



Strasbourg, 20 October 2003

Restricted
CDL (2003) 74
Or. eng.

Opinion no. 261 / 2003

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS ON

**THE REFERENDUM
ON DECREASING THE NUMBER
OF MEMBERS OF PARLIAMENT
IN GEORGIA**

by Mr Henrik ZAHLE (Member, Denmark)

1. The Monitoring Committee of the Parliamentary Assembly of the Council of Europe decided, at its meeting of 30 September 2003, to seek the opinion of the Venice Commission on the political situation in Georgia in the light of the forthcoming parliamentary elections which will take place on 2 November 2003, and in particular on the holding of a referendum, on the same day as the parliamentary elections, about decreasing the number of members of parliament.
2. I was appointed as one of two rapporteurs on the matter, at the Plenary Session of the Venice Commission which took place on 17-18 October 2003. The question was presented as urgent.

A. Background and question

3. A parliamentary election is going to take place on 2 November 2003.
4. For some time, there has been in Georgia a political interest in reducing the number of members of parliament, which presently, according to the Georgian Constitution, consists of 235 members. In accordance with art. 74 of the Constitution, a sufficient number of electors (not less than 200.000) has asked for a referendum on decreasing the number of parliamentarians. On 2 September 2003, the President of Georgia scheduled a referendum to take place on 2 November 2003, i.e. on the same day as the parliamentary elections. The question which will be put to the voters has the following content: "Do you agree to decrease the number of the members of the Parliament of Georgia to not more than 150 MPs?"
5. Article 28 of the Georgian Law on Referendum regulates the entry into force of a referendum. It states as follows (according to the translation submitted to me):
 - "1. From the day of setting the referendum till publication of its results it is permitted to take the resolution on the question put to the referendum.
 2. The resolution passed as a result of the referendum comes into force from the day of its publication, has validity and is final.
 3. The legislative and executive authority of Georgia is obliged subject to the referendum to bring into conformity the legislation of Georgia and other acts within one month.
 4. To change or unmake the resolution passed as a result of referendum is possible only under the referendum.
 5. The Constitutional Court of Georgia in the order established by law is granted the right to acknowledge the results of the referendum as invalid."
6. The question which lays behind the request of the Monitoring Committee is whether
 - (1) an affirmative answer to the referendum-question is going to be applied to the Parliament elected at the same day as the referendum, or
 - (2) the reduction of the number of parliamentarians will only take place after the relevant constitutional, legislative and other provisions have been amended in accordance with the result of the referendum, i.e. in practice not before the next parliamentary election in 2007.

B. Interpretation

7. The question which the voters are going to answer is, as already stated, “Do you agree to decrease the number of members of the Parliament of Georgia to not more than 150 members?” There is no indication, in the text of the question, about the time-limit or day when the change is going to come into force. In particular, there is no indication that the referendum should be related to the Parliament which is going to be elected on the same day as the referendum takes place.

8. The text itself, therefore, does not support the interpretation that an affirmative answer to the referendum-question should imply a change of the Parliament which is established at the same time as the referendum. In other words, the text does not indicate that the two votes are interrelated.

9. It must thus be concluded that the referendum does not relate to the composition of the Parliament which will be established by the election of 2 November.

10. If a majority of voters gives a positive answer to the referendum-question, in accordance with Article 28 § 2 of the Law on Referendum this result will “come into force from the day of its publication”. What does it imply, that the result “comes into force” immediately after the referendum?

11. The referendum is not an integrated part of a legislative procedure concerning a bill or a law. This possibility is explicitly excluded in the Georgian Constitution: its Article 74 § 2 provides that “The referendum cannot be held for adoption or abrogation of law ...”. The referendum and the publication of its result can therefore not by itself change the constitution or the electoral legislation. Especially there is no immediate change in the number of seats in the Parliament. The Parliament elected on 2 November 2003 will, in accordance with the Constitution, consist of 235 members, even if the referendum question is answered affirmatively.

12. Article 28 § 2 only implies that the possible positive result will make it obligatory for the Executive as well as the Parliament to establish a legal organisation which conforms with the result of the referendum. Not only does the constitutional regulation of the number of members in Parliament have to be changed, but also the electoral legislation with its regulation of constituencies, making up of the electoral result etc. will have to be revised in accordance with the result of the referendum. The necessary drafts for such amendments will have to be prepared, to be presented to the Parliament and to be voted for, and after these changes in the Constitution and in the legislation have taken place, the administrative consequences will have to be implemented. It is in this respect that an affirmative answer to the referendum-question implies immediate legal consequences, and it is in this respect that the result of the referendum “comes into force from the day of its publication”.

13. The revised Constitution and the revised electoral legislation will have to be ready to serve as a basis for the next parliamentary election, i.e. in practice the election in 2007.

C. A further consideration

14. The interpretation of the referendum-question and the relevant legislation on referendum is of course a question of national Georgian law, and a correct interpretation will have to be decided by the adequate Georgian authorities, eventually by the Constitutional Court of Georgia. The interpretation which is presented above (section II) may be questioned on the basis of specific sources of law or other legal material relevant for the interpretation which it may be claimed have been neglected in the interpretation above. With respect to this possibility, the interpretation has to be complemented with a further consideration which will show that it would be fundamentally incorrect to let a decision (taken by referendum or in any other way) on the size of a parliament have force in relation to a parliament to be elected the same day as this decision is made.

15. The institution of democratic elections of national parliaments is a cornerstone in any democratic legal and political structure. Such an election can only take place in relation to a specific organisation of the parliament to be elected. This implies that the election must be based on rules which are established in advance. The rules have at least to settle (1) the number of members of the parliament to be elected, (2) how many members are to be elected from each district, and (3) how many districts are to form the framework for the election. This is valid whether the elections are based on proportional representation or on single-member constituencies.

16. A parliamentary election with an undecided number of parliamentarians is incompatible with these conditions. For this reason as well – and this reasoning is not based on a specific interpretation of Georgian law - the number of members of the Georgian Parliament to be elected on 2 November 2003 must be the one established in the Constitution, i.e. 235 members.