

# **SPRING AND SPECIAL SESSIONS 2020 OF GEORGIAN PARLIAMENT**



Democracy Index-Georgia  
Tbilisi 2020

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## INTRODUCTION

Democracy Index – Georgia, founded in 2019 aims to measure the quality of the democracy in the country by observing the performance of the Georgian Parliament. The organization regularly informs the public about the results of its observations through the weekly TV airing, public statements, and social media. Apart from updating the public about the ongoing activities of the Parliament, the organization actively submits its recommendations for further improvements, and specific legislative proposals to the Parliament.

The results of the 2019 autumn sessions are reflected in the last report that is available on the website of the organization.<sup>1</sup> In the present report the results of the spring session of the Georgian Parliament are highlighted; and additionally, among them, the performance of the Parliament at the special session over the pandemic is evaluated.

The organization measures the quality of the democracy with the following criteria:

- transparency of the activities of every single Member of the Parliament (MP) to the public;
- Keeping the Parliamentary agenda abreast of the concerns of the citizens and ongoing important events in the country;
- Compliance of the Parliamentary legislative performance with the public demands and avowed European values
- The quality of the public engagement in legislative activities of the Parliament as well as in exercising its power to control the government and select high-ranking officials;
- The quality of engagement of individual members of the public in the legislative activities of the Parliament;
- The quality of deliberation of the governmental reports;
- Participation of the opposition in every aspect of the Parliamentary performance;
- The quality of the activeness and pro-activeness of the Committees

Every single issue in the present report is evaluated from the standpoint of the Constitution of Georgia, international obligations, and those recommendations that Georgia is committed to fulfil on its path of democratic development and the enforcement of the rule of law. The present evaluations or opinions are not based on any political viewpoint, their principles, and is free from any left wing, centrist, or right wing ideas.

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<sup>1</sup> See the link of the website of the organization [https://democracyindex.ge/uploads/News/Democracy\\_Index\\_Draft\\_GEO\\_Full.pdf](https://democracyindex.ge/uploads/News/Democracy_Index_Draft_GEO_Full.pdf)

## FINDINGS

Some positive aspects of the Parliamentary performance have been emerged over the spring session: Specific progressive steps taken in the legislative activities and in its power to control the government. However, as the broad picture shows, the spring session of the parliament did not differ from the previous one in its quality of the performance. Concerns, that revealed over the autumn session regarding democratic engagement, active participation of the civil society in the parliamentary activities, and thorough control of the government, emerged again during the spring session.

It is positive that the organizational department of the Parliament processes thematically the complaints and statements of individuals and categorizes them according to the problematic topics revealed therein. However, it is to be noted that those trends are not released publicly and to access the information thereof is possible only through proactively requesting the public information upon that.

It is positive that the Parliament adopted several important laws (some of them in their first hearing) to ensure democratic election and approach to the EU standards, regardless of few shortcomings existing in them:

- Constitutional changes on the electoral system;
- The changes in the Rules of Procedure of the Parliament;
- The law on Promotion of Employment adopted in its first hearing
- The Law “on the Rights of the Disabled Persons”
- The law “on Aquaculture”;
- The Forest Code of Georgia;
- The changes in the Law on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence and subsequent legislative changes;

It is positive that regarding inviting the Georgian Ministers to the Parliament the spring session turned out to be more active than the previous one. During the autumn session there was no case of inviting Minister to the Parliament, whereas there were six cases during the spring session, out of which 2 invitations were made by the Committees and 4 - by the opposition members of the Parliament.

It is positive that the opposition uses parliamentary question as the oversight mechanism.

It is positive that in the preparatory stage of the several draft laws the engagement of the experts and the civil society was provided: the preparatory stages of the draft laws “on Aquaculture”; on the Introduction of Anti-dumping Measures in Trade; the packages of changes in the labor and electoral legislation.

There are the several positive issues that the Parliament resolved regarding the pandemic and the

state of emergency: During the pandemic the Parliament declared the state of emergency in a timely manner and unanimously; It held the joint meeting with the representatives of the executive over the concerns about the pandemic that related to the Georgian citizens living abroad; The Gender Equality Council of the Parliament developed the recommendations towards the Government relating to the economic empowerment of women and prevention of domestic violence at the time of the spread of the corona virus. It is also noteworthy that the opposition was occasionally active towards the Prime Minister during the interpellation;

It is positive that comparing to the previous session, the committees used the mechanism of thematic research relatively actively.

It is positive that public reporting of fulfilled activities by the committees has been improved comparing to the previous session.

As for the negative sides of the Parliamentary performance, that has emerged over the spring and special sessions:

Like the previous session, the activities of individual members of the Parliament are not known to the public. Their parliamentary activities are not documented and reported simultaneously on the website of the Parliament.

Overall, parliamentary question has been used by the 22 members of the Parliament that, mostly, with several exceptions (Nino Tsilosani, Zaza Gabunia), are the members of the opposition.

Like the previous session, during this session as well, in response to the revealed problems from the complaints of civilians, corresponding issues have not been reflected in the agenda and have not been deliberated by the Parliament.

During the present session, legislative shortcomings have been emerged regarding adoption of some of the laws in an accelerated manner without specific reason that hindered substantial deliberation of those draft laws and the participation of the public therein.

Apart from the above, the legislative shortcoming was also adoption of some of the laws and amendments to the laws, among which some were adopted in its first hearing. These are the following:

- the amendments to the laws on “Electronic communications” and “on Broadcasting”, even though some of the concerns the Parliament did consider, that has to be welcomed;
- Some of the amendments made to the Code of Local Self-Government;
- Some of the amendments made to the Election Code;
- Some of the amendments made to the law “on State Property”;
- Amendments adopted to the law “on Tobacco Control” in its first hearing;
- The amendments adopted to the law on the „Introduction of Anti-dumping Measures in Trade” and subsequent legislation in its second hearing.

Legislative shortcoming revealed in the lack of engagement of the interested stakeholders in the

preparatory stage of the draft laws and informing the addressees about the draft law. These are following laws

- The law “on the Rights of the Disabled Persons;
- The law “on Tobacco Control”
- The law “on the State Property”

Like the previous session, the engagement of the civil society in the parliamentary performance was very low as every single time their fierce protest was ignored, revealing in either voting for the unacceptable candidates at the high positions or by voting through the unacceptable procedure to the civil society;

The Parliament did not thoroughly deliberate the reports submitted by the civil society;

In none of the cases did the legislative proposals submitted by citizens become the draft laws; Consequently, the participation of the public in law making was ruled out.

Parliamentary oversight of the government is very low, as the ministers invited to the parliament only rarely do appear therein, and in response to that, none of reactionary measures did the parliament take.

The reports of the Ministers are not substantially deliberated or hearing the Ministers in various settings at the parliament does not have any substantial meaning. In many times the parliamentary question/comment is not relevant to the topic of the ongoing discussion.

During the first time of the pandemic the Georgian Parliament turned out to be lax as it did not take any measure within the scope of its mandate;

The prolonged boycott declared by the opposition diminishes the role of the Parliament even more and significantly weakens the opportunity for critical and substantial debate.

The participation of the opposition in law making has been hindered regardless of their attempt. Specifically, the preparatory stages of the draft laws proposed by them were always delayed, therefore, deliberation of them was never possible. The opposition was not active enough in using the leverage of the governmental oversight such as requesting setting up the temporary investigative commissions, unlike the previous session.

The committees held the hearings in a passive manner and so did they use their other powers such as, for example, legislative initiatives; post legislative scrutiny; examining the activities of the administrative bodies; setting up temporary investigative commissions and other temporary commissions; study of the judicial case law; inspection of compliance of normative acts with the legislation of Georgia; controlling fulfillment of the obligations determined by the transitional provisions of the laws.



## 1. Individual MPs

The transparency and accountability of the Parliament to the country, as of the supreme representative body, can be reached at the institutional and individual level. While there is a significant progress in the enhancement of the institutional role of the Parliament, the role of the individual MP not only does not progress,<sup>2</sup> but diminishes more and more.

At the individual level in our country the transparency and accountability of the Parliament does not exist, nor does the powerful Parliament as the power of the Parliament depends on each and every strong and active individual MP.

The organization selected three standpoints of the evaluation of the performance of the individual MPs over the autumn session in 2019: 1. what their parliamentary activities cover; 2. What the worldview of each MP is; 3. What is their stance towards their voter while exercising their parliamentary mandate.<sup>3</sup> Within all of these three directions, practically, the parliamentary role of an individual MP remained unknown.<sup>4</sup>

Over the course of spring session of 2020 we continued to stay focused on the two directions of the above mentioned activities of individual MPs: 1. what their parliamentary activities encompasses; 2. What their stance is towards their voter while exercising their parliamentary mandate

**1.1. Individual Parliamentary activities of MPs** - Over the years, more and more information is published on the official website of the Parliament; Nonetheless, there are still serious shortcomings - The activities of an individual MP remains unknown to the public, exactly the same way as during the previous session.

Documenting daily activities of an MP will allow the voter to get to know the activities of the MP who she/he voted for, as to what the MP carries out within the scope of her/his parliamentary mandate weekly and monthly. This type of information is not processed simultaneously and published on the MP's profile. The information is scattered at various spaces of the website and is not easy to search.<sup>5</sup> Nowadays, the existing information placed on the personal pages of MPs at the Parliamentary website is scarce. The information does not contain any detail about their activities. Rather it illustrates their resumes and contact details, indicating as to which faction, committee or working group they are members of.

Member of the Parliament is a state political official. The public interest relating to her/his activities is legitimately high. The Parliament is obliged to ensure the transparent and consolidated update of

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2 The new constitutional footing stipulates the above based on that the institutional role of the Parliament is empowered and according to the Rules of Procedure of the Parliamentary significantly important mechanisms are assigned to the Parliament.

3 See, Autumn Session 2019 of Parliament of Georgia, Members of the Parliament, Committees, and Parliament, Democracy Index - Georgia, 2020, p.4-21

4 Id

5 See the submitted recommendation to the Parliament on the website of the organization: [https://democracyindex.ge/uploads/rekomendacia\\_deputatebis\\_profilebis\\_sheqmnaze.pdf](https://democracyindex.ge/uploads/rekomendacia_deputatebis_profilebis_sheqmnaze.pdf)

all the information and data, that will incapacitate the public to have an adequate picture as to what exactly any of the MPs carries out, as part of her/his parliamentary performance.

The voter needs to be capable, based on the full list of activities carried out by any of the MPs, of inferring independently whether an MP according to her/his activities remains committed to those political principles and promises, for that she/he was voted for, and consequently, whether she/he represents or not their voters' interests at the Parliament.<sup>6</sup>

In the recommendation submitted to the Parliament<sup>7</sup> we explored the Parliamentary websites of those countries, that stand out with their best practices on democratic development. We revealed that as a basic standard, on all of the studied parliamentary official websites of the above mentioned democratic countries, the following information about MPs are placed: legislative proposals or any other statutes initiated by MP; video records of MPs' oral statements at plenary, committee, and commission sittings; Parliamentary questions of MP and received answers thereto; the reports about the meetings held by MP; the questions asked through interpellation; financial data about MP (among them are the presents received), etc.<sup>8</sup>

**1.2. MPs' response to the complaints of citizens** - According to the observation results of the autumn session of 2019, we highlighted in the previous report that, basically, MPs do not analyze and study the systemic problems based on the complaints of citizens and do not reflect the corresponding issues in the parliamentary agenda for further deliberation. The conclusion derives from the written questionnaires filled in by the MPs, that we sent to them; and also, the Parliamentary website, that does not present any similar information.

As a result of the observation of the spring session of 2020, in the same way as over the previous session, in response to the revealed trends of the problems based on the complaints of citizens, they are not reflected in the parliamentary agenda, and further deliberated by the MPs. The conclusion derives from the Parliamentary website that does not present this kind of information to the public. It is noteworthy that the complaints of citizens are being processed thematically by the apparatus of the Parliament. As of now, according to the information received from the Parliament, over the spring session, in total, 8768 complaints were sent to the MPs. Out of them responded were 90.3% - 7918 complaints. The rest of the are being processed (as of 07.25.20)

Basically, the complaints of the citizens sent to the MPs related to the following issues: health care and social issues - 19.2% - 1691 complaints; employment - 1.3% - 118 complaints; human rights protection - 8.1% - 712 complaints; legal issues - 18.8% - 1653 complaints; requesting public information - 0.3 - 27 complaints; education, science, culture, sport - 0.9% - 87 complaints; economy and infrastructural issues - 1.5% - 140 complaints; requesting appointment - 1.3% - 114 complaints; answers<sup>9</sup> to the letters sent to by the MPs - 27.9% - 2454 complaints.

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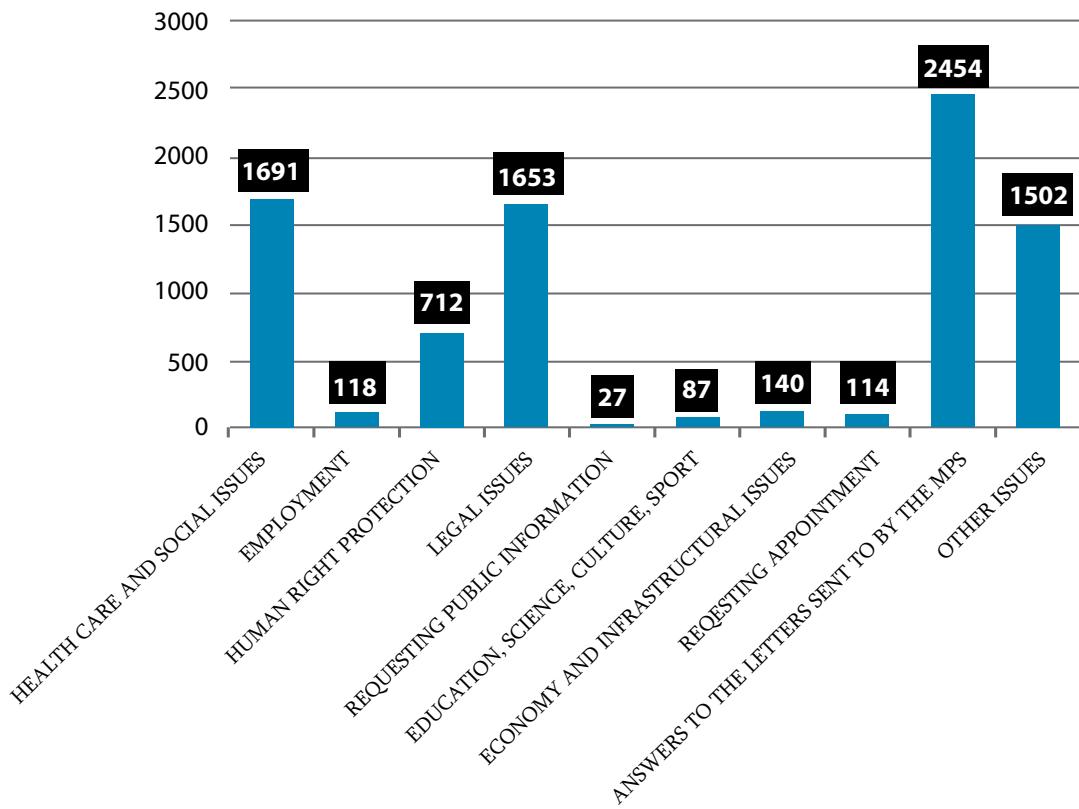
6 Id.

7 Id.

8 Id.

9 This number adds up the letters sent by the MPs to the state agencies in response to the complaints of citizens and the letters sent by the MPS, on their own initiative.

## Topics of the complaints that citizens sent to the MPs



It is noteworthy, that the organizational department of the Parliament that is in charge of receiving and processing the complaints, does not have an access to any kind of program that would differentiate the numbers of the complaints of the citizens sent to the state agencies by those letters that the MPs send to sundry agencies on their own initiative. Therefore, it is not possible to quantify how many complaints of citizens were sent from the Parliament to the state agencies.<sup>10</sup>

As a positive side, it has to be noted that the complaints of citizens are thematically categorized and give the information as to about what issues, most commonly, citizens address to their representatives at the Parliament. In this regard, the statistics shows that among the population the most problematic issues are health care, social and legal issues.

According to the entire statistics of the presented complaints, the highest number of complaints are addressed to Sophio Kiladze. Thus, this figure indicates the human rights protection as being one of the most serious problem in the country. In this regard, very interesting is daily parliamentary activities of the mentioned MP - what kind of measures she carries out to resolve these problems. However, again, it is impossible to learn of this information just because of the mere fact that the Parliament does not document and publicly release the parliamentary activities of the MPs, that

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<sup>10</sup> The letter received through the email on July 24, 2020, by the organizational department of the Parliament.

would allow any interested voter to get to know the activities of their representatives at the supreme representative body.

## 2. The Parliament

**2.1. The legislative achievements of the Parliament** - the Parliament took some important steps over the spring session that, in essence, expressed in adoption of several important laws in the direction of democratic development and the integration with the EU:

*2.1.1. The constitutional amendments in the electoral system over the spring session was indeed the significant achievement that had gone through a long path.*

On 29 June, 2020 the amendments were approved according to which the Parliament will consist of 120 proportional and 30 majoritarian seats.<sup>11</sup>

The constitutional changes were drafted as a result of the accommodation of the March 8, 2020 between the majority and the opposition, against the background of the public protest. The main supporting actors of reaching the accommodation were the diplomatic representatives of the western partner countries.<sup>12</sup>

The presented changes can be evaluated positive regardless of the fact that the parliamentary majority did not fulfill the demand of the civil society following the protesting demonstration of June 20-21 of 2019, on converting the electoral system to fully proportional by 2020:

- According to the changes, in case any party win all or majority of the majoritarian districts, it will no longer enable the party to compose the government and form the constitutional majority;
- The low electoral threshold and formation of electoral blocs promote small and new political parties, that will help minimize the polarized political environment and enhance the parliamentary democracy.
- Through the “dead end” mechanism, additionally, the formation of the government will be contingent on the vote for the party through the proportional system, and by doing so, the adverse effects of the mixed system will be ruled out.

Following the adoption of the constitutional changes, the Georgian Parliament started hearing the draft law on the changes in the Election Code and the subsequent legislative package in an accelerated manner.<sup>13</sup> According to the explanatory note of the draft law in the Election Code and the subsequent

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<sup>11</sup> See the Constitutional Law “on changes in the Constitution”, [15:23 09.07.2020].

<sup>12</sup> According to the constitutional law, the election threshold will be fixed at 1% of votes. This rule will be effective in case of holding once or several times the parliamentary polls till 2024. After 2024 the Georgian population will elect the parliament through the completely proportional electoral system without allowing electoral blocs.

<sup>13</sup> The decision of the Parliamentary Bureau of June 29, 2020 about hearing in an accelerated manner at two sittings on the same day of “the changes in the Georgian Organic law “on the Election Code” and

legislative package, the changes, in parallel with introducing the new mixed electoral system, were based on the recommendations<sup>14</sup> of the OSCE/ODIHR.<sup>15</sup>

The positive changes regarding the media campaign and air time distribution is worthy to note, that prevents the use of air time on an unequal footing during the pre-election period;<sup>16</sup> The regulations regarding the run-off, that, among other issues, limited the vague discretion of the Central Election Commission relating to fix the date of the run-off was also positive;<sup>17</sup> In addition, introducing the new model of funding the political parties to strengthen small parties was a positive change.<sup>18</sup>

High engagement in the drafting of the changes in the electoral legislation was ensured, that lasted over a year and aimed to reflect the recommendations of the OSCE/ODIHR and the other organizations in the electoral legislation.<sup>19</sup>

*2.1.2. The changes in the Rules of Procedure of the Parliament,<sup>20</sup> Regardless of some shortcomings thereof, was positive, inasmuch as the procedures were improved to ensure the effective performance of the Parliament.*

The MPs representing the same political party are not allowed to form more than one faction; According to the constitutional records, no less than 7 MPs are allowed to form the faction; The notion of the Parliamentary minority has been removed; The parliamentary opposition is formed by all the MPs, who do not belong to the Parliamentary Majority; the number of the Parliamentary positions have been reduced, and among them, the number of the vice chairpersons of the Parliament has

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the subsequent legislative package, <https://info.parliament.ge/file/1/BillPackageContent/27935?> [16:23 09.07.2020]

14 See, for example, the para “a.a.a.” of the explanatory note of the draft law of the Georgian Organic Law “on the Changes in the Election Code, <https://info.parliament.ge/file/1/BillReviewContent/255081?> [16:23 09.07.2020]

15 About the fulfillment of the recommendations, see in the next paragraphs thereof.

16 The changes were made in the Election Code, Article 50, according to which the broadcaster is entitled to fix the pre-election advertisement fee twice, in advance, on the 30th and 50th days before the vote, that is forbidden to be changed.

17 The article 761 was added to the Election Code, where the para 19 determined the third Saturday after the election to be the date of the run-off. During the Presidential election of 2019, due to nonexistence of such norm, the run-off was held on Thursday, that caused a trouble for some employees and those who were living abroad to vote in the election. For more details, see <https://on.ge/story/30254>, [16:23 09.07.2020]

18 The change was made to the article 30 of the law on Political Unions that determined the plain and regressive principle based scheme for funding parties. According to the explanatory note of the draft law, funding big parties is reduced at the expenses of increasing it for small parties. Pp.6-7, <https://info.parliament.ge/file/1/BillReviewContent/255083?>, [16:23 09.07.2020]. The mentioned funding rules were not criticized by the opposition in its hearing at the committee of the legal issues

19 See the conclusion of the Georgian Young Lawyers’ Association on the draft law of the Georgian organic law “on the Election Code”, p.1, <https://gyla.ge/ge/post/saiam-parlaments-saarchevno-kanonmdeblobis-reformaze-shenishnebi-tsarudgina#sthash.iZw80KRK.dpbs>, [16:23 09.07.2020]

20 The Rules of Procedure of the Parliamentary “on the changes to the Rules of Procedures of the Parliament”, <https://www.matsne.gov.ge/ka/document/view/4907021>, [13.07.2020 13:50]

been reduced from 9 to 3; the adoption of those draft laws that clarifies the numbering of the norms and do not consider the content of the law is determined through simplified procedure; The rules of composing the Investment Board of the Pension Agency and the other bodies have been changed; the time management rules during debates (including ones through interpellation) have been changed. The faction will be granted as many minutes as there are the members joined in the faction, however, no less than 10 and no more than 75 minutes. Those MPs not belonging to any faction (independent) will be granted 3 minutes, respectively; Some technical details have also been changed.

By reducing the number of the Parliamentary positions, the Parliament, at some point, responded adequately to the long-term crisis caused by the pandemic;<sup>21</sup> Additionally, the new rule of time management in the debate is to better organize the parliamentary activities and fairly distribute the time among the MPs. It is important that the Rules of Procedure of the Parliament effectively ensure the proportionate time distribution among the factions on the one hand, and give real opportunity to the independent MPs to express their opinions on the other; thus, that are all fair by the proposed changes.

It is positive indeed, that the both main opinions indicating the flaws following the proposed changes the Parliament did consider:

The first opinion concerned with lifting those restrictions according to which the MPs nominated by various political parties or electoral blocs were not allowed to form a faction. Due to their judgment, this regulation was beyond the constitutional provision and disproportionately limited the possibility for the MPs to fully engage in the parliamentary life in the event of being set to leave the parliamentary faction and unite under the new one.<sup>22</sup>

The second opinion concerned with the appointment of the members of the Board of the National Broadcaster, the Investment Board of the Pension Agency and the other bodies. With the proposed changes the candidate nominated by the opposition had to be appointed by the Parliament. To the opinion of the interested actors, this kind of resolution would still rest the issue on the will of the parliamentary majority that would prevent the participation of the parliamentary opposition in the decision making. Eventually, the Parliament left the power of the appointment of the candidates nominated by the opposition with themselves without voting procedure.

The other main opinion indicating the flaws concerned with the new regulations relating to the special session. Regarding this issue, the speaker - Irakli Kobakhidze stated that serious changes in the regulations relating to the special session were planned during the upcoming autumn session.

### 2.1.3. Adoption of the Labor Code<sup>23</sup> in its first hearing can be considered as the achievement of the

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21 The Georgian Young Lawyers' Association as well positively evaluated the change on reducing the number of the Parliamentary positions, see <https://gyla.ge/ge/post/saia-parlaments-reglementis-arsebiti-reformisa-da-saparlamento-ckhovrebashi-opoziciis-rolis-gazrdisken-moutsodebs#sthash.wIKhIse2.dpbs>, [13.07.2020 13:50]

22 According to the Article 41, para 3 of the Georgian Constitution, the elected MPs nominated by one political party are not allowed to form more than one faction. This provision does not explicitly limit the ability of various political parties or electoral blocs to form the faction.

23 The package of the legislative changes in the legislation on labor, <https://bit.ly/2WP4I83> [23.07.2020

Parliament over its spring session regardless of some contradictions between the employed and the employee.

The changes aim to approach the standards set by the EU directives that are determined by the EU Association Agenda and by the conventions that are adopted by the International Labor Organization, and effectively respond to the existing challenges on the Georgian labor market to improve the protection of the labor rights.

The changes define breaks and rest time; improve the anti-discrimination mechanism to protect the employee from the labor-related discrimination; define the notion of the reasonable adjustment for the disabled person; introduce new regulations on the duration of fixed working time; guarantee the higher remuneration for overtime work; determine internship; strengthen the mandate of the Labor Inspection to effectively monitor the labor rights.

The representatives of employers at the committee hearings opposed some of the proposed provisions from the package of draft laws as a result of which some of entire package changed: the regulations on the issues such as night shift work, highest threshold of remuneration for overtime work, minimum salary, recognition of the right to social strike, and the exhaustive list of grounds for termination of labor agreement, etc. were removed. Nonetheless, the positive side is that the main purpose of the package of draft laws - setting up the full-mandated Labor Commission - remained intact.

Regardless of the achievements and the positive changes, it is to be noted that the rules relating to equating the remuneration during paternal leave in the private sector to that in the civil sector did not change, even though the organizations working on the labor rights requested new regulations upon it.<sup>24</sup>

The explanatory note of the draft law is substantiated, gives the information about the expected benefit as a result of the adoption of the law, the impact on the expenses from the budget and the expected financial obligations (not calculated in precise figures, though) for the addressees of the law.

The preparation of the draft law lasted over the year. It was drafted with the engagement of the interested stakeholders, international labor organizations, the experts thereof, the state agencies, and the non-governmental organization.

It is unfortunate, that the draft law did not become the law; therefore, enacting those important novelties that are envisaged by the package, such as setting up the full-mandated Labor Commission is rescheduled by several months. At the same time, there is a risk that the new composition of the parliament might not vote for these legislative changes and the spirit of increasing the mandate of the Labor Commission, even more, if we consider the tense committee hearings on the issue. The very hearings showed the lack of the consensus among the MPs as well as the addresses of the draft law - the representatives of the employee and the employer.

*2.1.4. The adoption of the law “on the rights of the disabled persons”, against the odds, can be considered as the achievement of this session, inasmuch as the law improved substantially and systemically the*

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14:58].

24 EMC evaluates the package of the legislative changes, <https://bit.ly/3hs0QI7> [23.07.2020 14:45].

*human rights situation of the disabled persons in compliance with the UN convention “on the rights of the disabled persons”; the obligations of the state, municipalities, physical and legal persons in order to reach the equal life standards for disabled persons with the others.*

During the work over the draft law, the Public defender,<sup>25</sup> the Georgian Young Lawyers' Association,<sup>26</sup> Human Rights Monitoring and Education Center, and the other organizations<sup>27</sup> working on the disabled persons expressed their opinions indicating the flaws. The parts of the opinions are considered, however, according to the final evaluation of the latter,<sup>28</sup> the law is of declarative and abstract nature, does not set the specific standards of rights, and nor it improves substantially the human rights situation of the disabled persons. The prolonged terms set by the transitive provisions of the law to develop important standards are also deemed problematic. Due to their interpretation, it is highly expected that the fulfillment of the committed obligations based on the UN convention to realize the rights of the disabled persons will be delayed by several more years.

The engagement of the representatives of the community of disabled persons was problematic. The hearings on the draft law started over the period of the pandemic that hindered the participation of the community of the disabled persons and other interested stakeholders. It is true that asking questions during the hearings was provided online, however, to ensure the lively and substantial debate over the subject, it was possible and would be more reasonable for the Parliament and the initiator to consider the vulnerability of the community of the disabled persons especially over the pandemic, and ensure the deliberation of the draft law in a format of physical presence, especially when there was such a request expressed from the representatives of the community.<sup>29</sup> The Public Defender also considered the engagement as insufficient.<sup>30</sup>

*2.1.5. The law “on Aquaculture”<sup>31</sup> is one more achievement of the spring session, inasmuch as it systemically and in compliance with the modern environmental protective standards defines the prerequisites of sustainable, rational, and at the same time, economically profitable use of aquaculture - e.i. water resources, that is to promote the development of fishery in Georgia.*

The explanatory note gives the exhaustive information on the expected benefits from adopting the law, the impact on the expenses from the budget, and the expected financial obligations of the addressees

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25 See the opinion of the Public Defender relating to the draft law “on the Rights on the Disabled Persons”, <https://bit.ly/3eSiFIG> [23.07.2020 12:58].

26 See the Opinion of the Georgian Young Lawyers' Association relating to the draft law “on the Rights on the Disabled Persons”, <https://bit.ly/30E1XaD> [23.07.2020 13:00]

27 See the Opinions of Human Rights Monitoring and Education Center, and the other organizations relating to the draft law “on the Rights on the Disabled Persons”, <https://bit.ly/2E2zCmL> [23.07.2020 12:56]

28 See the evaluation of Human Rights Monitoring and Education Center, and the other organizations working on the rights of the disabled persons relating to the draft law “on the Rights on the Disabled Persons”, <https://bit.ly/2OQNjh7> [23.07.2020 13:08]

29 Disabled persons and the organizations evaluate the deliberation process over the draft law “on the Rights of the Disabled Persons” by the Parliament, <https://bit.ly/39k8gnT> [23.07.2020 13:19].

30 See the statement of the Public Defender relating to the draft law “on the Rights of the Disabled Persons”, <https://bit.ly/2CYV1ga> [23.07.2020 13:24].

31 The law “on Aquaculture, <https://bit.ly/39kFCD3> [23.07.2020 12:40].

of the law. At the same time, the law was drafted with the engagement of the interested stakeholders, international and local experts. The opinions of the UN organizations were also considered.

2.1.6. Over the spring session, the Parliament adopted the Forest Code of Georgia,<sup>32</sup> that, regardless of the discriminatory aspects of it,<sup>33</sup> still can be considered as one of the achievements of the Parliament over the spring session because of a few reasons.

The Forest Code as a consolidated act regulates the relations relating to the forestland, sets the norms that are in conformity with the international environmental protection standards for the preservation and the use of the forest resources; eradicates contradictions existing before among the normative acts.

The code is a significant novelty and is to support the sustainable management of the forest resources. The regulation is introduced by the Forest Code, according to which the activities relating to the specific use of the forest, will be subject to the evaluation of the impact on the environment, and the decision to authorize the use will be based on the requisites for the environmental protection that are determined in the code.

It is worth to note that in the preparatory stage of the draft law the international as well as local non-governmental organizations were engaged.

2.1.7. *Over the spring session the Parliament adopted the changes in the Law on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence" and subsequent legislative changes that strengthened the guarantees to protect the victim and clarified some of the definitions.*

The changes introduced electronic supervision of abusers; the validity of protective order increased from 6 to 9 months; the definition of the family member has been broadened, specifically from the list of the family members "foster child" and foster carer have been removed and the spouse of a child replaced "son-in-law" and daughter-in-law. To the list of the family members was added the person who was in matrimony without civil marriage in the past; the definition of the family member of the person being in matrimony without civil marriage has been clarified. Repeated disobedience of the warning for the violation of the requirements of the electronic supervision or evasion thereof by an abuser has been criminalized.

The UN Women Georgia representatives participated in drafting the law.<sup>34</sup>

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32 <https://bit.ly/3gakySj> [28.07.2020 16:20].

33 According to the Code, the government was entitled to grant the ownership of the part of the forestland to the Georgian Orthodox Church. The provision is clarified in the law "on the State Property" that determines that it is foreseen for the Georgian Orthodox Church to receive the ownership of the part of the state forestland of 20 of hectares space that have been adjoining its churches and monasteries before enacting the law.

34 See the explanatory note of the draft law "on Violence against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence" and subsequent legislative changes, p.7

**2.2. The legislative shortcomings of the Parliament** - The legislative shortcomings of the Parliament was expressed in flaws in the legislation and adopting the laws in a groundlessly accelerated manner.<sup>35</sup> The important international or local recommendations/opinions the Parliament did not consider and by doing so it hindered the democratic and human rights principles to be fully guaranteed by the legislation.

*2.2.1. The deliberation of the draft laws in an accelerated manner, after the state of emergency was lifted, was mainly groundless.*

The matter is that deliberation of the draft laws in an accelerated manner, as a rule, is a rather a limited capacity in a democratic state and is reserved as the mechanism that is designed to be resorted to in the event of urgency, so that the delay of the resolution of a certain issue could be damaged.

In all the rest of the cases the draft laws are adopted in a regular manner, that necessarily means substantial and thorough consideration of it, the participation of interested stakeholders therein, who are not the MPs, yet they are to be affected directly or indirectly by that, or who express their expert opinions upon the issue.

From 22 May to June 30, 2020 in total, 25 draft laws were registered at the Parliament. Out of them almost more than half - 12 draft laws were requested to be considered in an accelerated manner.

Out of 12 requests about considering the draft laws in an accelerated manner, only in 4 cases the specific and reasonable grounds for acceleration were provided in the explanatory notes. In all the rest of the 8 cases as a need for acceleration mainly the importance and the magnitude of the subject matter of the draft law was indicated that can easily be adjusted to accelerated consideration of any draft law.

It is also interesting that the requests about accelerated consideration of the draft laws that are proposed by the government and the members of the Parliamentary majority, are in all cases granted by the Bureau of the Parliament. In none of the cases the Bureau did provide justification of its decision on the need for acceleration.

Only one of 12 cases was preceded by the consultations in the preparatory stage of the draft law with the Ministry of Economy and Sustainable Development over improvement of existing taxation model of oil products gas. In this case the consultation held with the Ministry is definitely a positive aspect, however, even in this case the consultations were not held with those main actors that were to be directly affected in the event of adoption of the draft law. In none of all other cases the consultations in the preparatory stage that is the basic component of the accelerated consideration, were held with the interested stakeholders, who were to be directly or indirectly affected by the proposed resolutions by the draft law.

Accelerated consideration was mainly applied to the issues in the spheres of health care, education, and taxation. At first sight, these are the very issues that necessitates the urgent consideration over the pandemic, however, objectively, those issues did not consider the pandemic, were important to

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<sup>35</sup> The evaluation relates to the parliamentary performance during its regular session, as for the evaluation of the parliamentary performance over the pandemic, it is provided in a separate paragraph.

be resolved, yet it was not justified in the explanatory note as to why they were urgently important to be considered in an accelerated manner in the critically short period of time without substantial deliberation and debates, nor was it justified in the proposed changes themselves.

As for the other procedural requirements for consideration of the draft laws, in all of the cases the draft laws were considered within the defined terms; In every single time the draft law was supplemented by the conclusions of the leading committee.

*2.2.2. The amendments to the laws on “Electronic communications” and “on Broadcasting”<sup>36</sup> at some point contradicted the right to expression and the right to property, even though the critical substantial opinions of the civil society and among them of our organization as being the first in expressing our criticism, did the Parliament consider.*

The matter is that according to the draft law, special manager, apart from governing the finance-related administrative issues, was also authorized to perform other functions of the governing body of an authorized/licensed person; also, to appoint/dismiss the directors of an authorized/licensed person, the members of supervisory councils.<sup>37</sup> On the other hand, some of the authorized/licensed persons are media broadcasters as well. Therefore, according to the proposed initiative, the draft law authorized the special manager to interfere in the editorial freedom of the media - to determine the broadcasting network and the policy thereof. The draft law did not differentiate the media performance among authorized/licensed persons.

The constitutional threshold of protecting mass media protects the editorial policy of mass media from interference of the special manager. According to the initiated draft law the special manager that was appointed temporarily, was to adopt the full power of the managing body (bodies) of the media that contradicted to the media freedom.

The Georgian government retracted the draft law “on the changes to the law “on Broadcasting”,<sup>38</sup> however, the same regulation was transformed to the law “on electronic communications”.<sup>39</sup> The legal footing for the media broadcasters did not change and still, the threats of interference in the media freedom still pose, inasmuch as the proposed changes indirectly affect them.

As for the contradiction of the issue with the right to property, the draft law envisaged appointment of the special manager without judicial control. Media organization, apart from being one of the important instruments for exercising the right of freedom, represents the property. In this regard, appointment of the special manager means forceful transmission of the property to the other person for management. The judicial control over this type of measure is immanently important that was

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36 See the official website of the Parliament, <https://info.parliament.ge/#law-drafting/20679> [22:47 18.07.2020]

37 The draft law “on the amendments to the law “on Electronic communications”, article 12, <https://info.parliament.ge/file/1/BillReviewContent/256954?> [22:47 18.07.2020]

38 The letter of the Georgian government of July 13, 2020, GOV 6 20 00027126, <https://info.parliament.ge/file/1/BillPackageContent/28294?> [ 23:23 18.07.2020]

39 The law “on the amendments to the law “on Electronic communications”, article 1, para 1, <https://info.parliament.ge/file/1/BillReviewContent/259092?> [ 23:23 18.07.2020]

missing in the initial version of the draft law.

As a result of committee hearings, certain changes were made to the draft law. The appointment of special manager through the judicial control was determined in case of violating the obligations by Authorized/licensed person in the same way as it is in the law “on Licenses and Authorizations”, which is clearly a positive change. Nonetheless, the flaw still remains inasmuch as the mentioned change did not apply to all types of obligations.<sup>40</sup>

2.2.3. The amendments made to the Code of Local Self-Government<sup>41</sup> according to which they are entitled to form legal entities of public law, diminish self-governance, are not justified and contradict the strategy and the action plan of the government on decentralization.<sup>42</sup>

According to the draft law, by 2030, municipalities, in order to exercise their power, will be entitled to found legal entities of public law in the locations determined by the government and by doing so certain duties and responsibilities assigned to the local governance will be discharged by them.

According to the explanatory note, the draft law with the purpose of swift economic development and increase of efficacy of the self-governance is designed to, as an additional mechanism, to found legal entities of public law to supply municipal services corresponding to the demand.<sup>43</sup> The need for this change is not justified as a number of municipalities do already carry out their power through private legal forms.<sup>44</sup>

The explanatory note of the draft law does not make the link with the governmental strategy<sup>45</sup> of decentralization of 2020-2025, that determines the activities of local governance only through forming private legal persons, within the entire territory of the local municipalities and not on the certain settlements.

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40 The law “on the amendments to the law “on Electronic communications”, article 1, para 19, <https://info.parliament.ge/file/1/BillReviewContent/259092> [ 23:23 18.07.2020]

41 See the official website of the Parliament, <https://info.parliament.ge/#law-drafting/19547> [23:19 13.07.2020];

42 The governmental decree of December 31, 2019 on the decentralization strategy of 2020-2025 and the action plan of fulfilling the strategy of the decentralization of 2020-2025.

43 A.a.a. para of the explanatory note of the draft law “ on the amendments to the Code of Local Self-Government, <https://info.parliament.ge/file/1/BillReviewContent/241340> [23:19 13.07.2020]

44 For example, the municipality of the city of Tbilisi through the LTD City-Park supervised the parking rules from 2007 to 2018 in the city, and among other things, issued the fines. The municipality had delegated this power through the agreement to the company. As for the present draft law, it revealed that one of the purposes of the adopting this law is the legal person to be formed in Borjomi, that will determine the activities relating to construction of buildings. The legislative initiator, in addition to delegating the function of constructing buildings and collecting related fees, requests that legal entity of public law be entitled of those other functions as well, such as development of territorial upgrading and corresponding engineering infrastructure, cleaning of streets, parks, squares and other public places, managing the municipal waste, managing motorways of the local importance, parking car vehicles, administering outdoor advertising.

45 Supra, 42

In the circumstances when the municipalities lack sufficient material and human resources, the newly formed legal entity of public law will need additional budget. The source of funding of legal entities of public law can only be the state budget according to the article 13, para 1 of the law “on Legal Entity of Public Law”.

Funding the LEPLs that are formed by the municipalities of low income from the state budget will entail dependence of these municipalities on the central governance. This will diminish the status of the local governance in the country. According to the draft law they will have the discretion to refrain from exercising their power determined by the organic law; and at the same time, the central government, instead of strengthening the municipalities with the financial and human resources, will be motivated to fund and thus, make the newly formed LEPLs, that are created as a result of the changes in the law, dependent on it.

#### *2.2.4. The constitutional changes in the electoral system necessitated the changes<sup>46</sup> in the Election Code in an accelerated manner in which the Parliament did not consider substantial international recommendations.*

To ensure the balanced and unbiased representation, the recommendations of the OSCE instead of proportionate, suggested the equal representation of all of the parties at the the election commissions.<sup>47</sup> The Embassy of the U.S. in Georgia stated that transparency of electing the members of the elections commissions would increase the public trust in the election.<sup>48</sup>The Parliament did not consider this recommendation.

To prevent the possible dissemination of the hate speech and xenophobia, the recommendation suggested to determine the acceptable language during the pre-election campaign; the recommendation also suggested timely consideration of the possible cases of hate speech by relevant state authorities and where appropriate, application of sanctions.<sup>49</sup> The Parliament did not consider these recommendations.

The recommendation, to ensure that voters cast their ballot free of fear of retribution, suggested that consideration could be given to introducing a campaign silence period and an appropriate perimeter around polling stations forbidding campaigning and tracking of voters. The Parliament did not consider the recommendation.

The recommendation suggested that the procedures be simplified for complaints and barriers regarding filing complaints be eliminated, that everyone whose electoral rights have been violated, be entitled to lodge a complaint. The Democracy Index - Georgia welcomed the changes made to the

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46 See the decision of of June 29, 2020 of the Parliamentary Bureau on accelerated adoption of the “Changes to the Organic Law “on Election Code” and in the subsequent legislation in its two hearings on the same day, <https://info.parliament.ge/file/1/BillPackageContent/27935?> [16:23 09.07.2020]

47 See the report of the OSCE, February 28, 2019, <https://cesko.ge/res/docs/414827.pdf>

48 The statement of the U.S. Embassy in Georgia about the recommendations of the OSCE/ODIHR on the election reform, <https://ge.usembassy.gov/ka/statement-on-the-passage-of-osce-odihr-based-election-reforms-july-2-ka/>, [19:23 14.07.2020]

49 Supra, 40

Code of Election according to that the terms of electoral disputes have been reduced, however, they cannot be considered as substantial changes, as procedures were not simplified and the restrictions were not lifted as suggested by the recommendations. As the Ambassador of the EU stated it would be welcomed If more ambitious reforms were made in the crucial spheres recommended by the OSCE/ODIHR, such as retribution against voter, complaints mechanism, and the composition of the election commissions.<sup>50</sup>

At long last, even though the Parliament took significantly positive steps and drafted the changes with the wide engagement, that we mentioned above, the electoral legislation still remains one of the important challenges to the Georgian Democracy.

2.2.5. Among the changes made to the law “on the State Property”<sup>51</sup> that applies to a lot of issues, problematic turned out the rule that is to entail overloading the court even more, hinders swift dispute resolution, and damages the timely enjoyment of the right to property.

According to the changes made to the law, the administrative legal act of the LEPL National Agency of the State Property the claimant can appeal to the higher administrative body or the court. This stipulates the circumstances where many persons possessing the lands over many years, still cannot register their ownership on them legitimately, as these lands are registered on the balance of the state, and due to that the National Agency of the State Property does not grant the permission on registering the ownership on these interested person without the court order.

It is noteworthy that the initial version of the draft law<sup>52</sup> had even more flaws and consequently, our organization submitted substantiated opinion to the parliament.<sup>53</sup> Due to our opinion, out of these changes the court was to be even more overloaded with the disputes over reclaiming the ownership over the land, where the interested persons would challenge directly to the court the refusal on granting permission by the National Agency of the State Property over the land they had been possessing over the years (in many cases - by generations) which, at the moment of addressing to the Public Service Hall, is still registered on the balance of the state. It is to be noted that in its second hearing the initiator replaced this rule with the above mentioned (the interested person can choose herself to, first time, appeal to the court or the higher administrative body), however, as already underlined above, this change does not foster swift exercise of the right to property and unloading the court.

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50 IPN, Carl Hartzell - it would be welcomed If more ambitious reforms were made in the crucial spheres recommended by the OSCE/ODIHR, such as retribution against voter, complaints mechanism, and the composition of the election commissions, <https://www.interpressnews.ge/ka/article/607723-karl-harceli-sasurveli-ikneboda-upro-ambiciuri-repornebis-ganxorcieleba-eutoodiris-mier-rekomendebul-sakvanzo-speroebshi-rogoricaa-amomrchevelze-zecola-davebis-ganxilva-da-komisiebis-dakomplekta/>, [19:23 14.07.2020]

51 The package of changes in the law “on State Property”, <https://bit.ly/3eTUoSq> [23.07.2020 15:22].

52 According to the initial version of the draft law the administrative-legal act of the LEPL National Agency of the State Property was to be appealed directly to the court and not mandatorily to the higher administrative body first - The Ministry of Economy and Sustainable Development.

53 See the opinion of our organization on the changes to be made to the law “on State Property”, <https://bit.ly/2WNoRLL> [23.07.2020 15:27].

That the changes are unreasonable, appeal to the court and dispute therein is the financial burden for both the claimant and the state budget (in case of losing the case, the state agency is imposed to pay the state fees, the fees for legal aid, the expenses in favor of the claimant, and the other procedural expenses).

Apart from the above, the same regulation hinders swift economic relations, namely, due to the overload of the court, the dispute therein is a prolonged procedure, and during this period of time, the participants are not capable of enjoying the lands, make it the part of commercial relations, and engage themselves in economic activities. Therefore, as it seems, the land, as being one of the main economic resources, is void of any benefit for a long time and in the long term, hampers economic development and full enjoyment of the land market. It is clearly so, that this regulation is in contradiction with the avowed policy of the state - by simplifying the registration procedure of the lands, to support enjoyment of the resources of the land market and registration of the right to ownership thereof.<sup>54</sup>

2.2.6. The changes made to the law “on the Tobacco Control”<sup>55</sup> adopted in its first hearing are in absolute contradiction with the avowed policy of the state about the tobacco control and the world policy about health care, as the changes are designed to increase an access to tobacco.

According to the explanatory note of the draft law the consultations were not held with the governmental or non-governmental, international or local organizations, experts or the working groups.<sup>56</sup> It needs to be noted that the governmental organization itself, namely, the representative of the National Center of the Control of Diseases and Public Health, gave an explicitly negative evaluation to the draft law; considered it as contradicting the state policy over the control of tobacco consumption, and international standards, including those of the EU.

Our organization considered the draft law as totally opposite to the EU directive,<sup>57</sup> also, to the framework convention of the World Health Organization, the signatory state of which Georgia is.<sup>58</sup> Additionally, the draft law is not in accordance with the avowed policy of the state on tobacco. Specifically, the Georgian Parliament, after the changes made to the law “on Tobacco Control” in 2017, within the entire country introduced strict measures designed to harm reduction relating to

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54 The law on Recognition of the Right to Ownership of the Land Possessed by the Natural Persons and Legal Persons of Private Law, the article 1.

55 See the official website of the Parliament, <https://info.parliament.ge/#law-drafting/19518> [15:51 13.07.2020]

56 See the para D.a. of the explanatory note of the draft law “on the Changes to the Law on Tobacco Control”, <https://info.parliament.ge/file/1/BillReviewContent/240774?> [15:51 13.07.2020]

57 The article 14, para 1 of the EU 2014/40/EU directive obligates the members states to contain no more than 30 grams of tobacco in a package of rolling tobacco, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2014\\_127\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_127_R_0001), [15:51 13.07.2020]

58 According to the article 16, para 3 of the framework convention of the WHO every state party will do all of its efforts to ban retail of cigarette or selling them in small packages that makes the product accessible to juvenile, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2014\\_127\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_127_R_0001), [15:51 13.07.2020]

tobacco consumption.<sup>59</sup>

It is also worth attention that initiating the draft law without transparency contains the risks of corruption, as to where and in what circumstances the idea was formed and to whose interests the changes served.

It is worth mentioning that the Committee of Health Care and Social Issues, assigned as the leading one by the decision of the Parliamentary Bureau, while supported to proceed the draft law to the first hearing, indicated in its conclusion that the draft law contradicts the EU Directive.<sup>60</sup>

Eventually, in the event that the Parliament adopts the proposed draft law, it will go against the obligations the state has committed to internationally, and policy the state has declared domestically; inasmuch as the proposed changes will increase access to tobacco and first and foremost, for juveniles.

*2.2.7. The amendments made to the law "on the Introduction of Anti-dumping Measures in Trade" and subsequent legislation in its second hearing through which the government is enabled to set the special tariff<sup>61</sup> for the importers is against the constitutional principle.<sup>62</sup>*

The amendments are against the constitution inasmuch as it practically introduces the new tax statewide. It is noteworthy, that in order to interpret the notion of tax, the nature of the relations between the state and the citizen - the entrepreneur should be considered and not the given definition - tariff. In other words, by the definition given in the Tax Code, tax is the peremptory, unconditional monetary payment to the state budget.<sup>63</sup> On the other hand, the Constitutional Court, based on the case law, defines the tax as of autonomous nature, according to which the tax is the monetary payment peremptory payed to the state by person, that is done so without corresponding service.<sup>64</sup>

Due to the aforementioned interpretation, the special anti-dumping measure proposed by the draft law is tax by the Tax Code as well as by the interpretation of the Constitutional Court. It sets the obligation to make unconditional monetary payment to the state budget. Hence, it is fully covered by

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59 The tobacco control policy and implementation of the law, the Center for Disease Control and Public Health, 2018, p.14, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2014\\_127\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_127_R_0001), [16:25 13.07.2020]

60 See the conclusion of March 4, 2020 of the Committee of the Health Care and Social Issues over the draft laws "on the changes to the Law on "Tobacco Control"; "on the Changes to the Tax Code"; "on the changes to the Code of Administrative Violations", (07-3/427, 18.12.2019), <https://info.parliament.ge/file/1/BillPackageContent/25697?> [16:25 13.07.2020]

61 The Article 2, para "e" of the draft law determined special anti-dumping tariff as restrictive ant-dumping measure of dumping import within the Georgian customs territory and that is introduced based on the inspection made by the authorized body. By the articles 15, para 5 and 6, the tariff set by the special measure, is to be fully paid to the state budget, <https://info.parliament.ge/file/1/BillReviewContent/225951?> [14:32 13.07.2020].

62 See the letter of the government, <https://info.parliament.ge/file/1/BillPackageContent/19368?> [13:50 13.07.2020]

63 Tax Code, Article 6, para 1

64 See the decision of the Constitutional Court of July 5, 2019, №2/3/1279 , Levan Alaphishvili and Alaphishvili and Kavlashvili - Georgian Lawyers' Groups versus Georgian Government, II-26.

the definition of tax. Entrepreneur is obligated to make a completely unconditional payment defined by this tariff to the state budget. Additionally, the international practice shows that anti-dumping measure is deemed as not the tariff but the tax.<sup>65</sup>

Being the introduced amendment the tax by its nature, it has to be passed only by referendum, as by the constitutional reforms of 2017-2018, until 2029, the Georgian Parliament is not allowed to introduce a new statewide tax or increase its burden except through the referendum.<sup>66</sup> Consequently, introducing aforementioned tariff without referendum, due to the fact that is tax, is the violation of the constitution.

**2.3. The role of the civil society in the parliamentary activities** - It is interesting that over the previous session, the clear examples showing the problem of participation of civil society were ignoring their fierce protest every single time.<sup>67</sup> Over this session, we used some more criteria to evaluate the quality of engagement of the civil society that again showed that their participation was minimal; More specifically, their participation in the legislative process is not systematically ensured; hearing the shadow reports of civil organizations are formal; Protests of civil society against specific persons to be selected by the parliament at high positions are ignored, and other aspects.

#### *2.3.1. Engagement of interested stakeholders in the preparatory stage of draft laws are sometimes ensured and sometimes - not.*

There are some draft laws in the preparatory stage of which engagement was ensured and in this respect the criticism was not expressed by interested stakeholders, experts, or organizations working on the subject matter. These draft laws are “on Aquaculture”;<sup>68</sup> “on the Introduction of Anti-dumping Measures in Trade”;<sup>69</sup> package of changes in Labor Code,<sup>70</sup> and Election legislation.<sup>71</sup>

Apart from the mentioned above, there are also the draft laws where the problem of engagement was apparent to the addressees of the subject matter, or the addressees were not informed about the existence of the draft laws being dealt with at all. These draft laws were “on the Rights of the Disabled

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65 See for example, the “General Agreement about Tariffs and Trade”, the signatory of which Georgia also is. Anti-dumping measures are considered as tax in the Article 6 thereof. [http://www.economy.ge/uploads/kanonmdebloba/sagareo\\_vachroba/GATT\\_-\\_tarifebi.pdf](http://www.economy.ge/uploads/kanonmdebloba/sagareo_vachroba/GATT_-_tarifebi.pdf) [14:32 13.07.2020]

66 According to the article 2, para 6 of the constitutional law “on the amendments to the Georgian Constitution”, over 12 years after enacting this law, introducing new type of statewide tax, other than excise, or increase the rate of existing type of tax is only allowed through referendum, except the cases determined by the organic law.

67 See the report of our organization, p. 29-33

68 <https://bit.ly/39kFCD3> [23.07.2020 20:21]

69 <https://bit.ly/2OPA8qv> [23.07.2020 20:22].

70 <https://bit.ly/2WP4I83> [23.07.2020 20:23].

71 <https://bit.ly/3eVLB2q> [23.07.2020 20:25].

Persons;<sup>72</sup> “on Tobacco Control”;<sup>73</sup> and “on the State Property”.<sup>74</sup>

After exploring the relevant legislation, it was revealed that such inconsistency is posed due to the gap in the legislation of the specific norms that would ensure the normative frame for the engagement of interested stakeholders. Due to the existing regulations, the initiator of the draft law is not obligated to hold consultations with the addressees of the subject matter, send them draft laws, invite them to oral hearings, and lay the intensive groundwork over the matter before initiating it to the parliament.

It is worth mentioning as well, that omitting consultations with addressees of subject matter and interested stakeholders, and engagement of these groups/persons in the preparatory stage pose delayed deliberation at plenary hearings over those issues that had to be dealt with at a preparatory stage. Conducting deliberations in this fashion, renders the parliamentary performance ineffective.

The problem of engagement of interested stakeholders is not novelty: according to the evaluation of OGP (“Open Government Partnership”) of 2018 on the independent responsibility mechanism (IRM) to promote civic engagement, Georgia did not get high grade.<sup>75</sup> One of the main recommendations of IRM to Georgia was to develop the strategy for public engagement in executing the state authority in its all stages.<sup>76</sup>

### *2.3.2. Public engagement in the legislative activities is practically eliminated, inasmuch as, in basically none of the cases the legislative proposals submitted by members of the public never became a draft law.*

Over the spring session of 2020, in total, 55 legislative proposals were registered at the Parliament: 11 of them were registered between the sessions; 3 of them - over the special session, and 41 - over the spring session. Activeness of the public in this regard are almost doubled inasmuch as only 21 legislative proposal were registered at the Parliament over the previous session.<sup>77</sup>

Regardless of high activeness mentioned above, the actual result of these proposals - to be turned into the drafts laws and be considered - is not yielded. Only 16 conclusions of 55 legislative proposals are published, out which all of them are negative. In none of the cases the committees considered the legislative proposals.

In the aforementioned perspective as well, the situation is worsened as over the previous session there were two positive conclusions.<sup>78</sup> In 14 of the rest of 39 cases, even though the term of elaborating conclusion is expired, the conclusions are not published. Consequently, it is still unknown, as to the

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72 <https://bit.ly/3jxutmV> [23.07.2020 19:59], regarding the problem on engagement, see <https://bit.ly/2OQNjh7> [23.07.2020 20:27], <https://bit.ly/2CYV1ga> [23.07.2020 20:30].

73 <https://bit.ly/2BoI66O> [23.07.2020 20:20], in the explanatory note of the draft law it is indicated that the consultations were not held.

74 <https://bit.ly/3eTUoSq> [23.07.2020 19:52], in the explanatory note of the draft law it is indicated that the consultations were not held.

75 <https://bit.ly/30Jtunc> [23.07.2020 16:21].

76 Supra, 67

77 Supra 3, p.33.

78 Id.

committees considered these 14 proposals according to the procedure or with the violation of it.

In terms of the initiators, out of 55 of them, these are the natural persons or the non-governmental organizations, 2 -Legal Persons of Public Law: Tbilisi State University and the High Council of Justice. One of them is the political union.

As for the Committees, out of 55, the most of them - 35 legislative proposals upon the decision of the Bureau, were assigned to the Committee of Legal Issues. The rest of them were distributed to the committees in the following manner:

- The Human Rights and Civil Integration Committee - 5;
- Health Care and Social Issues Committee - 7;
- Education, Science, and Cultural Committee - 3;
- Regional Policy and Self-Government Committee - 2;
- Budget and Finance Committee - 2;
- Sector Economy and Economic Policy Committee - 1

The statistics show that the existing practice of Bureau, that distributes the legislative proposals only by their subject matter, is ineffective, as the proposals are being assigned to only 6 of 15 committees. As the practice proves, the 63% of them are being assigned to the Committee of Legal Issues. To unload the Committee of Legal Issues and activate the Human Rights and Civil Integration Committee, it would be reasonable if some of the legislative proposals will be assigned to the latter.

### *2.3.3. Consideration of the reports submitted to the Parliament by the civil society is conducted in a formal manner, not substantial, and critical.*

The Rules of Procedure of the Parliament allows submission of alternative opinions/evaluations, so called “shadow reports” by interested stakeholders over the certain types of the reports from the executive.<sup>79</sup> This kind of submissions is the “shadow reports” of the representatives of the civil society over the report of the government about the execution of the judgments of the European Court of Human Rights submitted to the Committee of Human Rights and Civil integration.<sup>80</sup>

Through observing the conduct of consideration, it was revealed, that the MPs were almost not attending the hearing of the submitted alternative reports, therefore, their consideration was neither critical, nor substantial.

5 of 15 members and 2 non-members of the committee were attending the hearing of the governmental report, while only 2 members of the committee were attending the hearing of the “shadow report”. The MPs did not ask the questions to the speakers of the shadow reports.

The MPs from the parliamentary majority asked the questions to and expressed their opinions over

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<sup>79</sup> See the Article 175, para 3 of the Rules of Procedure of the Parliament.

<sup>80</sup> See, <https://bit.ly/3jEGsPY> [24.07.2020 12:14].

the governmental report. From the questions/comments of the MPs<sup>81</sup> it can be inferred that they either had not read the report, did not listen to the speaker thereof, or they were asking the questions intending to avoid problematic issues (It must have been known to the MPs in advance, that Georgia has improved statistics regarding the subject matter since 2012).

The MPs from the parliamentary majority did not ask critical questions as to why the execution of the judgments of the European Court are delayed over the cases where the court found violations of the positive obligation of the state on effective investigation. It is worth mentioning that “shadow reports” contained critical evaluation on this matter.

The Committee gave only “positive evaluation” over the governmental report. The Committee did not prepare the conclusion, nor it gave recommendations for improving the situation over the execution of the judgments of the European Court or eradicating flaws in this matter. As for the “shadow reports”, the committee did not give any kind of evaluation, it rather heard it only.

The only aspect that can be positively evaluated is that unlike previous years, this year the “shadow reports” are published on the website of the Committee. However, revealed situation thereon is clearly negative as the recommendations provided in the reports are not reflected in none of the documents adopted by the Parliament and does not have any impact on the forthcoming steps of the parliament on the subject matter.

2.3.4. At the high positions the Parliament voted for and appointed those persons against whom the public had fairly expressed their critical opinions and the legitimate protest.

The Parliament voted for Irakli Shotadze<sup>82</sup> at the position of the Prosecutor General and neglected the protest of the public as well as the opposition towards the candidate who had once already been resigned following the prolonged outrage of the public over the highly publicized case of “Khorava Street” that revealed severe flaws of the investigation.<sup>83</sup>

Voting procedure was hasty and superficial - on February 17, 2020 the suitability of the candidate was evaluated; and on the following day the committee conclusion was drafted and his appointment on the position was voted for. The committee drafted its conclusion on the next day - on February 18 and the parliament voted for the candidate elected on the very same day, February 18.<sup>84</sup>

The Parliament voted for Nino Kadagidze<sup>85</sup> for the position of the Supreme Court Justice and by doing so it neglected the demand of the opposition to not vote for the candidate over the time of the

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81 The questions/comments concerned mostly with the issues whether how many applications were lodged with the European Court of Human Rights until and after 2012; also, how many applications were lodged with the court until and after 2012 over the violation of the convention on prohibition of torture. However, the requested statistics were provided in the governmental report as well as in the speech itself.

82 <https://bit.ly/2Di2kQ7> [28.07.2020 17:19]

83 <https://bit.ly/2EsRCqL> [28.07.2020 17:33].

84 <https://bit.ly/2Di2kQ7> [28.07.2020 17:43].

85 <https://bit.ly/3fblQv0> [28.07.2020 17:55].

pandemic, when the nationwide attention was drawn to the protection of life and health care.<sup>86</sup>

Apart from the mentioned above, the Parliament neglected the issues posing the lack of the qualification of Nino Kadagidze that was revealed towards her, as one of the candidates of the Supreme Court Justice, over the course of the public hearing held at the Legal Issues Committee. The coalition of the non-governmental organizations did also debate actively the issue of her lack of qualification.<sup>87</sup> The Parliament neglected the public protest and distrust towards Nino Kadagidze due to her close ties with the so called “clan” in the judiciary.<sup>88</sup>

The voting procedure in this particular case, similarly to that of voting on the position of the Prosecutor General, was hasty - the nomination of Nino Kadagidze was proceeded to the Parliament on March 11, 2020, she was heard on March 17, and was voted for at the position on the same day.

The Plenum of the Supreme Court elected Khvicha Kikilashvili as the justice of the Constitutional Court<sup>89</sup> even though proper discussion and informing the public around the nominated candidate for this high position was critically important.

The Parliament in this particular case did not effectively utilize its mandate - Neither did it propose any specific initiative to change the rule of election preventing the lapses, nor did it consider the initiative of changes in the law that the non-organization - “Georgian Young Lawyers’ Association”<sup>90</sup> and the independent MPs, Tamar Khulordava, Tamar Chugoshvili, Irine Phruidze, and Dimitri Tsqitishvili submitted following the election of the aforementioned candidate.<sup>91</sup>

Consequently, due to the fact that the Parliament did not adopt the preventive legislative changes to improve the procedure, within this faulty framework, later, on May 29, 2020 Vasil Roinishvili was elected by the Supreme Court as the justice of the Constitutional Court.<sup>92</sup>

The Parliament, after delay of one year, eventually, did not vote for the draft law<sup>93</sup> submitted in September, 2019, aiming to recognize the clan-based rule in the Judiciary. By doing so, the Parliament yet again did neglect the protest of the public over the years.

**2.4. Parliamentary oversight of the Government** - The Parliament has a wide range of power to oversight the government and guide it, determine its policy. Having said that, the Parliament not only cannot control the government, but also, it is very weak exactly towards the government, that is expressed in a very low accountability of Ministers or administrative bodies towards it.

*2.4.1. The practice of invitations of Ministers over the autumn and spring sessions proves that they are*

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86 <https://bit.ly/2BA3WUW> [28.07.2020 18:06]

87 <https://bit.ly/2P24E0p> [28.07.2020 18:11].

88 <https://bit.ly/307xUta> [28.07.2020 18:19].

89 <https://bit.ly/31LAOU0> [13.08.2020 19:15]

90 <https://bit.ly/3kB6PGV> [13.08.2020 19:26].

91 <https://bit.ly/3kB6PGV> [13.08.2020 19:26].

92 <https://bit.ly/3kRrqC> [13.08.2020 19:32]

93 <https://bit.ly/2CHdmid> [27.07.2020 13:20]

*not either invited or if so, they do not appear at the Parliament.*

The Parliamentary majority, practically, does not invite the Ministers at the Committee sittings regardless of the magnitude of the issue; and as of the the opposition, in case of their invitation, the Ministers themselves refuse to appear at the Parliament.

The scarcity of the invitation of the ministers and their visits at the Parliament diminishes the institutional independence of the Parliament, weakens its oversight function, and poses a serious hurdle for democratic development. Additionally, it creates the perception nationwide, that the rule of law does not work in the country.

Over the Autumn session the Parliamentary majority did never invite any Minister on their own initiative. In contradiction this, over the spring session, there was third case yet again when the opposition MPs/factions were requesting the attendance of the Ministers at the Committee settings, to ask the question over the ongoing serious issues; however, either the Ministers do not appear or the Committees do not consider the request of the opposition to invite the Ministers.

- In February, the Ministry of Finances did not appear at the Sector Economy and Economic Policy Committee. The faction “Independent MPs” invited him.
- In February and later, in June as well, Ekaterine Tikaradze did not appear at the Health Care and Social Issues Committee. In the first case, the factions, “Independent MPs” and “the Patriotic Alliance and Social-Democrats” invited her; and in the next case, the faction “Independent MPs”.
- In July, the Human Rights and Civil Integration Committee did not consider the request of the faction “European Georgia - Movement for Freedom” and did not invite Tea Tsulukiani, the Minister of Justice to the Committee sitting.

The Minister of Finances and the Minister of Health Care grossly violated the Constitution and the Rules of Procedure of the Parliament, that was an explicit ground for their impeachment. To these facts, in February, our organization released the public statement and called on the Parliament to proceed to the impeachment procedure.

*2.4.2. The annual report of the Prime Minister was submitted to the Parliament in compliance with the Rules of Procedure of the Parliament, however, yet again, the weak standing of the Parliament was expressed.*

The presented report was not one-sided, concerned with the challenges as well, however, the questions of the MPS, themselves were low. In other words, their questions and other types of comments did not contain the substantial and critical reasoning over the subject matter.<sup>94</sup>

Following the deliberation of the report, the Parliament did not adopt the decree, that is a very effective legal leverage for the Parliament to resolve the issues and to achieve the tangible results; and hence, its constitutional prerogative. Such an important document as is the annual report of the

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<sup>94</sup> See the website of the Parliament, <https://info.parliament.ge/file/1/BillReviewContent/254076>? [13:56 15.07.2020]

Prime Minister, the Parliament did not evaluate, did not identify the problems, and did not give the recommendations to the government for the following year.

#### *2.4.3. Interpellations were held in a hasty and superficial manner.*

Over the spring session, in total, 2 interpellations were held, that were scheduled on the same day, therefore, the time assigned to each was restricted.<sup>95</sup>

The written answer that is obligatory for the interpellation, was sent to the Parliament right ahead of the sitting, that, in general, hinders the effective conduct of the the proceedings.

In some of the cases the written answer was irrelevant. For example, to the question of “European Georgia” through interpellation, as to why the people having lost their jobs, are to be provided only the amount below the minimum subsistence, (200 GEL over 6 months), it is answered that amount of monthly minimum subsistence is 199,6 GEL.<sup>96</sup> Also, to the question as to what is the plan for the Government to reduce the poverty among the pensioners, the answer is that pension is doubled with 220 GEL in country while in 2012 the amount was only 150GEL.<sup>97</sup>

Over the course of the entire process, discursive and irrelevant debates were frequent.<sup>98</sup> There were the cases when the MPs did not use their time for the question efficiently, that affected the quality of the parliamentary debate negatively.

#### *2.4.4. Some of the Ministerial hours over the spring session were superficial; and in some other cases a lot of pent-up questions implied scarcity of the parliamentary visits of certain Ministers.*

The ministerial hour of the Minister of Defense was held in parallel with the opposition boycott<sup>99</sup> that led the entire procedure to meaningless, superficial formality. The Minister was not asked the critical questions over the challenges in the Georgian defense sphere. This is even more alarming, when the Georgian territories are occupied and occupant military forces, on a daily basis, with gross violations of the international law, continue their so called “borderization” process, posing at the same time, humanitarian crisis in the conflict regions.

Over the course of the ministerial hour of the Minister of Health Care,<sup>100</sup> the questions of the MPs

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95 See the website of the Parliament, <https://info.parliament.ge/file/1/BillReviewContent/249549?> [14:37 15.07.2020]

96 See the written answer of the Georgian Prime Minister to the question of “European Georgia” through Interpellation, asked on May 8, 2020. p.2 <<https://info.parliament.ge/file/1/BillReviewContent/249554?>> [01.06.2020]

97 See the written answer of the Georgian Prime Minister to the question of the faction “National Movement” through Interpellation, asked on May 8, 2020. p.2 <<https://info.parliament.ge/file/1/BillReviewContent/249554?>> [01.06.2020]

98 See the written answer of the Georgian Prime Minister to the question asked by the faction “National Movement” through interpellation, on May 8, 2020. p2. <https://info.parliament.ge/file/1/BillReviewContent/249555?>, [01.06.2020].

99 See the audio-recording on the link: <https://bit.ly/2QnCsG9> [21.08.2020 17:37].

100 See the audio-recording on the link: <https://info.parliament.ge/#law-drafting/19679>, 05.02.2020

concerned with a wide range of the issues, implying that a lot of the questions had accumulated to the Minister. It showed that more frequent visits and answering the questions at the Parliament was needed by her. One-time mandatory procedure of the Ministerial hour does not cover all the questions, nor it does allow to thoroughly consider all the issues.

**2.5. The Parliament over the Pandemic** - The pandemic and the state of emergency in the country continued without the parliamentary interference. As an outstanding achievement from the side of the Parliament was full unanimity to declare the national emergency in the country; occasional activeness of the opposition, occasional cases of the Parliament and the government to work jointly and some of the recommendations towards the government. On the other hand, the Parliament was completely inert - did not involve in developing strategic plan relating to the pandemic.<sup>101</sup>

*2.5.1. The achievement of the Parliament can be considered timely and unanimous declaration of the state of emergency; opposition's occasionally activeness towards the Prime Minister through interpellation; Joint working meeting of the Parliament with the representatives of the executive over the pandemic-related problems of the Georgian citizens living abroad; and the recommendations of the Gender Equality Council of the Parliament.*

Georgian Parliament voted for the decree on the declaration of the state emergency unanimously, with 115 votes versus 2 of them.<sup>102</sup> The presidential decree also got the absolute majority of the votes - 115 versus none of them.<sup>103</sup> Over the course of the deliberation of the issue at the sitting of the Bureau it revealed that the declaration of the state emergency over a month period of time was based on the consensus of the parliamentary parties.

Over the period of the state of emergency, two parliamentary factions applied the procedure of interpellation: "National Movement" on May 5, and "European Georgia" on May 8. They addressed to the Prime Minister through interpellation with the written questions.<sup>104</sup> The written questions of the both factions concerned with the economic situation triggered as a result of the state of emergency and the relating steps taken by the government. Specifically, those questions related to the anti-crisis budget, taxation policy, and the poverty.

The chairperson of the Diaspora and Caucasus Issues Committee and his deputy held the joint working meeting with the representatives of Ministry of Foreign Affairs and Medical Care. The subject matter of the meeting related to the pandemic-related problems caused to the Georgian citizens living abroad. The speakers at the meeting were the Deputy Minister of Foreign Affairs and the representatives of the National Center of Disease Control.

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101 The contribution of the Parliament to combating pandemic was nominal, limited only by occasional briefings of some of the MPs and their attendance at the Coordination Council of the Government.

102 See the voting results, <https://info.parliament.ge/file/1/BillReviewContent/246793?> [15:29 15.07.2020]

103 See the voting results, <https://info.parliament.ge/file/1/BillReviewContent/246794?> [15:29 15.07.2020]

104 The written letters of the factions are not published on the parliamentary website; however, the published written answers of the Prime Minister include the written questions of the factions. See the link, <https://info.parliament.ge/file/1/BillReviewContent/249555?> , <https://info.parliament.ge/file/1/BillReviewContent/249554?> [15:54 15.07.2020]

The recommendations developed by the Gender Equality Council of the Parliament towards the government, relating to empowering women and preventing domestic violence as the virus spreads, was indeed a positive step taken by the Parliament.

#### *2.5.2. At the outset of the pandemic the Parliament practically stopped functioning that was the most egregious flaw in its performance.*

The role and duty of the Parliament in a democratic society implies that during the state of emergency as well, the Parliament remains the most highly legitimate representative body of people; and in an emergency regime, continues its work within its power of law making as well as governmental oversight; and likewise, it remains the platform for open debates over the important issues for the public.

Developing the strategy to overcome the virus and neutralize the threats spurted out it in health care, economy and finances, turned out to be problematic. The Parliament did not take any step in this direction; the devaluation of the national currency at its highest rate and considering this issue with the President of the National Bank in a timely manner did not appear to be a measure of priority for the Parliament.

In essence, over the time of the state of emergency, in a situation that, in general, implies devolving unusually unfettered power to the government, thus poses risks for democracy and human rights, the Georgian government was left without control.

Our organization called on the Parliament to resume its debates on specifically pandemic-related issues in an emergency regime, as it was provided by many parliaments of democratic countries; and especially in the circumstances, when many critical concerns accumulated about the reasoning of restricting certain human rights, and harsh social and economic problems posed by the pandemic.

Regardless of the urgent need, the Parliament did not adopt the draft law on remote work, proposed by the parliamentary majority before declaring the state of emergency.<sup>105</sup> The draft law was initiated in an accelerated manner inasmuch as the pandemic, like worldwide, in Georgia as well required remote work and it was necessary to adopt the law in the shortest period of time. Nonetheless, the draft law was not adopted even in its first hearing.

The process of reporting of the Prime Minister<sup>106</sup> to the Parliament on the governmental report on the activities carried out over the state of emergency proves how irrelevant the parliamentary debate was and how unimportant the rules of the parliamentary procedures were for the MPs.

The Prime Minister, according to the Rules of Procedure of the parliament, was obligated to provide the list of particular issues to the Parliament that he was going to report on. Instead, his letter sent to the Parliament included the general summary of the governmental activities carried out against the virus.<sup>107</sup> The Prime Minister exceeded the time limit set by the law, nor did the Chairperson of the sitting called on him to adjust to it. His report was released first time in public on the website of the

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105 <https://bit.ly/2zGe8KL> [13:08.2020 20:30].

106 See the agenda of the plenary sitting of May 27, 2020, <https://bit.ly/3c7DaiT> [28.05.2020 14:03].

107 See the letter of the Prime Minister of May 21, 2020, #17860, <https://bit.ly/2Ainc8o> [28.05.2020 15:13].

government a week after its presentation at the Parliament on June 4, 2020<sup>108</sup> and still is not on the website of the Parliament.

The comments of the MPs did not concern with the subject matter; the hearing prolonged with 10 hours and 29 minutes, yet on completely different issues, non-related to the problems caused by the pandemic. As hearing was so long, 24 more issues of the agenda the Parliament could not consider.

The budgetary issues are not subjected to the presidential decree according to the Constitution. Nonetheless, the Georgian Parliament still envisaged them by the presidential decree. Therefore, the Parliament, based on the presidential decree, with the violation of the constitution and the law, without its control, fully devolved the expenditure of the budgetary resources to the government.

The Parliament voted for the changes to the Tax Code<sup>109</sup> that entitled the Minister of Finances and the Head of the Revenues Service to reschedule income or property tax for tax payers with 6-month period of time without defining any criterion. This poses the threat of discrimination towards tax payers and corruption, that on the other hand, is also likely to badly affect the parliamentary pre-election period of the 2020 as a manipulative possibility to get votes in the election.



### 3. The Parliamentary Opposition

3.1. The prolonged boycott of the opposition started as back as autumn sessions of 2019 lasted for the entire spring session. Such a long boycott only diminishes the role of the Parliament and eliminates an opportunity for a democratic and critical debate. This is also proved by the research published in 2019, that analyzes the practice of boycott with the examples of 6 Balkan countries.<sup>110</sup>

In 2020, the factions of European Georgia, over 9 session weeks (including the special plenary sittings, as well) declared the boycott with the political motivation that lasted for the entire spring session. The only exception was the special sitting of March 21, where the Parliament voted for the state of emergency proposed by the presidential decree; also, the special sitting of June 21, relating to the constitutional changes on the electoral system. The faction “National Movement” on the other hand, refused to stop boycott regime that posed the threat to adoption of the constitutional changes. In 2020 so far, in boycott regime, there is also one MP, Revaz Nikolaishvili.

As a result of this stance, only in the last year, in the boycott regime, the majority of the parliamentary opposition did not participate in the debate and voting on the following substantial issues:

- hearing of the Chairperson of the Parliament about the annual report of the Parliament and the action plan of the following year;

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108 See the report of the governmental activities against the COVID-19, <https://bit.ly/2Uj1uZ2> [8.06.2020 09:30].

109 See the link, <https://info.parliament.ge/file/1/BillReviewContent/247914>

110 WFF, Parliamentary Boycotts in the Western Balkans, 2019 p. 6, <https://www.wfd.org/wp-content/uploads/2019/07/WFD-WB-Boycotts.pdf> [19:20 15.07.2020]

- the Ministerial hours of the Minister of Finances; the Minister of Regional Development, and the Minister of Defense;
- hearing and adoption of the important draft laws;
- hearing of the reports of the Committees on their activities carried out in 2019;
- the appointments of high rank officials
- ratification of the international treaties;
- ratification of certain treaties on loan

**3.2. The draft laws proposed by the opposition** - In most of the cases when the draft laws were proposed by the opposition, until their committee hearings, the term of preparatory stage was extended, that made it impossible to hear the draft laws on the same sessions.

Over the spring session the representatives of the opposition proposed 10 draft laws in total. Over 4 of these draft laws, the term of consideration upon the request of leading committees were extended with 2 or 3 months; and in 5 other cases the term of consideration of the draft laws are not expired yet.<sup>111</sup> Only one draft law was considered by the Parliament and did not vote for it.

Due to extending the term of consideration of 4 of the draft laws, it was impossible to even start committee hearings upon them.

The procedure of extending the term shows the flaw in the Rules of Procedure of the Parliament regarding the fact that committee without any justification and agreement with the initiator of the draft law, is allowed to address to the Bureau with the request of extension of the term of consideration of the draft law; Likewise, the Bureau is allowed without any justification to grant such request of committee.<sup>112</sup>

The practice reveals that the aforementioned rule is actively applied by both, committees and Bureau to avoid starting consideration of the draft laws of the opposition. With manipulating the Rules of Procedure, the parliamentary majority leaves the issues initiated by the opposition beyond parliamentary consideration.

**3.3. Temporary investigative commission in the Parliament** - temporary investigative commission to substantially examine the critical issues is important parliamentary leverage for the opposition. Nonetheless, either the opposition does not apply this mechanism or the consideration of the request to set up this mechanism is getting delayed by the parliament.

Comparing to the previous session, when the opposition requested to set up investigative commission in 11 cases, when the consideration of all of them were delayed,<sup>113</sup> over the spring session of 2020, the

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<sup>111</sup> In one of the cases the term was to be expired on September 7, and in another case it is to be expired on September 29.

<sup>112</sup> See the Article 102, para 10, of the Rule of Procedure of the Parliament.

<sup>113</sup> Supra 3, pp.34-38

opposition did not request to set up any investigative or other temporary commission.<sup>114</sup>

The rule of setting up commission is also to be clarified according to which, in case less than 6 months are left before the expiration of the term of the parliament, setting up temporary commission is not allowed.<sup>115</sup> The norm is vague as it is impossible in advance to determine when the term of the Parliament will be considered as expired.<sup>116</sup>

**3.4. The role of the opposition in governmental oversight** - The opposition in the governmental oversight is significantly weak and it is proved by the low statistics of applying controlling mechanisms by them. It is also noteworthy, that this passiveness is encouraged by certain regulations in the Rules of Procedure.

Over the spring session, in total, there were 4 cases of applying the oversight mechanisms by the parliamentary opposition. In 2 of the cases the invited person (the Minister of Finances and the Minister of Health Care) did not appear and answer the questions, and in 2 other cases - the Prime Minister did appear and answered the questions.

On the one hand, the low statistics of applying the oversight mechanism by the parliamentary opposition and on the other, neglecting their requests by the officials without raising their corresponding responsibility by the Parliament, leads to the situation that the oversight function, that is to say, the control of the government by the opposition is very weak.

This footing itself is supported by leaving initiatives without parliamentary consideration and clumsiness of the Rules of Procedure, according to that re-inviting official to the Parliamentary sitting is only allowed two months after the previous invitation.<sup>117</sup> As for the interpellation itself, can be held only twice within the session.<sup>118</sup>

**3.5. The parliamentary questions of the MPs from the opposition** - It is worth mentioning that the MPs from the opposition apply the mechanism of parliamentary questions that by the Rules of Procedure is designed to control the government. While the statics of the parliamentary questions asked by the MPs is very low, main number of that is made of the questions asked by the MPs from the opposition. There were only few exceptions when the MPs from the Parliamentary majority also asked the parliamentary questions to the executive.

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<sup>114</sup> See the Answer №1-9756/20 received on the e-mail from the chief of section of the public information of the organizational department of the Georgian Parliament.

<sup>115</sup> The Article 74, para one of the Rules of Procedures of the Parliament.

<sup>116</sup> The Constitution of Georgia determines that the term of the Parliament is ended at the moment of recognizing the new term of the Parliament. Recognition of the term of the Parliament, on the other hand, is related to electoral and other political processes that is likely to set different terms, for example, it is likely that the extraordinary and repeated election or even the run-off in the circumstances when the majoritarian system still exists be called; subsequently, the exact date cannot be always predicted. Therefore, it is impossible to determine the exact date before which within no less than 6 month it is not allowed to set up commission.

<sup>117</sup> The Article 40, para 8 of the Rules of Procedure of the parliament.

<sup>118</sup> The Article 149, para 5 of the Rules of Procedure of the parliament.

22 MPs applied this mechanism. These are the following: Eka Beselia, Irakli Abesadze; Nino Tsilosani; Sergo Ratiani; Sergi Kapanadze; Zaza Gabunia; Zurab Chiaberashvili; Khatuna Gogorishvili; Giorgi Begadze; Gia Zhorzhiani; Roman Gotsiridze; Merab Qvaraia; Levan Koberidze; Kakhaber Kuchava; Irakli Abuseridze; Tamar Chugoshvili; Mamuka Chiqovani; Elene Khoshtaria; Guguli Maghradze; Levan Gogichaishvili; Tengiz Gunava; Badri Basilashvili.

The third of the parliamentary questions are asked by the members of the faction European Georgia (Sergo Ratiani, Sergi Kapanadze, Khatuna Gogorishvili, Irakli Abesadze) and concerned with the following issues:

- The number of the non-commercial and commercial legal persons formed by the municipalities, and the employees therein.
- the lands owned by the municipalities and those transmitted to the ownership of the Patriarchy.
- labor disputes in public institution and remuneration of lost earnings;

The MPs are mostly focused on the issues of single type. For example, the main addressee of Levan Koberidze, the MP was Ekaterine Tikaradze, the Minister of Health Care and Social Issues and Giorgi Gakharia, the Prime Minister and the subject of the questions was some of the health care programs and the steps taken tackling the novel Corona virus. Eka Beselia, the MP was mostly focused on the statistics on prosecution under some of the Articles envisaged by the Criminal Code of Georgia and the addressee of the questions was Tea Tsulukiani, the Minister of Justice. The main addressee of Sergo Ratiani, the MP, was the Minister of Education, Science, Sports, and Culture and the subject of the question was school conditions.

The MPs of the majority, in a similar way as the opposition, were also applying the parliamentary questions, however, this number is very low.<sup>119</sup>



## 4. The Committees

**4.1. the Committee Sittings** - The committees more reduced the number of sittings over the spring session. Therefore, the situation in this regard comparing to the previous session has been even worsened, even though over the summer there emerged the events that really were worth being dealt with by some of the committees.

Over the spring and special sessions of 2020, the absolute majority of the parliamentary committees violated the provision of the Rule of Procedure at least once. Unlike the autumn session of 2019, the situation in this regard significantly worsened and there revealed also the cases when some of the committees for several months did not hold sittings at all. The committees listed in the table below,

<sup>119</sup> Nino Tsilosani, the MP mainly would address to the Minister of Environmental Protection and Agriculture, and the questions were concerned with ecological issues, including reservoir constructions.

Zaza Gabunia, the MP sent 59 parliamentary questions to sundry municipal bodies about the shelter issues for homeless people, that most probably concerned with the thematic research undertaken at the Regional Policy and Self-Government Committee over the issues.

during the months indicated therein, either did not hold the sitting at all, or held less than two as an obligatory minimum number determined by the Rules of Procedure to be held by the committees.

Committee of	month (months)
Agricultural issues	March, April, May
Human Rights and Civil Integration	April, May
Education, Science, and Culture	March, April, May
Environment and Natural Resources	March, April, May
Sectoral Economy and Economic Policy	March
Diaspora and the Caucasus Issues	March, April, May
European Integration	February, March, April
Defense and Security	February, April, May
Legal Issues	February
Regional Policy and Self-Governance	March
Foreign Affairs	March, April, May
Procedural Issues and Rules	April
Finances and Budget	March, April
Sports and Youth Issues	April

As a reason for being passive, one of the committees indicated the pandemic.<sup>120</sup>

It is True, indeed, that during the pandemic, gathering in person of the MPs was problematic. The was the same in almost every country of the world. However, the solution to this problem is remote work. It is to be highlighted that still at the beginning of March the draft law was registered at the Parliament, proposing to allow the Chairperson of the Parliament to switch the Parliament to remote work in the event of the objective necessity.<sup>121</sup> Unfortunately, the draft law is not considered or adopted so far enabling the Parliament to continue its work at a regular bases including holding committee sitting over the pandemic.

Like the previous session this time as well, the Human Rights and Civil Integration Committee was conspicuously passive. It could proactively examine the practice of legal recognition of victim status and identify the legal flaws being subsequent to the public protests of June, 2019. Nonetheless, after a year, when the aforementioned problem was still pending, the committee still did not consider the issue or hear the relevant officials.<sup>122</sup>

It is noteworthy that of the complaints of citizens, mentioned in the report, the highest number

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120 See the letter N2-7873/20 from the Regional Policy and Self-Governance Committee of July 20, 2020.

121 See the link, <https://info.parliament.ge/#law-drafting/20154> [17.08.2020 17:59]

122 Supra 3, pp.46-49.

was about human rights problems.<sup>123</sup> It obviously implies that this committee has a lot of tasks to perform. Still, it held either the minimum or none of the sittings in April and May.

The Legal Issues Committee showed its passive stance towards the ongoing severe events,<sup>124</sup> when it did not launch the work on creating and improving the legislative mechanism of whistle blower and cooperation of witnesses with the investigative bodies. The organization called on the Parliament to start work on improving the mechanism of witness cooperation with investigative body.<sup>125</sup> Apart from the fact that the publicized case revealed this problem, the State Inspector as well highlighted the victims' cooperation as one of the most challenging problems in her report.<sup>126</sup> Therefore, our organization called on the Parliament to entitle the State Inspector to carry out protective measures for victims and witnesses for their security, effective cooperation with investigative bodies, and effective investigation.<sup>127</sup> The Committee did not consider any of these opinions/statements.

**4.2. Post-Legislative Scrutiny** - the committees like the previous session, this time as well, rarely ever used the mechanism of post-legislative scrutiny; and some of the committees as a reason for this rare use of the mechanism indicated the pandemic.<sup>128</sup> Additionally, unlike the previous session, this time, more of the committees - 6 of them did not provide us with the requested information.<sup>129</sup>

6 of 15 committees did not provide us with the requested information. These are the following: Defence and Security Committee; Diaspora and Caucasus Issues Committee; Legal Issues Committee; Agricultural Issues Committee; European Integration Committee; and Education, Science, and Culture Committee.

4 of remaining 9 committees did not apply the post-legislative scrutiny. These are the following: Regional Policy and Self Governance Committee; Foreign Affairs Committee; Sports and Youth Issues Committee; and Health Care and Social Issues Committee.

5 Committees applied this power. These are the following: Human Rights and Civil Integration Committee; Environmental Protection and Natural Resources Committee; Sectoral Economy and Economic Policy Committee; Finances and Budget Committee; as for the Procedural Issues and Rules Committee, it applies this mechanism as part of its main functions according to the power it has been assigned.<sup>130</sup>

Only 2, Environmental Protection and Natural Resources, and Sectoral Economy and Economic Policy committees applied post-legislative scrutiny to examine the issues raised by them, namely, to

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123 See the first chapter of this report

124 Publicized tragedy of Shaqarashvili case

125 See more details in the statement of our organization, <https://democracyindex.ge/ge/news/read/49/mamxileblis-institutis-ararseboba-da-mowmis-uari-tanamshromlobaze-tovebs-upasuxod-kitxvas>

126 See the report of the State Inspector of 2019, p.128

127 See the link, <https://democracyindex.ge/ge/news/read/43/parlamentma-saxelmwifo-inspeqtoris-samsaxuris-efqiani-mushaobistvis-sakanonmdeblo-garantiebi-unda-gaadzlieros>

128 Sectoral Economy and Economic Policy Committee and Sports and Youth Issues committees.

129 During the previous report preparation, 3 committees did not provide us with the requested information.

130 Article 2, para 2 of the Regulations of Procedural Issues and Rules Committee

examine how the Evaluation Code of Environmental Protection and the law on “Public and Private Cooperation” adopted in 2017 are being implemented.

**4.3. Hearing the reports of the accountable officials at the Parliament** - The majority of the committees heard the reports of the accountable officials except Sports and Youth Issues Committee and Regional Policy and Self Governance Committee indicating the pandemic as a reason for it. It is noteworthy that the Committees did not propose any initiative to resolve this problem and by doing so, they refused to discharge their constitutional duty.

Two Committees did not hear the reports from the accountable officials: Regional Policy and Self Governance Committee and Sports and Youth Issues Committee.

The most active committees pertaining to hearing the reports of accountable officials was Human Rights and Civil Integration Committee having heard 18 reports; however, out of the reports we studied (we did not study the conclusions of all of the reports), we revealed that the committee did not include the critical recommendations in its conclusions pertaining to the following:

4.3.1. The Public Defender submitted her report to the parliament.<sup>131</sup> Some of her important recommendations the Human Rights and Civil Integration Committee did not include in its conclusions.

The Public defender of Georgia submitted her report to the Parliament on March 31, 2020, about the situation of human rights and fundamental freedoms in Georgia in 2019.<sup>132</sup> The Human Rights and Civil Integration Committee heard the report and published its conclusions on that.<sup>133</sup>

The committee did not consider the recommendation pertaining to the Office of the Prosecutor General on re-opening the case of Temirlan Machalikashvili. The factions from the opposition initiated twice at different times to set up the temporary investigative commission on the case of Temirlan Machalikashvili.

The conclusion does not consider one of the important recommendations pertaining to the Minister of Justice on fulfilling the obligation by the state deriving from the optional protocol to the convention on prohibition of torture and other inhuman treatment and punishment, regarding the privacy issues of inmates and their health care.

The conclusion does not consider the recommendation pertaining to the Minister of Internal Affairs on launching the practice of using body cameras while carrying out the special operational measures during the communication between the police officer and an individual, .

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131 See the letter of the Public Defender of March 31, 2020, <https://info.parliament.ge/file/1/BillPackageContent/26134?> [12:44 17.07.2020]

132 See the letter of the Public Defender of Georgia of March 31, 2020, <https://info.parliament.ge/file/1/BillPackageContent/26134?> [12:44 17.07.2020]

133 See the conclusion of the Human Rights and Civil Integration Committee on the report of the Public Defender about “the situation of human rights and freedoms in Georgia in 2019”, (N1-5468/20; 01.04.2020) <https://info.parliament.ge/file/1/BillReviewContent/254792?> [12:44 17.07.2020]

The Committee did not also consider the recommendation pertaining to the Minister of Health Care on eradicating the practice of obtaining the consent of husband/partner for blocking the fallopian tubes of women (sterilization) and subsequent other recommendations.

The Committee did not also consider the other important recommendations, nor did it justify the reason for omitting them.

*4.3.2. The State Inspector submitted her report to the Parliament.<sup>134</sup> The Human Rights and Civil Integration Committee mainly considered the problems highlighted in the report in its conclusion after hearing the report.*

As a positive step, it is worth mentioning that the Committee considered in its conclusion the concerns identified in the report of the State Inspector. These are the following: The legislative as well as practical flaws regarding protection, collection, and storage of personal data. Reporting to the State Inspector on possible crime; cooperation with the investigation unit of the State Inspector; reporting on possible inhuman treatment by the medical staff of temporary detention isolators rather than by the victims themselves or the Ministry of Internal Affairs, etc.

As a positive step, it is worth mentioning that the Committee by its conclusion gave the recommendation to the State Inspector to improve her performance regarding personal data protection as well as investigation.

Hearing of the report was superficial, the MPS of the majority of the Parliament did not ask questions; only the chairperson of the Committee commented on the question of one of the MPs from the opposition

*4.3.3. The Administrative bodies submitted their reports on issuing the public information to the Parliament, mainly within the time limit.<sup>135</sup> However, the reports had flaws - they did not provide the information on each criterion required by the law. The Committee did not give recommendations for its prevention.*

The organization studied the reports of 75 authorities: Courts; the government; The Ministries; the Prosecutor's Office and others. As a positive step it is noteworthy that the reports of some of the authorities even include the information that is not mandatory by the law. Specifically, the reports of 10 authorities not only give the information about total quantity of the requests on issuing public information over the year, but also they categorize the requests according to the following criteria: who requested the public information, to whom, in how many cases, and on what matter.<sup>136</sup>

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134 <https://bit.ly/3fLPkRg> [14.08.2020 19:33].

135 The reports of sundry administrative bodies are due to be submitted to the Parliament at different times.

136 These are the reports of the following Ministries: Environmental Protection and Agriculture; Defence; Internal Affairs; Georgian National Energy and Water Supply Regulatory Commission; Georgian National Commission of Electronic Communications; the Ministry of Agriculture of the Autonomous Republic of Adjara; LEPL Legal Aid Service; Special Service of State protection; Public Defender of Georgia, the National Center for Disease Control and Public Health

Out of 75 studied reports of the authorities, only 7 were complete.<sup>137</sup> The reports do not include the comparative analysis with the previous year that makes it impossible to infer whether it is progress on issuing the public information or not; 6 of 75 authorities did not submit their reports to the Parliament within the time limit.<sup>138</sup> 5 of 12 reports submitted by the collegial bodies did not include the information on closing of sittings and/or the grounds of closing.<sup>139</sup>

The Courts do not frequently issue the copies of their decisions with the justification that encrypting personal data entails mobilizing large part of the human resources that would obstruct the course of justice (with this justification the Tbilisi City Court refused to issue the public information in 200 cases in 2019).

Our organization submitted recommendations to the Parliament and to the Human Rights and Civil Integration Committee that are included in the 14<sup>th</sup> and 15<sup>th</sup> recommendations, at the end of this report.

4.3.4. The State Security Service submitted its report to the Parliament.<sup>140</sup> The Committees of Defense; Legal Issues; and Human Rights and Civil Integration considered the report in a closed format; and their conclusion does not include the recommendations on preventing the flaws on the one hand, and improving the efficiency of the service, on the other.<sup>141</sup>

After hearing the representative of the Service, the joint sitting of the Committees continued in a closed format.<sup>142</sup> It would have been reasonable to hold a public debate on the public part of the

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137 These are the following: The Ministry of Defence; the Ministry of Justice; the Ministry of Regional Development and Infrastructure; Kutaisi Appeal Court; Pension Agency; Penitentiary Service, and the State Inspector Service.

138 These are the following: The Constitutional Court of Georgia; The Agency of the State Property; Technical and Construction Supervision Agency; The Public Broadcaster; Georgian National Service of Statistics; Georgian State Security Service.

139 These are the following: National Bank of Georgia; National Commission of Communications; Election Commission of the autonomous republic of Adjara; the Government and the Supreme Council of Abkhazia.

140 See the letter of the Head of the State Security, of April 14, 2020, <https://info.parliament.ge/file/1/BillPackageContent/26335?> [22:43 16.07.2020]

141 Human Rights Education and Monitoring Center (EMC), for example, evaluating the report, claims that the “document is basically void of conceptual interpretations and does not include theoretic framework of the standards and policy vision. Besides, the document does not develop the political concept of security that is the basis of the strategy and performance of the body. The report interprets security in its old paradigm (post second world war) being designed to protect the system of the state (its military and security systems, etc.) and considering the state as the object of protection; and not in its modern notion, broadening the concept of security, the objective of which is the well-being of individual and social groups, peace, subsequently the economic, social and environmental protection from the threats.” [https://emc.org.ge/ka/products/emc-sakhelmtsifo-usafrtkhoebis-samsakhuris-qoveltsliur-angarishs-ekh\\_maureba](https://emc.org.ge/ka/products/emc-sakhelmtsifo-usafrtkhoebis-samsakhuris-qoveltsliur-angarishs-ekh_maureba). [22:43 16.07.2020].

142 See the news report, The Parliamentary Committees heard the report of the State Security Service of 2019, [http://www.parliament.ge/ge/media/axali-ambebi/saparlamento-komitetebma-gaertianebul-sxd\\_omaze-saxelmwifo-usafrtxoebis-samsaxuris-2019-wlis-saqmianobis-shesaxeb-angarishi-moismines](http://www.parliament.ge/ge/media/axali-ambebi/saparlamento-komitetebma-gaertianebul-sxd_omaze-saxelmwifo-usafrtxoebis-samsaxuris-2019-wlis-saqmianobis-shesaxeb-angarishi-moismines).

report for the public to know the opinion of the opposition thereon.

The conclusion does not include the flaws being identified in the report, statements or evaluations of the non-governmental organizations; the report does not analyse the compatibility of the performance of the service with the document of national security; the conclusion completely agrees to the achievements of the service without providing any justification upon that.

*4.3.5. LEPL Legal Aid Service submitted its report to the Parliament,<sup>143</sup> however, the Legal Issues Committee had not published its conclusion by August 21.*

*4.3.6. The Public Broadcaster submitted its reports to the Parliament,<sup>144</sup> however, the Education, Science, and Culture Issues Committee had not published its conclusion by August 21. It is noteworthy that it is one of the most passive committees in its activities - over the period of March, April, and May it either did not hold the sitting or held less than its mandatory minimum.*

**4.4. Examination of activities of administrative bodies** - The Committees do not apply this leverage. The practice of the use of this mechanism does not exist at the Parliament. Like the previous session, the Committees did not examine activities of any administrative body over the spring session.

8 of 15 committees provided us with the requested information: Environmental Protection and Natural Resources Committee; Defense and Security Committee; Procedural Issues and Rules Committee, Diaspora and the Caucasus Issues Committee, European Integration Committee; and Education, Science, and Cultural Issues Committee.

Out of 7 remaining committees none of them examined the activities of the administrative bodies: Human Rights and Civil Integration Committee; Sectoral Economy and Economic Policy Committee, Foreign Affairs Committee; Sports and Youth Issues Committee; Health Care and Social Issues Committee.

As a reason for not having applied this mechanism, the two of them, Sectoral Economy and Economic Policy Committee and Sports and Youth Issues Committee indicated the restrictions set for preventing the spread of the Coronavirus. This explanation proves the necessity to adopt the rules for remote work, however, the committees did not propose any initiative to overcome this hurdle, hence, they refused to discharge their power determined by law.

It is noteworthy that the Sports and Youth Issues Committee had scheduled to examine the activities of some of the administrative bodies over the spring session.<sup>145</sup> They had even requested the information from some municipalities<sup>146</sup> and scheduled the date of hearing during this session,

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page, [22:43 16.07.2020]

143 See the letter of the director of the Legal Aid Service, <https://info.parliament.ge/file/1/BillPackageContent/25514?> [18:40 16.07.2020]

144 See the Letter of the Chairperson of the Council of Trustees of the Public Broadcaster to the Parliament of May 11, 2020, <https://info.parliament.ge/file/1/BillPackageContent/26579?> [18:58 16.07.2020]

145 See more details in our report of autumn session, 2019, p.54

146 The Government of Adjara Autonomous Republic; Municipalities of Kareli; Kutaisi; Kazbegi; Mestia; Akhalkalaki.

however, the hearing could not take place over this session.

**4.5. The legislative initiatives proposed by the Committees** - like the previous session, the situation has not changed as the committees passively proposed legislative initiatives over this session. Like the previous session, this time as well, only the same two Committees, as previously, did propose the legislative initiatives. All of the rest either did not apply this power or did not provide us with the information.

2 of 8 committees having proposed the legislative initiatives, are Environmental Protection and Natural Resources Committee and Health Care and Social Issues Committee. One of the (Environmental Protection and Natural Resources Committee) proposed the draft law and the other one (Health Care and Social Issues Committee) proposed the draft of the parliamentary decree. As already mentioned, these two committees proposed their initiatives over the last session as well.

7 of 15 committees did not provide us with the information. These are the following: Defense and Security Committee; Procedural Issues and Rules Committee; Diaspora and the Caucasus Issues Committee; Legal Issues Committee; Agriculture Issues Committee; European Integration Committee; and Education, Science, and Cultural Issues Committee.

6 Committees did not propose legislative initiatives. These are the following: Human Rights and Civil Integration Committee; Sectoral Economy and Economic Policy Committee; Regional Policy and Self Governance Committee; Foreign Affairs Committee; Sports and Youth Issues Committee; and Finances and Budget Issues Committee.

As a reason for not having used this power, two of them, Sectoral Economy and Economic Policy Committee and Sports and Youth Issues Committee indicated the restrictions set for preventing the spread of the Coronavirus. It is noteworthy that over the last session they did not use this power, even though these restrictions did not exist that time. This explanation proves the necessity to adopt the rules for remote work, however, the committees did not propose any initiative to overcome this hurdle, hence, they refused to discharge their power determined by law.

**4.6. Attending of accountable officials at Committee sittings** - comparing to the previous session, there was the progress this time. In other words, while over the last session none of the committees requested that any of the accountable officials mandatorily attend the committee sitting, during this session, two of them did request it; and in 4 other cases - the MPs from the opposition made this request.

Mandatory attendance of accountable official was requested by Health Care and Social Issues Committee and Environmental Protection and Natural Resources Committee. Besides, the MPs from the opposition in 4 other cases invited the government members to the following committees: Health Care and Social Issues Committee; Human Rights and Civil Integration Committee; and Sectoral Economy and Economic Policy Committee.

Regional Policy and Self Governance Committee did not provide us with the information regarding the use of this power.<sup>147</sup>

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<sup>147</sup> See the letter N2-7873/20 of the Head of the Apparatus of the Regional Policy and Self Governance

The accountable officials to the Parliament frequently did not attend the sittings even though they had been requested to.<sup>148</sup>

- Ekaterine Tikaradze, the Minister of Health Care and Social Issues did not appear at the Health Care and Social Issues Committee. She was requested to attend the sitting several times: on February 10, by the faction “Patriotic Alliance Democrats”; on February 26, by the Committee; and on May 20, by the faction “Independent MPs”.<sup>149</sup>
- Likewise, Tea Tsulukiani, the Minister of Justice did not appear at the Human Rights and Civil Integration Committee sitting requested to attend on July 2, by the faction “European Georgia - Movement for Freedom”.<sup>150</sup>
- Ivane Machavariani, the Minister of Finances did not appear at the sitting of Sectoral Economy and Economic Policy Committee requested to attend on February 2 by the faction “Independent MPs”.<sup>151</sup>

The only accountable official having appeared over the spring session at the Parliament is the Deputy Minister of Environmental Protection and Agriculture, requested to attend by the Committee on June 29. She appeared at the sitting on July 1, within the time limit set by the law.

Over the session there was also a case when the accountable officials themselves requested to attend the sitting: Nino Lomjaria, Public Defender, and Tea Tsulukiani, the Minister of Justice requested to attend the sitting of Human Rights and Civil Integration Committee. The committee heard them on January 21.<sup>152</sup>

**4.7. The Action plans and reports of the Committees** - documenting of the activities of the committees, that means setting action plans on the one hand, and reporting of the fulfilled activities on the other, have been significantly improved regarding the former and slightly worsened regarding the latter.

All of the Committees have provided the reports of their activities of 2019 except the Foreign Affairs Committee. Over the previous session, 10 Committees did not provide the reports of their activities of 2018.<sup>153</sup>

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Committee, of July 20, 2020,

148 Breach of the obligation to attend the sitting is the ground of the impeachment that is provided in details in the second chapter on the Parliament of this report.

149 See the letter N2-8077/20 of the Head of the Apparatus of the Health Care and Social Issues of July 28, 2020

150 See the letter N2-8038/20 of the Head of the Apparatus of the Human Rights and Civil Integration Committee of July 27, 2020

151 See the letter N2-8156/20 of the Head of the Apparatus of Sectoral Economy an Economic Policy Committee, of July 30, 2020

152 See the letter N2-8038/20 of the Head of the Apparatus of Human Rights and Civil Integration Committee, of July 27, 2020

153 Supra 3, p. 59

13 Committees have published their action plans of 2020. Environmental Protection and Natural Resources Committee and Sports and Youth Issues Committee have united the action plan of 2020 in that of 2018-2020 and Health Care and Social Issues Committee - in that of 2017-2020.

Sectoral Economy and Economic Policy Committee and Diaspora and the Caucasus Issues Committee have not published their action plans of 2020. In this regard, the situation has been worsened as by the autumn session, all of the committees had published their action plans of 2019.<sup>154</sup>

The data are analyzed in accordance with the information provided on the parliamentary website by August 22, 2020.

**4.8. Thematic Researches** - Statistically, comparing to the previous session, the committees improved in using the mechanism of thematic research. 4 committees launched thematic research in the Parliament over the spring session of 2020, while in the previous one this number was 3.<sup>155</sup>

Among these 4 committees having launched thematic researches, the most active was Education, Science, and Cultural Issues Committee, as it used this mechanism over 3 issues: Examination of art education in schools and out of them; access to quality vocational education adjusted to the regional needs; equal access to quality pre-school education for every child;<sup>156</sup>

Environmental Protection and Natural Resources Committee launched thematic research on evaluating pollution degree of the environment with lead in Georgia.<sup>157</sup>

The European Integration Committee launched thematic research on study the challenges posed to small and mid size business in the EU market<sup>158</sup>, and Sports and Youth Issues Committee did it over the issue as to how to increase the physical and sports activeness of the Georgian population.<sup>159</sup>

2 of 4 thematic researches held over the spring session has been completed: Education, Science, and Cultural Issues Committee completed its thematic research on examination of art education in schools and out of them and Sports and Youth Issues committee did it on how to increase the physical and sports activeness of the Georgian population.

It is also noteworthy, that in 2 of 3 thematic researched having been launched over the autumn session of 2019, Human Rights and Civil Integration Committee and Regional Policy and Self Governance Policy Committee completed their thematic researches. As for the other thematic research having been launched by the European Integration Committee and Sectoral Economy and Economic Policy Committee on periodic technical inspection of vehicles has not been completed yet.

**4.9. Study of judicial case law** - based on the received information the committees do not study

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154 Id.

155 Id, p. 55,

156 See the letter N2-8102/20 of the Georgian Parliament of July 28, 2020,

157 See the letter N2-7900/20 of the Georgian Parliament of July 20, 2020,

158 See the letter N2-7772/20 of the Georgian Parliament of July 16, 2020

159 See the letter N2-7834/20 of the Georgian Parliament of July 17, 2020

judicial case law. Consequently, the committees are not updated as to how the laws they adopted are being interpreted by the courts and what is the impact these legal norms have on social relations.

8 of 15 Committees did not provide us with the requested information: These are the following: Environmental Protection and Natural Resources Committee; Defence and Security Committee; Procedural Issues and Rules Committee; Diaspora and the Caucasus Issues Committee; Legal Issues Committee; Agricultural Issues Committee, European Integration Committee; and Education, Science, and Cultural Issues Committee.

7 remaining committees have never studied judicial case law. These are the following: Human Rights and Civil Integration Committee; Sectoral Economy and Economic Policy Committee; Regional Policy and Self Governance Committee; Foreign Affairs Committee; Sports and Youth Issues Committee; Health Care and Social Issues Committee; and Finances and Budget Committee.

The two of them, Sectoral Economy and Economic Policy Committee and Sports and Youth Issues Committee indicated the restrictions set for preventing the spread of the Coronavirus. This explanation proves the necessity to adopt the rules for remote work, however, the committees did not propose any initiative to overcome this hurdle, hence, they refused to discharge their power determined by law.

**4.10. Inspection of compliance of normative acts with the legislation of Georgia** - based on the received information the committees do not apply this practice, either. Consequently, this important mechanism of oversight assigned to Committees by the Rules of Procedure of the Parliament are never used in practice.

8 of 15 Committees did not provide us with the requested information: These are the following: Environmental Protection and Natural Resources Committee; Defense and Security Committee; Procedural Issues and Rules Committee; Diaspora and the Caucasus Issues Committee; Legal Issues Committee; Agricultural Issues Committee, European Integration Committee; and Education, Science, and Cultural Issues Committee.

7 remaining committees have never inspected compliance of normative acts with the Georgian legislation. These are the following: Human Rights and Civil Integration Committee; Sectoral Economy and Economic Policy Committee; Regional Policy and Self Governance Committee; Foreign Affairs Committee; Sports and Youth Issues Committee; Health Care and Social Issues Committee; and Finances and Budget Committee.

The two of them, Sectoral Economy and Economic Policy Committee and Sports and Youth Issues Committee indicated the restrictions set for preventing the spread of the Coronavirus. This explanation proves the necessity to adopt the rules for remote work, however, the committees did not propose any initiative to overcome this hurdle, hence, they refused to discharge their power determined by law.

**4.11. Inspection of the execution of the obligations assigned by the transitional provisions of the parliamentary decrees to the institutions of the executive branch of the Government, and the timeliness thereof** - the information received by the committees shows the scarcity of this practice and not every committee use this mechanism.

Inspection of the execution of the obligations assigned by the transitional provisions of the parliamentary decrees to the institutions of the executive branch of the Government is important to be exercised in practice in order to effectively implement the normative act in a daily life, and smoothly regulate the relationships that the norms apply.

6 of 15 committees did not provide us with the information. These are the following: Environmental Protection and Natural Resources Committee; Diaspora and the Caucasus Issues Committee; Legal Issues Committee; Agricultural Issues Committee, European Integration Committee; and Education, Science, and Cultural Issues Committee.

6 of 9 remaining committees have inspected compliance of normative acts with the Georgian legislation. These are the following: Human Rights and Civil Integration Committee; Sectoral Economy and Economic Policy Committee; Defense and Security Committee; Procedural Issues and Rules Committee; Health Care and Social Issues Committee; and Finances and Budget Committee.

Out of these 6 committees:

- One of the Committees - Procedural Issues and Rules Committee is tasked exclusively with this function to inspected compliance of normative acts with the Georgian legislation.<sup>160</sup>
- 5 remaining Committees used this mechanism on their own initiative that is indeed a positive step taken by them.

Sports and Youth Issues Committee indicated the restrictions set for preventing the spread of the Coronavirus. This explanation proves the necessity to adopt the rules for remote work, however, the committees did not propose any initiative to overcome this hurdle.

## 5. Recommendations to the Parliament

1. For the purposes of raising accountability of the MP and improving their performance, the website of the Parliament should offer individual profiles of MPs providing the following information online performed by MPs:
  - a) initiated draft law; other acts;
  - b) Parliamentary question and received answer;
  - c) video recordings of Parliamentary and other public speeches;
  - d) transcripts of their participation in sittings;
  - e) video recordings of their questions and received answers;
  - f) questions asked through interpellation procedure and received answers;
  - g) reports of the meetings;

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<sup>160</sup> Article 2, para 2 of the Regulations of Procedural Issues and Rules Committee

- h) financial information including gifts received;
  - i) received parliamentary funding other than their salary.
2. For the purposes of ensuring effective feedback from the MPs and raising their sensitivity towards the concerns of citizens:
- a) The Chairperson of the Parliament should issue the act to regulate processing of complaints/statements of citizens;
  - b) By the aforementioned act the Chairperson should determine the following:
    - i. periodicity of processing complaints/statements of citizens;
    - ii. methodology to identify trends;
    - iii. statistic data that will be collected.
3. For the purposes of the public engagement in law making, the Parliament should obligate the Bureau to justify the reasons for urgent necessity to adopt the draft law in an accelerated manner by the Rules of Procedure of the Parliament;
4. For the purposes of permanent monitoring of the quality of public engagement, the Parliament should publish the following on its website and social network in between the sessions:
- a) The index of engagement of public with visually easy-to-understand info graphs - providing the analysis of civil society demands and the final decisions thereto of the Parliament;
  - b) Online registry of the opinions of the civil society towards the issues to be dealt with by the Parliament, and the degree as to how these opinions were eventually considered.
5. For the purposes of permanent monitoring of the public engagement in law making the parliament should publish the following on its website and the social network in between the sessions:
- a) The index of engagement of private persons with visually easy-to-understand info graphs - providing the final outcome of the legislative proposals submitted by the citizens and the private legal persons;
  - b) Online registry of the aforementioned legislative proposals and their outcomes.
6. With the purposes of mandatory provision of the engagement of interested stakeholders in the preparatory stage of draft law, the Parliament should determine the specific rules by the law "on normative acts" and the Rules of Procedure of the Parliament.
7. With the purposes of improving the degree of consideration of alternative, so called "shadow reports" of civil society, the Parliament should determine the proviso by the Rules of Procedure of the Parliament that preparing conclusion/recommendation, committee will be obligated to evaluate and reflect its opinion about the governmental report and "shadow reports" cumulatively.

8. With the purposes of smooth consideration of draft laws submitted by the opposition, the Parliament should determine the specific prerequisites by the Rules of Procedure of the Parliament for committees, as being the only grounds enabling Committee to address the Bureau with the request to extend the time limit for consideration of draft law for one month first time, and if this term is not enough, once again, for no longer than two months. The Parliament should obligate the Bureau by the Rules of Procedure of the Parliament to justify its decision on extending the time limit for consideration of draft law.

9. With the purposes of efficient use of ministerial hour the Parliament should do the following:

- a) make the change to the Rules of Procedure of the Parliament obligating the member of the government, in the format of ministerial hour, to submit its written report to the Parliament in a reasonable time in advance, within no less than 2 two days before the plenary sitting;
- b) make the change to the Rules of Procedure of the Parliament entitling the Parliament to adopt the parliamentary decree after the ministerial hour.

10. With the purposes of its smooth performance, the Parliament should adopt the law on the rules of remote work.

11. With the purposes of the permanent monitoring of the degree of the opposition engagement, in between the sessions, the Parliament should publish the following on its website and social networks:

- a) the index of engagement of the opposition with visually easy-to-understand info graphs - providing the analysis of civil their demands and the final decisions thereto of the Parliament;
- b) Online registry of legislative initiatives and subsequent outcomes.

12. With the purposes of ensuring debates and critical discussions, the Parliament should set the time limit of boycott by the Rules of Procedure of the Parliament and set specific schedule of its use by the consensus with the opposition.

13. With the purposes to create good practice of setting up temporary investigative commissions and temporary commissions, in the Rules of Procedure of the Parliament, the Parliament should clarify the rule as to until when set up of the commission is allowed.

14. To activate the mechanism of inviting accountable officials to the Parliament, the Parliament should shorten the time interval for repeated invitation.

15. With the purposes of permanent monitoring of the performance of the Committees, each of them should publish easy-to-understand info graphs at the end of every month on the website and social network on the following:

- a) the number of committee sittings held;
- b) by the end of the session - the number of using the mechanism of the post legislative scrutiny clarifying the laws (to be) scrutinized;

- c) by the end of the session - the number of using the mechanism of inspecting compliance of the normative acts with the legislation, clarifying the normative acts (to be) inspected;
- d) by the end of the session - the number of using the mechanism of inspection of the execution of the obligations assigned by the transitional provisions of the parliamentary decrees to the institutions of the executive branch of the Government clarifying the obligations (to be) inspected;
- e) by the end of the session - the number of using the mechanism of inspecting the activities of administrative body, clarifying the body (to be) inspected;
- f) by the end of the session - the number of hearing the reports of accountable persons, clarifying the person heard;
- g) by the end of the session - the number of thematic researches launched and completed, clarifying the subject of it;
- h) by the end of the session - the number of the legislative proposals, clarifying the subjects of them;
- i) by the end of the session - the number of studies of judicial case law, clarifying the subjects of study;
- j) the number of legislative initiatives proposed by the Committees;
- k) by the end of the session - the number of requests of the committee to invite the officials to its sittings.

16. to improve reporting on issuing the public information, by the law, the Parliament should add two more mandatory criteria to be reported to:

- a) the factual and legal circumstances of decisions on refusal of issuing the public information; partly granting the request thereof; and closing the sitting by collegial public body;
- b) comparative analysis of issuing public information with the previous year.

17. Human Rights and Civil Integration Committee should do the following:

- a) develop the report template for the reports on issuing the public information to the administrative bodies;
- b) examine the grounds of refusals by the courts to issue the public information and learn the root causes, whether it is the lack of human resources or the legislative gaps. In both cases the committee should develop the mechanism to address the problem;
- c) develop a good practice of inviting the representatives of public bodies to the hearing committee and asking them questions on the emerged concerns from the reports;
- d) Publish the list of those public bodies that did not submit or submitted their reports to the Parliament with the violation of time limit, or did not submit the complete report to the Parliament.