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Addendum III

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**DRAFT CONSTITUTION OF THE REPUBLIC OF GEORGIA**

**CHAPTER 6 : "JUDICIAL POWER"**

**Two Alternative Versions**

CHAPTER 6

JUSTICE

(as drafted by the Secretariat of the State Constitutional Commission with regard to proposed texts)

ARTICLE 73

1. Juridical power in the Republic of Georgian shall be exercised by independent courts by means of constitutional control and justice.
2. Juridical power shall provide for the defence of the Constitution, rights and freedoms of individuals and juridical persons.
3. Courts shall take decisions on behalf of the Republic of Georgia.
4. The organisation, jurisdiction and competencies of the courts shall be established by law.

ARTICLE 74

1. Juridical power in the Republic of Georgia shall be exercised by the Constitutional Court of the Republic of Georgia, the Court of the Republic of Georgian, the Courts of the Lands, the local and military courts.
2. Creation of extraordinary courts and transfer of juridical function to non-judicial bodies shall be prohibited.
3. Military courts shall use proceeding forms established for common courts.

ARTICLE 75

1. Every citizen of the Republic of Georgia who has reached the age of 30, has juridical education, juridical professional experience of at least 5 years and speaks the language of the legal procedure may become judge in the Republic of Georgia.
2. A Judge shall be independent in his activity and shall be guided only by law and the idea of justice. The court shall judge according to its convictions, basing on real evidence and in accordance with law without being subject of any pressure.
3. The activity of a judge shall be incompatible with other paid activity except for teaching. A judge shall not be member of any political organisation.

4. The independence of a judge shall be guaranteed by a special order of nomination, appointment or election and by honourable conditions of remuneration.

5. Criminal prosecution of the members of the Constitutional Court and the Court of the Republic of Georgian, their detention and arrest shall be possible only with consentment of the Council of the Republic, except in cases when arrested in the act of which the Council of the Republic should be immediately informed of.

#### ARTICLE 76

1. The Court of the Republic of Georgia shall be elected by the Council of the Republic and shall be in charge of justice in the Republic of Georgia. The duty of the Court of the Republic shall be:

a/ to survey the administration of justice in all common courts of Georgia,

b/ to carry out the functions of the Court of Cassation,

c/ to concenter as a court of first instance cases established by law.

2. The President of the Court of the Republic of Georgia shall be appointed by the Council of representatives of the judges of the Court of the Republic of Georgia.

3. The judges of the Court of the Republic of Georgia could be dismissed only through an impeachment procedure.

#### ARTICLE 77

1. The consideration of cases in the courts shall be public. Consideration in close sessions shall be possible only in cases established by law.

2. All the decisions and sentences of the court shall be announced publicly.

3. During the consideration of a case all parties involved shall enjoy equal rights.

#### ARTICLE 78

1. Legal procedures shall be carried out in the Georgian language.

2. All participants of a legal procedure who do not speak Georgian shall be provided with an interpreter.

#### ARTICLE 79

1. Land courts shall be created in all the Lands and shall act as a cassation instance for all local courts.

2. The city court of Tbilisi shall enjoy the status of a Land court.

3. Land courts shall consider in the first instance military and other cases established by law.

4. The President and the members of a court shall be appointed by the Council of Representatives on the presentation of the President.

#### ARTICLE 80

1. Local courts consider in the first instance criminal, civil, administrative and other cases established by law.

2. The presidents and the members of local courts shall be appointed by the President of the Republic.

#### ARTICLE 81

1. The constitutional control in Georgia shall be carried out by the Constitutional Court.

2. The Constitutional Court shall consist of 8 members elected for a term of 10 years. The Council of the Republic, the Council of Representatives, the President of the Republic and the Court of the Republic of Georgia shall appoint 2 members each. The President of the Constitutional Court shall be elected among the members of the court for a term of 5 years.

3. Every citizen of Georgia who has reached the age of 50, who have higher juridical education and at least 10 years of working experience as a judge, barrister, in a public, private, education or science organisation may be appointed as a member of the Constitutional Court.

4. The dismissal of a member of the Constitutional Court before the expiration of the term he was appointed for shall be possible only according to law and through the procedure of impeachment.

5. The order of organisation and functioning of the Constitutional Court shall be established by law.

ARTICLE 82

1. The Constitutional Court shall have the competence to:

a/ consider on the request of the Council of the Republic, the Council of Representatives, the President of the Republic, the Cabinet of Ministers and the Court of the Republic of Georgia the compatibility with the constitution of international treaties of the Republic of Georgia, of acting laws, acts of the President and the Cabinet of Ministers.

b/ consider and take decisions on issues on the delimitation of terms of reference between different supreme bodies of the Georgian Republic, the supreme bodies and the bodies of power of the Lands, the supreme bodies and bodies of local self-government, between Lands. The case could be initiated by the Council of the Republic, the Council of Representatives, the President of the Republic, the Prime-Minister, the representative bodies of the Lands and local self-government.

c/ consider and take decisions on issues on the election of the President and members of the Parliament. The initiative here shall belong to the Chambers of the Parliament, the President of the Republic, political organisations which took part in the elections, to 5.000 voters.

d/ give interpretations of the Constitution of the Georgian Republic on the request of the Chambers of the Parliament, the President of the Republic and the Prime-Minister.

e/ decide on other questions established by the Constitution.

2. The decision of the Constitutional Court taken according to paragraphs a/, b/ and c/ shall be final and mandatory on all the territory of the Republic of Georgia. The interpretation according to paragraph d/ shall have the character of a recommendation.

3. In case a question on the compatibility of a law with the Constitution is arisen by one of the parties during proceedings in a common court, the court shall postpone the proceedings and bring an action against the Constitutional Court, which shall take the final decision within a period established by law.

ARTICLE 83

1. The Council of Justice shall consist of 11 members. The President of the Court of the Republic of Georgia who shall be also the President of the Council of Justice, the Justice Minister of the Republic of Georgia, the presidents of the courts of the Lands Abkhazia and Adzharia shall be ex officio members

of the Council of Justice. Other members shall be appointed for a term of 8 years by the President of the Republic on the presentation of the President of the Council of Justice among judges, barristers and law academicians.

2. The organisation, competencies and functioning of the Council of Justice shall be established by law.

## JUSTICE

(as drafted by the Working group of the State Constitutional Commission)

### ARTICLE 74x

Justice in the Republic of Georgia shall be administered by the Supreme Court of the Republic of Georgia, the Supreme Courts of the Abkhazian and Adzharian autonomous units, territorial, regional (city) courts and military courts.

### ARTICLE 75x

Constitutional control of the Supreme Court of the Republic of Georgia shall cover all the territory of Georgia.

Within its competencies of constitutional control the Supreme Court of Georgia shall take decisions on the compatibility to the Constitution of the Republic of Georgia of:

a/ laws and other acts as well as draft laws of the Republic of Georgia;

b/ decisions of bodies of local self-government;

c/ international treaties and agreements signed on behalf of the Republic of Georgia which have not come into juridical force yet;

d/ in case the court determines during proceedings that a law or other normative act is not in compliance with the Constitution, it shall postpone the proceedings and initiate the corresponding proceeding in the Supreme Court of the Republic of Georgia which shall have to consider and take a final decision on the issue within a given period.

Within its competencies of constitutional control the Supreme Court of Georgia shall consider:

a/ conflicts on the delimitation of terms of reference between the legislative and the executive powers, the central power and the autonomies;

b/ cases of charges of high treason or deliberate violation of the Constitution against a high official of the Republic.