

DRAFT LAWS, APPROPRIATE TO BE CONSIDERED BY THE PARLIAMENT OF THE 9TH CONVOCATION

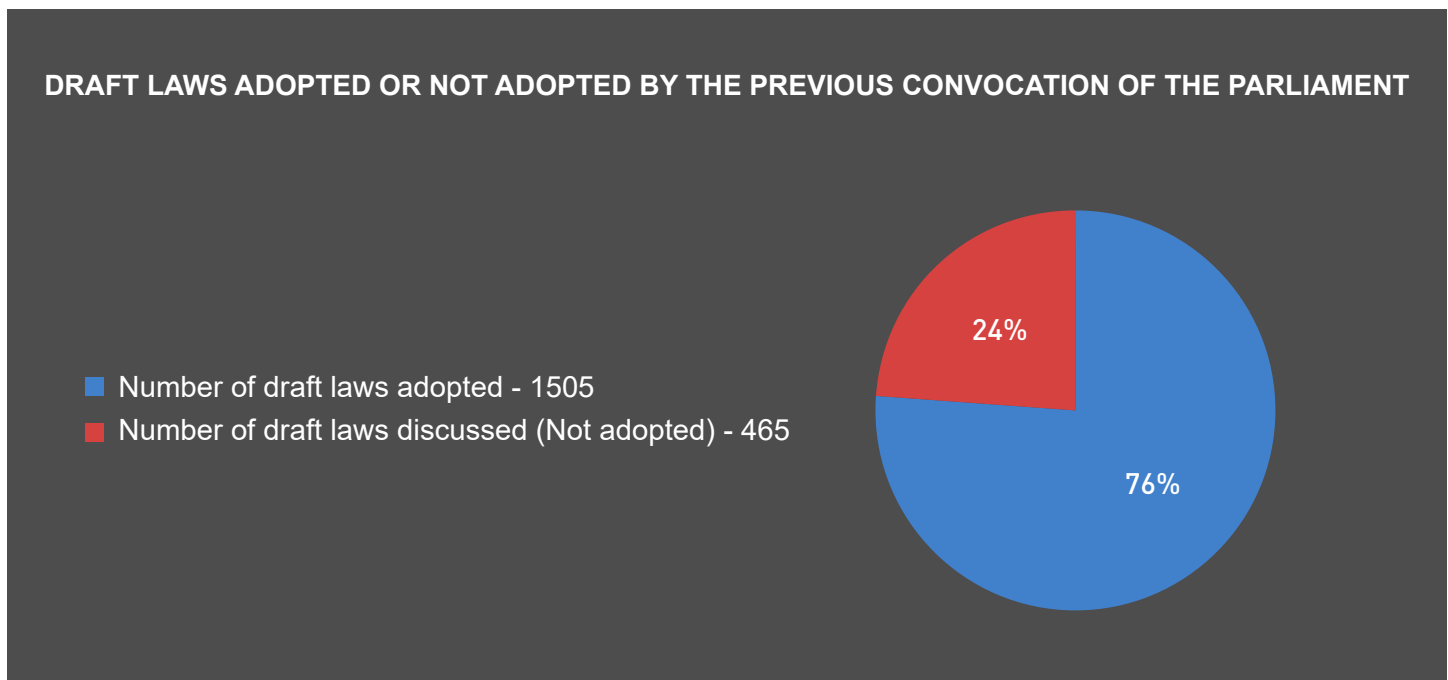
The first session of the 9th convocation of Parliament took place on 18 November 2016. In the nearest future, the Parliament should consider expediency of continuing consideration of draft laws, which were initiated in the Parliament of the previous convocation.^[1]

Transparency International – Georgia hereby presents assessment of the draft laws, which couldn't be finalized in the parliament of the 8th convocation. Therefore, it is reasonable to proceed with the process in the Parliament of the 9th convocation.

Congruent to the effective law, new convocation of the Parliament bears no obligation to continue hearing of the draft laws, which failed to be adopted in the period of the previous one. However, different committees may deem it appropriate to continue the hearing procedure for certain draft laws and present a relevant list of bills to the Bureau. A final decision on appropriateness or inappropriateness of considering draft laws is taken by the Parliament at the plenary session.

There are **114 legislative packages (465 draft laws)** which failed to pass three readings and have been suspended at various stages. There are pending initiatives, which the Parliament has not embarked on yet, as well as the ones that have been twice discussed and supported at the plenary sessions, though no final decisions have been taken.^[2]

Diagram 1.



¹ Parliament of the 8th convocation passed 1505 laws

² A comprehensive list by topics is available at:

https://docs.google.com/document/d/1R3_NHvIJUJG2QAboZVhFopU-2GV-tN5lwUqxd4TDrk/edit?ts=58245e17

DRAFT LAWS, APPROPRIATE TO BE CONSIDERED BY THE PARLIAMENT OF THE 9TH CONVOCACTION

We believe that it is recommended for the 9th convocation of the Parliament to proceed with consideration of certain registered initiatives, which were suspended at various stages. Out of these, the following ones merit particular attention:

- **Electoral reform, abolition of the majoritarian system**

Congruent to the constitutional draft law, after 2016 parliamentary elections, all subsequent ones should be fully held by the proportional system, in multi-mandate constituencies. As a result, currently effective 73 majoritarian districts will be eliminated.^[3]

- **Third wave of the judicial reform**

The presented draft law needs to be refined and certain important changes need to be reflected. Nevertheless, it is crucial to enact the positive changes, which the legislative package entails, including: electronic distribution of cases, which implies random assignment of court cases, depriving the Chairman of the intervention tools; settlement of conflict of interest during the selection of judges; revised rules for business travel and provision of judges with additional guarantees in this regard.^[4]

- **Amendments to the Rules of Procedure regarding absences**

According to the legislative initiative of the Procedural Issues and Rules Committee, absence from plenary and committee sessions on family grounds should not be regarded as an honorable excuse. It is noteworthy that out of 5913 cases of honorable absence, family grounds accounted for 4100 cases.^[5]

- **Code of Ethics with valid enforcement mechanisms**

On 29 September 2016, the Bureau registered a draft resolution on the [Code of Ethics](#).^[6] Congruent to the draft, Parliament should adopt Code of Ethics in the form of a resolution, establishing ethical standards of conduct for MPs. It is noteworthy that the presented draft of the Code does not envisage response mechanisms for breach of its provisions. It is important that the Parliament adopts Code of Ethics, which would encompass valid enforcement mechanisms and spell out relevant sanctions for violations of the Code of Ethics.^[7]

“Transparency International – Georgia” analyzed the content of the legislative amendments, which were initiated at the Parliament of the 8th convocation, but could not be completed for a variety of reasons.

³ Parliament of Georgia, draft law: „Amendments to the Constitution of Georgia”

<http://info.parliament.ge/#law-drafting/10408>; **considered at the first reading at the plenary session**

⁴ Draft law: “on Common Courts of Georgia”, on moving amendments to the Organic Law of Georgia and associated bills <http://info.parliament.ge/#law-drafting/9715>; adopted at the plenary session at two readings;

⁵ Draft law on: „Amendments to the Rules of Procedure of Georgia”

<http://info.parliament.ge/#law-drafting/9591> **adopted at the first reading of the plenary session.**

⁶ Initiating MPs: G. Maghradze, D. Usupashvili, T. Japaridze, S. Khabuliani, G. Gachechiladze, E. Beselia, T. Kacheishvili, T. Kordzaia, S. Danelia, D. Berdzenishvili, B. Gujabidze; Author: the Permanent Parliamentary Council on Open and Transparent Governance

⁷ Draft resolution “Code of Ethics for MPs of Georgia”, <http://info.parliament.ge/#law-drafting/12987> registered at the Bureau, hearings have not started yet

HEARING PROCEDURE AT THE PREVIOUS CONVOCATION OF PARLIAMENT

Congruent to the Rules of Procedure of the Parliament, within the period of 6 months committees of the new convocation compile a list of draft laws (by leading committees) which were submitted to the Parliament of the previous convocation and for which continuing of the hearing procedure is deemed **appropriate or inappropriate**. The list is submitted to the Parliamentary Bureau for further consideration. The Bureau forwards it to the plenary session of the Parliament, which adopts a decision in the form of a resolution.

- If a draft law was initiated by the **Government** of Georgia, while compiling the list envisaged by the 1st section of the given Article, approval of the initiator is required.
- If a decision is adopted in favor of continuing hearing of the draft law, which was initiated by a **former MP or faction**, a **respective leading committee** is defined as the initiator. If necessary, the Parliament is entitled to designate a leading committee at the plenary session.^[8]

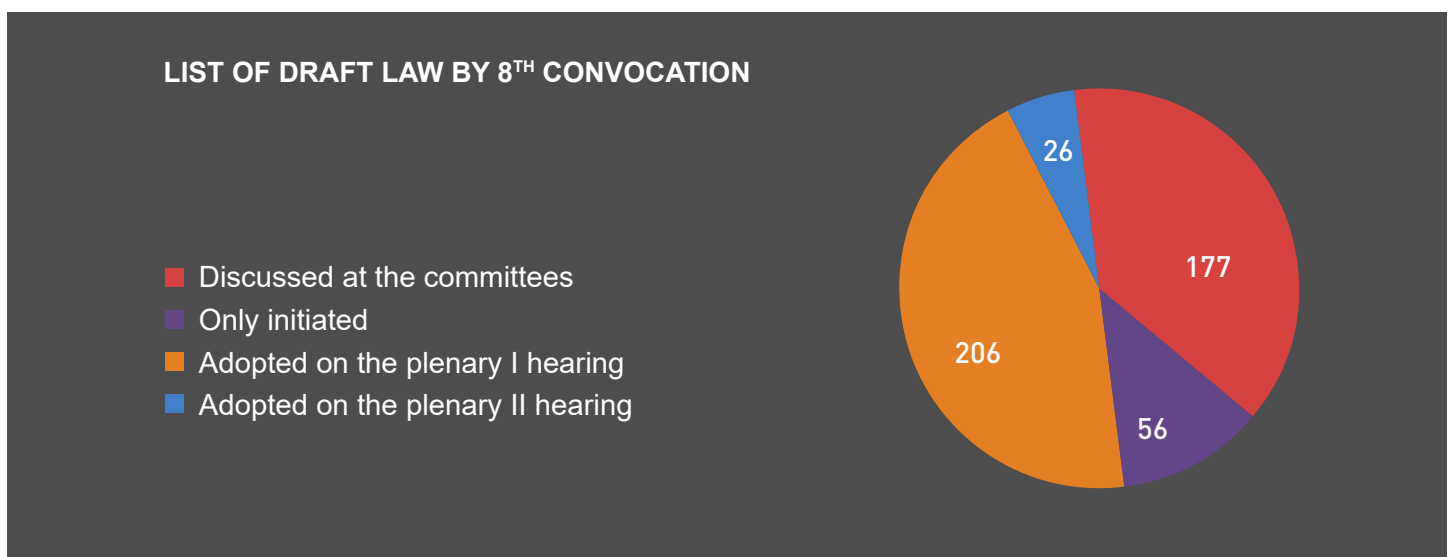
If the parliament does not take decision on appropriateness/inappropriateness of continuing hearing with respect to certain draft laws, they will be recalled.

Meantime, it is noteworthy that with respect to compilation of the given list and subsequent adoption of amendments, there are certain legislative/technical shortcomings, as the **Rules of Procedure do not define specific period for determining appropriateness/inappropriateness of hearing and passing draft laws**.

DRAFT LAWS, WHICH FAILED TO BE FULLY CONSIDERED AT THE PREVIOUS CONVOCATION OF THE PARLIAMENT, INITIATORS OF THE GIVEN DRAFT LAWS

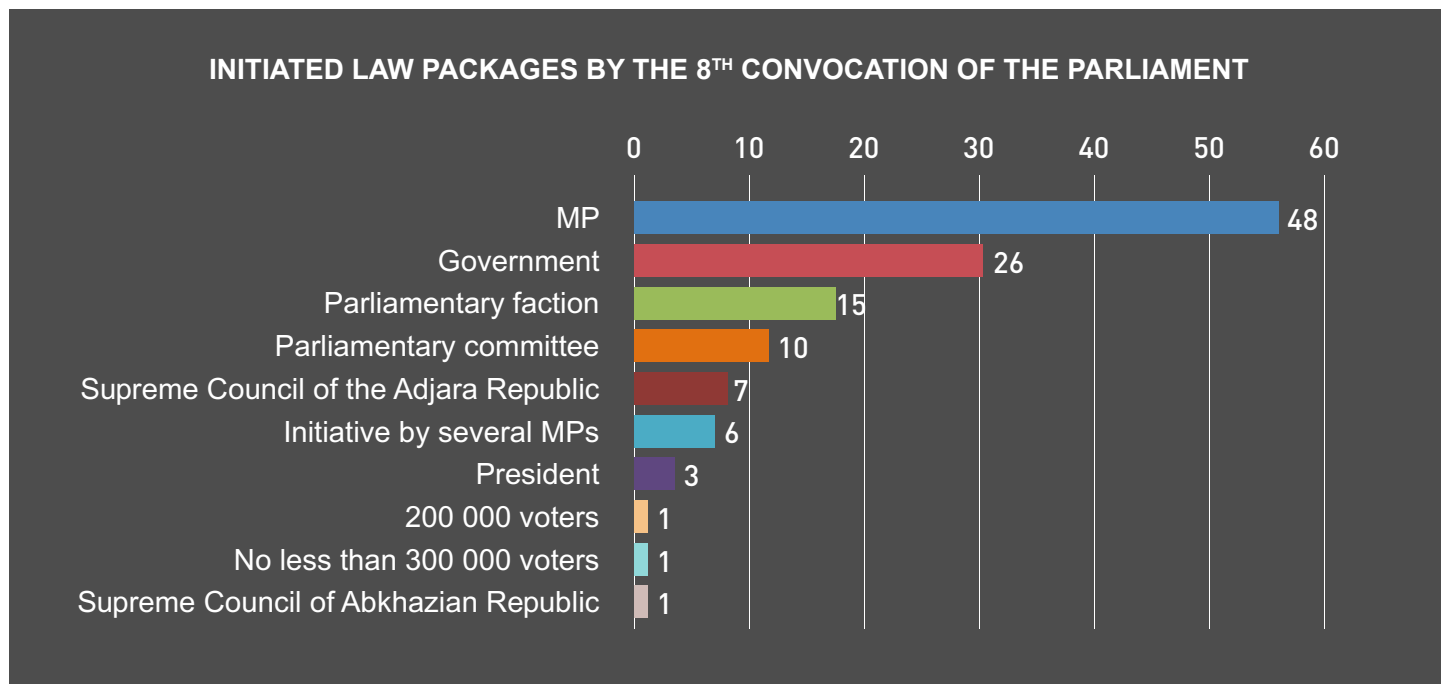
The Parliament of the 8th convocation failed to pass 114 legislative packages (465 draft laws) and 4 draft resolutions.

Diagram 2.



⁸ Meantime, the Parliament of the 9th convocation will include the MPs, who have initiated different draft laws in the Parliament of the 8th convocation: Kantaria Aleksandre, Erekle Tripolski, Gia Zhorzholoani, Eka Beselia, Gedevan Phophkhadze, Sergo Ratiani, Zaza Papuashvili, Gedevan Phophkhadze, Sergo Ratiani, Giorgi tsereteli, Teimuraz Chkuaseli, Karlo Kopaliani, Zviad Kvachantiradze, Dimitri Khundadze, Mirian Tsiklauri

Diagram 3. Number of legislative packages by initiators



DRAFT LAWS REGISTERED FIRST AT THE PARLIAMENTARY BUREAU OF THE 8TH CONVOCATION, WITH HEARINGS SUSPENDED

„[Amendments to the “Code of Georgia on Administrative violations”](#)”, [amendments to the law of Georgia on Advertising](#)“ (initiator: European Integration Committee, presenter Koba Davitashvili) were the first registered draft law failing to be adopted by the Parliament. It envisaged imposition of penalty on sale of sexual products at pre-school institutions, schools, institutions and organizations for persons below the age of 18 as well as within 50 meters from such sites, in all kinds of medical and educational facilities. Consideration of the draft law triggered heated [discussions](#) of the bill in the parliament as well as in the society. Ultimately, the initiative was suspended at the first reading of the plenary session. On 30 November 2016, the Parliament deemed continuation of the given draft law inappropriate.

PENDING DRAFT LAWS BY TOPICS

We hereby present the major initiatives that have not been considered / supported by the Parliament, by relevant thematic groups. We also present recommendations with regard to significant amendments.

AMENDMENTS TO THE CONSTITUTION

In the Parliament of the 8th convocation, several draft laws of constitutional amendments were registered. Out of these, [initiative](#) of 81 members pertaining to change of the election system deserves particular attention. The initiative states that the Parliament of Georgia consists of 150 members elected by a proportional system in multi-mandate constituencies, for a term of four years on the basis of universal, equal and direct suffrage by secret ballot. Meantime, it defines that seats of MPs may be assigned only to those election subjects, which manage to obtain at least 4% of votes according to all multi-mandate constituencies from those participating in the elections. In each multi-mandate constituency, seats of MPs will be distributed to the election subjects according to proportional results shown in the respective constituencies, as determined by organic law.

- [Initiative](#) of 200 000 voters pertained to changes in the election system. It stated that proportional and majoritarian system should be replaced by uniform proportional and regional proportional systems. 75 MPs should be elected by the former system and another 75 – by the latter.
- The initiative of 80 MPs regarding whereabouts of the Parliament also represents a matter of constitutional [amendment](#).
- The [initiative](#) of 80 MPs pertained to defining the concept of marriage in the Constitution. As it stated, marriage is a voluntary union of a woman and man for the purpose of establishing a family, based on the equal rights of the spouses.
- Another [initiative](#) registered at the 8th convocation of the Parliament prohibited foreign citizens from holding office of the President, Prime Minister, Chairman of the Parliament; yet another one was aimed at removing the provision, which was related to adoption of returned constitutional draft law with the comments of the president and revision of the Constitution at two subsequent sessions of the Parliament.

“Transparency International – Georgia” as well as other stakeholders have [repeatedly](#) called on the legislative body towards moving amendments to the election system. **Abolition of the majoritarian electoral system will provide for equitable distribution of parliamentary seats among the political parties according to the number of votes obtained.** Unfortunately, the 8th convocation of the Parliament did not demonstrate political will to implement the changes. **It is important for the parliament of the 9th convocation to focus on the given direction.**

PENDING CHANGES IN THE FIELD OF HUMAN RIGHTS

- The Government- [initiated](#) amendments to the law “on the Police” enable the police to install the photo / video equipment on police-owned vehicles with or without identifiable police signs for the purpose of ensuring road safety. **Covert police patrolling contradicts the Constitution of Georgia and poses a considerable risk of power abuse. Processing of personal data in such a manner for purposes of road safety is not legitimate.**
- The [initiative](#) put forward by 30000 voters entails amendments to the law of Georgia on the “Rule of Calculating Living Minimum”. It establishes the rules for determining the living minimum and defining calories of food basket. Specifically, the amendments are aimed at defining the minimum standards, which would serve as a basis for calculating the living minimum by the Government and the National Statistics Office of Georgia.
- The amendments to the Law of Georgia “on Public Service”, initiated by the member of Parliament Mariam Sajaia regulates the issues pertaining to announcement and taking of internship in public service, as well as duration of public service internship; if internship has been successfully completed and a relevant certificate has been issued, it should be included in work tenure. By the new Law on Public Service, work tenure includes: work in state offices and public service, including probation, professional development and reserve periods.

PENDING AMENDMENTS TO THE RULES OF PROCEDURE

- The [initiative](#) of the Procedural Issues and Rules Committee refers to absences of MPs from plenary and committee sessions **on honorable grounds, due to family reasons**. According to the amendment, family reasons will no longer be regarded as a reasonable excuse. Unfortunately, the legislative body didn't demonstrate the political will to changes. **We believe it is important to turn the given change into the law and ensure that "family reasons" are no longer considered as valid grounds for absences.**
- By [initiative](#) of the MP Aleksandre Kantaria, members of Parliament should have the right to make statements on week days of the plenary session in contrast to the current edition, which envisages such right only on Wednesday of plenary sessions.
- Initiative of the United National Movement refers to the freedom of speech; by the initiative, the factions from the majority or the minority are allowed to give their speech time to other factions from the majority or the minority.
- By [initiative](#) of Chiora Taktakishvili and Sergo Ratiani, for establishment of an interim investigation commission, instead of the list members, quorum should be defined by at least one third of all the MPs. Despite the fact that a request has been filed for setting up an interim investigation commission, the majority has not supported it. Since an interim parliamentary investigation commission is one of the most important levers of control, it is important to simplify the procedures in this matter and ensure that establishment of a commission is not solely dependent on the will of the majority.
- By [initiative](#) of Mikheil Machavariani, initiator of a resolution, declaration, statement, appeal will be allowed to request inclusion of a draft in the agenda of the plenary session in the case if the given plenary session is not preceded by the Bureau session or the Bureau has not adopted a decision on inclusion of the draft in the agenda of the plenary session.
- The [initiative](#) of the United National Movement envisages establishment of a new parliamentary committee – Committee for Good Governance, Transparency and Corruption Prevention.

PENDING CHANGES IN LAND OWNERSHIP

- The Government [initiative](#), concerning amendments to the law on "Agricultural Land Ownership", specifies the circle of persons entitled to agricultural land ownership. It also sets out the minimum and maximum area of the agricultural land that can be owned by a foreigner or a legal entity registered and founded in Georgia by a foreigner. The given initiative was suspended at the stage of committee hearings.^[9]
- Two [initiatives](#) of the Supreme Council of Adjara A/R are related to land ownership. Congruent to the legislative amendments, physical persons will be discharged of property taxes on agricultural land plots with area below 5 hectares; another initiative specifies additional conditions for recognizing plots of land illegally grabbed within the administrative boundaries of Adjara.

⁹ By resolution №3/1/512 of the Constitutional Court adopted on 26 June 2012, the provision of the law, which prohibited purchase or inheritance of agricultural land by foreigners was declared unconstitutional.

PENDING INITIATIVES CONCERNING THE PARTIES TO LOAN/MORTGAGE AGREEMENTS

In 2015, the Parliament passed [amendments](#) to the Civil Code and the Civil Procedure Code, which remove the possibility of evicting illegal/unlawful owners from real estate by the police. Before adopting the changes, a number of initiatives had been registered, which offered different solutions to the issue:

- [Initiative](#) of 49 Members of Parliament on amendments to the law on “Enforcement Proceedings”. The amendment envisages suspension of enforcement proceedings till 1 February 2014 with respect to real estate with ownership title acquired through loan and/or mortgage agreements.
- [Initiative](#) of Gedevan Pophkhadze on amendments to the law “on the Police” applies to the cases of the real estate, which have been foreclosed through loan or mortgage agreements and envisages suspension of police involvement in enforcement procedures till 1 February 2014.
- [Initiative](#) of the faction “Georgian Dream – Industrialists” on amendments to the Civil Code of Georgia and associated laws, which eliminates the practice of police eviction.
- [Initiative](#) of the faction “Georgian Dream – Industrialists” entails amendments to the law of Georgia “on the Police” and removes the provision, which authorizes the police to prevent real property infringement or other breaches without respective court order on the basis of submission of the ownership certificate by the owner.

“Transparency International-Georgia” believes that the presented initiatives, as well as adopted changes lead to unreasonable restriction of legal owners’ rights. **The rule envisaged by the law will bring along negative consequences for Georgia-based commercial banks, microfinance institutions, credit unions, leasing and development companies and citizens involved in real estate sector, which, in turn, will bear an adverse impact on the economic development of this sector.**^[10]

PENDING NEW DRAFT LAWS

There were several draft laws initiated in the Parliament of the 8th convocation. Out of these, the following ones deserve attention:

- [Draft law on Consumer Rights Protection](#), which along with the accompanying laws will regulate civil legal relationships between the customer and the retailer; general principles of physical persons rights, who enter the contractual relationship with the merchants for personal use of the latter’s products; it will regulate the safety regulations, state policy on protection of economic interests, consumer education and promotion of interested groups’ activities and etc. It is noteworthy that the Association Agreement also provides for strengthening consumer rights and improving the legislation in this direction.
- [A draft law on welfare of human companion animals](#) along with accompanying bills, it defines legal status of human companion animals and establishes required standards for purposes of their welfare.
- As [the law on the Development Bank of Georgia](#) and its accompanying draft laws stipulate, reorganization of the partnership fund will result in establishment of a joint stock company - Development Bank of Georgia. Legal grounds and functions of the bank are defined.

¹⁰ Transparency International – Georgia: Draft law on evictions is a risk: <http://www.transparency.ge/node/5294>

- Draft law of [International Protection](#) and its accompanying bills specify the standards of entry, presence and treatment of foreigners and those stateless persons, who are not in Georgia and who have called for international protection; legal status, rights and obligations, the social and economic guarantees and etc. for asylum seekers, refugees, persons with humanitarian status and persons under temporary protection.
- [The law on Philanthropy, Charity and Social Partnership](#) and its accompanying draft laws shape the legal framework, principles and forms for philanthropy, charity, philanthropic and charitable activities and social partnership.
- Amendments to the law on [„Adoption and Foster Care“](#) and the accompanying draft laws introduce new approaches to relations arising from the adoption and foster care cases; they also include regulations for international adoption. Legislative package determines other important aspects of the matter.

PENDING CHANGES TO ANTI-DISCRIMINATION LAW

The eighth convocation of Parliament adopted the law “on the Elimination of All Forms of Discrimination”. Adoption of the law was followed by certain amendment initiatives.

- [Initiative](#) of I. Jachviani concerning the law “on the Elimination of All Forms of Discrimination” and other accompanying draft laws envisages removing of “sexual orientation, gender identity and expression” as one of the forms of discrimination from the list of the norms, which ensure equal rights for all physical and legal entities. **The initiative definitely is a step backwards and hopefully, the Parliament will not consider it appropriate to continue the respective hearing procedure.**

The Parliament also registered a number of initiatives to improve practical application of the anti-discrimination law. **It is recommended for the Parliament of the 9th convocation to continue work in this direction:**

- [Initiative](#) of the Human Rights and Civil Integration Committee on amendments to the organic law of Georgia on “the Public Defender” - natural and legal persons who work out recommendations and general proposals within the law on the “Elimination of All Forms of Discrimination” are required to discuss them and within the term of 20 days notify the Ombudsman, in writing, of results of such review.
- The [Initiative](#) of the Human Rights and Civil Integration Committee on the amendments to the Civil Procedure Code defines a new term for appealing to the court by those who view themselves as victims of discrimination; namely, after a person learns about the circumstances of alleged discrimination, it is possible to apply to the Court during a period of one year (instead of 3 months).
- According to the [initiative](#) of the Human Rights and Civil Integration Committee, moving amendments to the law “on the Elimination of All Forms of Discrimination” brings along new commitment for legal persons of natural and private law. In particular, materials, documents, explanations and other information pertaining to a particular case should be submitted to the Public Defender by the established rule; otherwise, it will be considered that the complaint/application circumstances legally justify the request, the complaint/ application will be satisfied.

PENDING INITIATIVES REGARDING THE RULE FOR DETERMINING BONUSES

The Parliament of the 8th convocation has repeatedly held discussions on the rule of disbursing bonuses. Z. Kutsnashvili put forward an [initiative](#) entailing elimination of bonuses; however, it failed to gain support. As the Members of Parliament stated, the issue needed to be handled in a comprehensive manner. After elimination of bonuses, there still remained possibility of getting additional funds.

The initiative of the faction “Georgian Dream – Republicans” on amendments to the law on the Public Service and the accompanying [draft laws](#) regulate the issue of bonuses; in particular, a list of state and political officials is established, who are not eligible to receive bonuses. Meantime, the initiative regulates disbursement, limits and frequency of bonuses for other public servants; it also set the limits on the monetary incentives. The initiative defines a new way of determining compensation components for MPs (political officials): salary includes a prescribed remuneration, amount defined by the Bureau for execution of MP duties and supplements provided by the law. Thus, the presented edition no longer includes bonuses for MPs.^[11]

We believe that introduction of a legislative framework for regulating disbursement, scope and amount of bonuses is a highly welcome process. However, in our opinion, the given changes should be accompanied by increase of salaries; otherwise it will reduce the competitiveness of the civil service and may lead to drain of highly qualified staff.^[12]

PENDING LEGISLATIVE INITIATIVES ON SOCIAL ALLOWANCES AND COMPENSATION

A number of initiatives and proposals were registered at the 8th convocation of Parliament, most of which envisaged certain types of financial incentives for specific groups of people, ex:

- Congruent to the [amendments](#) to the law on “State Compensation and State Academic Scholarship”, rules are specified for calculating compensation of members of the Supreme Council of Adjara A/R, as well as for members of the Supreme Council elected between 1991 and 1996, and former MPs elected in Adjara in 2001.
- Two initiatives of the President were related to increase of compensation and bonuses (initiated in 2013). Congruent to the [initiative](#) on moving amendments to the law on “State Compensation and State Academic Scholarship” and accompanying laws, compensation rules will also apply to retired persons of Intelligence Service; compensation will increase for persons and family members of the persons retired from the agencies of internal affairs, state security service and the intelligence service. The President’s [initiative](#) on moving amendments to the law “on State Awards”, amount of one-time monetary award to the national hero increases - instead of 10 000 GEL it is defined by 15 000; in addition, state compensation is assigned to these persons and their family members; they also benefit from funding of public transportation and health insurance expenses by the state.

¹¹ By the first paragraph of Article 37 of the effective Law on Public Service, remuneration of a public servant includes salary, bonus and other additional allowances determined by law. The resolution N449 issued by the Government on 15 July 2014, established a rule of determining possible amount of bonus, rule and frequency of disbursement. It imposed a limit on one-time payment of bonuses; frequency of disbursement has been restricted as well. Parties authorized for disbursement have been defined; goals and grounds for awarding bonuses have been specified; the resolution does not apply to supplements, which are awarded at the discretion of the head of a particular institution. The new law on the public service envisages incentives for public officials based on assessment of their performance. The draft law includes the forms listed in the effective law with the exception of positional wage increase; in addition, one-time cash awards are replaced by bonus, which represent part of the positional remuneration under the currently effective law.

¹² Transparency International – Georgia: Staff Policy and Property Declarations <https://goo.gl/CsCIXB>

- Congruent to the amendments to the law on Social Assistance and accompanying laws (initiated by the MP G. Gozashvili) allowances overpaid before 1 July 2016 are legalized and are no longer subject to return. In addition, withheld amount of living allowances as well as any amount paid to the State budget by the persons indebted due to excessive disbursement of living allowances are not subject to return. Meantime, court and enforcement proceedings on return of legalized living allowances should be suspended.

Amendments related to the social benefits and compensation are welcome if they aim to address pitfalls in the legislation, eliminate inequalities and distribute funds fairly. However, it is recommended to consider draft laws with multiple components, including the law on the budget, in mind.

PENDING INITIATIVES ON ECONOMIC CRIMES

Several initiatives were registered in the 8th convocation of Parliament concerning economic crimes:

- [Initiative](#) of Zurab Japharidze on moving amendments to the law on “Amnesty and Declaration of Non-Declared Tax Obligation and Property Legalization” and accompanying laws; by the proposed drafts, criminal cases will be suspended and punishment will be cancelled to the persons, who committed crimes envisaged by a series of provisions of the eighth section of the Criminal Code (economic offence) before 1 January 2013.
- [Initiative](#) of the “United National Movement” entails amendments to the “Criminal Code of Georgia” related to the business or other economic crimes (illegal business activities, forgery, production and/or sale of false excise stamps, illegal actions at the time of insolvency etc.) and reduction of sanctions.

Prime Minister [Giorgi Kvirikashvili](#) has issued a statement with regard to decriminalization of economic crimes. **Liberalization of the Criminal Code is an important step forward; however, it is recommended that the amendments to the Criminal Code are considered in the form of a comprehensive reform.**