German Electoral System and Its Implementation in Georgia

I. German Electoral System

1. Legal Basis of the Electoral System

Bundestag elections principles are laid down in the Basic Law of the Federal Republic of Germany, but it does not include details regarding the electoral system and the number of Bundestag members. It indicates that specific regulations are stipulated under Federal Law.[1]

There is a Federal Law in Germany which regulates the issues concerning elections (Bundeswahlgesetz), covering matters such as electoral system, election administration, suffrage, preparing and holding elections, as well as summarizing the results, etc. Based on the Law mentioned above, the Federal Ministry of Interior issues Federal Electoral Regulations (Bundeswahlordnung).

2. General Characteristics of the Electoral System

Bundestag is comprised of 598 members, which is a basic number, because it may raise due to the procedure of allocation of seats. Bundestag members are elected based on the proportional electoral principles linked to majoritarian elections.[2] Thus, there is a specific model of a mixed electoral system applicable in Germany. The Law defines the number (299) of members elected through the majoritarian system and specifies that the remaining members are being elected based on the proportional system, so-called "Land lists" (Landesliste).[3]

This wording is similar to the clause of the Constitution of Georgia regarding 2020 Parliament Elections. The number of members elected through the majoritarian system is strictly defined in both cases. German legislation does not set out the number of members elected through the proportional system, but the message of the legislator is similar – the Parliament is comprised of members elected via both, majoritarian and proportional systems. This circumstance does not prevent the German legislator from establishing the procedures of allocating seats which complies with the principles of democracy and equal elections.

Majoritarian constituencies have single-seats. The candidate receiving the most votes wins the election. The party lists for proportional elections are presented not Germany-wide, but throughout Federal Lands, therefore they are called "Land lists".

Voters have two votes, so-called first vote (Erststimme) is casted to one of the majoritarian candidates, and the second vote (Zweitstimme) to one of the land lists participating in proportional elections. The second vote of the voter is not taken into account in case s/he casted the first vote in favor of 1) winning candidate nominated by the Initiative Group,[4] 2) winning candidate who was nominated by the party which failed to pass 5% electoral threshold or to acquire majoritarian seats in at least 3 constituencies;[5] 3) winning candidate nominated by the party the list of which was not admitted in the respective Land.

The number of three types of wining candidates (hereinafter - "independent MP") listed above is deducted from the number of Bundestag members (598) and thus the total number of seats to be allocated in Lands. They obtain their respective seats and the remaining seats are allocated in the manner provided for by the law.

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[1] Paragraphs 1 and 3 of Article 38 of the Basic Law of the Federal Republic of Germany.

[2] „...nach den Grundsätzen einer mit der Personenwahl verbundenen Verhältniswahl..".

[3] „Von den Abgeordneten werden 299 nach Kreiswahlvorschlägen in den Wahlkreisen und die übrigen nach Landeswahlvorschlägen (Landeslisten) gewählt."

[4] I.e. independent candidate.

[5] These parties are not participating in the process of allocation of seats.

3. Nomination of Candidates

A party is authorised to nominate one candidate per each electoral district. The same person may be nominated only in one electoral district. A party may not nominate a member of another party. At least 200 constituents are also allowed to nominate a candidate. Thus, independent candidates may take part in majoritarian elections.

Only parties are allowed to nominate Land lists. A party is authorised to nominate only one list in the same Land. One person may only be included in one list.

4. Electoral Ballot

Each voter gets only one electoral ballot consisting of two parts: 1) for majoritarian elections – the identity of candidates and the title of the party (in case a party nominates him/her); 2) for proportional elections – the title of the party and first five candidates of a Land list. The form of the electoral ballot is not an indicator that the elections are proportional, but serves the purpose of identifying electoral ballots where the second votes are not taken into account.

5. Allocation of Seats

First Stage

At the first stage the minimum number of seats which one party should obtain – i.e. quota of seats (Sitzkontingent) – is determined. At first, 598 Bundestag seats are distributed between the Lands proportionally to the number of their population, except foreigners. In result, the total amount of seats to be allocated to each Land is established.

Seats are allocated to Land lists per the number of votes obtained. Only the parties receiving at least 5% of second votes throughout Germany or obtaining seats in at least three majoritarian electoral districts (hereinafter "qualified parties") are taking part in the process of allocating seats. The number of seats for each Land is determined by dividing the number of votes received into the so-called "divisors" (Zuteilungsdivisor). This is same as electoral quota which determines the "weight" of one seat. In order to determine the divisor, it is necessary to divide the total amount of votes collected by lists of qualified parties into the remaining number of seats to be distributed in the respective Land minus the number of independent members.

The number of seats (hereinafter "direct seats" (Direktmandate))[6] of those candidates that were nominated by the parties in majoritarian districts on the territories of respective lands is deducted from the number of seats obtained by each Land list. If a party receives more direct seats in any of the Lands than it deserves based on the number of second votes, it will get these seats as "overhang seats" (Überhangsmandate) in any case.[7] Overhang seats raise the risk that the second votes received by parties will not be translated with proper proportion into the composition of Bundestag.[8] The Federal Constitutional Court of Germany did not find this

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[6] Example: X party obtained 20 mandates through proportional system in a Land, and its nominated 13 candidates won in majoritarian districts. In such case it will receive total of 20 mandates, out of which 13 will obtain candidates winning in districts and 7 will be given to first 7 candidates from the Land list of the X party.

[7] Example: X party obtained 20 mandates via proportional system in a Land, and 25 candidates nominated by the party won in majoritarian districts. Candidates winning in districts will receive all mandates and those included in the Land list of the X party will get none.

[8] Compare: Ipsen, Jörn, Staatsrecht I, Staatsorganisationsrecht, 25., überarbeitete Auflage, München 2013, Rn. 117.

institute unconstitutional but emphasised the need for maintaining balance. On the one hand, second votes should be translated into the composition of Bundestag proportionally, as much as possible. On the other hand, candidates elected through the majoritarian system should also receive seats.[9] These are the two goals that should be achieved in the process of allocating seats under a mixed electoral system in a democratic state. For the purpose to maintain the said balance, so-called institute of "leveling seats" (Ausgleichsmandate) is in place in Germany,[10] which will be discussed below.

Second Stage

At this stage, seats are finally distributed. The main purpose of distribution is to grant the parties with the number of seats that are proportional to the number of second votes obtained by them.

At first, the number of seats to be granted to each party on a federal level is calculated based on the number of second votes. It may alter due to the quota of seats determined at the first stage and overhang seats. In such a case, the number of Bundestag members is increased by leveling seats to the extent where each party receives a total amount of seats that they deserve per the number of second votes.[11]

Seats granted to parties based on the rule mentioned above is distributed on Land lists proportionally to second votes received by them in respective Lands. The Land list receives at least the amount of direct seats obtained by the respective party in a Land. The amount of direct seats is deducted from the number of seats obtained by Land list. Remaining seats are allocated to the candidates based on their sequence in the list. The candidate who received a direct seat and is also included in a list will not be taken into account. If a Land list deserves more seats than the number of persons included thereto, these seats will not be allocated.

If after both stages of allocation any of the parties receive more than half of total second votes but could not collect more than half of seats, it will be awarded overhang seats so that finally it receives one mandate more than the half of total seats.

6. 2017 Bundestag Election Final Results[12]

Party	Majoritarian (Direct) Seats	Proportional (Obtained from Land Lists) Seats	Total Number of Seats
Christian Democratic Union/Christian Social Union	231	15	246
Socialist Party	59	94	153
Alternative for Germany	3	91	94
Free Democratic Party	0	80	80
The Left	5	64	69

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[9] BVerfGE 131, 316 (368 ff.)

[10] Ipsen, Rn. 115.

[11] Example: Based on the results of proportional elections on Federal level X and Y parties deserve 100-100 seats. Majoritarian candidates of X party won 110 constituencies. The party will obtain 10 overhang seats, i.e. 110 seats in total. Majoritarian candidates of Y party won 90 constituencies. Y party will have 90 seats, plus 10 seats from party list, i.e. 100 seats in total. In order to eliminate disproportion, Y party will be awarded with 10 leveling mandates.

[12] See: https://www.bundeswahlleiter.de/bundestagswahlen/2017/ergebnisse/bund-99.html

The Greens	1	66	67
Total number in Bundestag	299	410	709

2017 Bundestag election results show that none of the parties managed to receive more than 50% of seats. Thus, no room was left for forming the government independently by one political party. The parties had to agree on positions with each other and to form a coalition, which is usual for the democratic process. The German system of allocation of Parliament Seats quite frequently leads to developing the events in an aforesaid manner and balancing the goals of various parties. In such conditions, there is less expectation of drastic changes in policy, and it is more stable.[13]

7. 2017 Bundestag Election Results According to Georgian Model[14]

If in 2017 Bundestag election the seats were allocated per current Georgian system the outcome would be:

Fraction	Majoritarian Seats	Proportional Seats	Total Number of Seats
Christian Democratic Union/Christian Social Union	231	101	332
Socialist Party	59	64	123
Alternative for Germany	3	40	43
Free Democratic Party	0	34	34
The Left	5	29	34
The Green	1	31	32
Total number in Bundestag	299	299	598

Difference between parties' seats in case of allocating them based on German and Georgian models would be:

Fraction	German System	Georgian System	Difference
Christian Democratic Union/Christian Social Union	246	332	+86
Socialist Party	153	122	-31
Alternative for Germany	94	42	-52
Free Democratic Party	80	34	-46
The Left	69	34	-35

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[13] Compare Ipsen, Rn. 72.
[14] The model for 2020 Parliamentary Elections is implied.

| The Green | 67 | 32 | -35 |

If Bundestag elections were held according to the current Georgian system, Germany would factually have had single-party state, because the Christian Democratic Union and Christian Social Union would have obtained a solid majority in Parliament. They would have received an additional 86 mandates compared to the German model, and other parties would have lost a significant number of seats. In the case of the Georgian model, governing parties receiving around 32,9% of proportional system votes would have received about 55,5% of seats; the difference would amount to 22,6%. Therefore, the composition of Bundestag would be substantially different compared to the actual will of voters.

II. Georgian Version of German Electoral System[15]

1. Electoral System

Georgian version (hereinafter "Georgian version") of German model for allocation of mandates is adapted to Georgian legislative reality. 73 members out of 150 MPs are elected from multi-mandate constituencies and 77 through the proportional system according to party lists.

Unlike Germany, the Georgian version suggests majoritarian elections in multi-mandate constituencies. Given the current reality and party system, introduction of majoritarian system with plurality voting in Georgia would extremely increase the risks linked to majoritarian system, such as ignorance of the will of the majority of voters, inequality, formation of a single-party state, domination of minorities over majorities, dramatic change in the balance of political power conditioned as a result of slight change in the will of voters, etc.[16] These risks are lower in multi-mandate constituencies, and the chances of independent candidates and those nominated by small political parties are raising. At the same time, the issue of democratic legitimacy of some of the winning candidates may become problematic while the percentage of the votes received by them is low. Taking into account that the Georgian version encompasses constituencies with 6-8 mandates with a large number of voters, the possibility of significant disproportionality between the number of votes received by the winner candidates lowers.

2. Active Suffrage

A voter has two votes. The first vote is casted to one of the candidates nominated through a majoritarian system in a constituency. Thus, the so-called "single non-transferrable" vote system is applicable. The second vote is casted to one of the parties/electoral blocs. Impact of German experience and terminology in this regard is obvious.

3. Majoritarian System

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[15] This chapter entails the model proposed by opposition which was spread via media sources.
[16] Compare Ipsen, Rn. 64, 68, 69.

Georgian version sets out minimal (6) and maximal (8) number of seats to be allocated to multi-mandate constituencies. Multi-mandate constituencies will be created in the result of merging current single-mandate constituencies provided that the following two conditions are met: 1) the value of a single mandate in a multi-mandate district should not differ from the average value of mandates in Georgia with more than 10%. The purpose of the aforesaid is to prevent the possibility that a vote of one constituent in a particular district has more value than the votes of other constituents in other districts. 2) A multi-mandate constituency should fully cover only adjacent municipalities, and as for Tbilisi – bordering administrative-territorial units. Supposedly this prevents abuse of electoral geography.

Independent parties or electoral blocs taking part in elections are allowed to nominate candidates in multi-mandate constituencies. The number of candidates nominated by one electoral subject should not exceed the number of seats to be allocated in the respective constituency; the minimum number is not determined. Initiative Group of voters is also allowed to nominate a candidate. One Initiative Group may nominate only one candidate.

The sufficient number of candidates receiving more votes than others are considered to be elected in multi-mandate constituencies.[17] It is desirable to make the wording of this provision more explicit. For example: in a multi-mandate constituency, the winner candidate will be the one holding the place lower than or equal to the number of mandates to be allocated in the respective electoral district.

4. The Principle of Allocating Seats to Parties/Electoral blocs

Georgian version entails the limit of total seats obtained by parties/electoral blocs through both electoral systems. It shall not exceed the number which equals the same percentage of 150 as the percentage of votes received by the political list of a party/electoral bloc.[18] The system is aimed at proportional translation of the will of voters into the number of seats as accurately as possible. The fact that unlike Germany, there is no possibility of an increasing number of MPs in Georgia complicates the full achievement of this goal. Irrespective of the aforesaid the Georgian version suggests a more effective way than the applicable one, which in practice frequently results in a drastic difference between the will of voters and the composition of the Parliament.

The number of 150 seats to be allocated may decrease except for two categories of seats: 1) seats of the winner candidates that were nominated by the Initiative Group and 2) seats of the winner candidates nominated by the parties/electoral blocs left beyond the electoral threshold. The limit of seats of a party/electoral bloc will be calculated out of the final number after the decrease.[19]

The limit of the party/electoral bloc first will be filled with the seats obtained through majoritarian elections. Afterwards, in case of remaining free seats, they will be allocated over the party list of the respective party/electoral bloc.[20] The German experience is applied in this case.

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[17] Example: 7 seats are to be allocated in a multi-mandate constituency. They will be granted to the candidates who are on the first seven places according to the number of votes received.

[18] Example: X party received 10% of votes through proportional system. 10% of 150 is 15. Thus, its limit will amount to 15 seats.

[19] Example: X party received 10% of votes through proportional system. At the same time 5 candidates nominated by the Initiative Group and 5 candidates nominated by the party/electoral bloc that failed to pass the electoral threshold won the elections through majoritarian system. Thus, the number of the aforesaid mandates will be deducted from 150 and 140 mandates will remain for allocation. The limit of X party will be calculated from 140 seats. 10% of 140 amounts to 14. Thus, 14 will be the limit of X party.

[20] Example: X party received 10% of votes through proportional system and 10 seats through majoritarian. Its limit was determined as 15 seats. 10 seats out of 15 will be granted to the candidates elected through majoritarian system and 5 to the first five candidates in the list of the X party.

5. Principle of Allocating Mandates According to Party Lists

The total number of second votes casted to the party list is the number of votes received by the list. The second vote of the voter who casted the first vote to the candidate nominated by the Initiative Group winning majoritarian elections is not taken into account. This procedure will prevent the increase of seats of any of the parties/electoral blocs with the assistance of "pseudo-independent candidates".

In order to count the seats of a party/electoral bloc, it is necessary to multiply the number of second votes received by such party/electoral bloc by the number of seats to be allocated and to divide by the total number of votes received by parties/electoral blocs passing the electoral threshold.[21]

6. Procedures for the Calculation of Electoral Votes and Allocation of Mandates

Georgian version offers the following stages of calculation of votes and allocation of mandates:

1) Identification of the candidates elected through a majoritarian system: At this stage, the first votes of the constituents, i.e. votes cast for majoritarian candidates, are counted, and the elected candidates are identified. This process also involves the identification of the electoral ballots, in which the constituents voted for the winner candidate nominated by the Initiative Group. The process reveals the number of independent MPs, which should be deducted from the total of 150 seats to be allocated.

2) Calculation of the second votes, consisting of two stages: At first, the second votes received by the party lists are calculated. The number of the second votes from the election ballots, where the constituent gave the first vote to the elected candidate nominated by the Initiative Group, is deducted from the total number of the second votes received by the party lists. As a second stage, the parties/electoral blocs that have passed the threshold are identified. This process reveals the parties/electoral blocs that failed to pass the threshold, following which the number of winner majoritarian candidates from these parties/electoral blocs are identified. This number is deducted from the 150 seats to be allocated, or from the number of mandates left after the number of independent candidates is deducted from the initial 150 mandates.

3) Calculation of the party/electoral bloc seats, i.e. the seat limits: We have already discussed this issue. The authors of the Georgian version suggest the following formula: $M_i = N_i \times (150-P) : N$. According to the formula, M_i stands for the limit of the seats for the party/electoral bloc, that passed the electoral threshold (set at the integer part of the number received as a result of calculation); N_i is the number of second votes received by this party/electoral bloc; P is the number of the MPs elected through majoritarian system and nominated by the Initiative Group or a party/electoral bloc that failed to pass the electoral threshold; and, N stands for the sum of the second votes received by the parties/electoral blocs, which passed the threshold.

4) Identification of the parties/electoral blocs with "filled limits" and "overhang seats": If the party/electoral bloc receives a number of seats from constituencies (majoritarian system) that fully fills the limit of seats allocated to it, there will be no seats distributed to that party/electoral bloc through a party list (the second votes). The same rule shall apply to the parties/electoral blocs, which received more majoritarian mandates then the allocated limit (overhang seats). In such instances, no additional seats will be allocated to such a party/electoral bloc;[22] otherwise, some part of the majoritarian MPs would be left without a mandate and

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[21] Example: X party received 100.000 second votes. Parties/electoral blocs passing the electoral threshold received total of 1.000.000 second votes. At the same time, 10 candidates nominated by the Initiative Group won the election through majoritarian system. The number of seats of the X party = 100.000 X (150-10) / 1.000.000. Finally the result will be 14 seats.

[22] In German electoral system, such mandates are referred to as "Überhangsmandate" (overhang seats).

the majoritarian principle would be violated. The number of additional seats (overhang seats) are calculated by deducting the seat limit of a party/electoral bloc (i.e. the sum of all mandates allocated to it) from the majoritarian mandates won by that party/electoral bloc.[23]

5) Allocation of seats to the "remaining" parties/political blocs: After the parties/electoral blocs with "filled limits" and "overhang seats" are identified, and the number of the seats received by them is determined, these parties/political blocs will not be able to participate in the distribution of the remaining seats. Therefore, the second votes cast in their favor are no longer taken in consideration, together with the second votes of the election ballots, according to which the first votes were cast in favor of the winner candidate nominated by these parties/electoral blocs. The seats of the "remaining" parties/electoral blocs are calculated following this formula: $M_k = N_k \times (150-P-P_1) : N$ (the integer part of the number received after the calculation). In the formula, M_k stands for the number of seats belonging to a party/electoral bloc; N_k is a recalculated number of the second votes received by this party/electoral bloc; N is the sum of the second votes received by the "remaining" parties/electoral blocs; P is the number of MPs elected through majoritarian system nominated by the Initiative Group or a party/electoral bloc, that failed to pass the electoral threshold; and, P_1 stands for the number of majoritarian seats obtained by the parties/electoral blocs with "filled limits" and "overhang seats".[24] The calculation principle is basically the same as in case of the initial calculation of seat limits for the parties/electoral blocs, but in this case the sum of the number of seats to be allocated is reduced and only the sum of the second votes received by the "remaining" parties/electoral blocs are relevant here (and not that of the parties/electoral blocs that passed the electoral threshold). The limit of seats for the "remaining" parties/electoral blocs might change, and there may be a certain disproportionality among the second votes received by and the seats allocated to such parties/electoral blocs, but the limitation in the number of parliament members does not allow for any other option, and the authors of the Georgian version have suggested the best possible solution.

7. Results of 2016 Parliament Elections in Georgia[25]

Party/Electoral bloc/Independent	Percentage of the votes received in	Seats received through	Seats received through	Seats in total	Percentage of the

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[23] Example: X party has a limit of 15 seats. The party received 20 seats through a majoritarian system. Therefore, the party will have 20 seats in total, out of which 5 will be additional seats (overhang seats). No seats shall be allocated to that party through a party list (the second votes).

[24] Example: Parties A, B, C and D participate in the elections. The sum of the second votes of the voters is 2,000,000. Party A received 200,000 votes (i.e. 10%), Party B – 800,000 votes (i.e. 40%), Party C – 400,000 votes (i.e. 20%), and Party D – 600,000 votes (i.e. 30%). Through the majoritarian system Party A claimed 1 seats, Party B – 63 seats, Party C – 3 seats, and Party D – 6 seats. After the initial calculation, the seat limits will be allocated as follows: Party A – 15 seats, Party B – 60 seats, Party C – 30 seats, and Party D – 45 seats. The number of majoritarian seats received by Party B exceeds its limit; therefore, this party will receive additional 3 seats, i.e. 63 seats in total. All seats shall be majoritarian. In result, there will be 87 seats left to distribute (150 – 63 = 87). The number of seats received by Party A will be 14 (200,000 x 87 : 1,200,000 = 14.5), i.e. 1 majoritarian and 13 party list seats. Party C will be receive 29 seats (400,000 x 87 : 1,200,000 = 29), i.e. 3 majoritarian and 26 party list seats. Party D will receive 43 seats (600,000 x 87 : 1,200,000 = 43.5), i.e. 6 majoritarian and 37 proportional list seats. In total, Parties A, C, and D will have 86 seats. The recipient of the remaining 1 seat will be determined as follows: the party, which has the highest fraction left after the removal of integer from the number of seats received by it, will receive the remaining 1 seat; if the amounts of fraction numbers are equal among two or more parties, the party that registered for elections earlier among those will win the remaining 1 seat. In this case, Parties A and D had highest fraction number (to make it simple, we used rounded numbers, but this will be a rare case in practice), i.e. the seat shall be allocated to the one, which registered for elections earlier than the other.

[25] http://cesko.ge/geo/static/2448/archevnebis-shedjameba

Candidate	proportional elections	proportional system	majoritarian system		Seats in total
Georgian Dream – Democratic Georgia	48,68%	44	71	115	76,67%
United National Movement	27,11%	27	0	27	18%
Davit Tarkhan-Mouravi, Irma Inashvili – Alliance of Patriots of Georgia, United Opposition	5,01%	6	0	6	4%
Tophadze – Industrial Party, Our Homeland	0.78%	0	1	1	0.67%
Salome Zurabishvili (nominated by the Initiative Group)	0	0	1	1	0.67%

The current system for allocation of seats contains a threat to the democratic development of the country. The main problem is that the will of the voters does not translate proportionally into the composition of the Parliament. The party that won the elections has the support of 48.68% of voters, whereas the share of the representatives of this party in the total number of Parliament seats is 76.67%. So, there is a difference of 27.99%, which is unbelievable for the democratic system. The will of the voters was not to grant the winner party with the constitutional majority, but after the allocation of seats, this is exactly what happened.

8. Results of 2016 Parliament Elections in Georgia According to the Georgian Version of German Electoral System[26]

Party/Electoral bloc/Independent Candidate	Percentage of the votes received in proportional elections	Seats received through proportional system	Seats received through majoritarian system	Seats in total	Percentage of the seats in total
Georgian Dream – Democratic Georgia	48,68%	4	71	75	50%
United National Movement	27,11%	42	0	42	28%
Davit Tarkhan-Mouravi, Irma Inashvili – Alliance of Patriots					

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[26] Georgian version does not provide information on certain details. It is also impossible to foresee what the results of election would be in the multi-mandate majoritarian constituencies. Therefore, it is possible that the table contains a few errors, which does not change the big picture and the final results. The results were calculated in consideration of the 3% electoral threshold.

of Georgia, United Opposition	5,01%	8	0	8	5.33%
Irakli Alasania – Free Democrats	4,63%	7	0	7	4,67%
Nino Burjanadze – Democratic Movement	3,53%	6	0	6	4%
Paata Burchuladze – State for People	3,45%	5	0	5	3,33%
Shalva Natelashvili – Georgian Labor Party	3,14%	5	0	5	3,33%
Tophadze – Industrial Party, Our Homeland	0.78%	0	1	1	0.67%
Salome Zurabishvili (nominated by the Initiative Group)	0	0	1	1	0.67%

If the seats were allocated according to the Georgian version, the support of the voters would be proportionally translated into the number of seats received by the parties. The result of the allocation of seats would be far fairer compared to the results of the current system. The winner party would not even have the majority of the seats in the Parliament, let alone the constitutional majority, which would force the party to take in consideration other political forces and the will of voters who support them.

9. Compliance with the Constitution

<u>Compliance with the Constitutional Clause Regulating the 2020 Parliament Elections</u>

For the assessment of the Georgian version with respect to the 2020 elections, the following constitutional requirements are relevant: 1) 77 MPs will be elected through a proportional system; 2) 73 MPs will be elected through a majoritarian system; 3) total number of MPs will be 150; 4) seats will be allocated to the parties/electoral blocs, which manage to pass the 3% electoral threshold; 5) the election legislation will define the procedure of the allocation of seats.

Georgian version meets all the aforementioned requirements. If it is applied, the number of MPs will not exceed 150, out of which 77 MPs will be elected through a proportional system and 73 through a majoritarian system. Only the parties/electoral blocs that pass the 3% threshold will be allocated seats in result of a proportional election. The process for the allocation of seats will be defined by the legislator, who is not obstructed by the number of seats (mandates) specified in the Constitution from determining the fairest possible regulation. Moreover, it is his/her constitutional obligation to do so. In this case, the main task of the legislator is to decide on the issue of the translation of electoral votes into the number of seats in the light of

the constitutional requirements,[27] because in the modern democracy the most important thing is to ensure that the will of the voters is adequately represented in the Parliament.[28]

The Constitution of Georgia generally mentions the MPs elected through a majoritarian system but does not specify the certain type of majoritarian system that needs to be applied. Therefore, there is no question or issue about the constitutionality of the model suggested by the Georgian version.

Compliance with the Relevant Constitutional Requirements

The Constitution of Georgia reinforces the principle of democracy. The democratic state ensures a free and equal political process, political pluralism, protects political minorities, regularly holds universal, free, equal and secret elections, bases its decisions on the principle of majority, etc.[29] The election is the most important form of implementing state governance by the citizens. It is fundamentally important for the democracy that the citizens have equal opportunity to participate in this process. The equality of chances when forming the political will of people is of central importance, especially for the political parties.[30] Any regulation that grants part of the citizens more impact on state governance and its formation compared to others is in direct violation of the principle of democracy.[31]

Principle of majority is a fundamental element of democracy,[32] which directly applies to elections.[33] Election princples, including the princple of equality of elections, are also considered the elements of democracy.[34] In the context of parliament elections, the Federal Constitutional Court of Germany holds that the principle of democracy requires the allocation of seats in accordance with the will of the voters.[35] This requirement is critically important in case of a parliamentary republic, as the formation of the government and its composition depends on the will of the parliament.

The principle of democracy requires that the minority has means to become the majority.[36] It would be against this requirement if the procedure of allocating parliament seats would have eliminated or greatly reduced this chance for the minority, i.e. would have made it impossible or difficult to change the government in a peaceful and democratic manner. Stemming from the aforesaid, the procedure of allocation of seats, first of all, should meet the requirements of the principle of equality of elections.

In the context of active suffrage, equality demands the equal assessment of votes of the voters and equal power thereof over the results of the elections. In the majoritarian system, this could be expressed in creating the constituencies (election districts) of approximately the same size and equal "calculation value" of the voter's votes (Zählwert). In cases of the proportional and mixed electoral systems, equality demands the "success value" of the votes as well (Erfolgswert).[37] In the context of passive suffrage, the principle of equality ensures

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[27] Münch, Ingo von, Kunig, Philip, Grundgesetz-Kommentar, Band 1 (Präambel bis Art. 69), 6., neu bearbeitete Auflage, München 2012, Art. 38, Rn. 14.

[28] Münch/Kunig, GG, Art. 38, Rn. 15.

[29] Compare to Münch/Kunig, GG, Art. 20 Rn. 13.; Mangoldt, Hermann von, Klein, Friedrich, Starck, Christian, Kommentar zum Grundgesetz, Band 2, 6., vollständig neu bearbeitete Auflage, München 2010, 20, Rn. 81-85.

[30] Sachs, Michael, Grundgesetz Kommentar, 6. Auflage, München 2011 Art. 20, Rn. 20.

[31] Compare to Sachs, GG, Art. 20, Rn. 19; BVerfGE 93, 37 (81).

[32] BVerfGE 29, 154 (165); 44, 125 (141 f); 112, 118 (140), etc.

[33] Sachs, GG, Art. 20, Rn. 22.

[34] Münch/Kunig, GG, Art. 20, Rn. 15; BVerfGE 99, 1 (13).

[35] BVerfGE 85, 148 (158).

[36] Sachs, GG, Art. 20, Rn. 21; Mangoldt/Klein/Starck, GG, Art. 20, Rn. 86; BVerfGE 5, 85 (199); 44, 125 (145).

[37] Sachs, GG, Art. 38, Rn. 90; BVerfGE 16, 130 (138 f.); 1, 208 (244 f.); 82, 322 (337); 95, 335 (353).

the equality of chances for all candidates and parties.[38] Herewith, the principle of equality and equality of chances applies to the whole election process, including the allocation of seats.[39]

Right to equal suffrage is linked to the principle of egalitarian democracy, requiring that all citizens are treated equally when implementing this right, which is one of the substantial grounds for the state order. This principle is regarded as strict formal equality,[40] which limits the legislator in terms of determining the differentiation. Differentiation should be justified by special, thematically necessary and exigent grounds.[41] Federal Constitutional Court of Germany applies a similar practice in cases of existing differentiation in the equality of chances of the electoral subjects.[42] Example of an acceptable differentiation would be an electoral threshold, which is justified by the Federal Constitutional Court of Germany with interest to preserve the operability and functionality of the parliament.[43]

Georgian version meets the abovementioned standards. There is no procedure of allocating seats that would provide for the perfect equality and the balance of chances and translate the voters' support into the parliament seats with full accuracy. This attempt to share the German model, in consideration of Georgian specifics, ensures to the fullest possible extent that equal value is granted to the voters' votes and that they have an equal impact over the composition of the Parliament. The experience proves that in practice current procedure for allocation of seats causes the increased influence of the governing party constituents over the formation of the Parliament in comparison to the constituents of other political forces. The result is the government, which consists of one political party. The suggested Georgian version gives us the chance to overcome this heavy experience. It reduces the chances of political forces to stay in the government through the procedure of allocating the mandates that work in their favor when they do not have sufficient support of the voters to do so. Georgian version increases the perspective of political minorities to become a majority, in case they have sufficient support of the voters, compared to what the current procedure allows for.

The Georgian version provides more efficiently for the equality of chances for candidates and parties participating in the elections, compared to the current legislation. When discussing the constitutionality of a specific procedure or rule, in general, one should consider if this procedure or rule is rendered unconstitutional by the practice of its application. Current regulation of the allocation of seats has been in place for years within the political system dominated by one party, which as a rule wins the large majority of majoritarian constituencies. Therefore, the rule of mechanical addition of majoritarian and proportional seats gives a starting advantage to a governing political force, which has much more material and administrative resources then others behind its back as it is. Calculations of the results of 2016 Parliament Elections according to the Georgian version clearly showed that this model would be much more effective at balancing the chances of non-government candidates and parties participating in the elections.

The Georgian version allows for the possibility of allocating "additional seats" to parties/electoral blocs.[44] The assessment of "additional seats" provided by the Federal Constitutional Court of Germany is also very interesting since those against the suggested Georgian model often refer to this circumstance as an argument to

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[38] Sachs, GG, Art. 38, Rn. 90; BVerfGE 41, 399 (413); 95, 408 (417); 104, 14 (19 f.); 111, 382 (398).

[39] Sachs, GG, Art. 38, Rn. 91; Stern, Staatsrecht I, S. 304 f.; Münch/Kunig, GG, Art. 38, Rn. 56.

[40] Mangoldt/Klein/Starck, GG, Art. 38, Rn. 130; Sachs, GG, Art. 38, Rn, 92; Münch/Kunig, GG, Art. 38, Rn, 51; BVerfGE 41, 399 (413); 82, 322 (337); 95, 408 (417).

[41] Münch/Kunig, GG, Art. 38, Rn. 54; BVerfGE 4, 375 (382f.); 11, 266 (272); 11, 351 (360 f.); 12, 10 (25); 12, 73 (77); 36, 139 (141); 40, 296 (317); 51, 222 (234 ff.); 58, 177 (190); 69, 92 (106); 78, 350 (358).

[42] BVerfGE 69, 92 (106); 71, 81 (96); 78, 350 (358 f.) და ა.შ.

[43] Sachs, GG, Art. 38, Rn. 94; BVerfGE 1, 208 (247 f.); 82, 322 (338); 95, 408 (419, 421 f.).

[44] When any of the parties/electoral blocs receive more majoritarian seats then their actual limit of mandates. We have discussed this in greater details above.

support their position. These seats are allowed for in a very limited number of cases since they derive from the specifics of the German electoral system and facilitate the close connection of the part of the MPs with their respective election districts.[45] The thing is, "additional seats" are obtained in majoritarian districts and the allocation thereof is problematic, because they might substantially change the proper translation of the voters' will into the composition of the parliament, i.e. some party may get more seats through majoritarian system, then the actual seats it was entitled to considering the percent of voters supporting it. Estimation of the 2016 Georgian Parliament Elections results according to the Georgian model showed us that the existance "additional seats" would not result in the substantial change in the proper translation of the voters' will into the actual composition of the parliament. In this context, the current procedure for allocation of seats is problematic: thanks to the majoritarian seats, this system translated 48.68% voters' support into 115 seats, i.e. the constitutional majority. While discussing this, we might also look at the popular simple arithmetic so often used by those who stand against the suggested Georgian model and note, that 48.68 does not equal 76.67, but is approximately 1.57 times less. This causes substantial differentiation in the context of the right to both active and passive suffrage. If we take into consideration the strict standard for justifying the differentiation in the election context, it is highly doubtful that the current system for the allocation of seats complies with the Constitution of Georgia.

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[45] BVerfGE 7, 63 (74 f.); 16, 130 (139 ff.); 79, 169 (171 f.).