

2020

MONITORING OF PRE-ELECTION ENVIRONMENT
FOR

PARLIAMENTARY ELECTIONS

Interim Report



2020

HUMAN RIGHTS CENTER



NGO **Human Rights Center (HRC)** was established on December 10, 1996 in Tbilisi. The objectives of HRC is to strengthen the respect for human rights, fundamental freedoms and to promote peace processes in Georgia. In order to achieve the above objectives, it is of utmost importance that the awareness of the public is raised and human rights are observed, further the government respects the rule of law and principles of transparency and separation of powers and ensures the elimination of discrimination at all levels.

HRC is a member to the following international networks:

- International Federation for Human Rights (FIDH); www.fidh.org
- World Organization Against Torture (OMCT - SOS Network - Torture);
www.omct.org
- Human Rights House Network www.humanrightshouse.org
- Coalition of NGOs for the International Criminal Court (CICC);
www.coalitionfortheicc.org

Authors: Giorgi Tkebuchava
Lazare Jibladze

Reviewer: Aleko Tskitishvili

Responsible for translation: Nick Jashi



Norwegian
Helsinki Committee

The report was prepared with the financial support of the Norwegian Helsinki Committee. The views expressed in this report may not necessarily reflect the views of the Norwegian Helsinki Committee. Therefore, the Committee is not responsible for the content of the Report.

TABLE OF CONTENTS

INTRODUCTION.....	5
1. PROTESTS DEMANDING CHANGE OF THE ELECTORAL SYSTEM.....	5
2. A NEW WAVE OF PROTESTS.....	6
3. OPINION OF THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR)	7
4. FROM STREET PROTEST TO THE NEGOTIATION TABLE	8
5. AGREEMENT OF MARCH 8 2020	9
6. RELEASE OF POLITICAL PRISONERS AS A PRECONDITION FOR THE ADOPTION OF CONSTITUTIONAL AMENDMENTS.....	10
7. DECLARATION OF A STATE OF EMERGENCY AND ITS IMPACT ON THE PARLIAMENTARY ELECTIONS	11
8. ADOPTION OF CONSTITUTIONAL AMENDMENTS ON THE PARLIAMENTARY ELECTIONS OF GEORGIA.....	13
9. ELECTORAL CHANGE IN LEGISLATION	15
10. MEDIA REGULATIONS	17
11. GENDER QUOTAS	18
12. RESIGNATION OF MAYORS	21
13. CHANGES MADE IN THE LEGISLATION REGULATING POLITICAL FINANCE	22
CONCLUSION.....	23

INTRODUCTION

With a support from the Norwegian Helsinki Committee, HRC monitors the pre-election period from 1 March, 2020, for the October 31 Parliamentary Elections. The interim Report of monitoring the pre-election period reflects the results of the monitoring carried out by HRC during the reporting period, as well as the significant events that took place before March 1, immediately affecting the situation existing during the monitoring period or the events that were still ongoing during the monitoring.

1. PROTESTS DEMANDING CHANGE OF THE ELECTORAL SYSTEM

The shortcomings of the electoral system existing in Georgia have long been discussed by a number of political parties, civil society or representatives of various sectors of the society. The model of unfair distribution of parliamentary seats existing before the amendments made to the electoral system repeatedly was a subject of criticism, including by the political team of Georgian Dream currently in power with majority in the Parliament. However, after coming to the power and because such electoral models provided possibilities for the rulers to be in an ivory tower, the promised reforms were repeatedly postponed.

Against the background of the events of June 20-21, 2019 having taken place in Tbilisi¹, the proportional elections have again actively returned to the agenda of political demands. This time, with broad public support and a united position of all of the opposition forces.

Demonstrations demanding a proportional electoral system began in summer after the police dispersed a protest using force on the night of June 20. Bidzina Ivanishvili, the Chairman of the Political Council of *Georgian Dream*, made a promise to the public on

¹see Analytical document of HRC regarding the events of June 20-21: <https://bit.ly/3li8lhi>.

TV² that by 2020 the country would move to a fully proportional system and the work on a draft law started. However, later on some of the MPs voted down the draft law³.

2. A NEW WAVE OF PROTESTS

After the ruling party did not fulfill its promise to the society and voted down the draft law, the protests and picketing of the parliament resumed, which was dispersed twice by the riot police⁴.

In order to find a solution to the crisis, the opposition parties and some constitutionalists offered to the government to switch to proportional system of so called *German model*⁵ which according to the opposition and the lawyers could have been implemented without the constitutional changes. Meanwhile, the government stated that the German model was contrary to the Constitution of Georgia and therefore could not be implemented⁶.

On December 9, 2019, following the request of the opposition to establish the compliance of the draft law prepared by the opposition with the Constitution, the Public Defender of Georgia - Nino Lomjaria sent the draft amending the electoral system to ODIHR⁷.

The opposition parties applied to the Public Defender to send the draft legislation to ODIHR once the government and the opposition nearly exhausted all the resources to discuss the issue whether or not the so-called German model as proposed by the opposition for the 2020 Parliamentary Elections complied to the Constitution. Noteworthy, the representatives of the opposition also requested that the draft law be submitted to the Venice Commission, however since such a communication with the

²see Ivanishvili's TV address: <https://bit.ly/31qOsgb>.

³see more information: <https://bit.ly/3glCAjS>.

⁴see more information: <https://bit.ly/3hsTaQc>.

⁵ In November 2019, the opposition parties began to work on German model, after on November 14, some of the MPs from *Georgian Dream* managed to vote down the draft law of constitutional amendments which were to fully substitute the mixed electoral system with proportional one.

⁶see more information: <https://rb.gy/ntv7gp>

⁷see more information: <https://bit.ly/32rPNm8>.

Venice Commission shall be carried out only through the official representation of the government, on the background of the resistance on the part of Georgian Dream, the communication would not be possible.

3. OPINION OF THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR)

On 5 February 2020, the OSCE / ODIHR (hereinafter referred to as ODIHR) published an opinion ⁸ discussing the so-called German election model proposed by the opposition.

Initially, the ODIHR emphasizes that the final decision on compliance of the law with the Constitution should be made by local courts, and the presented opinion reviews the proposed changes and analyzes them in relation to relevant international obligations and standards.

According to ODIHR, the proposed draft law changes the fundamental elements of the Electoral Code. The ODIHR experts state international good practice recommends that key aspects of the election legislation not to be opened for changes a year before the elections. Moreover, according to ODIHR, international standards do not offer a proper definition of electoral systems⁹. Consequently, whether a particular system should be categorized as majoritarian, proportional or hybrid is a matter of political and legal teaching, and of scientific debate¹⁰.

According to the Opinion, the package proposed by the opposition is in line with the principles of universal, free, secret and direct suffrage.¹¹

Beside some positive assessments, the ODIHR report provides six technical recommendations on how to improve the package of changes prepared by the opposition, *inter alia* including¹²: 1. Recommendations on the rules of marking the choice

⁸see ODIHR Opinion on Draft Amendments to the Election Code of Georgia: <https://bit.ly/2GdDfal>.

⁹ Ibid: Analysis and Recommendations, paragraph 15.

¹⁰see: Code of Good Practice in Electoral Matters, Venice Commission, paragraph II 2b. <https://bit.ly/2QEWcVD>.

¹¹see ODIHR Opinion on Draft Amendments to the Election Code of Georgia, Analysis and Recommendations, paragraph 18 A. <https://bit.ly/2YMIRPq>.

¹² Ibid: Technical Remarks, p. 8-9.

in the ballot paper, the deadlines for summarizing the final results by the CEC, the definition of sub-districts, the equal distribution of mandates among the multi-mandate districts, etc.

4. FROM STREET PROTEST TO THE NEGOTIATION TABLE

After weeks of street protests by the public and opposition parties, negotiations between the opposition and the ruling group began through the mediation of foreign diplomats accredited in Georgia¹³.

At the meetings, organized with the involvement of diplomats, it was stated by the ruling group from the outset that they were not considering moving to a fully proportional system at that stage, but were ready for some compromises. In this regard, the ruling political party proposed to the opposition to increase the proportional mandates to 100 and reduce the number of majoritarian MPs to 50. However, this change was offered with a condition that such electoral system (100/50) would be maintained also during the 2024 parliamentary elections. Representatives of the opposition parties involved in the negotiations did not agree with the ratio from the beginning and demanded a more proportionate and fair system.

Later on, following the meetings facilitated by the ambassadors and after a stiff denial by the opposition parties, it became known from the representatives of the ruling party that the introduction of a one-time electoral system of 110/40 was not excluded only for the case of 2020 elections¹⁴.

However, the negotiations were abandoned after the Supreme Court of Georgia, on February 10, 2020, sentenced Gigi Ugulava, one of the leaders of *European Georgia*, actively involved in the negotiations to change the electoral system, the former Mayor of Tbilisi, to 3 (three) years, 2 (two) months and 8 (eight) days of imprisonment on the charges of so-called *Tbilisi Development Fund case*. The supplementary punishment, however, imposed on Ugulava depriving him rights to hold any position in the public service for 4 (four) months, was declared served.

¹³see more information: <https://bit.ly/3jiGETL>.

¹⁴see more information: <https://bit.ly/32UHm3h>.

The investigation into this case started 7 years ago, and the court of final instance i.e. the court of cassations passed the judgment in violation of 6-month period for admitting the case and doing so only once Ugulava became politically active again, furthermore, the judgment was rendered by the judge, who during the previous proceedings on the same case was the main public prosecutor, the Prosecutor General¹⁵. The above judgment was made a subject of critical statements by the international partners and influential politicians noting the existence of political motives on the case, and utilization of the judiciary by Georgian authorities for the purposes of political revenge¹⁶.

5. AGREEMENT OF MARCH 8 2020

In parallel with the negative assessments expressed at the international level, the verdict against Giorgi Ugulava was assessed as "adequate" and the existence of political motives was denied by the representatives of the ruling forces. The opposition announced the start of protests. The opposition claimed that no further negotiations would be feasible unless the ruling group releases the political prisoners and agrees to the election instrument not allowing a party with less than 40% support to form a government¹⁷.

After the statements were made public, the informal meetings of the opposition and ruling groups with participation of foreign diplomats were carried on discussing the changes in the electoral system. According to the opposition parties, the only ratio that would provide the nearest representation and model to the fair and proportional electoral system in the Parliament of Georgia was the system of 130/20, which, according to the ruling group, was not feasible under the argument that the geography of Georgia does not allow the country to be divided into so few districts. Against this, the ruling party offered a ratio of 110/40¹⁸.

¹⁵see *Legal Assessment of the Criminal Cases ongoing against Giorgi Ugulava*, Human Rights Center. 2020: <https://bit.ly/34Pz8fp>.

¹⁶see Statements of Jim Risch, Chairman of the Foreign Relations Committee of the United States Senate and Jeanne Shaheen, US Senator: <https://bit.ly/3jvJLI>. Further see Joint Statement of the members of the European Parliament: <https://cutt.ly/quMK0ei>.

¹⁷see more information at: <https://bit.ly/3hxopti>.

¹⁸see more information at: <https://bit.ly/2QHk4YZ>.

Finally, on March 8, 2020, two documents of the agreement were signed between the government and the opposition¹⁹. At the informal meeting, it was decided that the 2020 Parliamentary Elections shall be held under a mixed system: 120 members shall be elected to the Parliament by proportional system and 30 members by majoritarian system. The agreement stipulates that should early elections be called to the Parliament within the period of 2020 to 2024, the first such elections shall be held in accordance with the rules set for 2020 Elections, and all other subsequent elections shall be held under fully proportional system as the applicable provision of the Constitution of Georgia lays down for 2024. The second document concerns a reaction to unwanted politicization of court proceedings and election processes.

6. RELEASE OF POLITICAL PRISONERS AS A PRECONDITION FOR THE ADOPTION OF CONSTITUTIONAL AMENDMENTS

In order to reach an agreement on the electoral system, the opposition raised the issue of releasing the political prisoners as a precondition for executing the issues under the agreement related to the change of the electoral system, and agreed to negotiations with the government only on the condition of resolving the above issue. So, this time, the issue was regulated in a separate document. By a document known as the Joint Statement,²⁰ it is recognized that the "highest standard" must be observed in the justice system. The Statement points to the need to react to the improper politicization of the courts and elections now and in the future. This problem was denied by the representatives of the ruling party. In the end, despite the denial of the existence of political prisoners, due to the heavy international pressure, which was related to the existence of alleged political motives in criminal cases of Irakli Okruashvili²¹, Giorgi Ugulava²², George Rurua²³, Besik Tamliani²⁴, and a number of statements have been made at the international and local levels, including by MEPs²⁵, U.S. Senators²⁶ and

¹⁹see 1) Memorandum of Understanding: <https://bit.ly/32xRqyD>.

²⁰see Joint Statement: <https://bit.ly/32xRqyD>.

²¹see *Legal assessment of ongoing criminal cases against Irakli Okruashvili*. Human Rights Center. 2020: <https://bit.ly/34CEOcd>.

²²see *Legal Assessment of ongoing Criminal Cases against Giorgi Ugulava*, Human Rights Center. 2020: <https://bit.ly/34Pz8fp>.

²³see Criminal Case of Giorgi Rurua: legal analysis, Human Rights Center. 2020: <https://bit.ly/31xImL1>

²⁴see the Legal Analysis of the criminal cases related to the events of June 20-21, 2019. Human Rights Center. 2020: <https://bit.ly/2G36KvP>.

²⁵see Joint Statement of the members of the European Parliament: <https://cutt.ly/quMK0ei>.

Congressmen²⁷, on May 15, 2020, the President of Georgia adopted an act of pardon releasing Irakli Okruashvili, the leader of *Victorious Georgia* and Giorgi Ugulava, one of the leaders of *European Georgia* from jail. However, according to the statement of the President, she pardoned not the political prisoners, but the criminals²⁸. The both prisoners left the penitentiary facility on May 15, 2020, on the day of issuance of the Act of Pardon. The pardon of these individuals by the President was positively assessed at the international level²⁹. Despite the pardons carried out, part of the opposition still did not agree to the constitutional amendments on the grounds that not all political prisoners had been released. The demand for their release continued again³⁰. The focus was made on the release of Giorgi Rurua, one of the shareholders and co-founders of TV company *Mtavari Arkhi*. Following these statements, later, on July 30, 2020, the Tbilisi City Court found him guilty of illegal purchase, possession, and carrying of a weapon (Article 236 of the Criminal Code) and sentenced him to four years in prison³¹.

7. DECLARATION OF A STATE OF EMERGENCY AND ITS IMPACT ON THE PARLIAMENTARY ELECTIONS

On March 21, 2020, a state of emergency was declared taking into account ongoing global processes in general and the epidemiological situation in the country³². The spread of the coronavirus around the world has created new challenges for the most important form of popular legitimacy in a democratic society which are elections. For the protection of social distancing, protection of life and health of citizens, elections were delayed in many (including Western) countries. Since the end of February, more than 50 countries have changed the dates of countrywide, regional or local elections³³. Among them, the issue of determining the date and holding the parliamentary elections

²⁶see Statements of Jim Risch, Chairman of the Foreign Relations Committee of the United States Senate and Jeanne Shaheen, US Senator: <https://bit.ly/2QwjZHq>. Further see Statement of Randy Weber, Republican Congressman: <https://bit.ly/3aZTGCE>.

²⁷see Joint Statement by Adam Kinzinger, Gerald Connolly, Eliot Engel, and Michael McCall: <https://bit.ly/2OHZRXL>. Further see Statements by Adam Kinzinger, Republican Congressman: <https://bit.ly/2ECwjDa>, <https://bit.ly/31vh7AP>.

²⁸see More information: <https://bit.ly/37sxaAF>.

²⁹For example, see Statements of Jim Risch, Chairman of the United States Senate Foreign Relations Committee and Jeanne Shaheen, US Senator: <https://bit.ly/3gwY4KD>.

³⁰For example, see Statements of Jim Risch, Chairman of the United States Senate Foreign Relations Committee on release of Giorgi Rurua: <https://bit.ly/2Qrj1w5>.

³¹see More information: <https://bit.ly/31xfjNT>.

³²see Order № 1 of the President of Georgia on the declaration of a state of emergency on the entire territory of Georgia, March 21, 2020. The city of Tbilisi. <https://bit.ly/3jixuXx>.

³³see COVID 19 pandemic and human rights. Human Rights Center 2020: pg. 11. <https://bit.ly/2D6zIO5>.

in Georgia was put at risk. In accordance with the legislation of Georgia, in case of a state of emergency general elections shall not be held. In the event of a state of emergency in any part of the country, a decision to hold elections in the rest of the country will be made by the Parliament³⁴; In case of declaring a state of emergency, the discussion of the draft constitutional law is suspended until the state of emergency is lifted³⁵, which is a particularly important constraint on the electoral system against the background of the ongoing changes to be made to the Constitution. In view of the above, the issue of adopting constitutional amendments before the elections was also endangered. In this regard, it should be noted that, like other countries, issues related to the epidemic and the mechanisms to fight it in the country have become the subject of major discussions in the state. Consequently, the opposition parties paid less attention to the constitutional amendments, and the resumption of the discussion related to it and the active phase of the processes required for the adoption of the amendments was announced by the ruling party on April 21, 2020 after the end of the state of emergency³⁶.

Beyond the above mentioned, ³⁷ in parallel with the world practice³⁸, in some expert circles talks has begun on the possible postponement of the elections in Georgia. It should also be noted that neither the CEC nor the political spectrum made statements regarding this scenario³⁹.

On May 5, 2020, the Central Election Commission participated in the online symposium on *Elections in times of Pandemic*, organized by the Association of European Election Officials (ACEEEO). According to the CEC, the state is mobilized to hold elections on October 31, 2020, even if the pandemic continues. At the same time, the necessary

³⁴see Article 71 of the Constitution of Georgia. <https://bit.ly/2OfTVg3>.

³⁵see Article 77 of the constitution of Georgia. <https://bit.ly/2OfTVg3>.

³⁶see Article - "Impact of State of Emergency on Parliamentary Elections". Human Rights Center. 24.03.2020. <https://bit.ly/2OwYohY>.

³⁷ For example, 1) Presidential elections of Poland scheduled for May 10, 2020: <https://bit.ly/2G4P9ng>; 2) Local elections postponed for 1 year in Great Britain: <https://bit.ly/2YH01hy>; 3) The spread of the pandemic in the United States coincided with the intra-party elections within Democrats. As a result, the primer was postponed in 16 states: <https://nyti.ms/34ME1FE>.

³⁸see Article: "COLCHIS: In Georgia, the opposition may become the next COVID casualty". <https://bit.ly/34DfNOg>.

³⁹see More information: <https://bit.ly/31C0LX7>.

conditions for the health of the citizens should not be interrupted and should be strictly observed⁴⁰.

8. ADOPTION OF CONSTITUTIONAL AMENDMENTS ON THE PARLIAMENTARY ELECTIONS OF GEORGIA

The Constitution of Georgia strengthens the principle of people's sovereignty, according to which the source of state power in Georgia is the people who exercise their power, including through their representatives⁴¹. This constitutional requirement envisages that the vote of each person in the elections of the representative body should be of equal value and that all the citizens should be given an opportunity to have a representative of their own taking care the interests of the public in the legislative body. Therefore, it can be said that fair elections and its transparency are one of the forms of public governance.

As for the parliamentary election system, it defines the rules for how to form a legislative (representative) body and how to transform it into mandates.⁴² The fair results of the elections are directly proportional to the electoral system⁴³.

The criticism of the electoral system existing prior to the changes lies in the fact that it fails to ensure fair election results. The main problem stems from the fact that by using the majoritarian component of the parallel electoral system, there is an unjustified, unjust discrepancy between the number of votes and mandates received by the parties. That is why the reforming of the electoral system, with a high legitimacy of support for the changes, at the request of the public, civil society and various opposition parties, has become a major issue on the government's agenda, which, despite many difficulties, was finally achieved with the involvement of international partners. On June 29, 2020, the Parliament of Georgia, in three hearings, adopted the draft laws on Amendments to

⁴⁰see More information: <https://bit.ly/3jk00If>. Further see article - "Parliamentary Elections during the Pandemic". Human Rights Center. 16.07.2020. <https://bit.ly/3gJrUvL>.

⁴¹see: Paragraph 2 of Article 3 of the Constitution of Georgia. <https://bit.ly/2YI1XX5>.

⁴²see Document of the Research Center of the Parliament of Georgia. "Proportional electoral systems in European countries and their peculiarities". March 27, 2020 <https://bit.ly/3jIEym3>.

⁴³see Document of the Research Department of the Parliament of Georgia. Election systems. <https://bit.ly/2YEEkhW>.

the Constitution of Georgia and on Amendments to the Constitutional Law of Georgia⁴⁴. The political party *National Movement* did not participate in the discussion of the constitutional amendments⁴⁵. Members of *European Georgia* attended the hearings and discussions within the Parliament of Georgia. However, the leaders of *European Georgia* stated that they would attend the second and third hearings of the draft law provided Giorgi Rurua will be released⁴⁶.

The main essence of the changes:

- ✓ The 2020 parliamentary elections will be held in a mixed system - 120 members will be elected in the parliament by proportional system and 30 members by the majoritarian system.
- ✓ As a result of the elections under the system adopted on June 29, 2020, the mandates of the members of the Parliament of Georgia will be distributed to those political parties that will receive at least 1 percent of the real votes of the voters participating in the elections. Further, for the electoral blocs of the political parties whose percentage of actual votes is at least 1 percent and multiplied by the number of political parties in the electoral bloc.
- ✓ However, to determine the number of mandates received by a political party or electoral bloc, the number of actual votes received by it is multiplied by 120 and divided by the sum of the actual number of votes received by all political parties and electoral blocs, which overcome 1 percent [the so-called "mechanical"] electoral threshold.
- ✓ Under the new system, if the sum of the number of mandates received by political parties and electoral blocs is less than 120, the undistributed mandates will be given in sequence to the political parties and electoral blocs with the largest balance.
- ✓ Further, as a result of the amendments, the percentage of total seats received by a political party or electoral bloc under the proportional and majoritarian systems in the total number of seats should not exceed the sum of the percentage of actual votes received by political parties and electoral blocs under the proportional system and the sum of the percentage of actual votes received by the same political party or

⁴⁴see: The Constitutional Law of Georgia on making amendments to the Constitution Law of Georgia regarding *making Amendments to the Constitution of Georgia*: <https://bit.ly/3gIHY0F>.

⁴⁵see: More information: <https://bit.ly/31xijng>.

⁴⁶ See information in detail: <https://bit.ly/2FX9yue>.

electoral bloc under the proportional system and the sum of 1/4 of this share. In case of exceeding the above margin ($\frac{1}{4}$), the party or electoral bloc will be deprived of seats from the proportional electoral list, which will be distributed proportionally to the electoral lists submitted by other political parties and electoral blocs that have crossed the relevant electoral threshold.

- ✓ A party whose support will be confirmed by the signatures of at least 5,000 voters will be eligible to participate in the 2020 elections. Moreover, the following entities shall be released from the obligation to submit 5,000 signatures: all qualified parties; all parties participating independently or in blocs in the last parliamentary or local self-government elections where the party or the block received at least 15,000 votes in proportion; all political parties with a member candidate or having nominated a candidate who received at least 15,000 votes in the first round of the 2018 Presidential Elections in Georgia.
- ✓ In addition to the above, the draft law directly provides for the boundaries of 30 single-mandate majoritarian election district considering the currently applicable administrative boundaries.

9. ELECTORAL CHANGE IN LEGISLATION

At the sitting of the Committee for Legal Affairs of the Parliament of Georgia on July 2, 2020, with 94 votes against one, in the third reading, the Draft Organic Law on Amendments to the Organic Law of Georgia Election Code of Georgia was adopted⁴⁷. Most of the changes represented in it are based on the recommendations of the OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR)⁴⁸. These recommendations refer to the improvement of the electoral legislation in the main directions like: *electoral environment and prevention of the use of administrative resources; media campaign and airtime; hearings of election disputes etc.*

Electoral legislation has also been amended in relation to *gender quotas*.

The main essence of the changes:

⁴⁷see Organic Law of Georgia on Amendments to the Organic Law of Georgia Election Code of Georgia. <https://bit.ly/2D55Duk>.

⁴⁸see: Office for Democratic Institutions and Human Rights. GEORGIA PRESIDENTIAL ELECTION 28 October and 28 November 2018. ODIHR Election Observation Mission Final Report: <https://bit.ly/3b2COTG>.

I. Election environment and administrative resources

- ✓ Like public servants, pre-election campaigning was banned during working hours for employees of legal entities under public law and non-entrepreneurial (non-commercial) legal persons, including public school teachers (*sub-paragraph (k) of paragraph 4 of Article 45 of the Election Code*);
- ✓ During 8 hours prior to the Election Day and until 20:00 on election day, it is forbidden to place and broadcast pre-election advertisement and programs of election subjects on television and radio. It is also forbidden to make automated telephone calls and send short text messages for election purposes (*paragraph 17 of Article 184 of the Election Code*);
- ✓ It will be inadmissible to place campaigning material within the radius of 25 meters from the polling station, as well as to physically hinder the movement of voters within the radius of 25 meters from the polling station (*paragraph 12 of Article 45*).

II. Media campaign and airtime

- ✓ It is also forbidden for election subjects to place an advertisement within own advertising time serving the campaigning purposes of another election subject. (*paragraph 1 of Article 51*);
- ✓ *It is forbidden to devote more time by the broadcaster to the customer than the fee paid for placing paid advertisements; further, in case of placing free advertisement, giving more time than determined by the law to the election subject shall be considered as an illegal donation (paragraph 14 of Article 51);*
- ✓ Free airtime will be used by the parties, which cross the threshold of 1% in the 2020 Parliamentary Elections, and from 2024 it will be necessary to cross the threshold of 3%, (*paragraph 2 of Article 51*);

III. Electoral Disputes

- ✓ *The time limits for drawing up the reports on offences are reduced in election commissions and the National Communications Commission (paragraph 2 of Article 83);*
- ✓ The time limits for hearing the disputes related to the use of administrative resources in election commissions are reduced from 30 to 10 days (*paragraph 6 of Article 93*).

10. MEDIA REGULATIONS

On July 17, 2020, the Parliament of Georgia heard and approved the draft law on amendments to the Law of Georgia on Electronic Communications⁴⁹ initiated by the Government of Georgia at an extraordinary session of the Parliament, in a fast-track procedure, in three hearings, within a week. A parallel amendment was made to the Law of Georgia on Broadcasting⁵⁰.

The originally initiated version of the draft law⁵¹ empowered the Georgian National Communications Commission to appoint a special manager to the person authorized by the commission / license holder in the case where the fines imposed by the commission on the authorized / license holder person could not ensure the execution of the decision of the Commission and delay in execution and / or suspension of authorization / revocation of license could be detrimental to the safety of the State or public. The amendments to the draft law immediately became the subject of strong criticism stating that it contained threats to restrict the freedom of expression⁵².

On July 9, 2020, companies operating in the field of electronic communications issued a joint statement. The signatories stated that the draft law amending the Law on Electronic Communications addresses the fundamental rights of authorized persons and that the adoption of the draft law in this form would have a significant negative impact on their future activities⁵³. Contrary to these statements, the National Communications Commission stated that the amendments did not refer to broadcasters, which according to NGOs was not true as the general reference to authorized / licensed persons in the draft law could not guarantee this. According to paragraph (s) of Article 2 of the Law of Georgia on Broadcasting in defining the terms, provides for that a broadcaster is considered to be the holder and / or an authorized person of a television broadcasting and / or radio broadcasting license; Accordingly, the Commission's statement that the proposed regulations apply to "only persons authorized by the law on electronic communications with critical infrastructure and have no connection with

⁴⁹see Draft Law on Amendments to the Law of Georgia on Electronic Communications: <https://bit.ly/34CnswH>.

⁵⁰see on Amendments to the Law of Georgia on Broadcasting. <https://bit.ly/3b4bSuS>.

⁵¹see Draft Law on amendments to the Law on Electronic Communications of Georgia: <https://bit.ly/2YJWtLz>.

⁵²see: Statement of Georgian Young Lawyers' Association: <https://bit.ly/34E4HZm>.

⁵³see More information: <https://bit.ly/2Ez3KH5>.

broadcasters" could not be considered credible without a clear specification of the circle of addressees in the draft law⁵⁴.

As a result of criticism expressed from the parliamentary minority, members of the media and the non-governmental sector, as well as telecommunications companies, the Georgian government withdrew the draft amendments to the Law on Broadcasters. However, the amendments to the Law on Broadcasters were transposed to the Law on Electronic Communications.

As a result of the harsh statements and assessments of the amendments to the draft law, the Communications Commission later held several consultative meetings with the private sector, after which the preconditions for the appointment of a special manager were clearly outlined in the draft law⁵⁵. Moreover, in a number of cases, the power to appoint a special manager was given to the court instead of the regulatory body⁵⁶. Furthermore, the provision that would have given the Communications Commission the authority to alienate the share of an authorized / licensee was removed from the draft law⁵⁷.

Finally, despite the changes to the draft law, the new version of the draft law⁵⁸ provides for that the Communications Commission may appoint a special manager to the media outlet that comes under the scope both of the Law on Broadcasters and of the Law on Electronic Communications.

11. GENDER QUOTAS

In accordance with paragraph (b) of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, the "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and

⁵⁴see The statement of the Institute for Democracy Research: <https://bit.ly/3jrpcwj>. Further see Statement of Georgian Young Lawyers' Association: <https://bit.ly/34E4HZm>.

⁵⁵see Article 46¹ of the Law of Georgia on Electronic Communications; <https://bit.ly/2Qustih>.

⁵⁶ E.g.: Subparagraph (b) of Paragraph 12 of Article 46, of the Law of Georgia on Electronic Communications: Article 46¹ of the Law of Georgia on Communications; <https://bit.ly/2Qustih>.

⁵⁷see Draft Law on Amendments to the Law of Georgia on Electronic Communications, paragraph 19 of Article 46¹: <https://bit.ly/34Cnswl>.

⁵⁸see: Law of Georgia on Electronic Communications: <https://bit.ly/2Qustih>.

public life," that is to allow women "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government"⁵⁹. Paragraph 1 of Article 4 calls for "adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women"⁶⁰. In addition to the above, the Association Agreement between Georgia and the European Union signed in 2014 requires Georgia to bring its national legislation in line with international standards.⁶¹ Taking temporary special measures includes the introduction of gender quotas.

Gender quota is the legally established level of representation of women and men in government bodies. The main idea of the gender quota is to substantially increase women's participation in political processes and not to isolate them from these processes.⁶² However, many states consider feasible only the model of political arrangements for a country, that ensures equal participation of women and men in policy-making. Achieving such parity is a key task for countries in the process of building democracy and the rule of law⁶³. This task is facilitated by the introduction of a quota mechanism that ensures equal participation and representation of women and men in the legislative and executive structures of the country⁶⁴.

On July 2, 2020, the Parliament of Georgia adopted amendments to the Election Code of Georgia, which approved a 25% gender quota mechanism, according to which political parties in proportional party lists will be required to have at least one member in four with a different gender.

Among the political parties there have appeared opponents against amendments related to gender quotas. Among them, the political party *European Georgia* and *Girchi* are critical of the changes. Representatives of *Girchi* claim that the Constitutional Court

⁵⁹see Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 7. <https://bit.ly/2BLrCGa>.

⁶⁰Ibid: 1 paragraph of Article 4.

⁶¹see Association Agreement between Georgia on the one hand and on the other hand, the European Union and the European Atomic Energy Union and their Member States: <https://bit.ly/30ZCfOf>.

⁶²see Women's Information Center Survey: "Gender quota as one of the mechanisms for ensuring gender equality in political life." <https://bit.ly/3jqmqYv>.

⁶³see Gender Policy and European Integration, Experience of Visegrad Group Countries (V4) for Eastern Partnership Countries (EAP); p. 29. Maia Kuprava-Sharvashidze. Visegrad Fund. 2015. <https://bit.ly/3hNRzo0>.

⁶⁴see on gender quotas and forms: <https://bit.ly/2EMlzSA>.

should suspend such a norm, because registration of a party under such obligation would not be fair. ⁶⁵.

The Constitutional Court rejected the claim of Girchi regarding the gender quotas. In particular, the court found granted one part of Girchi's appeal as the norm was unconstitutional, however, the second part, according to which every fourth member woman in the party list must be a woman, was considered constitutional⁶⁶.

The main essence of the changes:

- ✓ According to the amendments, in every parliamentary elections to be held until 2028, parties (election subjects) shall submit the party lists to the CEC Chairperson, where at least one candidate from every four would be of a different gender. Otherwise the party shall not be registered;
- ✓ For the parliamentary elections of October 28, 2028 and until 2032, parties (election subjects) shall submit the party lists to the CEC Chairperson, where at least one candidate from every four would be of a different gender. Otherwise the party shall not be registered;
- ✓ Until 2032, any member (if any) leaving the Parliament of Georgia shall be replaced by the next candidate of the same gender on the same list, provided the candidate gives consent to the membership of the Parliament of Georgia within 15 days after the vacancy arises. Otherwise, the next candidate of the same gender on the list shall take the vacant place.
- ✓ In the general elections of local self-government bodies to be held until 2028, every second on the list submitted by the party to the chairman of the relevant district election commission shall be a candidate with a different gender. Otherwise the party shall not be registered;
- ✓ Even in the case of a member leaves of *Sakrebulo* (a local assembly) the rule of succession envisaged for the Parliament shall apply (the left member shall be replaced with a candidate of the same gender).

These amendments are important inasmuch as against the background of the fact that 120 deputies in the next Parliament of Georgia will be elected by the proportional system, the change

⁶⁵see: Statement of Girchi: <https://bit.ly/2XjaQWk> .

⁶⁶see: Judgment of the Constitutional Court: <https://bit.ly/3n606Gf>.

will increase the representation of women in the legislature to at least 30 deputies, which is 20% of the total number.

12. RESIGNATION OF MAYORS

Five mayors resigned during the reporting period.

On *March 11, 2020*, media reported that the mayor of Kaspi, Manuchar Merabishvili resigned. He was elected to mayor of Kaspi municipality in 2017⁶⁷. He mentioned as a reason for resignation moving to another job. On the background of the resignation, the representatives of the opposition talked about the rivalry between Manuchar Merabishvili and Governor Giorgi Khojvanishvili and, according to the opposition, the Mayor was forced to resign⁶⁸.

On *April 1, 2020*, the Administration of the State Representative in the Imereti Region announced that the Mayor of Terjola Municipality, Bondo Sopromadze resigned⁶⁹. Bondo Sopromadze became the mayor of Terjola municipality after winning the October 21, 2017 local self-government elections. Opposition, in this case, talks about the controversy between the former mayor and the *Georgian Dream* MP Elguja Gotsiridze⁷⁰.

On *April 5, 2020*, Emzar Sabanadze, the Mayor of Oni Municipality and his first deputy, Dimitri Sakvarelidze resigned from the offices⁷¹. According to media reports, the resignations, also in this case, were preceded by an intra-party confrontation. According to Reginfo, Emzar Sabanadze was opposed by Racha-Lechkhumi-Svaneti majoritarian Gocha Ehlukidze and Governor Archil Japaridze⁷².

On *April 8, 2020*, Kutaisi Mayor Giorgi Chighvaria resigned⁷³. In a statement posted on his Facebook page, Chighvaria emphasized, that he is abandoning political activities⁷⁴.

⁶⁷see: More information: <https://bit.ly/3lkOMF8>.

⁶⁸see: more information at: <https://bit.ly/2QuLC3B>.

⁶⁹see: more information at: <https://bit.ly/3hH73KE>.

⁷⁰see: more information at: <https://bit.ly/3lub2MK>.

⁷¹see: more information at: <https://bit.ly/32xKBNM>.

⁷²see: more information at: <https://bit.ly/3gFoSs6>.

⁷³see: more information at: <https://bit.ly/2YHUeZ6>.

⁷⁴see: more information at: <https://bit.ly/3hC0Uzf>.

On *July 16, 2020*, Batumi Mayor Lasha Komakhidze resigned. According to media reports, he had some confrontations with the Chairman of the Government of the Autonomous Republic of Adjara, Tornike Rizhvadze. Moreover, according to the spread information, Komakhidze in exchange for resignation demanded to be included in the electoral list for 2020 Parliamentary Elections⁷⁵.

Extraordinary elections: *According to the Election Code of Georgia, in case of early termination of the mayor's authority, extraordinary elections shall be called by the CEC ordinance. Elections shall be held no later than the 50th day after calling the elections. No later than the 49th day before the Election Day, the CEC shall establish by an ordinance the time limits for election activities⁷⁶. In case of early termination of powers of the mayor, extraordinary elections shall be held in May or October in accordance with the rules established by the Election Code. Furthermore, where the term of powers of the mayor is terminated from February 15 to July 15, extraordinary elections shall be held in October of the same year, and where the term of powers of the mayor is terminated from July 15 to February 15, in the next May. Extraordinary elections of the mayor may not be held in the year of planned municipal elections⁷⁷.*

Since the above-mentioned mayors announced their resignations before July 15, the extraordinary elections will be held in October of the current year.

13. CHANGES MADE IN THE LEGISLATION REGULATING POLITICAL FINANCE

During the reporting period, changes were made to the legislation regulating political finances⁷⁸. *Specifically:*

- ✓ *According to the new version of the Law on Political Associations of Citizens, the party will receive budget funding on the basis of written consent, which must be submitted to the CEC. According to the old version, the CEC provided funding, to the*

⁷⁵see: more information at: <https://bit.ly/2QwOfSj>.

⁷⁶see: paragraph 1 of Article 169² of the Organic Law of Georgia, the Election Code of Georgia <https://bit.ly/3bclnZ7>.

⁷⁷see: paragraph 2 of Article 169² of the Organic Law of Georgia, the Election Code of Georgia . <https://bit.ly/3bclnZ7>.

⁷⁸see The Organic Law of Georgia on Political Associations of Citizens. <https://bit.ly/31IeTxZ>.

party while the party had to submit the consent to receive funding to the State Audit Office (**Article 10.11**);

- ✓ As for the donor natural persons, they may be donors provided they are registered in the territory of Georgia, and the partners to them are only Georgian citizens and legal persons registered in Georgia with final beneficiaries of only Georgian citizens (**Article 25.2(b)**).
- ✓ The amendment to the Organic Law of Georgia on Political Associations of Citizens provides for that only the first name, last name and personal number of the donor natural person are public. Under the old version, in addition to the above information, the place of registration was also public (**Article 26.2**);
- ✓ The State Audit Office is authorized to use the electronic document management system and electronic signature in the process of monitoring political finances, the electronic document and its printout version have the same legal force as the written document;
- ✓ The deadline for the State Audit Office to publish the information related to the report of the funds of the party election campaign shall be 5 working days after receiving the information;
- ✓ New Sanction - Warning was added to failure to provide information to the State Audit Office (**Article 34².5**);
- ✓ Beyond the provision of wrong donations, there has been added an article concerning the expenditure carried in violation of the requirements when the expenditure is made to obtain a support to any political force or to refrain from support to any political force, which shall be fined with double amount imposed on the person carrying the expenses(**Article 34².2**);
- ✓ Concluding a transaction for the purpose of bribing voters, if the value of such a transaction did not exceed GEL 100, resulted in a fine of ten times the value of the transaction for a party or party representative and fining a natural person with double the corresponding value. As a result of the amendments, this norm was deleted from the Organic Law of Georgia on Political Associations of Citizens and transferred to the Criminal Code and is punishable by a fine (**Article 164¹ of the Criminal Code**).

CONCLUSION

Finally, it can be said that as a result of the constitutional amendments adopted on June 29, 2020, the electoral system excludes the possibility of gaining a vast majority by the political party winning in the elections. Moreover, the given model produces almost analogous results for the winning party as it would be in case of fully proportional electoral system. Moreover, the given electoral system ensures proper representation of the opposition and a high degree of

pluralism in the Parliament of Georgia. It allows political parties, even those with little public influence, to gain representation in the supreme legislative body, which is by all means a step forward in creating a fair electoral system.

In assessing the pre-election environment, the vicious practice of using administrative resources for political purposes, established over the years, remains a topical and unresolved problem. Moreover, with the emergence of new media regulations - interference with freedom of speech and expression, persecution and trial of people on political grounds, political pressure on elected officials in the self-government, etc.

Furthermore, as the elections approach, the facts of harassment, physical and verbal abuse, attacks on media representatives, selective legal response by the police on the grounds of dissenting political views increase. Likewise the frequency of using fake news and other illegal means increase, and leaving all that without a proper reaction would hinder fair and transparent elections.