



Strasbourg, 17 May 2010

Opinion no. 543/2009

CDL(2010)044
Engl.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT CONSTITUTIONAL LAW
ON THE AMENDMENTS AND CHANGES TO THE CONSTITUTION
OF GEORGIA

adopted by the State Constitutional Commission
on 11 May 2010

Constitutional Law of Georgia
On the Amendments and Changes to the Constitution of Georgia

Article 1

Following amendments and additions shall be made to the Constitution of Georgia (Statements of the Parliament of Georgia, 1995, #31-33, Article 668):

1. Article 2 paragraph 4 shall be removed.
2. The word “Organic” should be removed from the Article 4 paragraph 4, Article 11, Article 12 paragraph 3, Article 21 paragraph 3, Article 26 paragraphs 2 and 6, Article 43 paragraph 3, Article 50 paragraphs 1 and 5, Article 70 paragraphs 3 and 10, Article 75 paragraph 2, Article 83 paragraphs 1 and 2, Article 86¹ paragraph 3, Article 89 paragraph 1, Article 95 paragraph 4, Article 99 paragraph 2.
3. Paragraph 1¹ shall be added to Article 29 with the following text:
“1¹. Citizen of Georgia who simultaneously is the citizen of any Foreign State shall not hold any state-political position.”
4. Article 34¹ shall be added to the Constitution with the following text:
“Article 34¹
The State shall facilitate the physical development of adults and youths by joint cooperation with educational institutions, sport unions by their involvement in sport activity.”
5. Article 42 paragraph 9 shall be formed as below:
“9. Any person who has illegally sustained damage from the State, Autonomous Republics, self-government bodies and officials shall be guaranteed to receive full compensation accordingly from funds of the State, Autonomous Republics or self-government bodies through the court proceedings.”
6. Article 51¹ sub-paragraph “a” shall be formed as below:
“a) Within 6 months after the parliamentary elections, if the Parliament is not dissolved on the grounds provided by Article 80 paragraph 6 and Article 81 paragraph 3.”
7. Article 56 paragraph 2 shall be formed as below:
“2. In cases prescribed by the Constitution and the Rules of Procedures [of the Parliament], also by the request of one fifth of deputies, the investigative or other temporary commissions shall be established in the parliament. Parliamentary majority shall not be more than half of the temporary commission.”
8. Article 61 paragraph 2 shall be formed as below:
“2. The President of Georgia at the request of the Chairman of the Parliament, no less than one fourth of deputies of the Parliament, Government of Georgia or on his/her own initiative shall, between regular sessions, convene a special session of the Parliament and shall also convene a special sitting during a regular session. If the act of

convocation has not been issued within 48 hours after a written request has been submitted, the Parliament shall start its work within following 48 hours in accordance with its Rules of Procedures.”

9. Article 66 paragraph 2 shall be removed.

10. Article 67 shall be formed as below:

“Article 67

1. *The President of Georgia, the Government, a member of the Parliament, a Parliamentary Faction, a Parliamentary Committee, the high representative bodies of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara, no less than 30,000 electors, shall have the right to the legislative initiative.*

2. *At the request of the President of Georgia or the Government, the Parliament shall discuss a draft law in an unscheduled manner.”*

11. Article 68 paragraph 4 shall be formed as below:

“4. If the Parliament rejects the remarks of the President, the initial draft shall be put on vote. A law shall be deemed to be adopted if it is supported by no less than half of the total number of members of the Parliament. The constitutional amendment shall be deemed to be passed if it is supported by no less than two thirds of the total number of members of the Parliament.”

12. Article 69 shall be formed as below:

“Article 69

1. *The President of Georgia is the Head of the State [of Georgia], guarantor of Constitutional functioning of State organs, national independence and unity of the country.*

2. *The President of Georgia is the supreme Commander in Chief of the Armed Forces of Georgia.*

3. *The President of Georgia is the supreme representative of Georgia in foreign relations.”*

13. Article 70 paragraph 2 shall be formed as below:

“2. Any person may be elected as the President of Georgia if he/she is a citizen of Georgia by birth, has the right to vote, has attained the age of 35, has lived in Georgia for at least fifteen years and has resided in Georgia for 2 years for the Election Day.”

14. Article 73:

a) Paragraph 1 sub-paragraphs “a” and “b” shall be formed as below:

“a) negotiate with the foreign states, conclude international conventions and agreements with the consent of the Government; appoint and dismiss the ambassadors and other diplomatic representatives upon recommendation of the Government; receive a visit and accreditation from the ambassadors and other diplomatic representatives of foreign states and international organizations;
b) Appoint Prime Minister;”

b) Paragraph 1 sub-paragraph “c” shall be removed;

c) Paragraph 1 sub-paragraph “d” shall be formulated as below:

“ d) obliges the Government to perform its duties before the confirmation of a new Government pursuant to Article 80 of the Constitution.”

d) Paragraph 1 sub-paragraphs “e” and “r” shall be removed.

15. Article 73¹ shall be added to the Constitution with the following text:

“Article 73¹

1. Legal acts of the President of Georgia shall be countersigned by the Prime Minister.

2. The order of the President of Georgia and the legal acts defined bellow may not be countersigned by the Prime Minister which relate to:

a) Appointment of elections and dissolution of the Parliament, convening the first sitting of newly elected Parliament, also convening the special sitting or session of the Parliament;

b) Legal initiatives;

c) Signing of laws and their promulgation, also return of a draft law with remarks to the Parliament;

d) Signing of international conventions and agreements, also submitting them before the Parliament for ratification.

e) Appointment and dismissal of members of the National Security Council, a Chief of Joint Staff of the Armed Forces of Georgia and other military leaders.

f) Appeal to the Court or the Constitutional Court;

g) Nominating a candidate of the Prime Minister and appointment of the Prime Minister;

h) Imposing temporary obligations on the Government in line with Article 80 paragraph 1 of the Constitution;

i) Appointment, dismissal, agreement and nomination of officials determined under the Constitution or Law.

j) Granting State rewards and special ranks;

k) Granting and termination of citizenship;

l) Convening the sitting of the Government in cases provided by the Constitution;

m) Appointment of judges of the Constitutional Court, nominating candidates of the judges of the Supreme Court in the Parliament, also appointment of members of High Council of Justice;

n) Activity of the administration of the President, National Security Council and intuitions subordinated to the President.

o) Declaration or revocation of state of emergency or state of war;

p) Pardon;

q) Providing a consent prescribed by Article 93 paragraph 4.

3. The Government is liable for the countersign on the legal acts.”

16. Article 75 paragraph 2 shall be formed as below:

“2. In case of violation of the Constitution and commission of a criminal offence by the President, the Parliament shall be authorized to dismiss the President in accordance with a procedures prescribed by Law and in compliance with Article 63 of the Constitution, if:

a) Violation of the Constitution is affirmed by the decision of the Constitutional Court;

b) Elements of crime are confirmed by the Conclusions of the Supreme Court.”

17. Article 78:
- a) Paragraphs 1 and 2 shall be formulated as below:
*“1. The Government of Georgia is the supreme organ of the executive branch, which exercises domestic and foreign policy of the State. The Government is accountable before the Parliament.
2. The Government shall be composed by the Prime Minister and the Ministers. State Minister(s) may be part of the Government. Prime Minister may designate a member of the Government as the first Vice Prime Minister(s) and may also designate member(s) of the Government as Vice Prime Minister(s).”*
- b) Paragraph 3 shall be formed as below:
*“3. The Government shall adopt a decree and a resolution under and for the purposes of implementation of the Constitution and legal acts; Decrees and resolutions of the Government shall be signed by the Prime Minister.
4. The President of Georgia shall be authorized to convene and preside the sittings of the Government on the issues of particular State importance. A decision adopted at the sitting shall be affirmed by the act of the President.”*
18. Article 79:
- a) Paragraph 1 shall be formed as below:
“1. The Prime Minister is the Head of the Government.”
- b) Paragraph 5 shall be formed as below:
“5. The Prime Minister appoints and dismisses other members of the Government.
- c) Paragraph 7 shall be formed as below:
“7. Resignation of the Prime Minister or termination of his/her authority shall result in termination of the authority of other members of the Government. In case of resignation or dismissal of other member of the Government the Prime Minister shall appoint a new member of the Government within two weeks.”
19. Article 80 shall be formed as below:

“Article 80

1. *After the approval of the newly elected Parliament, the Government shall be deemed dismissed and the President of Georgia shall authorize the same Government to perform its duties until the formation of a new Government.*
2. *Within 7 days after the dismissal of the Government, the President of Georgia shall nominate a candidate of Prime Minister from the list proposed by the political group with the best results in the Parliamentary elections. A candidate for the Prime Minister shall, within 7 days, nominate candidates of Ministers and present the composition and the program of the Government to the Parliament of Georgia for the vote of confidence.*
3. *In case of dissolution of the Government or dismissal of the Prime Minister, the President of Georgia shall, within 7 days, nominate a new candidate proposed by the Parliamentary majority. A nominee for the Prime Minister shall, within 7 days, nominate the Ministers and present the composition and the program of the Government to the Parliament of Georgia for the vote of confidence.*
4. *The Parliament of Georgia shall, within 7 days, discuss and put on vote of confidence the composition and program of the Government. In case the Government and its program does not receive the vote of confidence of the Parliament, revised new voting shall be held within a month after the vote of confidence of the Government and its program. The Government shall be deemed to receive the vote of confidence of the parliament if the majority of total number of members of the Parliament voted in favor. After the vote of confidence is received,*

the President shall, within 3 days, appoint the Prime Minister who shall, within 3 days, appoint other members of the Government. If the President fails to issue the legal act on the appointment of the Prime Minister within prescribed time frameworks, the Prime Minister shall be deemed to be appointed.

5. If the Parliament does not grant the vote of confidence to the Government and its program in compliance with the procedure prescribed by paragraph 4, the President shall nominate a Prime Minister from the candidates proposed by no less than two fifth of the current nominal list of the Parliament. The candidate of the Prime Minister shall nominate Ministers and present the composition and program of the Government to the Parliament for the vote of confidence. If two candidates have been proposed in accordance with the procedures prescribed by this paragraph, the President shall nominate the candidate proposed by the majority, and in case the candidates are nominated by equal number of MPs the President shall nominate either candidate.

6. If the Parliament fails to declare the confidence to the Government under paragraph 5 of the present Article, the President of Georgia shall dissolve the Parliament and shall appoint special elections.

7. The impeachment shall not be initiated during the procedures provided by the present Article; except when the ground for impeachment is the violation of the present Article itself.”

20. Article 80 shall be formulated as below:

“Article 81

1. The Parliament shall be entitled to declare non-confidence to the Government. No less than one third of the total members of the Parliament shall be entitled to raise a question of non- confidence. The Parliament shall discuss the question of non-confidence to the Government on the 30th day after the question was raised. The discussion on non- confidence to the Government shall continue if more than half of members of the Parliament support this decision.

2. The Parliament shall examine the question of non-confidence to the Government on the 60th day after the decision on continuing the discussions was made. The examination on non-confidence is permissible only in case, if the new candidate of the Prime Minister presented by two fifth of total number of members of the Parliament is put for vote. The declaration of the non-confidence to the Government and as well as presenting a new candidate of the Prime Minister shall be supported by more than half of the total number of members of the Parliament.

3. Within 3 days after the vote on non-confidence to the Government and proposing of the candidate for the Prime Minister, the President is entitled to (re)nominate the proposed candidate or to dissolve the Parliament and appoint special elections.

4. If the Parliament has not taken decisions prescribed by paragraphs 1 and 2 of the present Article, the same members of the Parliament can raise the question of non-confidence to the Government after 6 months.

5. The Prime Minister is entitled to raise before the Parliament the question of confidence of the Government in relation to a draft law. If the Parliament votes for non-confidence of the Government, it shall be deemed as the decision prescribed by paragraph 1 of the present Article and the procedures provided by paragraph 2 shall be continued.

6. A relevant draft law shall be deemed adopted upon the declaration of confidence to the Government by the Parliament.

The impeachment shall not be initiated during the procedures provided by the present Article; except when the ground for impeachment is the violation of the present Article itself.”

21. Article 81¹ shall be removed.

22. Article 81³:

a) Paragraph 1 shall be formed as below:

"1. The executive branch is represented by State Envoy – Governor in the administrative-territorial units of Georgia."

b) Paragraph 3 shall be formed as below:

"3. The Prime Minister appoints and dismisses the State Envoy – Governor with the consent of the President."

23. Article 86 paragraphs 1 and 2 shall be formed as below:

1. A citizen of Georgia who has attained the age of 30 has relevant higher legal education and has at least 5 year-working experience in the legal area is eligible to hold the judicial office.

2. Judges are life-time appointed, unless they reach the age determined by the Law. The rules on selection, appointment or dismissal of judges are defined by the Law.

24. Article 89:

a) In paragraph 1 of the Preamble, the words "representative organs of the self-government – the City Council, the High Council of Justice" shall be added next to the words "representative institutions";

b) Sub-paragraphs f² and f³ shall be added to paragraph 1:

f²) On the basis of the action brought by representative organs of the self-government – the City Council, the question of constitutionality of normative acts is discussed in relation to regulations defined by Chapter 7¹ of the Constitution.

f³) On the basis of submissions made by the High Council of Justice the question of compatibility of normative acts with Articles 82, 83, 84, 86, 86¹, 87 and 90 of the Constitution shall be discussed;

25. Article 90 paragraph 1 shall be formed as below:

"1. The Supreme Court of Georgia is the cassation Court."

26. Article 93 shall be formed as below:

"Article 93

1. Only the Government of Georgia is authorized to submit the Draft State Budget to Parliament after the examination of the main data and directions with the Parliamentary Committees.

2. The Government shall present the draft budget for the coming year no later than three months before the end of the current budget year. Along with the draft budget the Government shall present the report on implementation of the current budget. The Government shall present the report on implementation of the state budget to the Parliament for approval no later than three months before the end of the current budget year.

3. The draft budget shall not be amended without the consent of the Government. The Government may claim Parliamentary approval of additional expenditure only if it can indicate the source for such expenditure.

4. The expenditure of the President for the coming year can be reduced only with the consent of the President.

5. If the Parliament fails to approve the presented budget within 3 months, the last year budget shall cover the expenses necessary to carry out the Government's obligations undertaken earlier.

6. *The bill that may entail increase of expenditure of the state budget, decrease of revenues or new financial undertakings may be adopted by the Parliament only with the consent of the Government. The bills of the coming financial year shall be approved within the parameters of mutually agreed state budget between the Government and the Parliament.*

7. *The Parliament is authorized to control the legality of the utilization of the state financial resources by the Government”.*

27. The Chapter 7¹ shall be added to the Constitution with the following text:

Chapter 7¹

Local Self-Government

Article 101¹

1. Local self-government is a right and opportunity of Georgian citizens registered within the self-government unit to manage local issues independently, on their own responsibility in with the interests of the local population and in compliance to the Georgian law, without prejudice to the sovereignty.

2. The rule of creation of representative and executive institutions of local self-government is determined by the Law. Executive institutions of the local self-governments are accountable to local representative units.

3. Local self-government representative unit – the City Council is selected by the Georgian citizens registered within the self-government unit area based on direct, universal, secret and equal suffrage.

4. The rule of establishing a local self-government unit and revocation of its performance, as well as administrative border’s revision rule are defined by the Law. Prior to revocation or revision of the administrative borders of the self-governmental unit, the consultations shall be held.

Article 101²

1. Rights and authority of local self-government unit are separated from those of the state institutions. Self-government unit has its own and delegated rights and authorities. The Law determines the main principles defining rights and authorities of the self-government units.

2. Self-government unit independently and on own responsibility exercises its duties in compliance with the rules determined by Georgian Law. Own authority is exclusive.

3. Self-government unit is authorized to take any decision on its own initiative, if this decision does not fall under the authority of any other government institution or it is not prohibited by law.

4. State institutions may delegate rights and powers to the self-government unit on basis of legislative acts and also agreement only by transferring relevant material and financial sources, the calculation of amount of which is determined by law.

5. State institutions provide legal and material-financial conditions necessary for the development of the self-government units.

Article 101³

1. Local self-government has its property and financial resources.

2. The decisions made by the self-government units within the scope of their competence shall be necessarily implemented within the self-government’s unit territory.

3. The State’s supervision on the self-government unit activity is carried out by the procedure prescribed by law. The State’s supervision aims to provide compliance of the self-government’s normative acts with the Georgian legislation and at reinforcing the delegated rights and powers in proper manner. The State exercises supervision proportionally to its goals.

Article 2

The present shall come into force from the day of promulgation the report on final poll results of the presidential election in 2013.

The President of Georgia

Mikheil Saakashvili