



GYLA Submitted an Amicus Curiae Brief to Constitutional Court on Quotas

The Georgian Young Lawyers' Association submitted an amicus curiae brief (case N3/8/1526) on the case pending before the Constitutional Court - "Political Union of Non-entrepreneurial (Non-commercial) Legal Entity of Citizens" New Political Center ", Herman Sabo, Zurab Girchi Japaridze and Ana Chikovani v. Parliament of Georgia".

The case will be considered by the Constitutional Court on September 2nd. The applicant disputes the constitutionality of the norm of the Electoral Code, which requires a political party to request every fourth candidate on the proportional list to be of the opposite sex representative (for example, if the first three are men on the list, the fourth candidate must be a woman). The applicant considers that this article contradicts the right to free elections guaranteed by Article 24 of the Constitution.

GYLA assesses the disputed norm in the written amicus curie brief in relation to the case-law of the European Court of Human Rights, as well as discusses the compatibility of the approach of the European Court of Human Rights with the Constitution of Georgia regarding gender quotas. In the amicus curiae brief, the decisions of the European Court of Human Rights are cited in relation to the content and scope of the right to vote provided by the Constitution of Georgia, as well as to the principles and norms established by the Constitution of Georgia.

In a written amicus curiae brief, GYLA reviews the decision of the European Court of Human Rights in Strasbourg in the case of [Metka Zevnik v. Slovenia](#). This Decision was adopted on November 12th, 2019. In this case, a coalition of two Slovenian parties violated the requirements of Slovenian electoral law, according to which members of the same sex could not be less than 35% of the total number of candidates on the electoral list. The number of female candidates on the applicant coalition list was 35% less than the number of male candidates. Due to non-compliance with the requirements of the gender quota, the Slovenian election administration did not register the coalition. This decision was upheld by the Supreme and Constitutional Courts of Slovenia.

The European Court of Human Rights has declared the appeal against the State of Slovenia inadmissible. The Strasbourg court considered the removal of the party due to the lack of a gender quota a proportionate measure, stating that the Council of Europe (an organization of which the Strasbourg Court is a part) not only allows states to set quotas but also encourages the Council of Europe member states to lay down quotas. According to the Strasbourg court, the legitimacy of democratic processes is endangered without the participation of both sexes in the legislative body.

According to GYLA's amicus curiae brief, it is true that under Article 24 of the Constitution, a party has the right to freely choose its own candidates for parliament,

but this freedom of the party is restricted by Article 3, point 4 of the Constitution, according to which the activities of political parties are based on equality and principles of intra-party democracy. This norm obliges the political parties operating in Georgia to ensure internal democracy within the party and to respect the equality of its members, including the right to gender equality. In addition, according to Article 11, point 3 of the Constitution, the state ensures equal rights and opportunities for men and women. The state takes special measures to ensure the substantial equality of men and women and to eliminate inequality. Quotas are the special measures introduced by the Parliament of Georgia in accordance with Article 11 point 3 of the Constitution to eliminate gender inequality in the Parliament of Georgia. Although despite the fact that 51% of the participants in the first round of the 2016 parliamentary elections were women, in the parliament of this convocation, only 21 out of 150 MPs are women. [1]

GYLA believes that quotas are a useful, less restrictive and proportionate means of achieving gender balance in parliament. The number of women in parliament is increasing as a result of elections under the quota system. It should be noted, however, that the less restrictive means of quotas, such as additional party funding, if they were to present a gender-balanced list, this could not significantly increase the number of women in parliament. At the same time, the current quota model minimally restricts the party's freedom to decide for itself who will be its candidate on the electoral list and in what order. The party has the freedom to decide voluntarily who will be in the top three on its list. It is noteworthy that if the party has a low support but exceeds the 1% threshold, it may be the first three members will get to the parliament who has not been affected by the quota limit. As for the case when a party introduces 4 or more MPs in the parliament, in this case, the interest of gender equality comes to the fore. At the same time, the parties have the opportunity to nominate the woman with the most support within the party as the fourth and eighth MPs.

However, the intensity of the restriction is also reduced by the fact that the quota measure is a temporary measure and valid until 2024.

According to GYLA's conclusion, the disputed norm meets the requirements of the Constitution.

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[1] <http://parliament.ge/ge/parlamentarebi/women/qalebi-parlamentshi-23>