STUDENTS FORUM

Student Views of Elections

The modern world makes explicit efforts to improve democratic governance. In the majority of countries, the primary criterion for democratic development of the state and the society is free elections, as their outcomes provide for the essence, scope and efficiency of the government. The essence of elections has great impact on the future life of the state. Optimum legal regulation and organisation of election procedure may become the basis for the consolidation of a split society, while it might also secure long-term democratic sustainability.

Elections are a focus of social life and are of interest for every citizen of the state. They enable citizens to participate in political processes in general and in particular in public life. The attitude of society towards election processes is a particularly sensitive issue for future lawyers. They regularly discuss and debate many crucial aspects and challenges of elections both within and outside their lecture-halls, and these discussions and debates aim at the perfection of election law. Opinions and suggestions given in this contribution are abstracts from their discussions, which are sometimes well-founded and generally acceptable, but sometimes the manifestation of youthful attitudes.

Nana Chigladze
Professor of the Constitutional Law
of the Tbilisi State University

Election Administration

Tamta Mikeladze:

Development of an adequate system of election administration, that will secure the holding of democratic and impartial elections, and in future, the creation of a stable, legitimate, functional political regime, is one of the most pressing problems of election law, both in Georgia and abroad. During the analysis of this issue, more than one layer comes to the forefront, each of which requires separate regulation. On the one hand, the procedure for staffing of election administration should be on a horizontal level, which means securing the maximum level of impartiality, political comprehensiveness, and balance, while on the other hand, promoting their vertical distribution in such a manner as to guarantee the principle of equality of electoral rights of the various territorial-geographical units. This issue becomes particularly pressing during elections held under the majority ("first past the post") system, and complicates the actual operation of the principle of electoral equality. When speaking about these issues, account should be taken not only of legal, but also political aspects. Moreover in the current Georgian context, where there is no practice and tradition of constitutional rotation of govern-

ment, and in which we must permanently compromise with respect to legal and civil values and principles under the motivation of political expediency. But it is impossible to create a democratic, moreover legitimate political-state system through non-liberal, non-legitimate methods.

Election law provides not only for the official procedure of elections, it is also able to secure the continued existence of an efficient, legitimate political system. Starting with a low level of legitimisation, which may be caused by an inadequately staffed election administration, and consequent "doubtful" results of an election, will cause material problems for the government concerned during the entire period of its authority. Thus, a fair and resolution of this issue compatible with current conditions is vital not only as a matter of general principle, but also for the stability of the government.

An analysis of constitutional and political practice enables us to determine that in countries with low political culture, state civil institutions are less developed. As a rule, the election administration is staffed according to political factors, and its main focus is the maximum involvement of the entire political spectrum. While in advanced countries with long standing traditions, the problem of mass falsification of elections and corruption is not as pressing. These countries seek to insure the economy, autonomy, and professionalism of the election administration to the maximum possible extent. I shall speak about these issues later on, but for better consistency, I shall touch upon the political factors in the staffing of the election administration.

In this light, I would like to put forward a question: Which factors must the political forces use in selecting the staff of the election administration in such a multi-party and politically instable country as Georgia? Quite often, a political monolith, which had a rather high political rating four years ago, may fully collapse and lose even a minimal chance to enlist support. In my opinion, for the current conditions in Georgia, the solution is not to take account of political parties, even those which cleared the 7% hurdle. In an unfair political landscape the main powerful political forces "manage" to come to agreement so as to allocate quotas in the Parliament, and as a rule marginal political forces are excluded from this game.

In addition, the problem of political manipulation is not dealt with in current legislation. According to Article 27 I of the Election Code, the Chairman and 6 members of the Central Election Commission are elected by Parliament based upon a submission of the President of Georgia. First and foremost, it should be stressed that despite Article 69 I of the Constitution of Georgia, under which the President is the head of the Georgian state, and thus the President was removed from the political process and acquired the role of a neutral arbiter, Article 72 of the same Georgian Constitution does not exclude the President's belonging to a certain political party: "The President of Georgia is not entitled to hold any other office, except for a political one".

Constitutional changes of 2004 diminished the role of Parliament to such an extent, that it has actually become impossible to prevent "close cooperation" between the Parliament and President. Some elements of subordination are even noticeable. Thus, in my opinion

it will be impossible to actually secure the impartiality and fairness of an election administration staffed in this way.

The electoral experience of Latin America would appear to be of interest, where (in Brazil, Peru, etc.) special courts have been created to deal exclusively with election cases.

In Brazil there is the Supreme Election Court, regional election courts, and system composed of election judges and election councils that are subordinated to the general court system and which combine the function of constitutional control with the competencies of election administration. The composition of the Supreme Election Court is explicitly professional. Three members are drawn from the Federal Supreme Court, two from the (state) supreme courts, along with two representatives of the President, who are selected from among six lawyers nominated by the Federal Supreme Court and who are unlikely to be challenged.

In Peru, unlike the Brazilian model, the courts fall within the framework of the election system and law. In Poland, the national and constituency election commissions are staffed by the courts of the respective level. Furthermore, the national election commission is composed of the representatives of the Supreme Court, Constitutional Court, and the Supreme Administrative Court. Along with the judiciary, one of the important branches of the state power, the practice of election law is heavily influenced by the participation of executive power in election processes, for example in Italy and the USA. In the latter, important issues related to elections are regulated at federal level by the Departments of Justice and Defence.

Based on the above, I consider it reasonable to staff the Central Election Commission with due consideration of the factor of the civil society. Of course, this fact would have guaranteed a higher level of transparency and impartiality had the system been better balanced. Hence the role of the representatives of the judiciary should moreover be taken into account, whose involvement would make the process more professional. Also important is the efficient management, running and organisation of the administration. In this respect, of particular interest is the Mexican practice that empowers election institutions with public and global functions, including: 1) Actual administration of democracy; 2) Securing the development of political culture; and 3) Promotion of the development of political parties. For the discharge of these powers, a General Council has been created (8 non-party citizen-advisors elected by a 2/3 vote of the deputies, and two senators and deputies each, observing the balance between the majority and the minority. In parallel with these structures there is a system with explicitly managerial functions, which consists of a general director, 6 sectoral directors with strictly defined responsibilities, and a secretary to the general director.

It would be an oversight not to mention the prevalent topic among Georgian political debates concerning staffing of the Central Election Commission by the representatives of the non-governmental sector. I believe that this would be impossible, as this would be construed as an offensive interference with the state in the electoral sphere, regardless of the objective criteria for their appointment, about which it would be impossible to agree. Moreover, in the Georgian

context, the non-governmental sector is also not "virgin"; and its division according to political affiliation is not very difficult (the clear manifestation of the above is the Rose Revolution).

Another, less pressing, but no less important aspect related to the election administration include the independence, autonomy, economy and professionalism of the election administration. Under the election law of the majority of foreign countries, election bodies are autonomous and independent of other state authorities, with due consideration of the constitutional interrelation among them, such as accountability before parliament, and judicial supervision).

Several features of the relative independence of election authorities may be identified:
1. Designation of election institutions having independent legal status;
2. Creation of election institutions and their operation within the framework of a particular legal regime;
3. Independence of decision-making within their authority, except for those areas provided for by law;
4. Direct funding from the state budget with the possibility of autonomous disbursement of funds.

There are no essential deficiencies in the Georgian election law in the light of the above aspects, and they are duly regulated on the legislative level (Articles 17 I-III, 30 II and 19 III of the Election Code).

The issue of temporary or standing administration, as well as the number of members of the electoral authority is related to a very important principle – the principle of economy. In my opinion, standing administrations are preferable. First and foremost, it allows for actual implementation of the forms of direct democracy (referenda, plebiscites, elections) at any stage, whenever they become an issue on the agenda. In this respect the aforementioned principle may be considered as a certain fundamental of an efficient democracy. On the other hand, with the help of this principle it is possible, to settle all aspects of legal succession, stability of legal relations, and departmental organisation. With a view toward economic efficiency, it is possible to consider the issue of the reduction of the number of office members in-between elections. In Australia, the election administration consists of only three members (a representative of the Federal Court, the Head of Statistics Service, and one permanent member of the Commission). The Canadian Federal Election Administration consists of one member, elected by the House of Commons for an indefinite period of time. Within the area of administration and execution of powers, the issue of the length of office and rotation of members is important. In the above analysed countries, 2-6 years terms of office and prohibition of election for more than two successive terms are standard, while US legislation provides for the principle of re-election of 1/3 of the members every two years within the principle of maintaining parity between the two political parties.

In my opinion, the issue of professionalism has been fairly and correctly resolved under Georgian legislation, as possession of a certificate of an official of election administration has become a mandatory requirement. Indeed, the Election Code, which regulates every relation which may arise during elections in an exhaustive manner, sets a requirement of knowledge and qualification for members of the election administration.

Shalva Khvtisavrishvili:

An election administration may be centralised or decentralised. The Georgian election administration is a centralised system, and consists of the Central Election Commission, District Election Commissions and Precinct Election Commissions.

The influence of the Central Election Commission is particularly high. It decides on the number of constituencies and defines their boundaries, dismisses members of the district and precinct commissions in the case of need, accepts their reports, and supervises their activities. It is also entitled to adopt sub-legal normative acts.

In my opinion, a decentralised election administration similar to that of the United States, which is particularly efficient, would more appropriate for Georgia. The advantage of the decentralised system is that precinct election commissions are better aware of the problems and peculiarities related to the elections. However, if we take account of the Georgian political context and the political-civil consciousness of Georgian citizens, the continued existence of a centralised election administration for a certain period might be more suitable, as the Central Election Commission has a guaranteed status.

An election administration may also be temporary or standing. The Georgian election administration is a combination of both types. The Central Election Commission, which is elected for 6 years, is a standing one, while the precinct commissions are temporary. In my opinion, the advantage of temporary precinct elections commission is that the state will save considerable expense. However, such a resolution of the issue also has a negative implication, as due to their very short terms of office, the commission members will not be duly trained, and election legislation will not be improved (there is no guarantee that the election legislation will not be changed in the future as well).

An additional deficiency of the Georgian election administration is that the rotation principle is not employed, as this secures the stability of election bodies, and promotes the improvement of the level of their professionalism. I also believe that is should not be possible for the two members of a precinct election commission to be appointed by the three parties with best results in the elections. It would be preferable for them to be elected on the basis of competition, as in the Georgian context the people try to protect the interests of their parties, which ultimately results in a multitude of election disputes referred to courts, and obstructs the faultless holding of elections.

Guliko Galdava:

A correct choice made within the context of harmonisation of democracy and legal reality is a precondition of any success. Thus the improvement of the election system is of vital importance.

The supreme law of our country, the Constitution of Georgia, provides a valuable democratic principle: "The source of government in Georgia is the people" (Article 5). The people exercise the power through their choice. It is the people who choose their government. Thus no one is entitled to restrict their true will and desires.

It would be merely a formal question to discuss any of the groups of election systems, the number of election rounds, the number of chambers to the formed in the parliament, if we do not concern ourselves with the basic principles of the election system to be implemented against the background of democratic values, in order, that:

– The electorate is neither deprived of their will and votes, nor has them falsified;
– The election campaigning is sound, objective, equal and fair;
– The party primary, a feature that is well established in international practice, does not become a subject of derision in Georgia;
– The Central Election Commission is not staffed on the grounds of seemingly non- neutral principles.

Michael Kurdovanidze/Vakhtang Razmadze:

The Georgian election system has both positive and negative features. We believe, that it is necessary to change certain aspects based on the experience of democratic states, and the adjustment of the practice of democratic countries to fit the Georgian context.

In our opinion, the major deficiency of the Georgian election system is the procedure of staffing of the election commissions. It is apparent, that the chairperson of the election commission, as well as the deputies and other high officials thereof, must be qualified, independent professionals. For this reason, the procedure of their election and appointment is particularly important. We can give the following proposition as an example: the chairperson and members of the Central Election Commission, nominated by the President and elected by the majority of the Parliament, cannot be impartial and independent, especially within the context of our current conditions. Thus, it is necessary to create a special school of election systems, to which specialists of both foreign and Georgian election systems would be invited. Their task would be the training of persons willing to work in this system, to make them professionals, and arrange for a competition between them after the completion of the special courses. Trainees with high scores would then be sent abroad for a certain period in order to improve their qualifications. Only then could they be appointed to the Central Election Commission. The chairperson of the Central Election Commission and other high officials would be elected by the members of the election commission from among their number. As for district and precinct commissions, they would be staffed according to the results of the exams arranged by the particular school. Also, their term of office would be sufficiently long in order to protect them from undue government influence. In addition, the chairperson and the other high officials of the Central Election Commission would be elected from among their number before each forthcoming election. Also, the respective schools would periodically train other persons as well, who could then be appointed to vacant positions in the election commission.

All the above would secure the impartiality and professionalism of the members of the election commission, which is a precondition for democratic elections.

When speaking about the election system, particular attention should to be accorded to the verification of the electoral list. The current version of our Election Code may be

partly sufficient in this area; however certain comments may also be made in this regard. Compilation of a single list is not necessary, as this would require significant efforts. Account should as well be taken of the fact that elections are for people with a high level of civil consciousness, thus it will be advisable to hold preliminary registration for the verification of the electoral list before each election. This would remove problems related to voters.

Registration of Election Subjects

Mariam Tskipurishvili:

Elections, as the most important institutional mechanism of democracy, consist of several stages, which, on their part, constitute a complex set of particular social relations. One of the stages of the election process is the registration of election subjects. The registration of election subjects commences with the nomination of candidates to vacant positions in accordance with the procedure provided for by the law of the state. In my opinion, it would be desirable to make certain changes and amendments to the election law with respect to the procedure of registration of election subjects, in particular:
1) The collection of signatures should be mandatory for each of the parties and blocs participating in the elections. It would be advisable to create an equal playing field for all parties, this means that each party should be obliged to submit 50 000 signatures, irrespective of whether they have a representative in Parliament at the time of elections.

2) The procedure of registration of election subjects known as a "bloc" should not be identical to that of political parties. As far as elections are concerned, a bloc is an association of two or more parties registered by the Central Election Commission. A far greater number of voter signatures should be required for the registration of a bloc as compared with the number of signatures necessary for the certification of support for a political party in elections.

3) Cancellation of the registration of political parties or election blocs participating in the elections, and candidates for parliament nominated in a constituency should be the prerogative of the courts. If the commission has doubt concerning the accuracy of supporters' lists or other documents, it should still register the party, and then file suit in court, because if the Central Election Commission withdraws the registration of the subject and a court restores it, the party of the candidate loses at least one week. Thus, the latter commences its activities later and loses its rhythm.

4) As in many states, the institute of self-nomination should also exist in Georgia, as any citizen should be entitled to nominate his own candidacy individually, without any discrimination by a political or state office.

5) In parallel to the collection of signatures, Georgian legislation should provide for the obligation of paying a certain amount as an election deposit, which would mean requiring a security amount from each candidate and party willing to be registered as an election subject. If the party or candidate clears a certain barrier (i.e. exceeds a particular percent-

age of the vote), this sum would be returned; otherwise it would be transferred to the budget. Such changes to legislation would promote a reduction in the number of candidates and parties having no real chance of success in the election campaign, which would in turn have a positive impact on the election process, as the participation of a multitude of parties in an election is likely to leave the voter at a loss. The majority of votes are wasted as the majority of candidates have no chance to win. They are not able to reach the election threshold, and consequently are not able to hold political or state offices.

6) According to Article 96 III of the Election Code of Georgia, "The number of candidate-members of Parliament on a party list shall not be less than 100 and shall not exceed 235". In my opinion the limitation of party lists is unjustified. The reasons for introducing a maximum threshold are many, but why should it not be possible to have fewer than 100 members on a party list?! I do not agree with the opinion that if a party in not able to submit a party list of more than 100 candidate-members of Parliament, it will have a low rating, thereby not justifying the hopes of the electorate, and thus it would be better for such a party not to be registered at all. I believe that the stipulation of a minimum threshold should be dependent on the will of the party concerned, and must not be the prerogative of the legislator.

Taking account of the aforementioned comments and introduction of the proposed changes to the law would make not only the procedure of registration of election subjects more democratic, but also the entire election process as whole.

Electoral Qualifications

Salome Pruidze:

The number and content of electoral qualifications vary from country to country, however there is a tendency to reduce their number to minimum and to make them uniform. In my opinion, the fewer the number of qualifications and the greater the level of their clarity, the higher the level of democracy of the country.

One of the most important and universal qualifications is the age limitation. Its minimum threshold is particularly high in the case of passive voting rights. In my opinion, in certain countries the minimum age is unreasonably high. I believe, that certain people reveal their maximum possibilities at an earlier age. Together with advancing age, abilities, including mental ones, weaken gradually as a rule. This must be taken into account, in particular when electing a person to the highest offices such as president of the state. Acquisition of relevant experience is possible at ever earlier ages. Thus I fully agree with the stipulation of the Constitution of Georgia that provides for a lower age threshold for a presidential contender – 35 years. Identification of the most deserving person, regardless of the latter's age, is the right of the voters, and they should not be restricted in their choice by unreasonably high age barriers.

In my opinion, it is debateable what the minimum age for candidates to be elected to local self-government bodies should be. Under Georgian legislation this age is 21 years (article

110 of the Election Code of Georgia). 21 years is a rather low age for obtaining the knowledge and experience that are necessary for a person to be useful to his administrative-territorial region. I believe that in this case the minimum age should be at least 23 years. It is very difficult to imagine a 21 years old Gamgebeli (head of local administration) or Mayor who will perform his duties efficiently.

Certain countries have electoral qualifications of a moral nature, such as the deprivation of vagrants, drunkards, drug-addicts and bankrupts of their voting rights. In my opinion such an explicit separation from the rest of society, the deprivation of the voting rights will only increase their alienation from normal society, and will in no way promote their return to a sound way of life.

According to the Constitution of Georgia, persons residing in penitentiary institutions on the grounds of a court judgement are not entitled to participate in elections. In my opinion it would be better for certain categories of convicts (for example, persons, who have committed a crime of negligence) to maintain this right.

The deprivation of a criminal of his active voting right is justified by state interests; however this qualification would appear to more a form of discrimination.

Sopho Gigani:

I am not sure, whether it is correct, but in my opinion the age requirement for the passive election right, which currently stands at 25 years, should be increased. This threshold is rather low for a person to become a member of a legislative body. Exercise of this right requires far greater political experience than a 25 years old person may have. Moreover, a judge who administers justice must be at least 28 years old. A lawmaker, as I believe, should have even greater experience and knowledge.

Of utmost importance is the residential qualification, through which election law requires the residence of the person concerned for a particular period in the country or any of its territorial election units. Any Georgian citizen who is over 25 and who has resided in Georgia for not less than 10 years is entitled to exercise his passive election right.

A person who has not lived in Georgia for the past two years, and who is not registered in any on the Georgian consulates in foreign countries, may not be elected as a member of parliament. I believe that if a person has not been residing in Georgia for the past ten years, but nevertheless has great political experience or considerable potential for membership in a legislative body, his restriction in such a manner cannot be justified. He may do more for his country with respect to its political development, than, say, a person, who is 25 years old and has been permanently residing in Georgia for not less, than 10 years.

It should be noted that Georgian legislation does not provide for any additional qualification apart from age, residential and citizenship requirements. In my opinion it would be desirable to introduce a moral qualification as well, in order to prevent the granting of the passive election right and the resulting holding of offices in the Georgian government to

those persons who have unreliable pasts or reputations that would make their appointment or election to these bodies undesirable. The vital functions and political goals of the state must be executed by duly competent persons from a moral point of view as well.

Zaza Martiashvili:

The principle of citizenship is a key element that is employed in the exercise of both passive and active voting rights. On its face, the requirement of citizenship is justified in the exercise of active voting rights. Of course, only Georgian citizens are entitled to participate in the determination of the fate of their country. But a question may also naturally arise as to whether the rights and interest of persons, who permanently live in Georgia, but who are not Georgian citizens are being restricted. They are closely connected with the state and are therefore parts of it as well. Their fate, similar to the fate of Georgian citizens, also depends on the government. Thus, these persons should also be entitled to participate in the formation of the government. I believe that it would be preferable for the citizenship requirement to be replaced by a residential one with respect to the exercise of active voting rights. As I stated previously, the latter is measured according to the length of residence on a specific territory. In the case of passive voting rights the existence of the citizenship requirement is absolutely justified.

Natia Berikashvili:

In Georgia, election rights are exercised only by Georgian citizens. The law does not require a certain period for citizenship except for one occasion. Only a natural born Georgian citizen may be elected as President of Georgia, a requirement which in my opinion is absolutely reasonable. For example, in Russia both natural born and naturalised Russian citizens who have permanently resided in Russia for at least 10 years prior to their nomination may be elected President of Russia. In Hungary, the right to vote is also granted to immigrants, who live on the territory of Hungary and who are not Hungarian citizens, but who reside in the territory of the country on the date of elections. In some of the member states of the EU, the citizens of other member states enjoy both active and passive voting rights in local elections. It would be desirable if foreign nationals, who have permanently lived in Georgia for a certain period (at least 10-15 years) were entitled to exercise active voting in local elections. For instance in Netherlands, persons, who are not nationals of the Netherlands, but who have lived in the country for at least 5 years, are entitled to elect and be elected to municipal councils. I believe that passive voting rights should be enjoyed solely by natural born Georgian citizens, as they are better aware of national principles and traditions.

Irma Nozadze:

In order for active voting rights to be granted to a person, the latter must be a citizen of Georgia. Based on a general rule, all foreign nationals residing within the territory of Georgia, including stateless persons, are equal to Georgian citizens, except for certain exceptions. One such exception is the right to participate in elections. This provision, in my opinion is quite justified, as Georgian citizens are better aware of the processes ongoing in the country than foreign nationals, and thus it will be easier for them to make decisions. In addition, they are more interested in putting political processes on the right track.

I consider it unjustified for convicted persons, residing in penitentiary institutions, not to be entitled to participate in elections. I believe that they are also Georgian citizens. Account should also be taken of the fact that prisons aim at the rehabilitation of offenders. Thus their involvement in this process might direct their attention towards doing good for their country. There are a large number of inmates who are capable of expressing sound ideas.

Lali Tevdorashvili:

Every resident of the country enjoys voting rights, but this right is not unrestricted. It is restricted by various voting qualifications.

According to the Georgian Election Code, persons who were acknowledged as incompetent by a court or those, who are residing in penitentiary institutions based on a court judgement, are deprived of their voting rights, which in my opinion is not correct. A court may deprive a person of his voting rights because he is incapable of grasping the essence of his actions, but a convicted person is most definitely capable of understanding his actions. He is a part of society. Why should we not give him the right to make a choice, especially when the deficiencies of the measures implemented by the state often affect him directly? There are many factors and circumstances beyond the actions of the offender that contribute to the development of a person as an offender, and many of these are directly or indirectly related to the exercise of state functions in an improper manner, as in the case of the lack of social security in society. Also important is the problem of rehabilitation of an offender in a penitentiary institution, and to this end it is crucial to create relevant conditions for the life of an offender, as his future is no less related to changes in the government. Thus, in my opinion, there should be no such restriction with respect to them. They also are a part of the society.

Ana Basilashvili:

The fact that a presidential contender may only be a natural born Georgian citizen (the same stipulation is provided by the US Constitution) might be considered unjust. This leads to the differentiation of Georgian nationals by granting privileges to one category as

compared with another. In my opinion, this is impermissible. Every Georgian national must enjoy equal rights and obligations.

The residential qualification applies only to passive electoral rights. For example, a presidential contender is required to have resided in Georgia for at least 15 years, a candidate for a seat in parliament – 10 years. The Introduction of a residential requirement is correct in my opinion, and I do appreciate this fact, as it is impossible for a person to exercise assigned duties if he has not resided in Georgia for quite a long period, or is not familiar with the social, legal and cultural situation in the country.

An exceptional situation is encountered in Hungary, where immigrants, foreign nationals and stateless persons who live within the territory of Hungary and are residing in the territory of the country during elections, are entitled to participate in local elections (both active and passive electoral rights are implied). Hungary's position must be understood as an attempt to better equalise the rights of Hungarian citizens, foreign nationals and, stateless persons. I appreciate this fact. I believe that active electoral rights in local elections should be granted to foreign nationals and stateless persons, who permanently live in Georgia and know the Georgian language.

Sopho Kupatadze:

The essence of the introduction of an age requirement is that an individual should be aware of the importance of his actions, and must be ready to make decisions are important for all people and the entire country. Thus the goal of Georgian lawmakers is unclear, when they provide for the following age thresholds: 25 years for a member of the Parliament and 21 years for a member of a Sakrebulo (local self-government)…It seems that in setting forth the age thresholds, the lawmakers did not take account of the fact that participation in governance and management process of the state requires knowledge, education and relevant experience.

The purpose of the residential requirement is to insure that a candidate is aware of the problems of the country and the region from which he intends to be elected. The Georgian Constitution is emphatic in its requirement that the President of Georgia to be a natural born Georgian citizen, who has lived in Georgia for at least 15 years, and who resides in Georgia on the date of elections (Article 70 II). In regards to a member of parliament, a person who has permanently resided in Georgia for less than 10 years may not be elected to this position. In my opinion it is reasonable to provide for various residential requirements for elections based upon the majority electoral system. A person who does not belong to the region from which he intends to be elected, will not be able to take due account of specific problems of the region concerned.

Legislation does not provide for educational requirements for obtaining electoral rights. I believe that such a requirement should be employed for passive voting rights, especially when we take account of the composition of our representative body. The number of persons such as actors, film-directors, sportsmen, and singers, and the like, among the deputies is quite astonishing. It would be better for the lawmaker to provide for a category of people who would be entitled to be elected to representative bodies or positions.

However, eve the introduction of educational requirement would not solve problem until such time as becomes impossible to purchase diplomas in our country.

According to Article 28 II, persons, judged by courts as incompetent or those residing in penitentiary institutions on the basis of court decisions, are not entitled to participate in elections. If we take account of the already limited rights of inmates in penitentiaries, the deprivation of voting rights, the right to express their opinions, seems unjustified to me. A governor who comes to power is responsible to a certain extend for deciding the fate of these inmates. But the inmates should not be obliged to live under the governance of an administration, who was elected by others.

Georgian legislation requires improvement with respect to voting qualifications. It is necessary to introduce more stringent requirements, while insuring more stringent compliance with these qualifications by controlling authorities. The law should become more humane in this respect, and thus inmates should be given the right to participate in elections.

Election Funding

Tatia Eliadze:

Election funding is one of the most problematic and unclear issues according to the Election Code of Georgia. The so-called “pocket” political associations, which are created specially for elections, have a negative impact upon democratic and fair elections. Parties try to win with the help of a couple of political figures, scandalously entered into the list. They are funded from unidentified sources.

The problems related to finances may be divided into two aspects: The problem of the funding of the election administration and the funding of elections subjects. Non-transparency in the issue of funding is on the one hand conditioned by the multitude of parliamentary parties. In fact, their number, origin and other issues, related to the creation and further activities of these parties are not regulated. Although there is a Law on Political Associations, many of its provisions are deficient and unclear; which ever more complicates control and regulation in this field. On the other hand, the non-transparency of the issue of funding is conditioned by deficiencies within the legislation. There is no special law to separately regulate this issue. Articles of the Election Code on the funding of elections are not exhaustive and do not provide for detailed means of settlement of problems.

Article 8 of the Election Code provides a principle under which the entire electoral process operates. This requires that activities of the election administration, the sources and the amount of funding of election participants, as well as election-related expenses shall be open and public.

Of course, this general stipulation cannot secure the attainment of the goal embodied in this principle. We can give the following examples as an illustration of the above:

1) Article 43 VI of the Election Code of Georgia states: "The election administration, in the person of the Central Election Commission shall be entitled to receive grants from persons duly authorised by law". It is not clear which authorised person is meant. Neither the Code, nor special legislation define who may be "a person duly authorised by law". Secondly, the form, amount and purpose of the aforementioned "grant" are not regulated at all.

2) Article 46 states that "each of the election subjects is required to open a fund for the election campaign". The Code also provides exemptions with respect to these subjects. However the mechanisms of creation, existence, sources of funding and disposal of resources are absolutely unclear.

3) Also unclear is the issue of "election donations", contained in Article 47. The Code does not mention the purpose of receipt of such "donations" by election subjects, and whether this process must be subject to detailed publicity.

In my opinion there is no specific criterion which underlies the definition of a donor. It is not clear from whom a donation may be received, and what the main criterion for the differentiation was. It is not clear why an election subject is not entitled to receive donations from non-entrepreneurial legal persons. However, a donation may be accepted from a high official. It cannot be said that the criterion in this case is the prevention of corruption and lobbyism, as in both cases the principal likelihood derives more from a public official, than a legal person.

As mentioned above, the existence of funding-related problems is also conditioned by parties of unidentified origin. We can refer to an analysis of two elections (of 1998 and 1999). According to the official data of the Central Election Commission, 16 parties participated in the elections of 1998, 5 of which were the members of 2 election blocs (a total 13 election subjects). In 1999 an appalling increase was detected. 58 parties participated in the elections, and of them 39 were united in election blocs.

This should not be construed as if I am against a multitude of elections subjects. On the contrary, I consider that this is a necessary precondition for the creation of a democratic system, provided maximum publicity and transparency is secured. Thus the current situation is the following one in which the great majority of political parties registered in Georgia are "satellite parties" of financially sound ones, and which are created for the manipulation of the percentage figures at specific elections.

Based on the above, a number of "advisory" proposals may be suggested:
1) The activities of political associations (including funding aspects) should be regulated in detail and placed within a democratic legal framework;

2) It would be desirable to adopt a normative act similar to the United States Act on Federal Election Campaigns (of course, this does not mean the copying of the Act concerned in its entirety);

3. Changes and amendments should be made to the Code of Administrative Offences of Georgia and the Criminal Code of Georgia, which would provide for severe administrative or criminal liability for the violation of the requirements related to the publicity of funding (both for the receipt of unlawful donations and concealment thereof). No such liability is provided by the current legislation.

Tatuli Todua:

The funding of the elections is a precondition for holding an election. Thus its legal regulation is of particular importance. The activities and expenses of the election administration are funded from the state budget of Georgia. Also the Central Election Commission is entitled to accept grants from persons duly authorised by law. At the beginning of a budgetary year, the Central Election Commission submits a draft estimate, on the basis of which a decision is made on funding. If budgetary resources are not deposited into the account of the Central Election Commission, the latter is authorised to file an action with the Supreme Court of Georgia. I believe that this is a regular legislative blunder. According to past legislative changes and amendments, the Supreme Court of Georgia is entitled to consider cases only in the course of cassation. Thus, in my opinion, this provision of the Code must be harmonised with the current procedural legislation of Georgia.

The Code provides for time frames for the movement of resources from the state budget to the account of the Central Election Commission (not later than 55, 50 and 45 days before the date of elections). In my opinion, these time frames are not adjusted in extraordinary elections, which are provided for by the Georgian Constitution in the case of the pre-term dismissal of the Parliament by the President. According to the Constitution, in this case, elections are to be held not earlier than 45 and not later than 60 days following the date of the coming into force of the Presidential Enactment. Thus the times frames provided for by the Constitutional and Organic laws are controversial.

According to the Code, the chairperson and the accountant of the commission disburse funds and are responsible for monetary resources allocated to the election commission on behalf of the commission. If we omit this general stipulation, it can be said that the Organic Law provides for the relations between the Central Election Commission and the district commissions, while the relations between the district and precinct commissions are beyond the regulation of the Code. This is not an encouraging trend.

As concerns the election campaign fund, it should be mentioned that the Code seems quite unusual when defining the circle of election subjects, for whom the opening of an election campaign fund is not mandatory. These are constituency (majority) candidates for the Parliament of Georgia nominated by the initiative groups of electors, a party of a bloc and a candidate-member of a community or village Sakrebulo. According to importance, the membership of a community or village Sakrebulo is not an office of such importance as to be of interest from the point of view of public interest towards the control of state expenditures at this level. As concerns constituency candidates for the Parliament of Georgia, the logic of the lawmaker is absolutely unclear and unjustified. In my opinion, the obligation to open an election campaign fund must also be mandatory in this case.

After the completion of the elections, election subjects submit statements on the resources disbursed during the elections to the respective election commission. It would be preferable to provide for certain preliminary statements and to oblige election subjects to submit their statements periodicity, for example, once per week, after the opening of the fund. This would allow for more intensive financial control both before and after elections.

With a view to toughening control, it would be of interest to introduce a mandatory audit opinion. This would have increase the professional and comprehensive control over statements. In addition, it would have be desirable for a special office to be created within the administration of the Central Election Commission, a group for financial monitoring the direct function and goal of which would be verification of the legitimacy of resources transferred to the election campaign funds.

Nino Gersamia:

One of the key preconditions of correct and objective holding of elections is the funding of pre-election campaigns of political parties and of elections in general. First and foremost it should be stressed that election funding must be transparent despite the level of political and economic development of the country. This requirement is to be fulfilled at two levels.

The first one covers the funding of an election campaign. To this end, monetary resources attracted by an election subject must be transferred to the account of the election campaign fund. The information relating to the amounts under the disposal of the fund, their sources, as well as every transaction must be executed in writing and be open, public and available to everyone.

At the second level, it is necessary to monitor the financial standing of elected representatives both before and after elections. In my opinion, the state must promote a policy of financial transparency on the part of political parties, receiving budgetary funding.

In addition, it is important to pay attention to purposeful disbursement of the allocated resources. The Code does not provide for the identity of the manager, accountant or the coordinator of the election campaign fund. I believe these persons play central and crucial roles, and thus not every person should be allowed to perform these functions. It would be preferable for the fund manager, accountant and coordinator to be persons from outside, who do not participate in the election campaign and are not interested in electoral outcomes. This will prevent misappropriation of resources.

It is also interesting that anonymous donations are transferred to the state budget, a fact which in my opinion is not right. In so far as these amounts are transferred for a different purpose, it would be preferable to provide a mechanism which would merely reject anonymous donations.

The Law provides a list of persons who are prohibited from making donations to the funds. One of such category is stateless person. In my opinion, it is unjustified to deprive a stateless person of this right. Also, it is not correct to deprive a non-entrepreneurial legal persons and religious organisations of the same right. With respect to the other

persons, this ban is absolutely clear, as granting this right to them would have meant unjustified interference into state affairs.

The Election Code says nothing about the resources to be transferred to the fund by a member of the election campaign. In my opinion they should have the right to make contributions to the funds.

It should as well be mentioned, that after the summarisation of election results, the balance of the account is returned pro rata to persons who made the transfers. It would be preferable for these resources to be transferred to the state budget in a similar manner to that of anonymous donations.

Publicity of the Elections

Ana Sabatarishvili:

Based on the principle of publicity, the right to observe elections is enjoyed by local and international organisations registered with the Central or a district election commission of Georgia. The right to attend sessions of the election commissions and to remain on the premises of polling-stations on polling days is enjoyed by representatives of the press and other media accredited with the election commission.

Recently, the monitoring of elections has started to play an important role in the field of democratic changes and human rights, as the development of societal trust towards election processes and institutions is a primary precondition for the normal functioning of a democratic state.

For the improvement of election processes and the actual implementation of monitoring, the OSCE Bureau for Democratic Institutions and Human Rights developed recommendations on the evaluation of the elections, both for local and international observer organisations.

As advised by the Bureau, an observer organisation must, first of all, assess the compatibility of the elections with international standards. International standards are general principles that must be observed by the state itself. These include:

1. Periodic holding of elections (intervals between the elections should not exceed reasonable limits);

2. Validity of the elections (related to the existence of actual choice by the electors. This means that elections should not be held on a non-competitive basis, and that there must not be any unjustified barrier to the formation of political parties and the conduct of their activities);

3. Free elections (human rights are protected before, during and after the elections. The media must have the possibility to freely cover the election campaigns and other processes, while other civil organisations are to conduct their activities without restraint);

4. Fair elections (all the candidates must be provided with a level playing field. The law must not allow for any discrimination);

5. General and equal electoral rights (every citizen, who is of certain age, must be given the right to participate in the elections without any discrimination. In addition, there must be an efficient and fair system of registration of voters);

6. Secrecy of balloting (an elector must fill in the bulletin independently, in specially installed, isolated premises).

The other system of assessment is the establishment of the compliance with national standards. First the Constitution, as well as other special provisions must be analysed, and the standards contained in these laws must be monitored. During the analysis of elections, attention must also be paid to the extent they differ from previous ones. The comparison and establishment of progress or regression should be conducted according to the reports of international observers.

According to Article 68 II of the Election Code of Georgia, a domestic observer organisation may be a local union (association) or foundation, registered in accordance with Georgian legislation, no later than 2 years prior to election day, the charter or the statute of which, for the period of registration, provides for election monitoring and/or the protection of human rights, and which is registered at the Central Election Commission or a relevant District Election Commission for the purpose of observing elections.

In my opinion, this Article is unclear and will not be able to actually secure the performance of one of its functions, for example, the isolation of various organisations, such as satellites of political forces, from the election processes. Any organisation, which was incorporated two or more years ago for the performance of entirely different activities, and whose current existence is a mere formality, may change its charter on the instructions of certain political forces in order to be registered with the Central Election Commission, by adding the words “protection of human rights and monitoring of the elections” to its charter, and thereby obstruct the democratic process of elections as opposed to true monitoring, due to its biased attitude.

In my opinion, this Article must clearly state that an observer organisation may be a registered union (association), foundation, the charter of which has provided for the monitoring of the elections and protection of human rights for at least for two years prior to its registration with the Central Election Commission.

Similar requirements should be provided for international observer organisations, as it is absolutely possible for interested forces to promote the registration of an international organisation right before the elections.

Londa Toloraia:

An electorate is an inherent requirement of the essence of democratic governance, as it is the means by which society is able to make an informed choice. This requires mass media to become the tribune for discussing diversified opinions. Broadcasting companies bear particular responsibility for well-balanced coverage of the election process.

The theory of journalism differentiates three "ideal" types of broadcasting according to three institutional forms: state, social and commercial broadcasting. However, we must admit the development of a fourth type of broadcasting – political broadcasting, the primary goal of which is political influence in favour or to the detriment of a certain political force. Such broadcasting may be conducted by a formally independent channel, that moreover is often not profitable, or by a state channel if the state has political influence upon it.

The legislation on coverage of the elections should not become the subject matter of an interminable dispute. Pluralism, editorial independence and the professionalism of journalists are general requirements. At the same time, the freedom of the press must have its limits as well. These limitations include not only such social bans as provisions of the civil and criminal law against racist, blackmailing, and other unlawful publications, but also provisions related directly to the coverage of elections.

In certain countries the coverage of the elections is regulated by special rules. These rules are generally included in the laws on broadcasting and elections, or in special directives issued by the Central Election Commission. The Supreme Council of French Telecasting not only used to issue recommendations, but also exhaustively controlled their observance. There was a special group in the period before the Presidential elections of 1995, which monitored 30 programmes of daily news and the activities of 40 newspapers and magazines. Monitoring was conducted according to both qualitative (hours of open air, candidate supporting programmes) and quantitative criteria (attitude towards the candidates). During the entire election campaign recommendations were given to TV companies which were responsible for their observance.

In my opinion, in our case, state control of mass media is of particular importance. A common impartial policy should be developed to this end. Printed, electronic and broadcast media must be equally available to everyone. It should be mentioned that high prices of advertising time make pre-election campaigns rather expensive, and increase the probability of political corruption. Against a background of political partiality, the limited amount of TV companies places the subjects participating in the elections on a non-level playing field.

As concerns the content of advertisement, certain countries employ special rules with this respect. For example, in Belgium political advertisement must be positive and must not discredit other parties. In those countries where there are no requirements with respect to the content of the advertisement, political advertisement must permit discourteous accusations. Germany provides for the detailed regulation of the issue of advance scrutiny of political advertisement.

An additional important problem is the preferential status of high officials with respect to the other candidates during the elections. As a rule, they are entitled to greater on-air time; as well as enjoying the privilege of frequent appearance on TV. Events, related to "official duties" of a high official must not be confused with the issues, related to the election campaign, which happens quite frequently with a view to maintaining their offices.

In all European countries, the authority to regulate the key issues of telecasting is granted to so-called independent regulatory bodies. These bodies have the following functions: issuance of a broadcasting licences, supervision of broadcasting activities, as well as adoption of various normative acts. Sometimes they also perform quasi-judicial functions, such as: the examination of complaints of TV viewers. For the normal conduct of election processes, permanent control and supervision over the coverage of the election process is required. The legislation, rules, obligations and duties will not be efficient, if there is no mechanism to insure strict observance. Independence, guaranteed by law is not sufficient for the regulatory bodies to exercise their functions comprehensively. The independence must be real. The regulatory body must be independent of all three branches of state power. Thus, it is desirable for it to have a mixed composition. The regulatory body should be staffed by parliament and the government, while the participation of civic society should also be permitted. Candidates should be selected from among politically independent persons, in order to exclude the hazard of political pressure upon the regulatory body.

The Mechanism for the Protection of Votes

Ana Sabatarishvili:

The entire responsibility may be imposed upon our recent history, which did not even know what a democratic election meant, which did not enrich us with experience, and which failed to teach us how to cope with the most minor problems. It left us two bad habits: total indifference of the electors towards elections, as they think that their votes will not be counted, or even if they are, have any effect on the outcome of the election, and the desire of election subjects to win the elections in an underhanded way.

While political parties of the other states depend on pre-election campaigns and expend large amounts on the fascination and attraction of electors, in Georgia, millions of lari are spent on the elections themselves, as well as on their falsification and winning in a certain unlawful way. The Georgian voter, through his non-appearance at the ballot-box due to his passive and pessimistic attitude, gives additional means of manipulation of his vote to various forces.

In Georgia, the legislative body, together with its Organic Law, or the election administration with its decision have no other way. They sought to develop the most efficient defence mechanism for holding democratic elections, which quite often merely complicated the falsification of elections, and are not able to secure their full prevention.

Thus, particular attention should be accorded to the development of protection mechanisms, which will obstruct this process. During the elections of the last decade, more and more new mechanisms were implemented. Provisions for the marking of voters (by ink) had a great resonance in Georgian society. Particularly great resistance was instigated by the rumour that marking causes skin cancer. According to another opinion, the marking procedure was identical to a satanic ritual and thus a marked person was prohibited from taking communion. With a view to dissolution of these rumours, the Patriarchate's statement, that there was nothing satanic in marking was posted at each of the polling-stations.

For its part, the heath care service started to assert that the marking substance was absolutely harmless for human health. Consequently, there were only a small number of people who were afraid of marking from among those who came to polling-stations. Of course, there was a certain category of voters, who caused great disorder through their protest; however the reason for this must be found in fear and not in pragmatism.

According to the Organic Law, an elector's marking is to be checked by a particular member of the commission (namely, the flow regulator) upon entry into the room, who the illuminates the marked place with a special device, and only after insuring that an elector is not marked, allows the former to participate in the elections.

Unfortunately, the level of observance of this provision does not even reach average levels. At certain polling-stations, marking is merely a formal procedure, and the flow regulator is not actually able to verify whether a voter has undergone marking.

Unlike the receipt of ballot-papers and its requirements, the marking procedure is checked by a single person, quite often a party man, who may be interested in certain (marked) persons.

Consequently, it is not unusual for the marking procedure to work only in the first half of the day of its usage, while in the second half the various interested political forces easily decode its negative features. Securing each of 2800 polling stations with marking devises and liquid during each of the elections is a vast expenditure, which is not justified, as marking fails to actually perform the assigned function of protection mechanism.

Along with voter marking, another mechanism for protection against falsification was introduced – the special envelope. Each of the polling-stations is supplied with special envelopes together with ballot-papers, the number of which is equal to the total number of electors in the particular precinct.

For the identification of the purpose of the envelope, its merits and demerits must be listed. Although ballot-papers are printed under a strict control, and ballot-papers of each of the polling-stations bear its number, there were frequent cases of bringing in exact copies of these ballot-papers, as well as ballot-papers from other polling-stations. The ballot-papers for the other precinct were then brought to the other polling-station, and together they were easily dropped in ballot-boxes by various persons. With a view toward suppression of this practice a new requirement was introduced. Ballot-papers were to be placed in special envelops before dropping them into ballot-boxes. Of course, the person, who manages to obtain ballot-papers, makes (or forges) two signatures and a seal, is likely also to be successful in obtaining the special envelopes as well. However the probability that the issuer of envelopes is an interested party, together with the registrar and the second signatory, is minimal.

It should also be mentioned, that it is easy for a party representative and an observer to notice whether and how many envelopes a voter possesses. In the case of one ballot-paper put into another, this was improbable without taking ballot-papers into one's hands (however the physical contact of a member of the commission with the elector's ballot-paper brings endangers the principle of election secrecy).

There is an opinion that no one is allowed to touch a voter's ballot-paper after the former has made his choice, but persons who attach seals and issue envelopes often exceed their authorities, and try to notice for whom a particular voter has voted (this is sometimes easily done even without opening a ballot-paper, as the letter is rather thin and transparent). As a result, they may or may not attach a seal to the ballot paper or envelope of a voter ignorant of election procedures. Ballot-papers dropped into a ballot-box without a seal are invalid. In addition, the principle of election secrecy is violated.

The arguments supporting the opinion that an elector is to be given an envelope before entering into a polling-booth, in order that he not to be dependent on the goodwill of a member of the commission, are very sound, though there are also serious counterarguments. An election subject, who, according to preliminary information is aware that he will not be able to collect the necessary amount of votes at a certain polling-station, and who has several supporters in the precinct concerned, gives them the assignment of taking envelopes from polling-booths, dropping them into ballot-boxes, and then in turn taking ballot-papers with them. After the votes have been tallied, the balance will be upset, and the results of the particular polling-station may be invalidated. In addition, it is possible to steal ballot-papers for the so-called "carousel".

Liability in Election Law

Nato Kitiashvili:

Legal liability is a legal safeguard of independent, democratic elections. It implies the application of coercive measures with respect to the violators of legal provisions, including retaliatory restriction of their personal or property rights. Legal measures of liability are the sanctions, provided for by election and other laws.

Each type of the liability for the violation of election rules has its normative and factual basis. The normative basis is the legal provision itself, which provides a certain preventive measure. The factual basis means the correct application of a coercive measure for a specific violation committed by a particular person.

Legislation of various countries regulates issues related to the violation of election law in a diversified manner, and offers various procedural methods for resolving problems. In this respect, the examples provided several countries are particularly interesting:

In the Russian Federation, liability under the election law is considered as a type of constitutional violation. The following measures are applied for the violation of the requirements of the provision by a duly authorised person:
a) Dissolution of the commission (i.e. the Central, district and precinct election commissions);
b) Refusal of the registration of the candidate, election association or bloc;
c) Deferral of the registration;
d) Striking off the list of candidates.

The last measures are not applied if it is established that the number of signatures necessary for the registration of a candidate was not submitted. I fully agree to this stipulation of the Russian lawmaker, as in this case, the person concerned is not violating a provision of the election law, but rather fails to meet the precondition which is mandatory for the exercise of the right stipulated by the provision concerned, due to the reasons beyond his control. This, above all, results in adverse consequences for the person concerned, such as refusal of his registration.

The law provides for a list of unlawful actions, which result in the application of a constitutional-law measure. The election commission is entitled to refuse the registration of a candidate, if the latter:
1) Violated the procedure for creation of an election fund and disbursement of monetary resources;
2) Was engaged in political campaigning before registration;
3) Tampered with voters. The latter belongs to the category of actions, for which both constitutional and criminal law measures may be applied, as the elements of the action, provided for by the Criminal Code are evident bribery, which means handing over of money or a property of material value to a person with a view to performance of a certain action;
4) Used more than 0.5% of monetary resources from election funds provided for by the law, for funding his election campaign;
5) Did not submit the first financial statement;
6) Abused the time of mass media before elections – carried on propaganda against the state, disseminated information, prohibited by law;
7) Arranged a charity action and made pre-election promises with a view to obtaining monetary resources;
8) Misappropriated funds.

It should be mentioned that nearly the same grounds are listed for the application of constitutional-law measures arises.

Unlike Russian legislation, the law of the United States of America divides persons subject to constitutional-law liability into three groups:
1) A candidate, election bloc or association, their representative or observer;
2) Election commission;
3) Subjects of election administration, which violate election law (including the representatives of mass media) in the case they: a) violate a voter's right' right guaranteed by law, that is supplemented by the acknowledgement by the Central Election Commission (meaning the certification of the occurrence of this event by the Central Commission); b) did not comply with the decision of the Central Election Commission, district and precinct elections commissions, or the court judgement, which may result in the application of a preventive measure.

It should be mentioned that US legislation is much diversified in this respect, and provides for the refusal to registration, and deferral of the registration of candidates, invalidation of votes, changes in decisions on the declaration of the winning candidate, dissolution of the election commission, and cancellation of the election results.

Election provisions of Great Britain are particularly unusual. They consider the problem of violation of the requirements on a larger scale, and relate this fact directly to a criminal offence. Commission of an offence is a precondition for the restriction of the entitlement to exercise electoral rights, even in cases of compliance with the requirements. For example, a person revealed in the commission of a corruption crime is not entitled to exercise passive voting rights. An elected candidate must eave the Parliament upon the proving of his offence. In my opinion, dismissal of a member of parliament should be related solely to a criminal sanction. Essentially, a person should leave office only for being duly charged in a case in which his offence has been proved. Dismissal from office is a means for attaining a desired result in desired way. However, if we consider this issue from another point of view, one might speak about constitutional-law responsibility, which is closely connected with criminal actions of the person concerned.

Mexican law employs the institute of invalidation of elections, a policy that is closely connected with criminal actions committed by election subjects. On the basis of these actions, both constitutional and criminal law measures are applied against the person concerned. Elections will be invalidated if:
a) A polling-station was opened in a place, where its opening was not provided for, due to inexcusable reasons;
b) Electors were subjected to physical violence;
c) Famous representatives of culture, art and sport or the government were bribed (which ultimately resulted in a number of votes of a specific candidate);
d) The representatives of government exerted pressure upon the members of the election commission;
e) There was a mistake or mass falsification during the counting of votes;
f) The number of participants in the elections in additional lists was artificially increased at least by 10%;
g) Votes were counted at a place where their counting was impermissible;
h) Ballot-papers were issued by a person, who was not duly authorised;
i) Ballot-papers were received by a person, who was not duly authorised;
j) A person or an organisation committed an unlawful action at a polling-station, which was aimed at a specific political party having more representatives in a multi-mandate election district, than provided by law.

If several of these actions occur simultaneously, in a massive manner, it may become necessary to invalidate the whole results of the elections. This mainly happens when due to criminal actions of certain persons, it is impossible to conduct the elections according to normal procedures, and consequently to attain the results that correspond to reality to the maximum possible extent. In this case, the invalidation of the election results have more negative impact on the state, than the fraud of specific persons, or acts of violence, committed by them.

The Election Code of Georgia has more than one provision that directly refers to a relevant sanction for the violation of a provision by a particular authorised person, as well as in cases of non-compliance with the requirements of a provision, an authorised person or a body that implements measures aimed at the restriction of rights or the prohibition of the

exercise of these rights. These measures include constitutional-law liability. For example, Article 59 I (c) provides for the invalidation of ballot-papers, if they are not in a special envelop. If a person fails to comply with the mandatory rule on putting a ballot-paper into an envelope, the candidate he voted for will lose the requisite vote, which is not in the interest of the person concerned. Article 61 directly mentions the obligation of the chairperson of the precinct commission to respond promptly to the violations committed during voting and counting of votes, and remove them. In this case, the reference to the addressee of the application is absolutely fair, as it is the chairperson who is required to consider the violation in a precinct commission, and thus carry out measures for their removal. Article 69 V of the Code mentions the right of a precinct commission to refuse the registration of an observer organisation, if the latter fails to meet the requirements of the law. The Code provides for measures of constitutional-law liability, entitlement to the implementation of which arises on the grounds of a court decision.

Hence, although Georgian legislation does not acknowledge a separate definition for constitutional-law liability, the provisions of the Election Code allow for the introduction of this term in legal literature. Also, it would have been reasonable to have a separate chapter in the Election Code, which would have dealt with the measures of constitutional-law liability, identified the persons entitled to apply them, and would have introduced the legal definition of a constitutional-law tort and persons committing them.

Constitutional Proceedings on Election Disputes

Shota Kvachantiradze:

The right to file a constitutional claim with the Constitutional Court on the constitutionality of the calling of elections of the President of Georgia is enjoyed by at least 1/5 of the total membership of the Parliament of Georgia and the Public Prosecutor, provided they believe that the election of the President of Georgia was called in breach of the requirements of Article 70 VII, X or Article 76 III of the Constitution, or was not called despite the requirements concerned, i.e. the requirements related to the calling of repeated Presidential elections within 45 days in cases of pre-term termination of authority, and in cases in which the procedure and conditions of presidential elections, and criteria for the eligibility of a person to participate in the elections in the capacity of a candidate, provided by the Constitution and the Election Code are violated upon calling the presidential election.

As concerns the constitutionality of holding elections, the right to file an action with the Constitutional Court is enjoyed by at least 1/5 of the total members of Parliament, provided they consider that Presidential elections were held in breach of Articles 28 or 70 of the Constitution of Georgia, that is if the following requirements have been violated during the presidential elections: the lower age threshold for the electorate, the principle of free elections, there was unlawful pressure on the will of the voters, the elections were held in breach of the principles by virtue of which persons, acknowledged as incompetent by a court or residing in penitentiary establishments on the basis of a court judgement are not entitled to participate in the elections.

Mention must also be made of positive changes that are part of an entire block of legislative amendments in 2002, and in which specified time periods were provided for the consideration of the constitutionality of calling or holding presidential elections. Namely, before these changes, the period of time provided for the consideration of the constitutionality of presidential elections was 30 days, which in special cases could be extended by the plenum of the Constitutional Court. In practice, the consideration of the constitutionality of calling or holding presidential elections might have lasted for two months, which of course would have been absurd. This provision promoted use of the defective practice of protracted consideration of cases in the constitutional control body, which itself was and unfortunately still is rather deeply rooted in the system of the courts of general jurisdiction. As a result of the above changes, differentiated and in certain cases, rather shortened periods were introduced. In particular, the period for consideration of a claim on the constitutionality of calling presidential elections must not exceed 13 days, while the period for consideration of an action on the constitutionality of presidential activities must not exceed 17 days following the date of filing a constitutional claim with the Court. This is a mandatory requirement of the Law, and consequently this period is not subject to extension.

It should however be mentioned that in many countries of the continental legal tradition, issues related to the constitutionality of presidential elections does not fall within the competence of a body of constitutional control. A group of the authors consider that there is no reason for a constitutional court to examine decisions related to elections, except in special cases. Examination of these issues involves this body in the most political questions. Particularly lacking in common sense is the approval of the constitutionality of presidential elections by courts in countries with presidential government. A clear example of the above is the repeated elections in 1996 of the President Levon Ter-Petrosian in Armenia.

It must be stressed that the Constitutional Council of France, as a factual exemption, enjoys the greatest powers in the field of presidential elections. By virtue of the French Constitution of 1958, the government is obliged to provide the Constitutional Council with information concerning the conduct of elections. This information must be provided not just once, but regularly, in parallel with the course of elections. The Constitutional Council is entitled to appoint an envoy or envoys both from the general and administrative judicial systems that will monitor the election campaign. The Constitutional Council is entitled to verify the compliance of presidential candidates with the requirements of the law. It supervises the proper conduct of election procedures. The Council is also entitled to approve the result of presidential elections or to totally or partially cancel them. This depends on the level of the discovered violations. The Council must publish the result of presidential elections within 10 days following the elections.

Before the approval of the noted block of legislative amendments of February 12, 2002, legislation did not regulate the issue of the period for appealing against the calling or holding of elections. This resulted in numerous problems. This legal deficiency was re-

moved on February 12, 2002. It was provided that a constitutional claim on the constitutionality of calling elections may be filed not later than 7 days following the publication of a legal act on calling the elections, or the expiration of the period for calling elections provided for by the specific law. And in addition, a constitutional action on the constitutionality of holding elections must be filed within a period of 3 days following the publication of the election results by the respective election commission.

Mention must be also made of the fact, that an ombudsman may file a claim only on the constitutionality of calling elections. He is not authorised to file a constitutional claim with the Constitutional Court on the constitutionality of holding elections. A claim or a submission, filed by a non-authorised person is not admissible by the Constitutional Court for consideration. Georgian election practice has demonstrated that the most grave and mass violations of the Constitution and elections law occur during the period of the holding of elections. For years the famous phrase of Stalin was operable: "The key role is played by those who count the votes and by those, who vote". Thus it will be a great step forward if a public prosecutor is also granted the right to file a constitutional claim on the constitutionality of holding elections.