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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT CONSTITUTIONAL LAW
ON THE AMENDMENTS
TO THE CONSTITUTION OF GEORGIA**

I. The Parliament of Georgia ordains to amend the Constitution of Georgia (the Parliament Gazette, No. 31-33, Art. 668. 1995) as follows:

1. Article 50:

a) Add the following sentence to Paragraph 3:

“In case of premature termination of the authority of the Parliament, the President shall appoint parliamentary elections that shall be held not earlier than 60 days and not later than 90 days after the termination”.

b) Add the following sentence to Paragraph 4:

“or upon entry into force of the decree of the President on the dissolution of the Parliament”.

2. Add to the Constitution a new Article 51¹ as follows:

“Article 51¹

1. The Parliament may be dissolved by the President in the events prescribed by the Constitution.

2. The Parliament shall not be dissolved:

- (a) within one year after parliamentary elections, except for the events specified in Paragraph 5 of Article 80 and Paragraph 4 of Article 93;
- (b) in the course of exercise by the Parliament of the powers specified in Article 63 of the Constitution;
- (c) in the state of emergency or martial law;
- (d) during last 6 months of the term of office of the President.”

3. In Paragraphs 1 and 2 of Article 59 insert the word “the Government” after the words “bodies subordinate to Parliament”.

4. In Paragraph 2 of Article 61 insert the words “the Government” before the words “the Chairman”.

5. Article 67:

a) In Paragraph 1 insert the words “the Government” after the word “President”.

b) In Paragraph 2 insert the words “or the Government” after the word “President”.

6. In Paragraph 1 of Article 69 remove the words “exercises executive power”.

7. Article 73:

a) Subparagraph (b) of Paragraph 1 shall read as follows:

“(b) appoints the Prime Minister with the Parliament’s consent, and other members of the Government by the Prime Minister’s nomination.”;

b) Subparagraph (c) of Paragraph 1 shall read as follows:

“(c) dismisses the Government and removes members of the Government.”

c) In Subparagraph (d) of Paragraph 1 replace the word “ministers” with the words “the Government and members of the Government”. Replace the word “them” with the words “the Government and members of the Government”.

d) Subparagraph (e) of Paragraph 1 shall read as follows:

“(e) grants his consent to the Government on the introduction of a draft National Budget to the Parliament; in the events prescribed by Paragraph 4 of Article 93 of the Constitution issues a decree on the approval of the National Budget, which shall have the force of a law”;

e) Add to Paragraph 1 a new Subparagraph (i)¹ as follows:

“(i)¹ dissolves the Parliament in the events and pursuant to the procedures prescribed by the Constitution”;

f) Paragraph 3 shall read as follows:

“3. The President may repeal acts adopted by the Government and agencies of the Executive Branch, if such acts contravene the Constitution of Georgia, international agreements, laws, and normative acts issued by the President”.

8. Article 76:

a) Paragraph 1 shall read as follows:

“1. In the event of failure of the President to exercise his authority or premature termination of his authority, the President’s duties shall be executed by the Prime Minister. In the event of failure of the Prime Minister to execute the President’s duties or premature termination of the Prime Minister’s authority, the President’s duties shall be executed by the Chair of the Parliament. During execution of the President’s duties by the Prime Minister, the Prime Minister’s duties shall be executed by one of state ministers. During execution of the President’s duties by the Chair of the Parliament, the Chair’s duties shall be executed by one of his deputies.”

b) Add the following phrase to Paragraph 2:
“or dissolve the Parliament”.

9. Article 77 shall read as follows:

“The Administration of the President shall be formed to ensure that the President’s authority is properly exercised. The Head of the Administration shall be appointed and dismissed by the President. The regulation of the Administration shall be approved by the President.”

10. After Article 77 insert Chapter Four¹ as follows. Respectively, Articles 78-81 shall be amended and new Articles 81¹ and 81² shall be added as follows:

“CHAPTER FOUR¹
The Government of Georgia

Article 78

1. The Government of Georgia shall exercise executive power.
2. The Government consists of the Prime Minister, ministers and state ministers. The Government and members of the Government shall relinquish their authority before the President.
3. The Government shall adopt decrees and orders pursuant to and for the implementation of the Constitution, applicable laws, and normative acts issued by the President. The Government's decrees and orders shall be signed by the Prime Minister.
4. The President may call and chair government meetings on matters of national importance.
5. The Government shall:
 - (a) ensure implementation of laws;
 - (b) create necessary conditions to ensure national defense, maintenance of security, law and order, and protection of human rights and freedom;
 - (c) ensure enforcement of the government policy in the areas of economy, finance, budget, public property management, culture, science, education, healthcare, social welfare, and environment;
 - (d) exercise other powers prescribed by the Constitution and applicable laws.
6. The Government may resign upon its own decision.

Article 79

1. The Government shall be chaired by the Prime Minister.
2. The Prime Minister shall determine main directions and ensure proper organization of the activities of the Government, report to the President on the activities of the Government, and be accountable for the activities of the Government before the President and the Parliament.
3. The Prime Minister issues individual legal acts (known as orders) within the scope of his authority.
4. The Prime Minister may raise the issue of dismissal of a government member before the President.
5. Resignation or dismissal of the Prime Minister shall give rise to termination of the authority of other government members. In the event of resignation or dismissal of other government member, the President shall within two weeks appoint a new government member by the Prime Minister's nomination.

Article 80

1. After administration of an oath by the President, the Government shall relinquish its authority before the President. The President shall accept the relinquishment and may mandate the Government to continue exercising its authority until the formation of a new government.
2. The President shall nominate the Prime Minister before the Parliament within two weeks after relinquishment of authority or resignation of the Government.
3. The Parliament shall consider the nomination and the program of activity of the Government presented by the nominee within one week after the nomination. The Parliament gives its consent to the President for the appointment of the Prime Minister by majority of currently elected parliament members.
4. If the Parliament denies its consent to the appointment of the Prime Minister, the President may nominate the same or other person for the position of the Prime Minister within one week.

5. If the Parliament rejects the nomination three times, the President may appoint the Prime Minister without the Parliament's consent, dissolve the Parliament, and appoint new parliamentary elections.
6. The President shall appoint other government members pursuant to the procedure prescribed by the Constitution within two weeks after appointment of the Prime Minister.

Article 81

1. The procedure regulating the Government's authority and activities shall be prescribed by a special law at the initiative of the President. The President shall take into consideration proposals submitted by the Government upon introduction of a draft of such law to the Parliament.
2. The Prime Minister shall within one week after his appointment submit to the President the structure and rule of activity of the Executive Branch for his approval.
3. It shall be prohibited to merge or in any other manner unite armed forces, state security services, and police.

Articles 81¹

1. The Parliament may give a vote of no confidence to the Government by majority of currently elected parliament members. The matter of voting no confidence may be raised by not less than one-third of all parliament members. If the Parliament gives a vote of no confidence to the Government, the President may dismiss the Government or deny consent to the Parliament's decision. If the Parliament gives a vote of no confidence to the Government again within three weeks, the President may dismiss the Government, or dissolve the Parliament and appoint new parliamentary elections.
2. The Prime Minister may raise before the Parliament the matter of confidence to the Government. The Parliament may give a vote of confidence to the Government by majority of currently elected parliament members. If the Parliament does not give a vote of confidence to the Government, the President may dismiss the Government within one week, or dissolve the Parliament and appoint new parliamentary elections.

Articles 81²

1. Ministries shall be formed to ensure maintenance of government authority in certain areas of state and public life.
2. A ministry shall be chaired by a minister, who shall make independent decisions on the matters falling within his jurisdiction. A minister shall issue orders pursuant to and for the implementation of applicable laws, normative acts issued by the President, and government decrees.
3. The President shall appoint state ministers pursuant to the procedure prescribed by the Constitution for the purpose of implementation of tasks of national importance.
4. No government member shall hold any position, except for a partisan position, carry out a commercial activity, or receive wages or any other permanent compensation for any activity.
5. A government member shall have the right to resign from his office.
6. A government member may be dismissed by the President's decree or by the Parliament pursuant to the procedure prescribed by Article 64 of the Constitution."

11. Article 89:

- a) In Paragraph 1 insert the words "the Government" after the word "President";

- b) In Subparagraph (a) of Paragraph 1 insert the words “the Government’s” after the word “President’s”.

12. Article 93:

- a) Paragraph 1 shall read as follows:

“1. Only the Government of Georgia may introduce to the Parliament a draft National Budget after having agreed its essential details and directions with parliamentary committees and obtained the President’s consent.”

- b) In Paragraph 2 replace the word “President” with the word “Government”.

- c) In Paragraph 3 replace the word “President” with the word “Government”.

- d) Add the following sentence to Paragraph 2:

“If the Parliament does not approve the National Budget Implementation Report, parliament members shall give a vote of confidence or no confidence to the Government. If the Parliament gives vote of no confidence to the Government by majority of currently elected parliament members, the President shall dismiss the Government.”

- e) Paragraph 4 shall read as follows:

“4. If the Parliament fails to adopt the National Budget before a new fiscal year, the President shall approve the National Budget by a decree equal to a law and may dissolve the Parliament.”

- f) A new Paragraph 5 shall be added to Article 89 as follows:

“5. A draft law, which requires increase of expenditure or decrease of revenue in the National Budget, or undertaking of certain financial obligations by the State, shall be considered by the Parliament only after the Government’s consent.”

- II. Within two weeks after entry into force of the present Law, the President shall introduce to the Parliament a candidate for the position of Prime Minister pursuant to the procedure prescribed by Paragraphs 3-6 of Article 80 to obtain the Parliament’s consent to the appointment of the Prime Minister.
- III. The authority of old government members shall terminate immediately after formation of a new government.
- IV. By December 31, 2001, the President and the Parliament shall ensure that all normative acts adopted before the entry into force of this Law comply with the Constitution.
- V. The Law of Georgia on the Structure and Activity of the Executive Branch shall be null and void immediately after entry into force of the President’s decree on the structure and activity of the Executive Branch pursuant to Article 81 of the Constitution.
- VI. Subsection 7, and Paragraph 1 of Article 78 and Article 81¹, as prescribed by Subsection 10 of this Law, shall enter into force after formation of the Government pursuant to the procedure prescribed by this Law.

VII. This Law shall enter into force immediately after its promulgation.

Edward Shevardnadze
The President of Georgia

APPENDIX

**MESSAGE OF THE PRESIDENT OF GEORGIA
TO THE PARLIAMENT OF GEORGIA
ON 11 MAY 2001**

A simple and elastic system of the Constitutional Institutions, including efficiently balanced relations and equally divided political responsibilities, essentially provides for tendencies of democratic developments of the country.

The 1995 Constitution provided for the “presidential” model of the government, which turned out to be very effective for achieving the main goal at the time of adoption of the Constitution - stability. At the new stage of the country's development the challenges of intensifying the economic reforms, of strengthening the institutional grounds of the state, of introducing financial order, of improving entrepreneurial environment and of ensuring the increase of the real sector in economy, are emerging with a special acuteness. At the same time, it's impossible to resolve them successfully without abating corruption, lack of responsibility and the nihilistic attitude towards the law. It is obvious that the existing model of state government is outdated in the reality of Georgia.

That's why the constitutional changes are unavoidable, though they should be made while maintaining some of the fundamental principles.

First: Formation of the government of Georgia as of a collegial /collective/ body. The government should act on a basis of a common program and should be responsible to the president, as well as to the Parliament. This principle will not allow the personal and office confrontations in the government and will promote to growth of responsibility of its every member.

Second: Further strengthening of the legislative authority.

The Parliament will have the real possibility and tools to evaluate the activity program of the government and to oversee its implementation. The special attention will be paid to the fiscal and budget spheres for they are decisive factors of the state's development. The significant postulate of it is the bilateral (legislative and executive) obligation for preventing the transformation of the budget into the means of political struggle and instrument for power ambitions.

Third: The definition of the role and function of president as a head of government, as well as the first and most important guarantor of the state's stability and democratic constitutional system, of proper functioning of state institutions.

According to the submitted Constitutional Draft Law, the president is the supreme arbitrator between the legislative and executive authorities in resolution of possible political confrontation.

The presented Constitutional Draft Law provides for the new model of government implying the corresponding principle of its formation: the president presents the candidacy for Prime Minister to the Parliament. The legislative body has a power to discuss the future program of government and show its attitude toward both the concrete personalities and their program. The process of forming the executive should not create the crisis in the state. For this purpose the project stipulates the right of the president to dissolve the Parliament and appoint new election in the case of several vain attempts to approve the candidate for Prime Minister.

In the case the candidate for Prime Minister and his/her program gain corresponding political support, the new Prime Minister has a privilege to select and submit to the president the political group, which will ensure the successful implementation of the executive authority. The government will transform into the real collegial body. The government, the Prime Minister, ministers and state ministers will have more expanded power. The Law provides for the full list of the authority and the rules of government activity. As for the structure and the scope of activities of the executive body, the president approves it.

The president maintains the right to run and control steadily the significant strategic directions of the government: the conducting of the internal and international policy, the activity of law enforcing

bodies, human rights etc. It is significant that the government obtains such new functions of management and coordination, as implementation of law, creation of appropriate conditions for the state security, defense, order, human rights and liberty. As well as for carrying out the policy in the spheres of finance, budget, state property, culture, science education, health, social and environment defense.

The more active relations between the Parliament and government characterize the new model. The Parliament has an increased influence on government. The legislative branch has a power to discuss the issue of confidence toward the government. The government has a right to appeal to the Parliament for the political support and confidence.

In frames of the system of checks and balances, the president has a right to dissolve the Parliament and appoint new election in the cases strictly determined by the Constitution. It is meaningful that the dissolution of the Parliament is equal to making it the statewide important problem as a subject of the public debate, because after the legislative body is dissolved the president appoints new parliamentary election in a period determined by the Constitution. But at the same time the Parliament obtains an important right: to vote on no confidence to the government in the case of budget implementation failure that leads strictly to the resignation of the government.

It is noteworthy that according to the Constitution, the president has no right to dissolve the Parliament during the process of impeachment of the president. He does not have this right either within a period of the first year after the elections of the new parliament (with some exceptions determined by the Constitution) in the state of emergency and in the period of the last six months of constitutional authority of the president.

It's important that the proposed reform strengthens the basis of Constitutionalism in Georgia. In addition, the governmental model based on the above-mentioned principles or the strong Parliament, strong president and the powerful government ensure the resolution of the national problems, further development of democratic processes and the increase of the sense of responsibility.

Taking into account all stated above, I'm submitting you the Constitutional Draft Law correspondingly to the article 67 and article 102 of the Constitution of Georgia.

E. Shevardnadze

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