

# **OSCE electoral assistance and the role of election commissions**

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## Introduction

Most OSCE/ODIHR election observation missions (EOMs) of the past decade were dispatched to states that were not moving towards democracy. Especially in the post-Soviet area, the quality of election procedures as observed by EOMs has stayed at roughly the same dismal level, while the state of democracy on the whole has deteriorated rather than improved.<sup>2</sup> In the final reports of its EOMs in the post-Soviet area, ODIHR almost mechanically notes the lack of autonomy and impartiality of the election administration and the lack of trust among parts of the political spectrum and the general public in the fairness of the election process that follows from this. Partisan election commissions (ECs), it seems, are a fixture in the organization of unfair elections. For undemocratic governments, maintaining a large degree of control over the election administration is indeed the key to manipulating the electoral process. Considering that it would be difficult to corrupt the electoral process if ECs operate both professionally and autonomously from political interests, partisan ECs appear as a necessary (but not sufficient) condition for unfair elections.

ECs are charged with the actual, practical organization of elections. Because of their importance and because of the apparent relation between partisan ECs and unfair elections, it is instructive to gain an insight into how the composition rules of ECs and the application of these rules are manipulated to achieve partisan outcomes. Moreover, learning about how these outcomes are achieved should be a matter of consideration for organizations such as the OSCE that seek to improve the quality of election processes. The OSCE/ODIHR comments on ECs in every final report of an EOM and in every review of electoral legislation (issued in most cases in conjunction with the Venice Commission of the Council of Europe). The attention to ECs in these documents, however, is disproportionate to their importance. And crucially, the commentary on election administration is typically limited to lamenting the partisan composition and functioning of ECs: ODIHR does not have a coherent view, or at least does not put forward such a view, on what type of formula works to avoid partisan outcomes in the composition of ECs.

Given the importance of election administration, ODIHR should address the issue of partisan election administration more vigorously and coherently in its offer of election administration to the countries where partisan election administration is an issue. Based on a comparative study of the manipulation of rules for the composition and functioning of ECs, this article develops insights that could inform a more assertive ODIHR approach to the issue of partisan ECs. The article draws primarily from the original electoral legislation of the post-Soviet states, existing reviews of electoral legislation, and the final reports of EOMs. The next section first introduces the subject of election administration. Subsequent sections discuss election administration in the states of the post-Soviet area, the ways authorities secure control over ECs, and ODIHR involvement. The final section puts forward recommendations for a new approach to the issue.

## The world of election commissions

A generic name for the institutions that are charged with the organization of elections is Election Management Body (EMB). In the context of the countries of the post-Soviet area, EMBs are typically referred to as election commissions, in line with the Russian translation *izbiratel'naya komissiya*. There are two principal types of EMBs. In many Western European democracies, elections are organized by the executive branch of government, often through a specialized commission within a ministry. In most 'newer' democracies, on the other hand, EMBs are institutionally independent from the executive branch. ECs, at the very least, are responsible for delineating exact district boundaries, determining who can vote, informing voters, registering

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2 Max Bader, 'The Challenges of OSCE Electoral Assistance in the former Soviet Union' in *Security and Human Rights*, 2011, Volume 22 Number 1

candidates, overseeing the election campaign, setting up polling stations, conducting polling, counting and tabulating the vote, and publishing the results. The actual list of responsibilities of ECs is typically much longer. ECs are divided along a number of different tiers, with, at the one end, a singular central election commission, and, at the other, the election commissions responsible for individual polling stations and corresponding precincts. In the post-Soviet area, there is in most cases one additional tier, often referred to as District Election Commissions (DECs), and in some cases (Kazakhstan, Russia, Turkmenistan) two intermediate tiers. In the 2011 parliamentary elections in Russia, for example, there was one Central Election Commission (CEC), 83 Subject Election Commissions, 2,747 Territorial Election Commissions, and 95,249 Precinct Election Commissions (PECs). In the much smaller Moldova, there was one CEC, 35 DECs, and 2,703 PECs in the 2010 parliamentary elections.

ECs can have as little as three members, such as in precincts with few voters in Russia, and as many as 24 members, such as in local elections in Ukraine. There is an infinite number of different ways in which ECs can be composed. The nomination and appointment of EC members can be done by one or several entities. Only for CECs in the post-Soviet area, the list of entities that can nominate and/or appoint members of the CEC includes the president, the presidential administration, the lower and upper chambers of the legislature, their chairmen, the government, the parliamentary majority, the parliamentary minority, parties represented in Parliament, parties without representation in Parliament, parliamentary factions, judicial bodies, regional bodies, and NGOs. Other variables that are relevant with regard to the composition of ECs are the presence or absence of educational requirements (for instance, members possessing a law degree), the length of appointment, and whether members can be dismissed or recalled. A crucial aspect regarding the functioning of ECs concerns the share of EC members who must be present at an EC session to make commission rulings valid, and the share of either the present members or of all the members of the commission who must vote for a proposal to make that proposal a formal ruling.

What should be clear from this cursory and incomplete overview is that the world of ECs is highly complex: no two arrangements are the same. While this complicates the comparative study of election administration, it is possible to identify common aspects in how ECs are put together and in how provisions surrounding the composition and functioning of ECs are manipulated across the region of the former Soviet Union.

### **Election commissions in the post-Soviet area**

With respect to composition rules for ECs and the actual position of ECs vis-à-vis the executive branch in the post-Soviet area, three different situations can be distinguished. First, and most rarely, election commissions are truly autonomous from partisan interests. Second, election commissions clearly work in cahoots with the authorities, and little effort is taken to conceal this fact as the application of composition rules for ECs inadvertently lead to a pro-regime partisan outcome. Finally, composition rules in and of themselves hold the promise of pluralist, non-partisan ECs, but in reality ECs for the largest part operate and rule in the political interest of the authorities. This section illustrates these three different situations with an emphasis on the rules for the composition of central election commissions.

In the 2010 parliamentary elections in Moldova, '[the] CEC enjoyed the respect and broad confidence of political parties'.<sup>3</sup> In parliamentary elections in Kyrgyzstan in 2010, similarly, '[the] CEC operated independently from

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3 OSCE/ODIHR, 'Republic of Moldova. Early Parliamentary Elections 28 November 2010, OSCE/ODIHR Election Observation Mission Final Report', Warsaw, 26 Jan. 2011, p. 7

government and partisan interests and earned the trust of election stakeholders in a short period of time'.<sup>4</sup> Such statements are the exception to the rule: of the final reports by ODIHR EOMs in the post-Soviet area over the past decade, only about a handful do not explicitly note the lack of autonomy and impartiality of ECs. Among this handful are the three most recent national elections in Ukraine. EC composition rules in Ukraine contain a strong foundation for independent ECs and have remained roughly similar for a long time, but only after the Orange Revolution were they applied in a fashion that resulted in largely non-partisan outcomes. The current rules, adopted in 2005, for the composition of the CEC in Moldova are unique in that they prescribe that a majority — five out of nine — of CEC members are nominated by opposition forces in Parliament, thereby virtually securing that the CEC does not rule in the explicit interest of the regime. According to new composition rules for the CEC adopted in 2011, the right of nominating members to the CEC in Kyrgyzstan is equally divided between the president, the parliamentary majority, and the parliamentary opposition. It is too early to know whether under these rules the positive development of the last two elections, in which the CEC was by and large trusted, will be extended. The composition of ECs in Armenia has been criticized by the OSCE/ODIHR during each election. In 2011, new rules were adopted for the composition of the CEC according to which the members of the CEC will be nominated by three judicial bodies. While ODIHR has welcomed the new rules, coming elections will have to demonstrate whether the application of the new rules finally results in a non-partisan CEC.

At the other end of the spectrum, some post-Soviet states have had, either at some point or continually since independence, EC composition rules that clearly favoured the regime. In Turkmenistan, the rules leave 'little hope for real independence and impartiality of the election administration' as they allow for the unlimited inclusion in ECs of representatives of state bodies.<sup>5</sup> Since 2008, the CEC that oversees parliamentary elections is formed single-handedly by the president. The 22 members of the CEC in Uzbekistan are appointed by the Parliament, in which no opposition forces are represented. Up until 2007, the seven members of the CEC in Kazakhstan were appointed by the lower chamber of the legislature, but only the President could propose candidatures. A similar situation has existed in Tajikistan since at least 1994. Between 2000 and 2007, a majority of seven out of thirteen CEC members in Kyrgyzstan were appointed by the President. Since 1998, the President in Belarus has had the right to nominate and appoint six out of twelve CEC members. Similar composition rules were in place in Kyrgyzstan at the time of the 2009 presidential elections. Since the six appointments includes the chairman of the CEC, who has a tie-breaking vote, the President through his appointments alone can effectively ensure that the CEC will rule in the regime's interest. In these countries, the authorities do not try hard to conceal the relation of ECs with the regime, or to create an impression of impartiality. In Belarus, lower-tier ECs are openly formed by regional and local executive authorities instead of political parties or local parliaments. Also, the long-standing CEC chairwoman Yermoshina has repeatedly spoken out in favour of the President.<sup>6</sup> In Turkmenistan, cabinet members have been appointed to CEC positions.<sup>7</sup> And in Kyrgyzstan, the fact that the CEC for many years was located in the same building as the President's offices cast doubt on its independence.<sup>8</sup>

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4 OSCE/ODIHR, 'Kyrgyz republic. Parliamentary Elections 10 October 2010. OSCE/ODIHR Election Observation Mission Final Report', Warsaw, 20 DEC. 2010, p. 1

5 OSCE/ODIHR, 'Parliamentary Elections in Turkmenistan 12 DECEMBER 1999. Report of the ODIHR Needs Assessment Mission' 8-11 November 1999, p. 8

6 OSCE/ODIHR, 'Republic of Belarus Presidential Election 9 September 2001. OSCE/ODIHR Limited Election Observation Mission Final Report', Warsaw, 4 October. 2001, p. 11

7 Op. cit., note 4

8 OSCE/ODIHR, 'Kyrgyz Republic Parliamentary Elections 20 February & 12 March 2000. Final Report', Warsaw, 10 April 2000, p. 3

A situation that is at least as widespread among the post-Soviet states is that composition rules create merely an illusion of pluralism, impartiality, and independence. In Azerbaijan, nominations for the 18 members of the CEC come in equal numbers from the parliamentary majority, the parliamentary minority, and independent MPs. As ODIHR noted in 2003, '[w]hile this composition of the CEC would not necessarily be problematic as a theoretical construct, in practice it meant that the governing party and its supporters had a commanding, two-thirds majority that was sufficient to take decisions over any objections by opposition members'.<sup>9</sup> The de facto majority in the CEC is due to the fact that most independent MPs and representatives of small parties are supportive of the regime. In Armenia in 2003, three out of nine CEC members were nominated by the President and the remaining six by factions in Parliament. As ODIHR noted, the 'method of appointment is not necessarily problematic, [but] in this instance it failed to create politically balanced commissions and proved to be a great obstacle to independence, impartiality and professional performance of the election administration'.<sup>10</sup> In Kazakhstan and Russia, the President, the upper chamber of the legislature, and the lower chamber of the legislature each nominate candidates to the CEC. While this formula can lead to a pluralist CEC composition in a pluralist political landscape, the fact that Parliament is dominated by pro-presidential forces results in a CEC where most members are likely to support the regime. At the time of the parliamentary elections in Georgia in 1999, composition rules appeared to hold the promise for pluralism, but the 'system of appointment to election commissions creates the potential for the incumbent administration to enjoy a built-in majority at all levels of the election administration'.<sup>11</sup> In Kazakhstan, it has been common for EC members to be nominally independent while in reality being affiliated with the ruling party.<sup>12</sup> In relation to elections in Armenia and Kyrgyzstan, on the other hand, it has been observed that many EC members, especially in PECs, nominally represented opposition parties but were not aware of this, which suggests that their nominal partisan affiliation was intended to create an illusion of pluralism.<sup>13</sup>

Unsurprisingly, the nature of EC composition in the post-Soviet states closely corresponds with the nature of the political regimes in these states. Belarus, Tajikistan, Turkmenistan, and Uzbekistan, where the formula for the composition of the CEC does little to hide a lack of pluralism, have some of the most repressive political regimes in the region, with Freedom House Freedom in the World scores of between 5.5 and 7.<sup>14</sup> Armenia, Azerbaijan, Georgia, Kazakhstan, and Russia, where ECs generally pretend to be pluralist and independent from the government (but in reality are not) have Freedom House scores of between 4 and 5.5. The two countries, finally, where at least two national elections have been organized that largely met international standards, also have the most pluralist and independent ECs.

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9 OSCE/ODIHR, 'Republic of Azerbaijan Presidential Election 15 October 2003. OSCE/ODIHR Election Observation Mission Report', Warsaw, 12 November 2003, p. 6

10 OSCE/ODIHR, 'Republic of Armenia Presidential Election 19 February and 5 March 2003. Final Report', Warsaw, 28 April 2003, p. 5

11 OSCE/ODIHR, 'Georgia Parliamentary Elections 31 October & 14 November 1999. Final Report', Warsaw, 7 February 2000, p. 9

12 OSCE/ODIHR, 'Republic of Kazakhstan Parliamentary Elections 10 and 24 October 1999. Final Report', Warsaw, 20 January 2000, pp. 6-7

13 OSCE/ODIHR, 'Republic of Armenia Parliamentary Election 25 May 2003. Final Report', Warsaw, 31 July 2003, p. 8; OSCE/ODIHR, 'The Kyrgyz Republic Parliamentary Elections 27 February and 13 March 2005. OSCE/ODIHR Election Observation Mission Final Report', Warsaw, 20 May 2005, p. 6

14 The annual Freedom in the World publication of the American NGO Freedom House assigns scores for civil liberties and political rights to all countries. Scores range between 1 and 7, with 7 indicating the highest level of violation of civil liberties and political rights. The scores reproduced here are composite scores of the 2011 scores for civil liberties and political rights. Freedom in the World can be consulted at <http://www.freedomhouse.org/template.cfm?page=15>

## The manipulation of rules

In some states the formula for the composition of ECs is such that a partisan outcome in favour of incumbent forces is inevitable when the rules are simply applied. In other states, as pointed out above, composition rules may in principle be compatible with impartial and independent ECs. Either due to a violation of the spirit of the composition rules or due to the existence of a non-pluralist political constellation, however, ECs in these states do not turn out to be impartial and independent. There is, in other words, a discrepancy in these states between the equitable rules on paper, and an inequitable reality. How do the authorities manipulate composition rules and other legal provisions to gain or maintain control over ECs?

In some states, executive authorities interfere directly in the work of ECs. A report by ODIHR and the Venice Commission found, for example, that in Armenia 'the presidential administration still greatly influences the work of commissions'.<sup>15</sup> And in the 2003 presidential elections in Azerbaijan, 'local executive authorities appeared to direct the work of the ConECs'.<sup>16</sup> Executive authorities may simply staff ECs with their own representatives. In the 2000 parliamentary elections in Tajikistan, for example, 'most of DEC members included personnel from local and regional administration officials (Hukumat) or from institutions controlled by the Hukumat'.<sup>17</sup> Some countries have introduced caps on the presence of public officials in ECs. In both Kyrgyzstan and Russia, for example, the share of public officials in ECs below the level of the CEC may not exceed one third. It is doubtful, however, whether this provision is always strictly followed. Moreover, as an ODIHR review of the election law of Kyrgyzstan has stated, '[i]t can be argued that in the absence of substantial confidence in the election process that such persons should not be members of election commissions at all because they are beholden to the state authorities'.<sup>18</sup>

Another manner through which authorities can enhance control over ECs is by vertically linking ECs. According to composition rules in place in Kyrgyzstan between 2005 and 2011 and in Tajikistan and Uzbekistan until now, the CEC nominates and appoints the different DECs, which in turn nominate and appoint the PECs. This is also true for Azerbaijan, but in this case the higher-tier commission must ensure that representatives of the parliamentary majority, the parliamentary minority, and independent MPs are equally represented in the lower-tier commission. In Georgia, all DECs are composed by the CEC, and six out of thirteen members in every PEC are selected by the DECs in their respective district. And in Armenia between 2005 and 2011, each CEC member selected one member of each DEC, and each DEC member in turn selected a member of each PEC in the respective DEC member's district. Through this type of vertical linkage, DECs and PECs are more likely to be subordinate to higher-tier ECs.

Where composition rules prescribe an equitable distribution of EC positions among a range of different parties or political forces, managerial positions (the chairman, deputy chairman, and secretary) in ECs are often assigned to members of the ruling party or otherwise supporters of the regime. While opposition representatives were present in fairly large numbers in ECs during the 2008 parliamentary elections in Georgia, for example, they were clearly underrepresented in managerial positions. ODIHR found that a majority of PEC

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<sup>15</sup> OSCE/ODIHR and the Venice Commission, 'Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia', Strasbourg, 17 December 2003, p. 4

<sup>16</sup> Op.cit., note 8

<sup>17</sup> OSCE/ODIHR, 'The Republic of Tajikistan Elections to the Parliament 27 February 2000 Final Report', Warsaw, 17 May 2000, p. 9

<sup>18</sup> OSCE/ODIHR, 'Kyrgyz Republic Assessment of the Election Code as Amended by the Legislative Assembly in the Second Reading on 25 December 2003', Warsaw, 15 January 2004, p. 11

chairmen were affiliated with the ruling United National Movement.<sup>19</sup> In consecutive elections under President Kuchma in Ukraine, similarly, supporters of the President held a disproportionate share of managerial positions in DEC and PECs.<sup>20</sup> Regimes benefit especially from controlling the chairman position in ECs since chairmen typically have a tie-breaking vote which they can use to avoid a possible deadlock. ODIHR has repeatedly spoken out against the notion of a weighted vote for EC chairmen.<sup>21</sup>

Finally, the authorities facilitate control over ECs through provisions for a low quorum for attendance at EC sessions - the number of commission members who need to be present at a session for that session to be authorized to take decisions —and for a low quorum for decision-making in ECs — the number of commission members who have to vote for a proposal in order for that proposal to become an official ruling. In the most extreme case, only a quarter of EC members in Armenia can take decisions, given that the quorum for attendance at an EC session is half of all EC members, and the quorum for decision-making is half of those present at the session. This means that, for example, only two CEC members can make decisions at a CEC session if only four members out of seven are present and one of the ‘yes’ votes comes from the chairman of the commission. In Georgia, Russia, and Tajikistan, decisions can be taken by only one third of EC members as they require an attendance quorum of two-thirds and a decision-making quorum of half of those present. In most other post-Soviet states, the votes of at least 50 per cent of commission members are needed for decision-making due to the fact that they require that half of all commission members, instead of only the members present at the session, vote in favour of a proposal in order for that proposal to become a ruling.

### ODIHR involvement

OSCE participating states are nominally committed to an ‘administration of elections that must be conducted autonomously, free from government or other interference, by officials or bodies operating transparently under the law’.<sup>22</sup> In practically every review of electoral legislation and every final report of EOMs, ODIHR notes the lack of autonomy of ECs and recommends that the issue should be addressed. At the same time, ODIHR generally refrains from proposing concrete measures that can be taken to enhance the autonomy of ECs, and stresses that there is no singular recipe regarding composition rules. The Code of Good Practice in Electoral Matters of the Venice Commission is only slightly more specific on the issue: it advises that ECs have ‘at least one member of the judiciary’ and ‘representatives of parties already in parliament or having scored at least a given percentage of the vote’. These parties ‘must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis’.<sup>23</sup>

On a few occasions the OSCE has been directly involved in EC-related issues in participating states. In 2003, the CEC of Georgia requested the OSCE to nominate three candidates for the position of CEC chairman. The OSCE complied with the request, after which the President of Georgia appointed one of the three nominated candidates. The episode was not particularly fortunate as the CEC chairman that had been nominated by OSCE was widely mistrusted and oversaw the parliamentary election that sparked the Rose Revolution. Regarding

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19 OSCE/ODIHR, ‘Georgia Parliamentary Elections 21 May 2008. OSCE/ODIHR Election Observation Mission Final Report’, 9 September 2008, p. 8

20 OSCE/ODIHR, ‘Ukraine Parliamentary Elections 31 March 2002. Final Report’, Warsaw, 27 May 2002, p. 7

21 E.g. OSCE/ODIHR and the Venice Commission, ‘Joint Opinion on the Election Code of Georgia as revised up to July 2008’, Strasbourg, 9 June 2009, p. 13

22 OSCE/ODIHR, ‘Existing Commitments for Democratic Elections in OSCE Participating States’, Warsaw, October 2003, p. 14

23 European Commission for Democracy through Law (Venice Commission), ‘Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report’, Strasbourg, 23 May 2003, p. 10

the composition and the functioning of the CEC in Azerbaijan, '[t]he Venice Commission and the OSCE/ODIHR put forward a series of suggestions by way of a possible compromise between the majority party and the opposition' in 2003. The Azeri authorities rejected the proposed formula for the composition of the CEC, but did accept suggestions regarding the quorum for attendance at CEC sessions and decision-making.

Scores of legal reviews and final reports of EOMs have called on the authorities of especially Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Kazakhstan, and Tajikistan to address the issue of partisan ECs. The laws of three other states in the region — Russia, Turkmenistan, and Uzbekistan — equally contain problematic provisions regarding the composition and functioning of ECs, but these laws have been scrutinized less often by ODIHR. On the other hand, ODIHR has generally been only mildly critical of provisions on ECs in the laws of Moldova and Ukraine. Over the past decade, provisions on ECs have remained largely unchanged in four of the seven states whose election laws have attracted repeated ODIHR criticism — Azerbaijan, Belarus, Tajikistan, and Kazakhstan. ODIHR recommendations, consequently, in these states have been disregarded. Composition rules for ECs in Kyrgyzstan did not fundamentally change until the 2010 regime change. It appears, however, that the EC composition rules adopted as part of the new election code were inspired not so much directly by ODIHR recommendations as by a desire to prevent the domination of a particular political force in general, including in the CEC. In contrast to the other five states, the authorities of Armenia and Georgia have frequently changed the composition rules for the CEC. At least some of the amendments were seemingly aimed at placating the critical position of ODIHR. At the same time, in every election so far, the CEC has remained under the control of the Armenian and Georgian authorities. In just a decade, CEC composition rules in Armenia have been amended four times, most recently in 2011. Changes in 2005, which shifted the right to nominate two candidatures from the president to judicial bodies, and the change in 2011, according to which all CEC candidatures are nominated by judicial bodies, may well have been influenced by conversations with and recommendations from ODIHR, as the Armenian authorities have more often displayed an openness to ODIHR recommendations. Rules for the composition of the CEC have been amended six times in Georgia over the course of one decade. Of these changes, the two most recent have somewhat increased pluralism, but more than half of CEC members are still considered to be on the side of the regime.<sup>24</sup>

## Recommendations

With few exceptions, ECs in elections in the post-Soviet area are not impartial. Most political regimes of the region have deliberately put in place rules for composing ECs that result in partisan outcomes. Moreover, the letter and spirit of legal provisions surrounding the composition and functioning of ECs are often violated to augment their dependence on the executive authorities. Control over ECs helps the regimes to manipulate the election process. One of the first steps toward free, fair, and competitive elections is therefore the installation of ECs that operate professionally and do not promote the interests of any political grouping. Until now, ODIHR has been practically agnostic as to what constitutes best practices regarding the composition and functioning of ECs. ECs, however, are too important to be met with this relative neglect. The practice of ECs in the post-Soviet area provides a number of lessons about what composition rules and other provisions should be avoided to increase the likelihood that ECs will turn out to be impartial. While it probably remains true that 'there is no standard model for composition of election commissions',<sup>25</sup> ODIHR should take a position that goes further than simply stating that ECs must be impartial. This position might integrate the following insights.

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24 'Georgian President Flouts Election Law', [http://www.rferl.org/content/Georgian\\_President\\_Flouts\\_Election\\_Law\\_/1928246.html](http://www.rferl.org/content/Georgian_President_Flouts_Election_Law_/1928246.html) (last accessed 11 January 2012)

25 OSCE/ODIHR and the Venice Commission, 'Joint Opinion on the Election Code of Georgia as amended through March 2010', Strasbourg/Warsaw, 9 June 2010, p. 9



First, of overriding importance is that EC composition leads to impartial decisions and rulings. Impartiality can be achieved by appointing either impartial individuals, for example lawyers who are perceived as neutral, or a mix of political party representatives from different parties. When appointing political party representatives to an EC, their number can be either proportional to their vote share in recent elections or their seat share in the legislature, or numerically equal to that of other parties in the EC — for example, one or two candidates per party. Proportional party representation, however, tends to lead to ECs that are dominated by members who are loyal to the regime because of the often strong position of the leading party. Equal party representation therefore seems more appropriate. A second measure that can be taken to increase the likelihood of achieving an overall impartial EC composition is the inclusion of representatives of extra-parliamentary parties. The most appropriate way to assign the extra-parliamentary parties that dispatch one or several members to a particular EC is selection by lot among those parties that participate in a given election.


Second, lawyers bring to the table a number of real or perceived advantages concerning their work in an EC, including familiarity with the law, in some cases specific expertise in electoral matters, a stronger disposition to adhere to the law, and an impartial stance. ODIHR in some legal reviews calls for the inclusion in ECs of lawyers, or at least individuals with a law degree.<sup>26</sup> Few election laws, however, contain requirements for the inclusion of lawyers in ECs.

Third, it is advisable that the minimum number of commission members required for the passing of a decision or a ruling is a simple majority of all commission members (rather than merely the members present at a session). A smaller share could entail the taking of decisions by an excessively limited number of commission members who may represent a shared political interest; a larger share, on the other hand, could undermine the ability of the commission to rule effectively.

A new ODIHR approach to the issue of partisan ECs should incorporate norms that can be clearly and consistently communicated to the authorities of states with problematic provisions on ECs, and that, when implemented, still leave ample room for context-specific variation. Drawing from the above insights, the following norms could be central to a new ODIHR approach: 1. When the law prescribes the inclusion of political party representatives in ECs, these representatives, from parliamentary parties and a limited number of extra-parliamentary parties, should be appointed in equal numbers. 2. Unless there is widespread confidence in the impartiality and professionalism of higher-tier ECs, they should include a number of lawyers. 3. The quorum for decision-making in ECs should be a simple majority of all EC members.

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<sup>26</sup> OSCE/ODIHR and the Venice Commission, 'Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan', Strasbourg/Warsaw, 1 September 2003, p. 8



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