THE AMENDMENTS TO THE RULES OF PROCEDURE WORSEN THE LEGAL STATUS OF THE OPPOSITION

GEORGIAN FOUNDATION FOR STRATEGIC AND INTERNATIONAL STUDIES

On June 1, the members of the parliamentary majority initiated the Draft Law on the Amendments to the Rules of Procedure. This analysis covers the significant changes envisaged under this draft law, which worsens the legal status of the opposition and includes the following changes: MPs who were elected following the nomination of different political parties and/or electoral blocs will no longer be able to form a faction; the allocated time for a speech is increased for the Speaker of the majority, while smaller factions and independent MPs will receive less time; the opposition will no longer have its quota to independently elect a member of the Prosecution Council without the support of the Majority.

0 DRAFT LAW, INITIATOR

Legislative Initiative: Draft Law on the Amendments to the Rules of Procedure

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1 ESSENCE OF THE DRAFT LAW

The initiators of the draft law note in the explanatory memorandum that "the time has come to bring the Rules of Procedure in line with the fundamental provisions (not yet in effect) of the Constitution of Georgia. At the same time, the entry into force of the Rules of Procedure has revealed a number of deficiencies that need to be resolved".

The initiated draft law envisages changes related to the approximation of the Rules of Procedure with the Constitution, as well as a host of unrelated amendments that significantly decrease the legal status of the opposition in the work of the Parliament.

1. MAJORITY, OPPOSITION, PUBLIC OFFICIALS

PARLIAMENTARY MAJORITY AND PARLIAMENTARY OPPOSITION (ABOLISHMENT OF THE MINORITY)

CURRENT PROVISION	PROPOSED CHANGES
A Majority and Minority are established in the Parliament. The rules for their formation are defined as follows: • If the total number of MPs affiliated with a faction exceeds half of the total number of MPs, the faction is assume the status of the Majority upon its request; • If the total number of MPs affiliated with a faction exceeds half of the number of MPs who are not members of the Majority, the faction may request and receive the status of the Minority.	The Minority, as a separate subject, is abolished. Instead, there will be the Majority and Opposition. The Majority will consist of no less than 76 MPs. All MPs who are not part of the Majority will belong to the Parliamentary Opposition.

DECREASING THE NUMBER OF DEPUTY CHAIRPERSONS

CURRENT PROVISION	PROPOSED CHANGES
The Chairperson of the Parliament has 9 Deputies: • The First Deputy Chair is elected by the nomination of the Chairperson of the Parliament; • One Deputy Chair is elected from the MPs elected from the Autonomous Republic of Abkhazia and other is elected from the majoritarian MPs elected from the Autonomous Republic of Adjara; • 3 Deputies are elected upon the nomination of the Majority; • 3 Deputies are elected upon the nomination of the factions, which are not part of the Majority.	The Chairperson of the Parliament will have 3 Deputies instead of 9. One will be the First Deputy Chair[1], while the remaining two will be from the Parliamentary Majority and Parliamentary Opposition, respectively.

PARLIAMENTARY OFFICIAL POSITIONS THAT WILL BE ABOLISHED

CURRENT PROVISION	PROPOSED CHANGES
The officials of the Parliament are as following: • Chairperson of the Parliament; • First Deputy Chair and Deputy Chairs; • Chairpersons of the Parliamentary Committees; • Leaders of the Majority and Minority, Faction Leaders; • Chairpersons of temporary investigative commissions and other ad hoc commissions; • First Deputy Chairs and Deputies of the Parliamentary Committee Chairpersons.	• The Leader of the Majority will no longer be a parliamentary official; • Chairpersons of temporary investigative commissions and other ad hoc commissions will no longer be classified as parliamentary public officials; • The chairpersonship of the Temporary Parliamentary Commission on Restoration of Territorial Integrity and De-occupation, upon the decision of the Parliament, will be carried out by one of the Deputy Chairs of the Parliament, while the chairpersonship of a temporary investigative commission or other ad hoc commission can be held by a parliamentary official.

NEW PARLIAMENTARY OFFICIAL POSITIONS

CURRENT PROVISION	PROPOSED CHANGES
The First Deputy and Deputy of a Faction Chair are not parliamentary officials.	The First Deputy Chair and Deputies of the Faction Chairs will be introduced as parliamentary official positions, the remuneration of which will be equal to that of the First Deputy Committee Chair and Deputy Committee Chair.

2. RULES FOR FORMATION OF A FACTION AND PUBLIC OFFICIALS

RULES FOR FORMATION OF A FACTION

CURRENT PROVISION	PROPOSED CHANGES
A faction can be formed by not fewer than 6 MPs.[2]	Not fewer than 7 MPs will have the right to form a faction.
Elected MPs from same party list of the same party are not allowed to form more than one faction. An MP, except a Majoritarian MP, is allowed to affiliate with one faction that is formed by members of a political party that nominated he/him.	MPs who were elected following the nomination of different political parties and/ or electoral blocs will no longer be able to form a joint faction; According to the proposed amendments, Majoritarian MPs nominated by a party will be able to join a faction. However, Majoritarian MPs nominated by an initiative group will not be able to join a faction.

NEW RULES FOR THE ELECTION OF THE FACTION DEPUTY CHAIRPERSON

CURRENT PROVISION	PROPOSED CHANGES
The charter of the faction determines the rules for the election of its deputy chair.	The Chairperson of the Faction will be able to have a Deputy Chair for every 15 members. In the case of multiple Deputies, one of them will be given the status of the First Deputy.

THE FACTION'S RIGHT TO TAKE THE FLOOR

CURRENT PROVISION	PROPOSED CHANGES
A faction that is not affiliated with the Majority or the Minority is entitled to take the floor twice for 30 minutes during a session. A faction may raise this issue after the discussion on the issue is over at any time except during voting procedures. The Parliament is obliged to give the floor immediately.	All factions (including the factions of the Majority and Opposition) will have the right to take the floor for 30 minutes.

ALLOCATION OF SPEECH TIME FOR THE FACTION DURING THE FIRST AND SECOND HEARING OF A DRAFT LAW

CURRENT PROVISION	PROPOSED CHANGES
The speech of a representative of a faction shall not exceed 10 minutes, and the speech of a representative of the Minority or the Majority shall not exceed 15 minutes.	A faction will receive the right to speech in minutes equal to the number of its faction members, but not less than 10 and not more than 75 minutes.

3. ELECTION OF PUBLIC OFFICIALS BY THE PARLIAMENT

RULES FOR THE ELECTION OF A MEMBER OF THE BOARD OF THE PUBLIC BROADCASTER

CURRENT PROVISION	PROPOSED CHANGES
Among the candidates selected by the selection commission for the Parliament's approval: • The Public Defender of Georgia presents two candidates; • The Majority (if there is no parliamentary majority, by the factions) present three candidates; • At least one-quarter of **MPs who are not members of the Majority** present three candidates; • The Supreme Council of the Autonomous Republic of Adjara presents one candidate. Upon the finalization of the selection process, the selection commission presents at least three times the number of candidates needed to be selected by the Majority (if there is no parliamentary majority, by the parliamentary factions), **MPs who are not members of the parliamentary majority**, the Public Defender of Georgia and the Supreme Council of the Autonomous Republic of Adjara for approval.	Among the candidates selected by the selection commission: • The Public Defender of Georgia presents two candidates; • The factions, **which are part of the Parliamentary Opposition and have the most members**, present three candidates; • The Supreme Council of the Autonomous Republic of Adjara presents one candidate. Upon the finalization of the selection process, the selection commission presents at least three times the number of candidates to the **factions**, the Public Defender of Georgia and the Supreme Council of the Autonomous Republic of Adjara for approval.

RULES FOR ELECTION OF MEMBERS OF THE PROSECUTION COUNCIL

CURRENT PROVISION	PROPOSED CHANGES
• 1 member of the Prosecution Council is elected by the Majority • Its second member is elected from MPs not affiliated with the Majority according to the rules determined by the majority of their composition An MP who receives more than half of the votes of members of the Majority, or more than half of the votes of MPs not affiliated with the Majority, is deemed elected as a member of the Prosecution Council.	The Parliamentary Majority and Parliamentary Opposition will each have a member in the Prosecution Council. Every faction and group of 7 MPs without a faction have the right to nominate one candidate for the membership of the Prosecution Council. Both members of the Prosecution Council will be elected by the majority of full composition of the Parliament. At the time of the entry into force of the Rules of Procedure, the whole members of the Prosecution Council retain their authority until the expiration of term of office.

RULES FOR ELECTION OF MEMBERS OF SELECTION COMMISSION FOR THE PENSION AGENCY'S INVESTMENT BOARD

CURRENT PROVISION	PROPOSED CHANGES
Two members of the selection commission that select candidates for the members of the Pension Agency's Investment Board are elected by the Majority, while one member is elected by **MPs that do not belong the Majority.** An MP who receives more than half of the votes of members of the Majority or respectively MPs not affiliated with the Majority is deemed elected as a member of Selection Commission.	Two members of the selection commission that select candidates for the members of the Pension Agency's Investment Board are elected by the majority of full composition of the Parliament upon the nomination of the faction(s) of the parliamentary majority, while one member is elected upon the nomination of the factions of the parliamentary opposition.

4. POLITICAL DEBATES AND VOTING PROCEDURE

POLITICAL DEBATES

CURRENT PROVISION	PROPOSED CHANGES
Upon the request of one-fifth of the full composition of the Parliament, a group of political debates is designated at least once a month. The allocation of time is as following: • The Majority and the Minority are each granted 45 minutes for a speech; • Each faction, which is not part of the Majority or Minority, is granted 15 minutes; • Each independent MP is granted 5 minutes.	• Each faction is granted time in minutes equal to the number of its members, but no less than 10 and not more than 75 minutes. • Each independent MP will be granted 3 minutes.

VOTING PROCEDURE

CURRENT PROVISION	PROPOSED CHANGES
1-minute statements are allowed during the voting procedures. The **Minority and the Majority have the right to make 1-minute statements on procedural issues four times**, a faction, which is not affiliated with the Majority or the Minority has the right to do this twice, and an independent MP has the right to do this once.	The right of the Majority and Minority to make a 1-minute statement four times is abolished. Only the current rules for a faction, which is not affiliated with the Majority or the Minority, will remain in force.

5. PARLIAMENTARY CONTROL

RULES FOR HOLDING DEBATES FOLLOWING THE INTERPELLATION PROCEDURE

CURRENT PROVISION	PROPOSED CHANGES
• The Majority and the Minority are each granted 45 minutes; • Each faction, which is not part of the Majority or Minority, is granted 15 minutes; • Each independent MP is granted 5 minutes.	• Each faction is granted time in minutes equal to the number of its members, but no less than 10 and not more than 75 minutes; • Each independent MP will be granted 3 minutes.

FORMATION OF THE GROUP OF TRUST

CURRENT PROVISION	PROPOSED CHANGES
• Chair of the Defence and Security Committee of the Parliament; • One member of the Majority; • The majoritarian MP who gained most votes in the previous election; • One member of the Minority; • An MP not affiliated with either the Majority or the Minority who gained most votes in the previous election. - If there is no parliamentary minority, two members of the Group of Trust will be elected from this category of MPs	• Chair of the Defence and Security Committee of the Parliament; • Two members from the factions/faction members of the parliamentary majority; • Two members from the factions of the parliamentary opposition.[3]

DURATION OF THE MINISTER'S HOUR

CURRENT PROVISION	PROPOSED CHANGES
The duration can be extended until 21:00 by the majority vote of those attending the plenary sitting.	The duration can be extended by the majority vote of those attending the plenary sitting until all issues have been discussed.

6. THE SUPERVISORY COUNCIL OF THE BUDGET OFFICE

RULES OF FORMATION OF THE SUPERVISORY COUNCIL OF THE BUDGET OFFICE

CURRENT PROVISION	PROPOSED CHANGES
The Supervisory Council of the Budget Office of the Parliament coordinates the work of the Budget Office of the Parliament. The composition of the Supervisory Council of the Budget Office of the Parliament is as following: • Chairperson of the Parliament; • Chairperson of the Budget and Finance Committee; • One member from the Majority; • One member from the Minority; • One member from independent MPs with the majority of support; • One member from among the faction members that belong to neither the Majority nor the Minority, based on preliminary consultations. Representatives of the Minority and factions that do not belong to the Majority or the Minority should not exceed one half of the members of the Supervisory Council of the Budget Office of the Parliament.	The composition of the Council is as following: • Chairperson of the Parliament; • Chairperson of the Budget and Finance Committee; • Other members of the Supervisory Council are appointed by the Chairperson of the Parliament based on consultations with the factions and MPs who do not belong to any faction.

1 The First Deputy Chair will be elected upon the nomination of the Chairperson by the majority of full composition of the Parliament

2 According to the Constitution, 7 MPs have the right to establish a faction

3 If the factions belonging to the opposition nominate more than two members, the plenary session will be presented with the member from the faction that has the most members. If the number of members is the same, the plenary session will be presented with the faction member whose party received the most votes in the last parliamentary elections.

ASSESSMENT/RECOMMENDATIONS

The planned amendments to the Rules of Procedure should be negatively assessed as they significantly worsen the legal status of the opposition in the Parliament. Moreover, the draft law is aimed at creating privileges for the parliamentary majority.

The development of democratic governance in a parliamentary republic is impossible only through the strengthening of the rights of the majority. In order to bolster the role of the Parliament, it is important to guarantee the engagement of the opposition in important parliamentary processes. Instead of aiming to strengthening the role of the opposition (recommendations that we have numerously presented to the Parliament) and providing all political parties with equal and complete participation in legislative and oversight processes, the draft law deprives and weakens the opposition of the rights it enjoys under the current legislation.

1. The standing of political parties that have few members is worsened. This will weaken the parliamentary opposition. Parties that have less than 7 parliamentary mandates will no longer have the ability to create a faction with other parties. Independent MPs nominated by an initiative group will also be unable to create a faction.

According to the Constitution of Georgia, Members of Parliament elected following their nomination by one political party may form only one faction. The draft law envisages a new restriction that will prohibit MPs who were elected following the nomination of different political parties and/or electoral blocs from forming a joint faction.

This provision of the Rules of Procedure goes against the boundaries and intention of the Constitution. The purpose of the Constitutional norm is to restrict MPs elected from the same party from establishing several factions, for the purposes of receiving the rights granted to factions. The Constitution does not prohibit the creation of a joint faction by MPs elected by several party lists and doesn't envisage restrictions for MPs elected following the nomination by an initiative group.

It is noteworthy that a number of opposition parties may not be able to secure 7 parliamentary mandates as a result a low electoral threshold during the parliamentary elections in 2020. With the planned amendments to the Rules of Procedure of the Parliament, these parties will no longer be able to form a faction by uniting with other political forces and they will thus be unable to exercise the rights granted to factions.

In order to obtain 7 parliamentary mandates, a political party should receive around 6% of the total votes.[4] Due to the fact that they won't be able to form a faction, political parties will be deprived of the exercise of significant rights:

- Duration of speeches in debates – independent MPs, in comparison with MPs affiliated with a faction, are granted less time;
- They won't be able to use the 30-minute right to speech twice during a plenary session;
- They won't be able to nominate a candidate for the Member of the Board of the Public Broadcaster;
- The creation of independent investigative commissions by independent MPs will become more difficult, as a Resolution can be issued only with the support of at least 30 MPs (not less than one-fifth of the full composition of the Parliament). At the same time, a faction with 7 members has this right;
- Independent MPs will no longer be able to nominate members to the Group of Trust;
- Independent MPs are not members of the Parliamentary Bureau; therefore, they won't be able to have their representation in the Bureau without a faction;
- They won't be able to use the respective material and human resources made available to the factions.

2. It is problematic to increase the role of large factions at the same expense of decreasing the rights of small factions;

While it is true that the explanatory memorandum of the draft law notes that the role of the factions is increased, this change concerns only the big factions. The legal status of factions with a few members and independent MPs is made worse.

- According to the current rules, each faction, which is not part of the Majority or Minority, is granted 15 minutes, and each independent MP is granted 5 minutes, during the political debates, including the debates after the interpellation. According to the proposed amendments, each faction will be granted time in minutes equal to the number of its members, but no less than 10 and not more than 75 minutes. As a result, factions with fewer members will have decreased time while large factions will enjoy a significant advantage. Moreover, each independent MP will be granted 3 minutes instead of 5.

3. Decreasing the representation of the opposition in parliamentary official positions is problematic

The Chairperson of the Parliament will have one Deputy from the opposition instead of five. The chairpersons of temporary investigative commissions and other ad hoc commissions will no longer be classified as parliamentary officials (there are higher chances that a member of the opposition will take the position of a Chairperson of a temporary investigative commission rather than, for example, the position of a Chairperson of a parliamentary committee). The First Deputy and Deputies of factions are added to the list of parliamentary officials. A Faction Chairperson has the right to have a Deputy for every 15 faction members. As such, the number of parliamentary officials grows significantly for a faction that is represented by the majority.

4. Decreasing the role of the opposition in the election of public officials is a significant problem

- According to the current Rules of Procedure, the opposition has a quota in the process of the election of specific public officials and doesn't require the approval of the Majority to make its decision. For example, the member of the Prosecution Council is elected from MPs not affiliated with the Majority according to the rules determined by the majority of their composition. According to the proposed amendments, every faction and group of 7 MPs without a faction will have the right to nominate one candidate for the membership of the Prosecution Council. Both members of the Prosecution Council will be elected by the **majority of full composition of the Parliament**. This means that it will be impossible for an MP that is not favoured by the Majority to become a member of the Prosecution Council;
- According to the current Rules of Procedure, two members of the selection commission that select candidates for the members of the Pension Agency's Investment Board are elected by the Majority, while one member is elected by MPs that do not belong the Majority. According to the proposed amendments, two members of the selection commission that select candidates for the members of the Pension Agency's Investment Board will be elected by the majority of full composition of the Parliament, while only one member will be elected upon the nomination of the factions of the parliamentary opposition;
- The role of the independent MPs is decreased in the process of the election of the Board of the Public Broadcaster. According to the current Rules of Procedure, three members of the Board is nominated to the Parliament by at least one-quarter of MPs who are not members of the Majority. According to the proposed changes, this right remains unchanged only for the factions belonging to the opposition with the most members;
- The rules of formation of the Parliamentary Budgetary Office is also problematic. According to the current Rules of Procedure, the Chairperson of the Parliament is obliged to elect one member from the Minority and another one from the independent MPs. According to the proposed amendments, the Chairperson of the Parliament is free to make the decision on his/her own as there will only be an obligation to consult with the oppositional factions and independent MPs.

The only positive development in the proposed amendments to the Rules of Procedure is that the Minister's Hour won't be stopped at 21:00pm. Instead, it will go on until all issues have been discussed.

Recommendations

1. The Rules of Procedure of the Parliament should not go beyond the provision of the Constitution that reads that Members of Parliament elected following their nomination by one political party may form only one faction. MPs that have been elected through different party lists should have the right to create a joint faction. Moreover, there should be no restrictions for setting up a faction for Majoritarian MPs who were elected by the nomination of an initiative group;

2. The members of the opposition should retain their right to elect by quota the members to the Prosecution Council and the Pension Agency's Investment Board. The final decision should not belong to the Majority alone;

3. Independent MPs should retain the right to nominate a candidate during the election process of the Supervisory Council of the Public Broadcaster;

4. Factions and independent MPs should not have their allocated time for speeches decreased during the political debates, including the speeches following the interpellation. Factions should retain a minimum of 15 minutes, while independent MPs should retain 5 minutes instead of the proposed 10 and 3 minutes, respectively;

5. It is strategically and politically important for the country for the Chairperson of the Parliament to have a Deputy from amongst the MPs elected from the Autonomous Republic of Abkhazia and another Deputy from the majoritarian MPs elected from the Autonomous Republic of Adjara. In order to strengthen parliamentary control, it is also important for the Chairpersons of the Temporary Investigative Commissions to retain their parliamentary official status;

6. In order to strengthen the role of the Parliament, it is important for amendments to be introduced to the Rules of Procedure that would increase the oversight over the security sector, reform the Group of Trust, improve the parliamentary mechanisms of oversight and allocate at least one parliamentary committee chairpersonship for the opposition.

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4 The draft law doesn't account for the chance of having to add unallocated mandates if the proposed constitutional amendments are adopted and the number of MPs elected through the proportional system becomes 120 and the election threshold is set to 1%.

Sweden/საქართველო Sverige

This publication was prepared with the financial assistance of the Swedish International Development Cooperation Agency