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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

OPINION
ON THE AMENDMENTS TO THE ORGANIC LAW ON THE CONSTITUTIONAL COURT AND TO THE LAW ON CONSTITUTIONAL LEGAL PROCEEDINGS

Endorsed by the Venice Commission
at its 107th Plenary Session (Venice, 10-11 June 2016)

On the basis of comments by:

Mr Christoph GRABENWARTER (Member, Austria)
Mr Harry GSTÖHL (Member, Liechtenstein)
Mr Evgeni TANCHEV (Member, Bulgaria)

I. Introduction

1. On 20 May 2016 the Venice Commission received two requests for opinion on the amendments to the Organic Law amending the Organic Law on the Constitutional Court of Georgia (hereinafter, "Amendments to the OLCC") and to the Law amending the Law on Constitutional Legal Proceedings (hereinafter, "Amendments to the LCLP", both in CDL-REF(2016)038, together with an Explanatory Note). One request was sent by the Head of the Presidential Administration, on behalf of the President of Georgia, the other request was transmitted by the Permanent Representative of Georgia with the Council of Europe on behalf of the Government and Parliament of Georgia.

2. The amendments were adopted in first reading on 27 April, in second reading on 13 May and in third hearing on 14 May 2016. On 19 May 2016, the co-rapporteurs for Georgia of the Monitoring Committee of the Parliamentary Assembly of the Parliamentary Assembly of the Council of Europe had expressed their regret at the hasty adoption of the amendments. They furthermore regretted that these amendments had not been sent to the Venice Commission for opinion prior to their adoption.[1]

3. According to Article 68 of the Constitution, the President of Georgia has to either enact adopted laws or veto them within ten calendar days. The amendments reached the President for promulgation on 19 May 2017. In view of the urgency of the matter, the President requested an opinion to be prepared within ten days.

4. As a consequence, it was not possible to organise a visit to Georgia and the rapporteurs had to prepare this opinion on the basis of the translation of the amendments provided by the Georgian authorities. Inaccuracies may occur in this opinion as a result of incorrect translations.

5. The Commission sent a questionnaire to the Permanent Representation of Georgia with the Council of Europe, to the Constitutional Court, to the Ombudsman, to the Constitutional Court and to the NGO "Coalition for an Independent and Transparent Judiciary of Georgia". The Commission received replies from the Ministry of Justice, the Constitutional Court and the NGO.[2]

6. On 24 May 2016, representatives of the President of Georgia provided information to the Secretariat in Strasbourg. On 25 May, the Minister of Justice had a discussion via Skype on the amendments with Mr Gstöhl as well as Mr Markert, Ms Granata-Menghini and Mr Dürr from the Secretariat.

7. The Bureau of the Venice Commission authorised the preparation of a preliminary opinion, its transmission to the authorities prior to the plenary session and its publication. The preliminary opinion[3] was prepared on the basis of contributions by the rapporteurs and sent to the Georgian authorities as a preliminary opinion. It was made public on 27 May 2016.

8. On 31 May 2016, the President of Georgia vetoed the amendments and submitted considered remarks to Parliament (CDL-REF(2016)041). These proposed changes were adopted by Parliament on 3 June 2016 and the revised amendments entered into force on 4 June 2016.

9. Following an exchange of views with Ms Tea Tsulukiani, Minister of Justice, Mr Levan Bodzashvili, Deputy National Security Adviser to the President of Georgia and Mr George Papuashvili, President of the Constitutional Court, this opinion was endorsed by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016).

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[1] http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6175&lang=2&cat=3

[2] A reply to the questionnaire from the Ombudsman was sent after the publication of the preliminary opinion. It seems that the questionnaire was not received in time by the Ombudsman.

[3] CDL-PI(2016)005.

II. General

10. "Constitutional justice is a key component of checks and balances in a constitutional democracy."[4] In countries where a Constitutional Court or equivalent body has been established, the main task of this Court is to identify and remove unconstitutional provisions from the body of legislation. As a consequence, the continued functioning of the Constitutional Court is a precondition for the legitimacy of State action in a democracy.[5] This principle has practical repercussions on the Court's composition and on its procedure.

11. In view of the short deadline, this opinion can only deal with the major points of the amendments and examine whether or not some of them are detrimental to the proper functioning of the Constitutional Court in the light of European standards.

12. Other issues could not be dealt with, this concerns *inter alia*:
1. A change to the procedure for the election of the Secretary General of the Court (Article 14 OLCC).
2. Raising the number of votes for the approval of the detention of a Constitutional Court judge from a simple to an absolute majority (Article 15.3 OLCC).
3. The definition of elements that need to be included in the record of minutes on the suspension of an act (Article 21.5 LCLP).

13. "Institutional legislation, like that on the Constitutional Tribunal, needs thorough scrutiny and the opinions of all relevant stakeholders should be considered. Even if Parliament is not obliged to follow their views, this input can avoid technical errors, which can defeat the purpose of the legislation."[6] The Government's Explanatory Note and the reply to the questionnaire insist that all stakeholders, including the Constitutional Court and NGOs were consulted and that most comments were taken on board. The adoption of such a wide-ranging institutional reform within two months (10 March to 14 May 2016 according to the Explanatory Note) seems very fast, notably as the amendments were adopted in second hearing in the evening on 13 May and in third hearing in the morning of 14 May 2016. However, the preliminary opinion, endorsed by the Commission, could not examine this question in depth.

III. Legal assessment

A. Election of the President of the Constitutional Court

14. Current Article 10.3 OLCC provides that the President of the Court is nominated by an agreed proposal of the President of Georgia, the President of the Parliament of Georgia and the President of the Supreme Court. This means that when electing their President, the judges are confined to vote for the (one) judge proposed by these three authorities. The Explanatory Note for the amendments sets out that this provision would be unconstitutional. Article 88.2 of the Constitution stipulates that "The Constitutional Court elects its chairman from its composition for the period of 5 years."

15. The amended Article 10.3 OLCC provides that at least three members of the Court may make a proposal for the election of the President of the Court. While it is for the Court itself to decide

[4] CDL-AD(2013)012, Opinion on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session, Venice, 14-15 June 2013, par. 76.
[5] Opinion on the Two Draft Laws amending Law No. 47/1992 on the Organisation and Functioning of the Constitutional Court of Romania, CDL-AD(2006)006, para. 7; Amicus Curiae Opinion on the Law on the Cleanliness of the Figure of High Functionaries of the Public Administration and Elected Persons of Albania, CDL-AD(2009)044, para. 143;
[6] CDL-AD(2016)001, para. 132.

whether the current wording of Article 10.3 OLCC is unconstitutional, the new solution is clearly preferable as it allows for a real choice for the judges when they elect their President. This amendment is a welcome step forward.

16. Article 10.4 OLCC provides that the candidates for the two Vice-Presidents shall be nominated by the President of the Court. This provision has not been amended. While this rule perhaps intends to promote a close working relationship between the President and the Vice-Presidents, a change of this system might enable a wider choice also for the election of the Vice-President.

B. End of the term of office of the judges

17. The current version of Article 18 OLCC provides that the term of office of the judges is extended as long as they are still participating in the consideration of pending cases. As a consequence, the mandate of the new judge only starts when the outgoing judge has finished his or her cases. According to the Explanatory Note this led to a situation where judges could extend their 10-year term unconstitutionally.

18. The amended Article 18 OLCC therefore provides that the mandate of the judge ends after 10 years in all cases.

19. Extending the term of a judge in order to enable him or her to finish participation in pending cases serves the purpose of securing the effectiveness of constitutional justice. It need not necessarily mean that the new judge cannot take office. The extension of the term may be limited to cases where deliberation has started in the plenary.

20. On the other hand, experience shows that in a system with a strict end of the mandate of constitutional judges the succession between judges can be in danger. In a number of countries the appointment / election of new judges was delayed, sometimes for long periods. In some cases the number of remaining judges fell below the quorum and the courts were unable to sit. Therefore, the Venice Commission recommends in principle that judges leave office only when a new judge takes office.[7] Of course, such a system should be provided for on the level of the Constitution, even if this may seem difficult in the current situation in Georgia.

21. The amendment of Article 18 OLCC goes further than providing for a strict limitation of the mandate of the judges. During the last three months of his or her mandate, the judge is not allowed to participate in new cases, except (a) in admissibility cases, for which s/he cannot be a speaker (rapporteur), (b) in cases relating to electoral disputes and (c) in impeachment cases against high officials (Article 19.1.d and 19.1.h OLCC).

22. While limiting the term of office of a judge to the constitutional term of 10 years seems reasonable in view of the text of the Constitution, it is difficult to understand why the judges cannot fully exercise their constitutional function during the last three months of their mandate. Whether such a limitation of the mandate is unconstitutional is for the Constitutional Court itself to decide.

23. The Minister of Justice explained that the logic of this provision was that judges should not leave office in the middle of pending cases (on which they can no longer continue to sit after the end of their mandate as per the amendment). The three months rule would strike a balance ensuring that the judges terminate their cases before leaving office.

24. From a European perspective, the introduction of a three-month period seems arbitrary. The judges could have taken on new cases only four months before the end of their mandate and these

[7] Opinion on possible constitutional and legislative improvements to ensure the uninterrupted functioning of the Constitutional Court of Ukraine, CDL-AD(2006)016, para. 21; Opinion on the Draft Law on the Constitutional Court of Montenegro, CDL-AD(2008)030, para. 25.

cases may well be pending at the end of the mandate.[8] The three months exclusion period might quantitatively reduce this problem, but it does not address its root.

25. There seem to be mainly two possible solutions: either to retain the "old" system, whereby the outgoing judges are allowed to finish pending cases after the end of their mandate while the new judges already take up office (the constitutionality of such a system would need to be examined), or to replace the judges when their mandate ends with the effect that they cannot participate in pending cases any more.

26. The latter solution is a possibility, notably in constitutional proceedings, where there usually is no taking of evidence that a judge must have personally seen. Constitutional proceedings are mostly based on the evaluation of legal arguments. New judges may read the arguments as they are presented during the proceedings and may take over from their predecessor in the middle of the proceedings without the need to restart them.

27. The problem stems from current Article 4.1 OLCC, which states that only the judges who directly participated in the hearing of a case can adopt a judgment for that case. The amended version of Article 4.1 OLCC already relaxes this strict rule by providing that when a judge has been replaced the case has to be re-deliberated only upon request by the new judge. In view of this solution – providing for a replacement of judges without the need to restart the hearing of the case – there is no longer the need for preventing outgoing judges from exercising their mandate until the very end of their mandate.

28. The Venice Commission acknowledges there is a need to address the system of extension of the mandate but it strongly recommends removing the provision which – probably unconstitutionally – reduces the powers of the judges during the last three months of their term. Furthermore, a strict term limit should be introduced only once the Constitution is amended, to provide that a judge leaves office only when his or her successor takes office.

C. Procedure in case of re-adoption of an unconstitutional provision

29. Article 25.4[1] OLCC sets out that when a new case is brought against a norm with the same content as one that was already found unconstitutional, the case is to be declared inadmissible and the challenged provision is declared unconstitutional. Article 25.4[1] OLCC is amended with a sentence that such inadmissibility decisions enter into force with their promulgation, i.e. the act is declared unconstitutional as per the publication of the inadmissibility decision. While there is no objection against the amendment, this article shows that there are problematic provisions in the OLCC, which are not addressed in the amendments.

30. While it is positive that Article 25.4[1] OLCC deals with the re-adoption of unconstitutional provisions, the method to do so seems incoherent. In practice, it may be difficult to ascertain in each case to which degree the two provisions – the one declared unconstitutional in an earlier decision and the provision challenged in the current proceedings – have the same content. Therefore, it is doubtful that the decision as to whether a law adopted by Parliament is unconstitutional should be confined to mere inadmissibility proceedings. Such an important decision should be taken in a procedure on the merits.

31. The Venice Commission recommends addressing this issue as part of future amendments, which should be preceded by a thorough examination of the whole OLCC and LCLP in co-operation with the Court itself.

[8] Statistics show that both board and plenary cases last longer than three months.

D. Interlocutory measures – suspension of a provision

32. The current version of Article 25.5 OLCC sets out that if "the Constitutional Court" is satisfied that the operation of a normative act may entail irreparable consequences to one of the parties, the Court is entitled to suspend the application of that provision until a final decision. This is an authority of a simple majority of the board (chamber) when a board deals with the case. The amended wording reserves this competence to the plenary session. In such a case, the plenary session has to decide with at least half of all members of the plenary (i.e. five judges). The amended Article 25.4 OLCC also provides that the suspension may be lifted again upon request by a party. Following this interlocutory decision by the plenary session, the decision on the merits is taken by a board or the plenary session depending on the general distribution of jurisdiction between these organs as set out in Article 19 OLCC.

33. It seems strange that a final decision of unconstitutionality of a legal provision can be made by the board whereas a mere interlocutory decision on the suspension of the same provision can only be taken by the plenary session. In addition, the judges of the plenary session who are not members of the board in charge will have to familiarise themselves with the case, which will necessarily take time and thus delay the decision.

34. Finally, it is not logical that an interlocutory decision which is urgent by its very nature[9] should be taken in a more complicated procedure, which includes a transfer of the case from the board to the plenary session and then back to the board for the decision on the merits.

E. Automatic case distribution

35. Instead of a distribution of cases by the President of the Court, the amended Article 17.3^1 LCLP introduces an automatic system for assigning cases to speakers (rapporteurs). This is welcome as it increases the independence of the judges with a view to any discretion on the side of the President of the Court. The Minister of Justice informed the Commission that this system will not be a random system but it will take into account the case-load of each judge. It has to be ensured that the Court itself has full control over the programming and use of such software.

F. Increased competences for the plenary session

36. Amended Article 21 OLCC shifts the competence for a large number of issues from the board to the plenary session. This concerns notably

1. electoral and referendum issues (Article 19.1.d OLCC);
2. referrals from ordinary courts (Article 19.2 OLCC);
3. the interlocutory suspension of acts, which have irremediable consequences for a party (see under section D above) and
4. the constitutionality of organic laws.

This important shift has to be seen together with the increased quorum and the increased majority to take decision in the plenary session (see further below under section G).

37. In addition, according to Article $21^1.1^1$ OLCC, any member of a board can request the transfer of a case to the plenary session. A member of a board can do so a) when his/her position in the case differs from earlier case-law of the Court or b) when the content of the pending case (probably the draft act as presented by the speaker judge) contradicts the essence of the Constitution and/or constitutes a "rare application" of the Constitution or creates a particularly important legal problem. The translation of the amendments remains unclear on what alternative a) could mean. It seems to be sufficient that the opinion of the judge making the request contradicts earlier case-law. If this is

[9] In Liechtenstein, Articles 52 and 53 of the Law on the Constitutional Court *(Staatsgerichtshofsgesetz)* provide that the interlocutory decisions are in the sole competence of the President of the Constitutional Court.

so, this is rather odd. Why should a case go to the plenary simply because one member of a board develops a position which contradicts earlier case-law? This would make sense only if a majority of the board is developing such a position. Alternative b) at least seems to refer to the position of the majority of the board rather than an individual judge.

38. What makes this provision objectionable is that the judge can make a request to transfer the case at any stage of the procedure before the board and the plenum can reject such a request but only by a motivated decision of six out of the nine judges.

39. Requesting a two-thirds majority to reject such a request seems excessive. This provision could easily be abused by a judge.

40. Finally, Article 21^1.1 OLCC already provides a reasonable mechanism for the transfer of a case from a board to the plenary session when the board is of the opinion that its position is different from the practice of the Constitutional Court. The new Article $21^1.1^1$ OLCC retains this mechanism but attributes the same competence to a single judge, which is incoherent. If a single judge can refer a case to the plenary session under Article $21^1.1^1$ OLCC, it does not make sense to keep a provision which gives this competence to a majority of the board under Article 21^1.1 OLCC.

41. If the possibility for a single judge to request a transfer under Article $21^1.1^1$ OLCC were retained, it should not be required that a two thirds majority give a motivated decision to reject that request. In systems where such a referral exists (such as in Austria) there is either no such requirement or the plenary can decide in fast track or summary proceedings if it finds that the case does not raise an issue under the Constitution.

G. Quorum and majority for taking decisions in the plenary session

42. According the previous wording of Article 44.1 OLCC, the plenary session is entitled to take decisions with at least six out of the nine judges present. The amendment raises the quorum to seven out of nine judges. Furthermore, Article 44.2 OLCC raises the majority for taking a decision from a simple majority of the judges present to six members.

43. The Explanatory Note refers to the requirement of a qualified majority in the Czech Republic where "certain decisions of the Constitutional Court also require a qualified majority – nine judges present out of a maximum of 15 judges. The quorum for the Court to sit is ten judges. If all judges are present, this is equivalent to a three fifths majority (60 per cent); when there are fewer judges, e.g. due to illness, this ratio automatically rises. This special majority applies in cases of high treason of the President of the Republic and the devolution of his or her powers to the Prime Minister, the control of treaties prior to ratification, and the annulment of statutes and individual provisions thereof."[10] The Explanatory Note also insists that in Georgia, there is no constitutional provision defining the majority for taking decisions in the Constitutional Court.

44. The Czech member of the Venice Commission, Ms Veronika Bilkova, provided the following information as concerns the Czech example which is rather specific because:

a. The Czech Republic / Czechoslovakia have a very long tradition of constitutional justice. Czechoslovakia was one of the first countries to establish a specialised Constitutional Court already after WWI. Although the Court could not start to fully operate before the long Nazi and communist period, there is a tradition to rely on. This tradition also implies the existence of certain unwritten rules on the functioning of the Constitutional Court, including the rule under which the Court should always try to adopt its decisions by consensus and the majority should not try to defeat the minority using the voting system. This has worked very well in the Czech Republic so far.

[10] CDL-AD(2016)001, para. 80.

b. The Czech Republic (and formerly Czechoslovakia) has had this system since the reestablishment of its constitutional justice in the early 1990s. This situation differs substantially from a case where the system of a higher quorum/majority is introduced, while the Constitutional Court is already in place.
c. The Czech model is a unique one. It is a fruit of a particular constitutional tradition and its experience cannot be transferred to other countries without considering their respective constitutional and legal traditions.

45. The reply to the questionnaire by the Government explains the increased majority for annulling organic laws with their higher normative value, below the Constitution but above ordinary law and the higher majority needed in Parliament to adopt these laws. However, this explanation falls short of explaining why an increased majority would be necessary for the whole range of competences of the plenary session rather than for the annulment of organic laws only.

46. The new rule of Article 44.2 OLCC means that, depending on the number of judges present – nine, eight or seven – this majority to take a decision in the plenary is 67, 75 or even 86 per cent, respectively. In combination with the increased quorum, this is excessive and the Court can easily be blocked from taking decisions by a minority of judges.

47. This amendment must be seen together with the shift of powers from the board to the plenary session. Taken together, these provisions will certainly make it more difficult to ensure the main task of a Constitutional Court – to identify and remove unconstitutional provisions from the body of legislation.

48. In its opinion on Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, the Commission had pointed out that a "comparative overview shows that, with regard to the decision quorum, in the vast majority of European legal systems, only a simple voting majority is required. There are a few – and limited – exceptions to this rule in Europe"[11] and "a decision quorum of two-thirds is clearly not the general rule for plenary or chamber decisions in constitutional courts in Europe. Such a very strict requirement carries the risk of blocking the decision-making process of the Tribunal and of rendering the Constitutional Tribunal ineffective, making it impossible for the Tribunal to carry out its key task of ensuring the constitutionality of legislation."[12]

49. Especially if the Court were to be attributed additional competences in the field of human rights in future reforms as indicated by the Minister of Justice, it should be ensured that the Court can exercise its mandate in all cases if it is to become an effective remedy.

50. The Venice Commission strongly recommends removing from Article 44.2 OLCC the requirement of a minimum of six votes for the taking decisions in the plenary assembly.

H. Reinforcement of the requirement for the signature of judgments by all judges

51. Existing Article 43.2 OLCC and Article 29.1 LCLP already provide that the judgments of the Constitutional Court must be signed by all judges. Only acts not related to the consideration of a case shall be signed by the President and the Secretary of the Constitutional Court, according to Article 43.3 OLCC.

52. The Minister of Justice informed the Commission that this provision has already led to a problem in one case,[13] where one of the judges was unable to sign a judgment because he was in hospital for urgent treatment.

[11] CDL-AD(2016)001, para. 74.
[12] CDL-AD(2016)001, para. 79.
[13] Giorgi Ugulava vs. Parliament of Georgia of 16 September 2015.

53. The principle of the uninterrupted functioning of the Constitutional Court requires that a situation should be avoided where the absence of a signature by a single judge – be that deliberate or not – can prevent the publication of a judgment.

54. Instead of removing the requirement of the signature by all judges in view of this experience, Articles 22.3, 23.3, 23.5 and 29.1 LCLP further reinforce the requirement of the signature of all judges having participated in the deliberation of the act concerned and Article 33.1 LCLP requires that only acts which conform *inter alia*[14] to the former provisions can be published.

55. The amendments take into account that there may be cases where a judge cannot sign for objective reasons (e.g. because of sudden illness) and cases where a judge refuses to sign. According to Article 22.3 LCLP this fact may be announced in the courtroom, if the number of judges having signed equals at least the number of judges for the adoption of the ruling/minutes. In the cases defined in Article 22.4 LCLP (reference to the inadmissibility of cases that deal with provisions the content of which was already found unconstitutional and interlocutory suspension of provisions causing irreparable harm), the rulings/minutes must be announced together with this fact. However, this distinction between optional and obligatory announcement is not reflected in Article 29.1 LCLP, which seems to refer to such an obligation in all cases. For coherence, Article 29.1 LCLP should follow Article 22 LCLP in this respect.

56. During the discussion with the Minister of Justice, the exact effects of this rule remained unclear. The new rule that an act of the Court can be published if the number of judges having signed equals at least the number of judges for the adoption of the ruling/minutes seems to refer to the total number of signatures, not only to the signatures of the judges who voted in favour of the act. In this case the rule seems reasonable.

57. If, however, the clause "the number of signees is enough to make such a ruling" were to mean that the number of signees refers to those judges who made the ruling, i.e. those who voted in favour of it, this rule could become problematic in some cases. This is no problem if the judge who did not sign voted against the act. Then, the number of judges having signed will still be sufficient for the act to be announced. However, this can be questionable if the judge voted in favour of the act, the majority for the act is by one vote only and the judge cannot sign for objective (e.g. medical) reasons. In this case, the valid majority for the act would be achieved, but the Court would be unable to publish the act. Such a situation of *non liquet* must be avoided. Article 22 LCLP should be clarified.

58. An alternative would be to replace the requirement of a signature of the Courts' judgments by all judges with a signature of the President of the Court and the Secretary General only. An – incomplete – comparative overview shows that two major groups can be distinguished as concerns the modalities for signing decisions of the constitutional courts and equivalent bodies. In a first group, all judges who participated in the case sign. This group includes Albania, Algeria, Andorra, Brazil, Chile, Estonia, Germany, Kazakhstan, Kyrgyzstan, Lithuania, Peru, Poland, Republic of Korea, Romania, Russia, Turkey and Ukraine. In the second group, only the President / session chair, secretary general and/or the rapporteur judge sign. This group comprises Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", France, Italy, Kosovo, Latvia, Liechtenstein, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Portugal, Serbia and Slovenia. It is clear that Georgia currently belongs to the first group.

[14] Article 33.1 LCLP provides that only acts that comply with the provisions of articles 21.3, 21.5, 22.5, 29.1, 31 and 32 LCLP can be published.

I. Publication of the acts of the Constitutional court

59. Article 43.10 OLCC provides that the full text of an act of the Constitutional Court (judgment, ruling, recording notice or conclusion) is published on the website of the court within 15 days "from its receipt" (adoption) and sent to the "Legislative Herald of Georgia", which shall publish it within the following two days.

60. The Commission welcomes that while introducing a publication of the acts of the Court in the Legislative Herald, Article 25.6 OLCC also makes it clear that "the Constitutional Court act is regarded as promulgated if its whole text is published on the webpage of the Constitutional Court".[15] It must be ensured that the Court has full control over the publication of its acts on its own web-site. This avoids any interference by the Executive in the work of the Court by refusing to publish a judgment.[16]

61. It is also positive that Articles 43.13 and 47.2 OLCC provide that dissenting and concurring opinions are to be systematically published together with the act, and not only upon request of the judges formulating that opinion (Article 7.4 LCLP). Of course, the refusal to provide a dissenting or concurring opinion or a delay in providing such an opinion must not lead to a delay of the publication of the act on the web-site and the entry into force of that act.

IV. Conclusions

62. In view of the short deadline, this opinion, first published as a preliminary opinion, then endorsed by the Commission, could only deal with certain aspects of the amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings of Georgia. This opinion therefore examines in the light of European standards whether these amendments are detrimental to the proper functioning of the Constitutional Court which is essential for the separation of powers in a democratic State.

63. The amendments bring about a number of very positive changes, which are welcome, notably:
1. the new election system for the President of the Court, which ensures a real choice for the judges electing their President (Article 10.3 OLCC);
2. the systematic publication of dissenting and concurring opinions (Article 43.13 and 47.2 OLCC);
3. the introduction of an automatic case-distribution system (Article 17.3^1 LCLP) and
4. the entry into force of acts of the Constitutional Court upon their publication on the web-site of the Court (Article 25.6 OLCC).

64. However, there are other provisions that need to be amended lest the Constitutional Court risks being prevented from exercising its constitutional task, notably:
1. a strict limitation of the term of the judges should be only introduced together with a constitutional amendment providing that the outgoing judge continues in office until the new judge enter into office and the provision which reduces the powers of the judges during the last three months of their term should be removed (Article 18 OLCC);
2. the requirement of a minimum of six votes for the taking of decisions in the plenary session should be lowered (Article 44.2 OLCC) and
3. the provision enabling a single judge to refer a case to the plenary session should be amended. The requirement of a motivated decision should be removed and a simple majority of the judges of the plenary session should be able to reject such a request (Article $21^1.1^1$ OLCC).

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[15] The reply to the questionnaire makes a distinction between "publicizing" the decision on the website while it is "published" in the Legislative Herald.
[16] CDL-AD(2016)001, para. 143.

65. During the examination of these amendments, the Venice Commission noted that also other issues in the OLCC should be addressed, for instance, a declaration of unconstitutionality of a law because it has the same contents as provisions found unconstitutional earlier should be taken in proceedings on the merit, not in inadmissibility proceedings (amended Article 25.4[1] OLCC). In the long run, constitutional amendments appear necessary, notably to ensure the election of the judges by a qualified majority.

66. The Venice Commission remains at the disposal of the Georgian authorities for further assistance in this matter.