



Recommendations on Funding of Political Unions and their Entitlement to Other Benefits

International Society for Fair Elections and Democracy

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I. Changes in the Law of Georgia on Political Unions of Citizens

About the problem

Results of the 2016 Parliamentary Elections have demonstrated party financing problems that are in need of a solution. These problems are mostly related to funding of parties from the state budget. More specifically, some components of the formula for calculating state funding are ambiguous and faulty. In addition, existing regulations create wrong incentives for creating electoral blocs with the primary purpose of receiving state funding and other undeserved privileges. During work of the State Constitutional Commission (SCC), representatives of the Georgian Dream cited this problem as one of the main reasons for abolition of electoral blocs.

Existence of electoral blocs has one legitimate reason, which is helping parties with lower popularity consolidate their efforts for overcoming the electoral threshold. In our opinion, while existing regulations in Georgia promote this legitimate goal they also create unjustified incentives related to receiving of additional benefits from the state, as clearly evidenced by recent parliamentary and local elections. We are seeing “artificial” electoral blocs created to allow its members to receive undeserved benefits, which gives them an unfair advantage over parties running independently in elections. These additional benefits include additional funding obtained by manipulating components of the formula for provision of public funding, more free airtime for election advertisement, more funding for representatives in electoral commissions, appointment of electoral commission members, etc. For instance, the parliamentary elections in 2016 indicated that one of the most problematic issues was related to determination of which party was entitled to the supplemental funding of GEL 300,000 for creating a parliamentary faction. Due to lack of clarity, the CEC provided wrong interpretation of applicable regulations and as a result, Industry Will Save Georgia received GEL 300,000 while it failed to pass the electoral threshold of 3%, received only 0.78% of votes and was able to secure only a single majoritarian seat in parliament.¹ In addition, even if such ambiguity didn't exist we believe that the principle of providing funding to a party for creating a faction is inherently wrong. Creating a parliamentary faction should not be viewed as an additional accomplishment of a party, as this is automatically related to the party's entry into Parliament and therefore, a party should not be receiving an additional funding for creating a faction. The funding has nothing to do with compensation of faction expenses as these expenses are already covered by the parliamentary budget.

The legislation should provide for equality of rights for individual parties and electoral blocs. Electoral blocs should be entitled to the same benefits that individual parties running in elections are.

Recommendation

To resolve the problem related to electoral blocs, electoral parties running in elections should receive benefits on equal footing with parties running in elections individually.

¹ <https://www.gyla.ge/ge/post/arasamtavrobo-organizaciebis-ceskos-tavmjdomaris-gankargulebas-ekhmaurebian#sthash.kkdDOCUp.dpbs>

An electoral subject, i.e. a single electoral subject should technically become the object of all types of public, direct or indirect funding. Whether an electoral subject is a party or an electoral bloc, as an electoral subject it should be entitled to an equal portion of funding.

An electoral subject should receive funding based on results of the last local and/or parliamentary elections. The so-called mixing of components should only be allowed if an electoral subject was able to clear the 3% threshold in both elections. However, the following restrictions should also apply: a) mixing of different components of the formula should be allowed if composition of the electoral subject for both elections was identical; b) if a party participated under an electoral bloc in one election and independently in another, provision of funding should be based solely on results of the last election.

Component H should be removed from the formula provided in para.4 of Art.30 of the Law of Georgia on Political Associations of Citizens. This component provides an opportunity to receive an additional funding of GEL 300,000 for creating a faction. In addition, base funding (component B of the formula) should be doubled and GEL 300,000 should be increased to GEL 600,000. Until now, this was only allowed if a party/bloc received a 6% support.

Proposed formulation

1. Para.1 of Art.30 should be formulated in the following way:

“1. Funds from the state budget which are to be directly distributed among political parties shall be transferred to parties in compliance with the present article. A party shall have the right to receive funding from the day after first session of the newly-elected Parliament of Georgia is held, and the day after all protocols summarizing final results of general election of representative bodies of municipalities - Sakrebulo are published. Amount of party funding shall be determined by a decree of the Central Election Commission chairperson, based on this Law, the protocol summarizing final results of parliamentary elections of Georgia and results of general election of representative bodies of municipalities – Sakrebulo.”

2. Para.1¹ of Art.30 shall be removed.

3. Para.4 of Art.30 shall be formulated in the following way:

“4. The amount of state funding to be received by a party shall be calculated in the following way:

$$Z=B+(M*600*12)+(L*100*12)+(V*1,5)+(W*1)$$

Where, Z is the amount of state funding to be received by a party, B is the amount of base funding, M – is the number of the MPs equal to or up to 30 elected under a proportional system, L is the number of the MPs above 30 elected under a proportional system, V is the number of votes received under 200,000; W is the number of the votes received above 200,000.”

4. Para.5 of Art.30 should be formulated in the following way:

“5. The amount of base funding is GEL 600,000 annually.”

5. Para.6 of Art.30 shall be deleted.

6. Para.8 of Art.30 shall be formulated in the following way:

“8. The formula specified in this Article may be used by a party or an electoral bloc by mixing results of the last parliamentary elections and last general elections local self-government, if the party received 3% or more of votes cast in both elections. In addition, with regard to electoral blocs mixing of components of the formula based on results of the last parliamentary and the last general elections of local self-government is allowed if composition of the bloc was identical in both elections. A party that participated under a coalition in one election and independently in another may only use results of the last election to receive funding.”

7. Para. 9 of Art.30 should be deleted.

8. Para.10 of Art.30 should be formulated in the following way:

“10. The rule of distributing base funding among parties that are united in a coalition shall be determined in the Statute of the electoral bloc.”

9. Para.12 of Art.30 should be formulated in the following way:

“12. In order to provide financial support to electoral campaigns of political parties during the year of general local self-government and parliamentary elections, additional funding shall be allocated from the state budget of Georgia to cover expenses related to television advertising. This funding may be used for advertising only from the date when the respective general elections are called until Election Day, and in case of calling of repeat polling, election runoffs and election re-runs – until respective Polling Day. The amount provided in this paragraph can only be received by parties that became eligible for funding based on results of the last general elections. To calculate the amount of funding provided to a party under this paragraph, number of votes received by an electoral subject during the last general elections shall be multiplied by three. If an electoral subject is a bloc, its statute shall provide the rule for distributing the funding among parties united in that bloc. In addition, amount of funding meant for a party running independently in elections or for an electoral bloc (irrespective of number of parties that are members of the electoral bloc) shall not exceed GEL 600,000. No less than 15% of funding provided to an electoral subject shall be used for election advertising on at least 7 broadcasters other than national broadcasters.”

II. Changes in the Election Code

About the problem

Changes introduced in the Election Code in July 2017 amended the rule for appointment of members of the electoral administration by parties. The new regulations were drafted by the ruling team MPs and became effective after results of the 2017 local self-government elections were made public.

According to the new regulations, appointment of electoral administration members by parties became dependent on number of votes received by parties in the last parliamentary elections, replacing the previously existing rule based on which appointment of electoral commission members by parties depended on state funding received by a party, each party appointed 1 member in the electoral administration. Based on the new regulations, a party can appoint more than one member in the electoral administration, which in turn fails to ensure multi-party representation in electoral commissions. For

instance, based on the previously existing rule only one of the party-appointed members of the electoral administration represented ruling Georgian Dream party, while following enactment of the new rules the ruling party is now represented by 3 out of 6 party-appointed members.

According to authors of the bill, the aim of the new regulations was to improve performance of electoral administration as a stable institution. However, we believe that the changes are quite problematic in terms of maintaining trust towards the electoral administration as well as ensuring level electoral playing field for all political forces, seeing as it clearly serves the purpose of strengthening positions of the ruling party in the electoral administration. Notably civil society and experts, both national and international, have long discussed the need to change the rule of composition of the electoral administration, so that the important institute is shielded more against improper political influences and is based on professional competencies and independence of members.² Instead of implementing fundamental reforms, as required by the rule on composition of electoral administrations, the changes have made the institution of the electoral administration even more politicized seeing as the new regulations have created the ruling party's dominance on all levels of the electoral administration. Notably higher electoral administrations participate in the process of selection of professional members, which means that selection of professional members bears the risk of appointment of individuals that are loyal to the ruling political party all the while the Georgian Dream is represented by more commission members than other parties are.

Under the existing legislation, in addition to public funding qualified parties are also entitled to compensation for their own pre-election expenses from the state budget. Unlike them, independent candidates except for those running in presidential elections are not entitled to receive public funding (even if they are elected), which contradicts international norms.³

In addition, as stated earlier current regulations provide unfair incentives for political parties to create electoral blocs for receiving additional benefits from the state. To resolve the problem, amendments should be made not only to the organic law of Georgia on Political Associations of Citizens but also to the Election Code of Georgia.

Recommendation

To eliminate problems related to electoral blocs, electoral blocs participating in elections should receive benefits on equal basis with political parties that participate in elections individually. To this end, in its statute an electoral bloc should define which of its member will:

- appoint a member in the electoral commission if the electoral bloc meets the requirements prescribed by the legislation;
- use the free advertising time;
- use the electoral bloc's sequence number.

² https://gyla.ge/files/rekomendaciebi%20saarCevno%20garemos%20gaumjobesebasTan%20dakavSirebiT_ge.pdf; JOINT OPINION ON THE DRAFT ELECTION CODE OF GEORGIA, Adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011) para 36, 37.

³ <http://www.osce.org/ka/odihr/elections/georgia/299306?download=true> Monitoring Mission for the 2016 Parliamentary Elections

In addition, the statute of an electoral bloc should also define:

- the rule for distribution of base funding among parties united in the electoral bloc;
- the rule for distribution of funding for ensuring representation in the electoral commission among parties united in the electoral bloc;
- the rule for distribution of funding for television advertising among parties united in the electoral bloc, pursuant to para.12 of Art.30 of the Organic Law of Georgia on Political Associations of Citizens.

The rule on appointment of members by parties in the electoral administration should be amended to ensure that six electoral subjects with best results in the last general elections held under the proportional system are entitled to such right. In addition, each electoral subject should appoint one representative. If an electoral subject is a bloc, its statute should state which party has the right to appoint a representative.

Election campaign costs should be reimbursed for a majoritarian candidate nominated by an initiative group for parliamentary elections of Georgia and a mayoral candidate nominated by an initiative group for mayoral elections of a self-governing city/self-governing community. A candidate nominated by an initiative group, who receives 10% or more of votes cast in the first round of a majoritarian elections of the Parliament of Georgia or mayoral elections in a self-governing city/self-governing community, should receive a lump-sum payment from the state budget of Georgia for covering expenses made in both rounds of elections, amounting to no more than double the amount of votes received by the candidate in laris. The funding should be provided based on information about campaign expenses, upon submitting a report referred to in Art.57 of the Election Code.

In addition, all political unions that obtain the status of a qualified electoral subject in elections should have the right to maintain their sequence number for the following elections. In case of an electoral bloc, its statute should state which member of the bloc has the right to use the sequence number, while other parties united in the bloc should participate in casting of lots. Casting of lots for such parties should be held within 30 days after election results are summarized.

Proposed formulation

1. Art.13 should be formulated in the following way:

“Article 13. Procedure for appointing and terminating the term of office of CEC members by parties

1. Six members of the CEC shall be appointed by electoral subjects that performed best in the last general elections held under the proportional system, one by each subject. If such electoral subject is a bloc, a member of the commission shall be appointed by the party defined in the statute of the bloc.
2. If electoral subjects performed equally well, the electoral subject that registered earlier should take precedence.

3. If the number of the electoral subjects provided in para.1 of this Article is less than 6, all electoral subjects provided in this paragraph shall have the right to appoint one more commission member based on their results, to fill the number of commission members up to 6.

4. A party may withdraw the CEC member appointed by it. No such withdrawal shall take place during the period from the day of calling elections to the day of summarizing the final election results. A party may appoint a new CEC member within the above period only in the case of resignation or death of the appointed member.”

2. Para.1 of Article 43 should be formulated in the following way:

1. A qualified electoral subject participating in elections (in case of an electoral bloc, a qualified electoral subject that has the right to receive funding for providing representation in the electoral commission, as prescribed by para.4”k” of Art.114 and para.14”l” of Art.142 of this Law) shall receive GEL 100 for each electoral precinct and GEL 150 for each electoral district for providing their representation at DEC and PEC on Election Day. An electoral bloc, which does not include any qualified party, but the parties united in that bloc received in total 3% or more of the votes cast in at least one of the last general parliamentary or local self-government elections held under the proportional electoral system, shall receive GEL 100 for each electoral precinct and GEL 150 for each electoral district for providing representation at DEC and PEC on Election Day. The statute of the electoral bloc shall define the rule for distribution of funding among parties united in that bloc for providing representation at the electoral commission. The amount allocated for one electoral precinct shall be paid to the representative(s) appointed only for that precinct.”

3. The following para.3¹ should be inserted in Art.51:

“3¹. For purposes of paragraphs 5-16 of this Article, a qualified electoral subject shall mean an electoral subject entitled to a free advertising time, which received 3% or more of votes cast in the last general elections. If an electoral subject was represented as a bloc in elections, the party defined by the statute of the bloc shall be entitled to free advertising time.”

4. Para.1 of Art.56 should be formulated the following way:

“1. An electoral subject that obtains 5% or more of votes cast in a parliamentary election conducted under the proportional electoral system, and 10% or more of votes cast in the first round of a presidential election shall receive a lump-sum amount of not more than GEL 1,000,000 from the State Budget of Georgia to cover election campaign expenses incurred in both rounds. An electoral subject that receives 3% or more of votes cast in the general elections for representative bodies of municipalities - Sakrebulo (the number of votes shall be calculated based on votes received in the elections held under the proportional electoral system nationwide) shall receive a lump-sum payment of not more than GEL 500 000 from the State Budget of Georgia to cover election campaign expenses incurred in both rounds of Sakrebulo/Mayoral elections. If a candidate nominated by an initiative group receives 10% or more of votes cast in parliamentary elections of Georgia held under the majoritarian system and in the first round

of elections for the mayor of a local self-government, s/he shall be entitled to receive a lump-sum payment from the State Budget of Georgia amounting to no more than double the amount of votes that s/he received from votes cast in the election in Iarisi, for covering expenses incurred in the both rounds of elections. These electoral subjects shall receive such funding according to the information about election campaign expenses submitted by them, after submitting a report referred to in Article 57 of this Law.”

5. The following subparagraphs “i”, “k”, “l”, “m”, “n” and “o” should be inserted in para.4 of Article 114:

„i) a party united in the electoral bloc which will appoint a member of the electoral commission if the bloc meets the requirements prescribed by the legislation;

k) a party united in the electoral bloc which will use a free advertising time;

l) the rule for distribution of funding for providing representation at an electoral commission among parties united in the electoral bloc;

m) a party united in the electoral bloc which will use the electoral bloc’s sequence number;

n) the rule for distribution of base funding among parties united in the electoral bloc;

o) the rule for distribution of funding among parties united in the electoral bloc for covering expenses related to television advertising, pursuant to paragraph 12 of Article 30 of the Organic Law of Georgia on Political Associations of Citizens.”

6. Para.2 of Article 119 should be formulated in the following way:

„2. A political association has the right to keep the sequence number for future elections, if it receives the status of a qualified electoral subject in the elections held under a general proportional system. If a political association waives such right, it shall receive a sequence number based on the rule prescribed by para.3¹ of Article 119.

7. Para.3 of Article 119 should be formulated in the following way:

„3. If during the previous general elections a sequence number was assigned to an electoral bloc that received the status of a qualified electoral subject in elections held under a proportional electoral system, the party determined by the statute of such bloc shall be entitled to use the number.”

8. The following para.3¹ should be added to para.3 of Article 119:

„3¹. If a bloc obtains the status of a qualified electoral subject, sequence number of parties that are united in such bloc shall be determined based on casting of lots held within 30 days after election results are summarized. A political association that has the right to use the bloc’s sequence number based on the statute of such bloc and is exercising this right shall not participate in casting of lots.”

9. The following subparagraphs “i”, “k”, “l”, “m”, “n” and “o” should be inserted in para.14 of Article 142:

„i) a party united in the electoral bloc which will appoint a member of the electoral commission if the bloc meets the requirements prescribed by the legislation;

k) a party united in the electoral bloc which will use a free advertising time;

l) the rule for distribution of funding for providing representation at an electoral commission among parties united in the electoral bloc;

m) a party united in the electoral bloc which will use the electoral bloc’s sequence number;

n) the rule for distribution of base funding among parties united in the electoral bloc;

o) the rule for distribution of funding among parties united in the electoral bloc for covering expenses related to television advertising, pursuant to paragraph 12 of Article 30 of the Organic Law of Georgia on Political Associations of Citizens.”