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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

**adopted by the State Constitutional Commission
at its Plenary Session
of 19 July 2010**

Unofficial translation

Article 1

The following changes and amendments shall be made to the Constitution of Georgia (The Official Journal of the Georgian Parliament, 1995, ##31-33, Article 668):

1. The Preamble shall be worded as follows:

“We the citizens of Georgia, based on our firm commitment to advancing democracy, economic freedom, social well-being and the rule of law, securing observance of the universally recognised human rights and freedoms, strengthening Georgia’s independence and peaceful relations with other nations, considering the centuries-old traditions of the Georgian statehood and the historical and legal heritage of Georgia’s 1921 Constitution, do proclaim this Constitution before God and the nation.”

2. Paragraph 4 of Article 2 shall be amended as follows:

“Local affairs shall be managed by the citizens of Georgia registered on the territory of a self-government unit through self-governance, without prejudice to the state sovereignty and in accordance with the Georgian law. The state authorities shall promote and facilitate the development of local self-government.”

3. The word “organic” shall be deleted from paragraph 4 of Article 4, Article 11, paragraph 3 of Article 12, paragraphs 2 and 6 of Article 26, paragraph 3 of Article 43, paragraphs 1 and 5 of Article 50, paragraphs 3 and 10 of Article 70, paragraph 3 of Article 74, paragraphs 1 and 2 of Article 83, paragraph 3 of Article 86¹, paragraph 1 of Article 89, paragraph 4 of Article 95 and paragraph 2 of Article 99.

4. Article 21 shall be amended as follows:

“Article 21

1. Property and the right of inheritance shall be guaranteed. It shall be impermissible to infringe on anyone’s fundamental right to property.

2. Any restriction of the rights stipulated in paragraph 1 shall be allowed only for the purposes of public necessity, in compliance with the terms and procedures prescribed by law and in such a way as not to impair the very essence of the right to property.

3. Deprivation of property for the purposes of public necessity shall be permitted only in the cases provided for by law, upon a decision of the court or the pressing necessity as determined by law, subject to fair compensation paid in advance. Such compensation shall be exempt from any taxes, duties and fees.

5. The following shall be added as paragraph 1¹ of Article 29:

“1¹. A citizen of Georgia who is also a citizen of a foreign country shall not be eligible to hold the office of President, Prime Minister or Chairperson of the Parliament.”

6. The following article shall be added to the Constitution as Article 34¹:

“Article 34¹

The State shall, in cooperation with educational institutions and sports organisations, promote physical education of children and youth and increase their engagement in sports.”

7. Article 42 paragraph 9 shall read as follows:

“9. Everyone shall be entitled to receive, by a claim pursued through a court action, full compensation for any damage unlawfully caused by the state and local authorities and the authorities of the Autonomous Republics to be paid from their respective finances.”

8. Subparagraph (a) of Article 51¹ shall be amended as follows:

“a. Within six months from the date of the Parliamentary elections, unless the Parliament’s dissolution takes place on the grounds as provided for by Article 80 of the Constitution.”

9. Article 56 paragraph 2 shall be amended as follows:

“2. In cases provided for by the Constitution and the Rules of Procedure [of the Parliament], also at the request of one-fifth of the Members of Parliament, enquiry and other temporary (ad hoc) commissions shall be set up by the Parliament. The parliamentary majority representation in such a commission shall not exceed half of the total membership.”

10. Article 59 shall be amended so as:

a. Paragraph 1 shall read as follows:

“1. The Members of Parliament shall be entitled to pose questions to and receive answers from the bodies which are accountable to the Parliament, from the Government, individual members of the Government and the state bodies and institutions.”

b. Paragraph 3 shall read as follows:

“3. By the decision of a majority of all its members, the Parliament shall be authorised to raise before the Prime Minister an issue of the responsibility of individual ministers.”

11. Paragraph 2 of Article 61 shall read as follows:

“2. The President of Georgia at the request of the Chairman of the Parliament, no less than one-fourth of the members of Parliament, the Government, or on his/her own initiative shall be authorised to call the Parliament in a special session between its regular sessions, or to convene a special sitting in the course of a regular session. If an act of convocation is not issued within 48 hours following the submission of a written request, the Parliament shall have the obligation to convene within the next 48 hours in accordance with its Rules of Procedure.”

12. Article 63 shall be worded as follows:

“Article 63

1. In circumstances provided for in paragraph 2 of Article 75, the impeachment proceedings against the President may be commenced if the move for impeachment is supported by not less than one-third of all the members of Parliament. The case shall be submitted to the Constitutional Court for adjudication.

2. If elements constituting a criminal offence or a violation of the Constitution in the alleged conduct of the President shall be confirmed in the findings of the Constitutional Court, the Parliament shall, no later than 15 days after receiving the Constitutional Court’s opinion, debate and vote on removing the President from office on impeachment.

3. The President shall be removed on impeachment if the decision is supported by the votes of not less than two-thirds of all the members of Parliament.

4. If the Parliament fails to reach a decision within the time stipulated in paragraph 2 of this Article, no impeachment proceedings can be instituted on the same grounds.

5. No impeachment proceedings can be carried out during a state of emergency or under martial law.”

13. The following shall be added as paragraph 1¹ of Article 65:

“1¹. A request for the consent of Parliament regarding ratification of, denunciation or withdrawal from international treaties and agreements shall be presented to the Parliament by the Government, whereas in the cases provided for in subparagraphs (a)-(c), Paragraph 2 of this Article, or when a treaty is concluded by the President, such request shall be presented by the President.”

14. Paragraph 2 of Article 66 shall be deleted.

15. Article 67 shall be amended as follows:

“Article 67

1. The right of legislative initiative shall be vested with the President of Georgia, the Government, a member of Parliament, a parliamentary faction, a parliamentary committee, the high representative bodies of the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, at least 30,000 electors.

2. A draft submitted by the President or the Government shall, upon their request, be considered by the Parliament out of order of its legislative agenda.”

16. Article 68 paragraph 4 shall be worded as follows:

“4. If the President’s objections are rejected by the Parliament, the vote shall be taken on the draft without revision. A law shall be considered passed if it receives support of more than half of all the members of Parliament. The adoption of a constitutional amendment shall require approval by at least two-thirds of all Parliament members.”

17. Article 69 shall be amended as follows:

“Article 69

1. The President of Georgia shall be the Head of State of Georgia, the guarantor of Georgia’s unity and national independence. Within the powers vested by the Constitution, the President shall secure the functioning of state organs.

2. The President shall be the Commander-in-Chief of the Georgian armed forces.

3. The President shall be the highest representative of Georgia in foreign relations.”

18. Paragraph 2 of Article 70 shall be read as follows:

2. The President of Georgia shall be a national born citizen of Georgia, having the right to vote, who shall have attained the age of thirty-five years, shall have resided in

Georgia for at least fifteen years and for the last three years before the date when the election is called.”

19. Article 73 shall be amended as follows:

a. Subparagraphs (a) and (b) of paragraph 1 shall be revised to read as:

- a. [shall] by agreement with the Government, hold talks with foreign states, conclude international treaties and agreements; appoint and dismiss ambassadors and other diplomatic representatives of Georgia upon nomination by the Government; accept letters of credence from ambassadors and other diplomatic representatives of foreign states and international organisations;
- b. In cases specified by the Constitution shall nominate and appoint the Prime Minister;”

b. Subparagraph (c) of paragraph 1 shall be deleted.

c. Subparagraph (d) of paragraph 1 shall read as follows:

“d. In cases provided for by the Constitution shall charge the Government to continue carrying out its official duties until the formation of a new Government;”

d. Subparagraph (e) of paragraph 1 shall be deleted.

e. Subparagraph (f) of paragraph 1 shall read as follows:

“f. In cases provided for by the Constitution shall submit candidacies to the Parliament for approval, appoint, dismiss and discharge officials; appoint members to the High Council of Justice, submit to the Parliament for approval members to the Central Election Commission and national regulatory bodies as stipulated by the law;”

f. Subparagraph (j) of paragraph 1 shall read as follows:

“j. In order to carry out the powers and responsibilities set out in the Constitution, shall issue decrees, orders and instructions.”

g. Subparagraphs (q) and (r) of paragraph 1 shall be deleted.

h. Paragraph 3 shall be deleted.

i. Paragraph 4 shall be worded as follows:

“4. The President shall appoint members of the National Security Council, appoint and dismiss the Chief of Staff of the armed forces and other military commanders;”

j. Paragraph 6 shall be worded as follows:

“6. The President shall carry out other powers and responsibilities vested by the Constitution.”

20. The following article shall be added to the Constitution as Article 73¹:

“Article 73¹

1. Legal acts issued by the President, save for those issued under martial law, shall be countersigned by the Prime Minister.

2. Countersigning shall not be required for Presidential Orders and those legal acts that deal with:

- a) Calling of parliamentary elections, dissolution of the Parliament, convening the first session of a newly elected Parliament, as well as calling a special session or sitting of the Parliament;
- b) Legislative initiatives;
- c) Signing and promulgation of laws, returning a draft law to the Parliament for revision along with proposed amendments;
- d) Signing international treaties and agreements and in cases provided for by the Constitution, submitting them to the Parliament for ratification;
- e) Nomination, appointment and dismissal of officials as provided for under subparagraph (f) of Article 73;
- f) Bringing a motion before the Constitutional or other courts;
- g) Nomination of a candidate for the office of Prime Minister and appointment of the Prime Minister;
- h) Charging the Government to continue carrying out its official duties pursuant to Article 80 of the Constitution;
- i) Conferring state awards and special titles;
- j) Granting and withdrawing citizenship;
- k) Calling a meeting of the Government in the cases as provided for by Article 78 paragraph 4 of the Constitution;
- l) Appointment of the members of the National Security Council, appointment and dismissal of the Chief of Staff of the armed forces and other military commanders, appointment of the judges of the Constitutional Court and submission to the Parliament of candidates for judges of the Supreme Court;
- m) Activities and functions of the President's Administration, the National Security Council and the bodies under presidential subordination;
- n) Declaring and revoking a state of emergency or martial law;
- o) Pardoning;
- p) Giving or withholding of consent as provided for in Article 93 paragraph 4;

3. In the case of countersigning, responsibility for the legal act shall lie with the Prime Minister.”

21. Article 74 paragraph 1 shall be amended as follows:

“1. Upon the motion of the Parliament, the Government, no less than 200,000 voters or on his/her own initiative the President shall, within thirty days after the motion has been filed, call a referendum on matters as stipulated by the Constitution and the law.”

22. Article 75 paragraph 2 shall be amended as follows:

“2. Pursuant to Article 63 of the Constitution and the procedures established by law, the President may be removed from office by the Parliament for any violation of the Constitution or the commission of a criminal offence.”

23. Article 76 paragraph 2 shall be read as follows:

“2. An Acting President shall not be entitled to exercise the powers stipulated in Article 73 paragraph 1 (i) and Article 74 paragraph 1, or to dissolve the Parliament.”

24. Article 78 shall be amended as follows:

a. Paragraphs 1 and 2 shall be read as:

“1. The Government of Georgia shall be the highest body of the executive branch, in charge of the execution of domestic and foreign policy. The Government shall be accountable to the Parliament.

2. The Government shall be composed of the Prime Minister and Ministers. The Government may also include a State Minister or State Ministers. The Prime Minister shall be authorized to charge one of the members of the Government to serve as the first Vice Prime Minister, and also one or several members to serve as Vice Prime Minister”.

b. Paragraph 3-5 shall be read as:

“3. On the basis of the Constitution and other legal acts, and to ensure their proper implementation, the Government shall adopt decrees and resolutions which shall be signed by the Prime Minister.

4. The President shall be authorised to request the Government to consider a specific issue/issues and participate in these discussions, attended also by the Secretary and other members of the Security Council.

5. The powers, structure and procedures of the Government shall be determined by the Constitution and the law. The requisite draft law shall be submitted by the Government.”

25. Article 79 shall be amended as follows:

a. Paragraph 1 shall read as:

“1. The Prime Minister shall be the Head of Government.”

b. Paragraph 2 shall read as:

“2. The Prime Minister shall direct the Government’s activities, organise its work, co-ordinate and control the work of Government members.”

c. Paragraph 5 shall be read as:

“5. The Prime Minister shall appoint and remove from office the other members of the Government.”

d. Paragraph 7 shall be read as:

“7. The resignation or termination of the Prime Minister’s powers shall be deemed to be the termination of powers of the other members of the Government. If another member of the Government resigns or is dismissed from office, the Prime Minister shall within two weeks appoint a succeeding member of the Government.”

26. Article 80 shall be worded as follows:

“Article 80

1. Upon the first assemble of the newly elected Parliament, the powers of the Government shall be deemed terminated and the President of Georgia shall charge it to continue to carry out its official functions until the approval of a new Government.

2. The President of Georgia shall within seven days from the termination of powers of the Government nominate for the office of Prime Minister the candidate put forward by the election subject having gained the best results in the parliamentary elections.

3. The candidate nominated for the Prime Minister’s post shall within 7 days select ministerial candidates and submit for the Parliament’s approval a new composition of the Government along with the Government’s proposed agenda.

4. The Parliament of Georgia shall, within seven days after the submission, consider and put to the vote the new composition of the Government. An overall majority vote of the Parliament shall be required to gain the approval.

5. If rejected, the Parliament shall within one month hold a repeat confirmation vote of the same or a revised composition of the Government.

6. If the Prime Minister’s candidate is not nominated or the Parliament fails to approve the new Government through the procedure and within the timeframe as stipulated in paragraph 5 of this Article, the President shall within 7 days nominate for the post of the Prime Minister the candidate put forward by no less than two-fifths of all the members of Parliament. If two candidates are put forward by different groups of Parliament members, the President shall nominate the candidate proposed by a greater number of members, or one of the candidates if the number is equal.

7. In the case provided for under paragraph 6, selection of the members of the Government and holding of the confirmation vote shall be undertaken pursuant to the procedures as stipulated in paragraphs 3 and 4 of this Article. If the new Government fails to obtain the approval of the Parliament, the President shall within three days dissolve the Parliament and call early elections.

8. Within two days after the confirmation by the Parliament, the President shall officially appoint the Prime Minister, and the Prime Minister shall within two days appoint the other members of the Government. If no legal act providing for the appointment of the Prime Minister is issued by the President within the stipulated time, the Prime Minister shall be deemed to be appointed.”

27. The following article shall be added to the Constitution as Article 80¹:

“Article 80¹:

1. In the event of the Government’s resignation or the termination of the powers of the Prime Minister, the President shall within seven days nominate for the office of Prime Minister the candidate proposed by the parliamentary majority. In the absence of the parliamentary majority, the President shall nominate the candidate put forward by the parliamentary faction with the largest membership.

2. Selection of the Government members and holding of the confirmation vote shall be undertaken pursuant to the procedures stipulated in paragraphs 3-8 of Article 80.

3. In the cases provided for in paragraph 1 of this Article, the President shall charge the outgoing Government to continue carrying out its official duties until the formation of the new Government.”

28. Articles 81 and 81¹ shall be worded as follows:

“Article 81

1. The Parliament shall be entitled to declare no confidence in the Government. A motion of no confidence may be filed by not less than two-fifths of all Parliament members. The Parliament shall hold a vote on the motion at the earliest thirty, but no later than thirty-five days after its filing. The Parliament shall proceed with the consideration of a no confidence vote if more than half of all members of Parliament support this decision. If the Parliament fails to pass a decision to launch no-confidence proceedings, the same Parliament members shall not be entitled to file another motion of no confidence within the next six months.

2. At the earliest thirty, but no later than thirty-five days after the launch of no-confidence proceedings, the Parliament shall hold a vote on submitting to the President the Prime Minister’s candidate proposed by not less than two-fifths of all Parliament members. If two candidates are put forward under the procedure stipulated in this paragraph, voting shall be held on both candidates. The overall majority support in the Parliament shall be required for the approval of the Prime Minister’s candidacy to be submitted to the President.

3. Within five days after the submission, the President shall be authorised to officially nominate or reject the candidacy of a new Prime Minister. If the President nominates the candidate submitted by the Parliament, the new Government shall be formed in accordance with the procedure prescribed in paragraphs 3 and 4 of Article 80.

4. If under the procedure provided for in paragraph 3 of this Article, the President rejects to nominate the proposed candidate, The Parliament shall be authorised to vote on the submission of the same candidate. The vote shall be held not earlier than thirty, but no later than thirty-five days after the initial submission. If the candidate receives the votes of more than three-fifths of all Parliament members, the President shall be obliged to nominate the submitted candidate. The procedures as stipulated in paragraphs 3 and 4 of Article 80 shall be followed to form a new Government.

5. Approval of the new Government pursuant to paragraphs 3 and 4 of this Article shall be considered to be a no confidence vote in the incumbent Government and shall result in the termination of its powers. The appointment of the new Prime Minister and members of the Government shall be carried out in accordance with the procedure provided in paragraph 8 of Article 80.

6. If the Parliament fails to approve the new Government through the procedure provided for in paragraphs 3 and 4 of this Article, the President shall be entitled to dissolve the Parliament within three days and call early elections

Article 81¹

1. The Prime-Minister shall be authorised to move a motion for a vote of confidence in the Government in relation to the Government initiated draft law.

2. The Parliament shall vote on the relevant draft law within fourteen days after the motion has been filed. The draft shall be passed in one hearing.

3. The failure to pass the draft shall be deemed to be a decision to commence the no-confidence proceedings under paragraph 1 of Article 81 and shall be followed by the procedures as stipulated in Article 81.

4. If the Parliament fails to declare no confidence in the Government through the procedures and within the timeframe set forth in Article 81, the draft law shall be considered to be passed.”

29. Article 81³ shall be amended as follows:

“Article 81³

1. Representation of the Government in administrative-territorial units shall be vested in the State Representative - Governor.

2. The powers of the State Representative – Governor shall be defined by law.

3. The State Representative – Governor shall be appointed and relieved from office by the Prime Minister.”

30. Paragraphs 1 and 2 of Article 86 shall be worded as follows:

“1. A person who can serve as a judge shall be a citizen of Georgia who has attained the age of thirty, has a relevant degree in law and at least five years of experience in legal practice.

2. A judge shall be appointed for life until the legal retirement age. The law may provide for a trial period of not more than three years before confirmation of a judge on a permanent basis. The selection, appointment and removal from office of judges shall be regulated by law.”

31. Article 88 paragraph 2 shall be worded as follows:

“2. The Constitutional Court of Georgia shall be composed of nine judges – Members of the Constitutional Court. Three members shall be appointed by the President, three members shall be elected by the Parliament by a two-thirds majority of all its members, and three members shall be appointed by the Supreme Court. Members of the Constitutional Court shall be appointed for a term of ten years. The Constitutional Court shall elect the Chairman from among its members.”

32. Article 89 shall be amended as follows:

“a. The following shall be added after the words “representative bodies” in the preamble of paragraph 1: “the representative body of a local self-government body – Sakrebulo, the High Council of Justice.”

b. The following shall be added as subparagraphs (f²) and (f³) to paragraph 1:

“f². [shall] consider, on the basis of a claim of the local representative body, constitutionality of normative acts in relation to the provisions of Chapter 7¹ of the Constitution;

f³. [shall] consider, based on the motion of the High Council of Justice, constitutionality of normative acts with respect to Articles 82, 84, 86, 86¹, 87 and 90 of the Constitution;”

33. Article 90 paragraph 1 shall be read as follows:

“1. The Supreme Court of Georgia shall be the court of cassation.”

34. Article 93 shall be read as follows:

“Article 93

1. Only the Government of Georgia can submit a draft state budget to the Parliament for consideration, subject to a prior agreement of the basic parameters and directions for the budget with the relevant parliamentary committees.

2. The Government shall submit a draft budget for next year no later than three months before the end of the fiscal year. Together with the draft budget, the Government shall submit a report about the status of the implementation of the current budget. The Government's report on the execution of the state budget shall be presented to the Parliament for approval no later than five months after the end of the fiscal year.

3. No changes shall be made to the draft budget without the consent of the Government. The Government can request the Parliament's approval of any additional expenditure if it indicates the sources of financing such spending.

4. A draft law on the state budget can only provide for any cuts in the presidential appropriations, compared to the expenditures envisaged in the previous year's budget, with the consent of the President.

5. If within the course of three months the Parliament fails to pass the budget, state expenditures shall be incurred in the same proportions as in the previous year's budget.

6. A draft providing for an increased public spending, reduced revenues or taking on of additional financial obligations by the state vis a vis the current budget, can only be adopted by the Parliament with the consent by the Government. Any drafts concerning the next fiscal year shall be adopted within the budgetary parameters that have been agreed with the Government.

7. The Parliament shall exercise control over the lawfulness of all public spending executed by the Government.”

35. Article 94 paragraph 3 shall be worded as follows:

“3. Any exemption from taxes shall be stipulated by the law.”

36. The following chapter shall be added to the Constitution as Chapter 7¹:

Chapter 7¹
Local Self-Government

Article 101¹

1. The framework for the creation and functioning of local representative and executive bodies shall be determined by the law. The executive bodies of local self-governments shall be accountable to the local representative bodies.

2. The representative body of a local self-government unit – the Local Assembly (Sakrebulo) shall be elected by the citizens of Georgia registered on the territory of a self-government unit by secret ballot on the basis of direct, equal, universal suffrage.

3. The rules for the creation, abolishment of a local self-government unit and changing its administrative borders shall be prescribed by law. The abolishment of a local self-government unit or changes in local authority boundaries shall not be made without prior consultation with the self-governing unit concerned.

Article 101²

1. Powers of local authorities shall be separated from those of the state authorities. A self-government unit shall have own and delegated competences. The principles for determining local powers and competences shall be defined by the law.

2. A local self-government unit shall exercise own competences independently and under its own responsibility, according to the provisions prescribed by the law. Local authorities own competences shall be exclusive.

3. Local authorities shall have discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority by the law.

4. Delegation to local authorities of powers and responsibilities for specific purposes shall be based on relevant legal acts and agreements and must be accompanied by the allocation of appropriate material and financial resources. The amount of such resources shall be calculated as prescribed by the law.

Article 101³

1. Local self-government shall have its own property and financial resources.

2. Implementation of decisions taken by the local authorities within the scope of their competences shall be mandatory on the territory of the self-government unit.

3. The administrative supervision of local authorities shall be exercised according to the procedures as are prescribed by the law. The aim of administrative supervision shall be to ensure compliance of the legal acts issued by local authorities with the law and the proper implementation of delegated responsibilities. Any administrative supervision shall be proportional to the aims pursued.”

37. Article 102 paragraph 3 shall be worded as follows:

“3. A draft law concerning any constitutional revision shall be deemed to be passed if the draft is supported by the votes of not less than two-thirds of all members of Parliament in two consecutive parliamentary sessions with an interval of at least three months.”

Article 2

“The Parliament of Georgia shall before 1 December 2013 make any necessary legislative changes with respect to revoking the applicable organic laws and introducing the new procedure of judicial appointment.”

Article 3

1. This Law, save for paragraphs 1, 2, 4-7, 9, 31-33 and 36 of Article 1, Article 2 and Article 3, shall enter into force as of December 1, 2013.

2. Paragraphs 1, 2, 4-7, 9, 31-33 and 36 of Article 1, Article 2 and Article 3 of this Law shall enter into force from January 1, 2011.

Mikheil Saakashvili
President of Georgia