CEPS COMMENTARY
Thinking ahead for Europe

Free and fair?
A challenge for the EU as Georgia and Ukraine gear up for elections

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In an important test for democracy, Georgia and Ukraine will go to the polls for parliamentary elections on the 1st and 28th October 2012, respectively. The political leaders of these two Eastern Partnership countries have committed themselves to European values and principles – rhetorically. In reality, the promise of their colour revolutions is unrealised and they have shifted further towards authoritarianism, albeit following different paths in their respective post-revolution periods. Georgian leader Mikheil Saakashvili has championed a number of important reforms, such as fighting criminality and improving public sector services. But democracy is in decline in the country, with an increasingly over-bearing government, a weak parliament, non-independent judiciary and semi-free media. Unlike Saakashvili, who is still at the helm of Georgian politics, the protagonists of the Ukrainian revolution have either been imprisoned (Yulia Tymoshenko) or discredited (Viktor Yushchenko). Ex-president Yushchenko's attempts to neutralise his former revolutionary ally Tymoshenko resulted in the electoral victory of Viktor Yanukovych in 2010, who was quick to consolidate his reign.

An uneven playing field

The parliamentary elections in Georgia come at a critical juncture for the country, because the constitutional changes to be enforced in 2013 significantly increase the powers of the prime minister – effectively transforming this election into 'king-maker'.

If the Ukrainian president is to secure a constitutional majority in parliament, there are indications that Yanukovych will push for an amendment to enable presidential election by parliament rather than by direct popular vote. This would allow Yanukovych to abolish term limits altogether and also to avoid possible defeat in the 2015 presidential elections.

Recent legislative amendments in both Georgia and Ukraine have laid the ground for the forthcoming parliamentary elections. The reintroduction of the mixed proportional and majoritarian representation system in both countries favours the incumbent parties, which are in a stronger position to secure the support of elected officials. Georgia's electoral constituency map is also drawn up to blight the opposition. The *Ukrainian Democratic Alliance for Reform* and *Svoboda* (Freedom) opposition parties were not allocated a single

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representative seat in any of the 225 electoral district commissions, and raising the threshold to 5% for parties to enter the Parliament is detrimental to all the smaller parties.

The judiciary, administrative resources and the media

Besides tampering with the electoral rules, Saakashvili and Yanukovych have utilised the entire state apparatus to their benefit. Their administrations have consistently manipulated the key components of democracy, namely the judiciary, the civil service, and the media.

Political competition in both countries has been stifled by selective justice at the behest of the government. In Georgia, the courts colluded in depriving the opposition leader, billionaire Bidzina Ivanishvili, of Georgian citizenship, after he announced his intention to stand for election. Only after special legal amendments had been passed was he allowed to take part in the elections. Georgian authorities also seized the opportunity to fine Ivanishvili for millions of dollars. In Ukraine, Tymoshenko and Yuri Lutsenko, the jailed opposition leaders, were denied the right to register for election by the Central Election Commission. A number of other Ukrainian opposition figures, such as Arsen Avakov, are in exile and thus unable to campaign.

Both the Georgian and Ukrainian governments have made good use of administrative and budgetary resources to manipulate the electoral choices of the population. Saakashvili's 'libertarian' government increased public spending for social security programmes ahead of the elections. Every Georgian family is expected to receive 1000 *lari* (about €470) to spend on utilities or education in the next four years. Similarly, in April 2012, Yanukovich signed amendments to the 2012 budget increasing social programme expenditure by 3.2 billion *hryvnia* (about €4 billion). Moreover, in both countries, the police services, local authorities and tax collectors have been instrumentalised to generate votes for the incumbents through intimidation, fines and arrests.

The media is effectively gagged in both countries. Most influential television channels in Georgia are under government control, with the exception of TV channel Maestro. However, the government has made it difficult both for Maestro and Info 9, a channel owned by opposition leader Ivanishvili, to reach viewers. Newspapers and online media are relatively free, but the overwhelming majority of the population, especially in remote areas, relies on television for information about politics. As in Georgia, the Ukrainian opposition's TVi channel, which has been critical of government policies, was squeezed out of the cable networks, and its director persecuted. And when journalists attempted to protest against the authorities at the recent World Newspaper Forum in Kiev, they were brutally silenced by the guards of President Yanukovich. Furthermore, the amendments to the Criminal Code to recriminalise libel proposed by the ruling party are likely to further curb freedom of speech in Ukraine.

Civic activism

Civil society actors have played an important role in monitoring the electoral process and have called the authorities in Ukraine and Georgia to account, sometimes at great personal risk. Georgian civil society recovered somewhat after losing its prominent members to the government following the revolution; a number of NGOs united around the "It Affects You Too" campaign to monitor the electoral process and regularly exposed violations, especially in the application of electoral law. In Ukraine a coalition called *Chesno!* (Fair) has been analysing the electoral candidate lists and discloses information about them to the public.

What response from the EU?

For years, the EU has been caught between the unwillingness of Georgian and Ukrainian authorities to pursue genuine democratic reforms and its own inability to send a clear message on the democratic backslide in these countries, although in recent months EU leaders responsible for external relations have been more vocal in addressing this issue. The EU's reaction to the changed law on the functioning of the prosecutor's office in Ukraine is indicative of the trend. However, EU disapprobation appears to have done little to discourage adverse trends in the run-up to the elections. In the face of various pre-election irregularities and suspected wrongdoings before and possibly during the elections – and assuming that the presidential coalitions will maintain their majorities – the EU should brace itself for a damning assessment by the OSCE's election monitoring mission. If, indeed, the OSCE confirms that elections in both countries were neither (entirely) free nor fair, a difficult chapter in the EU's relations with Georgia and Ukraine is likely to begin, probably exacerbated by street protests in both countries.

In October and November, the EU Foreign Affairs Council will assess the elections in Georgia and Ukraine. If and when the scenario outlined above materialises, the EU may first have to further delay the ratification of the Association Agreement and the Deep and Comprehensive Free Trade Area with Ukraine and slow down negotiations on the same agreements with Georgia. Second, the conclusion of a visa facilitation agreement with Ukraine, which has been held up so as not to influence the outcome of the elections, could be frozen for a longer period of time. The ongoing negotiations about visa liberalisation with Georgia might also be prolonged. Finally, the European Neighbourhood and Partnership Instrument's conditionality could be triggered, with the EU decreasing financial and technical assistance to both countries. While unpopular with certain member states of the EU, these moves will be necessary if the EU is serious about promoting democratic values and principles in its relations with neighbouring countries.