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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

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

by Mr Sergio BARTOLE (Substitute Member, Italy)

The Georgian referendum on the number of the Members of the Parliament.

1. The Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to prepare an opinion on the possible effects of the approval of the amendments to the Constitution proposed by the President of Georgia. The proposal aims at reducing the number of the Members of the Parliament from 235 to 150. The amendments shall be submitted to the vote of the Georgian people according to a decision of the President who called a referendum to be held on the same day of the parliamentary elections. The question is whether the amendments, if and when approved, shall apply to the distribution of the parliamentary seats following the parliamentary elections which are scheduled on the same day of the vote for the referendum. Shall the new Parliament have 150 Members (instead of 235) if the proposal of President is approved by the people?

2. We can answer the question from two different points of view, both looking at the general principles of the Georgian constitutional order and applying the Georgian legislation concerning elections and referenda.

It is evident that the question submitted by the Monitoring Committee implies the suspicion that the Georgian authorities want to anticipate the effects of the referendum in breach of the principles of the rule of law. As a matter of fact the distribution of the parliamentary seats would be formally decided on the basis of legislative provisions, but it would not comply with the requirement that all the electoral operations have to be ruled by the same legislation from the very beginning to the end, that is from the decree providing for the calling of the elections to the final proclamation of the results of the vote. The Committee on the honouring of obligations and commitments by Member States of the Council of Europe could not be satisfied that the principles of the rule of law are complied with, if the the electoral rules were changed during the electoral operations. According to art. 6.2 of the Georgian Constitution the Georgian legislation shall be in conformity with the recognized principles and norms of international law. The following art. 50.2 is coherent with this provision when it requires that " the procedure for the election of a Member of Parliament and also his/her ineligibility to participate in elections is determined by the Constitution and organic law ". A previous legislation is necessary if we want that the participant in the electoral operations know the " rules of the game " in advance and are able to make their decisions accordingly.

3. Somebody thinks that the Georgian authorities could pretend to be authorized to apply the results of the referendum to the new Parliament by art. 28.2 of the Georgian law on referendum, which states that " the resolution passed as a result of the referendum comes into force from the day of its publication, has the validity and is final ".

But this provision has to be read in connection with two other provisions which suggest a solution which is not in contradiction with the principles of the rule of law.

a) First of all we have to keep in mind that according to art. 74.2 of the Georgian Constitution a referendum " can not be held for the adoption or abrogation of law ". Therefore the results of a referendum cannot be substituted for a constitutional

provision presently in force. In Georgia referenda concerning legislation have only a consultative relevance: even if their results are mandatory for the Parliament, they are not allowed to change or repeal the legislation.

On the other side even the Georgian law on referendum coherently accepts these conclusions when it states at art. 28.3 that " the legislative and executive authority of Georgia is obliged subject to the referendum to bring in conformity the legislation of Georgia and other acts within one month ". This provision evidently implies that, when the people approves a proposal for changing the legislation, its decision does not have immediate force of law, but has to be implemented by the representative authorities of the State of Georgia through the adoption of a parliamentary statute.

In the case we are dealing with the amendment of a constitutional provision is at stake: therefore the Parliament shall approve the required draft law with the special majority of two thirds of the total number of the members of the Parliament (art. 102.3 of the Georgian Constitution).

Perhaps we could have some doubts about the admissibility of a referendum concerning constitutional amendments. The mentioned art. 102 is apparently stating the exclusive rules for the procedure of their approval. It does not provide for the calling of referenda in the matter while it allows " not less than 200.000 electors " to submit a draft law for the general or partial revision of the Constitution: perhaps we could say that the participation of the electors in the revision of the Constitution should be limited to the submission of a draft law leaving the Parliament completely free in adopting the necessary decisions. The way chosen by the President expropriates the freedom of choice of the Parliament as far as it shall be bound by the results of the referendum. But, perhaps, it is too late to contest the presidential decision.

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