



Assessment of Constitutional Amendments in Georgia

On February 02, 2018, the Georgian Young Lawyers' Association (GYLA) presented the report on the assessment of the constitutional amendments in Georgia. The **purpose of the report** is to summarize and analyze the constitutional reform across the country, to identify the main trends and present them to the interested wider society for understanding of existing experiences. The **report thoroughly reflects** all stages of the constitutional reform starting from the set up of the State Constitutional Commission to initiating additional amendments to the recently adopted Constitution. The **report is based** on the information gathered by GYLA representatives who attended the meetings of the State Constitutional Commission working groups and the Committee, the information disseminated through the websites of the Parliament, the Constitutional Commission and media reports, public information requested from the

Parliament of Georgia as well as opinions prepared by the Venice Commission regarding the draft revision of the Constitution. In the course of the preparation of this report, Georgia's current legislation was analyzed with regards to a range of issues.

The following important findings have been identified in the report:

- The revision process of the Constitution was conducted with substantial shortcomings, which, on the one hand, made it impossible to reach a general consensus on the supreme law of the State, and on the other hand, made the text of the draft constitution a subject of criticism of many actors, including the Venice Commission.

The State Constitutional Commission:

- The activities of the State Constitutional Commission were conducted in an unreasonably short period - 4 months, which even at the initial stage excluded the possibility of making adequately reasoned and thoughtful decisions, especially in terms of starting the work from a clean sheet.

- Refusal of the President's administration to take part in the work of the State Constitutional Commission negatively affected the processes, as one of the issues on the agenda of the Constitutional Commission was the procedure of the president's election and his/her powers.

- The regulations of the State Constitutional Commission did not envisage any special criteria and rules for the selection of representatives of the Commission member NGOs and experts. Consequently, it is not clear based on what circumstances the decision on selection of specific organizations and individuals was made. On top of that, all interested persons were not able to enjoy this opportunity on an equal basis.

- The Commission was composed mostly of representatives of legal sphere, although, taking into consideration the multilateral nature of the Constitution, a multi-disciplinary approach was required.

- One of the main negative characteristics of the process developed within the State Constitutional Commission - the absence of a clear rule of decision making within the working group, resulted in numerous uncertainties and incorrect expectations in practice.

- Effective involvement of members in the activities of the State Constitutional Commission was hindered by a destructive part of the Commission's activity, which, in some cases, was expressed in insults of a part of the Commission members, in some cases, indifference to sensitive issues, and in some cases, non-thematic discussions.

- The activity of the State Constitutional Commission lacked transparency, which was reflected in the selection of some members of the Commission, in the absence of the rule for sharing opinions of non-member organizations of the Commission, in the vagueness of the decision-making procedure, neglecting the obligation to publish the session protocols on the website and most importantly, in the limited admission of media representatives to the sessions.

Universal public discussions:

- The discussions were planned and conducted in the manner which did not give general public the opportunity to freely and actively become involved in the discussions. On the other hand, the conducted discussions did not leave the impression that the government really wished to hear opinions of citizens about the planned amendments, especially those opinions different from the position of the government.

- The legislative base regulating universal -public discussions is not elaborate. Apart from a one-month term for conducting discussions, the Procedure of the Parliament does not envisage any detailed rules on any issue. Consequently, a range of important procedural stages are entirely regulated by case-law. The existing experience has shown that the absence of a detailed legislative base provides a wide possibility to conduct process as it is in the interests of the ruling political force.

- The general public debates revealed problems such as publicizing of the schedule of the first stage discussions in an unreasonably short time, creating barriers on attendance of debates, concentration of supporters of the ruling political party, opposition parties and public servants, absence of pre-planned questions, gathering of certain persons at microphones in the halls etc.

The Parliamentary hearings:

- The revision and adoption of the draft of the Constitutional amendments was conducted in an unreasonably short time;

- Sudden postponement of introduction of the proportional election system which was achieved by a universal consensus within the constitutional reform, led to the exclusion of opposition parties and non-governmental sector from the process.

- Absence of the will from both, the majority and opposition parties to achieve a general consensus over the supreme law of the country;

- The constitutional revision draft was approved only by one party;

-A draft law was initiated for the purpose of introducing additional amendments into the newly approved Constitution, although there was a procedural-legal possibility to reflect the necessary changes in the first phase of the revision;

- Qualitatively new initiatives were added to the issues of additionally initiated revision, which on the one hand, rendered the preceding process meaningless, and on the other hand, contributed to reflection of certain initiatives in the final text of the Constitution, which, due to the lack of time for discussion and understanding thereof, remained still vague for stakeholders.

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- The most part of the recommendations prepared by the Venice Commission has been taken into consideration. However, there are certain recommendations, which have not been reflected in the final text of the Constitution.

- The final version of the draft revision of the Constitution incorporates a number of positive initiatives, but due to the absence of a general consensus, the above issues lack the high legitimacy necessary for the supreme law.