



ASSESSMENT OF THE REVISION OF THE CONSTITUTION OF GEORGIA

Georgian Young Lawyers' Association

2018

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Was edited and published
in the Georgian Young Lawyers' Association
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1. INTRODUCTION

The present constitutional report has been prepared with the aim of summarizing and analyzing the nationwide process of the constitutional reform, identifying key trends and reporting them to public stakeholders.

As the supreme law of the state, Constitution is a primary foundation of the state's development and a credible indicator of the degree of democracy reached by the society. Therefore, any process that takes place in this area has crucial relevance. This understanding lies at the core of the idea of preparing this report. We believe that compilation of developments and subsequent conclusions in a single document will help create a bigger picture and form public opinion.

The Georgian Young Lawyers' Association (hereinafter, the GYLA) was a member of the State Constitutional Commission (hereinafter, the SCC) and a participant of subsequent processes, which has allowed us to analyze results of direct observation as well as additional information that we obtained.

The report provides a thorough account of all stages of the constitutional reform, from setting up of the SCC to initiation of additional changes in the newly adopted Constitution.

Based on the information that we analyzed, we found a number of significant circumstances related to the work of the SCC as well as the nationwide public discussions and the parliamentary discussions, the report prepared by the Venice Commission and the difficulty of reaching a wide consensus. The trends that we identified allow evaluation of effectiveness of the Parliament of Georgia as the lead agency, shortcomings in the process as well as advantages and disadvantages of constitutional amendments that were supported.

We remain hopeful that the present report will provide proper analysis of important past developments and promote development of experience-based approaches in the future.

2. METHODOLOGY

The present report is based on the information collected by representatives of GYLA attending sessions of the SCC and the working groups and analysis of such information, in addition to media reports and their analysis, information published on websites of Parliament and the SCC and analysis of such information. We also relied on public information requested from the Parliament of Georgia¹, and preliminary and final reports prepared by the Venice Commission on the draft revised Constitution. In addition, with respect to a range of issues we analyzed existing legislation of Georgia.

This document covers the reporting period from the day the SCC was set up on December 15, 2016 to December 15, 2017, before parliament approved at the second reading additional amendments to the newly adopted Constitution.

3. KEY FINDINGS

Important findings of the evaluation:

- ***The process of revision of the Constitution was characterized by substantial shortcomings, which made it impossible to reach a wide consensus on the supreme law of the state and subjected the text of the draft revised Constitution to criticism of a number of actors including the Venice Commission.***

The State Constitutional Commission:

- ***The SCC had four months to prepare the constitutional amendments; such unreasonably short period of time ruled out from the outset the possibility of making sensible and properly thought-out decisions, especially when the work needed to be done from a clean slate.***
- ***Exclusion of the Administration of the President from the work of the SCC negatively affected the processes, especially since one of the issues discussed by the SCC was election and powers of the President.***
- ***The SCC Statute did not contain any special criteria or regulations for selection of representatives of NGOs and expert communities as SCC members, so it was unknown what served as the basis of decisions to select certain organizations and individuals. Further, not all interested individuals were provided with the said opportunity on equal basis.***
- ***The SCC was staffed mostly by representatives of legal field, while in view of the multi-faceted nature of the Constitution working on the constitutional amendments required multi-disciplinary approach.***

¹ Letter no.7376/2-4 of the Parliament of Georgia, dated May 31, 2017

- *One of the most important shortcomings of the process that took place within the SCC was lack of clear decision-making regulations in the working groups, which resulted in ambiguities and unrealistic expectations.*
- *Effectiveness of participation of members in the SCC was limited by the destructive aspects of the SCC's work, which sometimes translated into verbal insults against members of the SCC in some cases and indifference towards sensitive issues or irrelevant discussions in others.*
- *Work of the SCC lacked transparency, as evidenced by the process of selection of some members of the Commission, lack of regulations for sharing opinions of non-member organizations, ambiguity of decision-making regulations, violation of the obligation to public session minutes on the website and most importantly, limiting access of media representatives to the sessions.*

Nationwide public discussions:

- *Discussions were planned and conducted in a manner that failed to provide adequate opportunity for free and active engagement of the public at large in the process. On the other hand, the public discussions that took place suggested lack of the government's actual willingness to hear views of ordinary citizens about impending changes, especially views that were different from the government's positions.*
- *The legal base for nationwide public discussions is incomplete. Other than a one-month period for conducting the discussions, the Rules of Procedure of the Parliament of Georgia does not provide detailed regulations about pertinent issues. As a result, a number of important procedural stages need to be regulated entirely by practice. Existing experience suggests that lack of detailed legal base leaves significant room for conducting the process in a way that favors interests of the ruling political force.*
- *During the nationwide public discussions we identified the following problems: failure to publish the schedule of the first stage of public discussions ahead of time, within a reasonable period; creating obstacles to attending the discussions; mobilizing supporters of the ruling party, opposition parties and employees of the public sector; pre-made questions; mobilizing certain groups of individuals near microphones in the discussion halls, etc.*

Parliamentary discussions:

- *Discussion and adoption of the draft revised constitution took place in an unreasonably short timeframe;*
- *The move to a proportional electoral system, which secured a wide consensus within the constitutional reform, was unexpectedly postponed, resulting in exclusion of opposition parties and NGOs from the process;*
- *Absence of actual will of both the majority and the opposition parties to obtain wide consensus on the supreme law of the state became evident;*
- *Draft revised constitution was approved by a single party only;*
- *A bill was initiated to make additional changes in the newly adopted Constitution, even though procedural/legal opportunity to reflect the needed changes were available within the first stage;*
- *Issues to be considered within the additional amendments included brand new initiatives, which both undermined the previous process and allowed reflection of certain initiatives in the final text of the Constitution that remained ambiguous for interested parties due to the lack of adequate time for discussing and understanding these initiatives.*
- *Majority of recommendations of the Venice Commission were taken into account but some recommendations were not reflected at all in the final text of the Constitution;*
- *The final text of the draft revised constitution brought together a number of positive initiatives; however, due to absence of a wide consensus these issues lacked the high degree of legitimacy required for the supreme law of the state.*

4. WORK OF THE SCC

4.1. Formation of the SCC

On December 15, 2016, the Parliament of Georgia adopted a [resolution](#) on establishment of the State Constitutional Commission. Under the parliamentary resolution, the SCC was chaired by Chairperson of the Parliament Irakli Kobakhidze; Statute of the SCC and its composition were approved under the said resolution. The following was outlined as the task of the

SCC² - **prepare a draft law providing for full compliance of the Constitution with fundamental constitutional law principles, and establish a constitutional system for the country's long-term democratic development.** [April 30, 2017](#) was set as a deadline for preparing the draft revised constitution.

4.1.1. Composition of the SCC

Under the SCC Statute³ and the [Order no.253/3](#) of the Chairperson of the Parliament of Georgia, dated December 23, 2016, composition of the SCC was as follows:

- 1. Chairperson of the Parliament of Georgia** – Irakli Kobakhidze;
- 2. Members of the parliamentary majority** – Tamar Chugoshvili (the SCC Secretary), Archil Talakvadze, Zviad Dzidziguri, Giorgi Volski, Ilia Nakashidze, Mamuka Mdinardze, Kakha Okriashvili, Koba Narchemashvili, Simon Nozadze, Nino Gogvadze, Eka Beselia, Vano Zardiashvili, Davit Matikashvili, Giorgi Kakhiani, Irakli Sesiashvili, Giorgi Liluashvili, Sopho Kiladze, Gedi Popkhadze, Manana Kobakhidze, Zakaria Kutsnashvili, Zaza Gabunia, Savalan Mirzoev, Enzel Mkoyan;
- 3. Members of the parliamentary minority** – Sergi Kapanadze, Otar Kakhidze, Giorgi Tughushi, Zurab Tchiaberashvili, Khatuna Gogorishvili, Salome Samadashvili, Mamuka Chikovani, Irakli Abesadze;
- 4. Members of the parliamentary faction Patriots of Georgia** – Irma Inashvili, Nato Chkheidze;
- 5. Independent MP** – Salome Zurabishvili;
- 6. One representative from every party or a bloc that participated in the last parliamentary elections independently and were unable to clear the electoral threshold but gathered at least 3% of votes; these representatives were number one the list of their respective parties/blocs** – Shalva Shavgulidze (political union of citizens Free Democrats), Dimitry Lortkipanidze (political party Democratic Movement – Unified Georgia), Giorgi Gugava (Labor Party of Georgia), Nika Machutadze (political union of citizens Movement State for the People);
- 7. Representatives of constitutional bodies** – Giorgi Abashishvili (Head of the Administration of the President of Georgia), Ana Dolidze (Parliamentary Secretary of the President of Georgia), Thea Tsulukiani (Minister of Justice of Georgia), Shalva Tadumadze (Parliamentary Secretary of the Government of Georgia), Zaza Tavadze (Chair of the Constitutional Court of Georgia), Nino Gvenetadze (Chair of the Supreme Court), Davit Gabaize (Chair of Ajara A/R Supreme Council), Zurab Pataradze (Chair of Ajara A/R Government), Gia Gvazava (Chair of the Supreme Council of Abkhazia A/R), Vakhtang Kolbaia (Acting Chair of the Government of Abkhazia A/R), Ucha Nanuashvili (the Public Defender of Georgia), Koba Gvenetadze (the President of the National Bank of Georgia), Lasha Tordia (the General Auditor), Davit Rakviashvili (the Secretary of the National Security Council of Georgia);
- 8. Experts and NGO representatives:** Ana Natsvlshvili (Georgian Young Lawyers' Association), Eka Gigauri (Transparency International – Georgia), Mikheil Benidze (International Society for Fair Elections and Democracy), Vakhtang Natsvlshvili (Open Society – Georgia Foundation), Lasha Tughushi (National Platform of Georgia), Arno Stepanyan (Multinational Georgia), Davit Asatiani (Georgian Bar Association), Rati Bregadze (Expert), Vasil Gonashvili (Expert), Avtandil Demetrashvili (Expert), Vakhtang Menabde (Expert), Shalva Papuashvili (Expert), Zaza Rukhadze (Expert), Mindia Ugrekhelidze (Expert), Tengiz Sharmanashvili (Expert), Vakhtang Baramidze (Expert), Joni Khetsuriani (Expert), Vakhtang Khmaladze (Expert), Ana Pirtskhalashvili (Expert), Zviad Kordzadze (Expert).

Out of the individuals determined by the SCC Statute, **the Administration of the President of Georgia did not participate in the work of the SCC.** The refusal of the Administration was **largely the result of the parliamentary majority's decision to deny co-chairmanship to the President.**⁴ The Administration of the President provided [the following arguments](#) to justify their decision – *“in the process of formation of the SCC we believed and continue to believe that high degree of legitimization, broad involvement, seeking maximum political trust and consensus are especially important. We think that the proposal offered by the Parliament of Georgia on rules for setting up a constitutional commission raises a number of questions. Draft of the resolution clearly lacks political trust and political legitimization, democracy of consideration of issues and does not seek a wide consensus. Furthermore, it focuses more on unilateral and non-party decision-making.”*⁵ Since one of the issues to be addressed by the SCC was election and powers of the President, clearly involvement of the said institution was especially important. Therefore, it is safe to say that one of the early negative aspects of the process of revision of the Constitution was the exclusion of the important constitutional body from the deliberations.

²The Statute of the State Constitutional Commission, Article 2 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_ ;

³ The Statute of the State Constitutional Commission, para.1 of Article 3 and para.1 of Article 7

⁴ <http://www.ipress.ge/new/54243-mdinaradze-sakonstitucios-komisiashi-prezidentis-administraciidan-2-tsarmomadgeneli-iqneba>;

⁵ <https://www.president.gov.ge/ka-GE/administraciis-siakhleebi-aq/giorgi-abashishvili-prezidenti-da-prezidentis-carm.aspx>;

As to the remaining members of the SCC, some were determined directly by the Statute of the SCC (e.g. the Minister of Justice of Georgia and the Parliamentary Secretary of the Government of Georgia)⁶ or by decisions of corresponding subjects (e.g. the parliamentary majority decided which MPs to nominate for the SCC membership from among themselves).⁷ The only exception was NGO representatives and experts, who were chosen unilaterally by the Chairperson of the Parliament within his exclusive powers.⁸ **Since the Statute of the SCC did not provide any special criteria or regulations for selection of NGO representatives and experts, it remains unknown as to what served as the basis of the decision to choose certain organizations and individuals. Further, not all interested individuals were provided with the said opportunity on equal basis.**⁹

Within the context of selection of experts for the SCC membership, **general analysis of the SCC composition is important, especially the fact that the Commission was staffed mostly by experts specializing in the field of law while in view of the multi-faceted nature of the Constitution working on the constitutional amendments required multi-disciplinary approach.** Involvement of experts specializing in fields including and not limited to foreign relations, economy and security was important. Unfortunately, discussions on and preparation of the draft revised constitution took place in a manner that excluded participation of individuals with specialized knowledge and expertise as SCC members or as outside experts.

In the process of revision of the Constitution, outside experts were engaged on two occasions, resulting in preparation of the following two opinions:

1. *Review of Amendments to the Constitution of Georgia in Respect to Human Rights and Judiciary Matters* by Sir Jeffrey Jowell;¹⁰
2. *Legal Analysis of Draft of the Constitutional Commission Provided by the State Constitutional Commission* by Christopher Degenhardt.

Additional expert assistance as well as documents that were prepared are clearly commendable, **however, this does not amount to the wide range of information required for making informed decisions about any of the inter-disciplinary issues envisaged by the Constitution.**

4.1.2. Changes in the composition of the SCC

Throughout the time of functioning of the SCC, **changes in its composition were made on two occasions.**

In the first case the change was necessitated by election of MP Manana Kobakhidze as a judge of the Constitutional Court, resulting in her exclusion from the list of the SCC members.¹¹ Manana Kobakhidze was replaced by Giorgi Khatidze in the SCC.

In the second case changes needed to be made after a number of the SCC members resigned.¹² **Opposition parties refused to continue to participate in the work of the commission on the account of the fact that issues of principal importance to them were overlooked.** These issues included keeping direct election of the President and unfair distribution of unallocated mandates. As a result of changes made in the Order of the Chairperson of the Parliament, representatives of the said subjects¹³ were removed from the SCC composition.

Amendments to the Order of the Chairperson of the Parliament on Approval of Composition of the State Constitutional Commission, which relieved a number of SCC members from their duties **is illegitimate from legal point of view.** As noted earlier, the SCC composition was defined under the SCC Statute¹⁴ stipulating that among other persons the SCC members also included **representatives of the parliamentary minority and number one candidates on the election list of parties and blocs that participated in the last parliamentary elections independently, did not clear the electoral threshold but garnered at**

The Statute of the State Constitutional Commission, para.2 of Article 3 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_;

⁷ The Statute of the State Constitutional Commission, para.4 of Article 3 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_;

⁸ The Statute of the State Constitutional Commission, para.6 of Article 3 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_;

⁹ However, in the same context it is important to note that all stakeholders who were not members of the SCC could still submit their opinions to the SCC, which allowed them to participate in the work of the SCC although with less intensity.

¹⁰ <http://constitution.parliament.ge/news-15-1.03>;

¹¹ Order no.39/3 of the Chairperson of the Parliament of Georgia, dated 14 February 2017, "on amendments to Order no.253/3 of the Chairperson of the Parliament of Georgia, dated 23 December 2016, on approval of the composition of the State Constitutional Commission"-

<http://constitution.parliament.ge/uploads/masalebi/14.02.2017.pdf>

¹² („National Movement“, „European Georgia“ and „the Alliance of Patriots“) and non-parliamentary opposition who were members of the SCC („Free Democrats“, „Labor Party of Georgia“, „Democratic Movement – United Georgia“, „Movement State for the People“);

¹³ Order no.146/3 of the Chairperson of the Parliament of Georgia, dated 21 April 2017, "on amendments to Order no.253/3 of the Chairperson of the Parliament of Georgia, dated 23 December 2016, on approval of the composition of the State Constitutional Commission" -

http://constitution.parliament.ge/uploads/masalebi/21_04_2017.pdf

Under the same amendments, representative of the International Society for Fair Elections and Democracy, Mikheil Benidze was replaced by Elene Nizharadze.

¹⁴ The Statute of the State Constitutional Commission, para.2 of Article 3 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_;

least 3% of votes, one from each party/bloc. The Statute also provided special quotas for parliamentary majority and parliamentary minority, as well as factions that were not affiliated with any of the two.¹⁵ **Quotas were established in proportion to seats secured in Parliament.** As a result, the parliamentary majority was authorized to nominate 23 members for the SCC membership, the parliamentary minority – 8, and the faction Patriots of Georgia – 2. **Any changes in the composition of the SCC required changes in the Statute, which in its turn had been adopted as a [parliamentary resolution](#) and amending the Statute fell under the exclusive powers of Parliament.**

Because composition of the SCC had substantial importance in the decision-making process, in which each member's vote has an important weight, clearly the above decision must be negatively assessed.

4.2. Timeframe of the SCC's Work

Pursuant to the SCC Statute, [30 April 2017](#) was set as a deadline for preparing the draft revised Constitution, which means that the SCC and its working groups had **four months** to prepare a draft of each revised chapter.

Work within the SCC working groups was quite intensive and entailed lengthy working meetings that often lasted all day long, as well as several back-to-back meetings. At the same time, actors that participated in drafting of the revised Constitution¹⁶ **found that the period given to the SCC was insufficient for revising the supreme law of the state.**

Lack of time was especially important considering that **the parliamentary majority did not provide initial draft of amendments to the Constitution**, meaning that the SCC had to start working from a clean slate, which required much more time and discussions that the period of four months allowed.

Lack of time led to shortcomings in the work of the SCC – for instance, documents that were quite voluminous were often sent to the working group members a day before, **which negatively affected understanding of comments, forming of positions and conducting quality discussions within the working groups.**

Immediately after setting up of the SCC it became clear that **there were a number of controversial issues that the Commission would be working on**, including electoral system, direct election of the President, definition of marriage, ownership of agricultural land by aliens, etc., meaning that reaching an agreement and a consensus would require much more time and effort. **This and other circumstances highlight the fact that the four-month period provided to the SCC was quite short and it needed to be extended.**

The concern about lack of time was raised by members of the SCC during the first session of the Commission. In response, the Chairperson of the Parliament explained that if the SCC finished its work by late April, the revised draft could have been adopted with two readings at the spring session of Parliament, and if the SCC couldn't prepare a high-quality document within the period of four months, on the basis of a maximally inclusive process, extension of the SCC's term of authority could have been discussed.¹⁷

Unfortunately, despite shortcomings in the process as well as lack of consensus on a number of issues, eventually the SCC finished its work in a substantially short period of time and adopted the final draft on 22 April 2017.¹⁸

4.3. The SCC Rules of Operation and Decision-Making

Throughout the period of its existence, the SCC had two sessions that brought together all members of the Commission. The first session was held on December 24, 2016¹⁹, and the second and final session on April 22, 2017.²⁰ From January 21, 2017²¹ to April 18, 2017²², the Commission was operating in working group formats. Under the Statute the Commission²³ consisted of the following four working groups (WGs):

¹⁵ The Statute of the State Constitutional Commission, para.3 of Article 3 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_ ;

¹⁶ Vakhtang Khmaladze - <http://www.epn.ge/?id=37725>; Transparency International-Georgia - <http://www.newposts.ge/?l=G&id=139397->

[%E1%83%92%E1%83%90%E1%83%9B%E1%83%AD%E1%83%95%E1%83%98%E1%83%A0%E1%83%95%E1%83%90%E1%83%9A%E1%83%9D%E1%83%91%E1%83%90,%20%E1%83%A1%E1%83%90%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%9D](#) ;

¹⁷ <http://constitution.parliament.ge/news-27/01> ;

¹⁸ <http://constitution.parliament.ge/news-24/04> ;

¹⁹ Issues discussed during the meeting were mostly organizational - <http://parliament.ge/ge/parlamentarebi/chairman/chairmannews/irakli-kobaxidzem-saxelmwifo-sakonstitucio-komisiis-personaluri-shemadgenloba-daamtica.page>

²⁰ Draft of revised Constitution prepared by the working groups was put to a vote during the meeting -

<http://constitution.parliament.ge/news-24/04>;

²¹ <http://www.parliament.ge/ge/parlamentarebi/chairman/chairmannews/parlamentshi-saqartvelos-saxelmwifo-sakonstitucio-komisiis-samushao-djgufis-pirveli-sxdoma-gaixsna.page>

²² <http://constitution.parliament.ge/news-18-1/04>

²³ The Statute of the State Constitutional Commission, para.3 of Article 8,

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_ ;

- 1) The Working group on the issues of Fundamental Human Rights, Judiciary, Preamble and the General and transitional provisions;
- 2) The Working group on the Issues of the Parliament, Finances and Control, revision of the constitution;
- 3) The Working group on the Issues of the President, the Government, and the Defense;
- 4) The Working group on the Issues of Administrative-territorial arrangement and Local self- governance.

The Statute established regulations for distribution of the SCC members in WGs.²⁴ In particular, each member of the SCC could join one WG voluntarily and another one with the SCC chair's consent. The possibility to join two WGs was used mostly by NGO representatives and experts, as well as some MPs. All WGs were chaired by the Chairperson of the Parliament of Georgia. The working group on the issues of Fundamental Human Rights, Judiciary, Preamble and the General and transitional provisions had most members.²⁵

Following the first session of the SCC it became evident that the parliamentary majority was not planning to offer to other members of the SCC a draft revised Constitution based on their opinions.²⁶ As the SCC chair explained preliminary decisions had not been made about any of the constitutional provisions. The only issue that the parliamentary majority felt strongly about was the parliamentary form of governance.²⁷ According to the SCC Chair, such format was chosen due to the following reasons – ***“We should start working on the document from a clean slate. This will allow us to conduct the working process within the SCC in the most effective manner, i.e. no preliminary decisions about any of the norms.”***²⁸

In absence of a preliminary draft it was decided that the SCC working groups would work in the following three stages: ***stage 1*** would entail detailed discussions of relevant chapters of the Constitution of Georgia and the existing text of the draft constitutional law of Georgia on Ajara A/R; ***stage 2*** would entail preparing the initial draft that would then be reviewed comprehensively, by individual articles; ***the third and the final stage*** would entail editing and finalizing the text of constitutional chapters.²⁹

During early stages of the SCC operation, readiness of the chairperson to start working from a clean slate was welcomed. However, unfortunately as the SCC operation further progressed it became evident that ***statements made during early stages of the SCC operation*** were not always practiced. However, in the beginning WGs were able to engage in a comprehensive review of each article and express their comments both verbally and in writing. Further, constitutional provisions presented during the second stage reflected comments and suggestions made by the SCC members during the first stage. However, during the third and the final stage of the process, a brand new text of the draft Constitution was presented; some parts of the text was based on agreements made during previous sessions, while others reflected views of the parliamentary majority and the government that had not been discussed during previous sessions or were discussed but disapproved by most members of the SCC. ***Generally, it is safe to say that the government and other actors considerably influenced the process of revision as a result of consultations with the Chairperson of the Parliament outside the SCC. During these consultations, a number of important issues were discussed, decided and reflected in the draft of the revised Constitution without the SCC members' engagement.*** For instance, during the first and second stage of the WG working process, introducing a provision about the Georgian National Communications Commission (GNCC) was never discussed but the issue was reflected in the draft revised Constitution presented at stage 3.³⁰

Such developments were largely encouraged by ***absence of decision-making regulations***, a major shortcoming of the working groups. The SCC Statute³¹ did not provide applicable regulations, so the issue was subject to regulation by practice. Lack of pre-determined decision-making regulations created problems in several different areas:

- ***Consideration of opinions provided by interested parties*** – the work of the SCC seemed open and accessible for the SCC members as well as the public at large, as suggested by the fact that all interested individuals were able to provide their opinion about the existing text of the Constitution. However, further discussions about these opinions were problematic. In particular, the SCC sessions discussed only those issues raised by several members of the Commission and therefore, although the process allowed generation of opinions of different individuals, the SCC mechanism for reacting on such opinions remains unknown. In particular, it is unknown whether each opinion was discussed in detail

²⁴ The Statute of the State Constitutional Commission, para.2 of Article 8,

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_ ;

²⁵ <http://constitution.parliament.ge/news-21/01> ;

²⁶ <http://constitution.parliament.ge/news-24/12> ;

²⁷ <http://constitution.parliament.ge/news-24/12> ;

²⁸ <http://constitution.parliament.ge/news-24/12> ;

²⁹ <http://constitution.parliament.ge/news-23/01> ;

³⁰ During the working groups on issues of human rights and the judiciary, Chairperson of the Parliament Irakli Kobakhidze stated that the provision on the GNCC was introduced as a result of consultations with the GNCC. In Irakli Kobakhidze's view, introducing such provision in the Constitution would strengthen independence of the GNCC. Revaz Arveladze, a member of the parliamentary majority objected and stated that the GNCC members already have adequate social guarantees and there was no need to introduce a provision on the GNCC in the Constitution. Eventually, during the final session of the SCC, the decision to create constitutional guarantees for independence of the GNCC was approved by majority of votes.

³¹ <http://constitution.parliament.ge/11> ;

or more importantly, how decisions to consider or ignore a particular opinion were made. As a result, the positive practice of allowing free submission of opinions was undermined by subsequent actions or lack thereof.

- **The quorum for decision-making at the SCC WGs** – in absence of concrete regulations that would apply to WGs, the quorum for decision-making was not established, giving WGs complete freedom to consider and decide a range of important issues with however many members were present at the time.
- **The procedure for decision-making at the SCC WGs** – as to the decision-making procedure, the SCC Chairperson suggested a few times within the WG format that issues should have been decided by way of a consensus based on a verbal agreement, meaning that positions identified as a result of discussions would no longer be put to a vote. As an exception, the only issue put to a test vote was moving to the model of a bicameral parliament before restoration of the territorial integrity.³² No other issues discussed within the WG format was put to a test vote.

The rule of deciding issues on the basis of consensus, agreed on verbally, translated into practice in different ways. More specifically, when a proposal raised by a member of the SCC was opposed by someone, it was upheld or rejected depending on whether the Chairperson of the Parliament was for or against it. If the Chairperson of the Parliament approved comments of a member of the SCC, remaining members of the Commission assumed that the comments were upheld, similar to when a member of the SCC raised a proposal and none of the remaining members of the Commission objected. However, eventually it became clear that none of the two cases guaranteed support of a proposal, for instance:

- During stage 1 of the WG working process, GYLA representative offered to introduce a provision in the Constitution that would guarantee highest possible standard of physical and mental health. Although none of the SCC members present at the session objected, the initiative was not included in the final draft adopted by the SCC.
- During the initial stage of the WG working process, majority of the SCC members including representatives of the parliamentary majority supported a ban on the sale of agricultural lands to aliens, as evidenced by open statements that they made during WG sessions. The draft presented at the second stage of the WG working process directly envisaged such ban but the final draft adopted by the SCC did not include a corresponding provision.
- During the WG discussions the Chairperson of the SCC supported introducing the provision about labor inspector but following consultations with the government outside the SCC he adopted a different stance about the issue. As a result, the final draft adopted by the SCC did not include a corresponding provision

In this way, it is safe to say that **the SCC Chairperson's declared will to conduct the process of revision of the Constitution from a clean slate and with maximum engagement was not implemented in practice**. Furthermore, absence of detailed decision-making regulations led to a reality where the principles for upholding or rejecting opinions voiced within the WG format remain unknown.

4.4. Destructive Aspects of the SCC Working Process

Throughout the four months of existence of the SCC, the practice that contained a range of destructive elements was revealed in addition to procedural shortcomings.

Of a particular note are **the WG discussions that went well beyond the format of a constructive dialogue and resulted in insults against concrete WG members**. In such cases, **the SCC Chairperson, who also served as the chairperson of all four working groups sometimes failed to act to eliminate dialogues that were irrelevant to the process of revision of the Constitution, and in other cases he actively engaged in such dialogues**, for instance:

- During deliberations about human rights chapter of the Constitution of Georgia, GYLA's representative criticized introduction of the provision about marriage in the Constitution. Her criticism outraged some members of the working group and they started calling GYLA's representative names while she was speaking. More specifically, a member of the working group Joni Khetsuriani called GYLA's representative "a dishonest person" because she voiced her opinion about definition of marriage. Instead of denouncing the insulting remarks, the SCC Chairperson urged GYLA's representative to finish her speech quickly.
- During a WG meeting, the SCC Chairperson accused a member of the working group Zaza Rukhadze of misquoting the Constitution of Macedonia. He demanded introduction of a prohibition to reject occupation in the Constitution.
- During a WG meeting the SCC Chairperson announced that the provision on the city of Lazika should stay in the Constitution because it will soon be granted the status of a free economic zone (FEZ). In response, a representative of

³² 12 members of the working group voted against a two-chamber parliament, five supported the proposal and the remaining three abstained - <http://www.newpress.ge/orpalatiani-parlamentis-sakitxs-sakonstitucio-komisiis-samushao-jgufma-mxari-ar-dauwira> ;

Transparency International – Georgia (TI) asked the SCC Chairperson to provide an example of a constitution that contained a provision about a city with the FEZ status. Irritated by the question, the SCC Chairperson asked the TI representative why she was smiling cynically and added that he was not going to engage with her in an argument about constitutional law.

The WG working process made it clear that some members of the SCC treated certain issues including sensitive ones with disrespect. For instance, proposal of GYLA's representative to create constitutional guarantees for meaningful gender equality was met with mockery. Human rights defending NGOs, including defenders of gender equality and rights of women, children, persons with disabilities and other minority groups issued a [joint statement](#)³³ in response to the said incident, with the primary goal of underlining the responsibility of the SCC with regard to ensuring meaningful equality for women, persons with disabilities and minority groups.

For evaluation of substantive aspect of the SCC working groups one must note discussions about existing President of Georgia, which was far from a results oriented process and primarily aimed to discredit him as a person. These discussions usually focused on two areas – one was questioning competencies of current President of Georgia, and another was underlining destructive nature of his decisions. During the WG meetings it was reported that appointment of some ambassadors was delayed, the Constitutional Court was staffed exclusively with employees of the President's Administration, the President of Georgia attempted to staff the government himself, etc. Such discussions were mostly initiated by members of the parliamentary majority and especially the Chairperson of the Constitutional Court.

4.5. Transparency of the SCC's Operation

Within the present report it is important to address transparency of the SCC's operation and its accessibility to the public at large. In this regard, we must delineate the following circumstances:

- **Selection of NGO representatives and experts for the SCC membership lacked transparency.** The SCC Statute did not envisage applicable criteria, which allowed selection of members unilaterally, without a competitive process;
- **The SCC Statute did not prescribe decision-making rules for working groups** and therefore, it remains unclear how exactly the working groups decided which proposals to support.
- Neither did the SCC Statute prescribe **the procedure for reflecting public opinions in the final draft** and it remains unclear what mechanisms the SCC had for acting on opinions that were submitted – more specifically, whether these opinions were discussed in detail and reflected in any way in the final draft.
- **The SCC Statute did not prescribe any procedure for participation of interested individuals in operation of the SCC; in particular, it did not provide any formalized procedure for attending the SCC sessions.** However, non-members had an opportunity to attend WG meetings after submitting a prior notice and receiving an access pass, provided no more than one representative of any particular organization attended the meeting. Unlike the WG meetings, individuals without the status of a member of the SCC were not allowed to attend the final session of the Commission.³⁴
- For transparency purposes the SCC Statute³⁵ required publishing of information about the SCC and the WG sessions, their daily agendas, minutes and drafts on the parliamentary website. **However, both during and after the period of its operation the SCC failed to honor its obligation to publish minutes of the WG sessions.**
- Meetings of the SCC were **closed for media and therefore, reporters were banned from attending the sessions or covering events that took place during these sessions.** In a number of cases only the first few minutes of individual sessions were open, usually when the SCC Chairperson was delivering remarks.

In view of the above-enumerated arguments, overall it is safe to say that despite attempts the SCC did not operate based on the principles of maximum transparency and inclusiveness, which undermined not only the widest possible consensus on the draft revised Constitution but also encouraged negative processes like insulating SCC members during closed meetings, unhealthy discussions about the President of Georgia, lack of clarity in the decision-making process, etc.

Additionally, in light of the closed process public could only be informed mostly by media statements of SCC members. These statements reflected different views of different actors, **which further complicated access of the public at large to the real process within the SCC**, as confirmed by the statement made by the Chairperson himself: *“generally, I would like to say [that]*

³³<https://gyla.ge/ge/post/arasamtavrobo-organizaciebi-sakonstitucio-komisias-mimartaven#sthash.lgsBdT4e.s7jytDB4.dpbs> ;

³⁴Opinion of EMC on the draft revised Constitution, p.3,

https://www.scribd.com/document/347164319/%E1%83%A1%E1%83%90%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%9D%E1%83%A1-%E1%83%A8%E1%83%94%E1%83%A4%E1%83%90%E1%83%A1%E1%83%94%E1%83%91%E1%83%90#fullscreen&from_embed ;

³⁵ The Statute of the State Constitutional Commission, para.4 of Article 9 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_

often information released outside of the Commission is absolutely different [than what it really is]. The truth is lost in five meters. Members of the Commission leave these doors and provide media with comments that are absolutely far from the reality that we have at the Commission session. Like for instance, a few days ago absolutely inaccurate information was released about discussions that took place in a working group meeting. Therefore, I would like to ask each and every member of the Commission once more to deliver the information that exists here as accurately as possible, especially considering that media then interprets [the information] in their own way.”³⁶

4.6. Final Session of the SCC

The Final Session³⁷ of the SCC was held on April 22, 2017.³⁸

Immediately after the session began, Teimuraz Tughushi, representative of the Constitutional Court explained that expressing the court’s view about constitutional norms in advance was inexpedient and refused to participate in voting. The same statement was made by General Auditor Lasha Tordia.

This was followed by the voting procedure envisaged by the regulations. Unlike the SCC working groups, the SCC Statute prescribed the quorum requirements and number of votes that were needed to make decisions of the SCC charter valid. In particular, **proceedings of the SCC session were valid if more than a half of all members of the SCC were present, while the decision on the approval of the final draft of the revised Constitution was valid if it was made by majority of all members of the SCC.**³⁹

In voting process held in parallel with the SCC session, individual chapters of the revised Constitution as well as proposed alternatives were put to a vote.

A total of 44 alternatives were proposed during the final session, 7 of these alternatives were supported.⁴⁰

³⁶ <http://constitution.parliament.ge/news-02/03>;

³⁷ Based on the public information provided by the Parliament of Georgia (letter no.7376/2-4 of the Parliament of Georgia, dated 31 May 2017), the SCC meeting agenda was as follows:

- Test vote on the draft revised Constitution by chapters, according to the following principles:
 - 1st test vote – Preamble, Chapter 1 (General Provisions) and Chapter 11 (Transitional Provisions);
 - 2nd test vote – Chapter 2 (Fundamental Human Rights), not including Article 30 (right to marriage)
 - 3rd test vote – Article 30 (right to marriage)
 - 4th test vote – Chapter 3 (the Parliament of Georgia), not including Article 37 (Parliamentary Elections)
 - 5th test vote – Article 37 (Parliamentary Elections)
 - 6th test vote – Chapter 4 (the President of Georgia), not including Article 50 (Presidential Elections)
 - 7th test vote – Article 50 (Presidential Elections)
 - 8th test vote – Chapter 5 (the Government of Georgia)
 - 9th test vote – Chapter 6 (the Judiciary and the Prosecution)
 - 10th test vote – Chapter 7 (Public Financing and Control)
 - 11th test vote – Chapter 8 (National Defense and Security)
 - 12th test vote – Chapter 9 (Local Self-Government)
 - 13th test vote – Chapter 10 (Revision of the Constitution)
 - 14th test vote – the Constitutional Law on Ajara Autonomous Republic.
- Alternative proposals put to a vote
- General voting

³⁸ <http://constitution.parliament.ge/news-24/04> ; the session was attended by the following individuals: Irakli Kobakhidze, Tamar Chugoshvili, Davit Asatiani, Eka Beselia, Rati Bregadze, Davit Gabaidze, Zaza Gabunia, Gia Gvazava, Nino Gvenetadze, Eka Gigauri, Vasil Gonashvili, Nino Gogvadze, Giorgi Gugava, Avtandil Demetrashvili, Giorgi Volski, Vano Zardiashvili, Salome Zurabishvili, Shalva Tadumadze, Archil Talakvadze, Lasha Tordia, Giorgi Kakhiani, Sophio Kiladze, Zviad Kordzadze, Grigol Liluashvili, Davit Matikashvili, Mamuka Mdinardze, Vakhushiti Menabde, Salvan Mirozev, Enzel Mkoyan, Ilia Nakashidze, Ucha Nanuashvili, Koba Narchemashvili, Ana Natsvlshvili, Vakhtang Natsvlshvili, Elene Nizharadze, Simon Nozadze, Kakhaber Okriashvili, Shalva Papuashvili, Zurab Pataradze, Irakli Sesiashvili, Arnold Stepanian, Lasha Tughushi, Mindia Ugrekhelidze, Ana Pirtskhalashvili, Gedevan Popkhadze, Zakaria Kutsnashvili, Vakhtang Kolbaia, Tengiz Sharmanashvili, Vakhtang Dzabiradze, Zviad Dzidziguri, Tea Tsulukiani, Giorgi Khatidze, Joni Khetsuriani, Vakhtang Khmaladze ← public information provided by the Parliament of Georgia, letter no.7376/2-4 of the Parliament of Georgia, dated 31 May 2017

³⁹ The Statute of the State Constitutional Commission, para.3 of Article 9 -

http://www.parliament.ge/ge/ajax/downloadFile/52563/%E1%83%93%E1%83%90%E1%83%93%E1%83%92.65_

⁴⁰ The following seven alternatives were supported:

- Alternative 12⁴⁰ - keeping the term “Public Defender” instead of the term “Ombudsman” in the draft revised Constitution (approved by a 37-4 vote)
- Alternative 15⁴⁰ - an individual who has been sentenced to deprivation of liberty by court may not be elected as an MP (approved by 42 votes).
- Alternative 22⁴⁰ - the rule on selection of 300 voters for election of the President – the principle of using proportional quotas (approved by 42 votes).
- Alternative 25⁴⁰ - the Prime Minister is accountable before Parliament on the work of the government. Once a year s/he submits a report to Parliament about the status of implementation of the government program, and upon request of Parliament – a report on implementation of individual parts of the government program (approved by 38 votes).
- Alternative 34⁴⁰ - composition of the Supreme Court was defined by 28 judges instead of 25, and it was determined the Supreme Court judges would be appointed for 10 years instead of lifetime appointment (approved by 43 votes)
- Alternative 35⁴⁰ - the following clause was removed from the norm that regulates appointment of judges – “a judge shall be selected based on a substantiated decision of the High Council of Justice, by an open ballot” (approved by a 39-6 votes).
- Alternative 44 (approved by 43 votes)

NGO representatives and some experts-members of the Commission proposed several important alternatives that were turned down. These alternatives are as follows:

- Alternative 1⁴¹ - The State shall ensure health, social welfare and adequate housing for citizens (turned down, 9 voted for);
- Alternative 7⁴² – The State shall ensure effective oversight on protection of labor rights. The State shall support employment of citizens of Georgia left without a job. The eligibility conditions for entitlement to social assistance and unemployment status shall be determined by the law (turned down, 13 voted for and 9 voted against);
- Alternative 11⁴³ - The Constitution of Georgia shall not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred to herein but stem inherently from the principles of the constitution (turned down, 17 voted for and 5 voted against);
- Alternative 16⁴⁴ - lowering the electoral threshold from 5% to 3%, special rules for distribution of mandates, two options were provided (turned down – option 1 – 16 voted for, 15 voted against; option 2 – 11 voted for, 23 voted against);
- Alternative 18⁴⁵ - Decision to set up a parliamentary investigative commission shall be made by one fourth of the total number of MPs (turned down – 18 voted for).
- Alternative 21⁴⁶- Maintaining direct election for the President (turned down, 11 voted for, 32 voted against);
- Alternative 33⁴⁷- Judges of the Supreme Court shall be elected through an open vote, on the basis of a substantiated decision (turned down – 14 voted for, 1 voted against).
- Alternative 37⁴⁸ - Members of the Council of Justice shall be elected by two thirds of the total number of MPs (turned down – 10 voted for, 1 voted against);
- Alternative 38⁴⁹ - The General Prosecutor shall be nominated by the President and elected by the Parliament by the majority of the total members of the Parliament (turned down – 5 voted for);

Following discussion of the proposed alternatives a general voting on the draft revised Constitution was held where ***the draft was adopted by a vote of 43 in favor with 8 members voting against.***

The following members of the SCC voted against the draft revised Constitution – Vakhtang Natsvlishvili, Ana Natsvlishvili, Eka Gigauri, Lasha Tughushi, Mikheil Benidze, Ana Pirtskhalaishvili, Vakhtang Khmaladze, Vakhtang Menabde.

The voting concluded the work of the SCC.

4.7. Draft Revised Constitution Adopted by the SCC

For purposes of the present report, clearly it is important to evaluate the draft law on the revised Constitution adopted by the SCC, ***which was revised both for mechanical and substantive editing.***

A number of changes were made in the text of the Constitution **including some positive initiatives, more specifically:**

A provision about European and Euro-Atlantic integration was introduced – within the scope of their powers Constitutional bodies undertake to implement all necessary measures to ensure full integration of Georgia in EU and the North Atlantic Treaty Organization.

A number of rights guarantees were reinforced and improved – of a particular note is a provision about substantive equality. Under this particular provision the State undertakes to implement special measures for ensuring substantive equality between men and women and eliminating inequality.

Constitutional independence was introduced/improved for a number of institutions:

- ***The Georgian Public Broadcaster (GPB)*** – GPB’s independence from state agencies and its freedom from political and substantive commercial influences was reinforced;

⁴¹ Initiated by – V.Natsvlishvili, A.Natsvlishvili, Khmaladze, Menabde, Benidze, Pirtskhalashvili

⁴² Initiated by – V.Natsvlishvili, A.Natsvlishvili, Khmaladze, Pirtskhalashvili, Menabde, Benidze

⁴³ Initiated by – V.Natsvlishvili, An.Natsvlishvili, Khmaladze, Pirtskhalashvili, Menabde, Benidze, Gigauri, Tughushi

⁴⁴ Initiated by – V.Natsvlishvili, A.Natsvlishvili, Khmaladze, Pirtskhalashvili, Menabde, Benidze, Gigauri, Tughushi, Stepanyan

⁴⁵ Initiated by – A.Natsvlishvili, Menabde, Stepanian, Tughushi

⁴⁶ Initiated by – Gigauri, Tughushi, A.Natsvlishvili, Benidze, V.Natsvlishvili

⁴⁷ Initiated by – A.Natsvlishvili, Gigauri, Benidze, Khmaladze, Pirtskhalaishvili

⁴⁸ Initiated by – A.Natsvlishvili, Pirtskhalaishvili, Gigauri, Benidze

⁴⁹ Initiated by – Natsvlishvili, Gigauri, Menabde

- **The Prosecutor's Office** – independence of the Prosecutor's Office from the executive authority was established;
- **Judiciary** – integrity and competency was established as the criteria for judicial selection;
- **Fundamental area of operation the High Council of Justice was established** – ensuring courts' independence and effectiveness and specifying that the HCoJ rule of conduct is determined by an organic law.
- **The parliamentary oversight mechanism was relatively enhanced** – the quorum required for establishment of an investigative commission was reduced to one-third of the total number of MPs.

Alongside positive changes, the draft of the constitutional law also contained a number of negative changes, including:

Unfair regulations for election of Parliament – the proposed distribution of mandates has been assessed as unfair. According to these new regulations, all unallocated mandates will be allocated to the party that garnered the most votes. Further, a decision was made to completely abolish electoral blocs while the 5% threshold prescribed by the legislation was maintained.

Abolishment of direct election for the President – direct election of the President was abolished and replaced by a system of indirect election through an electoral college consisting of 300 voters.

Initiatives that represent a step backwards in the field of human rights – of a particular note is the new formulation of definition of the marriage. The draft defines the marriage explicitly as a union between a woman and a man for starting a family. Considering that same-sex marriage is already prohibited by the existing legislation while LGBT groups have never demanded marriage equality, the said initiative was assessed as purely populist action and an attempt to score political points by artificially creating a sense of urgency around the issue.

Creating heightened risks to judicial independence:

- **Changes in the composition of the Supreme Court** – According to the draft, Supreme Court judges are elected by the Parliament upon submission of the High Council of Justice and not by the President as in the current legislation. Overall in view of the criticism towards the HCoJ regarding appointment of judges in the court of first instance and the court of second instance, the initiative was negatively assessed.
- **Probationary periods** – the draft preserves probationary periods for judges, which was criticized by national as well as international experts as a significant risk to individual judges as well as judiciary independence in general.

Overall, even though representatives of parliamentary/non-parliamentary opposition resigned from membership and NGO representatives and some experts voted against the final draft, it was considered that the proposed constitutional amendments introduced positive improvements in a number of areas. As to issues that proved to be especially controversial, including election of the President and the electoral system, it seemed that obtaining additional consensus was a possibility, which prompted NGO representatives and opposition parties to actively participate in subsequent committee hearings.

4.8. The dynamics of consideration of GYLA's opinions in the draft revised constitution adopted by the SCC

As stated earlier, GYLA was a [member](#) of the SCC alongside other NGOs. Officially the organization was involved in the operation of two working groups⁵⁰ but it also actively participated in meetings of other working groups both by submitting its opinion and with direct involvement.

On January 17, 2017, GYLA submitted [its opinions](#) to the SCC **concerning important issues pertinent to Georgia's Euro-Atlantic path, human rights, the electoral system, justice, election of the President and independence of the prosecutor's office.**

The draft law adopted by the SCC following the deliberations **reflects some opinions submitted by GYLA, including introducing the provision on Georgia's path towards Euro-Atlantic integration, widening the list of grounds for discrimination, ensuring substantive equality, providing explicit definition of procedural safeguards, establishing high standard for accessing public information, ensuring independence of the prosecutor's office, defining judicial selection criteria, determining primary purpose of the High Council of Justice, abolishing majoritarian electoral system.**

However, despite GYLA's numerous efforts **the draft revised Constitution adopted by the SCC overlooks some important issues**, including *the recommendations to create legal guarantees for effective protection of labor rights, removing definition of marriage, establishing guarantees for realization of economic and social rights, abolishing the three-year probationary periods for judges, keeping direct election for the President, keeping the electoral blocs, introducing the provision that allows for a fair distribution of unallocated mandates.*

GYLA supported a number of other initiatives raised by other members of the SCC within the WGs, including: *creating guarantees for protection of disability rights, ensuring access to information subject to public interest, recognizing the right to*

⁵⁰ The two working groups were – 1) The Working group on the issues of Fundamental Human Rights, Judiciary, Preamble and the General and transitional provisions; 2) The Working group on the Issues of the President, the Government, and the Defense;

Internet access, establishing guarantees for independence of the GPB, restricting felony disfranchisement to serious class of crimes committed with prior intent.

Naturally, **there were some issues raised in the process of working on the text of the Constitution, which GYLA opposed to substantially**. These issues include: participation of the HCoJ in judicial appointments, election of the HCoJ members by simple majority, placing limitations on powers of the Constitutional Court with respect to declaring unconstitutional legal norms that regulate elections.

Overall, despite negative aspects in the process of revision of the Constitution, **GYLA remained fully involved in deliberations on constitutional amendments**. More specifically, it was **actively participating in discussions during the first committee hearing where it raised all recommendations that were overlooked by the SCC**.

5. THE NATIONWIDE PUBLIC DISCUSSIONS OF THE DRAFT REVISED CONSTITUTION

5.1. General Information

After the SCC concluded its work, on May 3, 2017, the Parliament of Georgia made a decision to promulgate the draft law and create the Organizational Committee⁵¹ for the nationwide public discussions of the draft.

Pursuant to the Rules of Procedure of the Parliament of Georgia⁵², the Organizational Committee (OC) was provided **with one-month period** for conducting the public discussions.

The nationwide public discussions on the Draft Revised Constitution comprised of **two stages and a total of 18 regional public discussions**. Stage 1 covered Kutaisi,⁵³ Ambrolauri,⁵⁴ Chokhatauri,⁵⁵ Batumi,⁵⁶ Zugdidi,⁵⁷ Akhaltsikhe,⁵⁸ Gori⁵⁹, Telavi,⁶⁰ Mtskheta,⁶¹ Rustavi,⁶² and stage 2 covered Samtredia,⁶³ Sighnaghi,⁶⁴ Khulo, Shuakhevi, Keda,⁶⁵ Kaspi,⁶⁶ Ozurgeti,⁶⁷ Kazbegi,⁶⁸ Mestia,⁶⁹ Martvili,⁷⁰ Zestaponi and Terjola.⁷¹

Public discussions within stage 1 in Tbilisi were disrupted⁷² as a result of a severe protest of some participants. They chanted demanding establishment of effective labor inspection and a ban on the sale of agricultural lands to aliens.⁷³

Within stage 2, a total of 8 public discussions were organized in the following districts of Tbilisi - Saburtalo,⁷⁴ Krtsanisi,⁷⁵ Gldani,⁷⁶ Nadzaladevi,⁷⁷ Didube,⁷⁸ Mtatsminda,⁷⁹ Isani-Samgori,⁸⁰ Chughureti,⁸¹ Vake.⁸²

⁵¹ The following individuals were members of the Organizational Committee for the nationwide public discussions: Irakli Kobakhidze (Chairperson of the Parliament of Georgia), Tamar Chugoshvili (First Deputy Chairperson of the Parliament of Georgia), Irma Inashvili (Deputy Chairperson of the Parliament of Georgia), Sergi Kapanadze (Deputy Chairperson of the Parliament of Georgia), Zurab Chiaberashvili (MP), Vasil Gonashvili (expert), Tengiz Sharmanashvili (expert, assistant to the Chairperson of the Parliament of Georgia), Eka Gigauri (Transparency International – Georgia Executive Director), Tornike Cheishvili (specialist, office of the Chairperson of the Parliament of Georgia, Secretary of the Commission).

⁵² Para.5 of Article 176 of the Rules of Procedure of the Parliament of Georgia

⁵³ <http://constitution.parliament.ge/05-1/05/>;

⁵⁴ <http://constitution.parliament.ge/news-6-01/05/>;

⁵⁵ <http://constitution.parliament.ge/news-07/05.17/>;

⁵⁶ [http://constitution.parliament.ge/axali-ambebi/apage-6/](http://constitution.parliament.ge/axali-ambebi/apage-6;);

⁵⁷ <http://constitution.parliament.ge/news-09-1/05/>;

⁵⁸ <http://constitution.parliament.ge/news-10-01/05/>;

⁵⁹ <http://constitution.parliament.ge/news-11-1/05/>;

⁶⁰ <http://constitution.parliament.ge/news-12-1/05/>;

⁶¹ <http://constitution.parliament.ge/news-13-1/05/>;

⁶² <http://constitution.parliament.ge/14-1/05/>;

⁶³ <http://constitution.parliament.ge/19-1/05/>;

⁶⁴ <http://constitution.parliament.ge/22-6/05/>;

⁶⁵ <http://constitution.parliament.ge/22-5/05/>;

⁶⁶ <http://constitution.parliament.ge/24-2/05/>;

⁶⁷ <http://constitution.parliament.ge/24-1/05/>;

⁶⁸ <http://constitution.parliament.ge/25-2/05/>;

⁶⁹ <http://constitution.parliament.ge/25-1/05/>;

⁷⁰ <http://constitution.parliament.ge/28-1/05/>;

⁷¹ <http://constitution.parliament.ge/18-1/05/>;

⁷² <http://netgazeti.ge/news/194070/>; <http://old.1tv.ge/ge/news/view/161006.html>;

⁷³ Former members of the government – Sandro Bregadze and Lado Sadghobelashvili were active advocates of the issue.

⁷⁴ <http://constitution.parliament.ge/29-1/05/>;

⁷⁵ <http://constitution.parliament.ge/29-1/05/>;

⁷⁶ <http://constitution.parliament.ge/29-4/05/>;

⁷⁷ <http://www.interpressnews.ge/ge/politika/435174-nadzaladevis-raionshi-konstituciuri-kanonis-proeqtis-sayovelthao-sakhalkho-gankhilva-mimdinareobs.html?ar=A>;

⁷⁸ <http://constitution.parliament.ge/30-1/05/>;

⁷⁹ <http://constitution.parliament.ge/30-2/05/>;

⁸⁰ <http://constitution.parliament.ge/30-3/05/>;

⁸¹ <http://constitution.parliament.ge/30-4/05/>;

⁸² <http://constitution.parliament.ge/30-5/05/>;

On June 5, 2017, the Organizational Committee unanimously approved the summary protocol⁸³ providing a detailed account of activities of the Committee and comments/suggestions made during the public discussions.

5.2. Evaluation of Nationwide Public Discussions on the Draft Revised Constitution

The nationwide public discussions were monitored by GYLA by participating in meetings that were held within the process. The monitoring entailed observation of discussions and direct engagement by asking questions.

The monitoring has found that ***the poor practice of holding public discussions purely as a formality and without the aim of hearing public opinion, established over the past few years, still persisted.***

Based on problems identified in the nationwide public discussions, it is safe to say that ***the discussions were planned and carried out in a way that didn't properly allow free and active participation of the public at large in the process. On the other hand, the discussions didn't give an impression that the authorities were genuinely interested to hear opinions of citizens about proposed changes, especially opinions that differed from the government's positions. This has essentially undermined the role and importance of public discussions in revision of the Constitution.***

We identified the following important shortcomings in the nationwide public discussions:

Gaps in the legal base – the applicable legislation is incomplete. Other than the one-month period for conducting nationwide public discussions, the Rules of Procedure of the Parliament does not provide any applicable detailed regulations. Therefore, important procedural stages like the OC composition, preparing/publishing the schedule, informing interested individuals in a timely manner, the format of discussions, reconciling/sharing opinions, etc. are regulated based on practice. The experience suggests that absence of a detailed legal base creates wide room for administering the process in a way that serves interests of the ruling political force.

Failure to publish the schedule of public discussions on time – within stage 1 of public discussions, members of the Constitutional Commission and public at large did not receive the schedule ahead of the discussions, within a reasonable period of time. As a result, interested individuals were not informed in a timely manner and were prevented from engaging in the process to the full extent. In addition, information about time and venue of the meetings within both stage 1 and stage 2 of the nationwide public discussions was somewhat ambiguous. For instance, the final venue for discussions in Tbilisi was changed the day before for no apparent reason and the discussions in Khulo were postponed at the last minute also for no apparent reason.

Obstacles to attending the nationwide public discussions – in some cases we found obstacles to accessing the nationwide public discussions. In particular, during a meeting in Zugdidi representative of GYLA tried but could not access the venue on time, while the State Protection Service was letting a certain group of individuals in, based on instructions of high-level municipal officials. Our representative was eventually able to get inside the building but the hall was already full. Some people were not able to attend the public discussions at all.

Here we must also note that although there were options of buildings with much bigger capacity in Zugdidi, they selected a smaller venue, which was part of the reason why the said obstacles were created.

Mobilization of political party activists and public sector employees – for virtually every discussion representatives of the ruling political party as well as opposition parties and public sector employees were mobilized, mostly employees of local self-government, public entities established under local self-governments, public schools and kindergartens. In a number of cases organized meetings were also attended by representatives of the administration of the state's representative – Governor, employees of a majoritarian MP's bureau and representatives of Gamgeoba in administrative units. [The chair of the parliament himself confirmed this.](#)

Attempt to steer the nationwide public discussions in a desired direction – during all public discussions we found what was possibly a deliberate practice of mobilizing certain groups of individuals near microphones available at the venue. We have also found that these people had come to the public discussions with questions prepared in advance. Such practice hindered participation of other interested individuals in the discussions and allowed steering of the public discussions in the direction that benefitted the ruling party.

Immaterial part of the public discussions – we found instances where during their remarks OC members spent too much time on making political statements. We also found that some citizens expressed their views about issues that had nothing to do with the draft of the constitutional amendments. This diverted the attention from the focus of the public discussions undermining the quality of the public discussions.

⁸³ <http://constitution.parliament.ge/5-6/06;>

6. DISCUSSIONS ON THE DRAFT REVISED CONSTITUTION IN PARLIAMENT

Following the universal public discussions, the Parliament of Georgia began reviewing the draft. Under the May 4, 2017 decision of the bureau of the Parliament of Georgia⁸⁴, the following five committees were put in charge of the discussions – the **legal affairs committee (the lead committee), the human rights and civil integration committee, the defense and security committee, the regional policy and self-government committee and the financial/budgetary committee**. According to the announcement of the Chairperson of the Parliament, **the draft would go through two readings before it was adopted during the summer session** in June 2017.⁸⁵

6.1. Disadvantages of Rushing the Parliament's Consideration of the Draft Revised Constitution

The decision⁸⁶ to adopt the draft during the summer session after the draft had gone through two parliamentary readings **was criticized by NGOs**. In their official statements⁸⁷ NGOs underlined **the importance of the Parliament's consideration of the draft and demanded that the process not be conducted within an unreasonably short timeframe**.

NGOs highlighted that **there was no urgent need to conduct the parliamentary consideration of the draft in an expedited manner** by citing relevant provision of the Constitution that did not obligate the Parliament to commence parliamentary discussions of the draft immediately after the one-month period for the nationwide public discussions were finished.

NGOs also relied on the following circumstances to substantiate the need of additional time and discussions:

1. The first two stages of the revision – **the work of the SCC** and the nationwide public **discussions** – were conducted **forcibly and with certain irregularities**. **The period of four months** that the SCC was provided for preparing the constitutional amendments was short, **ruling out the possibility of conducting in-depth discussions on a range of issues within the SCC**.
2. Despite the discussions that had been organized, the draft revised Constitution introduced **issues with no consensus whatsoever among relevant actors – one such issue was the electoral system**. In addition, **even though public opinion was strongly negative about the move from direct to indirect election of the President**, the amendment remained on the table, and at that stage it was impossible to provide strong reasoning for postponement of replacement of direct election of the President with indirect one to 2023 – the compromise announced by the ruling party;
3. The draft envisaged issues **that have proven to be quite controversial**, including imposing a new type of common state tax and increasing the upper limit of the current rate through referendum, sale of agricultural land to aliens, etc. The deep polarization that exists in the society on the account of these issues was revealed by the WG discussions as well as the nationwide public discussions. **Therefore, the constitutional reform should have sought to obtain a wide consensus but instead the draft was adopted in a forcible manner**.
4. In the beginning of the process the authorities announced that no amendments would be made in the Constitution unless they were in compliance with findings of the Venice Commission. **The Venice Commission was planning to publish its opinion on June 16, meaning that holding two readings in June would have unjustifiably limited the possibility to appreciate and fully reflect the Opinion of the Venice Commission in the draft revised Constitution**.

Unfortunately, notwithstanding the above arguments the draft went through the first and second readings during the summer session and was adopted in June 2017.

6.2. Adoption of the Draft Revised Constitution after the first and second Readings

Under the decision of the Chairperson of the Parliament of Georgia, **the first reading for the draft revised Constitution was scheduled after the Venice Commission meeting on June 16**.⁸⁸ However, the committee discussions were held in the week of June 5,⁸⁹ so public stakeholders were not provided with an opportunity to submit their opinions to the parliamentary committees after familiarizing themselves to the findings of the Venice Commission.

Representatives of the parliamentary majority and minority, NGOs and other public stakeholders actively participated in the first reading of the draft **because it seemed that there was still a chance to obtain a consensus on a range of issues**.

⁸⁴ <http://info.parliament.ge/file/1/BillPackageContent/1364?>;

⁸⁵ <http://1tv.ge/ge/news/view/163656.html>;

⁸⁶ <http://1tv.ge/ge/news/view/163656.html>;

⁸⁷ <https://gyla.ge/ge/post/arasamtavrobo-organizaciebi-parlaments-moutsodeben-konstitucuis-proeqtis-gankhilva-daitsyos-sashemodgomosesiaze#sthash.QaT6ftul.CfjrAfRU.dpbs>;

⁸⁸ <http://constitution.parliament.ge/7-2/06>;

⁸⁹ <http://constitution.parliament.ge/8-4/06>, <http://constitution.parliament.ge/9-4/06>,

During the committee discussions GYLA representatives raised all those proposals that were turned down within the SCC, including – creating legal guarantees for effective labor inspection, removing definition of the marriage, keeping the electoral blocs, introducing the provision that allows for a fair distribution of unallocated mandates and more.

Several issues were raised during the committee discussions, which according to the Chairperson of the Parliament of Georgia⁹⁰ evoked intense emotions during the nationwide public discussions of the draft revised Constitution. These issues included ban on the sale of agricultural lands to aliens and introducing the marriage definition in the Constitution. It was also stated that provisions on the labor inspection and sale of land to aliens would be formulated but on these issues. However, during the committee hearing for the first reading of the draft, a single position about these issues did not exist.

During the committee hearings it became known that **several members of the parliamentary majority already had access to the initial opinions of the Venice Commission**, which clearly put the parliamentary opposition as well as public stakeholders at a disadvantage. The Chairperson of the Parliament explained⁹¹ that the Venice Commission had provided an early draft with the aim of exchanging opinions. He also **stated that⁹² the initial opinion was confidential upon the Venice Commission's request. Later part of the initial opinion was leaked by media**, which prompted mutual accusations between the President and the Chairperson of the Parliament. The latter announced the following:⁹³ **“in reality, only two subjects had the document: it was the leadership of the Parliament and the President of Georgia. Naturally, we have legitimate suspicion about how the information was leaked by Tabula and naturally, the legitimate suspicion has its basis.”** The President's Parliamentary Secretary Ana Dolidze said⁹⁴ **that the President had not received the initial opinion of the Venice Commission and accusing the President of leaking the document was an attempt to redirect attention from contents of the report.**

This eventually led to a reality in which **the preliminary opinion of the Venice Commission was available for public stakeholders before the final opinion was published.** As part of the initial opinion public, the Chairperson of the Parliament explained that the draft was in full compliance with requirements of the Opinion of the Venice Commission. According to him, the only anticipated revision concerned the rule on allocation of undistributed mandates – **setting up a strict ceiling to the number of undistributed that are to be allocated, in order to ensure the principle of electoral equality.**⁹⁵

The committee hearings in the first reading **ended with support of the draft revised Constitution by all five committees.**⁹⁶ Consideration of the draft at a plenary session of the Parliament was scheduled in the week of June 19⁹⁷, during an extraordinary meeting⁹⁸.

Everything took an opposite turn when prior to the plenary session it became known that abolition of the majoritarian system and moving to the proportional one could be postponed to 2024 instead of 2020.⁹⁹ This was justified with two reasons¹⁰⁰: 1. **The fact that the parliamentary majority could not mobilize the number of votes required for adoption of the draft law, because there were opponents of the proportional electoral system within the ruling party,** and 2. **The parliamentary opposition refused to support the draft revised Constitution,** due to their demands like direct election of the president, revision of regulations on sale of land and on tax issues. According to the Chairperson of the Parliament¹⁰¹, **there were two possible solutions – turning down the amendments or introducing a two-stage approach to moving to the proportional system,** in which the mixed system would be kept for the following parliamentary elections and the move to the proportional electoral system would be postponed to 2024. Which of the two options was more preferred would then be revealed during the parliamentary discussions.¹⁰²

Possible postponement of the move to the proportional electoral system evoked different reactions:

First of all, **the President of Georgia refused to call an extraordinary session for debating the constitutional amendments.**¹⁰³ Giorgi Margvelashvili explained that the decision substantially changed the draft examined by the public and the Venice Commission and he advised against adopting such draft. The President of Georgia offered the Parliament to continue working on the draft in view of the Opinion of the Venice Commission – **“My denial has no political motive. I urge the Parliament against the extremely hasty adoption of amendments without agreement [with other stakeholders], they need to go back to the**

⁹⁰ <http://constitution.parliament.ge/9-2/06>;

⁹¹ <http://constitution.parliament.ge/9-5/06>;

⁹² <http://constitution.parliament.ge/9-1/06>

⁹³ <http://constitution.parliament.ge/9-1/06>;

⁹⁴ <https://imedineews.ge/ge/saqartvelo/15623/ana-dolidze-prezidents-venetsiis-komisiis-tsinastari-daskvna-ar-miugia>; <http://constitution.parliament.ge/9-3/06>;

⁹⁵ <http://constitution.parliament.ge/16-4/06>;

⁹⁶ <http://info.parliament.ge/file/1/BillPackageContent/1806?>; <http://info.parliament.ge/file/1/BillPackageContent/1804?>;

⁹⁷ <http://www.ipress.ge/new/74243-sakonstitucio-cvlilebebis-proeqtis-saparlamento-formatshi-gankhilva-itsyeba>;

⁹⁸ <http://imedineews.ge/ge/saqartvelo/16741/irakli-kobakhidzem-prezidents-21-ivnisidan-riggareshes-sesiis-danishvnis-shesakheb-mimarta>;

⁹⁹ <http://constitution.parliament.ge/19-5/06>;

¹⁰⁰ <http://www.interpressnews.ge/ge/politika/441665-irakli-kobakhidze-chven-ori-gamosavali-gvqonda-uaris-thqma-cvlilebebe-an-proporciuli-sistemis-shemoghebis-oretapiani-midgomis-shethavazeba.html?ar=A>;

¹⁰¹ <http://www.interpressnews.ge/ge/politika/441665-irakli-kobakhidze-chven-ori-gamosavali-gvqonda-uaris-thqma-cvlilebebe-an-proporciuli-sistemis-shemoghebis-oretapiani-midgomis-shethavazeba.html?ar=A>;

¹⁰² <http://constitution.parliament.ge/19-5/06>;

¹⁰³ <https://imedineews.ge/ge/saqartvelo/16854/prezidentma-parlaments-riggareshes-sesiis-motsvevaze-uari-utkhra>;

comments and recommendations offered by the Venice Commission and draft a better version of the Constitution in such spirit. We should create a document based on a wide agreement, based on a consensus and founded on the fundamental principles offered by the Venice Commission. Let us not create obstacles to the democratic development of Georgia. I hope that under the difficult circumstances the esteemed members of the Parliament, the parliamentary majority will not resort to an extremely hasty regime and will continue the discussions about the Constitution, around the principles offered by me” – announced Giorgi Margvelashvili.¹⁰⁴

The Parliamentary minority¹⁰⁵ boycotted the process and refused to participate in the parliamentary discussions about the constitutional amendments¹⁰⁶, primarily on the account of postponement of the move to the proportional electoral system,¹⁰⁷ expedited discussions of the constitutional amendments¹⁰⁸ and the fact that the authorities were acting in accordance to their own agenda.¹⁰⁹

NGO representatives also refused to participate in the discussions, stating that¹¹⁰: “the ruling party has decided to ignore not only the feedback of the Venice Commission but also the entire process of the SCC operation, views of the civil society and all political parties, they went against all existing expectations and contrary to the initial draft they postponed the changes in the electoral system to 2024.”¹¹¹ **NGOs also sent an open letter to leaders of the European Union, the European Parliament, the Council of Europe, the Venice Commission and the U.S. Department of State.**¹¹² In their letter, the undersigned organizations stated that **the harmful actions of the ruling party constituted a dangerous attempt to consolidate the political power and it adversely affected the quality of democracy in the country.** President of the Venice Commission Gianni Buquicchio made the following statement in reaction to postponement of the move to the proportional electoral system and subsequent developments: **“I am disappointed and sad because it was a promising process and all political forces and the society agreed to move forward with our humble assistance and advice. Even though we did a really good thing, now everything is called into question. Regardless, I hope that all political forces will try to achieve a good compromise”¹¹³** – said Gianni Buquicchio.

As a result, despite the dissent and difference of opinion, the draft revised Constitution was still adopted. The first reading was held on June 22¹¹⁴ and the second on June 23.¹¹⁵ **Review of the draft by individual articles was conducted in an unprecedentedly short period of time, at the committee¹¹⁶ and the plenary sessions¹¹⁷ – in a single day.** Eventually **the text was adopted in complete disregard of different opinions – the session was not attended by any of the opposition MPs.** Under the Parliamentary Rules of Procedure, the third and the final reading,¹¹⁸ was scheduled to be held during the following session in fall.

6.3. Developments Following the Adoption of the Draft Revised Constitution at the Second Reading

The President of the Venice Commission tried to **mitigate the stalemate that followed adoption of the draft revised Constitution at the second reading.** To improve the situation he held meetings with the Prime Minister of Georgia¹¹⁹, the President of Georgia¹²⁰, opposition parties¹²¹ and NGOs¹²². According to the President of the Venice Commission the meetings were organized with the aim of holding a dialogue and finding the best way out from the situation.¹²³

Both the Prime Minister¹²⁴ and the President of Georgia¹²⁵ issued statements in reaction to the above, with the spirit of continuing the dialogue and obtaining wide consensus. The parliamentary majority criticized the President’s attempt facilitate

¹⁰⁴ <https://imedinews.ge/ge/saqartvelo/16854/prezidentma-parlaments-riggareshe-sesiis-motsvevaze-uari-utkhra>;

¹⁰⁵ European Georgia – Movement for Freedom, the United National Movement, the Alliance of Patriots of Georgia

¹⁰⁶ <http://netgazeti.ge/news/202962/>; <https://imedinews.ge/ge/saqartvelo/16940/patriotta-aliansi-riggareshe-sesias-boikots-utskhadabs>;

<https://imedinews.ge/ge/saqartvelo/17003/riggareshe-sesiaz-konstitutsiis-gankhilvas-boikots-natsionalebits-utskhadaben>;

¹⁰⁷ <https://imedinews.ge/ge/saqartvelo/16940/patriotta-aliansi-riggareshe-sesias-boikots-utskhadabs>;

¹⁰⁸ <https://imedinews.ge/ge/saqartvelo/17003/riggareshe-sesiaz-konstitutsiis-gankhilvas-boikots-natsionalebits-utskhadaben>;

¹⁰⁹ <http://netgazeti.ge/news/202962/>;

¹¹⁰ <http://1tv.ge/ge/news/view/166374.html>;

¹¹¹ <https://gyla.ge/ge/post/arasamtavrobo-organizaciebi-saqartvelos-demokratiuli-ganvitareba-saftrkhesia#sthash.xioRKTvn.dpbs>;

¹¹² <https://www.radiotavisupleba.ge/a/28581421.html>; <https://gyla.ge/ge/post/arasamtavrobo-organizaciebi-saqartvelos-demokratiuli-ganvitareba-saftrkhesia#sthash.xioRKTvn.dpbs>;

¹¹³ <https://imedinews.ge/ge/saqartvelo/17799/jani-bukikio-imedgatsruebuli-var>;

¹¹⁴ <http://constitution.parliament.ge/22-1/06>;

¹¹⁵ <http://constitution.parliament.ge/23-5/06>;

¹¹⁶ <http://constitution.parliament.ge/23-1/06>;

¹¹⁷ <http://constitution.parliament.ge/23-4/06>;

¹¹⁸ Para.8 of Article 176 of the Rule of Procedure of the Parliament of Georgia

¹¹⁹ <http://netgazeti.ge/news/204546/> ;

¹²⁰ <http://netgazeti.ge/news/204419/> ;

¹²¹ <http://netgazeti.ge/news/204439/>;

¹²² <http://netgazeti.ge/news/204535/>;

¹²³ <http://netgazeti.ge/news/204439/>;

¹²⁴ <http://netgazeti.ge/news/205609/>;

¹²⁵ <http://www.interpressnews.ge/ge/politika/442003-prezidentis-administracia-sakonstitucio-proeqtthan-dakavshirebith-konsensusis-misaghtsevad-mkharebs-orshabaths-shekhdvedras-sthavazobs.html?ar=A>;

an agreement, stating that *the dialogue and agreement on Constitutional changes was the prerogative of political forces and the President had nothing to do with the process.*¹²⁶

Another issue that was debated during the same period was *legal means of reflecting changes in the draft revised Constitution in an event the compromise was reached.* According to the statements that were made, sending the draft back from the third reading to the second reading was not an option.¹²⁷ Instead, the parliamentary majority was considering the following two possibilities: **1. Initiating new constitutional amendments or 2. Sharing the President's motivated objections.**¹²⁸ Opposition parties objected, stating that the negotiations were held only for the sake of formality since none of the options for reflecting the changes in the draft constitutional law were meaningful.¹²⁹

Another important factor was the format of the negotiations. Media reported that subsequent negotiations would possibly be conducted in the secretariat of the Venice Commission in Strasbourg.¹³⁰

Prior to departure for Strasbourg it became known that in an event of reaching an agreement with the opposition, **the 2020 parliamentary elections would possibly be held without the electoral threshold.**¹³¹ **They were also planning to allow forming of party blocs for the following parliamentary elections.**¹³² Opposition parties stated that the said offer was a political speculation and an attempt to create a discord within the opposition, so they appealed to the Venice Commission. **"Moving from the mixed system to a fair proportional system (including fair distribution of unallocated mandates) in 2020 was and remains our principled position. Further, the entire opposition agrees that the move to the proportional electoral system should not be postponed to 2024! The fact that the authorities are giving ultimatums before the consultations even begin leads us to believe that the Georgian Dream has decided to disrupt the dialogue before it starts, which is completely unacceptable for the opposition because we strive for constitutional amendments that improve the electoral environment and are based on a consensus"**¹³³ – it was stated in the appeal. In the end, the opposition parties requested that the Venice Commission express once more its principled position on the importance of consensus.

Following the appeal, on August 18, **a meeting was held between the opposition and the ruling political force on changes in the Constitution.** After the meeting it became evident that **no tangible results had been reached in the first round of negotiations. The parliamentary majority requested that the opposition submit their proposals in writing,**¹³⁴ **while the opposition was concerned because they were not convinced the ruling political force was ready to continue negotiations on the timeframe for moving to the proportional electoral system.**¹³⁵

Following the meeting, **opposition parties sent their written opinion about the constitutional amendments to the ruling party.** Two versions of the letter were released, signed by two different groups of opposition comprising of 11 parties.¹³⁶

The first letter¹³⁷ underlined that the primary objective of the constitutional reform was to introduce fully functioning parliamentary governance in the country and to facilitate the move to a proportional electoral system ahead of the 2020 parliamentary elections. In light of this, before continuing the dialogue any further, the following conditions should have been met: **1. Restore the political state in which the 2020 parliamentary elections were to be conducted with a proportional electoral system, while 2. unallocated mandates were to be distributed proportionally among political parties that gained seats in Parliament. As to the rule on election of the President, opposition parties recommended holding a plebiscite to find out what public thought.**¹³⁸

¹²⁶ <http://www.interpressnews.ge/ge/politika/442036-mamuka-mdinaradze-sakonstitucio-cvlilebebe-dialogi-da-shethankhmeba-politikur-dzalebs-shoris-unda-shedges-da-aq-prezidenti-arafershuashia.html?ar=A>;

¹²⁷ <http://www.interpressnews.ge/ge/politika/442531-irakli-kobakhidze-mzad-varth-opoziciasthan-konsultaciabi-suftha-furclidan-davitsyoth.html?ar=A>;

¹²⁸ <http://www.interpressnews.ge/ge/politika/442653-mmarthvelma-gundma-sashemodgomo-sesiazhe-shesadzloa-kidev-akhali-sakonstitucio-cvlilebebis-incipreba-ganakhorcielos.html?ar=A>;

¹²⁹ <http://www.interpressnews.ge/ge/politika/442508-thina-bokuchava-khelisuflebis-mier-molaparakerebisthis-vithom-gamotsvdili-kheli-aris-farsi-da-saerthashoriso-sazogadoebis-motyuebis-mcdeloba.html?ar=A>;

¹³⁰ <http://www.interpressnews.ge/ge/politika/442374-tomas-markerti-thu-partiebi-moilaparakereben-da-gadatsyvetilebas-miigheben-sheudzliath-strasbourgshi-chamovidnen.html?ar=A>; <http://www.interpressnews.ge/ge/politika/442309-sakonstitucio-cvlilebebe-umravlesobisa-da-opoziciis-monatsileobith-gaerthianebuli-shekhvedra-mimdinare-kviras-veneciis-komisiis-samdivnoshi-gaimartheba.html?ar=A> ;

¹³¹ <http://www.interpressnews.ge/ge/politika/447430-roman-gociridze-khelisuflebas-ubariero-saarchevno-sistemith-opoziciashi-gankhethqilebis-shetanasurs.html?ar=A>;

¹³² <http://www.interpressnews.ge/ge/politika/444298-opoziciuri-partiebi-sakonstitucio-cvlilebebis-sakithkheze-veneciis-komisiis-da-evropul-struqtirebs-erthobliv-mimarthvas-ugzavnian.html?ar=A>;

¹³³ <http://www.interpressnews.ge/ge/politika/444298-opoziciuri-partiebi-sakonstitucio-cvlilebebis-sakithkheze-veneciis-komisiis-da-evropul-struqtirebs-erthobliv-mimarthvas-ugzavnian.html?ar=A>;

¹³⁴ <http://www.interpressnews.ge/ge/politika/448109-archil-thalakvadze-chven-opoziciur-partiebs-vthkhoveth-tserilobith-mogvatsodon-im-sakithkhebis-chamonathvali-romlis-gauthvalistsineblobis-shemthkhvevashi-isini-mkhars-ar-dautceren-sakonstitucio-cvlilebebs.html?ar=A>;

¹³⁵ <http://www.interpressnews.ge/ge/politika/448113-shalva-shavgulidze-samsukharod-khelisufleba-ar-iyo-mzad-pasukhi-gaeca-mthavar-kithkvaze.html?ar=A>;

¹³⁶ <http://netgazeti.ge/news/215486/>;

¹³⁷ The letter was signed by – New Georgia, European Georgia, the United National Movement, the National-Democratic Party, Free Democrats, State for the People, the Republican Party, Civil Alliance for Freedom, the Democratic Party of Georgia, the Christian-Democratic Party of Georgia and the Christian-Conservative Party of Georgia

¹³⁸ <http://www.interpressnews.ge/ge/politika/447673-opoziciuri-partiebis-natsili-sakonstitucio-cvlilebebe-mmarthvel-gundthan-shekhvedris-sakithkheze-erthobliv-ganckhadebas-avrcelebs.html?ar=A>;

Signatories of the *second letter*¹³⁹ demanded **abolition of the majoritarian system and moving to the proportional system for the following parliamentary elections, bringing the threshold down from 5% to 2%, and maintaining the possibility to form electoral blocs and direct election of the President.**¹⁴⁰

The ruling political force issued a statement in response to this. According to the statement, **opposition parties could not propose specific issues as a precondition for supporting the constitutional amendments. They chose ultimatums over negotiation, which according to the majority did not constitute an action directed towards a constructive dialogue and made it impossible to continue the process.**¹⁴¹

The President tried to find a solution to the situation and resume the negotiations by offering opposition parties to prepare a new draft of the constitutional changes.¹⁴²

The President's initiative was unequivocally criticized by the ruling party.¹⁴³ However, **the process eventually led to a five-point agreement with the opposition.**¹⁴⁴ The opposition proposed the following issues to the authorities and the Venice Commission as a result of the consensus:

- **Moving to the proportional electoral system immediately, bringing the threshold down to 3% and maintaining electoral blocs;**
- **Maintaining direct election for the President;**
- **Keeping the National Security Council (NSC) as a constitutional body. Improving Georgia's self-defense capabilities and security;**
- **Strengthening the parliamentary oversight – in particular, introducing the obligation to initiate the vote of confidence if a Cabinet reshuffle affecting one third but no fewer than 5 members of Government;**
- **Strengthening independence of the judiciary - in particular, introducing appointment of the Supreme Court members based on nominations by the President and introducing lifetime appointment of judges without any probationary periods or transitional periods.**

Attempts were made **to reach an agreement about the issues enumerated above but to no avail and the draft revised Constitution was adopted by the parliamentary majority with the third reading on September 26, 2017.**¹⁴⁵ The President of Georgia invoked his right to return the legislative initiative to Parliament with his motivated objections.¹⁴⁶ **The Presidential veto was based on the above five-point agreement but the parliamentary majority did not uphold it and put the initial version of the draft law to a vote.**

6.4. Initial Opinion of the Venice Commission

On January 20, 2017, the Venice Commission delegation led by President Gianni Buquicchio visited Tbilisi for a working visit, at the invitation of Chairperson of the Parliament of Georgia Irakli Kobakhidze.¹⁴⁷ At the end of the meeting it became known that the Venice Commission would prepare an opinion on the draft revised Constitution. The Chairperson of the Parliament made an important announcement following the meeting: **"[...] We will review very carefully all recommendations that the Venice Commission will provide on constitutional amendments. We announced that the Parliament of Georgia will not adopt any single norm if it is criticized by the Venice Commission from legal point of view. We will honor this commitments."**¹⁴⁸ This created special expectations about opinions of the Venice Commission and their reflection in draft constitutional laws.

The first opinion of the Venice Commission was published on June 19¹⁴⁹. However, as noted earlier, initial draft became available to the public stakeholders before publishing of the Opinion.

In its opinion the Venice Commission positively assessed the ongoing constitutional reform because **it completed the transition of Georgia's political system into a parliamentary system started by the 2010 constitutional reform.** It also consolidated and

¹³⁹ The letter was signed by – New Rights, New Christian-Democrats, the United-Democratic Movement, Democratic Movement – Unified Georgia, European Democrats, National Forum, Free Georgia, Freedom, Labor Party, Traditionalists' Party, Political Movement of Law Enforcement Veterans and Patriots

¹⁴⁰ <http://netgazeti.ge/news/215486/>;

¹⁴¹ <http://www.interpressnews.ge/ge/politika/449157-saparlamento-umravlesoba-opoziciisgan-ver-mivigheth-is-sakithkhebi-romeltha-gaziarebis-shemthkhvevashic-sakonstitucio-cvlilebebs-mathi-mkhardatcera-eqneboda.html?ar=A>;

¹⁴² <http://netgazeti.ge/news/219825/>;

¹⁴³ <http://netgazeti.ge/news/219825/>;

¹⁴⁴ <http://netgazeti.ge/news/221365/>;

¹⁴⁵ <https://info.parliament.ge/#law-drafting/13831>;

¹⁴⁶ <https://info.parliament.ge/#law-drafting/14575>;

¹⁴⁷ <http://constitution.parliament.ge/news-20/01>;

¹⁴⁸ <http://constitution.parliament.ge/news-20/01>;

¹⁴⁹ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)013-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)013-e);

improved the country's constitutional order based on the principles of democracy, the rule of law and the protection of fundamental rights.¹⁵⁰

In addition to positive evaluations the Opinion also contained a number of recommendations that mostly dealt with important and urgent issues including balance between the state powers and the parliamentary/presidential electoral systems.¹⁵¹

Parliamentary electoral system¹⁵²- the Venice Commission welcomed the move from a mixed system to a proportional one but it also noted that the proposed regulation and the 5% threshold rule, abolition of electoral blocs and the rule on distribution of unallocated mandates raised concerns that the principle of equality of vote would be affected and pluralism would be put at risk. The Venice Commission proposed the following 3 options:

- proportional distribution of mandates among all political parties that passed the 5% threshold;
- setting up of a ceiling to the number of undistributed votes that is to be allocated to the winning party;
- reducing the threshold to 2% or 3% and proportional allocation of undistributed mandates.

Presidential electoral system¹⁵³ - According to the Venice Commission, introduction of indirect election system for the president is in line with the European standards but it also offered two additional recommendations in view of the president's role of a neutral arbiter: improving the electoral system (proportional distribution of unallocated mandates and or reduction of the electoral threshold) and requiring a qualified majority in the first round of the election of the President by the Election Board.

State budget¹⁵⁴ - according to the Venice Commission the fact that any amendment to the State budget needs governmental approval is an excessive restriction of the Parliament's powers in budget matters. Instead the Venice Commission offered to consider a provision allowing the Parliament to make amendments to a draft State budget without the government's consent. However, a requirement of qualified majority in Parliament in order to introduce amendments to the draft State budget should also be imposed.

Judiciary¹⁵⁵ - the Venice Commission provided a recommended appointment of the judges of the Supreme Court for life. Further, the judges of the Supreme Court should be appointed by HCoJ without involvement of Parliament or nominated by the HCoJ and appointed by the President.

The Venice Commission also recommended requiring a qualified majority for the appointment of the three judges elected by Parliament, and underlined the importance of transparent election of candidates for ensuring that only qualified candidates are elected to the Constitutional Court.

The Venice Commission criticized the limitation placed on the Constitutional Court's power to declare unconstitutional legal norms that regulate elections and stated that in view of the importance of the Constitutional Court when dealing with such issues the legislator should trust the Court to play its role in a correct manner. The need to safeguard the stability of electoral law may justify certain restrictions during the pre-electoral period but no rules should be completely exempt from the control of constitutionality. The Venice Commission recommended modifying the provision to ensure that the Constitutional Court has the ability to exercise constitutional control over any legislation adopted just before 12 months prior to the election.

The Venice Commission also recommended requiring qualified majority for election of the HCoJ members.

To avoid the risk of politicization and ensuring freedom of the prosecution service the Venice Commission recommended ruling out accountability of the prosecution service to Parliament in individual cases of prosecution or non-prosecution. If the accountability leads to a dismissal of the general prosecutor, a fair hearing should have been guaranteed as an important component.

¹⁵⁰ Venice Commission Opinion on the Draft Revised Constitution, p.18, para.90,

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¹⁵¹ Venice Commission Opinion on the Draft Revised Constitution, p.6, para.21,

<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

¹⁵² Venice Commission Opinion on the Draft Revised Constitution, p.6-10, para.22-43, p.19, para.92-94,

<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

¹⁵³ Venice Commission Opinion on the Draft Revised Constitution, p.11-12, para.49-55, p.19, para.95

<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

¹⁵⁴ Venice Commission Opinion on the Draft Revised Constitution, p.10, para.44-45, p.18, para.96

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¹⁵⁵ Venice Commission Opinion on the Draft Revised Constitution, p.15-18, para.74-87, p.20, para.98

<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

The Public Defender¹⁵⁶ - the Venice Commission found that election of the Public Defender for a five-year term was in line with applicable European standards but a requirement of qualified majority for election of the Public Defender was advisable.

Human Rights¹⁵⁷ - among other issues the Opinion of the Venice Commission also addressed the Chapter on Human Rights and provided the following recommendations:

- *Definition of marriage* – marriage as a union between a man and a woman for starting a family should not exclude the recognition of the union of persons with the same sex.
- *Right to vote* – the blanket ban on the right of citizens recognized as a support recipient by a court decision and admitted to inpatient care establishment to participate in elections and referendum is in contradiction with common European and international standards.
- *Freedom of belief and conscience* – allowing restrictions of manifestations of the freedom of belief and conscience if these manifestations violate the right of others seems too narrow. The Commission recommends inclusion of other legitimate aims of restriction of the right such as public safety, protection of public order, health and morals.
- *Freedoms of assembly and association* – allowing restriction of the freedom of assembly and association when it is laid down in a legal rule undermines free realization of these rights. The Commission recommends inclusion of standard grounds of such restriction – allowing restrictions when they are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, to avoid disclosure of confidential information or to ensure judicial independence and impartiality.
- *Freedom of parties* – the prohibition of creation of political party on territorial grounds is not justified. Freedom of parties can be restricted in the case of parties that advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order.
- *Children's rights* – the Venice Commission recommended introducing a separate provision on children's rights and providing corresponding guarantees.

6.5. The Draft Revised Constitution Supported by Parliament

For purposes of this report, we think it is important to evaluate how the issues worthy of special attention throughout the entire process of the constitutional reform were reflected in the final draft revised Constitution supported by Parliament¹⁵⁸:

Positive changes that were maintained:

- **A provision on integration in European and Euro-Atlantic structures was introduced;**
- **Guarantees for a range of rights were reinforced and improved:** - the idea of equality between men and women was established, the list of grounds for discrimination was widened, guarantees for disability rights were established, procedural safeguards were unequivocally defined, the right to internet access and freedom of using internet was recognized, grounds for placing limitations on active voting right was narrowed down, it was determined that workplace safety standards and labor rights are guaranteed by the law, etc.
- **Guarantees for independence of a number of institutions were introduced:**
 - *The Georgian Public Broadcaster (GPB)* – GPB's independence from state agencies and its freedom from political and substantive commercial influences was established;
 - *The Prosecutor's Office* – independence of the Prosecutor's Office from the executive authority was established;
 - *Judiciary* – integrity and competency was established as the criteria for judicial selection;
 - *Fundamental area of operation the High Council of Justice was established* – ensuring courts' independence and effectiveness and specifying that the HCoJ rule of conduct is determined by an organic law.
 - *The parliamentary oversight mechanism was relatively enhanced* – the quorum required for establishment of an investigative commission was reduced.

¹⁵⁶ Venice Commission Opinion on the Draft Revised Constitution, p.18, para.88-89, p.20, para.99

<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

¹⁵⁷ Venice Commission Opinion on the Draft Revised Constitution, p.12 -15, para.57-73, p.19-20, para.97

<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

¹⁵⁸ <https://info.parliament.ge/#law-drafting/13831>;

The following recommendations of the Venice Commission were taken into account:

- *Parliamentary electoral system*¹⁵⁹ - several ceilings were set up for undistributed mandates.¹⁶⁰ A 3-% threshold was introduced for the following parliamentary elections.¹⁶¹
- *Presidential electoral system*¹⁶² - it was established that the candidate that gains support of at least two-thirds of voters will be the winning candidate in the first round of election.¹⁶³
- *Judiciary authorities*¹⁶⁴ - the rule on lifetime appointment was extended to the judges of the Supreme Court.¹⁶⁵

A requirement of a three-fifth majority of Parliament's full composition was established in the election of three constitutional judges by Parliament was introduced.¹⁶⁶

In compliance with the recommendation of the Venice Commission, appointment of judges without probationary periods was introduced, effective as of December 31, 2024.¹⁶⁷

In conformity with the Opinion of the Venice Commission, the limitations placed on powers of the Constitutional Court with respect to declaring unconstitutional legal norms regulating elections were abolished.¹⁶⁸

A requirement of three-fifth majority of Parliament's full composition was introduced in the election of three member of the HCoJ.¹⁶⁹

*Public Defender*¹⁷⁰ - the rule about election of the Public Defender by three-fifth of majority of the full composition of Parliament was established.¹⁷¹

*Human Rights*¹⁷² - a number of new aims were added to the existing aims of restriction of freedom of belief and conscience. Namely, in addition to the aim of protecting rights and freedoms of others, an individual's freedom of belief and conscience can also be restricted for the protection of national and public security, prevention of crime, protection of health and administration of justice. However, it should also be noted that the recommendation of the Venice Commission about the issue was followed in a negative way. In particular, in addition to the aims of restriction of freedom of belief and conscience provided in the Opinion, additional aims were introduced, including: national security, prevention of crime and administration of justice. Since based on the European Convention and the practice of the European Court of Human Rights these aims are not legitimate aims that justify restriction of the said freedoms, clearly the proposed regulation placed far more restrictions on the freedom of belief and conscience than it was allowed under the international law. Therefore, NGO representatives and lawyers issued a statement in reaction to this new regulation¹⁷³, criticizing the way the recommendation of the Venice Commission was reflected in the draft revised Constitution.

¹⁵⁹ Venice Commission Opinion on the Draft Revised Constitution, p.6-10, para.22-43, p.19, para.92-94,
<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

¹⁶⁰ The Constitutional Law of Georgia, paragraphs 7, 8, 9 of Article 37, <https://info.parliament.ge/file/1/BillReviewContent/161170?> ;

¹⁶¹ The Constitutional Law of Georgia, para.9 of Article 2 of the Transitional Provisions - <https://info.parliament.ge/file/1/BillReviewContent/161170?> ;

¹⁶² Venice Commission Opinion on the Draft Revised Constitution, p.11-12, para.49-55, p.19, para.95

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¹⁶³ The Constitutional Law of Georgia, para.4 of Article 50 - <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁶⁴ Venice Commission Opinion on the Draft Revised Constitution, p.15-18, para.74-87, p.20, para.98

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¹⁶⁵ The Constitutional Law of Georgia, para.2 of Article 61, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁶⁶ The Constitutional Law of Georgia, para.2 of Article 60, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁶⁷ The Constitutional Law of Georgia, para.3 of Article 2 of the Transitional Provisions, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁶⁸ The Constitutional Law of Georgia, para.6 of Article 60 , <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁶⁹ The Constitutional Law of Georgia, para.2 of Article 64, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁷⁰ Venice Commission Opinion on the Draft Revised Constitution, p.18, para.88-89, p.20, para.99

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¹⁷¹ The Constitutional Law of Georgia, para.1 of Article 35, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁷² Venice Commission Opinion on the Draft Revised Constitution, p.12 -15, para.57-73, p.19-20, para.97

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¹⁷³ <https://gyla.ge/ge/post/arasamtavrobo-organizaciebisa-da-iauristebis-mimartva-konstituciashi-reliigiis-tavisuflebis-shezhgudvastan-dakavshirebit#sthash.O3BgElnm.dpbs>;

Negative amendments that were maintained:

- *Electoral system* – the move to the proportional electoral system was postponed to 2024. The decision to abolish electoral blocs was kept.¹⁷⁴
- *Abolition of the rule on direct election of the president* – although the parliamentary non-parliamentary opposition and NGOs objected, the rule on indirect election of the president was kept.¹⁷⁵
- *Human rights*¹⁷⁶ - the marriage definition was kept, even though there was no need to.

*Despite the difference of public opinion on the issue, it was established that agricultural land as an important resource can only be owned by the state, a self-governing unit, a citizen of Georgia or a union of citizens of Georgia. Exceptions can be prescribed by an organic law.*¹⁷⁷

The illegitimate aims for restriction of the freedom of faith, confession and conscience were kept.¹⁷⁸

The following recommendations of the Venice Commission were not followed:

*Budget process*¹⁷⁹ - the requirement of the government's approval for any amendment to the state budget was kept.¹⁸⁰

The judicial authorities - none of the alternatives offered by the Venice Commission were followed – judges of the Supreme Court should be appointed by the HCoJ without involvement of Parliament or nominated by the HCoJ and appointed by the President of Georgia. According to the text of the Constitution, even though the judges of the Supreme Court are nominated by the HCoJ the final decision is made by Parliament.¹⁸¹

The provision about ensuring maximum transparency of the process that precedes election of the judges of the Constitutional Court was not introduced;

The limitation placed on the Constitutional Court's power to declare unconstitutional legal norms that regulate elections was partly maintained.¹⁸²

Additional guarantees for ensuring independence of the prosecutor's office were not introduced. More specifically, accountability of the prosecutor's office to Parliament in individual cases of prosecution or non-prosecution was not ruled out. Also the requirement of a fair hearing if the accountability leads to a dismissal of the general prosecutor was not introduced.

Human rights – the blanket ban on the right of citizens recognized as a support recipient by a court decision and admitted to inpatient care establishment to participate in elections and referendum was maintained.¹⁸³

The blanket prohibition of creation of political party on territorial grounds was maintained and it was not indicated that freedom of parties can be restricted in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order.¹⁸⁴

6.6. Second Opinion of the Venice Commission

On October 9, 2017, the Venice Commission published its Opinion on the Draft Revised Constitution as adopted by the Parliament of Georgia at the second reading.¹⁸⁵ The Opinion placed a special emphasis the need for obtaining the widest

¹⁷⁴ The Constitutional Law of Georgia, para.2 of Article 2 of the Transitional Provisions - <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁷⁵ The Constitutional Law of Georgia, para.1 of Article 50 <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁷⁶ The Constitutional Law of Georgia, para.1 of Article 30 - <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁷⁷ Notably the Venice Commission approved the provision introduced in the draft revised Constitution initially, providing that the right to property over land as a significant resource must be regulated by the organic law. According to the Opinion, it allowed for more flexibility in adapting the rule to changing economic and political circumstances. Venice Commission Opinion on the Draft Revised Constitution, as Adopted by the Parliament of Georgia at the Second Reading, CDL-AD(2017)023, p.5, para.17; [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)023-e)

¹⁷⁸ The Constitutional Law of Georgia, para.2 of Article 16, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁷⁹ Venice Commission Opinion on the Draft Revised Constitution, p.10, para.42,

<file:///C:/Users/schareli/Desktop/%E1%83%99%E1%83%9D%E1%83%9C%E1%83%A1%E1%83%A2%E1%83%98%E1%83%A2%E1%83%A3%E1%83%AA%E1%83%98%E1%83%90%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98/default.pdf>;

¹⁸⁰ The Constitutional Law of Georgia, para.2 of Article 66, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁸¹ The Constitutional Law of Georgia, para.2 of Article 61, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁸² The Constitutional Law of Georgia, para.6 of Article 60, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁸³ The Constitutional Law of Georgia, para.2 of Article 24, <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁸⁴ The Constitutional Law of Georgia, para.3 of Article 23 <https://info.parliament.ge/file/1/BillReviewContent/161170?>;

¹⁸⁵ Venice Commission Opinion on the Draft Revised Constitution as Adopted by the Parliament of Georgia at the Second Reading on 23 June, 2017, CDL-AD(2017)023, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)023-e);

possible consensus on the large-scale constitutional reform. According to the document, it was regrettable that an agreement between political forces and other stakeholders could not be reached.¹⁸⁶

The Opinion criticized postponement of the entry into force of the proportional electoral system to 2024 because this was the most important aspect of the constitutional reform and the primary guarantor of consensus.¹⁸⁷

The Opinion stated that as a compromise the parliamentary majority had committed to consider the following two changes to the draft requested by the opposition:¹⁸⁸

- Allowing electoral blocs and reducing the election threshold to 3% at the 2020 parliamentary elections;
- Distributing unallocated mandates proportionally to all political parties that cleared the 5% threshold.

The Opinion of the Venice Commission also addressed a range of important issues envisaged by the draft revised Constitution:

Distribution of unallocated mandates - while commending the restrictions introduced in the draft in relation to unallocated mandates, the Opinion also stated that abolition of the bonus system would be the best solution based on the experience. In addition, the Venice Commission approved the proposal of the majority on proportional distribution of unallocated mandates to all parties that cleared the 5% threshold.

Senate – the fact that the new draft did not provide for the establishment of a temporary substitute for the Senate before restoring Georgia’s jurisdiction on the entire Georgian territory deprived the country of a main potential counter-balance to a strong government and of the representation of local interests at national level.

Public financing and control – the Opinion criticized the requirement of the government’s consent for any amendment to the State budget and stated that such regulation placed restrictions on the parliamentary power that was unjustified and needed to be improved.

Abolition of the rule on mandatory referendum was welcomed (after 12 years) for introduction of a new type of common state tax (except for excise tax) or increasing the upper limit of the current rate by the type of common state tax.

Presidential elections – the Commission found that the indirect election of the President is in line with the European standards; election of the president by qualified majority and an open ballot system was welcomed.

Human rights – regarding freedom of association, the Venice Commission requested introducing a provision that stipulates that conditions for liquidation of associations is a matter of organic law, just like it is stipulated by articles 23 and 26.

Regarding the marriage definition it was stated that the new provision should in no case be interpreted as prohibiting same-sex partnerships.

Regarding the new aims of restriction of freedom of belief and conscience, it was stated that aims like national security, administration of justice or prevention of crime are not compatible with the European Convention or the practice of the European Court of Human Rights. Moreover, some other important legitimate aims were missing from the new draft, such as health, morals and public order. The Venice Commission recommended redrafting the regulation in the light of Article 9 of the European Convention.

Regarding restriction of freedoms of assembly and association, the Venice Commission recommended inclusion of standard grounds of such restriction – allowing restrictions when they are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, to avoid disclosure of confidential information or to ensure judicial independence and impartiality.

The blanket prohibition of creation of political party on territorial grounds was criticized. The Commission recommended indicating that freedom of parties can be restricted in the case of parties that advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order.

The Commission negatively assessed the blanket ban on the right of citizens recognized as a support recipient by a court decision and admitted to inpatient care establishment to participate in elections and referendum is in contradiction with common European and international standards.

The Commission found the issue of ownership of the land to be one of the most controversial provisions of the constitutional reform. The provision offered in the process of deliberations, providing that the right to property over land as a significant

¹⁸⁶ Venice Commission Opinion on the Draft Revised Constitution as Adopted by the Parliament of Georgia at the Second Reading on 23 June, 2017, CDL-AD(2017)023, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)023-e), para.16;

¹⁸⁷ Venice Commission Opinion on the Draft Revised Constitution as Adopted by the Parliament of Georgia at the Second Reading on 23 June, 2017, CDL-AD(2017)023, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)023-e), para. 21;

¹⁸⁸ Venice Commission Opinion on the Draft Revised Constitution as Adopted by the Parliament of Georgia at the Second Reading on 23 June, 2017, CDL-AD(2017)023, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)023-e), para.17;

resource must be regulated by the organic law, allowed for more flexibility in adapting the rule to changing economic and political circumstances.

Constitutional law – election of the judges of the Constitutional Court by the qualified majority of Parliament was welcomed.

The prohibition for the Constitutional Court to declare unconstitutional legal norms regulating elections during the election year was found inexpedient. The Venice Commission recommended reducing the period as much as possible and replacing the requirement of full consensus of the plenum of the Constitutional Court when deciding on constitutionality of the conducted elections by a requirement of ordinary majority was recommended.

The Supreme Court – lifetime appointment of the Supreme Court judges was welcomed but it was stated that instead of Parliament these judges should be appointed by the HCoJ without involvement of Parliament or the president upon proposal by the HCoJ.

Prosecutor's office – the Venice Commission expressed concern over the fact that recommendations like ruling out accountability of the prosecutor's office to Parliament in individual cases of prosecution or non-prosecution and election of the general prosecutor by qualified majority of Parliament were not followed.

Probationary periods for judges - abolition of probationary periods in 2024 was welcomed.

The High Council of Justice – election of the HCoJ members by the qualified majority of Parliament was welcomed.

The Public Defender - election of the Public Defender for the term of 6 years and by the qualified majority was welcomed.

6.7. Additional Changes to the Constitution

After the draft revised Constitution was adopted at the third reading, the need to make additional changes to the constitution was raised¹⁸⁹ in order to follow the recommendations of the Venice Commission, which also included the possibility to reflect two issues viewed as a compromise by the parliamentary majority.¹⁹⁰

Due to absence of procedural/legal means for reflecting the said changes in the initial constitutional draft,¹⁹¹ initiation of additional changes was generally criticized. However, because it was about following recommendations of the Venice Commission and improving the constitutional text, there was no conceptual resistance to the changes among stakeholders.

The draft law registered in Parliament incorporated the following important issues:

Freedom of faith, confession and conscience – the Venice Commission recommended revising Article 16 of the draft Constitution in the light of the European Convention on Human Rights by removing the following aims of restriction: “state security”, “prevention of crime” and “administration of justice”.

Undistributed mandates – the Venice Commission recommended removing the so-called bonus system and distributing the unallocated mandates in proportion to the votes garnered by a party.

Powers of the Constitutional Court – the Venice Commission recommended broadening the powers of the Constitutional Court with regard to declaring electoral norms and elections unconstitutional. More specifically, it recommended extending the period during which the Constitutional Court can decide on corresponding complaints by 3 months and requiring ordinary majority when deciding on constitutionality of the conducted elections.

Electoral blocs – allowing electoral parties to run in the 2020 parliamentary elections alongside political parties.

However, after a meeting with constitutional bodies held within the nationwide public discussions on the draft revised Constitution it became known that in addition to the said issues **other initiatives may have also be introduced in the agenda, ones that were not based on the Venice Commission recommendations or were discussed during the previous process.**

Because the SCC with a very representative composition was working on the new text of the Constitution for several months, accompanied with active parliamentary discussions, **the fact that constitutional bodies proposed new issues within additional changes was negatively assessed. On the one hand this undermined the purpose of the process – to create inclusive formats for making informative decisions about the constitutional text, and on the other hand it created risks of introducing additional issues in the Constitution without adequate time or opportunity for understanding and evaluating these issues.**

¹⁸⁹ <https://www.radiotavisupleba.ge/a/akhali-sakonstitucio-cvliilebebis-akhali-cvliilebebi/28911323.html>;

¹⁹⁰ [https://info.parliament.ge/file/1/BillReviewContent/162584?;](https://info.parliament.ge/file/1/BillReviewContent/162584?)

¹⁹¹ Pursuant to para.8 of Article 176 of the Rules of Procedure of the Parliament of Georgia, a draft law on general or partial revision of the Constitution of Georgia shall be considered by Parliament and adopted with three readings, pursuant to the rule on consideration and adoption of a draft law prescribed by the Rules of Procedure. Pursuant to the rule prescribed by the Rules of Procedure on consideration and adoption of a draft law, based on Article 161 – when considering a draft law during a plenary session, if need be, based on a motivated proposal of a co-reporter, Parliament may pass a resolution to adopt a decision on returning the draft law from the third hearing back to the second hearing for consideration during a plenary session. In this way, instead of initiating new amendments, the draft revised Constitution could have been returned from the third reading back to the second reading.

Among these negative initiatives, **changes to the freedom of information regulations were especially problematic**. More specifically, the Ministry of Justice (MOJ) proposed introducing the three-part test contained by Article 10 of the European Convention in Article 18 of the draft dealing with freedom of information.

Because **the proposed regulation widened aims of restriction of accessing public information and substantially worsened opportunities for accessing public information, the changes were unacceptable for NGOs**.¹⁹² They explained that **such aims of restriction were ambiguous and incompatible with the specific nature of freedom of information**. Therefore, **NGOs supported keeping the existing regulation and allowing restriction of freedom of information only for clear and unambiguous reasons such as personal, commercial and state secret**.

Eventually, following the discussions in the committee and other formats, the MOJ proposal was substantially improved **but the definition of state secret remained somewhat ambiguous due to lack of a clear definition of the category of information that protects interest of legal proceedings and is categorized as a state secret because of this**.

Even though additional changes were initiated in the final text of the constitutional law, **several recommendations of the Venice Commission were still overlooked**. These recommendations include:

- **Public financing and control** – the role of Parliament in initiating amendments to the State budget was not increased;
- **Freedom of association** – a provision stipulating that conditions for liquidation of associations is a matter of organic law, just like it is stipulated by Articles 23 and 26, was not introduced.
- **Freedoms of assembly and association** – standards grounds of restriction of the freedoms was not included - necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder of crime, for the protection of health or morals or for the protection of the rights and freedoms of others, to avoid disclosure of confidential information or to ensure judicial independence and impartiality.
- **Freedom of political parties** – The blanket prohibition of creation of political party on territorial grounds was maintained and it was not specified that freedom of parties can be restricted in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order.
- **Voting right** - the blanket ban on the right of citizens recognized as a support recipient by a court decision and admitted to inpatient care establishment to participate in elections and referendum was maintained
- **Supreme Court** – the rule on election of the judges of the Supreme Court was not redrafted to allow the HCoJ or the President (upon proposal of the HCoJ) to elect the judges.
- **Prosecutor's office** – the recommendations on ruling out accountability of the prosecutor's office to Parliament in individual cases of prosecution or non-prosecution and election of the general prosecutor by qualified majority of Parliament were not followed.

The draft law on amendments to the Constitution was adopted at the second reading on December 15, 2017. The third reading is scheduled to be held during the upcoming spring session.

7. CONCLUSION

The information analyzed in this report clearly indicates that the **process of revision of the Constitution was characterized by substantial shortcomings, which made it impossible to reach a wide consensus on the supreme law of the state and subjected the text of the draft revised Constitution to criticism of a number of actors including the Venice Commission**.

Shortcomings of the revision process were found in the work of the SCC as well as during the nationwide public discussions and parliamentary discussions.

The unreasonably short period of time that the SCC was provided with to prepare the constitutional amendments is especially noteworthy, ruling out from the outset the possibility to make sensible and properly thought-out decisions, especially when the work needed to be done from a clean slate.

Lack of **regulations for decision-making** within the working groups was also a problem, which turned the discussions into a façade and created a playing field for drafting the law tailored to interests of the parliamentary majority.

¹⁹² <https://gyla.ge/ge/post/iusticiis-saministros-mier-shemotavazebuli-sakonstitucio-cvlilebebi-sajaro-informaciaze-tsvdomas-gaaauaresebs#sthash.48hss7od.dpbs>; <https://gyla.ge/ge/post/parlamenti-konstituciuri-cvlilebebis-processhi-ar-unda-gascdes-veneciis-komisiis-rekomendaciebs#sthash.w33IZADz.dpbs>;

Certain concerns were raised regarding overall composition of the SCC. **More specifically, it remains unclear as to what criteria were used for selection of NGO representatives and experts for the SCC membership, or why the inter-disciplinary approach was not used to guarantee making of informed decisions.**

Within this very context **exclusion of opposition parties from the SCC in full disregard of requirements of the law was substantially criticized.** Clearly, this influenced on the final voting during the last session of the SCC.

Lack of transparency of the SCC and irrelevant and insulting discussions that took place within the working groups substantially undermined the important nationwide process.

The confrontation between the President of Georgia and the Chairperson of the Parliament was another destructive aspect of the process of revision of the Constitution. It began when the President was denying participation in the SCC and continued to follow the entire process of revision.

The following problems were identified during the nationwide public discussions of the draft revised Constitution: **inadequate legal base, failure to publish the schedule of public discussions ahead of time, mobilization of political party activists and public sector employees, attempts to steer the discussions in a particular direction.** This led us to believe that the process was held for the formalities sake only, without the aim of hearing public opinion.

The parliamentary discussions were **extremely rushed** and the draft was adopted at the second reading, which ruled out from the outset any practical opportunity of obtaining a wide consensus. In addition, public stakeholders were not given an opportunity to understand and analyze opinions of the Venice Commission and form their positions accordingly.

A substantially negative aspect of the parliamentary discussions was postponement of the move to the proportional electoral system - the decision made by the parliamentary majority before the first reading of the draft. The decision undermined the agreement among all stakeholders of the process and essentially led to exclusion of all interested individuals. Against the background of high political polarization, solution could not be found, not even with the active engagement of the Venice Commission.

Similarly, **the need to make additional changes to the newly adopted Constitution was not made known until much later, even though the procedural/legal means to make corresponding corrections were available during the first stage.**

With regard to contents of the additional amendments, **we must highlight the negative effects of introducing brand new changes to the draft. This both undermined the previous process and allowed reflection of certain initiatives in the final text of the Constitution that remained ambiguous by interested parties due to lack of adequate time for discussing and understanding these initiatives.**

Majority of recommendations of the Venice Commission were taken into account but some recommendations were not reflected in the final text even though additional changes were initiated much later in the process.

In conclusion it is safe to say that **the reworked text of the Constitution certainly brings together a number of positive initiatives and can be viewed as a step forward in a range of areas. However, mistakes made during different stages of the revision process led to the reality in which the supreme law of the state was adopted with zero consensus, under the decision of the parliamentary majority. Clearly, this called into question the legitimacy of the legal act as well as all the improvements that are abundant in the final text of the constitutional law, which is especially regrettable.**