

## CONSTITUTION OF GEORGIA

### **Comparison between the Constitution of Georgia (CDL (95) 69) and the draft Constitution of Georgia (CDL (94) 66)**

#### **Note prepared by the Secretariat**

#### **CHAPTER 1 - GENERAL PROVISIONS**

##### ADDITIONS

A preamble has been added to the new Constitution stating its intended aims and emphasising its continuity with State tradition and the main principles of the 1921 Constitution.

The order of the Articles has changed and two new Articles have been added, Article 3 which lists the areas of responsibility of the Georgian Supreme State bodies and Article 4 which deals with the formation and composition of the Georgian Parliament.

All other Articles from the Draft have been retained in largely identical form. Article 2 is, however, considerably more detailed and states the date of determination of Georgian territory (21.12.91) as well as elaborating on internal territorial State arrangements and local self-government by the citizens of Georgia providing that their actions do not interfere with sovereignty. Article 9 (NC) has also been redrafted stressing the importance of the Georgian Orthodox Church whilst stating a balance with the independence of the Church and complete freedom of religious belief.

##### VENICE COMMISSION

Two suggestions were made by the Venice Commission and both were accepted. In Article 1 the concept "law based" has been amended to "a State based on the rule of law". In Article 7, the phrase "a really active legislature" is now rendered by "current legislation".

#### **CHAPTER 2 - CITIZENS OF GEORGIA. RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

##### ADDITIONS

Three new Articles have been added: Article 31 on the State's obligation to develop equally the whole territory of the country; Article 34 on the protection and promotion of cultural heritage and Article 43 on the duties and powers of the Public Defender.

There were numerous additions in the text of the new Constitution including: the possibility of appeal against extradition (Article 13), defined periods of detention and the relevant compensation for unlawful arrest and/or detention (Article 18), freedom of speech (Article 19), possible restrictions on the right to receive and disseminate information and the right to express opinions orally, in writing or in any other form (Article 24); an individual's right of appeal, the fact that an individual can only be judged by a court which has the jurisdiction to hear his case and a full compensation guarantee if an individual suffers damage which is legally caused by the State and self-governing bodies (Article 42); the right to free health insurance, and State control of health institutions (Article 37); equality of citizens (Article 38); state of emergency in the whole country or part of it, and the submission of a presidential decision on this to Parliament for ratification within 48 hours. (Article 46).

##### ALTERATIONS

Capital punishment may, before its full abrogation, only be imposed for serious crimes against a person's life and only the Supreme Court has the right to make such a decision (Article 15). This and several important restrictions are placed on the freedom of the individual including: an individual's freedom of movement can be restricted if in accordance with the law and in order to guarantee State and public security, to prevent crime and fulfil justice (Article 22), restrictions on the creation and activities of public and political organisations (Article 26).

##### OMISSIONS

Several Articles were omitted altogether: Article 38 on defence and military service; Article 39 on payment and rates of taxation. In other instances Articles have certain elements removed, for example Article 21 which deals with public acquisitions of property, compensation is no longer "immediate".

##### VENICE COMMISSION

Criticism was made on certain human rights points, the fact that the chapter is vague and should use positive, protective guarantees rather than state that something is "inviolable".

Single citizenship may still be a cause for concern (Article 12). The protection of Georgian citizens beyond the borders is still a wide concept and there have been no positive protective guarantees to replace the word "inviolable". The notion of human dignity has not been included in Articles 14 or 16. The right to practise religion individually or collectively in public or in private has not been included in Article 17. The suggestion that Article 46 (NC) should clarify that those human rights which were not laid out are exempt from all possible restriction in ordinary time (ie not in times of war) has not been followed.

#### **CHAPTER 3 - THE PARLIAMENT OF GEORGIA**

##### ADDITIONS

Article 4 (NC) envisage a two-chamber Parliament (Council and Senate) "once there are appropriate conditions and when self-governing bodies have been created over the whole territory of Georgia". The Council will be elected according to proportional representation, the Senate will be composed of members from Abkhazia, Adjania and other territorial units as well as of five members appointed by the President.

A more detailed statement is given on the vote of the Georgian Parliament (Article 48 (NC)); the conditions in which an MP is to carry out his duties and the MP's personal safety are now guaranteed it is an offence to prevent an MP from carrying out his duties (Article 52 (NC)); instances where an MP's duties may terminate prematurely before his term expires have been expanded to include bankruptcy, loss of Georgian citizenship and failure without good reason to participate in parliamentary work for a period of 4 months (Article 54 (NC)); Deputy Speakers are to be elected one from Abkhazia and

One from Adjanã (Article 55' (NC)); Article 57 has been inserted and deals with the creation and composition of a bureau the purpose of which is to organise parliamentary work.

#### ALTERATIONS

Figures given in Chapter 3 have for the most part been altered including the number of parliamentary Deputies which has been increased from 120 in the Draft to 150 in the new Constitution. The minimum age of a Deputy is now 25 years (Article 49 (NC)). The right to participate in elections is now afforded to a group of citizens or a political party whose initiative is supported by the signatures of 5,000 voters minimum (10,000 voters minimum - Draft) or which has a representative in Parliament at the time elections are called (not less than 5 members in the Council of the Republic according to the Draft) (Article 50 (NC)). Now at least 5% (4% Draft) of the votes of those who participated in proportional system elections is needed to get a mandate (Article 50 (NC)) and a motion for impeachment must now wait at least 1 year before it can be reintroduced (6 months Draft) (Article 63 (NC)).

#### OMISSIONS

Articles 58 (Draft) - separate and joint sitting of chambers, Article 67 (Article 68 (Draft)) - regulation of power to issue law decrees, Article 69 (Draft) - delegation of legislative authority and Article 70 (Draft) - votes of no confidence have been entirely removed. Also Article 49 (Draft) - composition of the Senate.

#### VENICE COMMISSION

The wording of Article 47 dealing with parliamentary composition has been rearranged as suggested and this Article has now become Article 4 - General Provisions. Suggestions with regard to the use of the word "free" and the removal of a minimum age for election with regard to Article 48 (Draft) were rejected.

In the Draft the minimum requirement of 4% of votes cast to get a mandate in Parliament was examined but judged acceptable due to the existence of such a requirement in legislation in some other countries. This figure has now been augmented to 5% (Article 50 (NC)).

The suggestion that urgent matters might require a newly elected Parliament to hold its first sitting as soon as possible following elections has not been followed. The period of 25 days (given in the Draft) has nevertheless been reduced to 20 days. Similarly, the minimum number of Deputies of parliamentary factions in the Council of the Republic (Article 56 (Draft)) which was questioned as high has been reduced from 12 (Draft) to 10 (NC).

The observation by the Venice Commission that Article 54 (Draft) does not state clearly whether a parliamentary secretary is an MP or a civil servant and that in most countries it is the case that a secretary is a civil servant who is not an MP has been heeded and all references to secretaries removed.

References to the fact that parliamentary committees deal with penal law and make decisions which are binding on the courts (Article 55 (Draft) word "Commissions" formerly used) have been removed.

Introductory sentences in Article 57 (Draft) have similarly been removed as suggested but the right to question (Article 59 (NC)) could still include the President and there has been no specification as to whether answers to questions shall be written or oral. The suggestion of special oral questions has also been rejected.

### **CHAPTER 4 - PRESIDENT OF THE REPUBLIC**

#### ADDITIONS

Article 69 (NC) now names the President also as head of the executive; time limits for the holding of new elections and events giving rise to this are given in Article 70 (NC); additional presidential duties are given in Article 73 (NC) including halting and dismissing the activities of representative bodies if such activities endanger the sovereignty or territorial integrity of the country, the setting of elections for Parliament and representative bodies and presidential authorisation to abrogate acts of executive bodies accountable to the President.

Certain Articles have been added: Article 77 (NC) dealing with government resignation, parliamentary refusal to ratify the Government and the removal of Ministers; Article 79 (NC) - resignation before and responsibility to the President of members of Government and Article 81 (NC) - which deals with the creation and direction of Ministries. Articles 78 - structure of executive and 80 - restrictions on positions held by members of Government, their resignation and removal which appeared in Chapter 5 of the Draft have also been added.

#### ALTERATIONS

50,000 electors are needed to back a presidential nomination (Article 70 (NC)) whereas before in the Draft the number was 25,000 including at least 50 MPs. The consent of Parliament is required at the appointment of members of Government, the President decides questions on citizenship and shelter, and declarations of a state of emergency must be submitted to Parliament within 48 hours (immediate Draft) in Article 73 (NC). A referendum is now fixed within 30 days of request (formerly 90 days (Draft)) by 20,000 electors or on the President's own initiative (Article 74 (NC)). Article 76 (NC) has changed substantially - presidential duties are now delegated to the Speaker or one of his Deputies ((Draft) - Chairman of Senate or Prime Minister) and elections are held within 45 days and were guaranteed by Parliament ((Draft) - within 60 days and ensured by Chairman of the Council of the Republic).

#### OMISSIONS

The statement that MPs can support several nominated candidates in elections has been removed (Article 70 (NC)) and the statement that the President cannot belong to a political party has been omitted (Article 72 (NC)).

#### VENICE COMMISSION

Comments were complementary concentrating largely on the substantial improvements in the draft document when compared with its predecessor. Several remarks were made with regard to presidential powers including the need to clarify which officials may be appointed or dismissed by the President (now members of Government - Article 73 (NC)) and the need to precise whether submittal to the Council of the Republic or the Senate means formal approval by these bodies (now altered to "with the consent of Parliament").

The declaration (in case of armed assault) of war and the power to conclude peace was also a cause for concern and it was suggested that unequivocal power in such matters should be given to Parliament whilst reserving to the President the power to use armed forces to repel aggression without involving a formal declaration of war. Reference to declarations of war and peace has been removed entirely.

### **CHAPTER 5 - THE JUDICIARY**

#### **(FORMERLY CHAPTER 6 - THE CONSTITUTIONAL COURT AND**

## **CHAPTER 7 - THE JUDICIARY)**

### ADDITIONS

Article 83 Sections 1,2, and 3 (NC) on constitutional control under the Georgian Constitutional Court, the general courts and the creation of military courts have been added together with Article 84 Sections 3 and 4 covering the accountability of judges and acts restricting their independence.

### ALTERATIONS

Articles 82-87 inclusive deal with provisions previously covered by Chapter 7 of the Draft and Articles 88-91 cover those provisions previously set out in Chapter 6 of the Draft.

The content of Articles 82-87 has remained largely identical to the Draft with the exception that in Article 87 (NC) it is now the Supreme Court (not the Board of Justice) who is informed when a judge is apprehended committing a crime and the Head of the Supreme Court who must give permission to search a judge's workplace, car or place of residence (Draft - General Prosecutor of Georgia).

Articles 88-91 on the other hand have been considerably revised, particularly Article 88 (NC) on the authority, composition and requirements of membership of the Constitutional Court. The order of the Articles has also been revised.

### OMISSIONS

Articles 91 (Draft) on complaints to the Constitutional Court and 92 (Draft) on conflicts between the law and the Constitutional have both been removed. Also Article 103 (1) (Draft) on the creation of a Board of Justice.

### VENICE COMMISSION

#### Provisions - judiciary

Several interpretative difficulties were observed. The manner of appointment of judges was open to question in the Draft. Further clarification as to whether appointment is by technical examination and promotion from the lower courts or rather by election is not given (Article 84, Article 86 (NC)). It was suggested that in view of Article 103 (1) (Draft) the vote of the general and specialised courts should not be left to organic law but should be directly guaranteed by the Constitution with the creation of specialised courts by the legislator only when necessary. In accordance with this suggestion judicial power has been given to the general courts and all mention of specialised courts has been removed (Article 83 (NC)).

In response to the observation that "res judicata" is not recognised by the new constitutional order, the phrase "only by a court by the right determined by law" has been added to Article 84 (NC). Venice Commission suggestions on publication of court decisions and clarification on the consideration of cases in closed court were not followed (Article 96 (Draft)).

Article 98 (Draft) posed problems with regard to separation of powers. The phrase "The General Prosecutor is responsible to the Minister of Justice has been removed assuring the independence of the judiciary. The suggestion that Article 100 (Draft) should clarify when a judge should refrain from considering a case is met with the response that "the judge's removal from a case is permissible only by law in determined cases" (Article 82 (2)).

Article 101 (Draft) resented several problems especially with regard to the search of a judge's personal effects where the permission for such a search was to be given by the executive. As suggested the new Constitution gives this power of permission to the judicial authority instead and it is the Head of the Supreme Court who now holds this power.

#### PROVISIONS - Constitutional Court

As suggested, Article 88 has been adapted and now includes 9 members of the Constitutional Court which resolves the potential problem of these being no majority in Court with regard to a decision. There is now a general statement on the removal of constitutional judges before their 9 year office expires (now 10 years). Suggestions for precision as to reasons for pre-term removal and also with regard to the competence of Georgian State bodies with regard to pre-term removal have not been followed. The observation that a decision by the Constitutional Court to discharge a judge should require a sufficiently high quorum of members deliberating and a majority of at least 5 votes has also not been followed.

Other suggestions which were not followed were: providing the Constitutional Court with its own budget to be administered by the Court itself; the addition of a final sentence to Article 90 (Draft) to clearly define the fact that the Constitutional Court and other courts from 2 independent elements of the Georgian judicial system and to avoid a clash of jurisdictions; the suggestion that the provisions of Article 100 (2), (5) and (6) should also be made applicable to members of the Constitutional Court.

Clarification on normative acts and international agreements and treaties passed after the Constitution enters into force have been followed.

## **CHAPTER 5 - CABINET OF MINISTERS (DRAFT)**

### **ARTICLES 79, 80, 81 OF DRAFT INCLUDED NOW IN CHAPTER 4 PRESIDENT OF THE REPUBLIC**

## **CHAPTER 6 - STATE FINANCES AND CONTROL**

### **(FORMERLY CHAPTER 8 - STATE FINANCES AND CONTROL)**

### ADDITIONS

The State budget law is signed by the President of the Republic (Article 92 (NC)). It is the President's consent which is required for the introduction of changes to the budget (Article 93 (NC)) whereas previously in the Draft it was the consent of the Cabinet of Ministers which was required. If Parliament cannot pass the budget by the beginning of the new budget year and expenditure is covered, but in the new Constitution the President has no right to veto this expenditure (Article 93 (NC)).

Article 95 (NC) is much more detailed than Article 108 of the Draft including provisions on the independence of the Georgian National Bank and the fact that the Bank carries out credit and currency policies in accordance with the main directions determined by Parliament. The National Bank is responsible before Parliament (Article 96 (NC)) as is the Chamber of Control (cf Article 97 (NC)). The Chamber of Control must, in addition to its other duties, submit a report once a year to Parliament on its own activities (Article 97 (NC)). A provision has also been added allowing for the creation of other bodies of State control according to law.

### ALTERATIONS

Article 94 (NC) is a combination of Articles 89 and 107 of the Draft and deals with State taxes.

## **CHAPTER 7 - STATE DEFENCE (NC)**

### **(FORMERLY CHAPTER 9 OF THE DRAFT UNTITLED)**

#### ADDITIONS

Article 98 which deals with the sovereign right of the Georgian State to wage defensive war and the function, structure and composition of the military forces includes additionally "independence" as a factor in defence of which military forces may be employed (Article 98 (NC)) includes an additional sub-section dealing with the decisions on the use of alien military force on Georgian territory which are to be made by the President and submitted immediately to Parliament for approval and consent before such decisions can enter into force. Article 101 has also been added stating that it is a duty of every citizen to defend Georgia and that defence and military duties are obligatory for every able-bodied citizen.

#### ALTERATIONS

The structure of military forces is now approved by the President and the number of forces by the majority of a total number of Deputies in Parliament (formerly both such approvals were given by the Council of the Republic (Article 98 (NC))).

### **CHAPTER 8 - REVISION OF CONSTITUTION (CHAPTER 11 (DRAFT))**

#### ADDITIONS

Article 102 (5) NC) has been added stating that the President of Georgia shall sign and publish the law on the revision of the Constitution according to Article 68.

#### ALTERATIONS

The submission of a bill for general or partial revision of the Constitution may now be made by 200,000 electors (50,000 (Draft)) and discussion of a bill now takes place 1 month after promulgation of the bill (6 months after publication (Draft)). A bill is passed if two-thirds of the total number of parliamentary Deputies are in favour (213 total number of each Chamber (Draft)).

#### OMISSIONS

All mention of publication has been removed (Article 125 (2) (Draft)) and Article 126 (Draft) and Article 127 (1) have been removed altogether.

#### VENICE COMMISSION

Article 125 and Article 126 of the Draft were criticised as being too heavy and potentially problematic if a referendum is always required to amend the Constitution. Article 126 and all references to referendums have been removed. It was also suggested that Article 127, which stated that the provision of certain unspecified Articles was impossible, was also problematic even though the Articles in question were not yet specified in the Draft. Article 127 (1) was removed completely.

### **CHAPTER 9 - TRANSITIONAL PROVISIONS (CHAPTER 12 (DRAFT))**

In the draft document the title of this Chapter alone was given, no concrete provisions were specified. Articles are now included dealing with *inter alia* the Constitution's entry into force, the status of Acts valid before this date, the signature and promulgation of the Constitution and its public display for one year after entry into force.

### **CHAPTER 10 (DRAFT) TERRITORIAL SETTLEMENT**

#### **ARTICLES 114-124 INCLUSIVE REMOVED**

Article 2 (3) (NC) provides that an "internal territorial arrangement" will be determined by constitutional law when Georgian jurisdiction is fully restored over the whole territory.