



EU-Georgia Civil Society Platform

Georgia Facing Exam on Constitutional Law

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Drafted by: Mr Lasha Tughushi, Liberal Academy¹

The window of political negotiations on the electoral system formally opened by the ruling majority will presumably be closed soon.

"Unexpectedly" trial of one of the main opposition negotiators - former Tbilisi mayor Gigi Ugulava was held in the process of negotiations due to which the process has virtually stalled. The opposition no longer wants to return to the negotiating table.

Meanwhile, Georgian Parliament Speaker Archil Talakvadze stated that the negotiations would be useless at the end of February due to the fact that it would not make sense to continue the process because of the time limit.

This means that the hope that proportional elections will be held in 2020 is an illusion since no further constitutional amendment can be made that, according to a number of experts, would promote greater political pluralism, defuse political tensions and reduce polarization.

This window of opportunity was preceded by another one. Last June tensions peaked in the streets of Tbilisi. The situation escalated after Russian MP Gavrilov suddenly appeared in the seat of the Georgian Parliament Speaker. After Russian MP delivered his speech in the Russian language at the Interparliamentary Assembly on Orthodoxy, Georgians took to the streets of Tbilisi. To ease the situation, Bidzina Ivanishvili, the leader of the ruling party, publicly pledged that the upcoming elections would be conducted under a fully proportional electoral system with a natural (zero) threshold.

After a promising political and legal process, the constitutional amendment was voted down by the Parliament of Georgia through majoritarian MPs, which was followed by new tensions. The deceived and angry parties and citizens again gathered in front of the Parliament of Georgia.

After that a new window was opened again.

¹ Lasha Tughushi is Director of the Liberal Academy Tbilisi Foundation, Chairman of the EaP Georgian National Platform, Member of State Constitutional Commission of Georgia (2017-2018)

The Government has responded to various opposition proposals with an initiative to conduct applicable mixed electoral system with some corrections. The Parliament will be elected as follows: 50 seats will be distributed under a majoritarian system and 100 seats - under a proportional system.

Constitutional amendments made by the Parliament of Georgia in 2017-18 envisage that Georgia will switch to a fully proportional electoral system from 2024. The Parliament of Georgia will be composed of 150 Members of Parliament elected under proportional representation in a unified multi-mandate constituency for a term of four years by universal, free, equal and direct suffrage by secret ballot.

In October 2020 elections will be held under the old mixed system. The applicable norm stipulates that 77 members are elected by a proportional system and 73 members are elected by a majority system. 3% is defined as the threshold for election under proportional representation. The right to establish electoral blocs is also allowed. From 2024, when the system will be fully proportional, according to the Constitution, the threshold will be raised to 5% and the electoral blocs will no longer be allowed, which has been explained by the fact that it is necessary to encourage formation of the parties. Former Georgian Parliament Speaker Irakli Kobakhidze, who was one of the protagonists of the change, said: "We should turn the page where one-man parties are attached to big trains and when entering the parliament are lost somewhere inside its labyrinths."

Meanwhile, the problem is that in case of mixed electoral system actually the absolute majority of MPs elected through the majoritarian system represent the ruling team.

Therefore, in the process of drafting the constitutional amendments as well as during the parliamentary debates majority of the opposition, NGOs and international experts sometimes delicately, sometimes using a megaphone, urge the Parliament of Georgia to switch to a proportional representation system not in 2024 but already in 2020. It is really weird if the proportional system is the best model in the Georgian context why not to switch to it this year?

For example, in the parliamentary elections 2016 the ruling party received 48.68% under the proportional representation system and 71 out of 73 majoritarian constituencies under the majoritarian representation system. In total the ruling party received 115 seats out of 150 i.e. more than $\frac{3}{4}$ of all the members of the Parliament of Georgia.

The mixed system actually resulted in a super majority of one political force, which is quite dangerous for a new democracy due to the fact that great power is concentrated in the hands of one force.

If the mixed electoral system is again used for the elections this year, the political process will be further aggravated due to the fact that super objectives for the opposition forces become more polarized.

Georgia – Parliamentary Republic

The recent constitutional amendments have ended the painful process of transition to a parliamentary system.

The President of Georgia has become a virtually symbolic figure. Like her predecessor, the President is not the head of true executive branch. Unlike her predecessor, the President is no

longer directly elected. The incumbent president is the last President who has been elected by people in the old way. From now on, the president will be elected by a 300-member election pane, including “all members of the Parliament of Georgia and of the supreme representative bodies of the Autonomous Republics of Abkhazia and Adjara. Other members of the Electoral College shall be nominated by the respective political parties from among the representative bodies of local self-governments on the basis of quotas defined by the Central Election Commission of Georgia in accordance with the organic law. The quotas are defined in compliance with the principle of proportional geographical representation and in accordance with the results of the elections of local self-governments held under the proportional system. The composition of the Electoral College shall be approved by the Central Election Commission of Georgia.”

The National Security Council is no longer headed by the President, despite the fact that she is formally the country's Supreme Commander-in-chief. The National Security Council has been replaced by the Defense Council, which is formed only during hostilities. As for the similar body, it was called the Security Council, which is not a constitutional body and is established under the control of the Prime Minister.

The President's competencies in foreign affairs were also restricted. For example, if the according to the edition of the Constitution, which was effective before 2010, the President appointed and dismissed ambassadors with the consent of the Parliament, after the election of the President in 2013 and according to the new edition, the President appoints and dismisses ambassadors on the recommendation of the Government.

One of the President's significant functions was restricted. The President's power to nominate the Chair of the Supreme Court and candidate members has been abolished.

The Venice Commission allowed the last norm. However, the anti-presidential sentiments expressed in the difficult relationship of the ruling party with President Giorgi Margvelashvili overwhelmed a sound constitutional logic and I think that this institution was undermined.

Strengthened Parliament of Georgia

The constitutional amendments regarding the Parliament of Georgia offer a number of novelties. For example, the oversight function of the Parliament of Georgia is strengthening.

The possibility of establishing an parliamentary investigative commission has been simplified. It is established on the initiative of 1/5 of MPs if the initiative is supported by 1/3 of all Members.

An interpolation mechanism has been introduced, which means that “a parliamentary faction or a group of at least seven Members of Parliament shall have the right to pose a question through interpellation to the Government, another body accountable to Parliament, or a member of the Government obliged to answer questions at Parliament sittings. The answer may become a subject of discussion by Parliament.” The mechanisms for setting up temporary commissions are also simplified. “Providing a timely and full response to a question posed by a Member of Parliament is mandatory.”

Prosecutor General and the Supreme Court members have been added to the list of impeachments with regard to which the Parliament of Georgia has an exclusive right.

The classic constructive vote of no confidence has been introduced.

However, it is noteworthy that these good mechanisms, including parliamentary control, do not actually work effectively, which is logical due to the fact that the Parliament of Georgia, where one party holds the constitutional majority, has “parental attitude” towards the executive branch.

Super-concentrated political power is prone to authoritarianism in case of weak political opposition whose risks increase in case of less practice of living in a democracy.

The weakness of parliamentary control is particularly clear in terms of special services and law enforcement agencies, which creates additional difficulties for the functioning of democratic institutions.

Therefore, “trampoline of democratization” begins with the proportional electoral system. The coalition parliamentary majority created as a result of the proportional electoral model and the coalition government will most likely implement the aforementioned important constitutional mechanisms.

Court or Corporation

Georgia's “second Achilles heel” is the judicial system. Within the “Fourth Reform” of the judicial system, the scales of power have been paid to the influential group of judges. The power is concentrated in the constitutional body - the Council of Justice, where the power is possessed by previously discredited judges with whom the ruling political team easily found a common language.

It is great temptation to control FemiDa in case of high level of political polarization. The High Council of Justice consists of 14 members appointed for a term of 4 years and the Chairperson of the Supreme Court. More than half of the members are elected from among the judges by the self-governing body of judges of the common courts. In addition, one member is appointed by the President of Georgia and the remaining members are elected by a majority of at least three fifths of the total number of the Members of Parliament.” Judges of the common courts shall be appointed for life until they reach the age established by the organic law. The decision to appoint a judge shall be made by the High Council of Justice.

The enchanted circle is actually closed. The Council controls the self-governing body of judges. The body elects the Council. The Council appoints judges for life-long terms. A judge shall be inviolable. It shall be impermissible to bring criminal proceedings against a judge, arrest or detain him/her, search his/her place of residence or work, and car, or to conduct a personal search without consent of the High Council of Justice of Georgia.

The appointment of judges to another constitutional body - the Supreme Court of Georgia was particularly dramatic. According to the recent constitutional amendments, the Supreme Court shall consist of at least 28 judges. The Supreme Court of Georgia is the Court of Cassation. Upon nomination by the High Council of Justice, the judges of the Supreme Court shall be elected for life, until they reach the age established by the organic law, by a majority of the total number of the Members of Parliament. In November 2019 the Parliament of Georgia appointed 14 judges to the Supreme Court. 8 more judges are waiting for their turn. The Venice Commission has recommended that this Parliament should not approve all judges of the Supreme Court of Georgia and transfer the right to appointment of a number of judges to the next convocation of the Parliament.

The process of appointment of judges conducted in the form of public hearings, was sufficiently transparent to allow the general public to get a picture of the judiciary elite not only in terms of political engagement but also general legal erudition.

The main task to be solved by the new government in the future is reflected at the beginning of the Article of the chapter on Judicial Power: "Judicial Power is Independent".

Strong Government

Georgia has been always concerned with the problem of equilibrium of forces. After the collapse of the Soviet Union, Georgia was engulfed in a bloody internal conflict. The first President of independent Georgia - Soviet-era dissident Zviad Gamsakhurdia was forced to leave Georgia after the military coup. He fled to Chechnya. Eduard Shevardnadze returned to Georgia. Shevardnadze's governance also could not avoid bloodshed. War in Abkhazia; violent raids of the paramilitary groups in the regions of Georgia, including Tbilisi; destroyed economy; unbridled crime; energy shortages and hyperinflation.

New Constitution of Georgia was adopted in 1995. Its preamble mentions the 1921 Constitution of the Democratic Republic of Georgia. In 1921 Georgia was a victim of the Soviet Russia's occupation and annexation, although it managed to adopt the Constitution of the Democratic Republic of Georgia - the basic law of the Democratic Republic of Georgia. It was implemented by the Constituent Assembly of Georgia on February 21 1921.

Georgia became a presidential republic. At first glance, it needed power concentrated in the hands of one person. The Rose Revolution resulted in the resignation of Shevardnadze. Mikheil Saakashvili came to power. He also needed real power and the revolutionary government changed the Constitution of Georgia and dramatically expanded the presidential power. At the end of his second term in office his government initiated constitutional amendments, according to which the super-presidential system was replaced by the super-prime ministerial system. The 2010 amendments envisaged shifting the center of power from the president to the prime minister.

For example, according to these amendments, the exercise of the right to the appointment and dismissal of the Prosecutor General would be transferred from the almighty president to the prime minister.

Full exclusive authority to appoint and dismiss ministers was granted to the Prime Minister under the same amendments. This norm was changed in 2013. It was added that after the change of 1/3 of ministers the government required redeclaration of trust by the parliament.

However, Saakashvili lost the elections and his legacy was transferred to Ivanishvili's political force, which on the one hand, took some steps to create a balanced model of government, although did not give up the opportunity to distribute power to others this year, to run for the elections under proportional representation with the assumption that there will be a coalition government.

Georgia needs consolidation of political forces among various like-minded actors and not its concentration in the hands of one force. This last version of the Georgian Constitution is passing this test.