Democratic Audit: Georgian Parliament

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PREFACE

In 2003-2004 the Caucasian Institute for Peace, Democracy and Development (CIPDD), Tbilisi, Georgia in cooperation with the Institute for Regional and International Studies (IRIS), Sofia, Bulgaria and the Institute for Development and Social Initiatives (IDIS - "Viitorul"), Chisinau, Moldova), implemented a project entitled *"Conducting a Democracy Audit in Bulgaria, Moldova and Georgia"*. The project included research and analyses of the level of democratization of the state governance system in the three aforementioned states. In Georgia research was done in institutions representing two different branches of government: the Georgian Parliament and the Rustavi City Municipality. The main goal of this research was to explore the existing legislation, laws' implementation and practice procedures as well as to consequently define the democratization level of the existing laws. The research on the Parliament included the examples of its two structural units: Defense and Security Committee and Parliament's Legal Department (part of the Parliament's apparatus). The underlying reason was the desire to become more acquainted with the everyday practice of the Parliament. Conducting research both at Committee and Department level provided an opportunity for exploring the political as well as the bureaucratic dimensions of the legislative body.

The project was implemented from July 2003 until June 2004. That period was a very crucial time in the history of Georgia's independent development. In November 2003 the governance of the country was changed as a result of a revolution. After the "Revolution of Roses", major amendments of the main laws of Georgia and of the country's Constitution were made. Consequently, the principle of division of powers was also partially changed. At the end of March 2004 the new Parliament was elected. New representatives, with little experience in governance, appeared in the Parliament and the executive branch of the government.

The present paper represents the outcomes of the democratic audit of the Georgian Parliament. Against a backdrop of the dynamically changing situation, great attention was paid to the functioning of the Parliament in the period before the revolution, though outlining also the changes that took place after the revolution.

DEMOCRATIC AUDIT OF THE GEORGIAN PARLIAMENT

The existing state governance system is based on legislation adopted in the period after 1995, following the adoption of the constitution[1]. It is worth noting that during the initial stage of development of the new national legislation system (1995-1999), Georgian legislation and its implementation process evolved, more or less, according to democratic norms and requirements. In 1999 - 2003 the introduction of democratic principles and, consequently, the success of this process was questioned. The development of a democratic state was hindered, the law enforcement process faced serious problems and no progress towards democratization was observed during this period. Insufficient levels of law enforcement were the main reasons for that. The legislation process and its compliance with the general principles of democracy and rule of law were suspended. Legislation and the legal and procedure mechanisms for its implementation were all submitted to the corrupt interest of

an individual. It became obvious that the actions of the political elite or the honest behavior of single politicians and officials could not influence the overall situation. According to Freedom House, *Nations in Transit, 2003,* during that period the Georgian state system was characterized by unstable territorial administration, weak institutional foundations and anticorruption measures that have proven ineffective.[2] Thus, saying in effect that there were significant breaches in collection of state resources, their management and distribution. The ineffective functioning of the Georgian Parliament (an institution which was predetermined through ballot rigging) was a significant negative factor. Many MPs considered themselves not as legitimate representatives of the society but rather as lobbyists for certain interest groups. As a result, MPs became more interested in lobbying for certain commercial activities than in issues such as the harmonization of Georgian legislation with European standards, rule of law or transparency and accountability.

After 1999-2000 the scale of corruption increased in Georgia as did the number of human rights violations. These processes were essentially immune from parliamentarian reaction. Correspondingly, during the period leading up to the 2003 November elections, the Georgian government system, including the Parliament, lost their legitimacy. It was widely accepted by experts that during that period it was almost impossible to lead the country in accordance with widely acknowledged democratic methods.

Despite these aforementioned problems, there were some cases of the so called 'best practices' adopted by the Parliament. In certain periods, in 1995-1999 in particular, certain MPs and Committees endeavored to exert active control over the performance of the executive branch of government, as well as to promote public participation. As was noted earlier, certain laws were adopted by the Georgian Parliament which placed the whole Georgian legislation system on a more democratic foundation in comparison with other CIS states. This, however, did not change the situation substantially. In most of the cases, good laws were adopted but not implemented. Responsible behavior on behalf of certain MPs and public officials was overshadowed by corruption and clan orientation. A leading example in favor of the abovementioned situation is the November revolution.

The present paper defines the role of the Georgian Parliament as a democratic institution within a state governance system before and after the 2003 revolution. Emphasis is made on the Defense and Security Committee as well as the legal department of the parlamentarian apparatus. The degree of democratization carried out within the Parliament and the mentioned structural units is evaluated according to four main criteria. Each of these criteria is discussed in separate, sub-chapters of this paper.

Note also that, as described by the project's preliminary plan, the research methodology was as follows:

- To study the legislative base via interviews with representatives of appropriate services and revision of documents;
- To get acquainted with institutions' procedures and practical bases through interviews with staff members of the agencies, as well as the revision of relevant documentation;
- To form and work with focus groups consisting of representatives of social groups having contact with institutions representing the targets for this research, as well as the staff of such institutions;
- To conduct a sociological opinion poll.

The representation of the Parliament, as well as the level of its legitimacy, is estimated in the first part of this paper. According to the research methodology, the evaluation of the abovementioned criteria is usually done through the following indicators: parliamentarian elections principles, the principles of the implementation of MPs responsibilities and obligations before their constituency; the implementation of the procedures of communication with the constituency.

The Parliament's level of independence and the principle of division of power within the governance system are discussed in the second part of this paper. The following indicators are used while evaluating these issues: the role of Parliament in defining state policy, its ability to exert control over the executive branch of government; mechanisms of budgetary control and Parliament's relationship with the government; the role of lobbying, public opinion or the launching of the presidential initiatives and the MPs' partial or personal interest in the decision making process. To complete this picture, the positive and negative experiences in Defense and Security Committee performance is assessed.

The third part of this paper is aimed at assessing the effectiveness of parliamentarian procedures and defining the level of democratic performance at different stages of their implementation. The following indicators were used: functioning of the Parliament's apparatus, responsibilities, staff recruitment and promotion procedures; role of the apparatus in parliamentarian work. The task was to provide for a more precise picture of both the positive and negative sides of the Parliament's and its legal department's performance.

In order to evaluate the level of Parliament's transparency and openness, the following indicators were used: accessibility of bills for society and mass-media; participation of the non-governmental sector and independent experts in the lawmaking process; Parliament's reaction to actual problems and interests of the society; the role of Parliament in setting up anti-corruption policies and lawmaking activities in this field.

Attention is also paid to the study of public opinion on the level of democratic performance of the Parliament. Sociological survey was conveyed for that purpose. Survey's results are presented in the fifth part of this paper.

REPRESENTATION OF THE PARLIAMENT AND THE ISSUE OF LEGITIMACY

According to the Georgian Constitution adopted in 1995, Georgian Parliament consists of 150 members elected by a proportionate system and 85 members elected by a majority system for a term of four years. This provides citizens with the opportunity to elect MPs not only because of their party's affiliation, but also because of their personal characteristics and abilities.

After 1990, election laws as well as election principles and systems were amended several times. Such amendments did not have a positive impact on the constituency. Georgian public witnessed the degradation of the election process, expressed primarily through the increasing number of ballot fraud. Each subsequent elections (both presidential and parliamentarian) appeared to become less and less democratic. It is irrefutable that elections in 1999, from the ballot fraud perspective, were less democratic than previous ones held in 1995; parliamentarian elections in 1995 were a step back in comparison with the elections held in 1990. Finally, the so called "Revolution of Roses" was provoked by an unprecedented amount of ballot fraud during the November 2, 2003 elections.

The history of bargaining between parties in the pre-election period is also very interesting. The Georgian Constitution envisaged 5% threshold for a party to gain mandates into Parliament, which was increased to 7% prior to the parliamentarian elections in 1999. According to the evaluation of some politicians and experts, that would lead to the strengthening and enlarging of the parties. However, this process of enlargement, as it was proved later, did not contribute to the creation of strong and stable parties, nor, accordingly, to the development of democracy. Parties still remained either formations around charismatic leaders or social entities within the governmental bureaucratic apparatus. To be built on a sustainable social base or program principle was of minor importance for party members in this situation. Actually, before the revolution of 2003 notions such as "the rights," "the lefts," "the liberals," "the conservators" and "the socialists" had no actual meaning. Parties or their members changed their alliances and ideologies quite frequently.

The fifth new Parliament obtained legal authority as a result of the general parliamentarian elections held on October 31, 1999. 45 political parties and blocks participated in the elections. Only three parties and political alliances passed the 7% threshold foreseen by the revised Electoral Code. These events were all conspiring against a background of ballot fraud. The government party – Citizens' Union— received 41.7% of the vote, while the Revival Union block gained 25.2% and the block "Industry will save Georgia" 7.1% of the total vote. The votes received by the

parties, which did not overcome the 7% barrier were then proportionately divided among these winning parties. As a result, the Citizens Union gained a substantial part of the vote and acquired 130 mandates in the Parliament. Political actors within these artificially enlarged, single political blocks had little in common with one another. Their political bargaining and unification had only one aim: to pass the 7% threshold. For instance, after winning 64 mandates in the Parliament, the Revival Union block was split. Also, the faction Citizens Union did not exist in its initial form for very long. It was gradually cleaved and by the beginning of 2003 consisted of only 21 members. By leaving both government and opposition blocks, MPs easily avoided fulfilling any obligations and promises to voters undertaken during the pre-election period.

Even in the period after the revolution, only two blocks gained seats in the Parliament under this proportionate system. The Governmental block National Movement-Democrats secured 135 seats in the Parliament, while only 15 mandates went to the opposition, which barely passed the threshold with 7.1% of the vote going in their favor. In the future, based on previous experience, we should expect the formation of new political units by MPs and establishment of new independent factions, all within the governmental block.

Georgian Constitution, the laws "On the Status of the Member of Parliament," "On Conflicts of Interest and Corruption in the Public Service," other laws and the Regulations of the Parliament of Georgia define the rights and duties of the MPs. Of course, it is well understood that it is not common for MPs to follow the regulations on how to communicate with electorates and other norms. The relationship between an MP and the electorate as well as the protection of the latter's interests depended mainly on the good will of the single MP. Even now, the protection of voters' interest is subject only to self-regulation.

The majority of the provisions addressing the accountability and responsibility of MPs, which are stipulated by the law "On Status of the Member of Parliament" and other regulations, are of formal character only. The following examples highlight this:

- "An MP is obliged at least once in six month to make an informational presentation before the electorate." (Regulation, article 13);

• "Two MPs, with the exception of Parliamentary officials, on a daily basis are working in the citizen's public chamber. The Bureau of the Parliament, together with faction chairpersons, will define the duty schedule." (Regulation, article 206)

There are not any procedural guidelines pertaining to the fulfillment of these, or any other provisions of the Regulation nor are there procedures controlling their implementation. Even today, no MPs are on duty and no MPs meet the citizens in the citizens' public chamber.

Until recently, the issue concerning the articles regulating MPs attendance of plenary or committee sessions and implementation of MP's obligations was in an even worse condition. Over the years, many MPs either did not attend sessions at all, or attended them too seldom as to be in brutal violation of the Regulation requirements. The current Regulation stipulates that the MPs are obliged to attend sessions if no reasonable excuse is available. The Procedural Issues and Rules Committee discusses cases and reasons behind MP's absences from sessions without reasonable excuse and submits relevant conclusions – the proposal on the form of liability – to the Bureau (Regulation, article 8). Although the Procedural Issues and Rules Committee has no obstacles in making and sending a list to the Bureau regarding these violations, the Bureau itself is doing nothing to punish such MPs. For instance, one MP, who won a seat in the Parliament with the party list Revival Union, attended parliamentarian sessions only a handful of times in the period of 1999-2003 and consistently headed the list of MPs failing to attend the sessions. At the same time his spouse, (also an MP), used his desk very often during voting in the Parliament. No sanctions were imposed on the MPs by the Bureau and in the next election this MP, who failed to attend nearly all the parliamentarian sessions, was included in the top 10 persons of the party list of the Revival Union.

It should also be mentioned, that before the 2004 elections a lot of amendments and revisions were added into the Regulations of the two previous Parliaments. After the Revolution of Roses, during an extraordinary session of the Parliament of February 17, 2004, the Parliament quickly adopted the new Regulation. This Regulation was elaborated through the joint efforts of the Legal Department, Legal Issues Committee and several MPs. Permanently introduced changes and amendments into the Regulation created confusion, not only among ordinary MPs, but also among those responsible for their implementation and many lawyers. Ordinary MPs faced particular difficulties in understanding the rules foreseen by the Regulation neither they could rely on special precedents nor on the setting up regulations in a more understandable fashion. In the opinion of many experts, the new amendments provide for a definite improvement of the Regulation, though, for those without proper legal background, there seems to be no substantial difference between the old and the new versions of the Regulation. The style of the previous Regulation was preserved and it can easily be considered excellent by those who do not know the peculiarities and realities of the functioning of the Georgian Parliament. The most important thing, however, is that the new version of the Regulation included articles from the old Regulation that were never implemented. According to the new Regulation, two MPs are on daily duty at the citizens public chamber (article 206 (2); An MP must, at least once in every six months, present information regarding his/her activities to the electorate (article 13). The same situation exists in regards to articles which foresee sanctions on MPs who violate the Regulation. For example, if an MP does not attend a Committee or plenary session while providing an unreasonable excuse, the Regulation imposes financial sanctions. This sanction was never used in the previous Parliament, thus making too difficult to gather a quorum.

Similar processes persist today, as well. Still, there are no strong reactions to the absence of MPs from parliamentarian sessions, which represent a brutal violation of the relevant articles within the newly adopted, more stringent Regulation.

THE DEGREE OF INDEPENDENCE OF THE PARLIAMENT

The Relationship between the Parliament and The Government. The Responsibility of Defining Policy.

The existence of an obvious political leader played an important role in the establishment of Georgia as an independent state as well as in the process of the elaboration of a Constitution.

In the beginning of 1995, 12 Draft Constitutions had been elaborated and submitted to the Constitutional Commission by various parties and societies. It could be stated, that the existence of an obvious political leader - Eduard Shevardnadze - played the main role in the establishment of the Presidential governance system. In May 1995 the Draft Constitution worked out by Eduard Shevardnadze was presented to the Parliament for adoption. It laid the ground for the establishment of presidential governance in Georgia. Some experts strongly believed that only Eduard Shevardnadze and this certain model of governance would be able to bring the country out of its crisis. However, it could also be argued that these factors had a negative influence on the further politic-economic development of the country.

Two years after the adoption of the Constitution talks over the ineffectiveness of the presidential governance model in Georgia and the need to transform it to a semi-presidential system started. At that time, the "Presidential party" and the majority in the Parliament were dependent only on the will of the President and were forced to implement any policy suggested by the President.

From the period of the adoption of the Constitution in 1995 until November 2003, the division of the powers of the President, Government and Parliament were as following:

- The President could appoint members of government, i.e. ministers and persons in other positions, which were foreseen by the constitution to be appointed only on the approval of the Parliament. Parliament was able, by majority vote of the MPs, to approve or reject the candidate suggested by the President.
- The Parliament, upon President's presentation, approved the structure and the agenda of the government and supervised the changes within the executive branch.

- Only the President of Georgia had the authority to present a draft budget to the Parliament. The draft law could be presented by the President only when its main parameters and directions were agreed upon by parliamentarian committees. Besides, along with the draft budget the President presented the report on the implementation of the current budget. Only in the particular cases wherein the President was able to mention the sources of funding could he require the Parliament to cover the additional government costs.
- Upon requirement, the person elected, appointed or approved for governmental positions by the Parliament ought to attend the session of the Parliament, its' committees or commissions' sessions as well as to answer questions put forth by MPs, a group of ten MPs or a faction of the Parliament.
- Parliament had the authority to adopt or reject a draft law created by the government and presented by the President.
- According to the provisions of the Constitution, the Parliament: "determines the principle directions of domestic and foreign policy" while the President "leads and exercises the internal and foreign policy of the state".
- Parliament ratified international treaties and agreements, as well as made their demonstrations or abolishment. It also took decisions over war and cessation of arms as well as the introduction of emergency and martial law.
- In cases of violation of Constitution, high treason or any other kind of criminal offence Parliament had the right to raise questions about the dismissal, in accordance with impeachment procedures against the President of Georgia or other officials foreseen by article 64 of the Constitution.

After the revolution in 2003, the state governance system was changed. Authorities explained the need for changes towards congruency with the European parliamentarian model. However, in the opinion of several local experts, by such changes, presidential system was further strengthened and the whole model became more corresponding to the Russian or Middle East models, rather than to European one. As one Georgian expert notes: "The new governance system corresponds to the European one only because it is not an American model."

Through the adoption of the new Constitution, the relation between legislative and executive power has changed. The post of Prime Minister, which is appointed by the President, has been introduced. The President gives consent for the Prime Minister to appoint members of cabinet i.e. Ministers. At the same time, the government should receive confidence from the Parliament. Parliament has the authority through a resolution - that must be adopted by 3/5 of the MPs, to declare a non-confidence vote for the government. However, the President may also dissolve the Parliament in certain cases foreseen by the Constitution. The new Regulation of the Parliament gives detailed descriptions on the relations between the executive and legislative power.

According to the Constitution of 1995, the President had no right to dissolve the Parliament, which in some cases of tension between the two branches of power could hinder the development of a constitution-based solution. Now, there is no longer the possibility that such difficulty will arise. However, the Parliament of Georgia, as an independent branch of power, has been weakened in comparison to the executive power due to the following reasons: the procedures foreseen for the resignation of the President and government are very complicated, while being comparatively easy for Parliament; Parliament still has no right to introduce changes in a draft budget without the approval of President and government.

The main agents organizing the well-functioning of the Parliament are defined as follows:

Chairperson of the Parliament leads the work of the Parliament. Deputy Chairpersons, upon the requirement of Chairperson, assist him/her in fulfillment of his/her duties.

Parliament establishes a Bureau in order to organize its legislative work. This bureau elaborates and presents to the Parliament the working plans and programs of the Parliament, agendas of the plenary sessions and approves the regulations of the parliamentarian committees and commissions, decides the issues of the registration of factions as well as other organizational issues. The bureau consists of the Chairperson of the Parliament, his/her deputies and the heads of the parliamentarian permanent committees and factions.

Decision-Making Process. Discussion on Draft Laws and Adoption Procedures in The Parliament

According to the Constitution of Georgia (article 67 (1)) the President of Georgia, Members of Parliament, a Parliamentarian faction, a Parliamentarian Committee, the supreme representative organs of Abkhazia and Adjara as well as a minimum of 30 000 voters enjoy the right to come up with a legislative initiative.

A draft law that has entered Parliament by an agent having a legislative initiative is sent to the bureau. In order to discuss and study the draft law, the bureau sends it to the relevant committee and defines the date to discuss it at a plenary session. The relevant committee/committees, before discussing the draft law on the plenary session, study it and present its appropriate conclusions to the bureau. It is obligatory to have information from a parliamentarian organizational department as well as the conclusions of the legal department before starting discussions on the draft law.

As a rule, Parliament discusses a draft law in three hearings.

What happens when the draft law is sent to the Parliament as a presidential initiative? “At the request of the President of Georgia, the Parliament shall give priority to the discussion of a draft law submitted by the former.” (Constitution article 67, Regulation article 55). This right of the President was often used improperly by the Georgian Parliament.

With the total negligence of some articles of the Constitution and other laws and the Regulation, many draft laws initiated by the President were discussed by the Parliament very quickly while violating many procedures. Under such conditions, committees could not study and present competent conclusions to the bureau; mandatory conclusions for the draft law either did not exist or existed only formally; MPs and, often, the members of the bureau lacked the possibility to get acquainted with the draft law. Despite all aforementioned violations, draft law was still put on the agenda by the bureau.

It should be mentioned that before 2003 about half of the draft laws adopted by the Parliament were initiated by the President. In 1999-2003, out of the 712 laws that were adopted by the Parliament, 408 of them were submitted by the President. In many ex-

perts' opinions, in recent years the development of non-democratic practices, the strengthening of corruption and budgetary crisis in the country were predetermined by the exaggerated use of the president's rights to legislative initiative.

The competence of parliamentarian committees has increased as a result of the legislative changes made in 2004. This, first of all, includes strengthening of the role of the committees in the legislative process. If before the main initiator of laws was the President (and such initiatives mainly served to further his authoritarian empowerment), now the President has the right to come up with legislative initiatives only in certain cases. Not enough time has passed to define how the new President of Georgia will follow this provision.

Discussing the functions of the Defense and Security Committee, we are able to make more obvious committees' working experience and decision-making procedures.

It could be said that over the years the Defense and Security Committee was one of the most influential committees in the Parliament of Georgia. Its working experience gives us a precise picture of the problems which parliamentarian committees face in their daily functioning and what kind of power they possess.

To prove the influence of the Defense and Security Committee it is enough to say that the members of the Committee have formed a trust group foreseen by the "Law of Georgia on Trust Group" adopted on March 4, 1998. According to this law, the main function of the trust group is budgetary control of the special programs and secret activities of the Georgian executive government. Usually, this group is led by the chairperson of the Defense and Security Committee. The Trust Group consists of five members.

Abiding by the existing legislation, committees, along with legislative activities, have the possibility to control the implementation of laws, parliamentarian resolutions and other decisions. Also, committees enjoy the right to review the congruence between the existing laws and the acts elaborated by the governmental officials, decrees issued by the President and orders issued by the ministers. If subordinate normative acts do not correspond to the legislation, the Committee has the right to address the agent which issued the act to quickly extirpate the discrepancies. If necessary,

the Committee can also re-send the relevant conclusions to the Georgian Parliament.

Several facts have demonstrated that the Committee could effectively use its right to control the executive branch of government. For instance, some years ago the Committee received a Presidential confidential decree on the recruitment of reserve officers to the armed forces. However, it appeared that such a decree was not congruent with the existing legislation, in particular with a provision stipulating that any announcement of any recruitment into the armed forces should be published. The Committee sent a relevant letter to the chancellery of the President. Consequently, the contradiction between the decree and the law was settled. Finally, only part of the decree regarding the occupation of reserve officers was classified as secret. One of the open Committee hearings appeared to be very successful. It was focused on the recruitments of soldiers in the Ministry of Defense for starting the so called Georgian Train and Equip program (2002). As a result of the timely intervention and reaction on behalf of the Committee, the situation was improved and the problem quickly lost its acuteness.

Georgian legislation provides the protection of the principle of maximum transparency in committee's functioning. Public sessions of the Committee are open and the agenda is announced in advance. Members of different factions and committees, members of government and invited persons may attend the sessions of the committee and maintain the right to a deliberative voice. Information on a Committee's session can be published in the press. Representatives of the mass-media as well as NGOs may be invited to a committee session. TV and Radio broadcasting of the Committee sessions can also take place. However, issues regarding state or military secrets are discussed within closed sessions.

As for the present experience, we can remember countless sessions - focused on the approval of candidates for ministers' posts, on issues related to defense and security financing, on analyzing critical events happening in the country, that were attended by representatives of the society who not only attended the sessions, but also put in questions and made comments. After 2000, greater attention was paid to the protection of the principle of transparency in the work of the Defense and Security Committee. To prove

this, it can be pointed out that none of the Committee's sessions was held without mass- media representatives in attendance. It could be added that in the years 1995-2000 representatives of the Committee (members of its apparatus as well as committee's head) participated in many seminars and conferences organized by NGOs. The Committee itself often came up with initiatives to organize such forums and meetings.

The Committee has actively worked towards the development of a State Security policy. The International Board of Advisors on Security issues was established in Georgia through active participation of the former chairperson of the Defense and Security Committee. The Concept of the Reformation of the Georgian Security System was prepared by the Board in cooperation with the Committee, its apparatus and other relevant governmental structures. During that period, the so called Concept of the reform of paramilitary forces was also prepared by the Committee's apparatus.

It should be mentioned, that the effectiveness and transparency of the Committee's work was substantially predetermined by the will of its chairperson. However, the system's gaps, the general level of governmental and political will influenced the Committee's functioning, as well. Unfortunately, many shortcomings marked the work of the Committee in the past period.

In recent years, there were many state agencies that were ignorant of the Committee's requirements. In some cases, many persons of such agencies took an irresponsible attitude toward the requirement of the Committee to attend the sessions; and if such persons attended the sessions, they did not feel obliged to present relevant explanations. There was a case when, despite being required by law to attend it, the Minister of Finance ignored a Committee session focused on the failure in implementing the budget. This problem has never been the subject of public discussion and no categorized reaction was made by the Committee in this particular case.

The decrease in the cooperation between previous Committees and government agencies could be explained by the irresponsibility of the heads of agencies, as well as by the wrong requirements for the Committee and its tendentiousness. Perhaps the basis for the latter was that Committee members and governmental representatives were from different political teams.

It should also be noted that despite the fact that the Committee possesses an effective leverage to control the implementation of the budget on a legislative level, we could conclude - considering the previous experience, that parliamentarian control over budgetary expenditures of the power structures is ineffective. It was never announced in the course of the Trust Group's work that any violation of laws in the budgetary field had occurred in the government's functioning or in the functioning of its heads. The functioning of the Chamber of Control (responsible for supervising the use and expenditure of state funds and of other material values) is also ineffective. The Defense and Security Committee never expressed official concern regarding that.

The level of preparation and attendance at the Committee's sessions, as well as the issue of preliminary detailed analysis of the topics subjected to the Committee hearings were also problematic. Very often MPs did not put forth any questions regarding important or contradictory issues. For instance, an uprising of one of the subdivisions of the national guards, which occurred on May 25, 2001, was followed by a hearing in the Committee. The hearing was attended by the officers who organized the uprising, as well. Their explanation that hard living conditions caused the uprising of soldiers did not provoke enough concrete questions or attempts to explore the following: how and why this subdivision occupied the territory of another subdivision**;** how and why there were strange, armed persons next to the rebel soldiers. However, in that particular case, the Committee was influenced by a general, governmental unwillingness to react. It is worth noting that the heads of the uprising were not punished properly and society does not know about any special investigation dedicated to this issue. The same happened with the Committee's discussion in the fall of 2001, which was focused on the illegal movement of Chechen fighters within the Georgian territory.

Over the years, the Committee had often communicated with ordinary citizens who had problems with the compulsory military service. The Committee's apparatus received those grievances and reacted to them in compliance with its prerogatives. However, the widely known shortcomings of the defense sector – corruption and the expansion of illegitimate, i.e. criminal relationships, within

the army - definitely required much more pro-active attitude on behalf of the Committee.

MPs' incompetence and frequent absence from Committee's sessions were among the major problems that influenced the work of the Committee. Actually, the Committee consisted only of its head and the staff of the apparatus. As a rule, the efficiency level of the Committee's activities was rather low. We should consider that over the years the Committee has paid more attention to legislation related activities than to the control over the government. Sometimes, the Committee intervened into the government's functioning while it implemented policies. For instance, the chairperson of the Committee attended, and attends, the sessions of the National Security Council of the President's administration; the Committee has also participated in the elaboration of the military doctrine. All of these factors influenced the effectiveness of Committee's legislative and control activities while the efficiency of the relationship between the Committee and the executive power remained rather doubtful.

Lobbying. Groups of Interest

According to the Law on Lobbying Activities, a lobbyist could act in the Georgian Parliament under the assignment of a group of Georgian citizens consisting of at least 30 persons or a legal entity registered in Georgia (with the exception of public enterprises and public agencies). Any citizen has the right to be registered as a lobbyist at the Georgian Parliament granting that his/her official position is not incompatible with the implementation of lobbying activities and upon presentation of a set of documents required by the Law. The third chapter of the law defines the rights and obligations of the lobbyist as well as the legal guarantees for his/her activities. These rights include as follows: the right to participate in discussions on a draft normative act foreseen by an assignment, to get acquainted with the official documentation concerning the draft normative act, to deliver speeches (except of plenary sessions), etc.

Georgian Law on Lobbying activities has been in force since September 1998. But, as of March 2004 there were only three lobbyists registered at the Georgian Parliament. It is unclear whether this is a result of a lack of information on behalf of the interest groups

or because they believe that lobbying would not be a productive way for influencing certain decision-making bodies. Unfortunately, as MPs themselves consider, lobbyists in the Georgian Parliament often have an unofficial, private character and stay beyond the requirements of the law. Before and after the revolution, many of these facts have been publicized, demonstrating the illegal interests' alliances between MPs, members of the government and business circles. Sometimes, representatives of criminal community have also been included in such bargaining. Information on MPs' involvement in racketeering and blackmailing are appearing even now, after the revolution. An MP, though being member of the winning majority, has already been punished. Consequently, we remain hopeful that the political will of the new authorities will reduce the level of MPs participation in illegal activities.

PARLIAMENTARIAN PROCEDURES: EFFECTIVENESS AND LEVEL OF DEMOCRACY

The apparatus of the Parliament provides legal, documental, informational, organization and technical services for the activities of the chairperson of the Parliament, his/her deputies, MPs, Committees, parliamentarian factions and investigation or other type of provisional commissions. The chairperson of the Parliament is in charge of the general governance of the apparatus, while the head of the apparatus is responsible for its direct, every-day management. The head of the apparatus is appointed by the chairperson of the Parliament and approved by the Parliament. The head of the apparatus of the Parliament is accountable before the Parliament, chairperson of the Parliament and the bureau. The apparatus of the chairperson of the Parliament, the apparatus of his/her deputies, the apparatus of the departments, services, fractions, Committees and commissions all form the parliamentarian apparatus.

Legal Department of the Apparatus of the Georgian Parliament

The functioning of the legal department, which is considered as one of the elements of the apparatus of the Georgian Parliament, is very indicative for the functioning of the very parliamentarian apparatus as a whole. Legal, research and organizational departments ensure the legal and informational background needed by the Parliament. They are directly involved in legislative activities and assist the Parliament and its organs in fulfilling their functions.

Twenty specialists with higher education are members of the legal department.

The legal department has expressed its opinions on many draft laws. There are also many laws that have been adopted by the Georgian Parliament despite the negative assessment of the legal department as far as a negative assessment on behalf of the legal department does not make a law invalid.

There are laws, enlisted below, which have not received the approval of the legal department because, in the opinions of the legal department specialists, they contradict the Georgian constitution and several laws:

- "On Changes Introduced into the Law of Georgia on the Security of Georgia"
- "Concerning Employment"
- "Concerning Lawyers"
- "On Changes and Amendments Introduced into the Administrative Offences Code of Georgia"
- "On Changes and Amendments Introduced into the Tax Code of Georgia"
- "Law on Taxation of Goods and Funds Obtained as a Grant"
- "On Changes and Amendments Introduced into the Civil Code of Georgia"
- "The Railway Transport Code of Georgia"
- "Law in Georgia Concerning the Control of Entrepreneurial Activity"

- "On Changes and Amendments Introduced into the Criminal Code of Georgia"
- "On Changes and Amendments Introduced into the Electoral Code of Georgia"

Specialists, including the head of the legal department, have their own vision on the reform in the legal department of the parliamentarian apparatus. In their view, separate groups of specialists should be established within the department. These groups would deal with the Constitutional Court and other Courts, because this sphere is one of the main directions in the work of the department. Presentation before the Constitutional Court is quite time-consuming and requires responsible work. For instance, more than 10 claims were sent to the Constitutional Court by the legal department of the Parliament apparatus in 2000. These claims require much more time and energy. At the same time, work on drafting laws to be presented to the Bureau is also ongoing. The legal department of the apparatus represents the apparatus of the Georgian Parliament in disputes of economic or other character at the General Courts, as well. In 2003, the apparatus of the Georgian Parliament had a dispute regarding the dismissal of an employee of the apparatus. The Court made a decision in favor of the plaintiff and the employee was restored to his position. Regarding the aforementioned case, many specialists believe that a group of people should be assigned to act as a liaison with the court. This group should be different from the group which works directly on draft legislation.

Representatives of the legal department also consider that a legal group of approximately 5 members should be established. The functions of such a group should be the following: to edit, from the legal standpoint, the texts of the acts adopted by the Parliament; correct, specify and incorporate the amendments (which should then be adopted by the Parliament) which resulted from their discussions. It is considered that Parliament still faces many obstacles in this regard.

The existing legislation provides for the transparency of the legislative process and of the legal department functioning, in particular. The Regulation of the Georgian Parliament states that a draft law should be published in the media 7 days before the de-

bate on it. Unfortunately, this provision is not implemented due to the failure of fulfilling terms of procedures set forth in the Regulation. It is supposed that the strict implementation of these procedures would make the legislative process transparent.

Generally, the low level of qualification of the public servants represents one of the main shortcomings of the Georgian Parliament. It is uncommon to find a public servant with high qualifications. Qualified individuals generally leave the low-salary work in the Parliament and seek positions in the private sector or in international organizations, where the salaries are several times higher than those in the Parliament.

It is also hard to outline which are the criteria and principles applied when evaluating the work of public servants, their attestation, recruitment or dismissal from the Parliament. A system of encouragement, acknowledging the good work of public servants and rewarding it through different bonuses or wage increases, does not exist in the Parliament. There is a tendency of reducing the parliamentarian administration and recruiting non-qualified staff, which seems to be based on nepotism. This problem may be considered important not only for the Parliament but also for the public sector as a whole.

The Staff Issues Management Department handles the management of the staff in the Parliament. It is in charge of the recruitment of the staff, increasing their qualifications, preparing attestation and personnel evaluations. However, the department is not independent in carrying out its activities. The head of the Parliament apparatus plays a major role in this process. Top management officials within the apparatus generally give permission to certain employees to participate in seminars or training courses. If an ordinary employee of the apparatus increases his/her qualification and knowledge, it happens mainly by the virtue of his/her experience and willingness and is very seldom because of activities (trainings, programs) carried out by international organizations. Computer courses offered to all employees of the Parliament represents the only one exception.

The last attestation of the Parliament staff included four stages: attestation in the Georgian legislation, computer skills, foreign languages and interview with the attestation commission. Unfortunately, despite vast amounts of energy, time and resources spent in order to carry out this attestation, the increase of employees' knowledge and work turned out to be incomplete. It brought nothing, neither wage increases nor career development for even most qualified and motivated employees. In brief, motivation which would attract qualified public servants to work in Parliament exists solely in principle.

Programs that envision the recruitment of qualified staff, staff development and promotion exist in the Parliaments of all developed states. It is hard to find a public employee in these Parliaments who increases his/her qualifications at least once in several years and do not move one step forward in his/her career. In 1997-1998 the Georgian Parliament enjoyed the opportunity to get acquainted with similar practices. In that period, TACIS program implemented a large project (130,000 Euro) in the Georgian Parliament titled: "Institutional Development of the Georgian Parliament". Five working groups, relying on a competitive basis, were created under the framework of this project. One of the groups worked on issues related to the improvement of parliamentarian staff's qualification. Taking into account both the parliamentarian experience of other countries as well as the peculiarities of the Georgian Parliament, these groups in cooperation with foreign experts elaborated recommendations on the institutional development of the Georgian Parliament. In the opinion of the employees who were involved in this work, neither complete recommendations were elaborated under the aegis of this project, nor were its parts discussed or adopted by the Parliament. As a result, these recommendations concerning the staff of the Georgian Parliament, as well as recommendations that were elaborated by other groups (including recommendations addressing the harmonization of the Georgian legislation with the European one) remain on paper.

TRANSPARENCY AND ACCOUNTABILITY OF THE PARLIAMENT

Despite many flaws, the adoption of The General Administrative Code of Georgia and the Law on Corruption and Incompatibility of Interests in the Public Service could be considered as a step towards greater transparency in the functioning of the Parliament and public services, in general. The first law makes public institutions more transparent and public information accessible to ordinary citizens, while the Law on Corruption and Incompatibility of Interests provides the general public with an opportunity to get acquainted with and control the financial condition and the incomes of each public servant.

The Law on Corruption and Incompatibility of Interests obliges all MPs and members of the parliamentarian apparatus to submit a property and income declaration every year. It should include information on the property owned by the MP and his/her family members, as well as his/her last year's income, outlining respective sources. Often, due to conflict of interests or attempts to conceal income, MPs deliver their stocks or leading/incompatible positions to relatives or friends. In the beginning of 2000 the Parliamentarian Committee on Procedural Issues, under the direction of the Chairman, compiled a list of some 60 MPs who had violated the abovementioned Law. This list mistakenly included the names of several MPs, which resulted in the entire list being ignored by the parliamentarian leadership. Nevertheless, incompatible interests of many MPs were revealed. Those MPs have begun delivering their stocks or positions to other persons in a speedy fashion. Undoubtedly, the representatives of the legislative body should take into consideration that the public interest is above anything else. Just as it is in any democratic country, all MPs' activities aimed solely at defending their own well-being should be viewed as ethically unacceptable and illegal act. Georgia should not be an exception.

Under Article 42 of the General Administrative Code of Georgia, everyone shall have access to information concerning:

(a) environment and hazards that constitute a threat to life and health,

(b) fundamental principles and objectives of a public agency,

(c) description of the structure of a public agency, the procedures for assigning and dividing functions among public servants and the decision-making procedures,

(d) names and office addresses of those servants of public agencies who hold positions or are responsible for the classifying of public information**,** public relations or provision of information to citizens.

How accessible is public information to ordinary citizens who are less familiar with the laws? What kind of measures does the Parliament undertake to ensure the accessibility of public information to everyone? If an ordinary citizen is unaware of his/her rights with respect to public information this is one thing, and when the public sector feigns its transparency, it is quite another. In most of the cases, we deal with feigned transparency rather than with real transparency. The more incapable and passive the parliamentarian structures and structural agencies are, the less transparent they appear to be. For instance, the work of the Legal Department in the Parliament is marked by a high level of professionalism and obtaining public information on its activities as foreseen by the law is rather easy. The same cannot be said of the Public Relations Department, which is responsible for the popularization of Parliament-based activities among the general public, facilitation of staff recruitment and the functioning of the "hall couriers" service as well as the development and implementation of contest programs for educational institutions. One of its structural sub-divisions, the publication office, is obligated to publish the "Legislative Herald" as well as special literature on the Parliament in order to be disseminated among the general public.

From 1998 until 2003 the work of the PR service of the Parliament of Georgia was practically paralyzed due to material shortages and reorganization processes.

The Department of Letters encountered problems, as well. As foreseen by the regulations, the Department of Letters should jointly carry out it work with MPs, wherein two deputies should be on

duty on a daily basis. However, the Department now has to cope with its obligations without the help of MPs.

The Department processes letters and complaints, which in turn provide an opportunity for the Parliament to identify those issues that are of major concern for citizens and require immediate attention by the Parliament. An annual increase in the number of submitted letters and complaints is noticeable (7 952 in 1997, 10 640 in 2002, and 13 010 in 2003). Letters and complaints concerning healthcare and social issues have noticeably increased in number. 1 341 letters and complaints in this sphere were submitted in 1997 compared to 4 128 in 2003.

Frequently, deputies violate the law by ignoring citizens' complaints. The issue of transparency of a parliamentarian structural sub-division can be touched upon once again: the Department of Letters will, without any delay, provide you with its processed statistical data and activity report but will not point out deputies or bodies that have ignored citizens' complaints.

Introduction of democratic values into Parliament's activities does not represent any difficulty for traditional democracies, but this becomes quite complex in such transitional and developing countries as Georgia. There are several reasons for this. For example, professional ethics of different branches of government are still in the process of formation, and this, in turn, is merely a part of a more general problem. Namely, until recently, one could observe the incompatibility between the common political culture and the principles of democracy and rule of law in Georgia. Numerous measures have been, and still are being undertaken on behalf of the authorities, media, and civil sector in an effort to improve the situation. But still there is a long road ahead before the problem is eradicated.

Comprehension of the notion of "ethic norm" is rather distant for many deputies. There are only inefficient, obscure or non-established regulations unable neither to provide a definition of behavior norms nor can they turn into a common reference-point of behavior that should guide the members of the legislative body in their activities and assist general public in assessing their work. The development of the Code of Ethics for deputies can be an efficient measure for overcoming this flaw. The Code would establish

mechanisms for preventing the lobbying of private interests, allowing the adoption of executable regulations by the Parliament and bettering the institution of deputy immunity.

In cases where appropriate political will is expressed, the strengthening of inner-parliamentarian control would be possible. There are two necessary preconditions for this:

- Strengthening of a structure focusing on the implementation of inner-parliamentarian control (in the Parliaments of 1995-1999 and 1999-2003 this function was unsuccessfully carried out by the Committee for Procedural Issues);
- Election of less "notorious" deputies among the Members of the Parliament. This depends on the competence of parties and their pre-election lists.

Societies experiencing transition periods, including the Georgian society, are marked by legal nihilism and unformed legal awareness. In addition, there still exists the impact of the cultural features and the low political culture which is impossible to be eliminated in a rapid fashion. In order to improve the situation, the main emphasis, along with an active and lawful fight against corruption, should be centered around the development and strengthening of civil society that, for its part, requires restructuring of the education system, further promotion of independent media, establishment of political parties and sustaining of a strong NGO sector.

Besides these elements, the democratic audit of the Parliament and of some of its units provides grounds to conclude that a better governance of the parliamentarian machinery and increased level of qualification of its staff are necessary. The establishment of a management and remuneration system that could attract high-level professionals is another pre-requisite for the development of the Parliament. Obviously, development of human resources alone cannot serve as a guarantee for the Parliament's institutional development. The improvement of the situation could be achieved through a complex approach that includes human resource development, foresees improved management, introduction of modern information and communication technologies, and enhancement of technical equipment.

The reform of the Parliament as a whole is a constitutional issue and proposals for any changes do not fall within the objectives of the democratic audit project. In general, it could be said, though, that despite the current, widely-criticized constitutional model, there is still some room for increased efficiency of the legislative power.

SOCIOLOGICAL RESEARCH RESULTS

Sociological research was conducted within the project framework aimed at assessing the attitude of the general public towards the level of the Parliament's democratization.

The key findings of the research could be outlined as follows: more than 65% of interviewed respondents admitted that the Parliament, with its personnel, does not fully represent public interests and that the Parliament's agenda is not driven at all by citizens' social requirements (69.5%). In the opinion of the society, the underlying reason is that the public is almost excluded from the law-making process (74.1%). The best example demonstrating this concern took place in January of 2004, when the 2-month period for public examination, prescribed by the Constitution, was violated and the Parliament adopted constitutional changes within a few days. These amendments changed such an important aspect of the country's constitutional arrangement such as the checks and balances principle in the governance system. The fact that more than 68.3% of the respondents did not receive any kind of information regarding these planned constitutional changes results from the violations of the procedural norms.

One of the most significant and negative conclusion regarding the Parliament's democratization, revealed by the research, is that the general public is generally distrustful towards the Parliament as an institution that secures human rights protection. The sociological research has also shown that a majority of the respondents do not view the Parliament of Georgia as a representative institution defending their interests (71.5% believe the Parliament expresses the opinion of a small part of society).

It is the prevailing opinion of the population (73.6%) that the majority of the MPs are uneducated, inexperienced and unqualified. 73.8% of those interviewed believe that when adopting laws, MPs are mostly guided by personal interests of their party's leaders or their own business concerns; 71.3% assume that MPs act in response to the pressure coming from powerful financial forces, while in the opinion of 69.9% of the interviewees, legislators are not ready to assume the responsibility and do not care about the improvement of the country's political or social and economic situation.

The general public believes that, actually, the authorities do not implement the decisions of the Parliament (60.7%) and laws are not observed in the country. In the opinion of those interviewed, Georgian legislation breeds corruption (52.4%) as Parliament's anti-corruption efforts are merely a formality (59.2%) and conflicts of interest are apparent in the decision-making process (51.6%). In the opinion of the majority of the respondents, the Parliament is unable to exercise control over the executive power (48.7%).

It is necessary to note that the research demonstrates respondents' attitudes towards the old Parliament, since the research process occurred prior to the formation of the new Parliament.

As for the expectations of the new Parliament, people hope that some positive developments will occur. 51.7% of those interviewed believe that the new Parliament will be more democratic and will serve the country's interests in a much more zealous fashion. In the opinion of 60% of the respondents, Parliament will back an implementation of reforms that will have a positive impact on the country's development in the nearest future.

One could certainly say that the population's attitude and degree of trust toward the country's new President and his team provide a unique chance for the process of reform to truly occur in the country. The vote of confidence allows the authorities to take steps that could be vexatious and unpopular, but ones that could bring the country to the track of democracy (privatization, attraction of foreign investments, dismissal of thousands of public servants as a result of optimized management, strict anti-corruption measures, etc.).

At the same time, the research revealed also some negative trends related to some characteristics of the population, namely its political culture and inability to exert control on or demand accountability of the authorities. For example, demonstrating its negative attitude towards the old Parliament, a significant portion of the respondents (33.7%) believed also that NGOs take an active part in the process of drafting laws. Meanwhile, in the opinion of 51.3% of the interviewees, this participation was only formal, and 63.7% assumed that the NGO sector had close relations with the authorities. This data indicates a) a mistrust of the general public towards the civil sector, or b) the inefficiency of the third sector itself. Also, 42.9% of the respondents, who work in the NGO sector, believe that the degree of the NGO sector's involvement in political and legislative decision-making processes is not satisfactory.

About 45% of the interviewed think that, when adopting laws or making strategic decisions, MPs give priority to state interests, while 70% believe that the private interests of leaders and parties are the driving force of MPs' decisions. Apparently, part of the interviewed voted for the two options. Perhaps, this is due to the fact that a significant part of the society believes that state and leaders' interests coincide. The latter represents another political and culture-related problem.

Interestingly, 52.3% of the respondents that are below the age of 20 are not satisfied with the level of qualification of the MPs, while 80.1% of these respondents are unsatisfied with the MPs' sense of responsibility. To conclude, part of the Georgian adolescents do not comprehend that a sense of responsibility is an indicator and element of professionalism.

[1] Present paper does not describe the legislation system that existed before 1995. Political and legal systems of that time were based on Soviet constitutional and legal norms, certain legal acts adopted under emergency conditions and a declared will to restore the pre-Soviet Georgian constitution of 1921. Such eclecticism, coupled with a background created by civil war and ethnic conflicts, caused a legal vacuum, legal nihilism and chaos.

[2] Freedom House, Nations in Transit 2003, p. 4