



EASTERN PARTNERSHIP
CIVIL SOCIETY FORUM
GEORGIAN NATIONAL PLATFORM

12 May, 2017

Mr. Gianni Buquicchio,

President of the Venice Commission of the Council of Europe

Mr. Buquicchio,

On behalf of the member organizations of the Eastern Partnership Civil Society Forum Georgian National Platform we would like to express our opinion with regard to the draft Constitutional Amendment Law.

Since regaining independence, Georgia yet cannot eradicate the problem with regard to the creation of fair electoral environment and elections system despite the tangible progress as attained in many directions in a course of democratic transition and building of the statehood. Such system would have enabled the absolutely adequate reflection of society's political attitude as well as support to the political subjects. Inability to solve the problem has met with the criticism from domestic civil societal and political organizations as well as international organizations and strategic partner states of Georgia. In addition, one of the root causes for underdeveloped party system as well as political apathy of the voters can be traced in the absence of fair electoral environment.

The undergoing process implying the initiation of amendments to the present constitution has allowed the adoption of preliminary decision with regard to the election of the legislative body through only the proportional system which undeniably is a step forward and hopefully, when the Constitution is adopted, the final decision will be progressive as well. Hereby it has to be noted that the reform of the electoral system thought to become the cornerstone for the development of fair electoral environment should be fully reflected in the constitution. This implies not only the alteration of the existing rules with regard to the formation of the Parliament but also the attribution of the mandates to the political subjects in accordance with the actual votes received.

In view of the above it deems expedient to revise the Article 37 as set out in the draft Constitutional Amendment Law and ensure its compliance to the principles of fair elections.

The Article 37 of the draft Law stipulates as follows:

2. Until the conditions, set in Paragraph 1 of this Article, are fulfilled, the Parliament of Georgia shall consist of 150 members of the Parliament elected by a proportional system for a term of four years on the basis of universal, equal and direct suffrage by secret ballot in a unified, multi-mandate electoral district.

5. A political party registered in accordance with a procedure determined by law, which has a representative in the Parliament at the time elections are scheduled or the initiative of which is confirmed

by the signatures of not less than 25,000 electors, verified via the procedure established by the organic law, shall have the right to stand for the elections.

6. The mandates of the members of the Parliament shall be distributed only among those political associations and electoral blocks, which obtained at least 5 per cent of the votes of the electors. To establish the number of mandates received by a political party, the number of votes received by this party is multiplied by 150 and divided by the sum of votes received by all parties. The integer of the calculated number is the amount of mandates received by this political party. If the sum of mandates received by political parties is less than 150, the undistributed mandates go to the political party, which has received the majority of votes.

The proposed project eliminates mixed electoral system and the Parliament is elected by a proportional system (Art 37.2), which corresponds to the demands put forward by the majority of political parties and NGOs. The reason for this demand was to ensure proportional representation of political parties in the Parliament and support the establishment of sustainable multiparty system.

Unfortunately, the procedure for distributing the mandates (Art. 37.6) cannot ensure achieving the above stated aim. Furthermore, the proposed rule violates the core principle of **fair elections - the principle of equality**. More specifically:

A) Mandates are distributed not proportionally, for example by using the D'Hondt's Rule, or Hare's Quota and Largest Remainder Rule, but by using quota, which is equal to the sum received by all parties participating in the elections, divided by 150, and every undistributed mandate is given to a party that has received the most votes. Due to this quota, the number of undistributed mandates will be high, which equals to the per cent of lost votes out of 150. On average, in every elections held during 1995-2016, under the 5 % threshold, the per cent of lost votes equalled to 20.1% (maximum was 61.5%, while minimum was 4.7%). Therefore, the party that amassed the most votes, would have received a bonus of minimum 7 and maximum 92 mandates. Evidently, **this rule substantially violates the principle of proportionality and equality;**

B) Maintaining the 5% threshold results in ignoring the choice made by a sizeable electorate. As we have noted above, on average this amount stood at 20%. If the threshold was lowered to 4%, the average number of lost votes would be reduced to 7.3%, and if the threshold was lowered to 3%, the number of lost votes would be reduced to 4.6%.

Only 2-4 electoral subjects were able to cross the 5% threshold (only twice were 4 electoral subjects able to cross the electoral threshold). We must also note, that the majority of these subjects participated in the elections in the form of election blocks. Even if the threshold was reduced to 3%, maximum 7% subject would be able to cross it;

C) The prohibition of electoral blocks will drastically increase the number of lost votes, coupled with weak party system, lack of financial resources and 5% electoral threshold in Georgia, while the proposed procedure of mandate distribution unjustly favors the winning party.

It is worth to note that civil societal organizations being the members of the constitutional commission did not support that part of the constitutional amendments setting the legal framework for the transition to the electoral system as described above.

Given all of the above mentioned, we believe that, with the condition to maintaining only the proportional system for the parliamentary elections, the procedure of mandate distribution must be brought in line with the principle of fair elections, while it would be reasonable to reduce the electoral threshold to 3 or 4 per cent.

For the democratic development of the country and for better electoral system to be established, it is important that a balanced electoral system is formed, hence, your position regarding the matter is extremely important.

Sincerely,

Lasha Tughushi, Manana Bitsadze-Mikeladze

Coordinators of the Working Group I of the
Eastern Partnership Civil Society Forum
Georgian National Platform

Signatory Organisations:

1. European Initiative - Liberal Academy Tbilisi, member of the State Constitutional Commission of Georgia
2. United Public Movement "Multinational Georgia", member of the State Constitutional Commission of Georgia
3. Free Choice
4. Europe Foundation
5. International Society for Fair Elections and Democracy, member of the State Constitutional Commission of Georgia
6. Article 42
7. Georgian Young Lawyers' Association, member of the State Constitutional Commission of Georgia
8. Transparency International Georgia, member of the State Constitutional Commission of Georgia
9. Institute for Development of Freedom of Information
10. Economic Policy Research Centre (EPRC)
11. The Center for Strategic Research and Development of Georgia
12. Media Development Foundation
13. World Experience for Georgia
14. Georgia's Reforms Associates
15. Association and Radio "Green Wave"
16. Media Monitoring Centre of Georgia
17. Human Rights Centre
18. International Center for Civic Culture
19. Studio Re
20. Penal Reform International
21. New Generation for Democratic Georgia
22. Women's Political Resource Center
23. IDP Association "Consent"

24. Samtskhe-Javakheti Regional Association "Toleranti"
25. Foundation "Multi- Ethnic Resource Centre on Civic Education Development"
26. People's Harmonious Development Society
27. Association of Tea Producers Georgia "Georgian Tea"
28. Foundation "Multi- Ethnic Resource Centre on Civic Education Development"
29. Partnership for Human Rights
30. Association for the Farmers' Rights Defence
31. Institute for Policy Studies
32. Institute for the study of nationalism and conflict
33. EU-Georgia Business Council
34. Civil Development and Human Rights Center
35. Georgia Press Association
36. Human Rights Priority
37. Community Development Academy
38. Civil Development and Human Rights Center
39. "School-Family-Society" Association
40. Student Youth Council
41. Association for the efficient use of the Georgian energy resources
42. International Center of Geopolitical research
43. Repatriates' Union
44. Civil Society and Democracy Development Center
45. Teachers' Union "Education and Universe"
46. Local Democracy Agency
47. International Business Development and Investment Promotion Centre
48. Association "Mercury"
49. Association "Imedi"
50. Levan Mikeladze Foundation
51. Youth Alternative
52. The Greens Movement of Georgia/Friends of Earth-Georgia
53. Civil Society Institute
54. Association "Dea"
55. Association "Atinati"
56. Center for Development and Engagement
57. Civil Society Development Association
58. Civil Forum for Peace
59. Association „Healthy Children"
60. Save The Future Generation
61. Journalism Research Center
62. Tbilisi Human Rights House
63. Enterprise Innovation Development Center
64. Caucasian House Georgia
65. Institute for Euro-Atlantic integration and strategic studies
66. Civil Society Development Institute
67. Association of Youth Journalists "New Vision"
68. Imereti Union of Science - "SPECTRI"

69. Civil Council on Defense and Security Issues
70. Union "Ecotech"
71. Energy Efficiency Foundation
72. Biological Farming Association "Elkana"
73. International Center for Advancement of Research, Technology & Innovation (ICARTI)
74. Georgian Trade Union Confederation
75. Caucasus Environmental NGO network (CENN)
76. Association European Studies for Innovative Development in Georgia
77. Railway Workers New Trade Union
78. Junior achievement of Georgia
79. Bridge of Friendship – Kartlosi
80. Energy Efficiency Centre Georgia
81. Journalism Resource Center
82. Peaceful and Business Caucasus
83. International Center for Environmental Research
84. European Integration Forum
85. Rural Communities Development Agency
86. Women's Initiatives supporting Group
87. Georgia Alliance for Safe Roads
88. International Center for Democratic Initiatives
89. International Society "Caucasian Mosaic"
90. Cultural-Humanitarian Fund "Sukhumi"
91. International Organization of Human Rights protection and Prisoners social welfare
92. Foundation "Caucasus Environment"
93. Abkhazeti – My Home