final ballot paper for the first round, it was obvious that only a few were serious competitors for votes. According to various public opinion polls, including those published in newspapers that supported the opposition, the incumbent, Kocharyan, took the lead, followed by Demirchyan and Geghamyan.

Kocharyan’s electoral campaign was led by the minister of defence, who took leave of absence from his post for this purpose and nominally stayed out of the office throughout the election. The other front-runners appointed party colleagues to lead the electoral campaign.

The slogans offered to the public by the three front-runners matched to some extent either the electoral programmes they had developed or the aspirations of the electorate they appealed to. The president came up with ‘Let’s Work Together’, and indeed his electoral programme resembled more an action plan than a political platform. During rallies he would announce that the roofs of the buildings were to be repaired or that households would be supplied with natural gas. Broader programmatic statements such as ‘Armenia should become the most organized state in the region’ were not elaborated to help the voters understand what was really meant.

Stepan Demirchyan (the son of the late Karen Demirchyan, the former leader of Soviet Armenia, who was assassinated in a terrorist attack in the Armenian Parliament on 27 October 1999) chose the slogan ‘Justice and Dignity’. This was an appealing message for the disaffected voters, who sought social and criminal justice. On a number of occasions, during rallies his supporters stressed that their candidate was the son of Karen Demirchyan. They promised to restore the former, Soviet-era administrative division of Armenia, trying to revive memories of a period when people possibly enjoyed a higher standard of living. Broader statements such as ‘Nagorno-Karabakh should become a party to the conflict settlement process’ were not specifically explained and it was not clarified how the peace-building process would benefit from that arrangement.

Artashes Geghamyan proposed the slogan ‘Let’s Save the Homeland Together’, which perfectly matched the essence of the Anti-Crisis Programme that National Unity had put forward. Geghamyan’s rallies were perhaps the most emotionally charged. He was the most ardent critic of the incumbent and the most optimistic visionary of the dramatic improvements that the Anti-Crisis Programme could bring. In contrast to the other two leading candidates, he made frequent references to his programme when on television.

The electoral campaigns of the different candidates were mostly conducted in two traditional ways—with rallies and on television slots. Although observers reported cases of intimidation for participation in opposition gatherings, the sizes of the crowds attending these rallies suggest that intimidation was hardly a deterrent to participation. There were confirmed cases of public-sector employees, teachers and doctors being instructed to attend the rallies of the incumbent.

The candidates were free to express their opinions and criticize the incumbent forces. Their television slots were free from censorship and from any intervention in editorial content. There were no reports of free or paid air time being denied on public (state-owned) or private television channels. However, there were restrictions on the daily usage of air time on public television, set by the CEC. Thus the candidates were deprived of the flexibility to use the total time allocated at their own discretion. In addition, the public television and five other private channels agreed to establish a price for air time of 120 USD per minute, which is approximately three times higher than the commercial advertising rate on a private channel. For many candidates this rate was prohibitive. However, it is more alarming that television stations, as the most important public information outlets, are using elections to maximize their private profits at the expense of outreach to the public.

The media spectrum was also adversely affected by the closing of two private broadcasters, A1+ and Noyan Tapan. Both lost their broadcasting licences in 2002 in tenders that were considered unfair and biased.

The Yerevan Press Club and the Caucasus Media Institute did quantitative and qualitative monitoring of the media coverage of the presidential election campaign. They concluded that the media coverage was not objective, fair, unbiased or balanced; the Armenian media accompanied most news reports with comments, thus telling voters how to interpret the news; and media coverage was mostly personality-oriented rather than issue-oriented and based on candidates' electoral platforms, which could help the voters make an informed choice. These monitoring reports clearly show that the electronic media, and especially public television, were heavily biased in favour of the incumbent, while the private print media supported the incumbent, or one or another opposition candidates, or no one in particular. Here it should be added that, even during non-election periods, in Armenia comments by journalists do accompany news coverage and news programmes do express their editorial opinion about events rather than report news. Trying to counterbalance the biased coverage in the electronic media, the opposition candidates, instead of using their campaign air time to promote their electoral programmes, were reporting on the meetings and rallies they had had on previous days.

The electoral campaign was especially tense during the second round of the election. Three large gatherings were organized by the opposition and one by the incumbent. More than 200 people were subjected to administrative detention for participating in unsanctioned rallies of the opposition. The most notable event of the second-round campaign was the debate between the incumbent and his rival, Stepan Demirchyan, on public television. Although the format of the debate was not one of the most professional, it was still an important event that enabled the electorate to compare the views of the candidates.

Generally the pre-election period was not free of intimidation, the misuse of state resources, biased media coverage and other violations. Although the International Election Observation Mission (IEOM) of the OSCE/ODIHR and the Council of Europe Parliamentary Assembly gave a positive assessment of voting in 90 per cent of the polling stations during the first round and 87 per cent of polling stations during the run-off, they also recorded violations that included ballot-box stuffing, 'carousel' voting, vote buying, multiple voting, open voting, the presence of unauthorized personnel, and signed and sealed ballot papers circulating outside the polling stations before and during the voting (OSCE/ODIHR and Council of Europe 5 March 2003, p. 7). According to the observers, the vote-counting process was flawed in 20 per cent of polling stations.

Although numerous complaints and appeals were filed either with superior electoral commissions or with courts of first instance, the adjudication system did not work effectively. Several investigations were initiated but none of the cases was eventually prosecuted. The complaints filed with the CEC were never formally discussed or answered by the commission. As the CEC chairman stated in the Constitutional Court, the leadership of the CEC issued 'oral decisions' on these complaints and appeals.

The results of the first round were challenged in the Constitutional Court by Artashes Geghamyan and those of the second round by Stepan Demirchyan. The Constitutional Court conducted the hearings in a professional and consistent manner. Both parties were given equal access to relevant documentation and had equal chances for questioning. For the court to invalidate the election results of the second round, the plaintiff had to produce a body of evidence proving that through violations and electoral fraud the incumbent had illegally gained at least 541,666 votes. This was extremely difficult to accomplish, and Demirchyan's representative requested in his concluding remarks that the court consider the quality and not the quantity of violations. The court did not refute the evidence brought by the plaintiff; the votes received by the incumbent in 40 polling stations had been deducted from the total. However, it left the CEC's decision on the election result in force. The court also condemned the administrative detentions of people participating in peaceful assemblies as a violation of the European Convention on Human Rights. Acknowledging the importance of public confidence in the electoral process, the court recommended to the newly elected National Assembly and the president that the Law on Referendums be amended and a referendum of confidence be held within a year.

5. The National Assembly Election

The 2003 National Assembly election was the third parliamentary election held in Armenia since the declaration of independence in 1991. Since the 1999 election, the outgoing Parliament had undergone significant factional reshuffles resulting from the weakness of the common programme bases of the alliances, intervention by the executive, intra-party disagreements and individual ambitions.

The 1999 election was considered, including by international observers, the most democratic ever held in post-Soviet Armenia. The most important factor contributing to the fairness of the election was the presence of the Unity bloc, created on the eve of the electoral campaign by an agreement reached between the then minister of defence, Vazgen Sargsyan, representing the Republican Party, and Karen Demirchyan, representing the People's Party. Demirchyan enjoyed the sympathy of the disaffected and interest-driven voters of the former Soviet nomenklatura, while Sargsyan was a charismatic leader who appealed to pro-incumbent and personality-driven voters. The incumbent forces felt confident that they would get the majority of the seats in the Parliament by popular vote, which is what eventually happened.

The situation changed drastically after the election with the 27 October 1999 terrorist attack in the Parliament, when Prime Minister Vazgen Sargsyan, Speaker of the National Assembly Karen Demirchyan, his two deputies, two other members of Parliament and a minister were assassinated. Shortly after this tragedy and the loss of the leaders of the Republican Party and the People's Party, which represented two different interest groups, the Unity bloc came to an end, with the Republican Party in power and the People's Party in opposition. (Aram Sargsyan, the brother of the assassinated prime minister, set up the Republic Party, an offshoot of the Republican Party.) A ministerial portfolio was offered to a member of the National Democratic Union, after which serious disagreements emerged within that party and three of its prominent members established their own parties. Another ministerial position was given to a communist; and the Revived Communist Party of Armenia was set up in addition to the traditional Communist Party. The Right and Accord bloc, which had proportional seats in the National Assembly, also ceased to exist.

There are various explanations for this instability of the political landscape and the volatility of the political parties. The predominant popular perception and understanding of the role and functions of political parties was shaped under the single-party system of the Soviet state. The Communist Party was the only political force in power. Being a Communist Party member meant career opportunities and access to power and resources. With few exceptions, people without any belief in the communist ideology were in reality pursuing these benefits by simply joining this political elite club. The single-party system also shaped a widespread rejection of the idea of pluralism: a different opinion intrinsically meant a wrong opinion and not another way of looking at issues or solving problems.

With the Communist Party's loss of power and influence after the collapse of the Soviet Union, its members with unfulfilled ambitions established parties of their own. Today, at least seven different communist parties are registered in Armenia.

Under the authoritarian Soviet system there were also people and dissident groups who initiated informal movements for human rights, the environment and independence. After independence, these groups formed separate parties, such as the Armenian National Movement, the National Democratic Union, the Self-Determination Union and the Constitutional Rights Union. After one of these groups—the Armenian National Movement—came to power in 1991 it basically replicated the communist *modus operandi*; although ideologically libertarian, functionally this group imitated the communist tradition of offering benefits to members of the 'club'.

Two traditional parties created at the end of the 19th century, the Armenian Revolutionary Federation (ARF) and the Liberal Democratic Party (Ramkavar), which had operated abroad during the Soviet period, re-established their presence in Armenia. With its social and nationalistic appeal, the ARF was viewed by the Armenian National Movement as a strong political competitor. Prior to the 1995 parliamentary election, several ARF members were accused of conspiracy and the party's activities were suspended.

The ARF resumed its activities in 1998 after Kocharyan was elected president and subsequently participated in the 1999 parliamentary election, winning seven proportional seats. In the 1999 parliamentary election, a number of newly created political parties also participated, such as National Unity, Powerful Motherland and Country of Law (Orinats Yerkir). Local political analysts suggest that these parties were either directly established by prominent statesmen or enjoyed their strong support.

The regulations for registering a political party in Armenia are quite liberal. The Law on Political Parties adopted in March 2002, which was intended to set a legal framework to encourage the consolidation of political parties and promote their role, specifies that parties must have at least 200 members in order to be registered. On the one hand, it is quite democratic to give freedom even to small political

groups to have their own parties, but on the other hand it leads to illogical fragmentation of the political landscape. In addition, given the 5 per cent threshold—the share of the vote that a party has to attain in order to be represented in the Parliament—these small political groups' chances of getting proportional seats in the Parliament are very limited unless they have significant resources and/or the backing of influential politicians.

The Electoral Code permits independent candidates or members of another party to be included on party tickets. This gives rise to fresh controversy within the parties. In theory, candidates at the top of the list on party tickets have a higher chance of winning seats in the Parliament. Some parties compile their lists in a transparent manner, taking into consideration the status of the candidate in the party hierarchy and the contribution he or she has made as a member of the party. However, for another group of parties the compilation of party tickets becomes a matter for bargaining when consideration is given to individuals who control several of the levers of power or may make substantial monetary contributions.

The great majority of the parties are personality-centred rather than ideology- or programme-based. The charters and programmes of many parties are therefore quite similar and full of general statements. It is becoming increasingly difficult for the voters to make a distinction between political platforms across this blurred political spectrum, and they prefer to 'place their bets' on personalities who would best pursue their interests. Thus the National Assembly is primarily viewed as a representative body for articulating the interests of different groups rather than a legislative forum for nationwide consensus-building through political deliberations.

Seventeen parties and four electoral blocs were registered by the CEC for the proportional elections in 2003. The three parties which had factions in the outgoing Parliament and had supported the incumbent in the presidential election—the ARF, the Republican Party and Country of Law—did not form an electoral bloc. This was a sign of their reluctance to make concessions and their determination to compete seriously with each other. In a number of majoritarian electoral districts each party nominated its own candidate—further evidence of the lack of will for political compromise among the pro-president parties. Moreover, during the electoral campaign they did not hesitate to criticize each other. Considering that all these parties had members on all the electoral commissions, this competition had a positive impact on the overall political balance in electoral administration, contributing to the orderly conduct of the election. In contrast, a number of opposition parties united to form the Justice Alliance, which was another positive arrangement for efficient competition with the pro-incumbent political forces and for maximizing the partners' chances of success.

On the basis of the results of the presidential election it was almost certain that the pro-incumbent forces, the Justice Alliance and another opposition party (National Unity) would win proportional seats in the Parliament, but it was uncertain which of the other parties would clear the 5 per cent threshold.

The majoritarian contest in some electoral districts was less competitive. Of the 56 majoritarian electoral districts, four had only one candidate and nine had only two candidates registered. The number of candidate withdrawals was significant: almost one-third of the candidates initially registered by the TECs pulled out prior to election day. No complaints against forced withdrawal of candidacies were filed officially. Presumably the competing candidates reached some kind of agreement, which could include buy-offs. A fraction of the majoritarian candidates were nominated by political parties or were independent but were openly supported by a political party. However, more were independent, mostly representing the business community. The businessmen standing for the majoritarian seats can be divided into two groups: those who are part of an oligopoly, seeking a new social status, and those of lesser calibre looking for new opportunities to secure or expand their businesses. The behavioural patterns of these two groups during the electoral campaign were also different. The first group was more self-confident and conducted its electoral campaign in a calm and well organized manner, whereas the second was less certain in its victory and resorted to intimidation, more 'unprofessional' vote buying, and fraud during the polling and the vote counting.

No serious disparities in opportunities were visible and no incidents were reported during the election campaign for the proportional seats. In its campaign, the ruling Republican Party stressed the experience and responsibility it was ready to assume. The ARF did not deny that the authorities had achieved the economic growth they reported, but emphasized the importance of a more equitable distribution of the benefits of economic growth. The third pro-presidential party, Country of Law, was more critical of the government. Its election campaign was especially innovative (including, for example, the mass production

and distribution of pens, baseball caps and tee-shirts with the party logo) and professionally designed, with a high-impact message—‘I Want to Live in a Country of Law’—which was promoted throughout the campaign. The Justice Alliance pointed out that, to offset the results of the presidential election, it was essential that it win the majority in the Parliament. National Unity represented the non-aligned opposition and was the most vocal critic of the government. The ADLU entered the election campaign with the slogan ‘Let’s Create a Middle Class’. Its leader spent a considerable amount of time during the rallies explaining the meaning of a middle class and apparently many voters wanted to be associated with it. The United Labor Party, which was headed by a leading importer of mass consumption goods, produced attractive promotional materials and managed to work efficiently with target groups. The name of the party also probably had a certain appeal to the voters.

Offers to the voters, including pledges of goods and services, especially by the majoritarian candidates, were widespread. In addition to traditional offers of cash, clothing and food, there were known cases of repairs being made to roads and flats, electricity bills being paid, computers being donated to schools, free lunches for Second World War veterans, and the baptizing of children.

As required by the Electoral Code, after the election the CEC published the political parties’ campaign revenues and expenditures. Of course, the expenditures just described were not reflected in this financial report. Moreover, the CEC published only summary figures, making the identification, interpretation and effective public oversight of the official party finances impossible. Monitoring of the parties’ campaign finances during the parliamentary election was done by a project carried out by Transparency International. Although not all the parties agreed to cooperate and provide information, the project, by using a consistent methodology, managed to reveal serious discrepancies between official financial statements and actual revenues and expenditures. Among other findings the report suggests that quite often legal entities were reluctant to make donations to political parties because of the fear of reprisals from the authorities in the form of tax inspections or audits. For service providers, such as the designers and printers of campaign materials, not to record the transactions was a means of avoiding the 20 per cent value added tax (VAT); and unequal conditions were created by service providers who expected preferential treatment by influential parties and politicians.

The media coverage of the parliamentary election was more balanced than that of the presidential election. The public television channel provided equal air time to parties and electoral blocs for campaigning, and the news coverage was almost equal in time allotted and neutral in tone. Some private print and electronic media, most notably the ALM television channel, continued to show some bias towards one particular candidate or party. The owner of this channel—the leader of a party standing in the proportional electoral districts—also participated in the majoritarian contest.

The violations registered by the OSCE and Council of Europe observers during the parliamentary election strongly resembled those observed during the presidential election—vote buying, multiple voting, open voting and ballot-box stuffing. Surprisingly, the vote-counting process was more problematic during the National Assembly election—in roughly one-third of polling stations, up from 20 per cent of polling stations during the presidential election. The only reasonable explanation for this increase would be majoritarian candidates’ closeness to the electoral processes in the electoral districts and their consequent intervention.

During the parliamentary election, candidates and parties were more successful in defending their rights in the courts. Seven candidates managed to have a court rule against the TEC’s decision to refuse them registration and one candidate’s appeal against the CEC was also satisfied by courts of first instance. Out of 15 appeals admitted by the Constitutional Court concerning the election results, the court invalidated the results in two electoral districts (the results in three other electoral districts had been invalidated by TECs earlier).

Six parties managed to clear the 5 per cent threshold in the proportional contest. In combination with the results of the majoritarian elections, the seats were distributed as follows: Republican Party 40 seats, Country of Law 19, the Justice Alliance 15, the ARF 11, National Unity nine and the United Labor Party six. Seventeen deputies elected through the majoritarian system formed the People’s Deputy group in the Parliament, while 14 remained unaffiliated.

Since none of parties gained an absolute majority in the National Assembly, so that no single party would be able to form the Cabinet single-handedly, the pro-president parties decided to form a coalition

government. This was a progressive development in the Armenian political culture: for the first time three political parties tried to formalize their relations by signing a memorandum of understanding that outlined the principles and goals of the coalition.

It is difficult to predict how viable this coalition government will be. There are already some indications of disagreement and tensions between the coalition parties, with Country of Law being the main whistleblower. However, the tensions have not yet escalated to proportions that would threaten the further existence of the coalition. One of the parties in formal alliance with the Dignity, Democracy, Motherland coalition has joined the Country of Law party, and similar developments could be expected as the positions of this party or others strengthen.

6. International Assistance and Civil Society Organizations

6.1. International and Domestic Observers

The electoral administration received substantial assistance from international organizations. The US Agency for International Development (USAID) provided equipment to the CEC and TECs. In addition to the provision of equipment, and the United Nations Development Programme (UNDP) conducted training for the TECs and PECs for both elections, covering more than 70 per cent of the total membership or more than 23,000 election officials. The OSCE procured transparent ballot boxes that helped the observers to document cases of ballot-box stuffing.

The International Foundation for Electoral Systems (IFES) printed enough copies of the Electoral Code and CEC decisions to be used by election officials. It also assisted in the preparation of voter education materials and worked with local activists in selected communities to improve the voter lists. During the parliamentary election the IFES and the US National Democratic Institute (NDI) organized debates among majoritarian candidates from several electoral districts. Promedia (a US Government-sponsored print journalism project implemented by IREX) prepared and distributed newspaper inserts on the elections. World Learning provided grants to local non-governmental organizations (NGOs) for small election-related projects.

Twenty-seven domestic NGOs were accredited by the CEC to observe the presidential election and 28 civil society organizations (CSOs) were accredited to observe the parliamentary election. The majority of these organizations fielded their observers in selected localities or monitored specific aspects of the elections, for instance, the accessibility of polling stations for handicapped voters. Very few of them had the capacity to deploy observers countrywide. One which did was an NGO called It's Your Choice. Usually the reports of domestic observers were covered by the mass media. However, the domestic monitoring results are not as important for the public as the observation reports of the international organizations, particularly the OSCE and the Council of Europe. The incumbent powers and the opposition almost never quoted the domestic observation reports, but references to the statements of international observers were quite common. This can be partly explained by the generally insignificant role played by CSOs in Armenia and by the assumption that domestic NGOs are not independent and cannot produce unbiased reports. Some local CSOs used 'Western' methodologies and prepared reports in ways that were quite similar to the reports by international observers, whereas other domestic NGOs hardly used any methodology and produced unjustifiably positive statements similar to the political statement of the Commonwealth of Independent States (CIS) observers. In general, the monitoring analysis was better substantiated when the groups concentrated on specific aspects of elections, like the media monitoring done by the Yerevan Press Club or Caucasus Media Institute.

The OSCE/ODIHR has monitored all national elections in Armenia since 1996. The 1996 OSCE report on the presidential election of that year concluded that 'The results of the first round of balloting could even be questioned until a thorough review and assessment of the irregularities and discrepancies is conducted' (OSCE/ODIHR 24 October 1996). Indeed, given the serious inconsistencies of the electoral process, the 1.75 per cent margin was not a sound basis on which to recognize the victory of Levon Ter-Petrosyan in the first round. The 1998 report on the extraordinary presidential election mentioned that 'This election showed improvements in some respects over the 1996 election' (OSCE/ODIHR 9 April 1998, p. 3). The 1999 parliamentary election was characterized as 'a step towards compliance with the OSCE commitments' (OSCE/ODIHR 30 July 1999). It should be noted that even the NDI, which traditionally gave the most negative opinion about the Armenian elections, admitted that improvements

did take place in the electoral process.

Previous elections were also separately monitored by the Parliamentary Assembly of the Council of Europe. As a rule, its criticism was a little milder than that of the OSCE. During the 2003 elections observers from the Council of Europe Parliamentary Assembly joined the OSCE team in an International Election Observer Mission. The assessment report on the 2003 presidential election stated that the process ‘fell short of international standards for democratic elections’ (OSCE/ODIHR 28 April 2003, p. 1). This election was not compared with previous ones; however, the outcome was not as questionable as the outcome in 1996. Regarding the 2003 parliamentary election, the observation mission stated that the elections ‘marked an improvement over the 2003 presidential elections in the campaign and media coverage, but fell short of international standards for democratic election in a number of key respects’ (OSCE/ODIHR 31 July 2003, p. 1).

One of the conclusive messages of the OSCE/ODIHR report is that: ‘The failure of the 2003 presidential elections to meet international standards lay not in technical or procedural lapses, but in a lack of sufficient political determination by the authorities to ensure a fair and honest process’ (OSCE/ODIHR 28 April 2003, p. 2). This statement is valid to the extent that the electoral process falls under the control of the authorities and is therefore dependent on their political determination. However, is that political determination the only significant guarantee of a fair and democratic process? Probably not: again, this is exemplified in the OSCE/ODIHR’s observation of the 2003 parliamentary election, where it acknowledged that: ‘The political leadership of the country made efforts to discourage violations’ (OSCE/ODIHR 31 July 2003, p. 1).

Despite this greater determination to discourage violations, the report also documented the increased problems in vote counting compared with the presidential election. As mentioned above, this can be explained by more direct and crude interference by majoritarian candidates whose interests were at stake. Elections are a multi-player process and the authorities cannot control all aspects of them, given the current capacity of the various institutions of state to enforce the law and the willingness of some individual members of society to break the law. Even the violations of the electoral law that were allegedly masterminded by the authorities were not adequately concealed, which is indicative of the ability of the authorities to be fully in charge of certain processes.

Moreover, the practice of exchanging favours and reciprocal expectations is widely considered to be acceptable and cannot be ignored. People do favours on their own initiative to show their loyalty or respect in the expectation of at least sympathy from individuals who occupy certain positions. The majority of today’s voters have taken flowers to their teachers from childhood or given a box of chocolates to their doctor and never felt that it was inappropriate. Similarly, a village may decide to show its loyalty to the incumbent and vote for him/her without any intimidation. Hence the percentage of pro-incumbent voters is relatively high in Armenia.

For profound democratic changes to take place in Armenia, significant cultural shifts are needed, including changes in the behavioural patterns of the electorate. It is not only important *how* people vote but also *whom* they elect. If cultural shifts towards adherence to truly democratic values do not occur in Armenia, history has witnessed cases of authoritarian regimes being established through fair and transparent elections.

7. Recommendations

The overall improvement of the electoral process cannot depend solely on changes in the legislation or a professional election administration. It involves more complex reforms that will be understood and accepted by the public. Both the 2003 OSCE reports contain important specific recommendations that should be taken into consideration. The recommendations presented below are focused on four main areas: confidence-building measures; improved electoral legislation; improved electoral administration; and an informed electorate.

7.1. Confidence-Building Measures

To restore people’s trust in future electoral reforms it is essential to start undertaking specific visible steps immediately. The CEC has to acknowledge and assume collective responsibility for serious violations at all levels of the electoral administration by resigning in its entirety, thus obliging the president and the

National Assembly to nominate new members. New nominations can be done from the existing pool of TEC members and it is perfectly feasible to find nine persons among 504 TEC members whose professionalism and impartiality will not be questioned either by the government or by the opposition.

It would be unrealistic to expect that all those who are responsible for electoral violations will be prosecuted. However, at least cases pinpointed in the Constitutional Court recommendations should be thoroughly investigated and prosecuted if appropriate. The society cannot afford to ignore ad infinitum the opinion of the supreme custodian of the constitution.

As a result of the tenders for television broadcasting frequencies, two television companies, A1+ and Noyan Tapan, lost their licences in 2002. This could perfectly well have happened as part of a fair and transparent competition, but as a result of this decision the Armenian electronic media have become less pluralistic. New selection criteria for television companies competing for broadcasting rights should be worked out in order to allow a broader reflection of different views.

7.2. Improved Electoral Legislation

A new formula for the composition of electoral commissions should be devised. Under the current system it is not clear whether the presidency is committed to assume full responsibility for elections or is interested in controlling the work of the electoral commissions. A move to exclusively professional commissions is probably not realistic in the present environment of political distrust, and the members of the electoral commissions should again be nominated by political parties. The National Assembly must find a formula that would ensure a more balanced composition of the commissions. For instance, the officially recognized opposition parties in the Parliament might nominate half of the electoral commission members, or each party might nominate three candidates who are later elected or endorsed by the parliamentarians.

Further, the unenforceable provisions of the Electoral Code discredit the electoral process. The National Assembly should review, amend or remove provisions that are obviously unrealistic because they cannot be implemented. For example, the upper limit on parties' election funds is unrealistically low for running an efficient electoral campaign. Another example is that as long as there is a demand for free goods and services among the voters, the candidates and parties will offer them. The Electoral Code could legalize such activities, thus reducing the controversy that surrounds the provision of free goods and services. Legalization would mean that any candidate or party can provide free goods and service to the voter on a voluntary basis but must not require the voter to 'reciprocate' by voting in favour of the benefactor. If the practice of providing free goods and services is legalized the parties will be able to declare openly that they adopt this campaigning tactic or explicitly reject it as an unacceptable practice which aims at gaining public sympathy.

Sensitive election materials, such as seals and ballot papers, should be under stricter control. For example, the ballot papers could be printed with serial numbers on a detachable stub, thus enabling the electoral commission to ensure that they are not taken out of polling stations and to prevent 'carousel' voting. As an extra security measure, the envelopes containing the polling station seals could be stamped at the CEC using randomly selected party seals before they are distributed.

7.3. Improved Electoral Administration

The CEC should revise its charter and incorporate provisions to encourage participatory and consensus-based decision making. Similar charters could be prepared for the TECs and PECs.

The CEC should establish new relations with the TECs and engage the members of the lower-level commission in the decision/resolution drafting process.

The CEC should review the previous decisions which are in force. Ambiguous decisions should be clarified, while decisions to prohibit activities (see the classification of the CEC's decisions in section 2) should be aimed at further regulating the application of the Electoral Code, not restricting the electoral process. Biased and informally worded decisions should be suspended.

New support staff should be recruited through the competitive recruitment mechanisms of the Civil Service Board. It would be preferable to involve international organizations specialized in electoral assistance in preparing the questions and structuring the interviews.

It is unlikely that even the newly recruited staff will be competent enough to perform complex tasks.

The CEC could subcontract specialized agencies to carry out specific activities; for example, media monitoring could be done by a media consulting firm, candidates' assets could be verified by an auditing institution, the training of members of the electoral commissions could be done by another specialized entity, and so on. These contractors could report periodically to the CEC, since the CEC will retain the decision-making power.

7.4. A Better-Informed Electorate

Usually, candidates and parties start their campaigning earlier than the Electoral Code envisages. It is important to inform voters about the electoral platforms of the competing candidates. It would be advisable to extend the election campaign period as well as to increase the free air time on public television. Legislation might also make participation in election debates mandatory to enable the voters to compare views and approaches.

The information on candidates should be accessible to voters. Strangely enough, the Electoral Code does not require candidates in the majoritarian electoral districts to submit even a simple resumé together with the other materials for registration. This does not mean that the electoral commissions will be authorized to evaluate the resumé for registration, but they should have the power to invalidate registrations if a person standing for public office conceals important biographical facts. Information on candidates' assets should be made public.

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Discussion Paper 2

Comments on the Analysis of the 2003 Presidential and Parliamentary Elections in Armenia

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Comments on the case study by Aghassi Yesayan

In the period since Armenia gained independence in 1991, one of its most acute problems has become the conduct of free and democratic elections. Since 1995, after each successive national election—presidential elections in 1996, 1998 and 2003, and parliamentary elections in 1995, 1999 and 2003—Armenian society has experienced a lasting feeling of dissatisfaction, and the mutual intolerance of political powers is becoming increasingly more acute. After each election the winning political power assumes that the latest elections were a step forward in comparison with the previous ones and that, although in the course of the elections there may have been some shortcomings, they did not have any serious effects on the outcome of the contest. The winning party also promises legislation to improve the Electoral Code by the time of next elections. In contrast, the losing political power assumes that the results of the elections have been falsified and that the newly elected authorities are illegal (illegitimate) and the results have been falsified on a scale exceeding those of previous elections.

These scenarios are also true for the two national elections—presidential and parliamentary—held in 2003. This discussion paper will try to evaluate these elections taking into consideration the electoral traditions of Armenia and the existing legislation as well as the country's political and party system.

1. The Legal Basis

Until 1990 Armenia applied the Elections Law of the Soviet Socialist Republic of Armenia, and it was this law which regulated elections to the Supreme Council in 1990—the results of which have not been challenged by any political powers. Since then the electoral legislation has been changed and modified prior to every election. In 1999 the Electoral Code of the Republic of Armenia was adopted and was subjected to severe criticism by different political forces. In 2001, after it joined the Council of Europe, Armenia committed itself to fulfilling a series of obligations, including the obligation to eliminate the shortcomings of the Electoral Code by the time of the next election, especially concerning the procedural part of the code, connected with the electoral commissions and the body responsible for the voters lists (Council of Europe Parliamentary Assembly November 2003). Nevertheless, the modifications made to the Electoral Code on 2 August 2002 have created new antagonisms. Here are some of them.

1. One of the main problems of elections in Armenia has been the issue of the participation of members of the armed forces. It is well known that the army always votes for the ruling party. There is evidence that in the course of past elections the same military detachments have voted several times in different electoral districts, and the voting has been conducted openly and under the strict supervision of their officers. The code solved this problem by depriving the military of the right to vote in elections to the majoritarian seats in the National Assembly (the Parliament). This has brought about an absurd situation. Currently two groups are represented in the Parliament—a group elected with the participation of the military (the 75 proportional seats) and another elected without their participation (the 56 majoritarian seats). According to the Electoral Code, therefore, voters are classified into two categories, one of which has almost twice as much voting power as the other.

The issue of pre-election propaganda among the military remains unresolved as well. The Electoral Code says nothing on this issue. This can, of course, be interpreted with reference to the formula that 'whatever is not forbidden is permitted'. However, attempts by the opposition to organize election campaigns in military detachments throughout the pre-election period have failed. On 15 January 2003, on the ZHAM ('Hour') television information programme, General S. Mirzoyan, the head of the Military Academy named after former Prime Minister Vazgen Sargsyan, announced that in his opinion the army should be protected from any propaganda and that he had therefore banned the dissemination of any election materials in the army. It appears that military servicemen have the right to vote but are deprived of the necessary information to make their choices.

2. Other changes made in the Electoral Code concern the maximum number of voters per election precinct. At first sight, reducing the number of voters in one district precinct from 3,000 to 2,000 people seems to be a positive change. However, it increased the number of election precincts by almost 500, which makes it even more difficult for the opposition parties, whose financial and human resources are limited, to control them. Now they needed 1,500 more activists than in the course of previous elections to serve as their proxies.

3. There have also been changes in the proportion of the deputies elected by majoritarian, single-mandate electoral districts: instead of the proportion proposed earlier, in 1999, whereby 94 deputies were

elected in proportional, multi-mandate electoral districts and 37 by majoritarian electoral districts, a new proportion was accepted—75 proportional to 56 majoritarian. In my view, this change in favour of an increase in the number of deputies elected by single-mandate electoral districts is closely connected with the position of businessmen and others who are elected to the National Assembly. In 1990–5 there were many top-level managers of local self-government bodies and directors of huge factories among the deputies on the Supreme Council, the majority of whom, although *de jure* non-partisan, were the main base of the ruling party and had huge power both in the Supreme Council and in the local communities. Article 65 of the constitution states: ‘A Deputy should not occupy another state service position or do any paid job with the exception of scientific, pedagogical and creative activities.’ After the draft constitution was confirmed in 1995, the Supreme Council, under pressure from these groups of deputies, adjourned the establishment of a professional National Assembly until the next elections in 1999. Nevertheless, in the 1999 parliamentary election, Article 65 of the constitution was violated and a large number of businessmen managed to enter the Parliament. From the legal point of view this question was regulated only formally: the businessmen continued to manage their private businesses. The same picture emerges from the result of the 2003 parliamentary election.

Taking into account that this category of deputies prefers to be elected in single-mandate electoral districts, as well as their financial capacities and influence in the communities, the ruling political power brings forward different political justifications in favour of the majoritarian election system: political parties have not yet been established yet, elections by the proportional system cannot provide full representation of the *marzes* (regions), and so on. It is interesting that the ruling power always favours the majoritarian principle and the opposition prefers proportional representation (PR). Thus, while it was leading the country, the Armenian National Movement was against the principle of PR, while today, being in opposition, it is fighting for a 100 per cent PR system. Thus, in our view the changes of 2002 in favour of the majoritarian principle were an incentive to businessmen and local authorities who were to use all the leverage they had, in both the presidential and the parliamentary elections, to support the ruling political powers. We all witnessed this in the course of the two elections that took place in 2003.

4. According to the Electoral Code, the Central Electoral Commission (CEC), the territorial electoral commissions (TECs) and the precinct electoral commissions (PECs) are set up as follows: the president appoints three members and the fractions in the National Assembly assign one member each. As long as three of the six fractions in the National Assembly supported the ruling president, two-thirds of the electoral commissions support the candidacy of the incumbent in the presidential election. Naturally, as a result of this all the functions and authority in managing the work of commissions were in the hands of those members who supported the president. The chairmen, vice-chairmen and secretaries of the CEC, as well as the 56 TECs and 1,865 PECs created all over the country, were assigned either by the president or by forces supporting him. As long as elections in Armenia demonstrated that the working principle is ‘What matters is not for whom people vote, but who counts the votes’, this question becomes a subject of serious discussion before each election.

2. The 2003 Presidential Election

Before starting the analysis of the 2003 presidential election, it should be mentioned that in 2002 the independent television company A1+ was deprived of its licence to broadcast on one frequency as a result of an open tender held by the National Commission on Television and Radio. Among a dozen other television companies active in Armenia, A1+ frequently provided air time to political actors who had different political views and approaches. The halting of broadcasting by this company called into question the guarantee of comprehensive information on the forthcoming presidential and parliamentary elections. In 1998, A1+ had made direct broadcasts from electoral districts revealing the violence and fraud that took place there. The forecasts and concerns of the Armenian and international communities came true: all the active television companies in the course of the 2003 elections were under the control of the authorities and never provided objective information on the elections.

On the eve of the 2003 presidential election it became clear that the main struggle would be between the incumbent, Robert Kocharyan, the chairman of the National Unity party, Artashes Geghamyan, and the chairman of the People’s Party of Armenia, Stepan Demirchyan. The Armenian electorate can be divided into two sections. One section includes voters who support the authorities; these are people who are connected with them in financial and other ways, as well as state officials. At the very last minute the

voters who either are indifferent or do not have any distinct political views and preferences, and prefer to sell their votes for few dollars, join this group. The second, significantly larger, section of the electorate includes (a) voters who are dissatisfied with the performance of the ruling authorities and (b) those who do not look for ideological principles in an opposition candidate and make their choice not on the basis of the candidate's career or moral image but rather on the basis of the how critical he or she is of the ruling authorities. A very vivid illustration of this phenomenon is the example of Aram Karapetyan, the president of the Perspective Centre of Strategic Studies, who lived outside Armenia for many years and was unknown to Armenian society before the 2003 elections. Karapetyan won fourth place in the presidential election as a result of his hypercritical position in respect to the authorities and his very emotional speeches, frequently spiced with offensive language.

During the election campaign the executive bodies and state resources were openly involved in the electoral processes and election propaganda. The preliminary report of the International Election Observer Mission (IEOM) of the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the Parliamentary Assembly of the Council of Europe drew special attention to this. It was noted among the shortcomings that 'Public resources were heavily used in support of the incumbent, representing a pattern of unequal treatment of candidates by the authorities' (OSCE/ODIHR and Council of Europe 20 February 2003).

The issue of the head of President Kocharyan's election headquarters had become a subject of discussion in many circles of society and the mass media. From the legal point of view, the appointment of the minister of defence, Serje Sargsyan, as Kocharyan's campaign manager in 2003 was highly dubious. Sargsyan took three months' leave from his post to serve as Kocharyan's top campaign official. Nevertheless, during that period of leave he visited the Russian Federation as part of an official delegation, as well as meeting high-ranking officials visiting Armenia.

The preliminary report of the IEOM also reported cases of disruption of the candidates' election campaigns. The campaign in the first round of the election led the international observers to conclude that: the pre-electoral process did not meet international standards by a number of important parameters (OSCE/ODIHR 20 February 2003). One of the most significant cases was observed in Vardashat, when a deputy of the National Assembly, Hayk Babukhanyan, was knifed. The observer missions and the mass media also reported attempts by high-ranking army officers to interfere in and hinder opposition candidates' election campaigns, attempts at intimidation in the process of setting up the electoral commissions, deliberate inconsistencies and mistakes in the voter lists (although the Electoral Code stipulates a rather detailed procedure for correcting them), and other instances of violations.

Among the shortcomings of the election campaign compared to international standards, the OSCE observers stated in no uncertain terms that the pre-election propaganda in favour of the incumbent, Kocharyan, by Armenian public television, as well as other private television companies, violated the principle of equality. 'Public TV failed to comply with its legal obligation to provide balanced and neutral information on the candidates, violating the principle of equal access for all candidates' (OSCE/ODIHR and Council of Europe 20 February 2003, p. 1). The partiality of public television's interpretations and analytical programmes was also highlighted. Regarding the private television companies, the international observers stated that they were even less impartial in their campaigning in favour of Kocharyan. For example: 'The private channel with nationwide outreach, Prometevs, allocated 61% of its prime-time news to the incumbent with an exclusively positive tone. In contrast, two candidates considered as opposition front-runners accounted for 5% and 4% respectively, with this coverage mainly negative' (OSCE/ODIHR and Council of Europe 20 February 2003, p. 5).

The print media presented almost the same picture. For instance, the state-financed newspaper *Hayastani Hanrapetutyn* ('Republic of Armenia') was openly supporting the incumbent, devoting 68 per cent of its total space to campaigning and advocacy for him. According to the assessment of the international observers the private newspapers, too, were not impartial, despite the pluralism of opinions. Private newspapers were mostly supportive of the opposition candidates and critical of the incumbent. The same picture was revealed by monitoring done by the Yerevan Press Club and the Caucasus Media Institute.

Both local and international observers and the opposition media noted different violations during the election process. Cases of ballot-box 'stuffing' in favour of the ruling president were widely witnessed. The violations observed were committed not only by citizens but also by state officials, deputies of the National

Assembly, and either directly by the members of the TEC or with their support. Cases of ballot-stuffing by local observers were also recorded. Interestingly, the domestic observation missions were overwhelmingly appointed by the authorities supporting the incumbent. The principle of secrecy of the vote for military servicemen was completely violated. Marked ballot papers were openly examined by their officers and only put into the ballot boxes after a visual check. During the pre-election period and on polling day a huge number of cases of attempted bribing of voters and electoral commission members were reported. A number of cases of ‘carousel’ voting, voting for others or multiple voting, open voting and even voting by minors were recorded as well.

2.1. Violations During the Vote Counting

At this stage falsification of the results took place, including ballot papers in favour of opposition candidates being placed in the packs of those of the incumbent, or being declared invalid without any justification, and fresh cases of ballot boxes being stuffed with invalid ballot papers. A need for this kind of activity had emerged, especially in districts where the votes for Kocharyan were visibly few in comparison with those in favour of Demirchyan, or at least they were equal. At this stage police officers were taking a more active role by pushing observers and proxies out of the voting precincts and giving out information about the situation in the precincts. In addition to this, dozens of members of electoral commissions representing opposition, observers and proxies had no chance to file complaints to the TECs before 14:00 hours on 20 February, for the simple reason that they were not yet open. A number of complaints were rejected without any appropriate justification—another violation of the Electoral Code, which guarantees this right. According to the report of the IEOM, none of the 160 complaints submitted to the CEC were processed.

During the period between the first and the second rounds, the CEC was guilty of obvious violations of the Electoral Code (in particular Article 41, Article 7, and others), failing to discuss complaints about commission meetings, undertake appropriate measures and publish its decisions.

Mass falsifications during the first stage of the 2003 presidential election caused a wave of public indignation, to which the authorities responded by mass administrative detentions. Active participants at meetings and proxies of opposition candidates as well as heads and members of the election headquarters of the opposition were arrested, and administrative proceedings were instituted against these people behind closed doors without a lawyer being present or court procedures being followed. Human Rights Watch noted that the administrative detentions were **‘an obvious attempt to intimidate and disable the opposition before the run-off’**.

This was not the first instance of administrative proceedings being used to pressure the opposition in Armenia. On 26 September 2002 the Council of Europe issued an announcement condemning administrative proceedings with political purposes. The 31st session of the Parliamentary Assembly adopted Decree 1334(2002) 1PACE, which urged the authorities of Armenia in particular to respect the obligations the country had undertaken, to reconsider the code of administrative violations immediately, and to eliminate the norms that permitted this kind of administrative detention. There were also warnings about the misuse of these norms before the Electoral Code was amended, and against instituting administrative proceedings against the organizers of and participants at demonstrations and rallies.

According to different information sources, in the period after the presidential election between 170 and 400 activists and participants at rallies were taken to the police departments. Some of them were released with a warning not to participate in the demonstrations and 157 people were sentenced to different administrative proceedings.

After the second round of the presidential election, Robert Kocharyan was announced the winner on the basis of the official data.

The election was accompanied by two cases in the Constitutional Court, the first based on the appeal of Artashes Geghamyan and the second case started upon the appeal of Stepan Demirchyan. The court rejected Geghamyan’s appeal but nevertheless made the case for a number of important legal positions in its decision. In particular it decided that the CEC had made a number of mistakes in the process of organizing the election with respect to control over the legal aspects of the election and that the CEC had not adequately responded to the appeals and complaints, or to the violations revealed by the IEOM. The suit made to the Constitutional Court on 17 May 2003 by Demirchyan was qualitatively different,

requesting that the presidential elections of 19 February and 5 March 2003 be declared invalid. Violations that had occurred were presented in seven points of the suit and 1607 pages of attached documents.

3. The 2003 Parliamentary Election

As parliamentary elections are closely linked to the party system, a brief discussion of the dynamics of the formation and development of political parties in independent Armenia from 1991 to 2003 is relevant.

Armenia's Law on Public and Political Organizations was adopted on 20 February 1991. Before this, with the exception of the Communist Party, all the parties in Armenia functioned either informally or as non-governmental organizations. Until 1995—that is, until the new parliamentary election—a total of 47 parties were registered—20 in 1991, eight in 1992, five in 1993, nine in 1994 and five in 1995. In 1991–2, in a country with a new statehood which had no experience of a traditional multiparty system, the emergence of many new political parties was a natural phenomenon. Then, in 1994–5, on the eve of parliamentary elections, many parties were created artificially to take advantage of the state of affairs at the time. Examination of the parties registered before 1999 makes it clear that, with the exception of the Peoples' Party, all the influential parties were registered in 1991–2. These are the Armenian Revolutionary Federation (Dashnaktsutyun, the ARF), the Armenian National Movement, the National Self-Determination Union, the Communist Party of Armenia and the National Democratic Union. If the parliamentary election of 1995 had been free and fair, this process of party development would most probably have continued and been enhanced. The year 1995 was a turning point in the sense that it was then that the tradition of influential officials creating 'pocket' parties, which aimed at their successful election to the Parliament, started.

Given the political events of the time, it became a priority task for the parties to grow into mass public parties. They were expanding their memberships artificially and turning into structures for servicing elections. Political unions were created mainly on the basis of situational rather than ideological interests. This was true of both the ruling and the opposition parties. One of the peculiarities of the current political life of Armenia is that it is impossible to classify parties by categories such as 'winners' and 'losers', 'ruling' and 'opposition'. It is interesting to note the opinion of the OSCE/ODIHR observers about the parties participating in the 1999 election campaign: **'In many cases, political party platforms were not different in substance, making impossible to draw a clear dividing line between opposition and pro-Government parties. In many cases the public credibility of a particular political party appeared to depend on the personal credibility of its leaders' (OSCE/ODIHR 30 July 1999, p. 4).** The fact that 'radical left', liberal and nationalist political powers are included together in pro-president and opposition unions, and the absence of clear ideological differences between the platforms of candidates in the presidential and parliamentary elections, supports this.

The elections in 1999 were not marked by many violations because of the lack of competition. The OSCE observers assessed these elections as the most democratic in the history of Armenia. Power was actually in the hands of the minister of defence, Vazgen Sargsyan. He 'took' the Republican Party—not an influential political actor—and created a pre-election party bloc together with Karen Demirchyan's People's Party (Demirchyan had been the leading opposition candidate in the eyes of the people in 1998). The Unity bloc simply excluded the possibility of political struggle. And the Republican Party, which had had no rating before the elections, became a ruling party. If Sargsyan had created the Unity bloc with any other party registered in Armenia in 1999, that party would surely have enjoyed a parliamentary majority today. With hope of success gone, the process of destruction of opposition candidates and parties started—not without the authorities' interference.

In fact there is no political struggle between the authorities and the opposition in Armenia in the classic meaning of this concept. There can be no other explanation for the fact that ministerial portfolios are assigned not only to parties of the parliamentary majority but to members of other parties as well. Receiving ministerial portfolios, the parties either become pro-government or split and join the opposition after losing their high positions.

Another basic obstacle to the development of political parties and political actors in the normal sense is the system of state governance established by the constitution. In accordance with this system the president appoints or dismisses the prime minister and, on the recommendation of the prime minister,

also appoints or dismisses the government ministers. The parliamentary majority can either approve or not approve the government's programme of action, but the new government is again formed by the president. An opposition politician has no chance to express himself in the executive branch.

The issue of party finance is another important factor. Examination of the pre-election funds of the 2003 presidential and parliamentary elections showed that the funds of the incumbent president and the parties supporting him were replenished mainly by investments by legal entities, whereas the funds of the opposition came from physical persons. This attests to the fact that businessmen avoid openly revealing sympathy with the opposition.

The 2003 parliamentary election followed two tense rounds of the presidential election. It was clear that the opposition was hopeless and tired and the society disappointed and indifferent because of the results of the presidential election: Armenian society had been pinning its hopes for a change of leadership mainly on the presidential elections. In these conditions there was no serious contest during the parliamentary election, and the main contest was not according to the 'authorities-opposition' formula but between three pro-government parties—the Republican Party, Country of Law (Orinats Yerkir) and the ARF. The opposition was mainly represented by the Justice Union, which united seven parties supporting Stepan Demirchyan during the presidential election, and by the National Unity party, led by Artashes Geghamyan, who had taken third place in the presidential election.

Senior officials involved in the lists of parties supporting the incumbent in the multi-mandate electoral districts—the Republican Party, the ARF and Powerful Fatherland—took leave from their posts during the election campaign and thus breached the requirements of articles 97 and 111 of the Electoral Code. The CEC legalized these violations of the electoral code by granting these officials the right to conduct election campaigns.

The most widely used means of getting rid of undesired candidates in this election was the use of double standards in the process of registering parties and candidates. Among many cases, the most interesting instance of refusal to register a candidate was the case of Aram Karapetyan, who had been registered as a candidate for president. On 26 April TEC no. 17 annulled its own decision (of 18 April) about registering Karapetyan as a candidate to be elected by the majoritarian system. According to the official comment, the TEC had received a warranty from the Department of Visas and Passports to the effect that Karapetyan did not meet the requirement of five years' permanent residence in Armenia. The same argument was used by the CEC when it announced that the registration of Karapetyan in the party list of the Justice Union by the proportional system was invalid. Only three months before, however, during the presidential election campaign, the same Department of Visas and Passports had granted Karapetyan a warranty stating that he had lived permanently in Armenia for the past ten years, after which he was registered as a presidential candidate and took fourth place in the first round.

The CEC and the TECs refused to register some two dozen candidates (mainly representatives of the opposition camp) by the majoritarian or proportional systems. As a rule, the reason given for rejections was that the signatures in support of the candidate were invalid or that property had not been declared.

In four electoral districts (nos 14, 27, 39 and 6) only one candidate was registered. Thus the election results in these districts were predetermined. A precedent for this occurred in the 1999 parliamentary election: in the village of Arshaluys, only one candidate was put forward and no one else found it possible to compete with him. According to the international observers' assessments, the unopposed candidates, having huge financial resources, used their influence and property as bribes in order to get rid of undesirable rivals. In a number of districts candidates withdrew for reasons unknown and the overall number of candidates standing fell almost by one-third. And in a number of electoral districts there was formally competition, but in reality the results were predetermined as many candidates essentially did not participate in the pre-election struggle. The evidence of the election campaign and the election results supports this.

In the opinion of various election observation organizations, the coverage of the election campaigns in the mass media was balanced in comparison with that of the presidential election, and television stations presented a range of opinions. Positive changes were noticed, especially with regard to public television, although *Hayastani Hanrapetutyun* continued to be biased and to present counterpropaganda against the opposition.

All the violations that had taken place during the presidential election were repeated in the parliamentary election. The international observers recorded violations during the vote counting and other violations of election procedure in the 30 per cent of 700 electoral precincts they visited.

According to the final data published by the CEC, from 17 political parties and four blocs competing for the 75 proportional seats, only **five** parties and one bloc cleared the 5 per cent threshold. The ruling Republican Party received the majority of votes, winning a parliamentary majority with 23 seats. Second place went to the opposition Justice bloc, with 14 seats, and third place to Country of Law (Orinats Yerkir) with 12. The ARF (with 11 mandates), National Unity (with nine mandates) and the newly created United Labor Party (six mandates), whose proportional party list was headed by a big industrialist, Gurgun Arsenyan, also succeeded in clearing the 5 per cent threshold. The entry of the United Labor Party into the Parliament was a fairly considerable surprise for political analysts. Created only two months before the election and not being a popular party at all, it managed to clear the 5 per cent barrier at the very first attempt, while a number of opposition and pro-government parties well known since independence were left behind. According to the assessments of the mass media, for the first time in the history of Armenia a party of one individual with a ‘deep pocket’ was elected to the Parliament exclusively by money.

Out of 56 majoritarian seats, opposition candidates won only three (having won four out of 150 in 1995 and four out of 75 in 1999). The result of election was that three parties supporting the president—the ARF, Country of Law and the Republican Party—created a coalition government and distributed the posts in the government among themselves. We are, however, convinced that this was done on the recommendation of the president rather than as a result of negotiations between the parties, as the president has the right to distribute key ministerial portfolios in the ministries of foreign affairs, defence and justice, as well as the positions of head of the police and minister of national security.

The IEOM qualified this election as ‘an improvement over the 2003 presidential election in the campaign and media coverage, but [it] fell short of international standards for democratic elections in a number of key respects, in particular the counting and tabulation of votes’ (OSCE/ODIHR 31 July 2003, p. 1).

4. Conclusions and Recommendations

Since gaining independence, Armenia has held four presidential and three parliamentary elections. Theoretically the constitution provided the possibility for political power in the country to be handed over either fully or partially at each of those elections. Nevertheless in these 12 years there has been no change of power as a result of elections. If we assume that Armenia is a democratic country, then we could conclude from this fact that the people have always been satisfied with the policy pursued by the authorities. We could assume this were it not for a court decision of 1998 when the people actually refused to support the president they had ‘elected’ two years before. Moreover, the Armenian National Movement, which according to the official data received more than 50 per cent of the votes in 1995, did not clear the 5 per cent barrier in the parliamentary elections of 1999 and 2003, whereas the Republican Party, which was invisible on the Armenian political arena before 1999 and was unknown to society, won the majority of the votes in the 2003 parliamentary election after effectively leveraging its power.

This consideration alone gives food for thought, quite apart from the assessments of the opposition and international and local observers. It is interesting that the political powers ruling today deny that there were falsifications in 1995–6. Moreover, the politicians ruling before 2000, who are in the opposition today (e.g., the Republic party), admit that results were falsified in 1998. Many representatives of the National Movement—the ruling political power before 1998—while admitting the fraud committed when they were in power, compare it with the fraud taking place today and indicate that the scale on which falsification occurs has greatly increased.

Indeed, in the elections of 1995 the main role was played by falsifications by the electoral commissions at all levels. In 1996 the most significant were falsifications by the power structures, especially the army; and in 1998–99 these were worsened by extensive bribery and voting by ‘dead souls’. In the course of the elections of 2003 new techniques emerged, even falsification of commission seals, and the number of falsifications reached an all-time high. However, comparing the scales on which falsification occurs is meaningless. Eventually each time the number of falsifications has been just enough to preserve the power.

From all this the following question emerges: ‘What about the law?’.

Until 1990 Armenia was regulated by the election law of the Soviet Socialist Republic of Armenia. It was under this law that the elections to the Supreme Council in 1990 were held. These were of course not perfect, but they did result in the communist monopoly being ended and in power passing into the hands of democratic (as seemed at that time) forces. After that, up to 2002, new laws were written, numerous changes were made and the recommendations of international experts were taken into account. Theoretically, the current Electoral Code in general meets the criteria of democratic elections, and Clause 31 of Article 139 stipulates responsibility for violations of the code's principles. The types of falsification that had occurred in the previous elections were taken into account. The punishments provided are fairly severe, starting from a considerable fine and going up to five years' imprisonment.

In connection with the elections at all levels of 1995–2003, the media, the opposition and observers demonstrated and drew the attention of the authorities to many cases of falsification in the course of elections, even as a rule naming the perpetrators. Moreover, in all decisions connected with elections the Constitutional Court has been inconsistent, referring cases to the Prosecutor's Office for prosecution while at the same time stating that the falsifications were very minor and did not affect the election results. In two or three cases it has even annulled the election results, thus confirming the fact of falsification. However, so far no one has been held to account for falsification. In the 1999 elections in the Achapnyak community there were open armed confrontations, shootings and injuries, but even then no one was punished.

This is how we come to the logical conclusion: to the formula 'Not a country of law'. In Armenia the principle of the separation of powers between the branches of government does not operate. The laws regulating the legislative branch and the judiciary are an extension of the executive power, and every time the ruling power, identifying itself with the state ('L'at, c'est moi!!'), puts into operation the levers of power—mainly the power structures and the law protecting the public authorities—to protect itself. Even in the weakest state this kind of situation means that the opposition's chances of succeeding in elections are negligible.

What is the solution? Perhaps the opposition should once more undertake amendments to the Electoral Code and this time demand a 100 per cent PR system. But, as has been shown above, the presidential election system is of a proportional type. The authorities of Armenia cannot accept the idea of losing power as a result of votes cast. The only guarantee of free and fair elections can be the will of the authorities and their acceptance that they might be forced to leave their positions as the result of elections. This is a necessary and sufficient condition for free and fair elections, and the absence of free and fair elections is the result of the will of the authorities.

To make it possible for the will of the citizens to be expressed properly and fairly, the following steps need to be taken.

1. The separation of the branches of government should be enshrined in the constitution and an independent and neutral judicial system should be provided.
2. The freedom of speech should be guaranteed, and as a first step its broadcasting frequency should be restored to the A1+ television channel.
3. The heads of the local self-governance bodies and administrative territorial units (*marzes*) should be elected (including the mayor of the city of Yerevan).
4. The Electoral Code should be changed, and in particular the electoral commissions at all levels should be appointed not according to party quotas but from professionals who have appropriate qualifications; in exchange for this the rights and responsibilities of party proxies should be established.
5. Military servicemen should lose the right to vote for a certain period of time (10–15 years).
6. Parliamentary elections should be held exclusively by the proportional representation system.

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Discussion Paper 3

Comments on the Analysis of the 2003 Presidential and Parliamentary Elections in Armenia

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Comments on the case study by Aghassi Yesayan

In the Republic of Armenia, the year 2003 was marked by a series of elections and a referendum. The neighbouring countries also held elections, so that they seemed to be links in a chain, and this enables us to make comparisons. At the same time, it is obvious that in the South Caucasus region there exist inner and invisible bonds between the countries such as are becoming a tool for integration in the region. In this sense the existing degree of integration, whether we like it or not, forces us to recognize the strength of the different links in terms of a number of common distinctive features.

In my view, in general the rush to elections in the South Caucasus does not indicate that the perception of and respect for human rights have taken root there yet. Human rights are still a purely theoretical, interesting and important (perhaps even fashionable) issue which has yet to become a fundamental of our everyday life—not just an abstraction—such that political forces when going into elections would be thinking not of winning at any price (the end justifies the means) but of the consequences of winning, and would try to win the electorate's confidence by protecting the concrete rights (including the right to vote) of real people.

The elections in Armenia in 2003 also revealed that those who aspire to power are not necessarily guided or motivated by democratic principles but simply believe that the end justifies the means. In other words, a democratic environment has not yet been shaped and elections are not regarded as a process of gaining a mandate from the people.

If we wish to consider the common features that are characteristic of all elections in the South Caucasus, we need detailed political, social and judicial analyses of each election that has taken place in each republic.

1. The Electoral Legislation

In democratic states every election is guided by many factors, but the most significant is the electoral legislation. It should clearly define the procedural mechanisms, the accuracy of the results and the transparency of the whole electoral process—pre-election, election and post-election (that is, the tabulation of the results), without which fair elections are not possible. In this respect, the legislation of Armenia does not meet the necessary standards to ensure a satisfactory process, as is evidenced by the elections of 1999 and 2003.

The elections of 1999 and 2003 are mentioned together because both were held under the same law. A few changes were made in the Electoral Code in 2002 but they were only partial, only addressed separate problems, and were not enough to improve the essence of the code. In this regard we may mention the ruling of the Constitutional Court of Armenia on 28 June 1999 which stated that: 'The shortcomings of and unrealistic solutions of the Electoral Code had a negative impact on the proper organization and conduct of the elections.' Specifically, this ruling concerned the compilation and management of the voter lists; the mechanisms for setting up the electoral commissions and the time frames for doing this; the number of electoral commissions; the intensity of their work schedule (especially in Yerevan); the procedure of decision making and compiling protocols (the records of electoral commissions); and the procedure and time frames for the examination of complaints. If we compare these shortcomings in the Electoral Code in 1999 with what could be observed in the 2003 elections, we can see that the negative aspects are not improving but are actually becoming worse. No realistic solutions have been found to the problems that occurred in the 2003 elections. Indicative of this is the 24 March 2003 ruling of the Constitutional Court concerning the first stage of the presidential elections, stating that: 'A number of decisions of the Constitutional Court of the Republic of Armenia define shortcomings of the Electoral Code which had a negative impact on the proper organization and conduct of the elections.' In other words, the legal standpoint of the Constitutional Court concerning the already amended Electoral Code remains unchanged.

One of serious shortcomings of the Electoral Code is the existing procedure of judicial protection of electoral rights, which is very complicated and inefficient. This conclusion is based on the procedure for appealing under the electoral legislation, which has not functioned properly since the 1996 elections. Article 139 of the code describes 31 types of violations; the competence to examine them, try them and make final decisions belongs to the courts of first instance.

Electoral rights are also protected by the Civil Procedure Code (Article 153), according to which: 'Citizens and parties (party alliances) can apply to [a civil law] court if violations of their right to elect or

be elected are recorded, due to the decision, action (or inaction) of a state body, local self-governance body, state official or electoral commission.’ Article 154 of the Civil Procedure Code also defines the concrete time frames for the examination of cases.

The Constitutional Court is charged with the protection of electoral rights in cases where there is a judicial dispute regarding election results (Article 100 of the Constitution of the Republic of Armenia, Article 87 of the Law on the Constitutional Court, Article 116 of the Electoral Code, etc.). Here, the jurisdictions of the different courts are clearly separated and each is competent only within the scope defined by legislation as required by the constitution (Article 5). In addition, the Electoral Code defines particular time frames for judicial proceedings on concrete violations.

Thus, although the electoral legislation does provide for the judicial protection of electoral rights in the electoral processes, as well as a mechanism for assessing violations of the law, actual practice shows that it does not work.

The question is bound to arise why more than 10,000 people officially involved in the electoral processes—members of the electoral commissions, party functionaries and others—do not appeal to the courts using the available procedure even though they constantly talk of the electoral violations they have witnessed. In my view, this is due to a number of factors: a series of shortcomings, gaps, imprecise definitions and so on noted in a number of rulings of the Constitutional Court (e.g., 16 April 2003, para. 10; 24 March 2003, para. 8; and others); a low level of trust in the judicial authorities; and a lack of training in the law among the majority of the election stakeholders—the members of the electoral commissions, party functionaries and others. There is probably also a psychological factor as well: the candidates (for presidential and parliamentary elections, and the political parties) do not appeal to the courts of first instance because they are confident of victory. Moreover, they concentrate on ensuring victory in the elections rather than on exposing violations of the law.

With some few exceptions, no cases have been initiated, no lawsuits have been filed and no factual data have been presented in the courts of first instance to be used in further cases. In general, it can be said that the interested parties have never taken any appeals on violations of the electoral law, through all the different stages of the preparation and conduct of elections, to court. The fact that some of the decisions of the courts of first instance on a few appeals on violations of the electoral law were not sufficiently accurate is remarkable.

As the ruling of the Constitutional Court from 16 April 2003 (CCR-412) states, the examination of rulings on the protection of electoral rights in the courts of first instance of Yerevan Central, Nork-Marash, Kotayk and Armavir was of an expressly formal character. Moreover, violations of the law—‘ballot-stuffing’, wrong vote calculation, voting for others and so on—were apparent throughout the 2003 elections. The territorial electoral commissions (TECs) in fact baselessly rejected such evidence, whereas the courts of first instance failed to act in accordance with the law. Furthermore, court rulings are not trustworthy since different courts can make different rulings on the same issue: for example, a court of first instance in Yerevan refused to uphold the registration of one parliamentary candidate as a candidate for a seat under the majoritarian system, while another court of first instance in Yerevan upheld it for a seat under the proportional system.

As a result, many candidates find themselves helpless once the election results are announced: no judicial recourse is available because all deadlines have already passed. The Constitutional Court becomes the only alternative, and there case examination is of a specific nature. It is characteristic of the proceedings at the Constitutional Court that they are based on arguments provided under legislative procedure which only authorizes the courts of first instance to investigate the circumstances in which violations have taken place, and the Constitutional Court is not allowed to undertake additional duties. In fact, the Law on the Constitutional Court states that: ‘The actual circumstances relevant to the cases investigated by the Constitutional Court cannot be a subject of judicial inquiry’ (Article 57).

Constitutional justice can only function effectively if the rest of the judicial system functions efficiently. Moreover, international practice demonstrates that constitutional justice presupposes that the normal work of all state bodies that are involved in the electoral process—the electoral commissions, the police, the Prosecutor’s Office and so on—will be fixed by legislation. In this regard, Constitutional Court ruling CCR-408, from 24 March 2003, assesses the legislative problems and shortcomings apparent in the electoral process in Armenia and indicates the need for urgent amendments. Recorded in the decision of

Constitutional Court, this conclusion is mandatory for all appropriate bodies and officials (the National Assembly, the Central Electoral Commission (CEC) and other bodies involved in the electoral process): decisions of the Constitutional Court are final and cannot be subject to revision (Constitution of the Republic of Armenia, Article 102). Accordingly, they should be accepted and implemented by any state body or official without further discussion. The Law on the Constitutional Court (Article 54) clearly indicates that: 'Any demand of the Constitutional Court of the Republic of Armenia with respect to state bodies, officials . . . is compulsory.' This emphasizes the role of the Constitutional Court as a state institution.

2. The Mass Media and the Election Campaigns

To ensure the establishment of a truly democratic government, the administration of free elections in a democratic society requires not only the presence but also the integrity of a wide range of elements. The joint endeavours of all political powers (or at least the majority of them) towards building and protecting democratic values and creating a constitutional order and a civil society are crucial. There should be no compromise with respect to these ideals. They should form the leading, consistent policy based on the overall protection of human rights not only during the pre-election period but continuously and in all spheres of life. The existing authorities can do much to promote these ideals by consistent economic, social, cultural and educational policy, paving the way to the democratization of society and the state.

The mass media have an important impact on the development of electoral processes considering the enormous role they play in building public opinion, an understanding of social policy and law, and political thinking. However, only free media can effectively carry out this mission. Expert assessments confirm that free and independent media still do not exist in Armenia. The mass media either belong to the authorities or are under their influence, or are influenced by political parties. They are not strong and free enough to present objective information. Despite this, the Armenian mass media are unanimous in their negative assessment of the conduct of the 2003 elections and accept that violations of the law were widespread, although they differ in their assessment of the impact of these violations on the electoral process and outcomes.

Throughout the electoral process, and especially during the pre-election period, the shortcomings of the electoral legislation led to additional misunderstanding of the activities of the mass media, as the legislation did not clearly define the criteria for information and propaganda. As a rule, the parties making appeals claim that the main principles of election campaigning have been violated, for instance, through the participation of state and local self-governance authorities, or foreigners and foreign organizations, in the election campaign, or because public property has been used for meetings with the electorate, or that the mass media have violated the Electoral Code and are not performing their role of providing the public with unbiased information. Representatives of the CEC, on the other hand, oppose this by asserting that the principle of equality of all candidates was assured as they were granted free and paid air time for their election campaigning, and claim that any citizen or television company has the right to express their views freely. Legislation cannot resolve these differences of view.

Meanwhile, it has to be said that the CEC failed to control the election campaign effectively. There was a lack of consistency in terms of meeting the requirements of Article 11 of the Law on Television and Radio Broadcasting: different mass media provided partial and biased analysis, and violated ethical and legal norms (Constitutional Court ruling CCR-436, 7 July 2003). Equal opportunities for all candidates are closely tied up with the formation of opinion among the electorate, and require the impartiality of state bodies throughout the electoral process, including the election campaign. The principle of a 'free and fair election campaign' must not in any way be interpreted in such a way as to infringe on the freedom of speech and the right to receive information.

3. Recommendations

1. Elections touch upon the global issues of society: that is why the electoral process in Armenia can meet democratic standards provided a series of improvements are undertaken and the complexity of the subject is taken into account. No issues can be treated here as insignificant or unimportant. Even a 'small lapse' could have serious effects on election results and even be dangerous in the process of democratization. In our opinion, the time factor is essential here. Changes and amendments should not be made

and finalized shortly before elections. However, it is important that they are quickly implemented, considering that changes in the legislation are usually followed by a series of time-consuming normative acts (regulations issued by state bodies) and amendments. Another important point is that all election agents (even considering the enormous number of them) should have time and opportunity to familiarize themselves with the amendments to the law and organize their work accordingly. Another guarantee of successful national elections is testing the amendments to the law at local government elections.

2. Free elections can be ensured if all political actors represented in the Parliament manifest the political will to develop joint approaches to resolving electoral problems. In the absence of such joint approaches it will be almost impossible to find effective short-term solutions. The parliamentary majority could be the initiator of a dialogue for the resolution of this problem.

3. Most of the improvements can be made through the Electoral Code and ensure both a series of laws (primarily the Electoral Code) and further work based on these laws (normative acts, administrative regulations and so on).

(a) The Electoral Code is the basis of the electoral process. The National Assembly should therefore take urgent measures to improve it. In our opinion, amendments to the code should define the concepts used in the law (election results, the results of the vote, etc.); specify the functions of election subjects (party agents, observers and others); specify the right of members of election commissions to resign before elections; and deal with other issues necessary for the transparency of the election process. Any suggested amendments should be based on comprehensive research and analysis.

Currently, apart from recording shortcomings in the electoral process, the mass media and reports by international and domestic observation missions and non-governmental organizations (NGOs) have come up with a number of proposals for improvement. In a number of cases the Constitutional Court has given a legal opinion concerning problems both in general matters (the election processes, the status and legal responsibilities of election subjects, etc.) and concerning specific actual issues (the security of ballot papers, the activities of the electoral commissions, etc.) and its ruling, which is mandatory in democratic states, has been ignored.

(b) Among the wide range of laws regulating the electoral process, special attention should be given to those which regulate the relations between different stakeholders, including the laws on television and radio, the mass media, the political parties and so on. Incompatibilities between various laws, on the civil service and others, and the Electoral Code were revealed and different comments were made during the 2003 elections. Once the Electoral Code is reformed, it is essential that all other laws related to the electoral process are updated as well to ensure a joint, consistent system that does not contain contradictions.

(c) Normative acts are extremely important in terms of ensuring the normal functioning of the electoral process. They must not be contradictory and should support the unification of all electoral legislation.

4. The work of the executive branch is important in the administration of free elections. According to the Constitutional Court ruling of 28 June 1999, there were shortcomings in the Armenian Government's organization and conduct of the elections. According to the Electoral Code, these are the direct responsibility of the executive branch. According to Article 1 of the code, the state is responsible for the preparation, administration, conduct and legality of elections. The Electoral Code anticipates the direct participation of the executive branch in the organization and conduct of elections. In the case of the 2003 presidential and parliamentary elections, the government failed to control the preparation of the voter lists properly. The large number of complaints about the voter lists during the 2003 elections shows that the 1999 Constitutional Court ruling was not groundless and is a serious problem today.

With regard to the executive branch, there is much room for improvement in the work of the law enforcement agencies. This includes not only the formal preservation of public order, which of course is a necessary duty, but also problems directly pertaining to the functioning of the electoral process, such as illegal entry to the electoral commissions, an adequate legal response to violations of the law, and the security of election-related documentation. The executive branch should ensure the normal functioning of the police, the national security bodies and the Prosecutor's Office in order to prevent violations, as well as taking immediate measures if violence occurs.

5. There is no working system of checks and balances and no precise control in the electoral process, and this often leads to an atmosphere of anarchy. Tendencies such as these are likely to increase as long as offenders are not held accountable for their actions. The legislative, executive and judicial powers should play a serious role in the resolution of such issues. Interestingly, a large number of violations were revealed and recorded in the 2003 elections. Both the authorities and the opposition should have a say in the issues of revealing violations under statutory procedure, otherwise talk about just and democratic elections will be nothing but a hollow formality.

6. According to the Electoral Code, a system of electoral commissions headed by the CEC is created to administer and conduct elections. The procedure by which the electoral commissions are set up is the subject of extensive discussions and varying interpretations. The current procedure (they are in effect made up of six representatives of the authorities plus three representatives of opposition parties) gives pro-government candidates unlimited opportunities for unpunished violations in the quest for power. It is worth mentioning that the principles on which the CEC is appointed in Georgia were supported by the international community, which provided more opportunity for the opposition parties to participate in the decision-making process in elections. However, as the November 2003 events in Georgia proved, even this did not promote free and democratic elections. The experience of other states shows that there is no generally preferred procedure for appointing the electoral management bodies. Each country uses principles and approaches that are based on its background and traditions.

Election commissions in democratic states are state bodies formed by a certain procedure. In our opinion, this is the right principle to adopt. Why?

According to the Electoral Code (Article 41), the CEC (as lower-level commissions—the territorial and precinct electoral commissions—are composed according to the same principle, we will focus hereinafter on the CEC) is a permanent state body (the reason for its being a state body is not specified in the code) which administers elections and ensures their legality. On the other hand, in carrying out their duties the members of the CEC are independent of any supervision by the state and local self-governance bodies (Article 32). Moreover, although it is an independent state body, the CEC is overwhelmingly formed by political parties, although the latter do not take any responsibility for unsatisfactory work by their representatives. At the same time, the commission members do not necessarily need to have professional backgrounds (i.e., a good knowledge of the electoral legislation). Obviously, the procedure in force is not the best way to form an independent body, as in many situations the representatives of political actors are primarily guided by political motives rather than law. The whole electoral process in 2003, and particularly the fact that 70 members of local electoral commissions boycotted the election in the 3rd electoral district, supports this. Moreover, according to our information, none of these 70 commission members were held accountable by their parties or by the authorities.

The electoral commission should not just be a formality but should be a genuine state body made up of state employees selected in accordance with certain requirements. Experienced state employees from other fields could be included in the electoral commissions, especially as these positions are of a temporary nature. At the same time, in order to ensure the direct participation of the political parties in the work of the electoral commissions, a special status (for example, monitoring) could be granted to party agents.

7. The impartiality of the judicial power is of immense importance in resolving problems that can arise here. The judiciary can carry out its main mission of ensuring justice only when its freedom and independence are guaranteed. In the Armenian reality the judicial system is, and is widely believed to be, corrupt, and it is therefore incapable of dealing with election violations efficiently. An independent judicial system is one of the main guarantees for building democracy. Although this issue is beyond the scope of this paper, it is worth recalling that free elections cannot be ensured without the effective functioning of this link. The problem of the independence of the judiciary needs urgent resolution. In many ways this does not necessarily depend on constitutional amendments and can be efficiently resolved even within the present legislative framework.

8. In order to improve the work of the electoral commissions it is necessary to pay serious attention to the professional development of their members. The current procedure for setting up the electoral management bodies, mass changes in the membership of electoral commissions on the eve of elections, combined with the fact that the majority of commission members work on a temporary basis (for example, the precinct electoral commissions (PECs) work only for a few months during the elections), have produced

the current low level of professionalism. The large number of corrections and deletions in the election protocols and other documentation, as well as in the papers of party agents, are clear evidence of this. This proves the inefficiency of the training that is done and indicates an urgent need for fundamental changes in training methodology. A great number of people need training, including thousands involved in the work of electoral commissions, and party agents, whose training should be of special interest for the candidates themselves.

9. The time factor, too, has a negative impact on the effective functioning of the electoral commissions. The law encourages commission members to work up to 30 hours without a break or any rest on election day. Clearly, fatigue and sleeplessness can lead to even more mistakes being made. To avoid this we recommend the use of the German model, where voting is run by one commission and the counting process by another.

10. The standards of the technical equipment of electoral commissions and rapid receipt of the appropriate information are essential aspects of the election process. This is especially a problem for the PECs: in 2003 a number of them were not even provided with a telephone. Moreover, the commissions cannot provide the necessary information to superior commissions and other authorized parties, as prescribed in the Electoral Code, because they do not have the technical means. It would be very valuable to set up an information centre which would serve as a clearing house of the latest information from PECs and deliver it immediately to interested parties. This would ensure the transparency of the election process. Each PEC would bear responsibility for the information provided, but at the same time every individual or organization (citizens, NGOs, the political parties and so on) would be able to follow up the election process, so that the transparency and oversight of the final tabulation of results would be ensured.

This paper has outlined conclusions and recommendations on a number of essential aspects of the electoral process. The list is not exhaustive. Many other issues need to be addressed and improved, including financial problems, the relationship between the centralized and the decentralized administration of elections, and the counting and security of ballot papers. It is hoped that these conclusions and recommendations will be the subject of broad discussion.



ELECTION ASSESSMENT in the South Caucasus (2003-04)

AZERBAIJAN



Discussion Paper 1

An Analysis of the 2003 Presidential Election in the Azerbaijan Republic

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In the sequence of political events of recent years in the Azerbaijan Republic, the 2003 presidential election played a specific role. The extraordinary powers which the constitution gives to the president define the significance of his role in the life of the state and the society.

In the years since independence in 1991, Azerbaijani society has shown that the individual qualities of the president, both as a politician and as a person, his business abilities, his energy and his authority in the country and beyond its boundaries, and his political beliefs and capacity for strategic thinking are the most important factors determining the development of the country.

The election of 2003 was the fifth presidential election in Azerbaijan in what is arguably a relatively short period since independence. Every new election in the country has demonstrated how important the quality of elections is if the people are able to choose freely, as well as in producing fair results in the competition among candidates for the highest office in the country. This is the most important condition for attaining long-term stability in the country, for the success and prosperity of the Azerbaijani people, and for the growth of the country's and its people's prestige in the international democratic community. With Azerbaijan's joining the Council of Europe in 2000, the demands of international organizations for the electoral process in the country to be democratized have also grown.

1. The Improvement of the Electoral Legislation

After the collapse of the totalitarian Soviet system in Azerbaijan, one of the most important tasks in the sphere of securing the political rights of the citizens has been the development of new basic principles of electoral legislation. In the period since independence much work has been done in this sphere. Nevertheless, until recently, the improvement of the electoral legislation was still one of the top priorities on the agenda for the progressive development of the Azerbaijani state and society.

In 1991, as in other former Soviet republics, the first presidential election took place in Azerbaijan. In this connection, on 26 June 1991, the new Law on the Election of the President of the Azerbaijan Republic was adopted. However, in its conceptual basis it was not very different from the previous electoral laws of Soviet times. The changes made in this law in 1992 and in 1993 were largely cosmetic and did not change its essence or its main content. This law served as the basis for the elections of 1991, 1992 and 1993.

On 12 August 1995 the Parliament, the Milli Majlis, adopted the new Law On Elections to the Milli Majlis of the Azerbaijan Republic. This was a new law regulating the way in which the highest legislative body of independent Azerbaijan is formed.

The new constitution, adopted on 12 November 1995, stipulated the most important principles of the citizens' electoral rights, including those relevant to parliamentary and presidential elections.

On the eve of the 1998 presidential election, issues of the democratization of the electoral legislation and its conformity to the requirements of contemporary democratic development came into focus and were seriously and widely discussed. As a result, on 9 June 1998 the new Law on the Election of the President of the Azerbaijan Republic was adopted. At the same time, on 15 May 1998, a special Law on the Central Electoral Commission of the Azerbaijan Republic was adopted. These two laws were conceptually different from the earlier ones. They stipulated standards for the transparency of elections, created favourable conditions for candidates, and introduced a new and more progressive system for appointing the electoral commissions. Nevertheless, these laws had a number of shortcomings.

The first municipal elections in Azerbaijan took place on 2 July 1999, based on the principles of the Law on the Rules of Municipal Elections. The most important issue in public life in 2000 became discussion of the further democratization of the electoral processes in connection with the forthcoming parliamentary election. In the course of developing the new principles of legislation, this period was marked by the most active participation of experts from international organizations, including the Organization for Security and Co-operation in Europe (OSCE). As a result of the discussions, new laws on elections to the Milli Majlis and on the Central Electoral Commission were adopted in 2000.

Despite the positive changes in Azerbaijan's legislation in respect to elections, the adoption of different laws at different times caused a number of contradictions and inconsistencies in and between them. At the same time, among the commitments Azerbaijan undertook when it joined the Council of Europe were the democratization of its election legislation and the realization of free and fair elections.

By early 2002, the first steps had been taken in the direction of developing the Electoral Code, which was to cover all aspects of the electoral process. A draft was submitted to experts of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the Venice Commission on Human Rights of the Council of Europe, and the International Foundation for Election Systems (IFES). It was surprising that the authorities of Azerbaijan for a long time hid the fact that the draft code was being prepared and submitted to the scrutiny of the international organizations from the citizens. A number of leading political parties first learned about it only in December 2002. The opposition refused to participate in discussions organized by the OSCE, and no really practical debate about it took place. However, it became known that the ODIHR, the Venice Commission and the IFES had suggested some 300 modifications and additions to the draft. Many of their recommendations were taken into account. At the same time, a whole range of crucial suggestions concerning questions of the establishment of the electoral commissions and their activities, the transparency of elections, the procedure for filing complaints against violations of the electoral law, and a number of others were not taken into account. On 5 May 2003, the Electoral Code, which consolidated the regulations concerning elections on all levels, as well as referendums, was adopted.

1.1. The Composition of the Electoral Commissions

The adoption of the Electoral Code as a law has played a significant role in the development of the electoral system in Azerbaijan. For the first time, all laws concerning elections were codified into one. This allowed the contradictions in the system of electoral legislation that had been accumulating for years to be eliminated. The possibilities of conducting elections transparently increased. However, the code did not fairly resolve a whole range of fundamental issues, including the establishment of the electoral commissions.

The Electoral Code states that the electoral commissions are the bodies which prepare and run elections on all levels, as well as referendums. The system includes the Central Electoral Commission (CEC), the constituency electoral commissions (ConECs) and the precinct electoral commissions (PECs). At present there are 124 ConECs and 5,729 PECs. According to the Electoral Code, the term of service of the electoral commissions is five years. According to the Electoral Code, the 18 members of the CEC are appointed by the Parliament as follows: six members are nominated by the parliamentary majority (i.e., the main pro-government party, currently New Azerbaijan), six are nominated by the parliamentary minority (currently the Popular Front, the Civic Solidarity Party and the Communist Party), and six are nominated by the non-partisan members of the Parliament. The ConECs, consisting of nine members each, and the PECs, consisting of six members each, are to be appointed according to similar principles.

However, according to the Law on the Ratification and Entering into Force of the Electoral Code of the Azerbaijan Republic, the setting up of the electoral commissions on this basis is to be suspended until the elections of 2005. Until then, the commissions are to be made up as follows. For the CEC, six members will be nominated by the parliamentary majority (New Azerbaijan), three by the parties of the parliamentary minority, three by the non-partisan members of the Parliament, and three by the parties that are not represented in the Parliament (currently Musavat, the Liberal Party, the Party of National Independence and the Democratic Party), making a total of 15 members. The district electoral commissions will comprise nine members and the PECs six, and they will be appointed according to principles similar to those by which the CEC is appointed. The district electoral commissions will each include three representatives of New Azerbaijan, two members representing the parliamentary minority, two representing the non-partisan members of the Parliament, and two representing the parties that do not have seats in the Parliament. For the PECs, three members will be representatives of New Azerbaijan, one will represent the parliamentary minority, one will represent the non-partisan members of the Parliament and one will represent the parties that do not have seats in the Parliament.

In all the electoral commissions at all levels the chairmen can only be a representative of the New Azerbaijan Party, one of the two secretaries is the representative of the non-partisan deputies, and the other secretary must be from the opposition. Thus the executive power gains control over the electoral commissions. This is also connected with the fact that the two-thirds majority required for a decision always remains with the ruling bloc: all the non-partisan members of the Parliament are supporters of New Azerbaijan.

The current model is a compromise, approved by the experts of the OSCE and the Council of Europe. At the beginning of discussions on the draft Electoral Code the international organizations showed

rigorous determination over the question of the need for serious changes in the principles on which the electoral commissions were to be established, but later they retreated from their initial stance.

2. The Work of the Electoral Commissions

In general, after the beginning of the 2003 presidential election campaign the electoral commissions did a great deal of work on the organization and regulation of the election. The CEC worked out a whole package of documents regulating in detail all the main procedural norms of the election process. In a series of workshops, the members of the district and precinct electoral commissions were familiarized with the main principles of the legislation and the implementation of its norms in practice. The CEC carried out a good deal of propaganda, the main purpose of which, expressed in the preparation of posters, television commercials and so on, was attracting the population to participate in the election. No less work was done by the district and precinct electoral commissions. Nevertheless, there were a number of shortcomings in the work of the commissions. The biggest failing was the abundance of mistakes in the voter lists.

According to the law, the voter lists must be ready 65 days prior to the date of elections, but in 2003 they were prepared much later, and even then it was clear that a huge army of voters had been left off the lists. The situation even reached the point of the CEC being forced to interfere and adopt a simplified procedure for modifying the voter lists. However, as election day showed later, this outrageous violation was not entirely eliminated.

We can conclude that there were very serious shortcomings in the regulating documents issued by the CEC concerning the rules for conducting the election campaigns.

Undoubtedly, the ten minutes per week which state television gave each of the presidential candidates for making their presentations did not give them time to present a detailed description of their platforms. The same could be said about the time assigned for television debates. Unfortunately, the CEC was also essentially indifferent to the offensive remarks made by the presidential candidates in respect to each other, which were reported all through the television broadcasts and published in newspapers and magazines, as well as to unlawful activities of different groups of engaged journalists in respect to the presidential candidates.

One of the main reasons for the shortcomings of the electoral commissions' work is closely connected with the quality of their personnel. This means not only the political orientations of the commission members but, no less important, the presence on the electoral commissions at all levels of officials who, as a rule, were representatives of the executive power.

2.1. The Funding of the Election

According to the Electoral Code, the costs of preparing for and conducting elections and the costs of the electoral commissions are to be met by the state. Funds are to be transferred by the Ministry of Finance to the bank account of the Central Electoral Commission within ten days after the date of elections is announced.

The law also stipulates the allocation of funding for the election campaigns of candidates for the presidency. For this purpose, special funds are created and bank accounts opened. The election funds of candidates for the presidency are made up of subsidies from the following sources: (a) funds allocated by the Central Electoral Commission; (b) the private money of candidates for the presidency, which must not exceed 25 times the minimum salary as of the date of the election and must be declared; and (c) voluntary donations from citizens and legal entities; donations by individual citizens must not exceed 1,500 times the minimum salary and donations by legal entities must not exceed 10,000 times the minimum salary. In general an individual candidate's election fund must not exceed 200,000 times the minimum salary (*c.* 1,120,000 USD).

The election funds can be spent either by the funders or by the political parties. According to the law, they can be used only for collecting signatures in favour of the candidate; for paying the individuals who collect the signatures; for election propaganda; and for paying for information and consultancy and legal services, and for help from individual citizens during the election campaign.

The presidential candidates should submit reports on their use of the election funds to the Central Electoral Commission in three stages. These are a preliminary report on financial expenses, a second

preliminary financial report, and a final financial report. This last report is to be submitted no later than ten days after election day. According to information presented by the CEC, for financing the presidential election of 15 October 2003, 22 billion AZM (manats) [c. 4.4 million USD] were allocated from the state budget. The bulk of this money was allocated for the expenses of the electoral commissions and for running the elections; the remainder was allocated to the election campaigns of the candidates. It should be noted that from these funds each of the candidates was granted a sum amounting to 60 million AZM (c. 12,000 USD). In addition, the state budget was used to finance the free air time on the state-owned mass media granted to each candidate.

3. Relations between the Authorities and the Opposition: the Registration of Candidates

In effect, the pre-election political marathon started a year before the date of the presidential election. The start of the new political confrontation was the period of preparation and holding of the referendum on 24 August 2002 on amendments in the constitution. Without going deep into the issues that were to be decided by the referendum, one objective truth has to be admitted: ultimately, the result of the referendum was the reinforcement of the authorities. However, the realization of this fact by the opposition camp, where for several years relations between the different opposition parties had been marked by distrust, tension and in some cases even open hostility, combined with the formulation of the question at the referendum, its realization and the results, promoted a process of consolidation of the opposition. And, with the approach of the presidential election, this process only grew.

The symbol of the ruling political power in Azerbaijan was without doubt President Heydar Aliyev, one of the patriarchs of the former Soviet elite, a former member of the Politburo of the Central Committee of the Communist Party who was the head of the Soviet Socialist Republic of Azerbaijan for 13 years and by 2003 had already been head of the Azerbaijan Republic for ten years—a charismatic person, possessing rich experience of political leadership, immense energy and the ability to lead political processes. While occupying the office of president, Heydar Aliyev was also leader of the main pro-government party, New Azerbaijan, members of which occupied practically all the leading official positions in the systems of the executive and legislative power. Representatives of New Azerbaijan and its non-partisan followers made up the majority of the members of the Milli Majlis.

Soon after the referendum that took place on 24 August 2002, in September Heydar Aliyev, while on a visit to Nakhichevan, Gyanja and Geranboy, made a statement about his desire to be re-elected to the presidency. His election campaign started with the issuing of a number of presidential decrees on state support to small and medium-size businesses, an increase in salaries and pensions for public servants, subsidies and additional payments to socially insecure sectors of the population, and government awards to prominent people in the arts and sciences. All this was a serious assertion of Aliyev's power aimed at preserving his positions during the run-up to the election.

The majority of the political parties (of which there were more than 40), both those that succeeded in getting official registration and the unregistered ones, belonged to the opposition. The most significant among them, according to domestic and Western experts, were Musavat, the Popular Front of Azerbaijan (PFA), the Party of National Independence and the Democratic Party. All of them occupied radical positions, challenging the legality of Heydar Aliyev's power and that of his clique, and were very negative towards the possibility of a dialogue with him.

Musavat, which was quite a serious power in the political life of Azerbaijan, is on the right wing ideologically. Its leader, Isa Gambar, the former speaker of the Parliament during the presidency of Abulfaz Elchibey (1992–3), was extremely negative in his judgement of Heydar Aliyev's record. The main mouthpiece of the party, the newspaper *Yeni Musavat*, was extremely aggressive towards the government.

Ideologically, the party closest to Musavat used to be the PFA, which was led by Ali Kerimli after the death of Elchibey. After the 2000 parliamentary election, however, the party went through serious stresses because of divisions in its ranks, the mass exit of members and attempts to create parallel structures. Its once warm relations with Musavat cooled. Nevertheless, the PFA had five seats in the Milli Majlis. In recent years there has been a visible warming of relations between the PFA and the Party of National Independence, and they have become allies.

The Party of National Independence, led by one of the veterans of the national democratic movement, Etibar Mamedov, considers itself right-centrist. In the 1998 presidential election, Mamedov was a serious competitor to Heydar Aliyev. After that election the party and its leader switched to more radical positions.

The Democratic Party of Azerbaijan, led by Rasul Guliyev, a former speaker of the Parliament before 1996 who had emigrated to the USA, took an irreconcilable position towards the government.

Besides these parties, other registered and not registered parties also enjoyed a certain popularity.

Already in the autumn of 2002 two opposed political camps were involved in a struggle which centred on the drafting of the legislative basis for the forthcoming election.

Long before the referendum, the Staff of the President had started drafting the new Electoral Code, which included in particular the legal norms for the conduct of presidential elections. However, after the draft was prepared, its content was not made available to public for a long time. This caused a certain concern among the opposition, and was the reason why the opposition joined forces in the effort to democratize the electoral system. As early as September 2002 the leaders of a number of opposition parties created a task force.

The leader of the PFA, Ali Kerimli, made concrete suggestions for reform of the electoral legislation. Nine parties expressed their will to cooperate. After this, demands for free and fair elections became one of the main mottoes of the joint protest actions that were organized by the opposition on a regular basis. This very motto became the foundation for the consolidation of the opposition. In this context, the opposition parties began to be more resolute in their demands for the code to be published.

Shortly afterwards, the Coordinating Centre of the Opposition was established. At first it included 24 parties. On 26 November 2002 the opposition circulated in the Parliament a statement demanding that the authorities publish the text of the draft Electoral Code as soon as possible. Soon the opposition parties had a chance to acquaint themselves with the text. After that, on 11 December, nine opposition parties that were members of the Coordinating Centre of the Opposition came to a unanimous conclusion about their approaches to the text of the Electoral Code. Among the main principles listed were the creation of unbiased electoral commissions, the transparency of elections, unhindered access for observers to elections and the security of candidates.

Meanwhile, the Baku office of the OSCE planned to organize a round table to discuss the Electoral Code on 16–17 December. Opposition parties that were members of the Coordinating Centre of the Opposition, representatives of the pro-government parties, representatives of the OSCE and foreign diplomats were invited to the discussion. However, the main opposition parties refused to participate, justifying their refusal by the argument that a conciliatory commission had to be created before the round table, the main purpose of which was to be the achievement of a compromise on the most contested questions. The round table was held without the participation of the majority of the opposition parties and non-governmental organizations (NGOs).

Although it was held with the participation of pro-government parties and organizations, the round table did not yield the expected result. Afterwards, the OSCE supported the opposition's suggestion of a conciliatory commission. The authorities agreed to this on condition that only representatives of political parties participated. In response the Coordinating Centre of the Opposition demanded the participation of the representative of the President's Office on the conciliatory commission. Despite the admonitions of the OSCE and the ambassadors of a number of Western countries (France, Italy, Greece and the United Kingdom), the leaders of a number of opposition parties decided not to participate in the conciliatory commission or the new round table planned for the second part of January. As a result of both sides' non-compliance, the Electoral Code was not discussed in Parliament.

It had become evident that the main issue of the draft code which caused the categorical objections of the opposition was that of the principles on which the electoral commissions were to be established. As mentioned above, according to the draft code the Central Electoral Commission would consist of six members to be nominated by the party that has the majority in the Parliament, six nominated by the parliamentary minority, and six nominated by the non-partisan members of the Parliament. In addition, two members, acting as independent lawyers, would be elected by agreement between the parliamentary majority and minority (one member from each), making a total of 20 members. The same principle was to be used in appointing the district and precinct electoral commissions. The opposition parties understood that this system would enable the authorities to keep their control over the work of the electoral

commissions. That is why they were against it from the beginning. Instead, they suggested the parity principle, by which at least half of the places in the commissions would remain with the opposition: it was suggested that the electoral commissions on all levels would be appointed on the basis of representing all the parties that had received more than 1 per cent of the votes at the parliamentary election of 2000. These included the pro-government New Azerbaijan, the Communist Party, the Democratic Party, the Popular Front, the Party of National Independence, Musavat, the Liberal Party, and the Party of Civic Solidarity.

The suggestion was not accepted. The authorities agreed with the majority of the suggestions made by the ODIHR, the Venice Commission and the IFES, and even some suggestions of the opposition, but were staunchly uncompromising on the question of the electoral commissions.

The OSCE's last attempt to achieve a dialogue between the authorities and the opposition took place on 26–27 February 2003, when a conference on the draft Electoral Code was held with the participation of political parties and NGOs. However, even then the absolute majority of opposition parties did not participate in the conference. The radicalism of the opposition could be explained by their hope that the international organizations would support them. This is evident in particular from a letter of 24 February 2003 from the Coordinating Centre of the Opposition to the head of the OSCE's Baku office, Peter Burkhart, in which he is reminded that: 'The improvement of the electoral legislation is one of the obligations of Azerbaijan before the Council of Europe.' Nevertheless, at the conference Burkhart and the representatives of the Venice Commission and the IFES stated that, despite a number of problems, on the whole the Electoral Code met international standards.

After that, the authorities immediately put the issue of the Electoral Code on the agenda of the Parliament and it was adopted on its first reading. On 9 April 2003 discussion of this question was completed. After that, the chances of the opposition bringing in amendments in the code were zero. And only the efforts of the international organizations brought to a conclusion the amendments in the procedure for setting up the electoral commissions.

The practice of including two independent lawyers on the Central Electoral Commission was also rejected by agreement of all participants in the discussion.

Although the opposition's opinion on the issue of the electoral commissions was not taken into account by the President's office, this controversy encouraged the opposition to consolidate, with the result that they were able to nominate a single candidate for the presidency.

Starting in September 2002, the opposition media raised the issue of a single candidate. In the spring of 2003, the question took on particular urgency. In April 2003 President Heydar Aliyev's health had deteriorated seriously. Next, reports appeared stating that he had changed his intention to stand in the forthcoming presidential election and that instead of him the candidate of the ruling party would be his son, Ilham Aliyev. The media published information to the effect that the West, and in particular the USA, would not object to the opposition putting up a single joint candidate, and that this would be possible on the basis of agreement between the two main opposition parties—Musavat, led by Isa Gambar, and Etibar Mamedov's Party of National Independence. Apparently, according to US experts, only by doing this would the opposition, when it came to power, be able to preserve the order and stability that were considered the achievement of the current ruling party. After the adoption of the Electoral Code on 14 June 2003, it was announced that a number of leaders from the opposition parties, including Gambar, Mamedov, Kerimli and Guliyev, had discussed the question of the single candidate and agreed on a common denominator but decided to keep the name of the single candidate secret until the date of registration.

On 17 June the election campaign started. By that time more than 20 people had announced their intention to stand. The peculiarity of this campaign was the fact that the main candidate from the authorities, Heydar Aliyev, was in Turkey undergoing medical treatment. Although the authorities announced many times that he would be coming back to the Fatherland soon, in early July Heydar Aliyev left for the USA to continue his treatment, and did not return before election day. Nevertheless, the necessary signatures and documents were collected for him and he was the first candidate to announce his registration at the Central Electoral Commission. However, at the same time, his son Ilham also announced his candidacy. The CEC registered for consideration of the authenticity of the signature lists the applications of 15 more candidates, including Isa Gambar, Etibar Mamedov, Ali Kerimli, Ilyas

Ismailov, Lala Shovket Hajieva and Sabir Rustamkhanli. A number of candidates were rejected, including former President Ayaz Mutallibov, the former speaker of the Parliament, Rasul Guliyev, and a former officer of the Presidential Office, Eldar Namazov. According to some international organizations, Azerbaijani political parties and NGOs, the arguments for rejecting them looked very unconvincing and political motives played a significant role.

After the signature lists had been checked, nine candidates for presidency were registered—Ali Kerimli, Etibar Mamedov, Yunis Oguz, Ilyas Ismailov, Heydar Aliyev, Ilham Aliyev, Isa Gambar, Abutalib Samedov and Hudrat Hasanguliyev. The other candidates did not collect a sufficient number of authenticated signatures. However, the law did allow candidates to deposit a certain amount of money and be registered on that basis. Three candidates took advantage of this right—Lala Shovket Hajieva, Hafiz Hajiev and Sabir Rustamkhanli. Thus 12 people were registered as candidates for the presidency.

By that time Heydar Aliyev had appointed Ilham Aliyev prime minister by presidential decree. Since, in the event of the president dying or being able to carry out his functions, the prime minister has the authority to take over his responsibilities, it was clear that this action was another step towards the selection of one candidate by the ruling power. This pushed forward the task of further consolidation by the opposition, the logical result of which could be the nomination of a single opposition candidate. In this case it could only be Gambar, Mamedov or Kerimli, with the support of a candidate of the Democratic Party who was not registered, Rasul Guliyev. By that time it was evident that the other registered candidates were not going to withdraw their names and would in any event stand in the election.

On 23–24 August in London a meeting of the leaders of four opposition parties—Gambar, Mamedov, Kerimli and Guliyev—took place. Observers anticipated from this meeting the nomination of the single candidate, but this did not happen. Although Kerimli announced his readiness to withdraw his candidacy if Gambar and Mamedov made concessions, they did not reach an agreement. In order to reduce the negative impression the results of the meeting would give, the participants signed a protocol on the activities of the Union of Democratic Stability—an organization which, as time showed, had neither clearly outlined areas of responsibility nor strategic goals.

The inability of the leading opposition parties to agree on a single joint candidate did significantly disorient the anti-government constituency and changed the distribution of power in the ranks of the opposition. After Kerimli announced his withdrawal in favour of Mamedov, it became clear what the respective chances of Mamedov and Gambar were. The larger part of the anti-government constituency had grouped around the Our Azerbaijan bloc of parties and organizations, led by Gambar, and the smaller part around the Victory bloc, headed by Mamedov.

A last attempt at unification was made by the opposition on the eve of election day, but this attempt as well yielded little result. Gambar and Mamedov were unable to agree on the division of power between the president and the prime minister if Gambar's chances were better than Mamedov's in the event of a single opposition candidacy. Unexpectedly, Gambar's candidacy was supported by Guliyev, who was promised the portfolio of prime minister in the event of an opposition victory, but this step by Guliyev turned out to be too late and insufficient.

Meanwhile, in early October, in a speech addressed to the Azerbaijani people while he was still in the clinic in the USA, President Heydar Aliyev announced his withdrawal from the election and called on his followers to give their votes to Ilham Aliyev. Thus the actual ballot paper included the names of eight candidates: Ilham Aliyev, Lala Shovket Hajieva, Isa Gambar, Hafiz Hajiev, Hudrat Hasanguliyev, Ilyas Ismailov, Etibar Mamedov and Sabir Rustamkhanli. (By that time Oguz and Samedov had withdrawn their candidacies.) On the eve of the voting a fragmented opposition faced the only candidate from the ruling power, Ilham Aliyev. The majority of the opposition leaders had proved unable to sacrifice their personal ambitions for the common goal on the basis of a united ideological platform.

4. The Activities of NGOs

A specific role in organizing the electoral marathon for the presidential election of 2003 was played by NGOs. Unfortunately, just before the parliamentary election of 2000 the Law on Non-Governmental Organizations (Public Alliances and Foundations) had brought in special amendments according to which an NGO which received donor support from abroad would lose the right to participate in elections as an independent observer. In conditions when the majority of Azerbaijani NGOs only exist thanks to material

support from the outer world, this would mean that practically all NGOs would be disqualified from participating as election observers. Despite numerous protests by the international organizations, the political parties and the NGOs themselves, this clause had remained in the law since 2000. On the eve of the 2003 presidential election, therefore, the struggle to change this clause was the focus of attention as the main goal of the NGOs.

In the period when the Electoral Code was being drafted and discussed, one of the most important questions was the problem of the procedure for setting up the electoral commissions, and the NGOs participated actively in the discussion of this question.

On 24 January 2003, at a session of the National Forum of NGOs, a discussion took place on the draft Electoral Code and the participants listened to information presented by foreign experts. In his own speech the present author made a number of suggestions for the improvement of the code, among them absolutely free access to elections for NGOs as observers. This did not raise any objections. There was also much argument about the question of participation of NGOs in the activities of the electoral commissions. Taking into account that the opinions of the authorities and those of the opposition on the principles for setting up the electoral commissions were totally opposed, it was suggested that NGOs should replace the non-partisan members of the Parliament in nominating one-third of the members of the commissions. The argument was that it would be fairer to have NGOs represented on the commissions than the non-partisan part of the Parliament. At this session the decision was made to suggest that NGOs be given unconditional access for observing elections and participating in the work of the commissions. Suggestions were also made on other changes and additions to the text of the draft Electoral Code. However, unfortunately, none of the problems raised by the NGOs found a solution.

On the question of NGOs' access to the 2003 election, everything remained the same as before. In the Electoral Code, both the draft and the final version, nothing was said about limitations on the observer role of NGOs during the election, but the principle limiting their functions was fixed in the law on NGOs and remained in force. Then, in the summer of 2003—after the referendum of 2002, and with the rights given to them by the amendments made in the constitution—four NGOs applied to the Constitutional Court to consider whether the clause in the Law on Non-Governmental Organizations (Public Alliances and Foundations) was in compliance with the constitution. Despite numerous meetings and appeals to the members of the Constitutional Court, under different pretexts the court contrived to avoid considering this.

Despite the support of some international structures (in particular, the IFES), the question of NGOs' participation in the work of the electoral commissions thus remained unresolved. The suggestion that they should be able to participate was received by the authorities very negatively and was categorically rejected by the opposition parties. In such conditions it was very difficult for the NGOs to insist. But even now, after the presidential election, this suggestion remains without doubt very important.

In the summer of 2003, a number of NGOs again returned to the question of uniting their efforts in support of democracy during the presidential election. At that time it was expected that a wide range of public, political and international organizations would participate and would form a coalition of NGOs whose main task would be to organize the monitoring of the forthcoming election. Monitoring of the pre-election process was carried out by numerous offices of NGOs in the different regions of the country. An extensive public awareness campaign was run. The FSCS Center for Civil Society, participating in the work of the coalition, distributed among the population huge amounts of books, brochures, bulletins, booklets and newsletters prepared for the election. It kept the population regularly informed on the course of the electoral process, and by election day had issued nine press releases. Other NGOs, also members of the coalition, did similar work. The Center for Civil Society helped the political parties a great deal in organizing the monitoring of the election and organized 28 training sessions for the representatives of six parties, familiarizing the participants with the methods and technology of election monitoring and providing them with literature and forms of reporting documentation.

The biggest problem of the organization of the other coalition was the search for forms of participation in monitoring the voting. As long as the NGOs' were restricted by legislation, there was only one way to do this. The Electoral Code did allow citizens to register as observers on individual basis. Although this involved a number of difficulties (two photographs had to be provided and a questionnaire containing numerous irrelevant questions had to be filled in and submitted), the NGOs had no other choice. Between

August early October, after having accomplished a major and complex task with the help of a number of international bodies (including the US Agency for International Development, USAID, and the OSCE), the NGOs managed to register a huge army of individual citizens as observers.

5. The Campaign and the Mass Media

One of the most important elements of an election campaign is the propaganda component. In the past only 30 days were allowed for the campaign, but the current Electoral Code stipulates two months. This gave the candidates chance to conduct an advocacy programme more consistently and systematically than before. The law stipulates the use of a number of forms of propaganda. Among them are the mass media, the distribution of campaign posters, and the organization of mass actions (meetings and demonstrations).

The observation of the course of the campaign demonstrated that all the candidates for presidency, although to different degrees, used the possibilities for agitation stipulated by the law. However, they did not always use them efficiently. In some speeches in the media, by radio and television, at meetings and during meetings with voters, instead of presenting their platforms and views, many candidates concentrated on criticizing their opponents, which sometimes turned into offensive language and insults worthy of the street. As a result, the voters were deprived of the chance to acquaint themselves with the candidates' programmes. Some of the opposition and pro-government candidates even used expressions that offended the honour and dignity of their opponents.

The candidates paid particular attention to organizing mass actions. In some cases opposition candidates' attempts to carry out mass actions were accompanied by confrontations with pro-government candidates.

The conditions created by local authorities for mass meetings and actions of the pro-government candidates were much better than those for the opposition candidates. At this stage of the campaign the local authorities' biased attitude to the use of visual means of campaigning was obvious. They frequently hindered the distribution of posters of the opposition candidates but took special care over the positioning and placing of posters of the pro-government candidates in the best and most visible places.

It should be mentioned specifically that the majority of the candidates did not use the newest electoral technologies in their election propaganda campaigns, placing their hopes, as before, in older, often inefficient, methods of attracting people to their side.

The mass media during the election campaign could be divided into three groups: the governmental and pro-government; the openly oppositional; and those who expressed the positions of actual parties while striving to maintain neutrality in the political confrontation and managing to appear objective on the whole. Probably the confrontation of the first two groups in the course of the campaign went beyond the main functional purpose of the mass media, which is to provide information and comment, and concentrated on disseminating compromising information about the opposing candidate, often false information, ignoring the rules of ethics and simple normal decency. Often the information presented did not even correspond to reality. The Media Public Council was forced to ban the publication and broadcasting of materials that violated the law and ethics most egregiously, but even after this a number of newspapers and television channels would not stop. On 6 August the Media Council again called on them to maintain decency and prepared a memorandum 'On the main principles of commenting on the election campaigns by the media'. It was signed by the majority of the representatives of the media but even later, before the voting, the most aggressive mass media did not refrain from using insults and threats as a method of discrediting the candidates and intimidating the voters.

It would be fair to say that in the purely political sense the pro-government candidate enjoyed much greater propaganda opportunities. Many newspapers supported the government candidate. Open and systematic propaganda on central television and radio and by all four television/radio broadcasting companies was of special significance. They openly supported first the candidacy of Heydar Aliyev, and then that of Ilham Aliyev.

The law provided sufficient opportunity for the state official publications to provide information about all the candidates as well as opportunities for them to put forward their views. Each candidate would receive the opportunity for regular and free broadcasting time from the television stations over the two months of the campaign. Weekly one-hour debates were stipulated for candidates or their representatives

in the course of the two months. The candidates had other, equal privileges in using the mass media. However, as time showed, objectively their possibilities for promoting their views and positions through the mass media were not equal. This was connected both with different opportunities for access to information and with the differences between candidates' financial means. For the majority of the candidates the high costs of publishing materials and advertising in the newspapers and magazines, and for presentations on television and radio, proved a significant barrier to a better use of this opportunity of influencing their constituencies.

6. The Voting

The presidential election took place on 15 October 2003. Voting started at 8 a.m. and went on until 7 p.m. Numerous observers from political parties and international and local bodies monitored the process of voting. The author's own centre, the FSCS Center for Civil Society, also monitored the voting process and managed to register 2,500 voters. All over the country, access for observers from the Center for Civil Society was not significantly hindered by the senior officials of the electoral commissions, which had often happened in the past. Nevertheless, during the voting, officials of the electoral commissions often expressed dissatisfaction with the behaviour of the domestic observers and used such punitive measures as suspending them from monitoring. In most cases the decisions of the commission authorities were not justified by the actions of the observers. Nevertheless, most observers did have the opportunity to accomplish the monitoring over the whole day of voting until the time for the count.

The observers' reports make it possible to reconstruct the voting and determine the level of democracy and the character and scale of the violations committed. The observation of previous elections shows that one of the most common violations was voting by the same person (as a rule, by the head of the family) for all the members of the family, even for relatives that did have a right to vote. This time as well such incidents did occur, but not everywhere, and in far smaller numbers. In the big cities, such as Baku, Sumgait, Mingyachevir, Ali-Nayramli and others, violations of this kind were isolated cases, but they were very common in rural areas, such as the Lenkoran, Jalilabad, Sabirabad, Salia, Bardi, Akhsuin, Ujar, Saatli, Julfa and Babek areas, and some others.

There were far fewer cases of ballot papers being given out to voters without the proper identification documents. The majority of observers stated that violations of this kind did not occur, but a number were registered. In particular, they took place in districts 08 1st (Binagadi, in Baku), 37 1st (Nizami, in Gyanja), 63 (Sabirabad), 64 (Sabirabad-Saatly), 65 (Sabirabad-Kyurdamir), 71 (Masalin), 94 (Bardi rural), and 95 (Ter-Ter).

Violations connected with attempts to 'stuff' the ballot boxes with bundles of ballot papers were significantly fewer than in previous elections. This did not occur in the majority of precincts. Nevertheless, this blatant violation on a massive scale was noticed in districts 06 (Julfa-Babek), 39 (Kyapaz 2nd, in Gyanja), 65 (Sabirabad-Kyurdamir), 61 (Nefchali), 62 (Saatli), 108 (Akstafa) and 111 (Zakatala-Balake), and some others.

In the past, the normal course of elections was upset by frequent and groundless interference by the police, which led to high tension and escalated the confrontation between opposing representatives of political parties in the commissions and the groups of observers. This time there were very few incidents of groundless police interference in the voting process. Only 29 per cent of observers in Baku, 7.6 per cent in Sumgait, 8.3 per cent of observers in the Lenkoran, Masali, Jalilabad and Bilasuvar regions, and 13.2 per cent of observers in the Ali-Gayramli, Sabirabad, Salyansk and Nefchali regions reported such cases. Probably only in the Nakhichevan Republic were they widespread.

In the past one of the main sources of violations of the electoral legislation on election day was the illegal abuse of the portable ballot-boxes. This time this method of illegally increasing the number of participants was not used to the same extent and was not used by so many precinct commissions. As observers witnessed, this method was used in previous elections by more than 50 per cent of the PECs. In the 2003 this occurred in 25 per cent of PECs and in some precincts was not observed at all.

Thus the observation of the voting process on election day showed that the number of the violations that had been traditional for Azerbaijan in elections in previous years—such as ballot-box stuffing, one person voting for several voters, ballot papers being given out without proper identification documents as required by the law, groundless interference by the police in the process of voting, manipulation of the

portable ballot boxes, and attempts by members of the electoral commissions to intimidate voters or to suppress the will of the voters and observers—was significantly reduced. All this speaks to the positive changes in the electoral process and the desire of the organizers and the authorities to give the election process as clean an appearance as possible. The violations listed above were not absolutely eliminated, but a lot has changed for the better.

Nevertheless, the observation of the voting process shows that the improvement of the process of voting is directly connected with improving the organization of this process. The principal violation of the law in the course of this election was connected with the compilation of the voter lists.

As indicated above, tens of thousands of names were missing from the voter lists. According to the Electoral Code, new names could only be added to the compiled and confirmed lists by decision of the court. In this connection the Central Electoral Commission decided that before election day individuals whose names are not included in the lists but who lived in a particular territory could be included in the lists without a court ruling by decision of the PECs, but on the day of voting this kind of decision could only be made by the courts. Some people whose names were not included did take advantage of this decision, but the majority, naturally, did not check whether their names were on the voter lists, and significant numbers of them were left off. Many applied to the courts on election day and had their electoral rights restored, but many thousands, after not finding their names in the lists, did not apply for the restoration of their rights and just refused to participate in the voting. It is difficult now to state exactly how many were deprived of their right to vote on election day, but such cases were registered in the majority of precincts of all districts. The scale on which this happened can be estimated indirectly from the following data. According to unverified information in the mass media, the courts restored the electoral rights of more than 6,000 people in Baku and around 1,000 in Sumgait. Of the observers, 22.5 per cent of those working in the Lenkoran, Jalilabad, Masallin and Bilasuvar regions, 26.4 per cent in the precincts of Ali-Bayramli, Sabirabad, Neftchali and Salyansk, 26.4 per cent of those in the precincts of Mingyachevir, Bardi, Ter-Ter, Agdam and Evlakh, 11.5 per cent of observers in Sumgait, all observers in no. 38 (Nizami 2nd, in Gyanja) precinct, and many others registered mass additions of new names into the voter lists. One can only guess how many people did not trouble to go to the courts or could not achieve the restoration of their rights by decision of the courts.

Many violations that took place on election day had to do with the bureaucratic zeal of the local authorities. As before, very often the representatives of the executive power interfered in the process of voting. This was registered by more than half of observers in the Baku precincts, precincts 67 and 68 (Jalilabad), 73 and 74 (Lenkoran), 64 (Sabirabad-Saatli), 66 (Bilasuvar), 04 (Julfa-Babek), 111 (Zakatala-Balake), 108 (Akstafi), and others. The eagerness of the representatives of the executive power to show off their loyalty may be the reason why, in response to the observers' question 'Have there been cases of collective voting at the polling stations?', the majority of observers at precincts 03 (Babek-Sharur), 04 (Nakhichevan), 06 (Julfa-Babek), 62 (Saatli), 111 (Zakatala-Balake) and 63 (Sabirabad), and some others answered positively. It appears that the managers of companies and organizations led collective visits to the polling stations. This, of course, has to be seen as a form of pressure on the voters.

Thus there were numerous violations of the norms of voting procedure. Some were more frequent than others. In particular, many violations took place in the precincts of the Southern zone (Lenkoran, Jalilabad and Masally), in the Nakhichevan Republic and, surprisingly, in such big cities as Gyanja and other regions, where the quality of the organization of the election was lower than it was nationwide.

The reaction of the CEC to the violations that took place was to invalidate the results in almost 700 electoral precincts, which is around 14 per cent of the total. This is a rather high proportion. The election was better handled in the electoral precincts of Baku, Sumgait, the Northern regions (Guba, Gusar and Khachmaz), the regions of the Sheki-Zakataly zone, and some others.

In general, the picture was much better than in previous years, and most probably, the violations did not greatly affect the results of the election.

7. The Counting of Votes and Summarizing the Results of the Election

The results of observations suggest testify that a sizeable proportion—around 40 per cent—of observers were not allowed to observe the counting and around 70 per cent were not given copies of the protocols—the official record of the count. This speaks to the fact that at the polling stations, as well as among the

election organizers, there was an overwhelming distrust of observers. The Central Electoral Commission, which is responsible for the implementation of the norms that it has itself worked out for this procedure, is showing surprising indifference to the restrictions placed upon observers.

Nevertheless, the majority of observers were present at the counting of votes at the precincts. Their reports indicate that in a number of cases, in the course of the count, while the results were being registering in the protocols, attempts were made to falsify the results.

Unlike previous years, the counting in the precincts and districts was completed on time as stipulated by the law. This enabled the CEC, with the help of special software, to post the results of the voting on an Internet page for all electoral precincts within two or three days. This was major progress in terms of providing the general population with significant information that affects their lives and public life in general. On 20 October 2003, the CEC by 12 votes to three confirmed the summary records of the election and passed the election materials to the Constitutional Court. On 28 October, the Constitutional Court confirmed the result. Its ruling stated that the votes of 2,421,061 voters who participated in the election were recognized as valid, out of 4,413,545 registered voters. The distribution of the votes is shown in table 1.

Table 1. The Results of the 2003 Presidential Election

Aliyev, Ilham Heydar	1,860,346 votes	76.84%
Gambar, Isa Yunis	338,145 votes	13.97%
Hajieva, Lala Shovket	87,523 votes	3.62%
Mamedov, Etibar Salidar	70,638 votes	2.92%
Ismailov, Ilyas Abbas	24,098 votes	1.00%
Rustamkhanli, Sabir Hudu	19,973 votes	0.82%
Hasanguliyev, Hudrat Muzaffar	12,071 votes	0.50%
Hajiev, Hafiz Alamdar	8,267 votes	0.34%

Thus Ilham Aliyev was declared president of the Azerbaijan Republic. On 31 October he was inaugurated and assumed his office.

Careful comparison of the protocols presented by the observers speaks in favour of the fact that the data of the overwhelming majority of the precinct and district electoral commissions' protocols given to the observers and published by the mass media were consistent with the official protocols. There are some inconsistencies in a number of indicators, but these are very rare and most probably they cannot be counted as having had any significant impact on the election results, although they do bear witness to continuing inaccuracies and minor shortcomings in the writing of protocols by both the precinct and the district electoral commissions, and the Central Electoral Commission.

8. The Activities of Foreign Experts

As indicated above, at all levels of preparation and discussion of the Electoral Code the experts of international organizations participated very actively. It cannot be denied that their recommendations played a significant role in the improvement of the text of this document. Especially active were the ODIHR, the Venice Commission and the IFES. Not less was done by the representatives of the international organizations in resolving the disputed questions and arranging a dialogue between the opposition and the authorities. However, not all their efforts brought the desired results. In particular, a whole range of recommendations of international organizations were not accepted in the course of working out the final draft of the Electoral Code, and efforts to establish a constructive dialogue between the opposition and the authorities were not successful. Nevertheless, it would be difficult to imagine the democratization of the electoral process without the participation of international organizations, as well as the impact of the leading democratic states of Europe and the USA.

With the beginning of the election campaign, the level of participation by international experts in monitoring the election increased. The long-term mission of observers from the OSCE Parliamentary

Assembly, the ODIHR and the Council of Europe was monitoring the whole election campaign, actively supporting the CEC in organizing the work and the creation of the legislative basis for elections, and publicly expressing its assessment of events in the course of the electoral process from the point of view of their compliance with international standards. By election day a large group of experts for a shorter-term observation mission from these three organizations, as well as others, had arrived. The CEC had registered approximately 1,100 foreign observers. Around 900 observers represented countries and organizations of the traditional Western democracies, and around 200 came from Commonwealth of Independent States (CIS) countries. No previous election in Azerbaijan had enjoyed the presence of such a large group of international observers.

The international and foreign observers who were monitoring the process for the next two days of 16 and 17 October presented their first reports on the results of the election on the day of voting. The joint statement of the International Election Observation Mission (IOEM) of the OSCE Parliamentary Assembly, the ODIHR and the Council of Europe stated that: ‘The voting in [the] 15 October 2003 presidential election in the Republic of Azerbaijan was generally well administered in most polling stations, but the overall election process still fell short of international standards in several respects’ (OSCE/ODIHR and Parliamentary Assembly, and Council of Europe 16 October 2003). This ambiguous formula apparently expressed the different approaches of the three organizations. This was also reflected in semantic differences between the speeches made at the presentation of the first response of the heads of delegations. At the press conference given by the IOEM on 16 October, the head of the OSCE mission, Giovanni Kessler (a member of the OSCE Parliamentary Assembly), stated that ‘These elections have demonstrated the increased dynamics of progress in the political life... in the direction of democracy and international standards’ (records of the press conference given by the IOEM on 16 October 2003). At the same press conference, the head of the Council of Europe delegation, Martin Kassin, was even more categorical in his assessment of the positive sides of the election: ‘The development of the electoral process in a normal route has a very important significance from the point of view of the desire of the state to promote the democratic values’ (records of the press-conference given by the IOEM on 16 October 2003). Somewhat different was the announcement of the head of the delegation from the ODIHR, Peter Eicher: ‘The night of the day of elections was characterized by a number of facts of violence and violations. In general the conditions of the campaign were not equal for all candidates’ (records of the press-conference given by the IOEM on 16 October 2003). Eicher seriously criticized the whole course of the election campaign.

The different opinions about the election found even more vivid expression in the assessments of other groups of delegates. Observers from the CIS countries, Turkey, Bulgaria and some Western European countries assessed the level of democracy at the election rather highly, calling it absolutely free and fair. On the other hand, the majority of observers from the USA (188 people) categorical disagreed with the primary assessment of the election in the document of the OSCE Parliamentary Assembly, the ODIHR and the Council of Europe, calling it subjective. They refused to assess the election as free, fair and democratic.

These differences can be explained by a number of factors. Doubtless, there was some political engagement on the part of a number of groups of delegates, but there were also subjective reasons: the majority of foreign observers were unprepared for the conditions of the electoral process in Azerbaijan and therefore unable to orient themselves in the actual situation, and they were not aware of the principles of Azerbaijan’s electoral legislation. Many were completely indifferent to the election and were trying to evade their responsibilities. Also evident was the old problem of international practitioners of election observation—the absence of clear and unified criteria for the assessment of elections. The work of the international and foreign observers would have been much more efficient if it had been done in close connection with the activities of the domestic observers. Unfortunately there was no such coordination of activities.

In general, the work of the international observers played a decisive role in determining the image of the 2003 election in Azerbaijan outside the country as one that did not meet international standards but was still a major step forward towards that goal. On 6 November, after discussing the results of the Azerbaijani election at its final session, the Parliamentary Assembly of the Council of Europe came to this particular conclusion.

9. Conclusions and Recommendations

Thus the election of the head of state of Azerbaijan in 2003 ended with the victory of Ilham Aliyev, who became the fourth president of the republic. The ruling authorities won the confrontation with the opposition in the course of the election campaign. This has reinforced the positions of the ruling authorities in the political system of the state even more than before. Where a consolidation of the opposition forces was anticipated, there has instead been a consolidation of the forces oriented towards the authorities and concentrated within the authorities. Time has shown that as of today the system of power constructed by Heydar Aliyev possesses a high degree of self-protecting capacity.

1. Special norms regulating liability for violations of the electoral law, as well as the procedure for considering and resolving complaints by voters, are still the most important requirement for the improvement of the electoral legislation.

2. The opposition, in the process of confronting the authorities, showed no capacity for working out and adopting new methods of struggle for political power but relied instead on the old and obsolete methods adopted in the first years of the national and democratic movement (1988–92). The election of 15 October 2003 has shown that neither of the opposition groups had its tactics clearly worked out. Some of the opposition leaders stated that they were capable of controlling the situation in extreme conditions, but as the end of the voting process approached it became clear that this was not at all the case. The opposition parties turned out to be surprisingly helpless in using the technologies for monitoring the election process. And when by the end of the day the Central Electoral Commission started to report the first information about the leading position of Ilham Aliyev this only produced a spontaneous rally of protest close to the headquarters of the Musavat party. Without clear indications from the party leaders about the action to be taken, and hoping that the police would not use force, the participants at the rally did not obey the law enforcement bodies. There was a collision between the police and the participants at the rally which continued on 16 October. Around 800 people were arrested, among them a number of leaders of the Our Azerbaijan bloc. A demonstration of the Musavat Party that was to have been held on 16 October and had been given official permission was cancelled. The supporters of other opposition candidates did not participate in the conflict and, although the majority of the people arrested were set free fairly quickly, some 100 criminal cases were brought against a number of people.

The events of 15–16 October brought about the demoralization of the opposition forces, although a number of parties (the Popular Front, National Independence, Musavat and others) expressed their disagreement with the election results. The rest of the opposition did not express their position explicitly. The 2003 election campaign may prove to have been a serious setback for the opposition parties unless they draw the proper conclusions.

3. The election is over. According to the majority of the international and domestic observers, there are still a number of problems both in the electoral system and in the electoral process. Meanwhile the Azerbaijani authorities have repeatedly announced their desire to build a state governed by the rule of law and asserted their obligations in and to a number of international organizations, including the Council of Europe. All of this makes urgent the task of preparing in future fully democratic and free elections which meet international standards. Naturally, serious reform of the electoral system would help the strategic course of the state towards democratization of the election process.

In particular, this means the further improvement of the electoral legislation. Indeed, in the course of recent years a lot has been done in this direction. The Electoral Code adopted in 2003, containing numerous progressive principles and innovations, was a significant step forward. Nevertheless, the work cannot be considered completed; moreover the code as we see it contains a number of serious shortcomings that require further improvement.

4. Analysis of the electoral process demonstrates that one of the most contested topics, which creates many problems, is the question of the organization and operation of the electoral commissions—the principles according to which the electoral commissions are composed. The resolution of this issue would end the gossip and rumours to the effect that the authorities control the functioning of the commissions and would ensure their independence and objectivity. This would help to strengthen trust in the electoral commissions on the part of the political forces of society and to provide equal conditions for all competing parties. In the opinion of this author, the current principle on which the electoral commissions are set up is not fair. At the same time, it is difficult to agree with the new opposition parties' argument in favour of

the parity principle. This question must be expected to come to the fore again as the next election approaches and will become the subject of serious debates and discussions. The problem of balance in the political representation on the commission remains open as the opposing political forces are unlikely to agree with the principles currently in place. The most acceptable way of providing a balance would be broad participation by representatives of NGOs in the commissions. We should admit that this is not the perfect way of ensuring fairness in the process of setting up these commissions, but it is a more acceptable way than the operation of the current system or the parity principle suggested by the opposition.

5. Among the measures aimed at improving the work of the commissions are a prohibition on state and municipal officials participating in them. In addition, decisions at meetings of the commissions should be made by a two-thirds majority of the votes of the participants present, not two-thirds of the general number of commission members, as is the practice now. The commissions themselves should elect their chairmen and secretaries.

6. The experience of the recent election has shown convincingly the great significance of the compilation of correct voter lists. The voter lists should be compiled not on the basis of formal residence in a given territory but on the basis of actual residence. This suggests precise accounting of all those people who are resident in each actual case.

The voter lists should be compiled not by state bodies but directly by the electoral commission. They must create conditions to make it possible for the voter lists to be checked with the participation of all interested parties. Citizens who are resident in a particular area but not included in the voter lists there should have ample opportunity to participate in elections.

7. One of the problems of the electoral process in Azerbaijan concerns the transparency of the elections. The legislation should therefore ensure broad opportunities for each citizen, each political party, NGOs and the mass media to monitor elections, including the process of voting, and receive information. This access should be provided without any serious limitations and the procedure as such should be simplified. The artificial obstacles in the way of nominating and registering candidates should also be abolished. This raises the problem of simplification of the relevant procedures. Still topical is the task of improving the process by which the results are communicated to the CEC and the CEC declares the official results. All these improvements could significantly reduce the number of violations of the electoral process.

8. According to the Electoral Code the candidates in presidential elections who win less than 5 per cent of the votes should reimburse the funds they have received from the state budget and reimburse the cost of the free broadcasts granted to them by the state mass media. According to the official results of the 15 October 2003 election as announced by the CEC, only two out of eight candidates, Ilham Aliyev and Isa Gambar, cleared the 5 per cent barrier. The candidates who did not and who have to reimburse the funds used from the state budget have indicated that they consider this demand unfair and are reluctant to comply.

9. In past elections no mechanism for financial transparency was provided either for the financing of the elections or for the financing of the election campaign of each candidate for the presidency. The public have no information on this subject and it is therefore difficult to judge presidential candidates' expenditure, their use of public money or the origin of their campaign funds. Providing transparency of elections must be an unconditional requirement of the electoral legislation.

Above all, one of the most important conclusions of past elections is the need for absolute compliance with all the requirements of the rule of law. Only if these requirements are fully met will it be possible to reach a level of democracy in elections which meet the highest standards.

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Discussion Paper 2

Comments on the Analysis of the 2003 Presidential Elections in the Republic of Azerbaijan

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Comments on the case study by Eldar Ismailov

Compared with previous elections, the presidential election held in Azerbaijan on 15 October 2003 was of especial importance several fundamental respects. There was significant interest in the election in society at large and there were also great expectations that it would lead to serious changes in the country. At the same time, the election was held in conditions of increasing political confrontation between the authorities and the opposition.

The case study by Eldar Ismailov on the October 2003 presidential election covers almost all these features. In general, it covers the pre-election situation, the electoral legislation, the establishment and work of the electoral bodies, the campaigns, the voting, the authentication of the election results and other issues. However, a number of the issues tackled in the case study need further clarification in order to give a more comprehensive picture of the election. This commentary will address those issues.

1. The Electoral Code

Starting in 1991, the reform of the electoral legislation in Azerbaijan resulted in the adoption of the new Electoral Code on 27 May 2003. The code brings together into one document the norms for the conduct of parliamentary, presidential and municipal elections, as well as referendums, and regulates the activities of the Central Electoral Commission (CEC); all these were previously covered by a number of different laws. The major advantage of the code is that the general regulations for the preparation and conduct of all elections and referendums are codified for the first time in a single law. In general this has eliminated a number of contradictions and gaps that existed in the election legislation. At the same time, positive innovations were introduced into the code. It covers issues such as the granting of the suffrage to stateless persons in all elections and referendums, and to foreigners who have resided in Azerbaijan for five or more years (in municipal elections); an opportunity for any citizen of Azerbaijan to observe elections on his or her own initiative; the possibility for candidates to register by paying a voluntary deposit as an alternative to submitting a list of signatures in support of their candidacy; the use of transparent ballot boxes; the numbering of ballot papers, and so on. In addition, the number of signatures necessary to support candidates's registration was reduced, and some procedural aspects of the conduct of elections were spelled out in greater detail.

However, with all its positive innovations, the new Electoral Code did not eliminate a number of fundamental problems. The main reason for its adoption was in fact not just the codification of the election laws but the need to eliminate these problems. Providing the necessary legal guarantees for democratic elections in Azerbaijan involved the following issues, among others: the establishment and the work of independent and impartial electoral commissions—the electoral management bodies; the eradication of direct or indirect intervention in elections, especially by state agencies and officials; transparency at all stages of elections; immediate consideration and resolution of complaints about violations of election rights; legal guarantees for the prevention of fraud in the voting process and in the process of authentication of the election results; and ensuring that violations of the election legislation are brought before a court of law. Attention to these issues was strongly recommended by the experts of international institutions who took part in the process of drafting the Electoral Code.

However, the innovations in the Electoral Code with regard to the compilation of the voter lists and the composition and appointment of electoral commissions also created conditions for harmful developments to emerge during elections. Thus, the provision that on election day the names of voters who are not in the voter lists could only be added to the lists by a court ruling led to serious problems during the 2003 presidential election. The fact that the code sanctioned the establishment of voting precincts in almost half of the military units also compromised the objectivity of the election.

2. The Electoral Commissions

The composition and work of electoral commissions were among the main issues that caused serious and wide-ranging debate during both the pre-election period and the election itself. Many suggestions were made in connection with this issue. The opposition's suggestions were directed at taking the commissions out of the control of the executive authorities, but this did not come about in the end.

According to the Electoral Code, the CEC, constituency electoral commissions (ConECs) and precinct electoral commissions (PECs) are the bodies responsible for the preparation and conduct of all elections and referendums in the country. The composition of the electoral commissions functioning at present is

the following: in the CEC, out of 15 members, six represent the majority party in the Milli Majlis (the Parliament); three represent the minority parties in the Milli Majlis; three represent the independent deputies elected in the single-candidate electoral districts; and the last three represent those political parties that had gained a majority of votes during the elections but could not take seats in the Parliament because they did not clear the threshold of 5 per cent of the total vote needed to obtain a seat.

The composition of the ConECs and PECs is based on similar principles. The ConECs consist of nine members (3:2:2:2), and the PECs of six members (3:1:1:1).

In addition to the 15 'core' members of the CEC, each registered candidate or political party that has a candidate registered is entitled to nominate a member with a consultative role to commissions on all levels, although they are not eligible to vote during the decision-making process.

This composition of the electoral commissions failed to ensure their independence and impartiality during the election. In fact, in the commissions at all levels, the ruling party had the two-thirds majority which enabled the state agencies to interfere in the commissions' work, and for this reason the commissions were not always able to carry out their duties in accordance with the law or to be objective and impartial during the election. Such conduct was displayed by electoral commissions at all stages of the election. Thus, objectivity and neutrality were almost non-existent during the registration of candidates, the compiling of the voter lists and the election campaign, as well as on election day itself. Moreover, the requests and complaints filed with the electoral commissions, especially the CEC, were not seriously considered. No serious measures were taken with regard to complaints transferred from the CEC to the law enforcement bodies. The representatives of the opposition on the commissions, who were in minority, had no significant impact on the decision-making process.

The professionalism of the electoral commissions left much to be desired. This lack of professionalism was manifested in shortcomings in numerous rulings made by the CEC and in the constituency and precinct electoral commissions not being fully able to work with the basic election documents—the Electoral Code and the instructions of the CEC. At the same time, it should be noted that the CEC and the International Foundation for Election Systems (IFES) conducted training seminars for the constituency and precinct election commissioners, and these seminars had a definite positive impact on the commissioners' ability to handle the election documents on election day compared with their performance in previous elections.

3. The Election Campaign

According to the Election Code, the pre-election stage of the election campaign covers the nomination and registration of candidates, the compilation of voter lists, and the election campaign proper.

Although the phase of nomination and registration of candidates was relatively calm, equal conditions were not ensured for all of them. The CEC demonstrated favouritism towards government and pro-government candidates, and a biased attitude to opposition and independent candidates. As a result, some candidates, including Rasul Guliyev, Ayaz Mutallibov and Eldar Namazov, were rejected by the CEC.

The conditions in which signatures in support of candidates were collected also had positive and negative aspects. Local executive authorities assisted in the collection of signatures in support of government and pro-government candidates, and in some cases participated directly in the process. Moreover, officials organized and carried out the collection of passports from people with the intention of forging their signatures in support of certain candidates. During the process of verification of voters' signatures and the registration of candidates, some signatures in support of opposition candidates were illegally deemed false and invalid by the CEC.

The requirements of the law vis-à-vis the registration of voters were also seriously violated. In most precincts, many voters were not on the lists and their addresses were not indicated. Prior to the compilation of the voter lists, local authorities conducted opinion polls to find out people's opinions—unlawfully—and the names of the majority of voters who expressed views in favour of the opposition or disagreement with the government were deliberately removed from the voter lists. The names of people who had left the area of electoral precincts long ago and of deceased voters were entered in the voter lists.

Although the election campaign was rather tense and lively, equal conditions were not created for all candidates. Twelve candidates were registered, but the CEC allocated only ten minutes of air time every

week for each candidate on state television. This prevented them from presenting even the smallest part of their platforms. Television debates organized on state television were rather formal in terms of both timing and organization. Only one hour of free air time per week was allocated to candidates for television debates. The government candidates had a significant advantage during their campaign on both state and private television channels. State television and the Lider and Space channels (controlled by the government) campaigned systematically in favour of Heydar and Ilham Aliyev, which was against the law, and campaigned against opposition candidates using unethical methods. At the same time, the television channels allocated a great deal of air time for the show concerts organized in most regions of the country in the favour of Heydar and Ilham Aliyev.

Candidate Ilham Aliyev, at the time, was acting prime minister, which was against the law, and all television channels gave broad coverage to his activities. The opposition candidates had no access to any private television channel except ANS; and ANS raised its tariffs for political advertising broadcasts several times during the final weeks before the election and in fact kept the opposition candidates' access to paid air time to a minimum.

The atmosphere at the mass rallies of the registered candidates was more heated than that with other forms of campaigning. Again, conditions were not equal for all candidates. The local executive authorities created more advantageous conditions for pro-government candidates, whereas the rallies of opposition candidates faced serious obstacles, despite the provision of the Electoral Code requiring equal conditions for everyone during pre-election activities. The local executive and police authorities also attempted to put obstacles in the way of opposition candidates' activities. Such interference resulted in serious confrontations in Baku, Masalli, Lenkoran, Davachi and Saatli.

The process of distributing campaign materials was on the whole calm, although there were some disturbing incidents. The posters of all candidates were printed and distributed, and no incidents that could seriously affect the election were observed. However, some violations did take place in the process. For example, local executive authorities did not allocate special places for campaign posters. This was the case almost nationwide. Moreover, in terms of dissemination, the posters of the pro-government candidates had a significant advantage. Although the law requires that information on place of production and print run should be indicated on election posters, some posters did not contain such information. At the same time, the local executive authorities hindered the distribution of the opposition candidates' campaign posters.

4. The Financing of the Election

Expenses related to preparation and conduct of elections in Azerbaijan are incurred by the state budget. According to the CEC, about 22 billion AZM (manats) (c. 4.4 million USD) was allocated from the state budget for financing the 2003 presidential election. The greater part was spent on the electoral commissions and the running of the elections, and the rest on the candidates' election campaigns. Each candidate received 60 million AZM (c. 12,000 USD) on his or her special election account.

The law provides that special election funds can be established to finance the activities of candidates for the presidency. In general, the amount in the election fund of a candidate cannot exceed 200,000 times the minimum salary (c. 1,200,000 USD) at the most by the day the election day is officially announced. The law prohibits foreign countries, foreign physical persons and legal entities, international organizations and public organizations, state governance bodies and municipalities, military units, charitable organizations, religious unions, departments of state and local government bodies and organizations from making donations to the funds of presidential candidates, supporting them by payments in kind or rendering assistance.

Presidential candidates must file a three-part report with the CEC on the spending of their election funds.

Oversight of the financing of elections is carried out by Control and Inspection Service under the CEC.

However, transparency of financing was almost non-existent in the presidential election. Neither pre-election nor post-election financial reports of the candidates have been published. It is therefore impossible to comment on the amount spent by candidates and the sources of funding; but, from the observations and general analysis, when the financial resources of the opposition and pro-government candidates are

compared, it is possible to conclude that the latter had a significant advantage. In comparison with opposition candidates, the government candidates used state and so-called private television channels and other state media outlets more by several hundred per cent. Numerous rallies of Ilham Aliyev, the main candidate of the authorities, meetings with supporters in the regions organized by local executive authorities, show concerts and thousands of very well-printed posters all over the country show that an enormous amount of money was spent during the authorities' election campaign. Taking into account the involvement of some governmental and administrative resources in the campaign as well, we can estimate that much more was spent by Ilham Aliyev than the law stipulates. Of the opposition candidates, the campaign of the candidate from the Bizim Azerbaijan bloc, Isa Gambar, was on a much larger scale than those of other opposition candidates, which implies significant expenditure. But Gambar's overall expenditure cannot be compared with Ilham Aliyev's.

The law requires that, if a candidate gains less than 5 per cent of the votes, he or she must return the funds allocated to his or her election account (in this case, 60 million AZM, or *c.* 12,000 USD) and the funds allocated for free air time and space in state media outlets. According to the CEC resolution on the results of the election, only two candidates out of 12, Ilham Aliyev (76.84 per cent) and Isa Gambar (13.97 per cent), cleared the 5 per cent threshold. The other candidates are required to return the funds, but most of them consider the provision unfair and are refusing to refund the money. The CEC has stated that if the funds are not returned voluntarily the case will be tried in court.

5. The Voting and the Counting of Votes

Pursuant to the law, voting is carried out from 8 a.m. to 7 p.m. Voting and counting should be transparent and overseen by observers, and after the results are authenticated in each precinct the record of the count should be transferred to the electoral district immediately.

It was noted that the voting could be seen to be quiet, and fewer violations took place compared with previous elections. For example, there were fewer cases of ballot stuffing and proxy voting. There was a higher voter turnout as well as the possibility for observers to observe the elections. However, a deeper analysis of the process shows that serious violations did take place during the voting and counting which could have affected the final results.

Violations in connection with the voter lists on election day were ubiquitous. Thousands of voters could not find their names on the lists. According to the Electoral Code, the names of those who are not in the list can be included in the lists on election day only on the basis of a court ruling. Some voters whose names were not on the lists did not apply to court at all, and the petitions of the majority of those who did were not granted. The situation with the voter lists at the end of the day deprived 10,000 people of their right to vote.

Serious pressure was exerted on the voters on election day, mainly manifested in the treatment of the voters who were employees of state agencies. Under the threat of dismissal, these people were forced to vote for the government candidate; a system of control was applied to ensure that they voted. This also had an impact on the high turnout on election day.

Thousands of ballot papers were not given out in the proper way on election day. Pre-marked ballot papers were given to 'loyal' state employees and they were instructed to vote for the predetermined person.

Unauthorized persons interfered seriously in the work of the electoral commissions and the voting process. Instead of acting independently, the commissions worked under the guidance of these persons.

Serious mass violations also took place during the counting and the tabulation of the results. Opposition and independent observers were treated violently by the police and unknown civilians, and forced out of the polling stations. The most common breaches of the law committed during the counting process were the deliberate cutting off of the power supply; the opening of ballot boxes and counting in rooms other than the rooms in which voting took place; interference with voters in favour of the government candidate; the signing of blank protocols (the official records of the electoral commissions) or protocols filled out in pencil; and irregularities in the transfer of ballot papers from the precinct to the electoral district. Many deputy chairmen of electoral commissions representing the opposition refused to sign the protocols because of these violations, but they were intimidated both on election day and the day after, and some were forced to sign them.

In general, the counting process was dubious at all levels and there was a lack of transparency.

According to the CEC statistics, the government candidate, Ilham Aliyev, gained 76 per cent of the vote, the main opposition candidate, Isa Gambar, 13 per cent, and the remaining candidates between 1 per cent and 3 per cent. Despite this official statement, the domestic and international observers had the impression that the results did not reflect the true outcome of the election. The Election Observation Mission (EOM) of the Organization for Security and Co-operation in Europe (OSCE) Office of Democratic Institutions and Human Rights (ODIHR) was not satisfied with the authentication of the results and came up with a critical statement on the overall election process.

6. Conclusions and Recommendations

The presidential election of 15 October 2003 in Azerbaijan did not differ fundamentally from previous elections. Gross violations (interference, campaigning in the polling stations, the falsification of election results and so on) were committed during this election, as during previous ones. However, compared with earlier ones, the mechanisms of fraudulent practices were 'improved'. This was shown distinctly by the deliberate exclusion of the dissatisfied electorate from the voter lists. Indeed, the participation of this section of the electorate could have affected the election results significantly. Another important aspect here was the pressure exerted on voters employed in state agencies and organizations. During this election, this method was used more skilfully and in a more organized manner.

However, it should be noted that turnout during the presidential election was notably higher than in previous elections. This goes to show that the vast majority of voters believe in the possibility of changing power in the country through free and democratic elections. However, ultimately, some unsolved problems in the election legislation and administration prevented the real will and beliefs of the voters from being realized. The riots on election night and next day in Baku were a protest against the fraud that had been committed. The government, instead of ameliorating the situation and preventing it from deteriorating further, used force. As a result, about 600 people, including ten opposition leaders, were arrested and intimidated. Although some of those arrested were released over the following days, the opposition leaders are still in prison.

All these issues necessitate reforms in the election system and measures to ensure democratic elections. The reforms should eliminate the impediments to democratic elections and cover the following issues.

1. First and foremost, democratic election legislation with substantial and real provision for the conduct of free and democratic elections should be adopted.

The election process shows that the main problem is the composition and activity of the electoral commissions. The electoral commissions should therefore be set up on the basis of principles which ensure that there is little or no government control and that they are independent and objective. They must gain the trust of the leading political forces and be able to create equal conditions for the competing parties. Moreover, employees of state and municipal bodies, as well as those working in all departments, entities and enterprises of state and municipal bodies, should not be employed on the electoral commissions since they can be subjected to pressure by the government in one form or another. The selection of their chairpersons and secretaries should be the prerogative of the commissions themselves as collective bodies. The current election legislation decided this issue in favour of the government.

2. A major issue that should be definitively resolved in the legislation is that of the compilation of the voter lists. New rules for the compilation of the voter lists should be adopted and voters should be registered on the basis not of their formal registration on the civil register but of actual residence. In other words, the registration of voters should be accurate. The voter lists must be compiled not by the local authorities but directly by the electoral commissions. Overall verification of entire voter lists by all interested election stakeholders must be ensured. The mechanism facilitating the participation of voters residing in an area whose names for any reason are not on the lists must be simplified.

3. A third issue that needs improvement in the election legislation concerns transparency. The legislation must ensure unlimited access and simple procedures to observe elections for every citizen, non-governmental or political institutions, and the media.

4. The rules for the nomination and registration of candidates must also be simplified in the legislation in order to prevent artificial obstacles.

5. There is a pressing need to improve the process of voting and the authentication of results. The improvements should eliminate election fraud.

6. The legislation should improve the process for filing complaints against election violations and ensure prompt consideration and resolution of complaints and certain punishment for such violations.

7. One of the main problems is the lack of a genuinely independent judiciary and rule of law.

8. Finally, an effective political environment for equal competition for all stakeholders must be created. Without this it is not possible to talk about normal, democratic elections. Some changes must therefore be made in other legislative acts that restrict the activity of political parties.

We believe that the implementation of the above could create real conditions for democratic elections in Azerbaijan.

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Discussion Paper 3

Comments on the Analysis of the 2003 Presidential Election in Azerbaijan: 'Laboratory Materials' and Lessons Learned in the Latest Presidential Election

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Comments on the case study by Eldar Ismailov

After the accession to power of Heydar Aliyev's son, Ilham Aliyev, in Azerbaijan in October 2003 and the forced resignation of President Eduard Shevardnadze in Georgia a month later, it has become clear how comprehensive and all-embracing the symbol of the Home is in the culture of the South Caucasus. The famous scholar S. S. Averintsev noted its significance in 1977 (Averintsev 1977, p. 153). Let us examine it more closely.

Since the three countries became independent, no president in Azerbaijan, Armenia or Georgia has left office of his own accord as a result of a peaceful transfer of political power. The departures of Zviad Gamsakhurdia and Abulfaz Elchibey were determined by coups. The first president of independent Armenia, Levon Ter-Petrosyan, was replaced by Robert Kocharyan, as might be suspected, not as a result of his voluntary resignation.

The psychological and culturological components of the political processes suggest that in all three republics those who have attained political power and resided in the presidential palace were perceived (and are still partly perceived) by their political rivals as 'usurpers of someone else's Home'. With some shift in tone, similar thoughts exist in the minds of the presidents: they perceive political power as their own Home. The rivals dream of ejecting the 'usurper of someone else's Home'; the presidents regard their power as ownership of the Home and departure from it as expulsion from their own property.

It seems that the paradigm of the Home also causes a certain aberration in the perceptions of international organizations, for example, the Organization for Security and Co-operation in Europe (OSCE), the Venice Commission and so on. On the one hand, in accordance with their purpose and mandate, the international organizations that are called to promote democracy in the South Caucasus try to rein in the ambitions and whims of the ruling elite when drafting the Electoral Code. For this purpose they make critical comments and proposals so that the code will be fair, ensuring equal rights for all presidential candidates, and thus undermining the symbol of power as the ownership of one's Home. On the other hand, they are not always insistent in defending their stance, but make concessions to the master of the Home or satisfy the needs of the 'legitimate' owner.

Thus, one reason why, when the Election Code of Azerbaijan was being drafted on the eve of the 2003 presidential election, the international organizations in Eldar Ismailov's words 'showed rigorous determination over the question of the need for serious changes in the principles on which the electoral commissions were to be established, but later they retreated from their initial stance' may be the psychology and culture of conceding to the master of the Home.

Another possible explanation is provided by Ismailov himself in his case study, 'Analysis of the 2003 Presidential Election in the Azerbaijan Republic'—equal representation of the authorities and the opposition in the Central Electoral Commission (CEC) is open to sabotage by either party. Perhaps the international organizations took this prospect into account and stopped insisting on the principle of fair arrangement of the electoral commissions? If this explanation is correct, this approach is based on the notorious fear of 'democratic setbacks'. The enemies of democracy, as a rule, abuse this fear and play on it, when necessary, in order to acquire a 'legitimate' right to violate the democratic principles of elections and human rights. Naturally, the supporters of democracy also suffer from this fear, but they try to solve the problem not by a moratorium on the expansion of democracy but by means of social engineering. In this sense, the possible negative side effects of applying the parity principle to the composition of the electoral commissions could be avoided by means of reforms, based on the legislative framework, whereas the experts of the Council of Europe and the OSCE retreated from their principles, accepted the prerogative of natural succession of power and indulged the wishes of the 'master of the Home'.

The case study by Ismailov, as a genuine analytical work, is rather informative in demonstrating the role of the international organizations in the drafting of the Electoral Code of Azerbaijan, which is in stark contrast with the Soviet electoral legislation. This discussion paper attempts to describe briefly the evolution of the old electoral laws and their replacement with new ones. In this respect, I would like to emphasize Ismailov's statement in his case study that: 'In its conceptual basis [the 1991 Law on the Election of the President of the Azerbaijan Republic] was not very different from the previous electoral laws of Soviet times. The changes made in this law in 1992 and in 1993 were largely cosmetic and did not change its essence or its main content'.

For those who are less familiar with the course of developments in Azerbaijan, it should be noted that parliamentary resolutions of 1992 in a way compensated in a way for the drawbacks of the old law. Thus,

it was the Parliament that decreed the presence of members representing the opposition on the CEC. I was a member of the CEC from the democratic opposition at that time. Recalling those days, it seems to me that the presence of opposing parties in the CEC ensured the conduct of free and fair elections. But it was precisely the participation of opposing candidates in elections and the representation of different political forces on the CEC that made these laws different from the Soviet ones.

The Soviet electoral legislation created a closed legislative system in which no legal criticism of the course of elections or of election fraud existed. Beyond the legal framework, the system was supported by monopolistic mass media which were totally dependent on the authorities and other public entities. That is why in Soviet society there was total, or rather systemic, hypocrisy. The person ‘elected’ could speak of the overwhelming support of the voters (hence the notorious 99 per cent in the Soviet election statistics) and no one could ‘legitimately’ contest this statement. Surely, at that time the electoral farce could have been unmasked by consideration of the reality, but to admit this would have undermined the supposed legitimacy of the system of the time.

The evolution of the electoral laws in Azerbaijan destroyed the closed legislative framework of the totalitarian regime. Now, the electoral commissions, consisting of members and observers, could express their objections in legal form. From this point of view, the Electoral Code of Azerbaijan can be regarded as something of an achievement, undermining the old, closed system of electoral law which had nothing to do with reality: like a psychoid consciousness, the previous electoral system of Azerbaijan did not see the objective reality, but rather a reality of its own, and existed in a world of its own. Freudism explains psychotic personality by the fact that this personality existing in the isolated system of conceptions generated by one’s own mind does not critically correlate one’s conceptions with the reality. The Soviet election system, similar to such mentality, strove to turn the homo soveticus into a psychoid.

However, the destruction of the old closed system has not created a strong legislative foundation for free and fair elections. It has generated eclectics, which was better than the ‘monism’ of totalitarian electoral laws but not what the principles of democracy require. Hence the eclectic nature of the situation in which some international observers and representatives spoke approvingly of the 2003 presidential election—for example, observers from the Commonwealth of Independent States (CIS) countries, Turkey and France; Giovanni Kessler, Vice-President of the OSCE Parliamentary Assembly; and Martin Kassan, head of the Council of Europe delegation—while extremely critical statements were made by other observers—Peter Eicher, head of the OSCE/Office of Democratic Institutions and Human Rights (ODIHR) observation mission, and Andreas Gross, co-rapporteur of the Monitoring Committee of the Council of Europe Parliamentary Assembly.

Here we must make a comment. Ismailov quotes Kessler: ‘These elections have demonstrated the increased dynamics of progress in the political life... in the direction of democracy and international standards’. The adequacy of this statement was undermined by the events that followed immediately after the election. The extensive arrests of opposition activists, leaders and even electoral commission members who refused to sign forged minutes (all this is described in the OSCE’s statements), the hindering of the publication and distribution of opposition newspapers, the expulsion of the Musavat party from its headquarters in downtown Baku to a building in the suburbs, as well as less serious events, do not support the statement about the ‘increased dynamics in the progress in the political life . . . in the direction of democracy’. It is true that the difficulties with the publication and distribution of opposition newspapers were very soon resolved, and several alternative buildings were proposed to Musavat, but even so it is difficult to agree that as a result of the election there was progress towards democracy in Azerbaijan.

Because of the eclectic inner structure of the Electoral Code and the contrast between the reality and the letter of the law, the code enabled the ruling party to prevail at the presidential election in 2003. At the same time, however, it helped to reveal the numerous violations during that election. Because of this eclectic, nothing could have prevented the predetermined outcome of the election (in contrast with the parliamentary election in Georgia).

On the first point, let us present a fact which, probably for reasons of limitations of space or its narrative logic, Ismailov has not included in his case study. According to critics from the opposition, during the discussion of the draft Electoral Code, Article 179.1 was (wrongly, in terms of procedure) introduced into it. This article provided that if, after election day has been announced, the president, for reasons indicated

in Article 104 of the constitution, stops performing his duties before the end of his term, the election must be cancelled and a new, extraordinary election called. Article 179.1 was not just ‘made up’ out of lawlessness; it was based on articles 104 and 105 of the constitution; but the need for it was not justified either by the requirement of free and fair elections or by overcoming technical difficulties of the elections. At the same time, its purpose and meaning were quite transparent in the context of the president’s state of health.

On 3 May 2003, Heydar Aliyev disappeared into the prestigious Gulkhane clinic in Turkey. Ordinary people in Azerbaijan were puzzled and fell victim to the verbal crossfire between the pro-government and opposition mass media. Naturally, the state tried to mask the fact that the president was undergoing medical treatment, but the opposition parties and press started to spread news about the serious, even terminal, condition of the president, and then about his death. In response, Azerbaijan’s ambassador to Turkey and then the president’s son, Ilham Aliyev, issued statements to the effect that the president’s treatment was succeeding and accused those who were spreading irresponsible rumours about his condition.

It was in these circumstances that Article 179.1 was incorporated into the Electoral Code. Its aim was to create a safety net for the presidential power as immovable property protected from the encroachments of ‘strangers’. It was expected that Heydar Aliyev would stand in the election. However, his state of health created the danger that the ruling party might be left without a candidate in the election, or that in time of trouble, and without the president’s charisma, the opposition might seize power. Taking this situation into account, a new Article 179.1 was incorporated into the code; it made it possible, if and when necessary, to cancel the election and designate a new election when a new candidate from the ruling party could fight the opposition.

Events developed further after Heydar Aliyev was transferred to a clinic in Cleveland, Ohio. The clinic’s press service put out information about the success of his treatment in measured diplomatic statements but, despite this optimism, the president could not confirm the official reports in his radio or video addresses.

In the context of these events, an unprecedented electoral incident took place. Heydar Aliyev and his son were nominated to be presidential candidates at the same time. Ilham Aliyev tried to explain this by his support for his father at the election. This statement resembled putting the best face possible on a bad business.

It was at this point that Heydar Aliyev signed a decree appointing his son prime minister. The legitimacy of this appointment, while Heydar Aliyev was not in the country and was not carrying out his duties, raised intense discussions in the society. However, in this way the second candidate from the ruling party acquired the resources he needed to fight for the ‘Home’. It was probably this fact—not international pressure, of which no evidence exists—that enabled the authorities to reject Article 179.1 as superfluous by means of a Constitutional Court ruling which suddenly ‘recalled’ an opposition request about this matter.

This rather unpleasant event demonstrated that the symbol of power—the ‘private Home’—was enhanced by the Electoral Code, preventing its seizure by strangers and protecting the course of elections which repeatedly ‘legitimize’ the ownership of the Home.

Now let us look at the facts that support my second statement, that the Electoral Code did not prevent the exposure of violations and forgery at the election.

The case study by Ismailov, which summarizes all the major breaches of the law committed during the 2003 presidential election, is evidence of that. It can be clearly seen from his paper that the author had no problem collecting facts about violations and fraud, since the law provided for adequate mechanisms for the monitoring of the election. Nor did the international observers have any difficulty in detecting and recording breaches.

Here I would like to take issue with one of Ismailov’s theses. In his case study he presents rather serious and widespread types of violation. His account is in agreement with the opinion of the OSCE, and he makes the reservation that: ‘In general, the picture was much better than in previous years, and most probably the violations did not greatly affect the results of the election’. In this commentary, we do not have strong enough arguments to cast doubt on the first part of his statement—that the general election picture looked much better than in previous years. However, the logic of Ismailov’s paper casts doubt on the second part of his statement: the types of violation he lists are such as to make it impossible to say that

they hardly *decisively* affected the outcome of the election. Perhaps the author made this reservation to demonstrate his impartiality, showing that he is ready to see the negative and positive sides of the election. He was probably also influenced by strongly condemnatory statements made by the international organizations (which, however, did not recommend holding new elections). However, in my own opinion, the claim that the latest presidential election in Azerbaijan fell short of proper democratic standards points to the uncertainty of the situation: it is impossible to determine clearly who won or lost the election. The winner had already been nominated by the CEC.

This situation, when the international organizations avoid directly recognizing the true state of affairs by using phrases like ‘one more step towards democracy’, is precarious for the ruling party since it casts a shadow on the legitimacy of its actions.

The Electoral Code allocated six seats on the CEC for the parliamentary majority and provided that the chairman of all the electoral commissions is a representative of this majority. In this case, this majority belonged to the New Azerbaijan party. However, as a result of numerous violations during the parliamentary election in 2000, the opposition parties did not regard the Parliament as legitimate, and in the opinion of the OSCE and the National Democratic Institute (NDI) in the USA the opposition’s stance was justified. In this situation, the dominant position of New Azerbaijan on the new electoral commissions raised objections from the opposition parties, particularly from Isa Gambar’s Musavat Party, whose success in the 2000 election was diminished by the official results but impossible to conceal. The fact that the leaders of the Liberal Democratic and Social Democratic parties, despite tense relations with Musavat, recognized its great success at the 2000 election is also evidence of that.

These two facts are presented to demonstrate the ‘eclectic’ nature of the Electoral Code of Azerbaijan. In this case, we could not find anything better than the ‘philosophically’ tinged word ‘eclectic’ to denote the duplicity of the code in which articles and provisions following ‘from’ and ‘for’ democracy are alongside articles and provisions that are intended to reserve the Home of power for the master. Thus, on the one hand, the code stipulates that a candidate who does not manage to collect the required number of signatures can be registered by paying a registration deposit (articles 58.5, 60.5). In contrast with the previous electoral laws, these articles significantly restrict the authorities’ opportunities to reject the registration of serious contenders. On the other hand, the very same articles provide for the registration of candidates needed for various kinds of manipulation, for example, ‘puppet’ candidates who helped to organize dirty attacks on opposition candidates during the campaign, often openly supporting the candidate from the ruling party in one way or another while slandering the opposition leaders, even accusing them of different kinds of moral depravity. This absurd situation is not created only by these parts of the Electoral Code.

Ismailov’s case study analyses various aspects of this subject, and puts forward his judgements and opinions. The paper gives a good opportunity to enrich the general picture of the latest presidential election in Azerbaijan with new details, counterarguments and content by means of commentary.

Ismailov is surprised that ‘the authorities of Azerbaijan for a long time hid the fact that the draft of the Electoral Code was being prepared and submitted to the scrutiny of the international organizations from the country’s citizens’. In this respect, we may add that the public was also puzzled by the fact that the international organizations also concealed this fact while their experts examined the draft code. As for the reasons for this secretiveness, in my opinion the authorities did not want to create a new arena for debate between the ruling party and the opposition. The participation of non-governmental organizations (NGOs) in these debates would broaden and exacerbate the discussions, which would, whether the authorities wanted it or not, open a new front for struggle and agitate the citizens. (It should be admitted that this situation creates additional difficulties not only for totalitarianism, but also for democratic government, although this does not mean that it is undesirable.)

Another possible reason why the Electoral Code was drafted in secrecy is put forward by the opposition. It claims that the authorities wanted to avoid a long-drawn-out discussion of the code. At first, this argument appeared to be valid. However, when the discussion started in December 2002 and continued till June 2003, it lost its weight. Six months is a long time for discussion of a bill.

If we proceed from the socio-political context to the actual text of the Electoral Code, one of its drawbacks is that the code does not oblige the CEC to collect and publish electoral statistics which would indicate, say, the gender composition of the voters.

During discussion of the draft code, a proposal was made to add a special provision on activating female voters. As is well known, the electoral passivity of women is a problem for many Muslim and even Latin American countries. That is why this problem is addressed by the programmes of International IDEA.

To overcome the electoral passivity of women, the present author put forward a legislative initiative for an electoral lottery. I am not so naïve and ambitious as to object to the fact that this initiative was ignored during the parliamentary debates. However, because it may have some value, I will avail myself of the opportunity to describe it briefly. This initiative is as follows. The Electoral Code should stipulate that after elections the CEC, either jointly with the Committee for Securities or independently, will arrange a television show with a free lottery. The draw would be done using the numbers of female voters taken from the lists of voters who received ballot papers. Then, under the oversight of the main political parties, the signatures of the winning women would be checked against their signatures on the voter list when they received the ballot paper. The women whose signatures were forged by the members of the electoral commissions would, naturally, not be awarded lottery prizes. Thus, on the one hand, an incentive for women to participate in elections would be created, and, on the other hand another mechanism would be introduced to prevent forgery (Mehdi, Badalov and Mehdi 2003, pp. 102–10).

To conclude the discussion of the Electoral Code, I would like to describe its ‘philosophy’. The code does to a degree solve the problem of restrictions placed on the opposition, but it does not restrict the manipulation of elections by the authorities. (Probably, for this purpose Article 17.6.13 of the Electoral Code prohibited public comments by members of the electoral commission on the resolutions adopted by the commission of which they were members. This induced two members of the CEC, Vidadi Makhmudlu and Anvar Aliev to apply to the Constitutional Court with a suit against the restriction of the commissioners’ freedom of speech by Article 17.6.13 (Symbolic Constitutional Court. Laws, Rights, Protocols, pp. 65-76)). Meanwhile, in my opinion, in countries where significant ‘denationalization’ has not taken place, and where most domains of national life are still dependent on the state, a major criterion for election legislation must be the extent to which that legislation restricts the impact of the executive power on the electoral structures and the course of elections.

In terms of these criteria, the Electoral Code of Azerbaijan probably leaves much to be desired.

As this commentary was being written, the Azerbaijani media were calling for dialogue between the authorities and the opposition. The Electoral Code could have been an important topic in this dialogue. During the election the code confronted a tough reality. The election revealed unforeseen methods of fraud. Now it is worthwhile to compare the reality of past elections with the Electoral Code in order to see how the law should be amended. For example, during the election it became obvious that the code does not clearly stipulate the rules for approval and/or coordination of mass meetings with the presidential candidates (this why the meetings of opposition candidates with voters were often preceded by hard negotiations with local authorities (Azerbaijan National Committee of Helsinki Civic Assembly, pp. 23-27)).

Numerous breaches of the law highlighted another legislative problem. Up to now, electoral offences envisaged in the Criminal Code (articles 159, 160 and 161) have been subject to amnesty. This has raised the well-founded suspicion that in this way the authorities encourage fraud and protect offenders from future punishment in the event of new political forces coming to power. Probably, in countries like Azerbaijan, it is worthwhile toughening the legislation with respect to the articles in the Criminal Code that deal with electoral crimes. Such articles must be categorized as crimes against the state or should not be subject to amnesty.

Now to other aspects of the election. Alongside the positive aspects of the CEC’s activities, Ismailov also finds drawbacks, with many of which we disagree. Among the drawbacks he mentions the ‘indifference’ of the CEC to insults made by presidential candidates to other candidates in public. In my view, this statement by Ismailov requires refinement and comment. First, the CEC did file a complaint with the Prosecutor’s Office and the Ministry of Justice with respect to insults made. Second, as regards the inadmissibility under the law of insult and libel of candidates in public statements, some parallels with parliamentarians and journalists will enable us to view this issue somewhat differently. Article 91 of the constitution of Azerbaijan stipulates that a parliamentarian cannot be held liable for thoughts expressed in the Parliament. And, after the Paris Conference held in late November 2003, on the initiative of its representative for the press, Freimut Dewer, the OSCE published a recommendation to the European Union (EU) and OSCE countries advising them to withdraw from their legislation all articles envisaging liability for journalists for libel.

These facts mean that the threat of liability for libel impinges on the freedom of expression and the free style of expression of parliamentarians in the Parliament and of journalists in the press. It is my opinion that, in this situation, the statements of presidential candidates are comparable.

In his case study Ismailov criticizes the CEC, and with good reason, for the short air time allocated for the candidates' television debates. I would like to point out another aspect of this issue: the opportunity to make numerous statements on television creates a difficult situation for those candidates whose ideas and opinions are strictly limited. This exposes the intellectual limitations of those presidential candidates who were registered as a result of manipulation or who are not serious candidates for power.

In conclusion, I would like to note that, in a society where the authorities control nearly everything, where a developed stratum of non-partisan and independent persons is lacking, and where independent courts are non-existent, free and fair elections cannot be conducted without the pressure of international organizations. In this context, the Electoral Code of Azerbaijan and the latest presidential election present rich 'laboratory material' for the theory of democratization. The author of the case study has presented part of these materials. We shall take this work further.

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ELECTION
ASSESSMENT
in the South Caucasus
(2003-04)

GEORGIA



Discussion Paper 1

An Analysis of the Presidential and Parliamentary Elections in Georgia: A Case Study, November 2003–March 2004

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Summary

During the period analysed in this study, Georgia went through the most important political event since its independence. The ‘Rose Revolution’ of 23 November 2003 resulted in the crumbling of the ineffective and corrupt regime of President Eduard Shevardnadze and in bringing to power young and energetic political leaders with huge public support. The revolution was a direct result of the parliamentary election of 2 November 2003, and the reason for the presidential election of 4 January 2004 and the parliamentary election of 28 March 2004. This study could therefore not avoid discussion of some issues which otherwise would not fall within its scope.

The study reviews the major components of the elections in chronological order. There are nine sections focused on: (1) the legal framework of the elections and the input of different actors into them; (2) the system of election administration and the management of the elections; (3) the process of voter registration and a major scandal related to it; (4) the process of the building of opposition and pro-government coalitions, and their interaction; (5) their strategies for the elections; (6) the results of the elections and their political consequences; (7) the role of civil society and the media in the election process; (8) the role of the international community; and (9) some lessons learned from this long process and possible recommendations for the future. Since all the three elections discussed were in fact part of one long political campaign, all topics are discussed in a cross-cutting way and important links are established between the elections.

The length of this paper was predetermined, so that it is not possible to include all the interesting aspects of this unusually long and complex political process in Georgia, which deserves much deeper analysis. Such analyses could be extremely helpful for a better understanding of the anatomy of a post-communist society and the prospects for fair and democratic elections there, as well as the power of liberal democratic ideas which a limited number of civil society actors could promote in such societies.

1. The Development of the Election Legislation

1.1. The Background

The legislation relating to elections has been the legislation that has changed most frequently in Georgia since 1990. Although the election system and the main principles of fair, free and transparent elections were defined by the Georgian Constitution of 1995, and were always secured in the laws, for almost each election (there have been 12 parliamentary, presidential and local elections since 1990) the Parliament has adopted new laws or has changed the old ones substantially. The resulting unstable legal environment around elections created a number of problems. For example, major issues, such as the model according to which the election management bodies were to be set up, were decided after last-minute deals between the two or three major political players in the way that was most favourable to them only; unfavourable political opponents were excluded from the elections by changing the eligibility rules just before the elections; the staff of the election administration never had enough time to be trained on the changes in the law, and so on.

Until 2001 there were specific laws for parliamentary, presidential and local elections. These laws were closely interrelated and frequently referred to each other because all kinds of elections were administrated by the same system of election commissions. At the same time, these laws were not always coherent and created many opportunities for biased misinterpretation by the election administration bodies, the government and the courts.

1.2. The Election Code of 2001

The parliamentary election of 1999 and the presidential election of 2000 were marked by growing election fraud and falsification, and in most cases the system of election administration appeared ineffective to prevent it and/or to put right the wrongdoings of different election actors. The criticism of international and local observers and public negativism towards the elections reached a critical point, and this forced the Parliament to reform the Electoral Code and all contingent legislation. Consequently, in 2001 a comprehensive Election Code was adopted which covered all kinds of election except those to the parliaments of Ajara and Abkhazia. The code included detailed regulation of the most sensitive stages of elections, such as the registration of parties and candidates, the financing of the election campaigns of parties and candidates, voting procedures, the system for monitoring elections, the rules for the courts

considering election-related complaints, and so on. However, because of the lack of consensus among the political forces, many other important issues were left undecided, among them the model for setting up the election administration and the system of voter registration.

1.3. The ‘Last-Minute’ Amendments to the Election Code in Summer 2003

1.3.1. Presidential Commission for Preparation of the 2003 Parliamentary Election

For the parliamentary election of November 2003, local and international stakeholders started intensive work to prepare amendments to the Election Code as early as the end of 2002. By this time President Shevardnadze was under immense pressure from the international donors, which made the holding of fair and democratic parliamentary elections their top precondition for all kinds of assistance from abroad. In February 2003 the president issued a special decree on necessary measures for the preparation of the November 2003 election, including drafting necessary amendments to the Election Code. To deal with these multiple tasks he established a special commission. However, this commission, which originally had the ambition to be a representative body, including the political opposition and representatives of non-governmental organizations (NGOs), very soon became a body of presidential supporters. By the end of February 2003 representatives of the NGOs and the political opposition declared that they could see no positive effect from their participation in the process, since the government representatives were not willing to consider their initiatives and arguments, and therefore left the commission. Consequently, the presidential commission became one of the organizational units of the presidential electoral bloc, although its leadership continued to present itself to the public and the international community as a non-partisan governmental unit working on general issues of election organization.

1.3.2. The Parliamentary Inter-Factional Commission

As soon as the Parliament resumed its spring session in February 2003, the forum for debate of the election law and the election administration moved to the parliamentary inter-factional commission, which was composed of representatives of all the parliamentary factions. It met almost daily and considered a great many draft amendments and even new versions of the code prepared by different factions. Several international organizations brought foreign experts in election law into the process and mobilized local lawyers as well.

After several unsuccessful attempts to come up with a compromise version of the amendments, the parliamentary commission decided to agree on at least some important details concerning the transparency and fairness of the election process, and put aside the issue of the composition of the Central Election Commission (CEC) for the time being. For this reason the representatives of all the parliamentary factions came together at a meeting sponsored by two US organizations, the National Democratic Institute (NDI) and the International Foundation for Election Systems (IFES), in mid-April. After long debate the participants agreed to merge two drafts of amendments to the Electoral Code, one coming from the government factions and the other from the opposition. It also agreed to consider ‘NGO recommendations’ on making the election process more transparent.

Since the government and opposition factions had come to some kind of agreement, it was decided that the working process should continue in a format different from that of the inter-factional commission, which was too big for any productive article-by-article consideration of the draft. It was decided to have a smaller group under the leadership of the speaker of the Parliament.

From this moment the speaker of the Parliament became the most active player in the process of drafting the amendments. However, by the end of June the process reached deadlock once again. The deadlock was resolved after the personal involvement of former US Secretary of State James Baker (see below). The consensus reached over the ‘Baker Formula’ resulted in the amendments being adopted in August 2003. These amendments did increase the transparency of the election process and established more effective legal guarantees of its fairness but, as a result of last-minute manoeuvres by the presidential coalition, they failed to reduce the government’s influence over the election administration.

1.3.3. Legal Tools Available to the Government and the Opposition Before the Election

Finally, the process of preparing the proper legal basis for the 2 November 2003 parliamentary election ended with tangible positive results for the opposition and civil society. Effective legal tools for achieving a

high degree of fairness in the election process were in place—full access to information, parallel vote tabulation, guarantees for election observers, guarantees for media coverage, exit polls, access to the judiciary, a chairperson of the CEC with moral responsibilities to international organizations, and so on. However, it was also evident that these achievements could easily be ignored by an irresponsible government, which retained full control over the election administration, by ensuring a decision-making majority in the CEC—two-thirds—for the supporters of the presidential bloc.

2. The Administration of the Elections

2.1. The Composition of the Central Election Commission

2.1.1. The Background

The origins of the election administration system of Georgia were in the first multiparty elections held in October 1990. By that time the ruling Communist Party was very weak and had to agree to the model suggested by the newly emerging opposition parties. According to that model, the government would appoint three commissioners in the CEC and lower-level district and precinct commissions and then each party had the right to appoint one member in each commission. This model went through several modifications during the following ten years but the main concept was kept unchanged: the administration of elections was not an exclusive function of the state bureaucracy, but rather the job of political appointees of the parties participating in elections. However, after the early 1990s, the ruling political groups always succeeded in modifying this system in such a way as to allow them to secure a decision-making majority at all levels of the election commission system. At the same time, the election commissions turned into an arena for back-room deals between political players.

Before the 1999 elections, there was an attempt to introduce a greater element of non-partisan professional administration into the electoral commissions, although some party representatives were also included. In practice, though, this meant greater domination by the supporters of the incumbent powers, while commission members continued to defend their partisan interests in an even more blatant way. The ruling political groups were successfully manipulating their decision-making majority: they would first ensure election victory for themselves and then ensure some modest success for those opposition groups which were the most loyal and politically the less dangerous to them.

2.1.2. A Failed Attempt to De-Politicize the Election Administration

By 2001, when the new Election Code was being drafted, the opposition parties, having substantial experience of being defeated in unfair elections, were demanding significant changes in the model of election administration. Their demands would have been left unsatisfied once again but for a new and important trend in Georgian politics: the ruling party (the Citizens' Union of Georgia, CUG, led by Shevardnadze) was experiencing major internal tensions, and the group of so-called 'reformers' led by Mikheil Saakashvili and Zurab Zhvania were thinking more and more about their political future without Shevardnadze. They, better than anyone, knew what the election-related advantages of a ruling party were in the model of election administration existing at the time.

However, the political parties did not reach an agreement about balancing their interests in a party representatives-based model of election commissions, and the opposition did not agree on a state bureaucracy-based model. In what became a hopeless impasse, caused by distrust among the political parties and in the state bureaucracy, NGOs emerged as a solution. The 2001 Election Code proposed a radically new principle: NGOs with professional experience in election monitoring, human rights and democracy support, selected by certain criteria, were given the exclusive right to nominate 15 candidates for membership of the CEC, and the Parliament was to select seven CEC members from this pool by a two-thirds majority. Many political groups, however, were still sceptical about the principle and expressed suspicions that NGOs would favour certain political groups. In the end the NGO representative-based model introduced by the Election Code was never implemented, and the old commissions, which were kept in place by the code until the new ones were created, administered the 2002 local elections.

2.1.3. Deadlock in Reaching a Consensus Between the Political Groups

Shortly before the 2002 local elections, the Parliament adopted at first reading an amendment to the Election Code that was a return to the ‘pure’ party representation system: all parties that had won more than 4 per cent of the vote in the last parliamentary and local elections were qualified to participate. However, this draft never became law and the country reached the pre-election stage of the 2003 parliamentary election with the old acting commissions still in place and with a dozen different theoretical models suggested and advocated by different parties.

The principles by which the election administration bodies should be set up became one of the central issues debated between the opposition and Shevardnadze’s revived CUG during the spring of 2003. In June 2003 all the members of the CEC from the opposition parties except Revival resigned. Some politically neutral members, including its chairman, also resigned. The law prohibited the appointment of new commissioners, since the old CEC was acting until the new model was established. This meant that the remaining pro-Shevardnadze commissioners were left in charge of organizing the November parliamentary election. On 30 June President Shevardnadze stated that he would not consider it a tragedy if the parties did not reach agreement about the new CEC and the election were managed by the old CEC. On the same day a group of 14 countries’ ambassadors to Georgia met leaders of the parliamentary factions and expressed their concern about the delay in setting up the new CEC.

2.1.4. The ‘Baker Formula’

In a last attempt by foreign actors to resolve the situation, in early July 2003 James Baker, former US Secretary of State, visited Georgia to underline the commitment of the United States to fair elections and to help the Georgian Government and various opposition groups reach agreement on a number of election-related issues. One of the main agreements reached between the government and the opposition with the facilitation of Baker concerned the principles on which the CEC should be set up. According to the ‘Baker Formula’, the CEC would be composed of 15 members. The chair would be nominated by the Election Observation Mission of the Organization for Security and Co-operation in Europe (OSCE) and appointed by the president. The president would appoint five members of the CEC. The remaining nine seats would be divided between those opposition parties that had (a) cleared the 4 per cent threshold for representation in the Parliament at the past parliamentary elections or (b) cleared a 4 per cent threshold in the Tbilisi City Council elections and earned more than 100 seats in the country as a whole in the 2002 local government elections, plus a party of ‘Zviadists’ (supporters of former President Zviad Gamsakhurdia).

After several days of intensive discussion on the Baker Formula, on 23 July the Parliament adopted this principle at the first reading with the support of 125 MPs. Part of the presidential factions voted in favour but other parts of these factions plus two opposition factions—Aslan Abashidze’s Revival and the Industrialists’ Union (also known as Industry Will Save Georgia), which was loyal to the president—voted against.

2.1.5. The Revised Baker Formula

The opposition celebrated victory, but it only lasted for a couple of days. When the Parliament came back for the second vote on the draft, the governmental factions together with Revival and the Industrialists’ Union proposed an alternative composition for the CEC (according to their understanding of the Baker Formula) which would guarantee them together a two-thirds majority in the CEC. The opposition accused the government of turning down Baker’s original formula with the help of some opposition factions and appealed to the international community. Indeed, various countries’ ambassadors called the president and met him, but he declared that the Parliament was an independent branch of power and he could not intervene in its work.

Consequently, the presidential factions with the help of Revival and the Industrialists’ Union turned down the Baker Formula on the second vote and in mid-August adopted new amendments to the Electoral Code. According to these amendments the proportion between the government and opposition representatives in the CEC was seemingly the same as that suggested by Baker, but the content was very different. Revival and the Industrialists’ Union, formally opposition members but with a long history of cutting last-minute deals with the government, received five seats in the CEC. These five members plus five

members appointed by the president would have a majority of two-thirds of the votes, which guaranteed the presidential bloc full control over the election administration process.

2.1.6. Selection of the Chairperson of the CEC and its Composition after the Rose Revolution

The opposition lost its battle over the appointment of a chairperson of the CEC as well. After several weeks of consultations with the political parties, the government and NGOs, the OSCE mission nominated three candidates for this position, Vakhtang Khmaladze, David Usupashvili and Nana Devdariani. On 1 September 2003 the president picked Devdariani, who was the least acceptable candidate from the opposition's point of view because of her affiliation with the Socialist Party, which had joined the presidential coalition several months earlier.

The model according to which the CEC was to be set up remained unchanged after the Rose Revolution of November. At the beginning of December 2003, the interim president, speaker of the Parliament Nino Burjanadze, replaced the five members appointed by President Shevardnadze in August, who had resigned (upon the 'friendly' advice of the new leadership), and the chairperson of the CEC. The same process took place in lower-level commissions. The CEC, under a new chairperson, Zurab Chiaberashvili, organized the January 2004 presidential and the 28 March parliamentary elections.

Before the March parliamentary election, President Saakashvili refused an opposition request for the composition of the CEC to be changed. He suggested instead that the opposition nominate two candidates whom he would appoint to the CEC among the five presidential appointees. As expected, the opposition parties failed to reach agreement over the candidates and those two seats went back to the new ruling coalition. Chiaberashvili resigned from the chair the next day (19 April 2004) after the CEC issued the final official results of the 28 March election. On the same day Saakashvili appointed him Mayor of Tbilisi.

2.2. The Central Election Commissions in Action

As a result of this long and painful process, each of the three elections discussed here—of 2 November 2003, 4 January 2004 and 28 March 2004—were administrated by a CEC in which the ruling political forces had a decision-making majority. They dealt with their jobs differently, however.

2.2.1. The Old CEC (until September 2003)

The CEC which had organized the controversial 1999 parliamentary election, the 2000 presidential election and the 2002 local elections emerged from this lengthy process as an agency that had no credibility among local and international stakeholders. It was blamed (in some cases unfairly) for all kinds of falsification of results and manipulation during the elections. Thus the Georgian Government, the opposition parties and international actors started preparations for the 2003 parliamentary election with the shared assumption that the old CEC would be replaced. Even high-level government officials, not to speak of the opposition leaders, openly stressed the need for criminals working in the CEC to be prosecuted.

Such an environment would be enough to invite the conclusion that the CEC was not in a position to deal with the complex task of preparing one of the very important political events in recent Georgian history—the 2003 parliamentary election. However, negotiations between the political actors on the new CEC ended only in September 2003, just two months before the 2 November election, and the old CEC did an extremely poor job, especially after the resignation of its chairman and opposition commissioners (in May 2003).

The most illustrative example of politically biased, unprofessional and unlawful management of the elections conducted by the old CEC was the management of the voter lists computerization project (discussed in section 3 below). Another example was its ruling of 25 August 2003 on Participation of the State and Private Mass Media in the Election Process and the Rule of their Usage. This decision violated the freedom of speech guaranteed by the constitution, including the rights of voters to receive accurate and sufficient information, the right of the mass media to impart information without restriction, and the right of the contestants in an election to express their messages in a campaign. Media and NGO representatives asked for a copy of this ruling but were told that it was undergoing final editing and would be published in the *Official Gazette*. After major protests, in the afternoon of 27 August the CEC issued a

copy of the signed text. Its last article stated that an appeal against the ruling could be made in the District Court within three calendar days—that is, up to 6 p.m. of 28 August. However, 28 August was a holiday and the courts were closed.

It was thus obvious that the CEC planned not to leave the media enough time to go to court. Since the appeal was valid from the date on which it was officially posted, the Georgian Young Lawyers Association (GYLA) still found a way to appeal (by sending the complaint to the court via the post office, which was the only public agency working during the holiday) and won the case, but this ruling was a clear demonstration of the priorities of the old CEC.

2.2.2. The New CEC (1 September 2003–30 November 2003)

The new CEC began its work on 7 September 2003 under great time pressure. It had only eight weeks left until election day. Its chair had limited influence over decisions after the modification of the Baker Formula. In August the pro-government political groups (including Abashidze's party, Revival) controlled a two-thirds majority in the CEC, not counting the chairperson. Thus attempts by the Parliament to protect the legitimate interests of the opposition in the decision making by the CEC had been nullified. For example, the CEC followed an agreement between the presidential bloc and Revival, and appointed pro-government chairs and pro-Abashidze members in lower-level commissions.

In this situation it was hoped that the chairperson of the CEC, Nana Devdariani, would at least raise her voice against unfair and unlawful decisions by the majority. She enjoyed the commitment of the NGOs and some opposition parties during the first month of her job. She overruled some unfair decisions by lower-level commissions and made efforts to make the work of the election administration more transparent. However, she lost that commitment almost completely during the second month of her leadership of the election process, and after the November election she lost control over the process as well. Scandals related to the electronic voter registry left her mainly occupied with fixing this problem while other important issues were left to the discretion of other, politically more biased commissioners. For instance, Devdariani failed to react properly when the governments of Shevardnadze and Aslan Abashidze (in Ajara) organized and orchestrated violence against the opposition in Bolnisi and Batumi a couple of days before election day; and she issued two contradictory instructions about registering voters on election day, which caused additional chaos during the voting process. Under her chairmanship the CEC cancelled the accreditation of the television company Rustavi-2 because it permitted a television advertising spot aimed against CEC members.

Most importantly, Devdariani failed to react to complaints brought by observers about violations of the law documented in many electoral districts. It was obvious that the majority of the CEC would not pay attention to those complaints, but she had the right to bring those complaints to the court on her own and she did not do so, even in the most obvious cases. Moreover, two weeks after election day the CEC, led by Devdariani, ruled that invalid and protest ballot papers (ballots marked against all candidates or parties) would not be counted towards the number of people participating in the election. This changing of the rules after the fact was a purely political move which would increase the chances of the New Rightists party (which had moved closer to the government after election day) to enter Parliament. Finally, the CEC and its chairperson went so far as to completely ignore the explicit decision of the Tbilisi Appellate Court about the election results in the Bolnisi region.

Because of these and many similar facts, by the time the majority of the CEC had approved the final results of the elections (on 20 November 2003) the CEC was widely viewed as a completely politicized pro-government body which had failed to organize a free and fair parliamentary election in Georgia.

2.2.3. The Renewed CEC (after December 2003)

The presidential election of 4 January 2004 and the parliamentary election of 28 March 2004 were conducted by the CEC that was renewed in December 2003. These two elections can be considered a major step forward in terms of fairness and good organization. In an extremely short period of time (one month in the case of the presidential election) the CEC managed to come up with a realistic and reliable model of voter registration, activated the lower-level commissions, and ensured transparency and a proper flow of information. During the January presidential election the CEC dealt successfully with the extremely difficult task of organizing elections on the territory of Ajara as well.

In terms of the organization of the voting process and the accuracy of the voter lists, the CEC did a good job during the 28 March parliamentary election as well. However, this time it became too much involved in politics and issued several politically biased decisions. The most damaging to its reputation was its ruling nullifying the results of the proportional elections in two regions of Ajara and declaring new elections there. (There are 235 seats in the Georgian Parliament, of which 150 are elected on the basis of nationwide party lists using proportional representation (PR) and 85 in single-mandate electoral districts by the majoritarian system.) It was more than clear to everyone that the law did not provide for a new election to be held in such a situation. However, the CEC followed the political plan of the leadership of the country and adopted an unlawful decision to hold a new election, on 18 April 2004. Although the results of the elections on the territory of Ajara were falsified, documented public support for the local authoritarian leader, Aslan Abashidze, had been declining from election to election (from 98 per cent on 2 November 2003 to 56 per cent on 28 March 2004). Thus the political leadership of the country wanted to give Abashidze one more opportunity to be completely defeated in his own region, which could lead to more political mistakes by the local ruler. The CEC chose to pursue this goal (which was probably politically justified) rather than the law, which was more than clear in this situation. Finally the CEC was forced to cancel its decision, not because the GYLA took a complaint to the court (which also followed the wishes of the political leadership) but because of armed resistance by the local authorities of Ajara, which did not allow the CEC representatives to enter the territory.

3. Voter Registration

3.1. Registration of Voters for the 2 November 2003 Parliamentary Election

Local and international observers repeatedly noted the absence of a proper system for registering voters as the main source of falsification of the results of the previous elections held in Georgia. The attention of all interested actors was therefore focused on this issue from the end of 2002. During the period April–October 2003 a great deal of work was done, and seemingly all the prerequisites for creating a system of updatable and transparent voter lists in the country were in place. However, negligence and criminal acts by certain public officials and their political clientele brought the work of several thousand people and the money that had been invested to nothing. As a result, the ‘updated’ voter lists prepared for the November parliamentary election turned to be the main reason for the election being rendered null and void and the country being brought to its feet for revolution.

A month before the election, after reviewing the posted voter lists, Georgian society was shocked: in almost every city and village of the country citizens were finding their dead relatives on the lists but not their own names.

The new CEC attempted to correct the electronic lists but, after spending two valuable weeks doing so, it came to the conclusion that this was impossible: there were too many serious problems both with the raw data and with the system for processing them to be put right in just a few days. Consequently, the 2 November election was conducted on the basis of handwritten voter lists which the commissioners prepared one day before the elections. These lists were posted for public examination only on the morning of election day. Thus election day turned into nationwide chaos. Voters spent hours looking for their names on the lists and many still did not find them. As a result, considerable numbers of voters were denied participation in the election. This became the single most important argument which enabled the opposition to bring the citizens out onto the streets.

3.2. The Reasons for the Chaos in the Voter Lists

It is worth looking more closely at the process of establishing the voter lists for the November parliamentary election, because this is the best demonstration of the harmful role of the politically biased, ineffective and corrupt government in conducting elections in Georgia, as well as the reasons why Georgians were no longer prepared to tolerate their old government. There were several major reasons for the chaos in the voter lists published at the beginning of October 2003.

- Failure to comply with the timelines set for particular activities by presidential decrees 123 and 193 of 2003 and the May 2003 Intergovernmental Memorandum of Georgia and the United States, by which the US government promised substantial financial support for the organizing of the election if the Georgian Government dealt with its job properly:

- At the beginning of October voter lists were published without a computerized process being in place and with the checking and verifying data, which should have been concluded by 31 August, not yet completed.
 - The demarcation of the territorial borders of election districts and precincts, as well as verification of streets and addresses, was several months behind schedule.
 - The Ministry of Finance only transferred appropriate funds for their activities to the election commissions at the beginning of September.
 - The process of transferring data from the Ministry of the Interior to the CEC computer centre continued until 26 September, while according to the plan the CEC had to receive verified data by 1 June.
 - The CEC computer centre was only provided with office space and equipment after considerable delay.
- Uncoordinated, ineffective management and control of and among the agencies and organizations involved in the process of establishing the voter lists:
 - Apart from the intergovernmental memorandum mentioned above and its annex, there was no official document identifying the rights, obligations and functions of the parties involved in the process.
 - It was not until mid-August that the issue of who was to conduct the final processing of the data and where it would be done was decided.
 - No manager of the project or person with overall responsibility as envisaged in the inter-governmental memorandum was ever officially appointed.
 - The parties involved in the process dealt with core issues only by means of oral agreement rather than by establishing official documents.
 - The government officials responsible for implementation of the presidential decree were not carrying out permanent monitoring of the process or reacting to existing problems adequately.
- The delays in appointing a new CEC and the delegation of the task of establishing the voter lists to the old CEC personnel:
 - Old members of the CEC had to carry out this very responsible function while intensive debates regarding their criminal responsibility for the falsification of previous elections were taking place in political circles and the mass media. In this environment the members and employees of the CEC did not have adequate motivation to work effectively.
 - The new CEC started functioning at the beginning of September, when the situation with the voter lists was already critical. Nevertheless, had the new CEC managed to grasp the situation in time, at the beginning of September, it would have managed to avoid many problems.
 - The transfer of documents related to the voter lists from the old to the new CEC management was not adequate or accurate.
- The choice of an inadequate model for establishing the voter lists and the placing of the major responsibility for this on the Ministry of the Interior, which was unprepared and unsuitable for this function:
 - Pursuant to the presidential decree, the initial gathering and organization of voters' details was to be carried out by the Ministry of the Interior. This decision was made not only without any input from NGOs and representatives of the political opposition but also without taking into consideration the arguments of the relevant officials of the ministry.
 - Senior government officials of the State Chancellery did not take into consideration recommendations regarding more effective methods of process implementation. As a result, during the preparation period (from February 2003), the representatives of the NGOs and the political opposition ceased cooperation with the representatives of the government.
 - A proposal to invite a foreign company competent in the field of gathering and verifying voter data, which would have settled the existing permanent chaos regarding the population census and inter-

organizational confrontations, was one of many recommendations that were not taken into consideration despite the fact that foreign funds were made available to support this project.

- The recommendation regarding the establishment of a transparent and effective system of monitoring and verifying computerized data available via the Internet was also neglected.
- The Ministry of the Interior and other agencies were not allocated the necessary funds for carrying out the enormous amount of work involved.

The electronic data on a single street in Tbilisi transferred to the CEC by the Ministry of the Interior illustrate that there was a well thought out and systematic mechanism for falsification of the election which could only be the work of an organized group, and analysis of the data on other districts confirms this. For example, a house situated at 3 Khoshtaria Street existed in the data twice. In the first case the name of the street and the number of the house were written in different cells, and the voters indicated there were actually resident at that address. However, in the second case the name of the street and the house number were written in one cell and none of the citizens indicated there had ever lived in that house (the same scenario was repeated with other houses on the same street). Not only did the format in which the address was indicated diverge in the real and the false data; the date of birth for all ‘false’ voters was 1 January, with only the years of birth varying.

It was clear that the system of falsification involved a specific signal or password from one agency or public official to another, so that the latter would not confuse real and false voters while finalizing the voter lists. Most likely the system was not invented for this election specifically but had been used before: dishonest commissioners would put signatures across the names of false voters (this was safe, because these voters would never show up to protest) and put a similar number of appropriately filled-in ballot papers in the ballot box.

However, this time the system failed to work in the same way. The ‘raw material’ for falsification passed on to the CEC from the Ministry of the Interior was of ‘high quality’, but something did not work and the rest of the system was brought to light.

There were other interesting facts as well, which are eloquent about this system of falsification:

- Senior officials of the Ministry of the Interior kept more precise handwritten data on Tbilisi voters (more than a quarter of the total number) in their archive until mid-October, while they knew that the CEC was finalizing the voter lists on the basis of the incorrect electronic data that had been transferred earlier.
- Senior officials of the Ministry of the Interior declared that they did not have originals or copies of the electronic data earlier transferred to the CEC and thus could not deliver them to the Anti-Corruption Council upon its request. Two days later they ‘discovered’ these materials in their office and transferred them to the Anti-Corruption Council, but only after the president had become involved in the matter.
- The former chairman of the old CEC did not transfer the electronic data on Tbilisi voters to the CEC computer centre administered by the IFES for almost a month and a half (delaying this from 3 July until 15 August). At the same time he was aware that the electronic data were less reliable than the handwritten lists kept in the Ministry of the Interior, but the request for lists to be transferred was never made.
- One of the issues on which there was disagreement between the old CEC and the IFES computer centre was the question who had to do the final processing of the lists—dividing them according to electoral precinct and preparing them for publishing. It should be underlined here that embedding the above-mentioned falsifications as well as ‘wrapping’ them well (so that the objective would be achieved and the violations would not be so glaring) was possible at this second stage.

It was obvious that the chaos in the voter lists for the November parliamentary election was the result of lack of professionalism and poor management, as well as criminal action. It is not excluded that during the development of the voter lists different political parties (including opposition parties) independently of each other tried to falsify the lists for their own benefit. It could be the case that such surprisingly high amounts of inaccuracy were caused by a clash of different falsification mechanisms which did not allow any of the parties to achieve their objectives.

3.3. Voter Registration after the Rose Revolution

The CEC renewed after the Rose Revolution faced the major task of putting right the voter lists. After assessing the situation, it came to the conclusion that for the forthcoming presidential and parliamentary elections it was impossible to do all the work which had been intended to be done during February–October 2003 and was not done properly. The CEC therefore decided to establish voter lists which would be the most reliable possible but still temporary, without full computerization, by using a combination of different methods. It focused its efforts on avoiding the situation of an active citizen coming to vote and not finding his name on the voter list. Before the 4 January presidential elections a nationwide campaign was therefore announced for self-registration by the citizen: a voter would come to the polling station himself and obtain a voter's identification card. Since the Rose Revolution had already mobilized the citizens, this system worked well, and by the time of the 28 March parliamentary election more than 1.2 million citizens had registered their names.

This system did, however, have major shortcomings as well. For example, it was impossible to announce the total number of voters in any district until voting closed on election day. These shortcomings did create problems, but far fewer than were observed at the November parliamentary election.

4. The Relationship Between Political Parties and Coalition Building

4.1. The Political Landscape After the 2002 Local Elections

The political class of the country started preparations for the 2 November 2003 parliamentary election in the light of the outcome of the June 2002 local elections. The latter were marked by the astonishing defeat of President Shevardnadze's CUG (it got less than 3 per cent in the capital, Tbilisi) and the indisputable victory of the opposition political groups which broke with the president before the elections—Mikheil Saakashvili's Nationals, the New Rightists of David Gamkrelidze and the United Democrats of Zurab Zhvania. Two other traditionally strong players in Georgian elections experienced serious problems: Aslan Abashidze's Revival showed extremely poor results outside Ajara, and the Labor Party of Shalva Natelashvili lost a substantial section of its voters, who mainly switched to Saakashvili. The dynamics of the political process suggested that if the parliamentary elections had been fair and democratic the presidential political forces would have had no chance of competing with the united opposition. (Abashidze's Revival is not counted here as part of the opposition. It was formally an opposition party but most observers believed that it would make a last-minute deal with Shevardnadze and was therefore not a reliable partner. Subsequent events fully confirmed this observation. At the same time, for Georgian civil society and the pro-Western political leaders, Abashidze and Revival were an extension of Shevardnadze's regime and thus any cooperation with them seemed inappropriate.)

Consequently, the major questions of the November 2003 parliamentary election were the ability of President Shevardnadze to form a strong political coalition once again and the ability of the democratic opposition to form a united political front against the presidential coalition.

4.2. Attempts to Create an Opposition Coalition for the November 2003 Election

Although the New Rightists were the first party to break with President Shevardnadze, in 2001, and the Labor Party had shown promising results in the three previous election, the Nationals—a coalition of three groups, Saakashvili's National Movement for Democratic Reform, and the Republican and Conservative parties, and led by Saakashvili—quickly gained the name of the most radical and strongest anti-Shevardnadze political group by the end of 2002 and the beginning of 2003. The United Democrats of Zhvania broke with Shevardnadze only weeks before the June 2002 local elections and were the least popular among the opposition groups (this was due to the extremely low personal popularity of Zhvania).

International and local observers and civil society actors considered the possibility of forming a big opposition coalition based on these four political groups (Labor, the New Rightists, the National Movement and the United Democrats). The first to abandon this process were the Labor Party, which decided to choose an election strategy that consisted of fighting against 'everyone related with Shevardnadze's name currently or in the past'. This did not disappoint local civil society activists because Labor was advocating a very leftist, almost Soviet-style socialist, ideology.

A great deal of effort was made to bring together the remaining three groups. For instance, the NDI organized a permanent weekly forum for leaders of these parties (plus the Traditionalists to some extent); local civil society activists hailed the demonstration on 3 June 2003 at which these three stood together, promising to protect the joint interests of the opposition; and important international actors constantly mentioned the names of the three leaders together (which did annoy the most popular among them, Saakashvili).

However, by the end of June the New Rightists announced their decision to go into the election alone. They were afraid of Zhvania, the ‘past master of behind-the-scene political deals’, and were uncomfortable with Saakashvili, who was becoming more and more radical against Shevardnadze and was clearly campaigning for his own future presidency. They also believed that the financial resources of their supporters (the ‘New Georgians’) and experience gained during the last local elections (they had come third in Tbilisi and first nationwide in terms of the number of seats obtained) would enable them to enter Parliament on their own and to create a coalition within the Parliament depending on the overall outcome of the election.

By August 2003 attempts to create at least a two-member opposition coalition had failed as well. By that time the United Democrats of Zhvania had secured a coalition with the speaker of the Parliament, Burjanadze, whose personal popularity was growing constantly. This move was essential for Zhvania, whose personal popularity remained very low. At the same time, Saakashvili’s coalition was successfully expanding its campaign in the regions and was gaining more and more support. Saakashvili was coming under considerable pressure from the other leaders of the Nationals not to form a coalition with Zhvania and by this means to keep the image of ‘completely clean political group’ (Zhvania had been blamed for many dirty political deals, including the falsification of most of the previous elections). The other reason why many Nationals did not want a coalition with Zhvania was their firm belief that they would succeed in the elections. They did not want to share the results with Zhvania’s team, which was weaker but was demanding equal representation on the party list.

Finally, all the popular opposition leaders and parties went into the election alone. There were some last-minute unions (the Traditionalists joined the Burjanadze–Democrats, the Liberals joined the New Rightists, etc.) but they did not affect the original winning potential of the dominant parties.

The attempt to build a big coalition of the democratic opposition for the 2 November 2003 election failed for the following main reasons:

- The young and ambitious leaders of the opposition parties (Saakashvili, Zhvania, Gamkrelidze and Burjanadze) lacked experience and willingness to reach a political consensus.
- They all came from the CUG, which had a long tradition of internal party political intrigues and lack of trust among the leaders.
- At least three leaders of the opposition had presidential ambitions for the 2005 elections and already saw each other as competitors rather than partners.
- President Shevardnadze played the leaders of the opposition off against each other well, and none of them were giving up hope of eventually getting support from the president, who would be quickly disappointed by his own new team.
- There were ideological tensions in the way of agreement, for example, between the New Rightists, which sought to occupy the right wing of the political spectrum by stressing property rights, a free market and entrepreneurship, and the Nationals, who were eager to get popular support by advocating the confiscation of property illegally gained by the oligarchs and its redistribution among the poor.

4.3. The Building of the Political Coalition Around President Shevardnadze

President Shevardnadze and his party (the CUG) emerged from the local elections of June 2002 with less than 7 per cent support nationwide. Many observers therefore concluded that Shevardnadze would assess his remaining political potential realistically and would not attempt to create a new presidential coalition for the parliamentary election of 2003. Rather he would guarantee free and fair parliamentary elections in 2003, the results of which would suggest candidates for the 2005 presidential election as well. However, Shevardnadze decided not to give up and started building a new pro-government coalition on the ruins of

the CUG. By the end of 2002 State Minister Avtandil Jorbenadze had become chairman of the CUG. He attempted to reorganize the party by bringing the younger generation of the party into the leadership. However, eventually he did not get the promised *carte blanche* from the president and did not succeed in reducing the influence of some notorious leaders of the party, including the governor of the Kvemo-Kartli region, Levan Mamaladze. The president and his allies understood that a discredited CUG could not count on victory in the election on its own and started building a pro-presidential coalition.

The first to join the coalition was Vakhtang Rcheulishvili with his Socialist Party. The Socialists have had a long record of jumping from one political camp to another. They were with Shevardnadze in the early 1990s. They then moved to Abashidze's coalition, criticizing the president severely and advocating a pro-Russia foreign policy. By 2003, when the president was looking for replacements for leaders who had left the party with Zhvania and Saakashvili, Rcheulishvili quickly rejoined the CUG, counting on the co-chairmanship of the president's coalition, which would mean at least half of the seats on the party list for his party. (His hopes were never realized and finally he got less than 10 per cent of the 'winning' seats in the party list.)

The second political group which joined the presidential coalition was the National Democratic Party (NDP) led by Irina Sarishvili-Chanturia. Once strong and popular, the NDP had failed in the 1999 parliamentary election. It was about to conclude an oppositional political union with Zhvania's United Democrats at the end of 2002, but suddenly changed its political vector and switched to Shevardnadze's camp. Sarishvili-Chanturia became the spokesperson of the presidential coalition and 'famous' for her political predictions and scandalous announcements aiming at discrediting the opposition leaders. She also counted on much more political influence within the coalition than she eventually obtained (her party got less than 8 per cent of the 'winning' seats in the party list).

Several other small political groups and undesirable public figures joined the presidential coalition by the end of August 2003. Among them were the heads of the State Railway Company and the State Road Fund, both of them personal friends of Shevardnadze and frequently accused by the NGOs and the media of corruption on a grand scale. The presidential coalition needed these and similarly wealthy figures to finance its election campaign. At the very end of the coalition building the Christian Democrats, led by former State Minister Vaja Lortkipanidze, joined the coalition. The latter, who had a more or less undamaged political reputation, led the party list for the election.

There was a good deal of speculation about possible alliances between Revival and the CUG. For example, Rcheulishvili, the leader of the Socialists, openly declared that his main goal was to build a political coalition between Shevardnadze and Abashidze and with them defeat the Zhvania–Saakashvili alliance. Although no such coalition was ever formalized, it worked well before the election (a deal was reached between them in the election commissions, as discussed earlier) and after the election (Revival brought people from Batumi to Tbilisi to defend President Shevardnadze from demonstrators led by Saakashvili).

The process of building the presidential coalition was accompanied by constant tensions within the CUG. For example, there were major fights between State Minister Jorbenadze and the mayor of Tbilisi, Vano Zodelava, who had administrative resources for controlling a considerable number of the voters of the capital city, and between Jorbenadze and Mamaladze, who controlled more than 200,000 votes of the Azeri population and demanded at least one-third of the party list for his people. Shevardnadze did not intervene in the battles between the CUG leaders and among the coalition members, and used his well-known strategy of allowing everyone to weaken each other. As expected, the president took a lead at the very end of the creation of the party list and ensured the proper representation of the people in the list who were most loyal to him. This was the time when disappointed leaders of the coalition had no other choice but to agree to whatever the president was giving them.

President Shevardnadze's last and only unsuccessful political coalition in his political career featured the following trends:

- The only thing that united the coalition was the president himself. To some extent this had been the case in the previous (1999) election as well, but this time there was a new, clear predisposition: the leaders of his coalition were assembled around the outgoing master in the hope of getting the lion's share of his political inheritance, which would be available by the time of the 2005 presidential election.

- Shevardnadze experienced such huge pressure from the opposition that he agreed to accept in his coalition virtually anyone who would apply. Consequently, for the majority of the population and for the international community, the overall face of his coalition was shocking.
- The leaders of the coalition had no common ideas, principles or political standing. Thus it became clear to all that if this bloc won the country would go to nowhere and would continue struggling in a state of political deadlock.
- The leaders of the coalition were constantly fighting each other for influence and seats in the Parliament, and the effectiveness of their campaign suffered accordingly. Their only hope if they were to succeed was therefore election fraud, pressure on the voters (especially in the Azeri-populated regions) from the state administration, and the falsification of the results by the election administration.
- The presidential coalition lacked election-related experience and a developed infrastructure, which went to the previous leaders of the CUG—mainly Zhvania’s and to some extent Saakashvili’s teams.

4.4. Coalition-Building for the 28 March Parliamentary Election

Technically the 28 March election was a continuation of the 2 November 2003 parliamentary election, but by that time the political composition of the country was completely changed and in many cases reversed. The greater part of the former opposition (United Saakashvili’s, Zhvania’s and Burjanadze’s teams) was already in power, controlling not only the executive branch but the old Parliament as well. Some smaller parts of the former opposition (the New Rightists), which had remained neutral during the Rose Revolution, stayed in mild opposition to the new political leadership, while others (Labor, the Traditionalists and Revival) went into sharp opposition to the new government. From the former presidential coalition (and the CUG itself), several weak and demoralized groups and leaders (the Socialists, with a new leadership, several groups of the former CUG, and the NDP) emerged and fought for their political survival.

There was an attempt to create a new, big coalition in opposition to the new president, consisting of the New Rightists, the Industrialists’ Union, Labor, the Traditionalists, the NDP and the Socialists with a different configuration, but it failed due to lack of time, the huge differences between these groups, and the efforts of the new political leadership to destroy it. Finally, only the NDP and the Traditionalists were able to form a coalition, and later the New Rightists and the Industrialists’ Union came together.

The composition of the new governmental coalition was determined by the outcome of the Rose Revolution. During the turbulent days of the revolution, Saakashvili, Burjanadze and Zhvania tied their political destinies so firmly together that they had to announce the complete political union of their respective groups immediately after the revolution. For technical reasons and because of some internal tensions they did not form a united political party before the March election, but they made all the moves in this direction, including submitting a party list on behalf of a party (the National Movement of Saakashvili) and not a coalition.

This decision put Saakashvili’s former coalition partners (the Republicans and the Conservatives) in a difficult situation. They did not intend to dissolve their parties and merge with the Saakashvili–Zhvania–Burjanadze new, bigger party, but at the same time they did not want to go into the election alone, which would mean becoming an opposition to President Saakashvili. Finally, the Republicans and the Conservatives cancelled their election registration and did not participate in the election as parties, and some of their representatives were included individually in the party list of Saakashvili.

One interesting new player emerged for this election. Konstantin Gamsakhurdia, the elderly son of former President Zviad Gamsakhurdia (1990–2), came to Georgia after 12 years of exile in Europe and formed a new political party called Freedom. He refused to join any of the existing parties in the hope of getting backing from former supporters of his father who had suffered repression under Shevardnadze.

The coalition-building processes before the 28 March 2004 parliamentary election were marked by the following factors:

- The Rose Revolution and the almost unchallenged victory of Saakashvili in the 4 January presidential election predetermined the outcome of the 28 March parliamentary election. The new government coalition had indisputable popular support.

- Most of the political groups which for different reasons stayed out of the government coalition faced the huge challenge imposed by the 7 per cent threshold, on the one hand, and did not have enough time to unite their resources, on the other hand.
- The fact that the new leadership was losing its almost unanimous popular support (Saakashvili's 96 per cent of the vote in January 2004) led some of its opponents (the Labor Party, for example) to conclude that they could get more than 7 per cent of the vote alone and they refused to form a coalition with others.

5. Campaign Strategies and Election Outcomes

5.1. The Parliamentary Election of 2 November 2003

The presidential coalition, lacking popular personalities and suffering from poor management, conducted a very modest election campaign. First of all, it tried to mobilize the available administrative resources by holding constant meetings with central and regional officials. The latter would receive precise directions as to how to mobilize the population for the presidential coalition and against the opposition. The governors of different regions competed with each other to guarantee the highest percentage of the votes for the presidential bloc.

The presidential coalition's second important election strategy was intensive propaganda to discredit the opposition. Its spokeswoman would appear every week on a news conference with newly discovered 'evidence' of the plan of the opposition, which was designed and financed by 'hostile foreign forces'. Sometimes she would indicate Russian intelligence, at other times the US Democrats, who were mounting a worldwide anti-Bush campaign. The KMARA civil resistance movement (see section 7 below) was the favourite target of government supporters. Two weeks before the election the speaker of the Parliament, Burjanadze, was also accused of having permanent contacts with Russian intelligence, and the Ministry of Security started an investigation into this.

Table 1. Results of the Parliamentary Election of November 2003

	Official results*	Results according to exit polls	Results according to PVT
Presidential coalition	21.32%	14.2%	18.92%
Revival	18.84%	7.3%	8.13%
Saakashvili–National Movement	18.08%	20.7%	26.26%
Labor	12.4%	14.1%	17.36%
Burjanadze–Democrats	8.8%	8.1%	10.15%
New Rightists	7.3%	6.0%	7.99%

* As approved by the CEC on 20 November 2003.

PVT = parallel vote tabulation carried out by the International Society for Fair Elections and Democracy (ISFED).

Saakashvili's National Movement with its slogan of 'Georgia Without Shevardnadze' was the most active player in the election campaign. It organized hundreds of meetings with the population in all regions of Georgia. It covered even Ajara and Kvemo-Kartli, which were under the exclusive control of Abashidze and Shevardnadze, respectively, and where no other political group dared to campaign. In both cases activists of the National Movement were severely beaten by the police, the security services and local officials. The other direction of the National Movement's campaign was initiating court cases about unpaid pensions. Despite huge political pressure on the courts from the government, it won several pensions-related cases, and thus the hearts of the poorest among the population. Its television advertising was based on these concrete actions (both winning court cases and being beaten by police), as well as on the reforms which Tbilisi City Council had undertaken under Saakashvili's leadership.

The New Rightists relied mainly on television advertising, designed after consultations with a US specialist and broadcast from July—four months before the election. The Burjanadze–Democrats bloc also conducted an intensive campaign with the help of the human resources and know-how which had gone over to them after splitting from the CUG. Their main hope was the popularity of Burjanadze, which would compensate for the personal unpopularity of Zhvania.

The Labor Party had a difficult campaign because the Nationals stepped into its territory—emphasizing the problems of the poor—and attacked President Shevardnadze in a more radical way than Labor had traditionally done. Revival, as usual, was sure that no one would enter its ‘exclusive territory’—Ajara, which would guarantee them at least 12 per cent of the vote nationally. However, they decided to fight with the Nationals (who started campaigning in Ajara) in Tbilisi as well. Their campaign was aggressive and directed at discrediting the rest of the opposition.

KMARA activists had constant clashes with Revivalists in Tbilisi and elsewhere. It was evident that the informal coalition between Abashidze’s and Shevardnadze’s forces was working beyond the alliance in the election commissions.

The following was the outcome of the different strategies of the main actors in the 2 November 2003 election:

- The results of the election proved that the strategy of the Nationals was the most successful. They managed to establish the image of the most radical, honest and brave opposition to Shevardnadze with the closest direct contact with a wide range of the population.
- The presidential coalition extracted the maximum from its administrative resources but this was not enough to win it the election and it resorted to falsification of the results.
- The New Rightists spent a great deal of money but failed to establish direct contact with the population. The segment of property owners, which they targeted, appeared to be too small and divided among the several parties.
- The Burjanadze–Democrats bloc failed to transform the high personal popularity rating of Burjanadze into a high party rating because of the unpopularity of Zhvania and his team.
- The Labor Party did relatively well but still lost a lot of its vote to the Nationals.
- Revival, which lost everything outside Ajara, decided to risk everything in order to become number one in the election race and went on to falsify votes in Ajara in a quite unprecedented way.

5.2. The Presidential Election of 4 January 2004

In the light of the Rose Revolution, the extraordinary presidential election scheduled for 4 January 2004 became a kind of formality. The main issue which this election would decide was not the name of the future president—that was Saakashvili, the most popular politician. Rather the election was important in order to prove that the new political leadership had established full control over the country and was able to administrate elections. Also, the number of voters recognizing the new government and participating in the election would indicate how many of the population approved the revolution.

Acting President Burjanadze, who did have presidential ambitions, understood that this time she could not compete with Saakashvili, and the very fact of her standing in the election would lead unavoidably to the break-up of the new political leadership, which was highly undesirable for all. The other traditional candidate for the presidency, Abashidze, saw that he had absolutely no chance outside Ajara. At the same time, his standing in the election would imply that he accepted the results of the Rose Revolution, which he did not want. Consequently, Saakashvili was left as not just as the strongest candidate but the only possible candidate for the presidency.

As a result, there was almost no competition during the election. The attention of the local and international stakeholders was mostly devoted to the establishment of the voter lists and negotiations with Abashidze about allowing elections on the territory of Ajara. Finally all the administrative issues were successfully resolved and Saakashvili won the election with 96 per cent of the votes.

5.3. The Parliamentary Election of 28 March 2004

On 24 November 2003, the Supreme Court of Georgia considered a complaint brought by the International Society for Fair Elections and Democracy (ISFED) and nullified the results of the proportional elections of 2 November 2003. The new political leadership, despite sharp criticism from NGOs, decided not to dispute the results of the elections to the 85 majoritarian seats because most of the elected majoritarian members of Parliament (MPs) had declared their full loyalty to the new government and promised necessary support during the forthcoming extraordinary presidential election. After consultations with political parties, which demanded more time to prepare themselves for the election, Acting President Burjanadze announced elections to the 150 proportional seats in the Parliament for 28 March 2004.

The new political leadership did not agree with the recommendations of the international organizations (the OSCE and the Council of Europe), some of the NGOs and opposition parties, and did not consider lowering the 7 per cent threshold to 4–5 per cent. This fact, combined with the huge popularity of President Saakashvili and the considerable fragmentation of the opposition, suggested that only the presidential coalition would be able to clear the threshold, which would mean that it would take all 150 proportional seats.

The election campaign was much more quiet and peaceful than that of five months before. Generally, all the parties had equal opportunity for campaigning, but the political debates were still very calm. The main reason for this was lack of topics for the opposition to exploit. For most of the opposition leaders, to campaign against Saakashvili's party meant campaigning against the Rose Revolution, which was extremely popular. It was also evident that most of the parties had spent most of their available financial resources on the 2 November election and did not have the resources for a full-scale campaign.

By the time of the 28 March election, the new government had made enough mistakes for a strong and united opposition to be able to count on some success, had not at least four opposition groups been fighting for almost the same voters (see table 2). The result was that over 20 per cent of the vote was divided between them, and only one of them cleared the 7 per cent threshold. After several rounds of negotiation and confrontations with the central government, Abashidze finally allowed relatively free elections in Ajara, which resulted in the defeat of his Revival Party nationwide.

Table 2. The Results of the Parliamentary Election of March 2004

	Official results	Results according to PVT
National Movement	66.24%	67.78%
New Rightists–Industrialists Union	7.96%	7.75%
NDP–Traditionalists	2.55%	2.3%
Labor	6.0%	6.1%
Freedom (K. Gamsakhurdia)	4.3%	4.7%
Revival	3.89%	6.6%

PVT = parallel vote tabulation by ISFED.

6. The Political Composition of the New Parliament and Expected Outcomes

The 2 November 2003 (majoritarian) and 28 March 2004 (proportional) elections gave a firm constitutional majority to the supporters of President Saakashvili. Through the March 2004 proportional election, the presidential coalition won 135 of the 150 proportional seats in the Parliament. More than 40 MPs out of 75 elected at the majoritarian elections on 2 November 2003 were awaiting them in the Parliament in order to form a firm constitutional (more than two-thirds of the total number of MPs) majority for the presidential coalition. Nino Burjanadze became speaker of the Parliament and members of the presidential majority were given the chairmanship of all the committees.

For purely tactical political considerations, the presidential majority is divided into two factions. This move prevented the New Rightists faction (which gained 15 proportional and two majoritarian MPs) and other individual majoritarian MPs from forming an official minority with the post of vice-speaker and other privileges. Four majoritarian MPs represent Ajara (two others elected in November were appointed by Abashidze to executive agencies of Ajara and thus refused to become MPs). Ten MPs elected in 1992 from the Abkhazian regions who had continued to sit in all the subsequent parliaments for political reasons (it was impossible to hold elections in Abkhazia but representation from Abkhazia was desired) were also deprived of the status of MP. The majoritarian MPs who had won in the 2 November elections with backing from Shevardnadze's coalition and had not switched openly to the new governmental majority (or were not accepted) formed a separate faction, which is still under the full control of the government. Up to 15 majoritarian MPs have so far stayed out of any factions: most of them were so discredited that no one wanted to see them in their factions.

From the composition of the Parliament and the internal dynamics of the majority, the following outcomes may be expected from the Parliament:

- The president will have a guaranteed majority in the Parliament for voting on ordinary laws (for which the support of 78 MPs is necessary) and on organic laws (118 MPs), as well as on constitutional amendments (158 MPs).
- The Parliament cannot block any significant demands of the president because of the constitutional model of the relationship between the president and the Parliament. The latter works in constant fear of being dissolved by the former.
- The opposition at the beginning of the Parliamentary term is extremely weak—about 20 MPs, of whom some four or five can actually speak out in the Parliament.
- The presidential majority may experience minor losses very soon. Some 15 persons from the Republicans and Conservatives and former NGO leaders are most likely to break with the majority and form a faction or small groups. It is less likely that all the opposition groups will come together in a strong minority faction.
- Despite expected losses, it is most likely that for the remainder of the term of this Parliament the President will be able to secure at least a sufficient majority to secure the passing of any decisions except amendments to the constitution. Burjanadze's team (about 20 MPs) may form an independent faction only at the very end of the Parliament's term—by which time Burjanadze may well decide to form her own political party for the next election.

7. The Role of Civil Society and the Media

7.1. Civil Society and Elections

7.1.1. Background

Civil society activists played an instrumental role at all stages of the elections discussed here. Starting from the end of 2002, the most vigorous NGOs—the Institute of Liberty; the Georgian Young Lawyers Association; the Caucasian Institute for Peace, Democracy and Development; the Open Society–Georgia Foundation (OSGF); the Association for Legal Public Education; ISFED, and others—were actively involved in putting in place the necessary preconditions for free and fair parliamentary elections, on the one hand, and in mobilizing a democratic opposition, on the other hand.

At the beginning the leading NGOs were actively involved in consultations with the government about developing an effective and fair model of election administration and establishing reliable, accurate and transparent voter lists. However, by February 2003 the NGOs had concluded that the government had little if any intention to use the expertise and enthusiasm of civil society in this regard. Consequently, they turned their efforts to mobilizing the democratic forces in the society and developing effective tools for monitoring of the elections. A group of NGO leaders travelled to several East European countries to study the experience of their colleagues, and to Washington and Strasbourg for meetings with high-level officials of the US Government, the European Union (EU), the Council of Europe and other international organizations. After these study tours they developed a strategy and action plan which included several components grouped into two main directions: mobilization of the people against Shevardnadze's regime; and conducting effective and objective monitoring of the elections.

7.1.2. The Resistance and KMARA

Among the resistance activities, the most influential was the KMARA movement. Starting from March 2003 the leading NGOs developed a network called KMARA (the name means ‘Enough!’) which united several hundred activists, mainly students. From April 2003 KMARA activists, mainly students, launched a nationwide campaign. They organized demonstrations simultaneously in major cities of the country and painted the offices of the most notorious officials and public agencies with the slogan KMARA. A young person with KMARA slogans on his or her tee-shirt and flags became the symbol of an active citizen calling on the government to be accountable to the people. Representatives of the presidential bloc condemned this and called it a serious threat to the stability of the country, and the state-controlled media also criticized the movement sharply. There were several cases of young activists being beaten and arrested. The leaders of the opposition parties except for Revival and Labor expressed their full support for the campaign.

While KMARA was positioning itself as the most radical civic group of resistance to the government, other civil society activists (excluding a few NGOs, which criticized both the political opposition and KMARA) were appearing on television and in the newspapers with criticism that was more academic but not less painful for the government. By the end of the election campaign, and especially during 2–3 November 2003, this group of civil society activists included the most popular writers, poets, singers, actors, sportsmen, lawyers, journalists, scientists and others. In many cases these very civil activists put considerable pressure on the leaders of the political opposition and encouraged them to make braver and bolder moves against Shevardnadze’s regime. They also played a crucial role in bringing people out on demonstrations.

7.1.3. Election Monitoring

The NGOs’ activities on the civic resistance front were reinforced by equally intensive efforts on the election monitoring side. Several NGOs, led by ISFED and the GYLA, developed a joint plan which included preparing several thousand election observers and PVT specialists. Highly qualified specialists were giving the public daily critical updates of the government’s efforts to organize free and fair elections. For example, civil society activists uncovered major fraud by government officials during the process of voter registration. NGO monitors took upon themselves the important job of documenting violations on election day and bringing related cases before the courts. Some of the cases they won played an instrumental role during the events of November. The PVT results announced by ISFED in mid-November confirmed the results of the exit polls published on 2 November and finally shaped public opinion in favour of the opposition.

7.1.4. Civil Society after the Rose Revolution

After the Rose Revolution, civil society’s involvement in election-related activities became less intense. However, some NGOs continued close monitoring of both the presidential (4 January) and the parliamentary (28 March) elections. They conducted PVTs, documented many violations of the law and filed complaints. For example, after the 28 March parliamentary election, the GYLA filed a complaint to the court against the CEC, which had adopted an unlawful and politically motivated decision to hold a second vote in two districts of Ajara. This happened during the days of intense confrontation between the central government and the authoritarian ruler of Ajara, in which the central government had the full support of civil society including the GYLA. Despite the highly charged political environment, the GYLA decided that it was a matter of professionalism and morality to protest against unlawful election-related decisions, no matter what the short-term political consequences of such protest.

The very intensive and successful involvement of civil society in election-related matters was due to a number of factors:

- Georgian civil society and NGOs have long been noted, even before the 2003–2004 elections, as being among the most vibrant and effective in the South Caucasus. They thus had the necessary ambitions and resources to play an active role at the critical defining moment for the country.
- There was a considerable tradition of cooperation between the NGOs and democratic opposition leaders. Activities could therefore be coordinated and functions divided among the political and civil society leaders without any transaction costs or other difficulties.

- Civil society leaders had constant access to the most popular television channels and newspapers. Even state-controlled television offered the NGO leaders time up to the final days before the 2 November election.
- Prominent NGO leaders succeeded in mobilizing (and ‘training by working together’) respected and well-known individuals who did not have experience of campaigning and had hitherto preferred to stay out of active politics.
- A group of the most developed NGOs accomplished the difficult task of close cooperation not only among themselves but also with newly-emerged activists and regional groups. Their combined professional expertise, well-trained human resources and system of quick response outweighed those of their main counterpart, the government.
- The international community, especially the US Government, the Open Society Institute (OSI) and the OSCE, backed the local civil society groups by all possible means—training, consultation, sharing of experience, financing, issuing announcements, and so on.

7.2. The Media and the Elections

7.2.1. Starting Position

Although the print media were also very diverse and extremely active in all election-related issues, the central role belonged to the television stations, and the discussion below will therefore focus on them.

By the end of 2002 there were seven television stations in Georgia which had daily news programmes and considerable influence over public opinion. State television, Channel 1, was the voice of the government but, because of the competition from private television, it was not completely closed for the opposition and was tolerably open to civil society. Ajara TV belonged to the leader of Ajara and the Revival Party, Aslan Abashidze, who micro-managed it and forced it to advocate his political agenda only. The most popular television company, Rustavi-2, was the most active on the market and managed to retain the image of an independent television station with clear sympathies for the anti-Shevardnadze political groups and civil society actors. The newly created TV Imedi belonged to the wealthiest Georgian businessman, Badri Patarkacishvili, who had amassed capital together with Boris Berezovsky in Russia and started to build his own media and show business empire after returning to Georgia. TV Imedi kept a politically neutral line but was widely expected to back the pro-government political forces. The same was expected of another newly established television company, Mze, which belonged to oligarchs from Shevardnadze’s orbit. Iberia belonged to a controversial businessman and MP with close ties with Abashidze. Channel 9 also belonged to another Russian-based Georgian millionaire, but there was more expectation that it would remain politically neutral.

Consequently, the political opposition started its election campaign in early 2003 with only Rustavi-2 on its side, one television channel (Channel 9) being neutral, three (Channel 1, Ajara TV and Iberia) being opposed, and two (TV Imedi and Mze) waiting for their moment to become equally aggressively opposed.

7.2.2. The Role of the Media in the November 2003 Parliamentary Election

Despite such an unfavourable starting position, the opposition won the information war with the presidential coalition, and this was the single most important driving force for their success in the November election and the Rose Revolution. This success was due to the following factors:

- The opposition had much more sophisticated and innovative methods of using the media than the government.
- The most active media player in the elections—Rustavi-2 television—had won widespread popularity among the population as a result of several years of open and fearless criticism of the Shevardnadze regime.
- The professionalism of the Rustavi-2 journalists and staff was several degrees higher than that of the pro-president television stations, and the public figures used by Rustavi-2 in its programming were much more trustworthy and influential than those used by its competitors.

- During the course of the elections, Rustavi-2 step by step became the most active part of the opposition political coalition and during the events of November frequently determined the most important decisions of the political leaders.
- The state-controlled Channel 1 was under considerable pressure from civil society and had to play, at least to some degree, a politically neutral public-service television role. Consequently anti-Shevardnadze political forces, NGOs and independent experts did have access to this television channel as well.
- Those television channels which were expected to become more anti-opposition and showed an inclination to do so found it extremely difficult to back the discredited presidential regime, which was making more and more mistakes, and it was almost impossible for the commercial television channels to ‘make over’ such events, actions and speeches.
- With seven television stations covering election-related political events daily, this election was the most exhaustively covered election in Georgian history. This coverage eventually supported the mobilization of the citizens and focused their attention on political events.
- The results of the exit polls broadcast by Rustavi-2 immediately after the close of voting on 2 November played an enormous role in mobilizing the public and preventing fraud.
- During the last and most important days of November the chairman of the state-controlled television station resigned and all other stations took the side of the opposition, at least to some extent.

7.3.3. The Role of the Media in the 28 March 2004 Parliamentary Election

After the collapse of President Shevardnadze’s regime, the media landscape changed immediately. Only Ajara TV and Iberia continued an openly critical approach to the new leadership, while the wealthy owners of TV Imedi and Mze quickly took measures to ensure friendly relations with the new government, and the state-owned Channel 1 continued its usual role—backing those in power, no matter who they were. The new government also took effective steps to ensure the ‘proper’ functioning of the television stations. For example, the law enforcement agencies searched the facilities of Iberia and its owner was charged with other business-related crimes. There were some mysterious incidents as well. For example, Rustavi-2 and Mze closed down their very popular live night shows simultaneously during the days when the most heated public debates on the upcoming amendments to the constitution, unfavourable to the government, were expected. Channel 9, which weeks earlier had won the competition for important frequencies and had advanced plans to expand its operations, suddenly announced its self-liquidation.

The role of the media during the 4 January and 28 March elections can be summarized as follows:

- The media played a much less important role in these elections because general public opinion had already been formed before and during the Rose Revolution, and no one even attempted to change it significantly.
- The new political leadership made it clear to all, including the owners of the television channels, that it would not allow anyone to draw lessons from the events of November and use the same tools (strong oppositionist television) against itself that they had used so effectively against the Shevardnadze regime.

8. The Role of International Actors

8.1. The Background

From late 2002 it was evident that the main international actors had decided to play an unprecedentedly active role in the Georgian election process. The mutual understanding among the international actors was that Georgian society was approaching a major crossroads and that the outcome of the elections, as well as their fairness, would determine much more than the name of the ruling party or coalition: it would determine the policy directions of the country for the next four years. International financial institutions (the International Monetary Fund (IMF) and the World Bank) made it clear that they would not consider continuing their programmes without substantial changes in the Georgian Government’s policy in many directions, including dealing with corruption and improving the effectiveness of public institutions. Such changes were not expected to happen without the formation of a reformist government which enjoyed popular support expressed in free and fair elections.

8.2. Coordinated Efforts for Free and Fair Elections

Consequently, multilateral international organizations (the UN Development Programme (UNDP), the OSCE, the EU and the Council of Europe), foreign governments (the USA, Germany and the Netherlands) and private foundations (the OSI) offered the Georgian Government multidimensional assistance in organizing the November 2003 parliamentary election. Despite constant disappointments caused by the government's failure to implement promised measures (mobilizing budget resources, adopting amendments to the Election Code, etc.), the international actors continued their efforts, which were more and more closely coordinated as election day approached. For example, a group of foreign ambassadors was established, bringing together the heads of 15 foreign missions to Georgia. This group, supported by a special technical group consisting of election professionals, held constant meetings with the president, the state minister, the leaders of the political parties and NGOs. It facilitated dialogue between the local actors, on the one hand, and, on the other hand, used its collective leverage to get the Georgian Government to prioritize the objectives of fairness and freeness of the election on its agenda.

The active role of the international community in the Georgian elections was evident after the Rose Revolution as well. For example, for financing the 4 January presidential and the 28 March parliamentary elections, the donor community raised several million US dollars, which covered more than 70 per cent of the election costs.

8.2.1. The Role of the US Government

The US embassy in Georgia, the US State Department and the US Agency for International Development (USAID) contributed considerable human and financial resources to the Georgian elections through various projects. The memorandum between the US and Georgian Government representatives discussed in section 3 above forced the Georgian Government to start preparations for the elections with a concrete plan and deadlines, although this plan was not fully implemented.

High-level US Government officials and politicians travelled to Georgia several times during 2003 and had a significant influence on the process of preparing the elections. For example, the visit of James Baker in July 2003 enabled the Georgian political leaders to resolve a deadlock over how the election administration was to be set up. Although the Baker Formula was modified significantly by the pro-government coalition, it still played a very important role in moving the process forward.

At one point the opposition considered the US Government as the only effective tool for exerting influence on the Georgian Government, which was too biased towards the presidential coalition. For example, the opposition tried to prolong a session of the Parliament (which was going to adopt a modified version of the Baker Formula) until the early morning of 27 July in order to make a call to Washington and let them know that Shevardnadze was breaking his word.

After 2 November—election day—the US officials made it clear that they were extremely unhappy at seeing so many violations of the law and so much fraud, as well as the government's unwillingness to consider the legitimate complaints of the opposition. The US ambassador to Georgia conducted several unsuccessful rounds of negotiations between the government and the opposition over a period of three weeks, 2–22 November 2003. At the same time, he and other high-level officials from Washington were giving clear signals that their sympathies were with the opposition. These moves made President Shevardnadze very angry with his US friends. For example, during the most critical days before the revolution, two telephone conversations with the president, initiated by Baker from the USA, were 'interrupted at the very beginning due to some technical problems with the connection', as the spokesman of the president reported. However, it was clear to everyone that the president just did not want to speak even with his personal friends from the West.

8.2.2. The Role of the OSCE

To increase the commitment of the political forces to the election administration, the OSCE mission to Georgia agreed to be involved in the politically sensitive task of selecting a chairperson of the CEC. In August 2003 the mission and senior officials from OSCE headquarters conducted several rounds of consultations with political leaders and NGOs, collected more than 30 individual applications for the position of chair, and finally suggested three candidates to the president. By doing so the OSCE took on a responsibility for the election process in Georgia that was unusual for such organizations. It also organized

the biggest observation campaign of the elections and issued several statements that were very critical of the election administration and the government.

8.2.3. The Role of George Soros and the OSGF

George Soros and his foundation were the most active private players in the election. By the time of the 2 November 2003 parliamentary election much was at stake for the foundation, which had spent a great deal of money during the previous eight years on promoting democracy and human rights in Georgia. It was evident that the civil society of the country was preparing itself for a comprehensive battle for liberal democratic values, and the OSGF decided to contribute to this battle as much as possible. It intensified its efforts not only for election monitoring, voter education and mobilization, but also to support the protest movement against the corrupt and ineffective government.

This last move generated much criticism from the president and his supporters. For example, at a news conference on 2 June 2003, the president made a strong statement against certain foreign donor agencies which were financing anti-state activities in Georgia, saying that he as president could close down their operations in Georgia, as had been done in many other countries, such as Ukraine and Russia. He did not name names but it was clear that he meant the Soros Foundation above all. It was not only supporting the KMARA movement but had also awarded opposition leaders Saakashvili and Zhvania special prizes for exceptional achievements in democracy-building a year earlier. In response to this statement, the OSGF director made very critical comments on the president's words, stating that the only presidents who had closed down the foundation's operations in their countries were Slobodan Milosevic and Aleksandr Lukashenko, and that he did not want to see a Georgian president mentioned in such company.

The other donors, international organizations and foreign governments played important roles in the Georgian elections. This combined effort of the international community had the following general features and results:

- International actors took the risky decision to become deeply involved in the Georgian elections because, on the one hand, they were extremely disappointed with the results of their intensive support to the country for many years and, on the other hand, they saw a realistic opportunity for change coming from the strong political opposition and an active and organized civil society.
- In the case of the Georgian elections the international community overcome all its customary difficulties and coordinated its efforts successfully. Consequently, it managed to exert the necessary influence over the process and to use the available resources in the most effective and efficient ways.
- The general activism of the international community and, in most cases, timely and appropriate statements by the influential organizations and leaders provided enormously important moral support to the local actors, who were very often facing the need to take great risks without any guarantees inside the country.
- Some of the international actors (the US Government and the Soros Foundation) took too much risk and acted on the margin of interference in the domestic political affairs of Georgia. Although this risk appeared to be acceptable in the case of Georgia, it created serious difficulties for them elsewhere. For example, after the Rose Revolution the Soros Foundations in Ukraine and Uzbekistan experienced serious problems with the respective governments.

9. Lessons and Recommendations

Making recommendations for the future on the basis of two parliamentary and one presidential elections held in Georgia during the period November 2003–March 2004 is a risky task. These elections were accompanied, and their results were greatly determined, by an unusual 'election actor'—the Rose Revolution. This major political event shaped everything related to the elections, starting with public activism and ending with international support. Many trends, both positive and negative, observed in this study are less likely to be repeated in the future, although there are a number of issues which should be taken into consideration by everyone who is interested in making free and fair elections a widely available public good in Georgia.

9.1. The State Administration

Corruption. Almost every public agency is involved in organizing elections in the country. When these public agencies are managed by corrupt officials it becomes impossible to conduct free and fair elections or to ensure that public opinion is adequately reflected in the elected bodies. The state administration should be rid of this disease by the implementation of a comprehensive and long-term anti-corruption programme.

9.2. The Election Administration

Composition. It is more than clear that the institution of political appointees in the election administration does not support election fairness. Even after the Rose Revolution, when the new government tried its best to demonstrate to the world that it was very different from the old and wanted to start a new, honest political era in the country, the CEC, controlled by the former ruling political forces, engaged in pure politics and forgot the law and the imperatives of fair elections—in particular, in its decision on a second vote in two districts of Ajara discussed above. (On the other hand, the commissioners appointed by the opposition parties were abstaining from voting on all decisions, no matter how well justified and legally grounded those decisions were, and this was advantageous for the governmental forces.) It is absolutely necessary to give the task of administering elections to well-trained public servants with appropriate accountability and transparency mechanisms.

Size. While larger, collegial election commissions ensure wider representation of different stakeholders, they are less effective and less responsive to the dynamics of the election process. Election commissions should be made smaller, more effective and more efficient, and wider transparency and effective tools for appealing against decisions should ensure the representation and participation of the stakeholders.

Status. The election administration should become a part of the state administration. The reformed Ministry of the Interior could be in charge of the elections. Elections do not mean just a day on which voting takes place or even just the election campaign for a particular office. They are a permanent process which requires a permanent, well-functioning administrative system that will ensure the continuous updating of the voter lists, staff training, voter education, the maintenance of the election infrastructure, financial monitoring of the political parties and so on. Only a branch of the state administration, subject to political oversight, can deal successfully with multiple and complex functions of this kind.

9.3. Political Parties

Programmes. None of the political parties presented a meaningful or more-or-less comprehensive election programme during the elections discussed here. The winners of elections built their success on tough criticism of an incapable government and general promises of justice, prosperity and happiness. Glorious victories won in this way often end in huge public disappointment and nihilism. Moreover, without clear programmes parties will never build reliable constituencies and will continue to count on groups of protesters that are dangerous to democracy. Special measures should be taken to force the political parties to produce concrete, clear and meaningful programmes. For example, special incentives should be designed for the parliamentary minority to set up a shadow government.

Internal democracy. The leaders of almost all the political parties which participated in the elections acted as authoritarian rulers of their parties. Such leaders may ensure success in an election but they will hardly become democratic rulers of the country after victory. Special initiatives are necessary to introduce much higher standards of internal party democracy and accountability. This could be done as much by amending the law on political parties as by supporting and popularizing initiatives of individual parties in this direction.

Financing. Dirty money played a significant role in the elections once again. The official financial records published by the major political parties were at the best less than 10 per cent of their actual expenditure for the elections. (This information comes from reliable sources from different parties.) Major initiatives are necessary to make this process much more transparent and lawful. Together with more effective tools of monitoring, the financing of parties' election campaigns from the state budget or a special public fund should be considered as well.

9.4. The Media

Less partisanship. The media played an instrumental but controversial role in the elections. They crossed the line between their usual place in the life of the society and involvement in politics, and became a politically too biased actor in the elections. This time their bias was positive to more progressive political groups and their eventual impact on the process was extremely positive. However, in contrast to NGOs and civil society, where such bias is less dangerous in the long run (civil society is a large, open and changing system, and people have a right to deal with tyranny, after all), such politicization of the media raises serious concerns. The media, and especially the television stations, are controlled by a very limited number of influential businessmen who can redirect this powerful tool to any other direction, depending on their business and private calculations. It is absolutely necessary for the media to be brought back to their usual job—disseminating objective information with high-quality, non-partisan analyses. The establishment of a strong public-service television, an improvement of journalists' professional ethics and the enforcement of the anti-monopoly and tax legislation in the media business should ensure this.

9.5. The Judiciary

Independence. The judiciary emerged from the elections discussed here as one of the most damaged public institutions. In fact, the courts legalized every (with very few exceptions) election-related politically-motivated action of both the old and the new leaderships. Since eventually more progressive political leaders won the battle, the actual negative impact of politically-biased court rulings was less than it might have been, but it could have been extremely substantial if there had been no Rose Revolution. The only effective remedy for such problems in the judiciary is the real, not merely declaratory, independence of the courts and judges. Self-censorship by judges should be overcome by increased professionalism and better living standards for judges.

Discussion Paper 2

Georgia: Through Elections to the ‘Rose Revolution’

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Comments on the case study by David Usupashvili

This discussion paper is devoted to the political basis of the developments triggered by the parliamentary election in Georgia of 2 November 2003 and the factors that determined the outcome of the pre-term presidential election of 4 January 2004 and the repeated parliamentary election of 28 March 2004. An analysis of the political processes under way in Georgia through the prism of the elections is relevant since it was the elections that served as a litmus test for these processes and, ultimately, as a catalyst for the 'Rose Revolution' of November 2003.

Although the Rose Revolution was neither predicted by analysts nor planned by the opposition, there is undoubtedly an inner logic in these developments in post-Soviet Georgia. The elucidation and scrutiny of causes and effects are important not only in order to appreciate the current situation in Georgia but also to identify the essential nature (if there is one) of events in the post-Soviet space, particularly in its European part. Will Georgia give new and powerful impetus to a revival of the 'wave of democratization'? Will it be an exception to the 'grey zone' in which most post-Soviet states, bogged down in transition, now find themselves, or will the grey zone ultimately suck it in again? This is not just an academic problem.

Complementing the highly professional analysis by David Usupashvili, which focuses mainly on the legal aspects of the elections and attendant processes in independent Georgia, this paper aims to amplify the general picture and help to answer these questions.

1. Precursors of the Revolution

1.1. Eduard Shevardnadze at the Helm of Georgia

Article 70, paragraph 1 of the Georgian Constitution stipulates that the same person can only be elected president of the country for two consecutive terms. However, this constitution was adopted in August 1995 when Eduard Shevardnadze, who had returned from Moscow to Georgia, had already been president for over three years, first in the capacity of chairman of the State Council (March–October 1992) and then as chairman of the Parliament and head of state (since October 1992). If we add that he was the first secretary of the Central Committee of the Communist Party of Georgia from 1972 to 1985, he ruled the Georgian Soviet Socialist Republic and then independent Georgia for over 25 years (with a seven-year interval, when he was minister of foreign affairs of the USSR under President Mikhail Gorbachev and was then idle for a short time after the demise of the USSR).

This well-known fact is mentioned here only to emphasize that a whole generation in Georgia had lived under Shevardnadze's government or rule. The generation born in the late 1940s and 1950s grew up under Shevardnadze in the former USSR and found themselves under his presidency again in the independent Georgia. >From the emotional point of view it is no wonder that this generation developed a certain 'Shevardnadze fatigue'. Not surprisingly, this generation were the core of the protesters in November 2003. Although young people, to whom Shevardnadze seemed like a prehistoric creature, were the immediate motive power of the Rose Revolution, it was mature people who formed the critical mass that determined the course of events. That is why some observers define the November 2003 events as the 'revolution of the mature'.

However, prior to the November upheaval, the belief that Shevardnadze would hold on in power until April 2005—the end of his last constitutional term—prevailed in Georgia. And, since the Parliament elected in November 2003 was supposed to ensure the transition from the Shevardnadze regime to a post-Shevardnadze era, much greater attention was paid to that election than to those of 1995 or 1999. In addition, the dreadful hopelessness of the past few years cried out for changes before 2005 and impelled at least some signs of recovery in the political and economic life of the country. Probably, over the years of newly won independence, Georgian society had tired of the post-Soviet half-truths, half-measures and half-steps in different directions, and lost patience. But neither Shevardnadze nor his entourage could sense the mood in the society. Shevardnadze was too obsolete to sense the spirit of the times, and his whole entourage fell in with his wishes or was as blind as he was to what was happening.

1.2. Distress Signals

A politician who has lost ties with the times becomes either dangerous or helpless. Shevardnadze and his entourage were unable to react adequately to the numerous distress signals sent out over recent years, which showed unmistakably that the ship was sinking. Suffice it to mention four such warning calls.

1.2.1. *The 9 April 2000 Presidential Election*

Essentially, the population passively boycotted this election and mostly did not turn out to vote, thus depriving Shevardnadze of credibility and legitimacy.

At the time, according to the legislation in force, presidential elections were valid provided there was a turnout of 50 per cent + 1 of the voters. According to impartial observers, far fewer people participated in the 9 April 2000 election (see, e.g., Ivanidze 10 April 2000). It is pointless to consider the management of this election (see, e.g., US Department of State February 2001; and OSCE/ODIHR 9 June 2000) since the protocols (the official results) compiled on behalf of the precinct and district electoral commissions, as well as the final data of the Central Election Commission (CEC), bore no relation to reality. The authorities on different levels competed eagerly to demonstrate their loyalty to the incumbent president and to produce 'better' results.

It is relevant that there was a widespread opinion that Georgia had no choice as such in the 9 April 2000 election. Out of five presidential candidates, four were obviously phoney. One, Jumber Patiashvili, a former first secretary of the Central Committee of the Communist Party of Georgia, played the role of 'scarecrow' to lead everyone to believe that Shevardnadze was the only choice. It is noteworthy that Aslan Abashidze, ruler of the Autonomous Republic of Ajara, who allegedly played Patiashvili's game, ultimately secured the percentage of the vote that Shevardnadze needed in Ajara, once again demonstrating his strategic partnership with Shevardnadze. Understandably, none of the new-generation politicians of non-communist origin dared *not* to play in Shevardnadze's field by his rules. However, this does not make this farce a legitimate election. Who knows whether, if there had been even a tiny chance for fair elections, a choice would perhaps have appeared?

In the event, if Shevardnadze deceived anyone by the official results, it was only himself and those who did not want to see the truth. The rest of the country was well aware what Shevardnadze's 're-election' was all about.

1.2.2. *The Collapse of the Citizens' Union of Georgia*

It is therefore no wonder that the 're-election' of Shevardnadze in 2000 coincided with the collapse of the ruling party, the Citizens' Union of Georgia (CUG), which left alongside him only politically non-competitive money-grubbers who were unable to govern the state as the challenges of the times demanded.

The first to leave the CUG, having entered Parliament on the CUG party list as a result of the 31 October 1999 parliamentary election, were young and successful businessmen. Having joined in the still ongoing confrontation with the then speaker of the Parliament, Zurab Zhvania, they founded a political organization, the New Right. Although remaining loyal to Shevardnadze, they created a precedent of withdrawal from the CUG.

Later, as if realizing that they were sinking in a swamp of stagnation and corruption, the 'Young Reformers' group of the ruling party, led by Zhvania and Mikheil Saakashvili, who at the time headed the parliamentary faction of the CUG, started to think about saving their own political souls. A major political scandal erupted when the *Washington Post* in April 2001 published an article entitled 'A Hero to the West, A Villain at Home' (Baker 14 April 2001), in which President Shevardnadze was described by his own party comrades from the Young Reformers group as exhausted and unable to carry out further reforms and combat corruption. Another article entitled 'Potemkin Democracy: Four Myths about Post-Soviet Georgia', published in the USA two months later (King 2001), caused a panic among the Young Reformers themselves because the author challenged the sincerity of their reformist intentions and ranked them among the myths. In these circumstances, further delay was tantamount to death for the Western-oriented politicians who anticipated assistance from the West in future, and they gathered the courage to separate themselves openly from the president.

Saakashvili, who in the meantime had leapt from the Parliament to the Ministry of Justice and back, left Zhvania far behind. Together with his supporters, he seceded from the CUG and founded the National Movement for Democratic Reform, bitterly criticizing Shevardnadze's domestic policy.

At first Zhvania attempted to inherit whatever was left of the CUG, but he overestimated himself. He announced that the CUG was in opposition to the president, which was a nonsense: although Shevardnadze had resigned as chairman of the party (in September 2001), he remained a member of the

CUG and was much upset that his party claimed to be in opposition to him. Finally, the CEC barred the registration of Zhvania's group under the name of the CUG. Zhvania was rescued by the previously unknown Christian Conservative Party, and his team ran for the 2 June 2002 local elections on the ticket of this party. Ultimately, Zhvania and his depleted team had to secede from the CUG and establish a political organization, the United Democrats. The disintegration of the CUG continued and it split into stakeholder groups.

Table 1. The Results of the Elections to the Tbilisi Council (Sakrebulo), June 2002

Parties and blocs	Percentage of the vote (%)	Number of seats won
Labor Party	24.99	15
National Movement–Democratic Front Coalition	23.58	14
New Rightists	11.1	7
Christian Conservative Party–Zurab Zhvania's team	7.2	4
Industry Will Save Georgia bloc	6.81	4
Revival–21st century bloc (Aslan Abashidze)	5.63	3
Unity bloc (Jumber Patiashvili)	4.03	2
The following failed to clear the 4% threshold:		
Socialist Party	2.8	0
Citizens' Union of Georgia (CUG)	2.37	0
People's Party–Union of Traditionalists	2.0	0
National Democratic Party (NDP)	1.6	0

Note: 21 parties and blocs contested the election and 575,000 voters participated. Turnout was 48 per cent.

1.2.3. Crisis of Power

The crisis of autumn 2001 demonstrated that Georgian society did not want to remain a passive observer of the feeble actions of the authorities and was gathering the energy to intervene in the political processes directly.

In October 2001, the authorities' crude attempt to exert pressure on the Rustavi-2 independent television company led to mass protests. At first, rallies of mainly young people were held under the slogans of protection of the freedom of speech and freedom of information. Soon, however, the Republican Party for the first time put forward the slogan 'Georgia Without Shevardnadze'. The government crisis provoked the resignation of the speaker of the Parliament and all the ministers but did not satisfy the expectations of the public: most ministers were soon safely back in their ministries, and Shevardnadze did not give any serious reconsideration to the mechanism of governance.

1.2.4. The 2002 Local Elections

The failure of the remnants of the ruling party at the 2 June 2002 local elections was a sad prelude to the inglorious demise of Shevardnadze's regime. In the capital, Tbilisi, the CUG failed to clear the threshold of 4 per cent of the vote required in order to obtain a seat on the City Council, and thus did not get a single representative.

Although these elections were very poorly conducted in terms of organization (see, e.g., Council of Europe),¹ the results, particularly in Tbilisi, where about one-third of the national electorate, and the best-informed and competent section of it, is concentrated, reflected and served as graphic evidence of the moods and tendencies prevailing in Georgian society.

Table 1 shows the results of the elections to the Tbilisi City Council (Sakrebulo).

Despite the imperfections of local self-government in Georgia, the emergence of an opposition city council in the capital, headed by the active Saakashvili, marked the advent of islands of opposition power in the country. Figuratively this was demonstrated by the raising of the new flag with five crosses (which later became the banner of the revolution and the national flag). In concrete terms it was manifested in the renovation of lifts and roofs in residential blocks, the construction of playgrounds and pension increases for Tbilisi pensioners. Saakashvili initiated a crusade against endemic corruption and quite soon demonstrated that something tangible can be achieved if the resources, however scarce, are not embezzled. The slogan of the coalition he headed, ‘Georgia Without Shevardnadze’, began to come true.

2. The Parliamentary Election of 2 November 2003

2.1. Elections ‘Caucasus Style’ⁱⁱ

There are three main stages in the election process: (a) a preparatory stage—electoral legislation, the setting up of the electoral administration, the compilation of voter lists, the nomination of candidates and the election campaign; (b) the election proper—voting and vote-counting; and (c) the post-election phase—the tabulation and announcement of results and ruling on complaints.

Although the voting is normally considered to be the decisive stage, in the reality of the South Caucasus it plays a secondary role, since the election outcomes are determined at the first and third stages. Essentially, only one provision of the electoral law (the Electoral Code) is crucial. This will be discussed below.

All the relevant international organizations admire engagement in the process of ‘repairing’ the electoral legislation. In Georgia (and the two other states of the South Caucasus) this traditionally takes place immediately before elections. Despite long experience, they ignore the fact that this process essentially has very little to do with the improvement of the legislation as such: the authorities use the occasion to prepare new and/or additional opportunities to secure the outcome they want, and the opposition tries to resist in order to have a chance, at least in theory. This takes place for one simple reason: the winner at this stage is ‘doomed’ to succeed in the elections. In other words, the crucial question is not for whom and in what proportion the electorate votes but for whom they are ‘allowed’ or ‘not allowed’ to vote, and who sums up the election results. The main role in elections in the South Caucasus is played by the administration that organizes and conducts the election process, not the voter. Figuratively speaking, 10–15 members of the precinct electoral commission outweigh 1,000–1,500 voters, and so on, incrementally.

In such circumstances, the existence of good or bad electoral legislation is almost irrelevant. No one will be enforcing it, while most members of the electoral administration, as well as ordinary voters, have not even a general idea about the provisions of the law. Only one aspect is important—who will control the electoral commissions (see also International Crisis Group 13 May 2004). Thereafter everything starts working on the same principle and yields predictable results, no matter who observes the elections or how they do so. Western institutions console themselves that some democratic amendments to the electoral law have been passed, but this fake optimism can produce nothing but a sad smile.

Thus, in the states of the South Caucasus, the CEC (and all the lower-level electoral commissions, at district and precinct level) are not just political institutions, not just a subdivision of the de facto authorities, but an extension of the presidential administration and actually a partisan executive body (of the president’s party). In accordance with the intentions of their leaders, they tailor the voter lists as they wish. They register or do not register parties and candidates for participation in the elections, they create favourable or unfavourable conditions for campaigning, they accredit or do not accredit local and international observers and journalists, they count non-existent ballot papers or do not count those that do exist, they fail to consider complaints or they make unfair rulings on them, and ultimately they produce election results that contradict the will of the voters but satisfy the ruling party.

2.1.1. The ‘Baker Formula’

Prior to the parliamentary election of 2003, former US Secretary of State James Baker visited Georgia and proposed a formula for the settlement of disputes concerning the organization of elections. This demonstrated at least four approaches formulated by the Republican administration in the USA. They

perceived the significance of the forthcoming elections in Georgia; they clearly identified the key elements of the electoral process; they hoped that Georgia was capable of running a process which at least approximately resembled elections; and they believed that relatively fair elections would reinforce the positions of the young political generation and create a favourable environment for the constitutional handover of power as a result of the April 2005 presidential election.

A letter sent by President George W. Bush to President Shevardnadze long before the elections, in which he explicitly called on his colleague to open the road to power to the younger generation, emphasizes the last approach. Naturally, the US ambassador to Georgia, Richard Miles, who had acquired rich experience in the Balkans, acted on the basis of the above considerations.

Shevardnadze's reaction to this was the reaction of a backward politician lagging hopelessly behind real life: he did not understand the spirit of Bush's letter, or pretended not to. Inexplicably, he felt offended by Baker and did not answer a telephone call from Baker in Washington when the latter was concerned about developments in Georgia. Then he felt offended by Ambassador Miles and George Soros, and the whole world as well. Shevardnadze should have blamed himself instead, since his decision on the composition of the CEC not only undermined Baker's proposals, which had been agreed with the opposition, but went against their spirit. Once again, he made a deal with Aslan Abashidze, allied with the Industry Will Save Georgia bloc as a minor partner, and formed the electoral administration by the old, time-honoured method whereby the real opposition was only symbolically represented and was unable to influence the decisions made.

2.1.2. The OSCE 'Formula'

The mission of the Organization for Security and Co-operation in Europe (OSCE) in Georgia, along with Aslan Abashidze, turned into Shevardnadze's partner in his efforts to prevent the emergence of an opposition majority in the Parliament. On the basis of a rare consensus between the leading political forces in Georgia, the OSCE mission acquired the right to submit to the president a candidate for the chair of the CEC. The mission availed itself of this opportunity in a rather peculiar way, to put it mildly, and proposed three candidates at once. And no one in his right mind could have doubted what Shevardnadze's choice would be. He only needed one second to cross out David Usupashvili's name and another second to appoint Nana Devdariani chairperson of the CEC.

The role of the OSCE in elections in the South Caucasus was described delicately but accurately by Dennis Sammut, executive director of a London-based organization, LINKS: 'The experience of elections held in the South Caucasus in 2003/2004 shows that the OSCE/ODIHR mechanism ceased to be adequate and became extremely cumbersome' (Sammut 2004).

2.1.3. The Saakashvili 'Formula'

The situation with the electoral bodies in Georgia hitherto had induced the opposition to make a deal with the authorities and be satisfied with the leftovers after the division of parliamentary seats between Shevardnadze and Abashidze. This was the way it had been done before, and these rules were accepted by the New Right and Labor. However, Saakashvili chose another way. The National Movement bloc, which he led, had been established before the 2002 elections by the National Movement, together with the Republican Party (favoured by the intellectuals) and the Union of National Forces–Conservatives (backed by enlightened Zviadists, the supporters of the first president of Georgia, Zviad Gamsakhurdia). Its election campaign for the 2003 parliamentary election was aggressive in the figurative and literal senses of the word all over the country. In particular, the National Movement campaigned actively in Ajara, which for ten years had been rendered 'off limits' for the opposition by Abashidze, and in the Kvemo-Kartli region, inhabited predominantly by ethnic Azeris, where the official election results were traditionally tailored in Shevardnadze's favour, just as Abashidze did in Ajara. Both in Ajara and in Kvemo-Kartli, the activists and leaders of the National Movement bloc were subjected to overt violence and reprisals by the local authorities. Various obstacles and provocations were arranged in other regions, too, but the opposition representatives won respect and support nationwide thanks to their courage and perseverance. Advertising clips of the National Movement during the election campaign were based on reports from the actual sites, and were refreshingly different from the static and monotonous advertisements produced by other competitors.

2.2. The Results of the 2 November 2003 Election

The quantitative results of the 2 November 2003 election give much food for thought (see table 2).

Table 2. Results of the Parliamentary Election of 2 November 2003

Party/bloc	Official results*	Results according to PVT
For A New Georgia (Shevardnadze)	21.32%	18.92%
Revival Union (Abashidze)	18.84%	8.13%
Saakashvili–National Movement	18.08%	26.26%
Labor Party	12.04%	17.36%
Burjanadze–Democrats	8.79%	10.15%
New Right	7.35%	7.99%

* The official result as approved by the Central Election Commission (Prime News Agency, Tbilisi, 25 November 2004).

PVT = parallel vote tabulation, conducted by the International Society for Fair Elections and Democracy (ISFED) (generally known in Georgia as Fair Elections) (<http://fairelections.ge/>).

2.2.1. For A New Georgia (Shevardnadze)

The pro-government bloc—officially the Alliance For A New Georgia—which Shevardnadze formed for the 2003 parliamentary election looked like a ghastly mutant even in the Georgian reality. The cocktail of failures, bankrupt politicians and dubious individuals who had nothing to do with politics was too much for the people to stomach. Its ambition to retain power at any price, which in the situation at the time was tantamount to usurpation of power, triggered popular discontent. Shevardnadze's need to secure guarantees for himself and his family after the expiry of his last presidential term (the task Boris Yeltsin faced in Russia) left him no choice but to rely on the corrupt bureaucracy. During his rule, Georgia had been steadily turning into a country of mutual mistrust where the people totally distrusted the government while the government distrusted the people and deprived them of the suffrage. Is not this fertile soil for revolutionary processes?

2.2.2. Revival Union (Abashidze)

The results Aslan Abashidze produced for his party in Ajara in the November 2003 parliamentary election bewildered even Shevardnadze's team. The number of voters compared with 2002 grew miraculously by 25 per cent, or 70,000. The dumbfounded CEC tried to manipulate the figures to bring them into conformity with the initial order of the authorities. In mid-November 2003, as the protests in the capital were growing day by day, Abashidze dispatched his unwilling supporters to Tbilisi, trying to save Shevardnadze's regime at the last minute. Thus the Shevardnadze–Abashidze partnership, which had been camouflaged for a decade as a confrontation, was exposed. After Shevardnadze's bodyguards took him away from the political arena on 22 November, when protesters rushed into the Parliament building, Abashidze's totalitarian regime in Ajara appeared not even anachronistic but atavistic, and a few months later was eliminated.ⁱⁱⁱ

2.2.3. The New Right and Labor

The loyal attitude to the official election results of Labor and the New Right, who claimed to be in opposition but had avoided participating in the revolution, is evidence of their readiness to make a deal with Shevardnadze and neutralize the real opposition. However, their underestimation of the processes going on, their excessive fear of change (the New Right^{iv}) and their general inadequacy due to lack of political intellect (Labor) cost them dear: both lost a sizeable share of their electorate, as a result of which at the 28 March 2004 parliamentary election Labor failed to clear the threshold of 7 per cent of the total vote required to win seats in the Parliament, while the New Right along with the Industrialists' Union/Industry Will Save Georgia achieved minimum representation in the Parliament.

2.2.4. *The Burjanadze–Democrats*

Before the election, the former speaker of the Parliament, Zurab Zhvania, realized his vulnerability because parallels were bound to be drawn between his and Shevardnadze's political techniques. His invitation to the acting speaker of the Parliament, Nino Burjanadze, to head the list of candidates was a clever move. The relative failure of the Burjanadze–Democrats is accounted for on the one hand by Zhvania's personal unpopularity (at the outset of the election campaign his popularity rating had been almost equal to Saakashvili's), and on the other hand by their failure to run a campaign that was sufficiently aggressive. Many voters left the Burjanadze–Democrats for the National Movement of Saakashvili.

3. The Rose Revolution: the Main Factors in its Success

The falsification of the November 2003 election results only served to give impetus to the revolutionary processes (it would be difficult to impress the Georgians by election fraud).

3.1. The Strength of the Opposition

The crucial fact was that the genuine opposition was strong as never before at this election. The Saakashvili–National Movement and Burjanadze–Democrats blocs were perceived as a real alternative to Shevardnadze's regime. No less importantly, not only did Georgia trust the opposition, but the West and in particular the USA could be presumed to do so as well. These two blocs brought together figures who were experienced in both legislative and executive activity (people had left the executive branch because of fundamental differences with Shevardnadze's methods of governance). The leaders, Saakashvili and Burjanadze, became famous as new-generation politicians of a pro-Western orientation. Thus a clear political beacon appeared in Georgian society, a real alternative to the impotent and corrupt authorities.

3.2. The Inadequacy of the Authorities

If Shevardnadze's bloc had been satisfied with its 'achievements' at the first stage of election manipulation (voting under pressure from the administration; it was these data that the PVT registered) and had not further distorted the results on the level of the central and district electoral commissions (this falsification is reflected in the official results), Shevardnadze could have had a chance to retain control over the Parliament and extend his power until the expiry of his presidential term. In fact at first Saakashvili did not demand his resignation and only insisted that the CEC bring the results more or less into conformity with the actual picture of the voting. The opposition was not aiming at a change of power in November 2003, but intended to create favourable conditions for the 2005 presidential election. It was important for Saakashvili to establish himself as the leader of a victorious political force in order to become number one candidate for the presidency a year and a half later. Shevardnadze, however, underestimated public opinion, which forced the opposition to put forward the demand for the president to resign, and as a result of the parliamentary election Georgia got a new president.

3.3. The Role of the Media

These developments would hardly have resulted in the outcome that crowned the November 2003 events if free media had not played the enormous role they did—first and foremost the popular Rustavi-2 television company, which staked everything on Saakashvili. In an interview for the French newspaper *Le Monde*, Saakashvili himself pointed out that the existence of free media in Georgia was a major factor in the success of the revolution, along with the unity of the opposition (Saakashvili 10 March 2004). Rustavi-2 organized exit polls on election day, 2 November, and broadcast the outcome before the first official results were announced, thus creating an atmosphere of rejection of the official vote results by society at large; then it broadcast live rallies and demonstrations; it was open to the opposition and the supporting non-governmental organizations (NGOs) 24 hours a day; and it helped to mobilize the masses when the protests reached their peak. Thanks to this channel, the whole population of Georgia followed the Rose Revolution live (and thanks to CNN, which took an unprecedented interest in the events in Georgia, any interested person in the world could follow the events). Other local television channels and newspapers also did a good job, particularly when they realized which side was gaining the initiative.

3.4. The Role of Civil Society

Civil society demonstrated maturity and responsibility during the revolutionary events, and the foreign donors can reckon their achievements in supporting emerging civil society in Georgia to their credit. First of all, the KMARA youth movement (the name means 'Enough!') should be noted for beginning its active struggle against the authorities and for the active participation of voters long before November. It successfully applied the experience of its Serb predecessor organization, Otpor ('Resistance'), creatively using the methods tested in Serbia (and Slovakia) on Georgian soil. Noisy and annoying, its activists sometimes irritated the ordinary citizen, but they managed to build up their campaign. When during the post-election protests the activism of the general public subsided temporarily, KMARA revived popular enthusiasm by its un-self-seeking activity. Shevardnadze was offended by George Soros' financial support for this movement and even threatened to shut down the Georgian office of the Open Society Institute (OSI), but this never materialized.

The Committee for Disobedience formed by intellectuals also played an important intellectual role in the everyday work with the people, and deserves a mention.

3.5. The General Atmosphere

The markedly peaceful nature of the events won the sympathies of the democratic community. The fact that over the three weeks of raging emotions not a single shop window was broken, not a single car was damaged, even the flower beds were not trampled down in the main street of the city, astonished even the temperamental Georgians themselves. It is still a mystery that no provocations took place; they could have had unpredictable consequences, although there must have been many people willing to cause them and capable of doing so. Not a single fatal shot was fired, not a single hand grenade exploded.

3.6. The Leaders

The Saakashvili factor must be considered separately. A charismatic leader, who demonstrated outstanding capability to persuade and mobilize people, he also showed unique political intuition, walking the tightrope in those tumultuous November days and never taking a false step. Nino Burjanadze must also be given credit: when Shevardnadze lost control of the situation and attempted to impose a state of emergency, she had the courage to announce that she would undertake the functions of president (according to the constitution, the speaker of the Parliament is the second person in the hierarchy of power). Two months later, she formally gave the reins to Mikheil Saakashvili, and the inauguration of the new president took place on 25 January 2004, three weeks after the election.

3.7. The Winner?

The main players were the ordinary people. The distinctive feature of the Rose Revolution was the fact that, despite the hardships of everyday life, on cold and rainy days, people (predominantly adult townfolk who attended the demonstrations with their families, not troublemakers) stayed in the streets for days, not inspired by social slogans but to protect their dignity and put an end to lies and insults. The voter protected his right to vote, that is, to remove an objectionable government from power (probably the most important achievement of the revolution). Neither the police nor the internal troops dared to use force against such lofty motivation. The regular army never appeared on the streets of Tbilisi.

4. The Presidential and Parliamentary Elections after the Rose Revolution

The pre-term presidential election on 4 January and the parliamentary election on 28 March 2004 essentially served as a vote of confidence in the revolutionary authorities of Georgia. It is in this context that the quite predictable (see, e.g., Economist Intelligence Unit 22 March 2004), though alarming, election results must be seen. Saakashvili gained 96 per cent of the vote in the presidential election, and the consolidated party list of the National Movement and Democrats won two-thirds of the vote in the March parliamentary election.

4.1. The Presidential Campaign, 2004

The outcome of the 4 January election was predetermined, since Saakashvili had clearly established himself as a national leader who had no competitors of equal standing.

The distinctive features of his campaign were the enormous difficulties faced by the new CEC, first of all in terms of bringing the voter lists into agreement with the reality; the participation of voters in Ajara in the election of the president, which was yet another step towards their reintegration into national political processes; and the prominent and significant role of the future First Lady of Georgia in the election campaign. Nothing of the kind had happened before in the states of the South Caucasus.

On the whole the winner even exceeded the results of the first and second presidents of Georgia (Zviad Gamsakhurdia in 1991, and Eduard Shevardnadze in 1992, 1995 and 2000), and the tradition of the absence of competition at presidential elections has continued.

4.2. The 28 March 2004 Parliamentary Election

After the decision of the Saakashvili–National Movement and Burjanadze–Democrats blocs to consolidate their tickets (the representatives of the Republican Party and the Union of National Forces–Conservatives also remained on the joint party list), the only real question in the election was whether any other party or bloc would manage to clear the 7 per cent threshold. In a short time span, a more or less competitive alliance, the Rightist Opposition, was formed by the New Right and Industry Will Save Georgia. This alliance gained a little under 8 per cent and won 15 parliamentary seats (of the proportional seats, the remaining 135 were won by the National Movement–Democrats).

From the legal point of view, the most disputable and dubious aspect of the decision to repeat the parliamentary election was the decision that the results of the 2 November 2003 election in the 85 majoritarian districts should remain in force. Since the conduct of majoritarian elections in Georgia is in no way better than the conduct of proportional–party list elections (and is often even worse), all this looked like a mutually beneficial deal, as a result of which the majoritarians avoided a new campaign (and the attendant expenses and risks), while the new authorities gained their loyalty. The majoritarian parliamentarians got an opportunity to prove their loyalty in early February when the old Parliament (elected in 1999) was called to amend the constitution urgently.^V

On the whole, the January presidential election and the March parliamentary election were appraised by the local and international observers as an advance in the direction of modern democratic standards (International Society for Fair Elections and Democracy 2004). However, even though the new authorities were 'doomed' to win in the absence of competition, only the scale of the problems was reduced, while the whole scope of the problems remains. Any future elections may be held in a different political context, and only then will it be possible to judge whether the new authorities are sincere about ensuring a democratic electoral process and whether the generally positive changes in this sphere are irreversible.

5. Some Conclusions

As to the revolution proper, the present author draws a conclusion that contradicts logic and analytical rules: the November 2003 developments in Georgia are a positive phenomenon *no matter what happens later on*. Why positive must be clear from the above. This concluding section will briefly examine the new reality and what can happen in the future.

5.1. A Change of Elite

A new, truly young generation has come to power, and this marks a change of the political and administrative elite. The advantage of the new people is that they are not burdened with the Soviet stereotypes, dogmas and narrow-mindedness in thinking and action. But because they are young it is difficult to expect them to have an established system of values, a clear political credo and a strategic vision of the future of the country they are going to govern. Youth tends to underestimate the importance of dialogue and work in coalitions, both political and civic. At the same time, all this is characteristic of the whole of post-Soviet society with its low political culture and lack of skills and pluralist traditions.

5.2. Risks

The new authorities are facing innumerable problems and there are no guarantees that the society's expectations of rapid and decisive changes will be satisfied rapidly and decisively. The truly unique vote of confidence in the new authorities carries with it the risks of rapid disillusionment and of the abuse of unlimited power. The latter risk may be increased by the desire for revenge for the Shevardnadze decade when the ruling powers obstinately rejected the 'non-Soviet' people. At the same time, at the initial stage when corruption is being tackled, political teams are being radically reshuffled and the bureaucratic machine is being reduced, the number of the discontented will grow faster than the number of the satisfied. It is unlikely that the demoralized former authorities will be able to consolidate and pose a real threat, but if tangible and positive changes in the country are delayed the confidence in the new authorities will not stay unchanged.

5.3. Problems

At the same time, there is no organized and responsible opposition ready to replace the political team currently in power. Among the old-timers of Georgian politics, only the Republican Party is still in the arena. Most members of the Parliament are either descendants of the CUG (power generates power?) or newcomers to the national legislature. The political configuration is clearly unbalanced, with a gap in the left flank. The political credo of the National Movement–Democrats on the whole (assuming that they are a single political force) seems rather shapeless. Thus the establishment of a stable and predictable political spectrum still remains a matter for the future.

5.4. Objectives

In these circumstances, the role and function of civil society are difficult to overestimate. The November events in Georgia can be considered a revolution only if systemic institutional reforms follow, in the implementation of which the authorities and society rise to a fundamentally new level of relations. This will depend on society comprehending and developing its success in terms of everyday control over the authorities and immediate participation in the rehabilitation of the country, and the authorities realizing their accountability and the need to engage society in the reforms as a necessary prerequisite for progress.

The latest parliamentary election and reshuffles in the government have introduced yet another innovation: some prominent representatives of civil society have been transferred to various branches of power (previously, it was vice versa). On the one hand, this is reassuring in the sense that the ties and understanding between the authorities and civil society will be enhanced. On the other hand, the NGO sector has lost manpower and the feasibility of thorough-going reform that engages the whole of the society depends on how soon and how adequately this gap is bridged.

5.5. Chances

At any rate, the Georgian state now has a chance to resume the reforms, combat corruption, and create a basis for stable economic development and thus integration into the expanding European Union.

Most importantly, Georgia should avoid being reduced to being a country where the citizens are only capable of overthrowing objectionable rulers from time to time.

Notes

ⁱ The Council of Europe Congress of Local and Regional Authorities was the only international organization that observed the 2 June 2002 local elections in Georgia.

ⁱⁱ The present author was a member of various missions, as an observer at parliamentary elections in Armenia (1999), and the parliamentary (2000), local (1999) and presidential (2003) elections in Azerbaijan, and a witness of or participant in all elections in post-Soviet Georgia.

ⁱⁱⁱ This event fundamentally changed the political and economic landscape of Georgia and deserves a separate discussion.

^{iv} The representatives of this party appeared at the first session of the 'newly elected' Parliament called by Shevardnadze on 22 November which, however, never recognized its own mandate.

^v The altogether dubious affair of amendments to the constitution does not do credit to the new authorities, but that is beyond the scope of this analysis.

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Discussion Paper 3

The Parliamentary and Presidential Elections in Georgia, 2003–2004

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Comments on the case study by David Usupashvili

David Usupashvili's research is focused on evaluating three consecutive elections that took place in Georgia in the past two years: the parliamentary election in November 2003, the pre-term presidential election in January 2004, and the quick and partial (party list–proportional seats only) parliamentary election in March 2004. This is the period before and after the November 2003 'Rose Revolution' which, as the author points out on the very first page of his paper, is probably the single most important political event in Georgia since independence. While its root causes may be sought in the variety of problems Georgia has faced over the years—the collapsing credibility of President Eduard Shevardnadze's government as a result of its general ineffectiveness and rampant corruption, a protracted economic crisis, and the structural uncertainty of the Georgian political regime, which included both democratic and autocratic elements—it was rampant electoral violations that triggered the revolution. If the Rose Revolution had democratic legitimacy, it was because the government, through its consistent and blatant violations of the electoral process, had effectively deprived the people of their right to change the government peacefully. Taking to the streets and eventually forcing the president to resign (which was done by peaceful means in the end, but could very well have led to violence) was the last resort for the people to defend their political rights.

These elections should be put not only into the context of the November revolution but also into the context of the evolution of electoral processes in Georgia since independence. While Usupashvili only does this very briefly in the present case study, he—in co-authorship with the author of these comments—analysed this broader picture in a paper sponsored and published by International IDEA in 2003. This analysis shows quite conclusively that the history of the electoral process in Georgia since independence and until November 2003 was one of gradual decline in standards and in their public credibility.

Why did the electoral process in Georgia sink to such a low point, and what were its major deficiencies? Did it improve after the revolution, and if so in what ways? What are the major shortcomings that still persist? These are all issues that are very interesting for comparative research on democracy. However, they are especially crucial from the practical point of view. What can be done in order to bring the electoral processes and procedures closer to internationally acceptable standards and, most importantly, make them credible to the Georgian electorate?

Usupashvili's case study is extremely informative and it gives a coherent as well as detailed picture of the electoral processes, their political background and their consequences. It is clearly and logically structured. The assessments given, as well as practical recommendations, are well thought through, and I happen to agree with most of them.

In these comments I will reinforce and highlight some of the main points made by Usupashvili, underline some areas in which the paper could be improved, and bring to the reader's attention some issues of which in my view the analysis is lacking or insufficient.

The remainder of this paper follows the structure of Usupashvili's paper, but I will make some general comments first.

- While the case study describes three elections, the author's attention is disproportionately focused on the November 2003 parliamentary election. Given its fairly dramatic consequences, and the fact that this election represented the end of a political era and the culmination of a negative trend in the electoral processes that had been developing for more than a decade, this appears quite natural. The sections on the January 2004 (presidential) and March 2004 (parliamentary) elections are very brief and much less informative. Certainly, these were snap elections and provide less of a basis for broad generalizations, but they were supposed to start a new political era—as well as, hopefully, a new approach to holding elections. I believe, therefore, that these elections deserve greater attention and more detailed analysis.
- The attention the author pays to different topics is disproportionate: for instance, issues related to voter registration are analysed in greater detail than the election legislation. Again, there are grounds for this in the sense that the massive disenfranchisement of voters that resulted from faulty registration of electors and voter lists in the November election was one of the chief reasons for the popular outrage that led to a regime change, while the election legislation conformed more closely to democratic standards and was not the main issue of concern. However, in a broader perspective—especially bearing in mind tasks for the future—a more specific assessment of the strong and weak points of the election legislation would be more than useful.

- The paper is at many points laden with detail about the ways in which the election processes unfolded. These are without doubt rather important, but there is, I think, a need for sharper general assessments of the major problems related to different areas of the election process. This is done in some sections but not others.
- While, as mentioned above, the structure of the paper is clear and logical, in my view it could be improved. I would support the addition of a general section at the beginning of the paper that would provide a general, summary assessment of each of the three elections. It would state what the most critical weaknesses of the election processes in Georgia were, what general political trends they signified, the root causes of the failure of the November election, the main hopeful or alarming features of the subsequent snap elections, and so on. This section would provide the big picture at the beginning and also make sure that no important issues fall through the cracks between the specific problem areas analysed in different sections.
- I believe there are several important issues that did fall through the cracks, even though they deserved greater attention, in particular:
 - Violence in the election campaign was an extremely alarming negative trend that made the November 2003 election different from all previous and subsequent ones. The author mentions the most publicized incidents, such as the brawls in Bolnisi and Batumi, but does not make the pre-election violence a special topic of analysis. There were quite a few other violent episodes during the earlier stages of the election campaign, and this represented a steady trend.
 - While according to Georgian law there is a distinction between non-political public servants and political appointees, in practice this distinction is blurred. This has a direct bearing on elections. There is ample evidence that in the pre-November period the government pressured almost all those who depended on government salaries to campaign actively in favour of the government party and threatened them with dismissal if they did not comply. There are no signs so far (or are there?) that the new government will respect the non-political character of the public (civil) service more than the previous one. This issue is also linked to that of elections because it is difficult to have a non-partisan election administration (as the author rightly recommends) without having a non-political civil service.
 - The extremely important issue of political party financing is only mentioned in passing in the ‘Lessons and Recommendations’ section.
 - The author hardly discusses the large-scale election violations in Kvemo-Kartli which happened under the new administration. (This is not at all to suggest that he is too soft on the new government: the general character of the paper shows that he can be quite tough on it when it so deserves.)
- Given that the author happens to be an important democracy activist and a public figure who has access to first-hand information to election-related issues, I do not have doubts about the credibility of his sources. But it would still be useful to state explicitly what his sources are.

All my remarks and recommendations, above and below, may be exaggerated with regard to this particular paper. I understand that the length of the paper was limited and that it could not possibly cover fully all aspects of the three important elections, which were quite different from each other. The author had to make choices in favour of highlighting some topics or events rather than others. I might still prefer the paper to highlight some major points more strongly at the expense of some details. But these comments should be also understood as being intended to complement Usupashvili’s case study rather than to advise on how it could be improved.

1. The Development of the Election Legislation

The case study makes two important and fully valid points here.

- It has become an unfortunate tradition in Georgia to overhaul the election legislation shortly before elections as a result of last-minute deals between major political actors. These deals have usually focused on the way in which election commissions were set up, reflecting the ever-changing power balance each time. They have disrupted the work of the election administrations considerably. This is also linked to a large and very important problem that is discussed in the next section, that of the politicization of the electoral administrations.

- In the past three or four years, there have been certain improvements in the quality of the election legislation. In particular, the unified Election Code was passed in 2001, replacing separate legislation on the parliamentary, presidential and local elections. This code and subsequent amendments have introduced greater transparency in the electoral process and given the opposition parties and civil society more tools for monitoring its fairness. These tools later helped the opposition and civil society to make a conclusive case that the November election was rigged.

The assumption that the election legislation, while it has its problems, was not the main reason why the November election went wrong, is correct. However, I still think that more detailed analysis of the election legislation is needed. The author has rather focused on the history and evolution of the election legislation in Georgia, which is certainly instructive and necessary for an understanding of the election processes. But the actual strong or weak points of that legislation and their effect on the election process are only mentioned in passing. For instance, at the end of section 1.3.2 he writes that amendments suggested by the ‘Baker Formula’ ‘did increase the transparency of the election process’, but how did they do so specifically? Likewise, in section 1.3.3, the author lists areas in which the election legislation was improved before the November election, but there is no explanation as to what specifically was novel compared to the previous legislation or why these changes constitute an improvement. One or two examples would be helpful.

Did all the changes motivated by achieving greater transparency work, or did some of them backfire? Two provisions come to mind here. One was the rejection of the use of additional voter lists in order to avoid ‘carousel’ voting, or multiple voting by the same people. In practice this led to a situation in which people who could not find themselves on the list lost their right to vote altogether (in the January and March elections, additional lists were back in use). The second provision—again motivated by preventing fraud—removed curtains from the polling booths and obliged a member of the precinct election commission to sign the ballot paper (on the back) after the voter had made his choice. Some observers believed that the secrecy of the ballot was thus compromised and that this gave the government an additional opportunity to intimidate voters.

This section does not mention the subsequent elections. While these were not preceded by comparable legislative battles, there were legislative issues here as well. For instance, there was a quite unprecedented delegation of legislative power on some issues to the Central Election Commission (CEC). The new authorities refused to make some of the changes they were asked to make by some international organizations as well as by domestic non-governmental organizations (NGOs); this refusal itself might be interesting to highlight. In any case, even if the author does not consider this topic important, at least a brief mention would be more logical than simply ignoring the whole issue.

Most importantly, the section lacks any general assessment of the election legislation as it exists now. Is it broadly acceptable, with only small details needing to be improved? Or should it be rejected and rewritten? Does it need substantive changes in specific areas? A comprehensive analysis of all these issues would probably require a separate paper of at least comparable length, but it would be reasonable to expect some major points to be made here.

2. The Election Administration

This part of the case study consists of two sections, of which the first analyses the most controversial issue—the composition of the CEC—and the second its actual performance. Since the very first elections in 1990, the composition of the CEC has invariably been based on the principle of the balance of power between different participating parties. As the balance of power changed, specific formulae had to follow these changes. The composition of the CEC (and, automatically, the lower electoral commissions) therefore became hot political news and a matter of intense horse-trading between different political actors as every election approached. This horse-trading then continued on election day and culminated when ‘creative counting’ of the votes started: those present on the commissions could negotiate for the election outcome they considered most fair. Probably no other aspect of the election system in Georgia demonstrates its deeply corrupt nature so vividly. It also shows that election fraud was not single-handedly perpetrated by the powers that be: the opposition was also co-opted in back-room deals that decided what the will of the people really was.

This section briefly discusses the history of the issue, mentioning a window of opportunity opened up by the first version of the 2001 Election Code which entrusted NGOs with forming the election commissions. That attempt failed because of endemic distrust between the political players. Arguably, this notable episode rather belongs to the previous section—that on the election legislation. The author also presents a detailed picture of pre-election political fights over the issue. This picture is very instructive and informative. However, I might support cutting down on some of the detail in favour of placing greater emphasis on the analysis.

The paper also shows that the running of the new elections after the revolution did not signify any abandonment of this faulty principle: rather, the dominance of the new authorities was duly reflected in the composition of the CEC. I would prefer the author to dwell more on this stage as it is important in the context of the prospects for future election processes in Georgia.

In the period before the March 2004 election the new authorities explicitly ignored the recommendations of the Council of Europe and some domestic NGOs with regard to a change the law in order to make the composition of the election commissions more balanced. As the paper mentions, instead the president promised the opposition to include two of their representatives at the expense of his own quota, but this did not work as the opposition failed to agree among themselves. Was this a genuine attempt to reach out to the opposition or a gimmick based on the assumption that the opposition would not accept the offer? The author does not say this, although his wording may suggest that he is inclined towards the latter version. Most importantly, what was the preferable and practically most viable option for tackling the issue in these particular circumstances? This is not an easy question to answer, and that is why the author's analysis would be rather interesting.

The second part of the section provides a rather detailed and informative analysis of the actual performance of the CEC, especially before the November 2003 election. It dwells very briefly on the performance of the new CEC and notes the considerable progress achieved in the fairness and good organization of the election. However, this is only a general assessment within a short paragraph, and it does not specify what the sources for this assessment are. It is not noted, for instance, in what areas progress was achieved and what the major failures were—if there were failures. In this context, the author could compare assessments by international and domestic observation missions. Also, discrepancies between the official election results on the one hand and the results of exit polls and parallel vote tabulation (PVT) on the other hand would be a fairly reliable indicator of changes with regard to election fairness. In fact, the author does provide such comparisons—but he does this in section 5, which deals with the election results, where these data are probably less important.

One more remark: the author restricts his analysis to the CEC's activities, not even mentioning the lower-level election administrations. This, however, could have given a chance to discuss the poor quality of the elections in Kvemo-Kartli in January and March 2004.

Quite importantly, the paper mentions an extremely alarming episode when the CEC rather blatantly overstepped its competence in annulling the March elections in two electoral districts in Ajara (even if in substance they deserved to be annulled). This showed that the commission was following political expediency rather than the law.

3. Voter Registration

This topic, for the reasons mentioned, which are fully legitimate, gets an especially large share of attention in the paper. As the study clearly shows, faulty voter registration was not just the result of incompetence or lack of resources but rather a calculated mechanism for election fraud: the voter lists were artificially inflated with the addition of non-existent voters, and election officials could then give those 'votes' to candidates and parties they deemed appropriate. There is also strong evidence suggesting that intentional tampering with the voter lists did not start with the November election. Presumably, in earlier elections the administration falsified the voter lists to rig the results quietly, without disrupting the whole process. What was new in November 2003 (although this trend started in the summer 2002 local elections) was the complete chaos in the voter lists and the massive disenfranchisement of voters who could not find their names on the lists.

The author analyses in detail how it happened that the voter lists proved so exceptionally bad this time. The big question is what the root cause of the problem was. Was it that, because of the break-up of the

Citizens' Union of Georgia (CUG) in 2001–2002, the government became even more disorganized than it had been? Was it a change in legislation that rejected additional lists? Or was creating greater chaos part of the government strategy (presumably because it needed fraud on a larger scale this time)? Usupashvili sees this as a result of 'lack of professionalism and poor management, as well as of criminal action' (section 3.2, the last paragraph).

I share the author's assessment that the new system of voter registration based on self-registration—proposed and implemented by the new CEC for the emergency presidential and parliamentary elections—was the best option in the circumstances. However, this system involved somewhat greater hazards than those mentioned in the paper. It was not only that—as the paper states—the full number of voters was not clear until the end of the elections, since voters could also be registered on election day. The problem was that the full number of eligible voters was never ascertained. People who chose neither to register themselves nor to vote (which presumably includes both politically passive citizens and those who actively opposed the post-November government) did not get into the register of voters at all, which means that it is practically impossible to calculate the turnout in these elections. In the snap presidential election in January, the constitutional provision saying that elections were only valid if turnout was 50 per cent or more was still in force. Since Mikheil Saakashvili did not have any viable contenders, the issue of turnout was the main question of the election. Luckily, the absolute number of voters that came to ballot boxes exceeded even 50 per cent of the figure of eligible voters assumed for the November elections, which almost everyone agreed was inflated. There were therefore no doubts about the legitimacy of Saakashvili's victory.

As a result of a package of constitutional changes in January, this constitutional provision was (probably wisely) removed, so that from a legal point of view accurately defining the absolute number of eligible voters is no longer so dramatic an issue. However, while the arguments for the decision on instituting a new system of voter registration (the lack of better alternatives) were strong, it was also politically risky, as it could be interpreted as favouring Saakashvili by automatically solving the turnout threshold problem.

In any case, the question remains: was the system of self-registration justified by the special circumstances of snap elections when reliable and comprehensive voter lists were lacking, and there was no time to even try creating one, or should this be taken as the new principle?

4. The Relationship Between Political Parties and Coalition Building

The November revolution changed the political landscape of Georgia dramatically. The balance of forces before the November 2003 election and that before the subsequent snap elections are therefore difficult to compare. Usupashvili does a very good job of analysing both pre-electoral situations with regard to the major political players and their coalition-building attempts (mostly failed ones). There are, though, some details that could be disputed. For instance, in the very first paragraph of this section, he writes that 'the Labor Party of Shalva Natelashvili lost a substantial section of its voters, who mainly switched to Saakashvili'. However, the paper does not state clearly when this happened or what evidence supports this claim (usually, public opinion polls would be the source). In the local elections of 2002, Labor did a little better than the National Movement, and for a considerable time afterwards Natelashvili and Saakashvili showed comparable results in opinion polls, whether regarding their personal popularity or regarding the popularity of their respective parties. In my own view it was only immediately before the November election that any considerable number of voters switched to Saakashvili, and during the November protests Labor was abandoned by most of its supporters, disappointed by the failure of their leader to join the protest movement.

Similarly the claim made in the third paragraph of section 4.2 that Saakashvili was the most popular leader of the opposition has to be qualified: when, exactly? In my own view, the opinion polls carried out during the summer of 2003, when the issue of creating or not creating coalitions was being actively discussed, the popularity ratings of the three main opposition leaders—Saakashvili, Natelashvili and Nino Burjanadze—were very close, are accurate. Moreover, this may explain the failure to create coalitions: each of these leaders (and perhaps some others) considered him/herself to be the most credible future presidential candidate and did not want to strengthen any other candidate. Usupashvili does not mention a crucial episode in the summer of 2003 when the three pro-Western opposition parties (the National Movement, the United Democrats and the New Right) were very close to creating a joint party list with

Nino Burjanadze at the top. It was the high (and rising) popularity ratings of Burjanadze that (prematurely) boosted her political ambitions and led her to demand her own personal quota on the election list, which ultimately disrupted the coalition-building effort for good.

These details may not be so crucial on their own but they illustrate an important general trend: while the pre-election period was notable for strengthening the opposition parties (which could be considered a positive trend), the quality of the parties did not necessarily improve. The parties, new and old, were still machines serving the political ambitions of their leaders. The personal ratings of individual leaders were the single most important factor that defined coalition-building strategies.

The dramatic change of the political landscape after the revolution underscored the weakness of the political parties yet again. The winners of the revolution became the only viable political force. Opposition parties that had not taken part in the protests were marginalized and needed to rebuild their support base. Most amazingly, the erstwhile government parties like the CUG and Revival not only lost power (for Revival, this happened in May 2004, a period that is not covered by this paper) but ceased to exist. The CUG was not formally disbanded but it did not even take part in the March election—which is the equivalent of political death—while Revival announced its dissolution on the day after its leader left Georgia. This confirmed that these parties, created around executive power centres in the early 1990s, could only exist as their extensions.

The weakness of the political parties caused an unusual situation before the March 2004 election, when the main question was not who would win (this was obvious) but whether any party apart from the National Movement could clear the 7 per cent threshold for representation in the Parliament, and whether there would be any opposition representation at all in the Parliament. I suggest that this could also be better highlighted in the paper.

5. Campaign Strategies and Election Outcomes

Section 5 of the case study summarizes the campaign strategies of the different political players before each election. Some additional remarks are worth making.

The paper states—correctly—that ‘the Nationals stepped into [Labor’s] territory’ by appealing to the poorest voters. On the other hand, it should also be noted that the National Movement and the Burjanadze–Democrats also had common electoral territory to compete for: it could be described as people who were ready to support an opposition party that had a pro-Western image (which distinguished them from the Labor Party). Only careful analysis of the results of opinion polls can show conclusively at the expense of whose votes the popularity of the National Movement really increased (it would have been useful if the author had used polling results in this paper). The obvious fact, however, is that the strong showing of the National Movement in the November election was paralleled by the unexpectedly poor results of the Burjanadze–Democrats, when two or three weeks before the election these two had been close in the opinion polls.

Presumably the very intense campaigning by the National Democrats in the last two weeks, which was accompanied by their representatives being physically beaten in Bolnisi and Batumi, demonstrated to voters that they were the main opponents of the incumbent government. On the other hand, Burjanadze’s attempt to project an image of a moderate and ‘reasonable’ opposition, in contrast to the radical ‘hotheads’ of Saakashvili (her slogan of ‘Revolutionary Changes Without Revolution’ was tacitly meant to distance her from Saakashvili) proved counterproductive. It appears that, as election day drew closer, the public mood became polarized: some voters may have taken fright and voted for the traditional powers just to be on the safe side (by any account, the government party got more votes than the opinion polls predicted), but the majority went for those whom they saw as the most consistent opposition.

With regard to the January presidential election, I think it should have been mentioned that in lieu of credible opponents it was turnout figures that were the major concern for the new government. That is why it was participation in the election that became the main target of the campaign efforts. Some scare tactics used by Saakashvili could also be mentioned: he went so far as to predict ‘civil war’ if the election were unsuccessful (which could only happen as a result of low voter turnout).

In the March 2004 election the main question was whether any party would clear the 7 per cent threshold. The support for the National Movement, which now united the major pro-revolution parties,

was no longer so overwhelming: they won only 66.24 per cent of the vote in the end. On the one hand, as Usupashvili very rightly states, the opposition suffered from a ‘lack of topics . . . to exploit’: they did not know how to formulate a sufficiently attractive message. In Shevardnadze’s time, everyone became used to the opposition speaking about corruption, unpaid salaries and pensions, and the government’s lack of political will—but none of this could work against Saakashvili. Without a tradition of strong political parties with more or less stable images and messages, inventing a completely new protest message proved difficult.

Moreover, the opposition parties once again proved their immaturity by failing to assess the situation correctly and create at least temporary pre-election coalitions. For instance, if Labor, the Socialists and Jumber Patiashvili’s Unity—three parties with barely distinguishable leftist–populist messages—had created a united party list, they would easily have cleared the 7 per cent threshold. But they did not. Their counterparts on the right—the New Right and Industry Will Save Georgia—proved more rational, joined forces, and cleared the threshold with a narrow margin.

6. The Political Composition of the New Parliament and Expected Outcome

This section is rather brief but captures all the major points. To summarize, supporters of Mikheil Saakashvili have full control of the Parliament. Although there may be some additions to the opposition, he will probably retain a fairly strong majority that is unlikely to weaken appreciably unless some very grave failure of the government leads to a major political crisis. Given that the Parliament is also considerably weakened by the constitutional amendments passed in January 2004, it is unlikely to serve as an effective counterweight to the executive government.

7. The Role of Civil Society and the Media

This is in my view one of the best sections of the paper: The author has managed to be fairly succinct but also quite skilfully summarized the role of civil society and the media in the three elections. To summarize even more, this role was considerable in the November 2003 election—one can confidently say that there would have been no revolution without the media, and NGOs also played an important role—but these actors were much less important in the snap presidential and parliamentary elections. It would be premature to say that this change by itself indicates that the Georgian state under the popular Saakashvili is becoming more authoritarian than it used to be under the unpopular Shevardnadze. A lack of alternative leaders who can mobilize public support, and do so around civic values, cannot be the fault of the new government. But there are also some alarming trends in the media that Usupashvili describes: in fact, the level of media pluralism has declined, and the influence of the NGO community is also less. This change has exposed the institutional weakness of the media and civil society: it is much more difficult to play an independent and conspicuous role vis-à-vis a popular and strong government than an unpopular and ineffective one.

These dramatic events also raised existential questions about what the proper role of the media and civil society organizations should be, but this subject is mentioned in the case study only in passing. Are the media about proper and balanced reporting or about mobilizing popular support for ‘democratic forces’ against corrupt autocracy? As independent media developed in the late Shevardnadze period, the most popular Rustavi-2 and some other broadcasters tried to balance their political reporting and give a voice to all major players. Even the state-run television was forced to make some concessions to pluralistic programming. As the November election day approached, and especially in the three subsequent ‘revolutionary’ weeks, this balanced image was largely shed, and the television stations more or less openly took one or the other side. Rustavi-2 pretty much became the revolution television (it later promoted itself as the ‘television of the victorious people’). It had good enough reason to do so: it was obvious that if the government had its way with the election it would try to destroy Rustavi-2. On the other hand, broadcasters financed by rich tycoons, such as TV Imedi and Mze, even deserved special thanks from President Shevardnadze for ‘taking the right position’ (he contrasted them to the state television even though in that critical period it behaved slavishly enough).

A similar dilemma led to rather heated discussions within the NGO community. As Usupashvili says, the leading pro-democracy NGOs initially (in early 2003) tried to cooperate with the government on improving the election environment, in particular the registration of voters, but once it became clear that

this was pointless they switched to the dual task of monitoring the election process and exposing numerous violations, and organizing resistance efforts. These two tasks were mutually contradictory: The first required taking a certain distance from the political contest and acting as an impartial arbiter, while the latter strategy implied taking quite strong political positions. The politicization of one part of the NGO community led to sharp criticism by the other part, which considered the principle of NGO ‘neutrality’ sacred.

8. The Role of International Actors

The level of international involvement in the Georgian elections as described by Usupashvili can be assessed as quite unprecedented. He describes it as ‘risky’, while in some cases it ‘acted on the margin of interference in the domestic political affairs of Georgia’. It allowed some observers (predominantly Russian, but some also European) to see the regime change in Georgia as masterminded by the United States. As his interviews after his resignation show, the deposed President Shevardnadze largely shared this perception.

Usupashvili does not summarize his assessment of how great an effect the international involvement had: can it be described as decisive, important, marginal, or what? However, his paper shows that this impact cannot be discounted, although conspiracy theories ascribing everything to Washington-drafted scenarios are preposterous.

There were several counts on which international involvement in Georgian affairs was greater than usual: this included the visit of James Baker, special envoy of the US President, to cut the Gordian knot of disagreements about the composition of the CEC and push for a more democratic election environment, and the implementation of one point of the Baker Formula by the Organization for Security and Co-operation in Europe (OSCE), which actually selected three candidates for the position of CEC chairperson, one of which was picked by President Shevardnadze.

Assessments of the elections by the OSCE and Council of Europe observer missions were not as smooth and conciliatory as they usually are. Major international donors made their assistance to Georgia conditional on the holding of free, fair and orderly elections. But all this also showed the limitations of outside involvement. Had it not been for Georgians taking to the streets, the Georgian Government would have been quite successful in withstanding international pressure. As Usupashvili shows in other sections, the government successfully watered down the main point of the Baker Formula on the composition of the CEC (although formally it claimed—successfully—to be in compliance with it). The OSCE was careful to propose at least one candidate for CEC chair who would be acceptable to the Georgian president—Nana Devdariani, whom he predictably picked. Devdariani justified this choice by doing nothing to prevent electoral fraud. The experience of Georgia’s neighbours showed that the government could ignore harsh criticism of election irregularities and the international assistance programmes would eventually return, if in slightly reduced amounts.

However, the role of international actors was very important in other ways: it empowered the Georgian opposition and pro-democracy civic groups. This includes long-term work in support of the media, civil society and political parties. The support given to KMARA, the student protest movement, has received most publicity, but the whole infrastructure of pro-democracy NGOs and independent media would not have existed without Western support. International actors also strengthened local democratic activists whenever they gave strong and clear enough assessments of the election processes in Georgia, thus augmenting the legitimacy of the opposition and civic activists’ claims. However, precisely for this reason, some international actors avoided any public statements in order not to be accused of supporting one of the sides in the Georgian elections.

Last but not least, Western support turned out to be wasted when it was focused on technical support of the election administration or other government bodies involved in pre-election work. The Herculean efforts of the IFES, which computerized the voter lists for the whole of Georgia, was wiped out a couple of days before the election when the CEC abruptly decided to switch to handwritten lists. Of course, this does not imply that international donors should always support civil society and steer clear of governments. But technical assistance programmes cannot ignore the fundamental intentions of the local counterparts they are trying to assist: if the intention is not to allow fair elections, assistance is pointless.

9. Lessons and Recommendations

This section should probably be crucial in the case study but it seems to me less successful than others. It is not that I disagree with any of Usupashvili's recommendations, but there could be more of them, and they could be better argued and structured. For instance, the recommendation to increase internal democracy within political parties (a crucial issue indeed) by changing the law on parties is interesting but inconclusive. How, specifically, should the law be changed in order to achieve this goal? It is my view that the system of proportional representation (rather than the first-past-the-post system) is the single most important reason why Georgian political parties lack internal democracy. This view, however, is shared by only a small minority among the Georgian political elites, although presumably a large majority of the common citizens should support it.

I would suggest that it would be convenient to prioritize the recommendations. For instance, the recommendation to create a non-partisan public-service-based election administration is so critical that it should stand out and be argued in greater detail: the main argument against introducing such an electoral administration in Georgia (usually raised by the opposition parties) is that there is no genuinely non-partisan civil service in Georgia, so such an administration would in practice be pro-government. I do not consider this argument decisive, but it is certainly valid, and without a strong answer to it this recommendation will be less than convincing for many Georgians.

Finally, it would be more helpful to categorize the recommendations not (only) by problem area (election administration, political parties and so on) but by addressees as well. Who is supposed to follow these recommendations? Are they addressed to international donors, the Georgian Government, or Georgian civic organizations?

About International IDEA

Created in 1995, the International Institute for Democracy and Electoral Assistance (IDEA) is an intergovernmental organization that promotes sustainable democracy worldwide.

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