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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

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

Based on comments by

**Mr Henrik ZAHLE (Member, Denmark)**  
**Mr Sergio BARTOLE (Substitute Member, Italy)**

## *I. Introduction*

1. *By a letter of 3 October 2003, the Parliamentary Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (the Monitoring Committee) requested the Venice Commission to prepare, urgently, an opinion on the Referendum on the reduction of the number of members of parliament in Georgia.*

2. *At its 56<sup>th</sup> Plenary Session (17-18 October 2003), the Commission appointed Mr Henrik Zahle and Mr Sergio Bartole as Rapporteurs and, in the light of the urgency, empowered them to submit the opinion to the Monitoring Committee before the following Plenary Session. The present opinion was subsequently prepared on the basis of the Rapporteurs' comments (see CDL (2003) 74 and CDL (2003) 75 respectively) and transmitted to the Monitoring Committee.*

## **II. Background**

3. According to Article 49 of the Georgian Constitution, the number of members of parliament is currently 235: 150 elected for a period of four years by a proportional system and 85 elected for a period of four years by a majoritarian system.

4. A tendency towards reducing their number has become apparent in Georgia. Subsequently, 218,000 signatures have been collected in order to promote a referendum on this matter.

5. By an order of 2 September 2003, the President of the Republic of Georgia, pursuant to Articles 13 and 14 of the Georgian Law on the Referendum (see CDL (2003) 77), has scheduled a referendum for 2 November 2003 (the same date as the parliamentary elections). The question to be submitted to the people's decision is the following: *"Do you agree to decrease the number of the members of the parliament of Georgia to no more than 150 MPs?"*

6. As regards the admissibility of a referendum concerning constitutional amendments, it must be noted that Article 102 of the Constitution sets forth, seemingly in an exhaustive manner, the bodies entitled to initiate a process of Constitutional revision; these are: a) the President, b) more than half of the total number of members of Parliament and c) not less than 200,000 electors. There is no mention of the possibility of calling a referendum to this end. It might therefore be argued 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 subsequent decisions. If this is correct, then this referendum risks depriving the parliament, which will be bound by the possible positive result of the referendum, of its freedom of choice. This question, however, is left to the appreciation of the Constitutional Court.

## **III. As to the decrease of the number of parliamentarians**

7. The number of members of parliament is a matter for each Constitution to determine with regard to specific national factors such as the size of the population and the structure of parliament. A change in those factors may determine the need to alter such number.

8. In the Commission's view, the concern of ensuring parliament's effectiveness may legitimately prompt a change in the number of MPs, in accordance with the applicable procedures of constitutional revision.

#### IV. As to the effects of the referendum

9. The text of the question which will be submitted to referendum does not contain any reference to the parallel parliamentary elections, and does not suggest that the two votes are related.

10. The question has nevertheless been raised as to whether the reduction of MPs, if and when approved, shall already apply to the distribution of parliamentary seats following the forthcoming parliamentary elections of 2 November 2003 (in other words, whether, should the result of the referendum be positive, the new Parliament will consist of “no more than” 150 Members instead of 235)

11. In the Commission’s opinion, the reply to this question cannot but be negative, on the basis of both the general principles of the Georgian constitutional order and the Georgian legislation concerning elections and referenda.

12. 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.

13. If the reduction of MPs *to no more than 150* were to be applicable already to the next elections, these elections would be in respect of an undecided number of parliamentarians and would thus clearly be incompatible with the preceding principles.

14. Further, the distribution of parliamentary seats would only formally be decided on the basis of legislative provisions, as in reality 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. Changing the electoral rules during the electoral operations would clearly be in breach of the general principle of the rule of law, and subsequently of Article 6 § 2 of the Georgian Constitution, according to which “the Georgian legislation shall be in conformity with the recognized principles and norms of international law”, as well as of Article 50 § 5 of the Constitution, requiring 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”. The previous existence of clear legislative provisions is absolutely necessary in order for the voters to foresee the results of their decisions and regulate their conduct accordingly.

15. It is true that Article 28 § 2 of the Law on referendum provides that “The decision made as a result of the referendum, enters into force on the day of its publication, has a legal power and is final. Referendum results have a power of direct activation.”

16. This provision, however, has to be read in connection first of all with Article 74 § 2 of the Georgian Constitution, providing that a referendum “cannot be held for the adoption or abrogation of law”. This means that the referendum is not an integrated part of a legislative procedure concerning a bill or a law, and its results cannot be substituted for a constitutional

provision presently in force. In Georgia, therefore, referenda concerning legislation have only a consultative relevance: even if their results are mandatory for the Parliament, they do not have the force of directly changing or repealing the legislation.

17. Further, Article 28 § 3 of the Law on referendum states that “Legislative and executive authorities of Georgia are obliged to bring the legislation and other acts of Georgia and other acts in conformity with the referendum results within a period of 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.

18. At any rate, the general wording of the question submitted to referendum renders it unsuitable to produce direct effects on the Georgian legal system: indeed, it leaves crucial matters unanswered, such as the exact future number of parliamentarians and the proportion of those who will be elected with the proportional rather than the majoritarian system.

19. The Constitution will therefore have to be amended and provide an answer to these questions; pursuant to its Article 102 § 3, Parliament will have to approve the required draft law with the special majority of two thirds of the total number of the parliamentarians.

20. In case of a positive result of the referendum, not only will Article 49 § 1 of the Constitution need to be changed, but the electoral legislation with its regulation of constituencies, making up of the electoral result etc. will also 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 Parliament and to be voted for. After these changes in the Constitution and the legislation have been carried out, the administrative consequences will have to be implemented.

## **V. Conclusions**

21. In conclusion, in the Commission’s view the possible positive result of the referendum on the reduction of members of parliament scheduled for 2 November 2003 will only affect, subsequent to the necessary constitutional and legislative reforms, the parliamentary elections foreseen for 2007. It will not have any impact on the composition of the parliament resulting from the parliamentary elections of 2 November 2003.