Strasbourg, 20 March 2021 **CDL-AD(2021)008**

Opinion No. 1017/2021 Or. Engl
ODIHR Opinion Nr ELE-GEO/406/2020

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

GEORGIA

JOINT OPINION

ON AMENDMENTS TO THE ELECTION CODE, THE LAW ON POLITICAL ASSOCIATIONS OF CITIZENS AND THE RULES OF PROCEDURE OF THE PARLIAMENT OF GEORGIA

Approved by the Council for Democratic Elections at its 71st meeting (online, 18 March 2021) and adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021)

on the basis of comments by

Mr Nicos ALIVIZATOS (Member, Greece)
Mr Josep Maria CASTELLÀ ANDREU (Member, Spain)
Mr Michael FRENDO (Member, Malta)
Mr Don BISSON (Expert, OSCE/ODIHR)
Mr Fernando CASAL BÉRTOA (Expert, OSCE/ODIHR)
Ms Alice THOMAS (Expert, OSCE/ODIHR)
OSCE/ODIHR Core Group of Experts on Political Parties

Opinion co-funded by the European Union

I. Introduction

1. By letter of 24 December 2020, Mr Archil Talakvadze, Chairperson of the Parliament of Georgia, requested an urgent opinion by the European Commission for Democracy through Law of the Council of Europe (hereinafter "Venice Commission") and the OSCE Office for Democratic Institutions and Human Rights (hereinafter "OSCE/ODIHR") on several amendments to the Election Code, the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament of Georgia.[1] He asked for the Commission's opinion to be available in the week of 18 January

2. The Bureau of the Venice Commission decided against the urgent procedure on two accounts: the lack of a compelling reason of urgency, as well as the impossibility - also owing to the holiday season - to examine the texts and to organise meaningful consultations in order for the opinion to be ready within the requested timeframe. The opinion has therefore been prepared under the ordinary procedure. According to the established practice, the Opinion has been prepared jointly with the OSCE/ODIHR.

3. Messrs Nicos Alivizatos, Josep Maria Castellà Andreu and Michael Frendo acted as rapporteurs for the Venice Commission. Messrs Don Bisson and Fernando Casal Bértoa and Ms Alice Thomas were appointed as legal experts for OSCE/ODIHR. The OSCE/ODIHR Core Group of Experts on Political Parties (more specifically Ms Ingrid van Biezen, Ms Nicole Bolleyer, Ms Barbara Jouan Stonestreet, Mr Richard Katz, and Mr Daniel Smilov) also contributed to this Joint Opinion.

4. On 11-12 February 2021, a joint delegation composed of Mr Alivizatos, Mr Castellà Andreu and Mr Frendo on behalf of the Venice Commission, and of Mr Bisson, Mr Casal Bértoa and Ms Thomas on behalf of the OSCE/ODIHR, accompanied by Mr Pierre Garrone and Mr Gaël Martin-Micallef from the Secretariat of the Venice Commission and Ms Kseniya Dashutsina from the OSCE/ODIHR, participated in a series of videoconference meetings with members of the Central Electoral Commission, the Ministry of Justice, various political parties of Georgia, representatives of non-governmental organizations (NGOs) and other stakeholders. This Joint Opinion takes into account the information obtained during these meetings. The OSCE/ODIHR and the Venice Commission are grateful to the Council of Europe Office in Georgia for the excellent organisation of the videoconferences.

5. This joint opinion was drafted on the basis of comments by the rapporteurs and the results of the virtual meetings held on 11-12 February 2021. Following its examination and approval by the Council for Democratic Elections at its 71st meeting (online, 18 March 2021), and an exchange of views with with Mr Hamazasp Danielyan, Member of Parliament and main Rapporteur on the draft amendments to the Electoral Code of the Republic of Armenia, it was adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021).

II. Scope of the Joint Opinion

6. The scope of this Joint Opinion covers only the legislative revisions officially submitted for review ("the amendments"). Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing elections and political parties in Georgia.

7. The Joint Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international standards, norms and practices, as for example set out in the International Covenant on Civil and Political Rights, the European Convention on Human Rights and its additional protocols, as well as the relevant OSCE

[1] CDL-REF(2021)003; see CDL-REF(2021)008 and 009.

human dimension commitments, and the Venice Commission's Code of good practice in electoral matters.[2] The Joint Opinion also highlights, as appropriate, good practices from other Council of Europe member states and OSCE participating States in this field. When referring to national legislation, the OSCE/ODIHR and the Venice Commission do not advocate for any specific country model; they rather focus on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws.

8. This Joint Opinion is based on unofficial English translations. Errors from translation may result.

9. In view of the above, the OSCE/ODIHR and the Venice Commission would like to make mention that this Joint Opinion does not prevent the OSCE/ODIHR and the Venice Commission from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework regulating political parties and electoral legislation in Georgia in the future.

III. Executive Summary

10. Primarily, it is important to stress that the best placed forum for political interaction and debate is the Georgian Parliament and that therefore the decision of the opposition to boycott parliamentary sessions is regrettable. While parliamentary boycotts are a legitimate means of expressing dissent in political discourse, lengthy and extensive boycotts may hinder any meaningful parliamentary dialogue and could have impact on the right to political participation of the people through its elected representatives.

11. At the same time, good governance requires the ruling majority to provide opposition parties with the proper space to function and engage in a genuine dialogue with the opposition on key reforms and the governance of the country, particularly in relation with electoral and political association reforms. In addition, all political forces need to refrain from any actions that could increase tensions, further undermine political pluralism in the country and erode the proper functioning of the Parliament and other institutions of control such as the Central Electoral Commission.

12. Undoubtedly, participating in parliamentary activities is an important cornerstone of the work of political parties in parliament, and allows them to represent their voters in a key decision-making body of the State. Nevertheless, work in parliament is not the only purpose of a political party, as also reflected in Article 30 (1) of the Law on Political Associations of Citizens, which states that parties shall receive funding for "financial support of party activities and development of the party system". Even in situations where a majority of elected Members of Parliament of a party refuse to take up their mandates, depriving a political party of all state funding is an unduly invasive excessive and disproportionate measure. In some cases, the lack of such funding would seem to deprive political parties of the ability to operate at all.

13. Similarly, sanctioning political parties, and not individual Members of Parliament, by depriving them of funding for six months if the respective Members do not attend the majority of sittings during a parliamentary session appears disproportionate and at odds with the Parliament's Rules of Procedure, which already regulate such matters in a clear and balanced manner. Similar considerations apply with regard to the proposed amendment to the Rules of Procedure of Parliament, which would result in the full deduction of the salary of a Member of Parliament who does not attend without good reason all plenary sittings during a calendar month of the regular session, both for the period of the parliamentary session and for the

[2] Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev-cor.

ensuing recess period. This latter proposal would also likely not be compliant with the Constitution of Georgia, which makes salaries for Members of Parliament mandatory.

14. Finally, and as a consequence of the previously mentioned amendments, the proposed changes to the Election Code would infringe on the rights of political parties to equal opportunities by denying them free airtime if they do not receive public funding. The denial of free airtime to those parties is both disproportionate and unfounded, as it is exactly these parties with less funds at their disposal that would need access to free airtime in order to voice their opinions and present their programmes to the electorate. Moreover, there appears to be no obvious connection between the allocation of free airtime and receiving state funding that would justify such a step. In addition, such a restriction is not in the public interest, as it would reduce access to information that the public needs in order to make an informed choice in elections.[3] It is recommended to also review these amendments to ensure that the opportunities of political parties to address the electorate are not unduly restricted.

15. There are other more proportionate and appropriate means available to achieve the goal of the amendments, which would involve imposing direct consequences on individual Members of Parliament for their actions. This would be more in line with the Georgian Constitution and international standards. Such broad sanctions against parties not taking part in the Parliament's work were not found in any other Venice Commission or OSCE/ODIHR member/participant states.

16. In order to strengthen political pluralism and help ensuring the proper functioning of democratic institutions, the OSCE/ODIHR and the Venice Commission therefore make one **main recommendation**, which is to reconsider adopting the proposed amendments.

IV. Legal and Political Background

17. In October 2020, parliamentary elections were held in Georgia. The pre-electoral period had been marked by increased political tension caused among others by disagreements over the existing electoral system. Following a Memorandum of Understanding signed on 8 March 2020 between the main opposition parties and the ruling party, constitutional amendments were adopted, and it was agreed to conduct the 2020 elections under a revised electoral system. The amendments introduced a larger proportional component to the electoral system and lowered the threshold for parties to be represented in Parliament. The reduced threshold (1% of actual votes in the previous parliamentary elections instead of 5%) increased the apparent competitiveness of the elections, with many new parties entering the political arena.

18. Following the first round of elections, the ruling party and eight opposition parties reached the parliamentary threshold, as well as the statutory threshold for receiving state funding. However, all of the opposition parties rejected the election results, alleging widespread electoral fraud. The opposition parties boycotted the second round of elections held in single-mandate constituencies and threatened to not take part in the new Parliament, requesting instead, *inter alia*, that new parliamentary elections be held. As a result, while the proportional seats were evenly shared between the majority and the opposition (60/60), the majority obtained all 30 majoritarian seats and therefore exactly 3/5 of the seats in Parliament.

19. Following a series of negotiations brokered by the international community in January 2021, two political parties reached an agreement with the ruling party and joined Parliament following a Memorandum of Understanding signed between both parties, which remained open to other opposition parties. The remaining six opposition parties, however, maintained their refusal to join the Parliament until their request for new elections would be met. The new

[3] UN International Covenant on Civil and Political Rights, Article 25 and General Comment 25.

Parliament thus currently consists of the ruling party, with 90 seats, and 2 opposition parties holding 6 seats out of 150 seats.

20. The parliamentary Legal Issues Committee thereupon prepared several amendments to the Law on Political Associations of Citizens, the Rules of Procedure of Parliament and the Election Code.

21. Generally, the rights to freely associate, participate in elections and hold public office are set out in Articles 23, 24 and 25 of the Georgian Constitution. The Law on Political Associations of Citizens regulates political party matters, including the funding of political parties. According to Article 30 (1) of the Law on Public Associations of Citizens, political parties shall receive funding for "financial support of party activities and development of the party system". Political parties become eligible to receive public funding if they obtain 1% of the actual number of votes in parliamentary elections.

22. The attendance of Members of Parliament of parliamentary sittings and sessions is set out in Article 224 of the Rules of Procedure of Parliament, which provides for reductions of the salaries of Members of Parliament if they fail to attend parliamentary sittings without a valid reason. At the same time, Article 91 (10) of the Rules of Procedure of Parliament specifies that boycotts (defined as the refusal of a faction or a Member of Parliament to discuss and participate in a plenary session due to political views) shall not constitute a case of non-attendance of a parliamentary session.

23. Currently, Article 51 of the Election Code regulates free airtime allocations during election campaigns that shall be provided to qualified electoral subjects demonstrating a certain level of public support. After the 2024 parliamentary elections, a new Article 51 will enter into force, granting free airtime to all parties that obtain at 3% of the votes.

V. Analysis

24. The rights to free association and free expression are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, must be able to fully enjoy such rights. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), and in Article 10 and 11 of the European Convention on Human Rights (hereinafter "ECHR"), which protect the rights to freedom of expression and opinion and the right to freedom of association respectively.

25. Moreover, Article 25 of the ICCPR provides individuals with the right to take part in the conduct of public affairs, either directly or through freely chosen representatives. Article 25 also guarantees the right to vote and to be elected at genuine periodic elections by universal and equal suffrage, guaranteeing the free expression of the will of the electors. The right to free elections, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature is likewise set out in Article 3 of Protocol 1 to the ECHR.

26. It should be noted that any successful changes to electoral and political party legislation should be built on at least the following three elements: 1) a clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and 3) the political commitment to fully implement such legislation in good faith. In particular, the OSCE/ODIHR and the Venice Commission stress that an open and transparent process of consultation and preparation of such amendments increases confidence and trust in the adopted legislation and in the state institutions in general.

27. Stability of the electoral law is crucial to ensure trust in the electoral process, and in particular to exclude any suspicion of manipulation of the electoral legislative framework, according to the Venice Commission's Code of Good Practice in Electoral Matters, and as explained in the interpretative declaration on the stability of electoral law.[4] It is recommended that amendments to the electoral, but also the political party legal framework are adopted through a transparent, accountable, inclusive and democratic process,[5] allowing for a meaningful discussion and facilitating consensus of the key stakeholders.

28. Focusing on the content of the amendments to different political and electoral laws in Georgia under consideration in this Joint Opinion, the first common characteristic is the restriction of political pluralism and the limitation of the rights of the opposition. The amendments would limit widely the rights of citizens to associate politically, to participate in elections, and the right to hold public offices, all of them recognized in the Georgian Constitution (Articles 23, 24 and 25), and the main international human rights instruments mentioned above. In general, such restrictions do not seem to be necessary or proportionate measures to deal with the problem of the absence of the Members of Parliament during parliamentary sessions. Moreover, there does not appear to have been extensive consultations with relevant stakeholders, including non-party stakeholders.

A. Amendments Relating to the Funding of Political Parties

1. General Remarks

29. The proposed amendments would revise Articles 30 and 39 of the Law on Political Associations of Citizens and deny state funding to a political party or electoral bloc that did not take up at least half of the parliamentary mandates that it won. In addition, if half of the members of parliament of any party or bloc do not attend without good reason more than half of the regular plenary sittings during the previous regular plenary session, the party or bloc would lose state funding for the next six months.

30. Currently, based on Article 30, political parties become eligible for funding from the state budget if they receive at least 1% of the actual number of votes in a parliamentary election.[6] Parties receive the respective funds on the basis of written consent submitted to the Central Election Commission (hereinafter "CEC") under Article 30 (4) no later than 25 November for the following year. If a political party fails to submit the required consent even after a reminder by the CEC, it loses the right to receive its share of funding for the following year.

31. Article 39[1] is a transitional provision under Chapter V of the Law on Political Associations of Citizens and applies to parliamentary elections held before 2028 (Article 39[1] (1)) and to parliamentary elections held before 2024 (Article 39[1] (2)), respectively.

32. The draft amendments aim to substitute the current Article 30 (4) with a new provision, and to supplement Article 30 with two new paragraphs 5 and 6. Two further paragraphs 3 and 4 would be added to Article 39[1].

33. The new paragraph 4 of Article 30 specifies that political parties would receive public funding from the second day after the relevant convocation of the Parliament of Georgia acquires full powers. The funding would cease on the day when, following new elections, the next convocation of the Parliament of Georgia would assume full powers.

---

[4] Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, II.2; interpretative Declaration on the Stability of the Electoral Law (CDL-AD(2005)043).
[5] Venice Commission, Rule of Law Checklist, CDL-AD(2016)007rev, II.A.5.
[6] According to Article 30 par 3, eligible parties shall receive 15 Georgian Lari (GEL) (approximately 3.75 EUR) annually for each vote received within the first 50,000 real votes in the last parliamentary elections of Georgia, and 5 GEL (approximately 1.25 EUR) for each subsequent vote received.

34. While the proposed amendment appears to have a mainly declaratory value, it is welcome that the current paragraph 4 requiring written consent by political parties before receiving public funding would thereby be abolished.

35. Obliging parties that are eligible for public funding to submit a declaration of written consent every year in order to receive funding and depriving thereof those who do not for an entire year, would appear to be an unnecessary administrative step that imposes additional burdens on both the political parties and the CEC. For the above reasons, deleting and replacing the current Article 30 (4) of the Law on Political Associations is a positive step.

2. The Loss of State Funding for Political Parties if Members Fail to Take up at Least Half of their Mandates

36. The introduction of a new paragraph 5 to Article 30 aims to limit the distribution of public funding to all eligible parties, by requiring that only those political parties, whose members took up at least half of their mandates as Members of Parliament, shall receive public funding. In practice, once Parliament informs the Central Election Commission about the failure of Members of Parliament of a particular party to take up their mandates, the Commission would immediately cease all public funding.

37. While states are not obliged to provide political parties with public funding, the latter is a good means to not only support political parties in the important role they play, but also to prevent corruption, and remove undue reliance on private donors.[7] This will strengthen political pluralism and help ensuring the proper functioning of democratic institutions. In addition, public funds should be allocated to recipients in an objective and unbiased manner.[8]

38. Political parties are associations that are promoted and protected by the freedom of association under Article 22 of the ICCPR and Article 11 of the ECHR, as well as Articles 3 and 23 of the Georgian Constitution, which recognize the importance of political parties in democracy and guarantee to all citizens of Georgia the right to form and participate in political parties.

39. As underlined in the 2nd edition of OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, political parties need appropriate funding to help them fulfil their core functions, both during and between elections.[9]

40. Any limitations imposed on the funding allocated to or received by political parties through the state would affect their right to freedom of association and will therefore need to adhere to the requirements outlined in Article 22 par 2 of the ICCPR and Article 11 par 2 of the ECHR. This means that such limitations will need to be based on law, follow a legitimate aim, and be necessary and proportionate to fulfil this aim. While the desire to ensure the functioning of the Parliament is understandable, it is questionable whether depriving individual parties of all public funding is the right and proportionate way to do so.

41. According to Article 30 (1) of the Law on Political Associations of Citizens, political parties shall receive public funding for "financial support of party activities and development of the party system". This would seem to indicate that public support is not solely linked to a party's

[7] Venice Commission - OSCE/ODIHR Guidelines on Political Party Regulation, 2nd edition (CDL-AD(2020)032), par. 232.
[8] Ibid, par. 234.
[9] Venice Commission - OSCE/ODIHR Guidelines on Political Party Regulation, 2nd edition (CDL-AD(2020)032), par. 204.

activities in Parliament, but that such public funding is allocated to support all activities conducted by a political party, within Parliament and beyond.[10]

42. This is compounded by the fact that all political parties that receive 1% of the actual vote are eligible for public funding, which will likely include parties that may not meet the electoral threshold of 5% as defined by the Constitution of Georgia for the next parliamentary elections (Article 37(6) (although the electoral threshold for the 2020 elections was, on an exceptional basis, set to 1%).

43. It would thus appear disproportionate to link the public funding of political parties solely to the question of whether or not enough elected Members of Parliament from these parties have taken up their mandates, and to deprive political parties of all public funding in the latter case. Such a step would have serious implications for most opposition parties, as confirmed during the videoconference meetings with these parties. In some instances, the loss of public funding would call into question the very existence of certain political parties, especially in cases where parties have few other avenues for obtaining party funding. This affects the vast majority of opposition parties, given that the threshold for receiving public funding and the threshold to enter Parliament are exceptionally, following the last elections, the same (one per cent).

44. Generally, according to the Constitution, political parties shall participate in the formation and exercise of the political will of the people (see Article 3 (4) of the Constitution). Moreover, in their definition of political parties, the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation stress that a political party is "a free association of individuals, one of the aims of which is to express the political will of the people, by seeking to participate in and influence the governing of a country, *inter alia*, through the presentation of candidates in elections".[11] The participation in parliamentary activities at the national level is thus not the only purpose of political parties, as can also be seen by the fact that the threshold for receiving public funding is the number of votes that a political party receives, not the number of parliamentary seats that it garners.

45. At the same time, one could argue that even if this is not specifically mentioned in the Constitution or in the Law on Political Associations of Citizens, representing their supporters in parliament and taking part in the parliamentary process is nevertheless part of political parties' tasks and objectives, should they receive enough votes to do so. Public subsidies to political parties may at least partially also be justified by the performance of public functions by those parties, including the participation in parliament. It would therefore not be unreasonable to link a portion of the funding to the extent to which members of political parties carry out public functions in the legislature if elected to do so.

46. Given the other non-parliamentary functions of a political party, such considerations should not disproportionately influence the amount of public funding received,[12] and would also need to depend on the number of party members who have or have not taken their seats as Members of Parliament. This should be set out clearly in law, as should the length of time that political parties shall be deprived of a certain portion of their public funding.

---

[10] See also the Statement of the Public Defender of Georgia of 24 December 2020, at Public Defender Negatively Assesses Changes Relating to Termination of Funding for Political Parties (ombudsman.ge).

[11] Venice Commission - OSCE/ODIHR Guidelines on Political Party Regulation, 2nd edition (CDL-AD(2020)032) par 11.

[12] In other countries, there are no known cases where parties were deprived of public funding for not taking up mandates, or boycotting parliamentary sessions or electoral rounds, see e.g. the example of North Macedonia (then "The Former Yugoslav Republic of Macedonia", where during the 1994 parliamentary elections, some opposition parties participated in the first round of elections, and then decided to boycott the second round. They still retained their public funding, having passed the necessary threshold (though these parties did not obtain any seats in parliament).

47. During the online meetings, the authorities informed OSCE/ODIHR and the Venice Commission that, if a new paragraph 5 is introduced to Article 30, this new provision should not apply before the next election has taken place. This is welcome.

48. At the same time, it is noted that due to the ongoing boycott of parliamentary activities by most opposition parties, the Parliament is currently composed largely of Members of Parliament of the ruling party. In such situations, any legislation that could be seen as largely punitive in nature, and that targets opposition parties, should be avoided. As stated in the "Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist", "there is a clear need for ensuring that majorities do not abuse their otherwise legitimate rights just because they won the elections".[13] Excessive limitations on state funding for opposition parties that they have already proven eligible for such funds based on Article 30 of the Law on Political Associations of Citizens would go against this principle, send the wrong message and set a dangerous precedent in terms of party pluralism and maintaining a level playing field. Moreover, if the amendments would be passed by May of this year, as intended by the drafters, this would have serious consequences for the abilities of the affected parties to participate in local elections, due to take place later in 2021.

49. In any event, the current situation, where the Member of Parliament have decided to renounce their seats in Parliament until a new election has been called, would appear to be a political dispute that should be resolved by dialogue and good will, not by deciding, by majority vote, and in the absence of the affected political parties, to deprive political parties of all of their public funding. It is thus recommended to significantly amend or delete the proposed Article 30 (5) from the amendments.

50. The above considerations equally apply to the new Article 39[1] (2) proposed by the Draft Amendments, which contains the same limitations for political parties that are part of an electoral bloc.

3. The Temporary Loss of State Funding for a Political Party if the Majority of its Members of Parliament Fail to Attend the Majority of Parliamentary Sittings Without Justification

51. Under the proposed Article 30 paragraph 6, the public funding of a political party would be suspended for a period of six months in cases where more than half of the elected Members of Parliament from this party failed, without good reason, to attend more than half of the regular plenary sittings of the previous regular plenary session of the Parliament. As in the previously mentioned case, once Parliament informs the CEC about the failure of Members of Parliament to attend the requisite number of sittings, the CEC would immediately cease all public funding of the respective period.

52. As opposed to the changes proposed by Article 30 (5), this provision concerns situations where Members of Parliament have already assumed their mandates, but still do not attend the requisite number of parliamentary sittings. It is assumed that the aim of the provision, however, is likewise to ensure the functioning of the Parliament even in cases where Members of Parliament from a given party boycott the majority of sittings or sessions.

53. The overall package of amendments also foresees an amendment to Article 224 of the Parliament's Rules of Procedure, by introducing a new paragraph 15[1]. According to this provision, the above failure to attend all plenary sittings during one session, or the failure to attend all plenary sittings of a session for a month, would lead to the full deduction of a Member

[13] Venice Commission, Parameters on the Relationship between the Parliamentary Majority and the Opposition In a Democracy: A Checklist (CDL-AD(2019)015), par. 20.

of Parliament's salary for the period of the session and the ensuing recess period, unless the respective Member of Parliament attends an extraordinary session during recess.

54. The Venice Commission has previously found that while political action may follow various paths, and attendance at sittings is not the sole form of such action, it would be conceivable for the Constitution to lay down a rule of attendance and indicate penalties on defaulting members, ranging from partial or complete withdrawal of indemnity to withdrawal of the right to vote, but without providing for the loss of the mandate.[14]

55. However, given the broad aim of public funding under Article 30 (1) of the Law on Political Associations of Citizens, it would be disproportionate to take away six months' worth of all public funding for a political party that is eligible for such funding, due to the actions or omissions of Members of Parliament of such a party. Such actions would raise concerns not only under the political party's right to freedom of association, but also with regard to the right to freedom of expression of its members.

56. Additionally, the failure of Members of Parliament to attend parliamentary sittings, whether in plenary or in committee, is amply dealt with in the Parliament's Rules of Procedures, in particular Articles 91 and 224. According to Article 91 (10), a Member of Parliament may miss plenary sittings or sessions if he/she has a good or valid reason for doing so, which include illness, birth, death or illness of a family member, or business trips. Meetings with state delegations visiting Georgia, or other visits to the Georgian Parliament also qualify as good/valid reasons for missing a sitting or session (Article 91 (11)).

57. In addition to the above-mentioned, more usual reasons for missing parliamentary sittings or sessions, Article 91 (9) of the Rules of Procedures states that a Member of Parliament "shall not be deemed to have missed a plenary session without a valid reason if a faction or a Member of Parliament refuses to discuss and participate in the plenary session due to political views (boycott)." While this is not mentioned under the list of good/valid reason for missing a session or sitting as set out in Article 91 (10)-(11), a boycott of a session for political reasons is nevertheless recognized in the Rules of Procedure as an equally valid reason for not attending a session or sitting, or rather, is not considered to constitute a case of non-attendance at all. Article 91 also does not indicate that this shall only apply for a certain number of sittings or sessions, or to a certain number of Members of Parliament.

58. During the videoconference meetings with stakeholders in Georgia, the OSCE/ODIHR-Venice Commission delegation was informed that the amendments did not aim to ban the right to boycott sessions as set out in Article 91 (10) of the Rules of Procedure of Parliament, and that this provision would remain untouched. Rather, the amendments sought to ban cases of "sabotage", which were to be distinguished from acts of boycotts, and the ongoing refusal of the opposition parties to take part in parliamentary sessions is perceived by the ruling party and the law drafters as a case of a "sabotage", not a boycott.

59. During discussions, it was not clear how such cases of sabotage would be defined and what would render them different from boycotts. Article 91 (10) defines boycotts as cases where "a faction or a Member of Parliament refuses to discuss and participate in the plenary session due to political views" – this would appear to be very similar to the current actions of opposition parties in Georgia. In any event, if the instant cases are not seen as boycotts, then the amendments should state clearly what sets them apart from cases where Members of Parliament engage in boycott activities.

[14] Venice Commission, Parameters on the Relationship between the Parliamentary Majority and the Opposition In a Democracy: A Checklist, CDL-AD(2019)015, par. 60; Opinion on the Draft Revision of the Romanian Constitution, CDL-AD(2002)012, par. 27 and 29.

60. In any event, while the Parliament's Rules of Procedure permit the absence of Members of Parliament in cases where they boycott sittings or sessions, the proposed Article 30 (6) would suspend public funding for political parties for a period of six months. This would create a contradiction between the Law on Political Associations on the one hand and the Rules of Procedure on the other, and also within the Rules of Procedure.

61. It would be preferable to resolve this contradiction by deleting the new Article 30 (6) from the amendments. In addition to the reasons set out above, it would also be disproportionate to punish a Member of Parliament for voicing his/her opposition to a matter by boycotting a session with the full deduction of his/her salary. Moreover, other cases where a Member of Parliament fails to attend sittings or sessions without good reason are already covered by Article 224 of the Rules of Procedure of Parliament, which foresees sanctions in the form of proportionate salary deductions and other measures in such cases.[15]

62. The above considerations apply equally to the new Article 39[1] (3) proposed by the amendments, which contains the same limitations for political parties that are part of an electoral bloc.

63. There is also a proposed amendment to Article 224 of the Rules of Procedure of the Parliament of Georgia, which would fully deduct the salary of a Member of Parliament who does not attend without good reason all plenary sittings during a calendar month of the regular session. The salary would also be fully deducted during the recess period if the member does not attend without good reason all plenary sittings of the regular session before the recess.

64. The Georgian Constitution, in Article 39 (3) states that "[a] member of parliament shall receive remuneration prescribed by a legislative act." As the Constitution does not qualify this grant of remuneration, it is questionable whether the Parliament can introduce conditions that fully deduct the remuneration without making a change to the Constitution.

65. More proportionate sanctions could include deducting the per diems, travel expenses, office expenses and daily attendance stipend from a Member of Parliament who routinely fails to attend sessions and sittings without good reason.

B. Amendments Concerning the Allocation of Free Airtime in the Context of Elections

66. The two proposed amendments to Article 51(2) and Article 186 of the Election Code would amend articles dealing with the allocation of free airtime to political parties during election campaigns.

67. Each article allocates free airtime to political parties who have met the threshold of obtaining at least 3% of the vote in the last parliamentary elections. Currently, the free airtime is allocated to those parties that receive state funding and those that do not.[16] The amendments would deny this free airtime to those parties which do not receive funding from the state budget at the time of scheduling the elections.

---

[15] According to Article 224 par 12, stating that "[a] Member of Parliament shall be deducted ten per cent of his / her salary for each of the more than two plenary sittings missed during the regular session due to unreasonable reasons, as well as for each plenary sitting missed due to unreasonable reasons during the extraordinary session". According to par 13 of the same provision, the failure to register for a plenary sitting will lead to a five per cent deduction of the Member of Parliament's salary (unless he/she boycotted a sitting or session according to Article 91 par 9 of the Rules of Procedure). Article 224 par 15 also states that in the aforementioned cases, the total amount of a one-time salary for a Member of Parliament shall not exceed 50 per cent of such salary. Under Article 224 pars 16-18, the extent of failure of Members of Parliament to attend committee and plenary sittings and sessions shall be drawn up and published on the Parliament's website on a monthly basis, and at the end of each session.

[16] Law on Broadcasting, Article 66.

68. The allocation of free airtime to political parties on an equal basis is a part of equal suffrage rights and should be guaranteed for parties and candidates alike. This is especially important in countries such as Georgia, where airtime on TV channels is very expensive. The notion of equality of opportunity is fundamental to the holding of democratic elections and applies to the allocation of radio and television airtime.[17]

69. Any restrictions on the allocation of free airtime should have a basis in law, be in the public interest and comply with the principle of proportionality.[18] Political forces should be able to voice their opinions in the main media in the country.

70. The allocation of media airtime is integral to ensuring that all political parties, including small parties, are able to present their programs to the electorate, both before and in between elections. While allocation of free airtime on public media is not mandated through international law, such a provision can be a critical means of ensuring an informed electorate. Where the State allocates media space, the regulation concerned should provide that free airtime and print space be allocated to all parties on a reasonable basis, consistent with the principle of equal treatment before the law.[19]

71. In addition, such a restriction is not in the public interest as it would reduce access to information that the public needs to make an informed choice.[20] In fact, it is those parties that do not receive state funding that would be most in need of free airtime to voice their opinions and present their programmes to the electorate. It is recommended to review the draft amendments to ensure that opportunities of political parties to address electorate are not restricted and voters are given a chance to make an informed choice.

[17] Venice Commission Code of Good Practice in Electoral Matters, CDL-AD(2002) 023rev-cor at I.2.3.a.ii).
[18] Venice Commission Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev-cor, II.1.b.
[19] OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation 2nd Edition, CDL-AD(2020)032, par. 232ff.
[20] UN International Covenant on Civil and Political Rights, article 25 and General Comment 25. the right to receive information is guaranteed by Article 10 ECHR.