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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**GEORGIA**

**DRAFT REVISED CONSTITUTION**

**AND**

**DRAFT CONSTITUTIONAL LAW  
ON THE AUTONOMOUS REPUBLIC OF ADJARA**

**AND**

**EXPLANATORY MEMORANDUM  
ON THE DRAFT CONSTITUTIONAL AMENDMENTS**

**DRAFT**

**Article 1.** The Constitution of Georgia shall be formulated as following:

We, the citizens of Georgia, whose firm will is to establish a democratic social order, economic freedom, a rule-of-law and a social state, to secure universally recognized human rights and freedoms, to enhance state independence and peaceful relations with other peoples, drawing inspiration from centuries-old traditions of statehood of the Georgian nation and the historical-legal legacy of the Constitution of Georgia of 1921, proclaim the present Constitution before God and the nation.

### **Chapter One. General Provisions**

#### **Article 1. State sovereignty**

1. Georgia is an independent, unified and indivisible state as confirmed by the Referendum of 31 March 1991 held throughout the whole territory of the country including the Autonomous Soviet Socialist Republic of Abkhazia and the former Autonomous District of South Ossetia and by the Act of Restoration of State Independence of Georgia of 9 April 1991.
2. The territory of the State of Georgia is determined as of 21 December 1991. The territorial integrity of Georgia and the inviolability of state borders is acknowledged by the Constitution and laws of Georgia, and recognized by the world community of nations and international organizations. Alienation of the territory of Georgia shall be prohibited. The state borders may be changed only by a bilateral agreement with a neighboring state.

#### **Article 2. State symbols**

1. "Georgia" is the name of the State of Georgia.
2. Tbilisi is the capital of Georgia.
3. The official language of Georgia shall be Georgian and also Abkhazian in the Autonomous Republic of Abkhazia. The official language is protected by Organic Law.
4. The state flag, the coat of arms and the anthem of Georgia is defined by Organic Law, which shall be revised in accordance with the procedure established for the revision of the Constitution.

#### **Article 3. Democracy**

1. Georgia is a democratic state.
2. The political structure of the State of Georgia is a democratic republic.
3. People shall be the source of state authority. People exercise their power through their representatives, also through a referendum and other forms of direct democracy. Participation in elections and referenda is a duty of every citizen of Georgia.
4. No one has the right to appropriate or illegally seize the power. The current term of the body elected through universal elections shall not be extended or reduced by the Constitution or law.
5. Political parties participate in the formation of political will of people. Activities of political parties are based on principles of their freedom, equality, transparency and inner-party democracy.

#### **Article 4. A rule-of-law state**

1. Georgia is a rule-of-law state.
2. The State recognizes and protects universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly applicable law. The Constitution of Georgia shall not deny other universally recognized human rights and freedoms that are not explicitly referred to herein but derive from the principles of the Constitution.
3. State authority shall be exercised based on the principle of separation of powers.
4. State authority shall be exercised within the ambit of the Constitution and the law. The Constitution of Georgia shall be the supreme law of the State. The procedure for adoption and issuance of legislative and other normative acts and their hierarchy shall be determined by the Constitution and the Organic Law.
5. The legislation of Georgia shall comply with the universally recognized principles and rules of international law. An international treaty of Georgia, unless it comes into conflict with the Constitution of Georgia or the Constitutional Agreement, shall prevail over domestic normative acts.

#### **Article 5. A social state**

1. Georgia is a social state.
2. The State shall take care for promoting principles of social justice, social equality and social solidarity within the society.
3. The State shall take care for equal socio-economic development over the whole territory of the country. Law establishes the special conditions for the development of high mountainous regions.
4. The State shall take care for ensuring healthcare and social protection, subsistence minimum and decent housing for citizens. The State shall promote employment of citizens. Conditions of providing subsistence minimum shall be determined by law.
5. The State shall take care for development of education, science, culture and sports, and protection of cultural heritage.

#### **Article 6. Economic freedom**

1. Economic freedom is recognized and guaranteed.
2. The State shall take care for development of free and open economy, free entrepreneurship and competition.
3. Abolishment of the universal right to ownership, its acquisition, alienation or inheritance shall be inadmissible.

#### **Article 7. Framework of territorial arrangement**

1. The following shall fall within the exclusive competence of supreme state authorities of Georgia:
  - a) Legislation on Georgian citizenship, human rights, emigration and immigration, entering and leaving the country, temporary or permanent stay of aliens and stateless persons in Georgia;
  - b) criminal and penitentiary, civil, intellectual property and trade, administrative and labor, procedural legislation; land, minerals and natural resources legislation; pharmaceutical legislation; legislation on accreditation of educational institutions and academic degrees; the National Academy of Sciences;
  - c) Foreign policy and international relations; foreign trade, custom and tariff regimes;

d) state defense, armed forces, military industry and arms trade; issues of war and ceasefire; determination and introduction of legal regime of state of emergency and martial law; courts and prosecution; state security; criminal police and investigation; status, regime, and protection of the state borders; sanitary cordon on borders;

e) State finances and state loans; currency issuance; banking, credit, insurance and tax legislation;

f) railways and roads of state significance; integrated power system and regime; communications; status and protection of territorial waters, airspace, continental shelf and exclusive economic zone; aviation; merchant fleet; ensigns; harbors of state significance; fishing in oceans and high seas; meteorology; environmental monitoring systems; standards and etalons; geodesy and cartography; determining the exact time; state statistics.

2. The powers and rules of authority of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara shall be defined by constitutional laws of Georgia that constitute an integral part of the Constitution.

3. Constitutional law shall revise the territorial state structure of Georgia on the basis of the principle of delimitation of powers after the complete restoration of jurisdiction of Georgia over the whole territory of the country.

4. The citizens of Georgia shall regulate the affairs of local importance through local self-governance in accordance with the legislation of Georgia. The separation of powers between the state authorities and self-governing units is based on the principle of subsidiarity. The State ensures the compliance of financial resources of self-governing units with its powers defined by Organic Law.

#### **Article 8. Relationship between the State and the Georgian Orthodox Church**

Along with freedom of belief and confession, the State shall recognize the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State. Relations between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia shall be governed by the Constitutional Agreement that should be in full compliance with the universally recognized principles and norms of international law.

### **Chapter Two. Fundamental Human Rights**

#### **Article 9. Right to human dignity**

1. Human dignity shall be inviolable and protected by the State.

2. No one shall be subjected to torture, inhuman or degrading treatment, or cruel, inhuman or degrading punishment.

#### **Article 10. Rights to life and physical integrity**

1. Human Life shall be protected. Death penalty shall be prohibited.

2. The physical integrity of a person shall be protected.

#### **Article 11. Right to Equality**

1. All persons shall be equal before the law. Any discrimination based on race, color, origin, ethnic belonging, language, sex, religion, political and other opinions, social affiliation, property and social rank, residence or any other ground shall be prohibited.

2. According to universally recognized principles and norms of international law and legislation of Georgia, citizens of Georgia regardless of their ethnic, religious or linguistic origin, shall have the right to maintain and develop their culture without any discrimination and enjoy their mother tongue in private and publicly.

3. The State shall provide equal rights and opportunities for men and women. The State shall take special measures to ensure the essential equality of men and women and eliminate inequality.

4. The State shall create special conditions for exercising rights and interests of persons with disabilities.

#### **Article 12. Right to personal identity**

Everyone shall have the right to the free development of their personality.

#### **Article 13. Personal Liberty**

1. Personal liberty shall be protected.

2. Imposing imprisonment or otherwise depriving liberty shall be permitted only on the basis of court decision.

3. Arrest of a person shall be permitted by a specially authorized official in cases provided by law. A detainee shall be brought before a court of competent jurisdiction not later than 48 hours. If the court does not adjudicate upon detention or any other deprivation of liberty within next 24 hours, the person shall be released immediately.

4. A person shall be informed about his/her rights and grounds for detention immediately upon detention. A person may request an assistance of a lawyer immediately upon detention which must be satisfied.

5. Pre-trial detention period shall not exceed nine months.

6. Violation of requirements of this Article shall be punishable by law. A person whose liberty is unlawfully deprived shall have the right to compensation.

#### **Article 14. Freedom of movement**

1. Everyone lawfully in Georgia shall have the right to move freely within the territory of the country, choose his/her place of residence freely and leave Georgia freely.

2. These rights may be subject only to such restrictions that are prescribed by law and are necessary in a democratic society to ensure national security and public safety, prevent crime, protect public health or administer justice.

3. A citizen of Georgia shall be free to enter Georgia.

#### **Article 15. The rights to privacy, protection of communication and informational self-determination**

1. Personal space and communication shall be respected and protected. No one shall have the right to enter a place of residence or other possessions against the will of a possessor, nor to conduct a search.

2. These rights may be subject only to such restrictions that are prescribed by law and are necessary in a democratic society to ensure national security and public safety, prevent crime or protect rights of others based on a court decision, or without a court decision in cases of urgent necessity. The court shall be notified on restriction of the right not later than 12 hours in order to confirm the legality of restriction not later than 24 hours after its submission.

3. Information contained in official records pertaining to health, finances or other personal matters of an individual shall not be made available to anyone without prior consent of an individual in question, except as determined by law, when it is necessary to ensure national security or public safety, protect public interests, health or rights of others.

**Article 16. Freedom of belief and conscience**

1. Everyone has the freedom of belief and conscience.
2. No one shall be persecuted because of his/her belief or conscience, or be compelled to express his/her opinion about belief or conscience.
3. Restriction of freedom of belief and conscience shall be inadmissible unless their manifestation violate the rights of others.

**Article 17. Rights to freedom of opinion, information, mass media and the Internet**

1. Freedom of opinion shall be protected. No one shall be persecuted because of his/her opinion or for its expression.
2. Everyone has the right to receive and disseminate information freely.
3. Mass media shall be free. Censorship shall be inadmissible. Neither the State nor particular individuals shall have the right to monopolize mass media or the means of dissemination of information.
4. Everyone has the right to access and freely use Internet..
5. The exercise of these rights may be restricted by law on such conditions which are necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the prevention of crime, for the protection of the rights of others, for preventing the disclosure of information that is deemed confidential or for ensuring the authority and impartiality of the judiciary.
6. The independence of the public broadcaster from state agencies and freedom from political and substantial commercial influence shall be ensured by law.
7. Institutional and financial independence of the national regulatory body that is established for protection of media pluralism, exercise of freedom of expression in mass media or prevention of monopolization of mass media or means of dissemination, as well as protection of rights of consumers and entrepreneurs in the field of broadcasting and electronic communications shall be guaranteed by law.

**Article 18. Rights of fair administrative proceedings and access to public information**

1. Everyone has the right to a fair hearing of his/her case by an administrative body within a reasonable time.
2. Everyone has the right to access information and official documents that are kept in public institutions, unless they contain state or commercial secrets.
3. Everyone shall be entitled to full compensation for damages unlawfully caused by state bodies or bodies of the autonomous republics and self-governances and their employees from the state funds or funds of the autonomous republic and local self-governances respectively.

**Article 19. Right to property**

1. The right to own and inherit property shall be recognized and guaranteed.
2. In the public interest, this right may be subject to restrictions in cases prescribed by law and according to the established procedure.
3. Property may be deprived for pressing social needs in cases directly prescribed by law, based on a decision of a court, or if urgently necessary under an organic law, provided that preliminary, full and fair compensation is made. Compensation shall be exempted from any taxes and fees.

4. The right to property over the land as a significant resource shall be regulated by Organic Law.

#### **Article 20. Freedom of intellectual creativity**

1. Freedom of art and academic activities shall be guaranteed. Intellectual property rights shall be protected.
2. Interference in the creative process, censorship in the field of creative activities shall be inadmissible.
3. Dissemination of a creative work may only be prohibited on the basis of a court decision if dissemination of the work violates the rights of others.
4. Cultural heritage shall be protected by law.

#### **Article 21. Freedom of assembly**

1. Everyone, except those who are in composition of the armed forces, has the right to assemble publicly without arms, without prior permission.
2. The law may establish the need for prior notification to the state authority if an assembly or a manifestation is to be held on a public thoroughfare.
3. Authorities may terminate a public assembly or a manifestation only if it assumes unlawful character.

#### **Article 22. Freedom of association**

1. Freedom of association shall be guaranteed.
2. Liquidation of an association may only be made by its own decision or a decision of the court in cases prescribed by Organic Law and according to the established procedure.

#### **Article 23. Freedom of parties**

1. Citizens of Georgia have the right to form a political party and participate in its activities as prescribed by Organic Law.
2. A person who will be enrolled in the armed forces, or appointed as a judge or a prosecutor shall cease to be a member of a political party.
3. Creation and activity of a political party that aims to overthrow or forcibly change the constitutional order of Georgia, infringe the independence and territorial integrity of the country, or propagate war or violence, stir up national, ethnic, religious or social strife, shall be inadmissible. Creation of a political party on territorial grounds shall be inadmissible.
4. A political party may be prohibited only on the basis of a decision of the Constitutional Court, in cases prescribed by Organic Law and according to the established procedure.

#### **Article 24. Right to voting**

1. Every citizen of Georgia, who has attained the age of 18, has the right to participate in referendum and elections of state bodies and bodies of the autonomous republics and self-governances. Free expression of the will of voters shall be guaranteed.
2. A citizen who is serving his/her sentence for a particularly grave offense in a penitentiary institution by a court judgment, or has been recognized as a support recipient by a court decision and admitted to inpatient care establishment shall have no right to participate in elections and referendum.

**Article 25. Right to hold public office**

1. Every citizen of Georgia has the right to hold any public office if he/she meets requirements established by law. Conditions of civil service shall be determined by law.
2. A citizen of Georgia who at the same time is a citizen of a foreign country may not hold the office of a President, a Prime Minister, and a Chairperson of the Parliament of Georgia.

**Article 26. Freedom of labor, freedom of trade unions, right to strike and freedom of enterprise**

1. Freedom of labor shall be guaranteed. Everyone has the right to free choice of employment. Labor rights shall be protected by Organic Law.
2. Everyone has the right to establish and join trade unions in accordance to the organic law.
3. The right to strike shall be recognized. The procedure for exercising this right shall be determined by Organic Law.
4. Free enterprise shall be guaranteed. Monopolistic activity shall be prohibited, except in cases permitted by law. Consumer rights shall be protected by law.

**Article 27. Right to education**

1. Everyone has the right to receive education and right to choose the type of education.
2. Preschool education shall be ensured according to the procedure prescribed by law. Elementary and basic education shall be compulsory. General education shall be fully funded by the State according to the procedure prescribed by law. Citizens shall have the right to state-funded vocational and higher education according to the procedure prescribed by law.

**Article 28. Right to health**

1. A citizen has the right to state health insurance as a means of affordable and effective medical assistance.
2. The State shall exercise control over all healthcare institutions, as well as over the production and circulation of medicines.

**Article 29. Right to environmental protection**

1. Everyone has the right to live in a healthy environment and enjoy the natural surroundings and public space. Everyone has the right to receive full information about state of the environment in a timely manner. The right to participate in the adoption of environmental decisions shall be ensured by law.
2. Environmental protection, rational use of natural resources and sustainable ecologic development shall be ensured by law, taking into account the interests of current and future generations.

### **Article 30. Right to marriage**

1. Marriage as a union between a woman and a man shall be based on the equality of rights and free will of spouses.
2. The State shall protect the family welfare. The rights of mothers and children shall be protected by law.

### **Article 31. Procedural Rights**

1. Everyone has the right to apply to the court to defend his/her rights. The right to fair and timely trial shall be ensured.
2. Everyone shall be tried only by a court that has jurisdiction over a particular case.
3. The right to defense shall be guaranteed. Everyone has the right to defend his/her rights before a court in person or through a lawyer, or a representative in cases prescribed by law. Unrestricted exercise of the rights of a lawyer as well as the right of self-organization of lawyers shall be guaranteed by law.
4. The defendant has the right to call his/her witnesses and interrogate them under the same conditions as the witnesses of prosecution.
5. A person shall be presumed innocent until his/her guilt is proved according to the procedure established by law on the basis of court's judgment of conviction.
6. No one is obliged to prove his/her innocence. The burden of proof shall be placed on prosecution.
7. A decision to commit an accused for trial shall be based on a reasonable doubt while a judgment of conviction shall be based on incontrovertible evidence. Any suspicion that cannot be proved in accordance with the procedure established by law shall be resolved in the defendant's favor.
8. No one shall be subject to repeated conviction for the same crime.
9. No one shall be held responsible for an action that did not constitute an offence at the time when it was committed. No law shall have retroactive force unless it reduces or abrogates responsibility.
10. Evidence obtained unlawfully shall have no legal force.
11. No one shall be obliged to testify against himself/herself or against his/her relatives who are determined by law.

### **Article 32. Citizenship of Georgia; Compatriots living abroad**

1. Georgia shall protect its citizen regardless of his/her whereabouts.
2. Georgian citizenship shall be obtained by birth and naturalization. The procedure for obtaining and losing Georgian citizenship, granting citizenship of Georgia to a foreign citizen and compiling citizenship of another state by a citizen of Georgia shall be determined by Organic Law.
3. Deprivation of citizenship shall be inadmissible.
4. Expulsion of a Georgian citizen from Georgia shall be inadmissible.
5. Transfer of a citizen of Georgia to a foreign state shall be inadmissible except in cases provided by an international treaty. Decision on transfer of a citizen may be appealed to the court.
6. The State cares about preservation and development of relations of compatriots living abroad with their homeland.

### **Article 33. Rights of aliens and stateless persons**

1. Aliens and stateless persons living in Georgia shall have the rights and obligations equal to those of citizens of Georgia except in cases provided by the Constitution and the law.
2. The State shall be entitled to impose restrictions on political activities of foreign citizens and stateless persons in accordance with law.
3. Georgia shall grant asylum to aliens and stateless persons in compliance with universally recognized rules of international law, according to the established procedure.

### **Article 34. General principles for ensuring fundamental rights**

1. The fundamental rights referred to in the Constitution, in terms of the context thereof, shall also apply to legal persons.
2. Exercise of fundamental human rights should not violate the rights of others.
3. Restriction of a fundamental human right shall not violate the essence of this right.

### **Article 35. Public Defender**

1. Supervision over protection of human rights within the territory of Georgia shall be exercised by the Public Defender who shall be elected for a five-year term by a majority of total members of Parliament. The same person may not be elected as a Public Defender who previously held this position.
2. Hindering activities of the Public Defender shall be punishable by law.
3. Arrest or detention of the Public Defender, search of his/her place of residence and place of work, car, or any personal search may be permitted only by consent of Parliament, except when caught at the scene of crime, which should be immediately informed to the Parliament. Unless the Parliament gives its consent, the Public Defender shall be released immediately.
4. Powers of the Public Defender shall be determined by Organic Law.

## **Chapter Three. Parliament of Georgia**

### **Article 36. Status and authority, the Rules of Procedure of the Parliament**

1. The Parliament of Georgia is the supreme representative body of the country that exercises legislative power, determines main directions of country's domestic and foreign policy, controls activities of the Government within the scope of the Constitution, and exercises other powers.
2. The work of the Parliament shall be determined by the Rules of Procedure of the Parliament which is adopted by a majority of the total members of the Parliament based on the initiative of a member, a faction or a committee of the Parliament. The Rules of Procedure shall have the force of law. It shall be signed and promulgated by a Chairperson of the Parliament.

### **Article 37. Parliamentary Elections**

1. After appropriate conditions have been created throughout the territory of Georgia, two chambers shall be set up within the Parliament: the Council of Republic and the Senate. The Council of Republic shall be composed of members elected under the principle of proportionality. The Senate shall be composed of members elected from the Autonomous Republic of Abkhazia, the Autonomous Republic of Adjara, and other territorial units of Georgia and five members appointed by the President of Georgia. The composition, powers, and procedure for the election of chambers shall be defined by Organic Law.

2. Before the conditions envisaged by Paragraph 1 of this Article have been created, the Parliament shall be composed of 150 members of Parliament elected in a unified multi-mandate election district for a four-year term by a proportional system on the basis of universal, equal and direct suffrage through secret ballot.
3. Regular parliamentary elections shall be held on the last Saturday of October of the calendar year of expiry of powers of the Parliament. In case of dissolution of the Parliament, elections shall be held not earlier than 45<sup>th</sup> and not later than 60<sup>th</sup> day of the Parliament's dissolution. If election date coincides with a state of emergency or martial law, elections shall be held not earlier than 45<sup>th</sup> and not later than 60<sup>th</sup> day after revocation of this situation.
4. Any citizen of Georgia having the right to vote, who has attained the age of 25 and who has lived in Georgia for at least 10 years, may be elected as a member of Parliament. A person may not be elected as a member of Parliament who has been serving a sentence in a penitentiary establishment.
5. A political party registered according to the procedure established by law, having a member of Parliament elected upon its nomination at the time of appointing elections, or its support is approved by the signature of 25,000 voters according to the procedure prescribed by Organic Law shall have the right to participate in the elections.
6. Mandates of a member of Parliament shall be distributed only to those political parties which receive at least 5 percent of votes cast in the elections. With the purpose of determining a number of mandates received by a political party, a number of votes received by this party shall be multiplied by 150 and divided by a total number of votes received by all political parties. The whole part of the received number is the number of mandates received by the political party. If the total number of mandates received by political parties is less than 150, undistributed mandates shall be given to a political party which has received the most votes.
7. The election procedure of the Parliament shall be determined by Organic Law.

#### **Article 38. First session of Parliament and termination of powers**

1. The first session of the newly elected Parliament shall be held not later than the tenth day after announcement of official results of parliamentary elections. The President of Georgia shall fix a day for the first session. The Parliament shall be authorized to start work at the first session if the majority of total members of Parliament is present at the session. The Parliament shall acquire full powers from the moment of confirming powers of two thirds of members of Parliament.
2. Powers of the Parliament shall be terminated upon the first gathering of the newly elected Parliament.

#### **Article 39. A member of Parliament**

1. A member of Parliament of Georgia is a representative of all Georgia, enjoys a free mandate and cannot be recalled.
2. Arrest or detention of a member of Parliament, search of his/her place of residence and place of work, car or any personal search may be permitted only by prior consent of Parliament, except when caught at the scene of crime, which should be immediately notified to the Parliament. Unless the Parliament gives its consent within 48 hours, the arrested or detained member of Parliament shall be released immediately.
3. A member of Parliament shall have the right not to testify about facts disclosed to him/her in the capacity of a member of Parliament. Seizure of written materials related to this issue shall be inadmissible. This right shall be retained by a member of Parliament after his/her term of office expires. A member of Parliament shall not be held liable for the views expressed inside or outside Parliament while performing his/her duties. A member of Parliament shall be guaranteed unhindered exercise of their powers. A member of Parliament shall receive remuneration prescribed by law. Respective state bodies shall ensure personal safety of a

member of Parliament based on his/her application. Hindering exercise of powers of a member of Parliament shall be punishable by law.

4. A member of Parliament shall not hold any public service or be engaged in entrepreneurial activity. A member of Parliament may be engaged in public activities and may also be engaged in scientific, pedagogic and artistic activities if they do not envisage fulfillment of administrative functions. Conflict of interests shall be defined by the Rules of Procedure of Parliament.

5. Issues of recognition or early termination of powers of a member of Parliament shall be decided on by Parliament. Decision of the Parliament may be appealed to the Constitutional Court. The term of office of the member of Parliament shall be terminated if he/she:

- a) submits a personal application on termination of powers to the Parliament;
- b) holds a position incompatible with his/her status or is engaged in incompatible activity;
- c) fails to participate without good reason in more than half of regular sittings during the regular session;
- d) has been convicted by a court judgement;
- e) has been recognized as a support recipient and admitted to relevant inpatient care establishment, has been found missing or dead by court;
- f) dies;
- g) loses citizenship of Georgia;
- h) is subject to termination of his/her powers by decision of the Constitutional Court.

#### **Article 40. Chairperson and Deputy Chairpersons of Parliament**

1. The Parliament of Georgia shall elect a Chairperson for its term of office by a majority of total members by secret ballot, under the Rules of Procedure. The Chairperson of Parliament shall chair over the work in the Parliament, ensure free expression of opinion, sign the acts adopted by the Parliament and fulfills other powers prescribed by the Rules of Procedure. The Chairperson of Parliament shall exercise full administrative functions in the House of Parliament as prescribed by the Rules of Procedure.

2. The Parliament of Georgia shall elect a first deputy chairperson and deputy chairpersons for its term of office by a majority of total members, including one deputy each from the autonomous republics of Abkhazia and Adjara, under the Rules of Procedure. The first deputy chairperson and deputy chairpersons of the Parliament shall perform the duties of the Chairperson on his/her behalf, in case the Chairperson is unable to exercise his/her powers or has been removed from office.

#### **Article 41. Parliamentary Bureau, committees and factions**

1. To organize the work of the Parliament, a Parliamentary Bureau shall be established which consists of a Chairperson and deputy chairpersons of Parliament, chairpersons of parliamentary committees and parliamentary fractions.

2. Committees shall be set up in the Parliament to preliminary prepare legislative issues, facilitate implementation of decisions and exercise control over activities of the bodies accountable to the Government and Parliament.

3. Members of Parliament may join a parliamentary faction. The number of faction members should not be less than seven. Members of Parliament elected upon nomination of one political party may join only one faction. The rule of establishment and activity of the faction and its rights shall be determined by the Rule of Procedure of Parliament.

#### **Article 42. Investigative and other temporary commissions of the Parliament**

1. Investigative or other temporary commissions shall be established in the Parliament in cases envisaged by the Constitution and the Rules of Procedure of Parliament, as well as at the request of least one fifth of members of Parliament.
2. Decision on creation of a temporary commission shall be adopted by the Parliament according to the procedure prescribed by the Rules of Procedure. Decision on creation of a temporary investigative commission shall be supported by one third of the total members of Parliament. Parliamentary factions should be presented in a temporary commission by at least one member. Representation of opposition factions in temporary commission should not be less than half of the total number of members of the commission.
3. At the request of an investigative commission, everyone shall be required to come to its meetings and submit all documents and information that are necessary for examination of the case.

#### **Article 43. Question and Interpellation of a Member of Parliament**

1. A member of the Parliament shall be entitled to pose a question to the Government, other body accountable to the Parliament, a member of the Government, state bodies of the territorial units at all levels and state institutions. Providing timely and full response to the question of the Member of Parliament is mandatory.
2. A parliamentary faction, a group of at least seven members of Parliament shall have the right to pose questions through interpellation to the Government, other body accountable to the Parliament, a member of the Government who are obliged to answer questions at the sittings of Parliament. The answer may become a subject of discussion by Parliament.

#### **Article 44. Sessions and sittings of Parliament**

1. The Parliament shall meet in its official capacity for a regular session twice a year. The autumn session shall open on the first Tuesday of September and close on the third Friday of December. The spring session shall open on the first Tuesday of February and close on the last Friday of June.
2. The President of Georgia shall convene an extraordinary session of Parliament at the request of the Chairperson of Parliament, not less than one fourth of members of Parliament and the Government during the period between the sessions, or convene a special sitting in the course of a regular session. Unless an act of summoning is issued within 48 hours after a written request, the Parliament shall meet within the following 48 hours according to the procedure prescribed by the Rules of Procedure of the Parliament. A special sitting of the Parliament shall be held only according to the agenda defined by an initiator and shall close once the agenda has been completed.
3. The Parliament shall meet upon declaration of a state of emergency or martial law by the President. The Parliament shall work until revocation of this situation.
4. The sittings of the Parliament shall be public. By the decision of the majority of the members, the Parliament may declare a sitting or its part closed while discussing particular issues. The decision to close a sitting or its part shall be taken by secret vote. Records of open plenary sittings of Parliament shall be public.
5. Voting at a plenary sitting of Parliament shall be open or secret. Voting is open, except for the cases envisaged by the Constitution and the law.
6. A member of the Government and an official accountable to the Parliament shall be entitled and may be required to attend sittings of Parliament, its committee or commission, to provide answer to the questions raised during the sitting and submit a report of activities performed.

The Parliament, a committee, or a commission shall hear such an official immediately upon request.

#### **Article 45. Lawmaking and rules of decision making**

1. The Government, a member of Parliament, a parliamentary faction, a parliamentary committee, supreme representative bodies of the Autonomous Republics of Abkhazia and Adjara, and not less than 30,000 voters shall have the right of legislative initiative. The Parliament shall discuss a draft law submitted by the Government out-of-order upon its request.

2. A law shall be deemed adopted if supported by a majority of the members present but not less than one third of total members of the Parliament unless otherwise prescribed by the Constitution for adopting laws. An organic law shall be deemed adopted if supported by a majority of total members of the Parliament unless otherwise prescribed by the Constitution for adopting organic laws.

3. Parliament shall adopt other decisions through a resolution. A resolution shall be deemed adopted if supported by a majority of members present but not less than one third of total members of the Parliament unless otherwise prescribed by the Constitution or the law for adopting resolutions. A resolution on approval of the constitutional agreement shall be deemed approved if supported by not less than three fifths of total members of Parliament.

#### **Article 46. Signature and promulgation of a law**

1. A law passed by Parliament shall be submitted to the President of Georgia within 10 days.

2. The President shall sign and promulgate the law or return it to the Parliament with justified remarks within 2 weeks.

3. If the President returns the law, the Parliament shall put the President's remarks to a vote. For adopting remarks, the same number of votes shall be needed as it is required for initially adopting similar laws. If remarks are adopted, the final version of the law shall be submitted to the President within 5 days who signs and promulgates it within 5 days.

4. If the Parliament rejects the President's remarks, an initial version of the law shall be put to a vote. An organic law or a law shall be deemed adopted if it is supported by a majority of total members of Parliament. A law shall be submitted to the President within 3 days who signs and promulgates it within 5 days.

5. A law on introducing amendments to the Constitution that was adopted by two thirds of total members of Parliament, shall be signed by the President of Georgia within 5 days after submission, without the right to return it to the Parliament with remarks.

6. If the President does not sign the law, nor return it to Parliament with justified remarks within the timeframe defined in Paragraph 2 of this Article, or does not promulgate it within the timeframes defined in Paragraphs 3, 4 or 5 of this Article, the Chairperson of Parliament shall sign and promulgate it within 5 days after this timeframe expires.

7. A law shall enter into force on the 15<sup>th</sup> day from its official promulgation in the Legislative Herald of Georgia unless another date is defined by the same law.

#### **Article 47. International agreements**

1. The Parliament of Georgia shall ratify, denounce and annul international treaties by a majority of its total members. The Parliament shall ratify, deny and annul international treaties referred to in Paragraph 2(c) of this Article by a majority of two thirds of its total members.

2. Besides those international treaties that envisage ratification, it shall also be mandatory to ratify international treaties which:

a) envisage Georgia joining an international organization or interstate alliance;

- b) are of a military nature;
- c) concern the territorial integrity or change of the State borders;
- d) concern taking and issuing a loan by the State;
- e) require change of domestic legislation or adoption of laws that are necessary to fulfil its international obligations.

3. Other international treaties shall be submitted to the Parliament.

Parliament shall be notified of the conclusion of other treaties and international agreements.

4. If a constitutional claim or submission has been lodged with the Constitutional Court, respective international treaty shall not be ratified until the Constitutional Court passes its judgement.

#### **Article 48. Impeachment**

1. Not less than one third of total members of Parliament shall have the right to raise the question of impeachment of the President of Georgia, a member of the Government, a judge of the Supreme Court, a General Prosecutor, an Auditor General and a member of the Board of the National Bank if they have violated the Constitution or committed an offence. The case shall be transferred to the Constitutional Court which will consider it and submit its conclusion to the Parliament within 30 days.

2. If the Constitutional Court based on its conclusion confirms components of crime or violation of the Constitution in the actions of the official, the Parliament shall discuss and vote for the removal of the official from office via impeachment within not later than 15 days after submission of the conclusion.

3. The President of Georgia shall be deemed removed from office via impeachment if this decision is supported by not less than two thirds of its total members. A member of the Government, a judge of the Supreme Court, a General Prosecutor, an Auditor General and a member of the Board of the National Bank shall be deemed removed from office via impeachment if this decision is supported by majority of its total members.

4. If the Parliament does not decide to remove the official from office via impeachment within the timeframe defined in Paragraph 2 of this Article, initiating an impeachment procedure for the same ground shall not be admissible.

5. Officials listed in this Article, except members of the Government, can only be removed from office by impeachment.

6. No impeachment procedure shall be implemented during a state of emergency or martial law.

### **Chapter Four. President of Georgia**

#### **Article 49. Status of the President**

1. President of Georgia is the Head of the State of Georgia, the guarantor of unity and national independence of the country.

2. President of Georgia is the Supreme Commander-in-Chief of the armed forces of Georgia.

3. President of Georgia shall represent Georgia in foreign relations.

#### **Article 50. Rule for election of the President**

1. The President of Georgia shall be elected by the Election Board, without debates, through secret ballot for 5 years. The same person may be elected as the President of Georgia only twice.

2. Any citizen of Georgia having the right to vote, who has attained the age of 40 and who has lived in Georgia for at least 15 years, may be elected as a President of Georgia.
3. The Election Board shall consist of 300 voters, including all members of the Parliament of Georgia and the supreme representative bodies of the autonomous republics of Abkhazia and Adjara. Other voters shall be nominated by respective political parties from the composition of the representative bodies of local self-governments in accordance with Organic Law, in compliance with the principle of proportional geographical representation and on the basis of quotas defined by the Central Election Commission of Georgia in accordance with the results of elections of local self-governments held under the proportional system. Composition of the Election Board shall be approved by the Central Election Commission of Georgia.
4. Elections of the President of Georgia shall be held in the House of Parliament. Not less than 30 voters shall have the right to nominate a candidate to become the President of Georgia. One voter shall be authorized to support the nomination of only one candidate. One voter shall be authorized to vote for only one candidate. In the first round of elections, a candidate having received the most votes but not less than majority of total number of voters shall be considered elected. If the President of Georgia have not been elected in the first round, the second round shall be held between two candidates with the most votes in the first round. A candidate who received the most votes shall be considered elected in the second round. The first or second round of the elections shall be considered to have been held if more than half of the total number of the voters have participated. If elections have not been held or the Election Board failed to elect the President of Georgia, new elections of the President of Georgia shall be held within 30 days.
5. The President of Georgia shall be elected in October of the calendar year when the term of office of the President expires. In case of early termination of the term of office of the President of Georgia, the President shall be elected within 45 days from termination of the term of office. If election date coincides with a state of emergency or martial law, the President of Georgia shall be elected within 45 days after revocation of this situation. If the date of election of the President of Georgia coincides with the last two months before the parliamentary elections, the President of Georgia shall be elected within 45 days after holding the first sitting of the newly elected Parliament.
6. The elections of the President of Georgia shall be appointed by the Parliament, except for the re-elections, which shall be appointed by the Chairperson of the Parliament.
7. The rule and conditions of the election of the President shall be determined by the Constitution and the Organic Law.

**Article 51. President's oath, termination of terms of office, immunity, conflict of interest and succession**

1. Before assuming the office, on the third Sunday after the elections day, the newly elected President of Georgia shall address the people and take the following oath of office: 'I, the President of Georgia, do solemnly affirm before God and the nation that I will support and defend the Constitution of Georgia, the independence, unity, and indivisibility of the country; that I will faithfully perform the duties of the President, will care for the security and welfare of the citizens of my country, and for the revival and might of my nation and homeland'.
2. The term of office of the President of Georgia shall be terminated and the term of office of the newly elected President of Georgia shall be commenced after taking the oath by the newly elected President.
3. The President of Georgia shall enjoy personal immunity. No one shall have the right to arrest or bring criminal proceeding against the President of Georgia while holding the post.
4. The President of Georgia shall not hold other service, undertake entrepreneurial activities, receive salary or other permanent remuneration for any other activity. The President of Georgia cannot be a member of a political party.

5. If the President of Georgia is unable to exercise his/her powers or his/her powers are terminated early, the Chairperson of the Parliament shall perform the duties of the President of Georgia.

## **Article 52. Powers of the President**

1. The President of Georgia shall:

a) with the consent of the Government carry out representative powers in foreign relations, negotiate with other states and international organizations, conclude international treaties, accredit ambassadors and other diplomatic representatives of other states and international organizations; upon nomination of the Government appoint and dismiss ambassadors of Georgia and other diplomatic representatives;

b) on behalf of the State of Georgia, conclude a constitutional agreement with the Apostolic Autocephalous Orthodox Church of Georgia;

c) appoint the elections of Parliament and local self-governance in accordance with the Constitution and procedure prescribed by law;

d) upon nomination of the Government appoint and dismiss the Commander of the armed forces of Georgia; appoint a member of the High Council of Justice; participate in the appointment of the Chairperson and members of the Central Election Commission in cases defined by Organic Law and in accordance with the prescribed procedure; nominate candidates for the members of the national regulatory authorities to the Parliament;

e) make decisions on granting citizenship in accordance with the procedure prescribed by Organic Law and asylum in accordance with the procedure prescribed by Law;

f) grant pardons to convicts;

g) in accordance with the procedure prescribed by law give state awards, high military, special and honorary titles and higher diplomatic ranks;

h) upon submission of the Government and with the consent of Parliament, is entitled to suspend, the activity of self-government bodies or other representative bodies of territorial units or dissolve them if their activities jeopardize the sovereignty, territorial integrity of the country, or the exercise of constitutional powers by state bodies;

i) exercise other powers as defined by the Constitution.

2. The President of Georgia shall have the right to appoint a referendum on issues defined in the Constitution and law at the request of the Parliament of Georgia, the Government of Georgia, not less than 200 000 voters within 30 days after such a request is received. A referendum shall not be held in order to adopt or repeal a law, to grant amnesty or pardon, to ratify or denounce international treaties, as well as concerning the issues that envisage restriction of fundamental constitutional rights of individuals. Issues related to the appointment and conduct of referendum shall be defined by Organic Law.

3. The President of Georgia shall have the right to address the people. The President shall annually submit a report on crucial state-related issues to the Parliament.

## **Article 53. Countersignature**

1. Legal acts of the President of Georgia shall require the countersignature of the Prime Minister. A legal act that requires a countersignature shall be promulgated and shall entail legal consequences only after its countersignature. In the case of countersignature, the responsibility for legal acts shall be laid on the Government.

2. Countersignature shall not be required for legal acts of the President of Georgia related to:

a) appointing parliamentary elections, dissolving the Parliament, convoking sessions and sittings of the Parliament;

- b) concluding constitutional agreement;
- c) signing and promulgating a law, returning a draft law to the Parliament with remarks;
- d) appointing the Prime Minister; appointment of a member of the High Council of Justice; appointing a Chairperson and a member of the Central Election Commission; nominating a member of the Board of the National Bank and appointing the President of the National Bank; appointing a judge to the Constitutional Court;
- e) granting state awards and special ranks;
- f) granting and terminating citizenship, granting asylums;
- g) pardon of convicts;
- h) appealing to the Constitutional Court or a court;
- i) organizing the exercise of powers of the President of Georgia.

## **Chapter Five. Government of Georgia**

### **Article 54. Government**

1. The Government of Georgia is the supreme body of executive power which carries out internal and foreign policy of the country.
2. The Government shall be accountable to the Parliament of Georgia.
3. The Government shall consist of a Prime Minister and ministers.
4. A Ministry shall be established to ensure the implementation of state policy and governance in the field of activity of the Government and is headed by a Minister.
5. One or several State Ministers may also be represented in the composition of the Government. The position of a State Minister may be enacted by law with the purpose of accomplishing state objectives of special significance.
6. A member of the Government shall have no right to hold any other office except in a party, be engaged in entrepreneurial activity, or receive remuneration from any other activity except from scientific and pedagogical work.
7. In order to ensure representation of the Government in administrative-territorial units, the Government shall be authorized to designate state trustees. Powers of state trustees shall be determined by law.
8. The structure and rules of activities of the Government shall be defined by the Constitution and the law. The draft of this law shall be submitted to the Parliament by the Government.

### **Article 55. Prime Minister**

- 1 The Prime Minister is the head of the Government.
2. The Prime Minister shall define the main directions of the Government activities, organize the Government activities, coordinate activities of the ministers and sign the legal acts of the Government.
3. The Prime Minister shall represent Georgia in foreign relations, conclude international treaties on behalf of Georgia.
4. The Prime Minister shall appoint and dismiss ministers and shall be authorized to assign one of the ministers to exercise the duties of the first Vice Prime Minister and to assign one or more ministers to exercise the duties of the Vice Prime Minister.
5. The Prime Minister shall be accountable for the activities of the Government before the Parliament. Annually he/she presents the report on implementation of the Government Program

to the Parliament, and also at the request of the Parliament - the report on implementation of particular parts of the Government Program.

#### **Article 56. Vote of Confidence**

1. Upon recognition of powers of the newly elected Parliament, the Government shall dismiss its authority before the Parliament and continue to perform its duties before the appointment of a new Prime Minister.
2. The Parliament, within 2 weeks after dismissing the authority of the Government, resigning the Government, resigning the Prime Minister or otherwise terminating his/her authority, shall put a vote of confidence to the Government proposed by a candidate of the Prime Minister nominated by a political party which wins in the parliamentary elections. Along with the composition of the Government, the Government Programme shall be presented to the Parliament. A vote of confidence shall be passed by a majority of the total members of the Parliament.
3. If the Parliament does not pass a vote of confidence to the Government within the established timeframe, the President of Georgia shall dissolve the Parliament not earlier than two weeks and not later than three weeks after the expiration of respective timeframe and shall appoint extraordinary elections of the Parliament.
4. The President of Georgia shall not dismiss the Parliament and shall not appoint extraordinary elections of the Parliament, if the Parliament within two weeks after expiry of the timeframe set forth in Paragraph 2 of this Article passes a vote of confidence to the Government proposed by a candidate of the Prime Minister nominated by more than one-third of the total members of the Parliament.
5. Within three days after voting confidence to the Government, the President of Georgia shall appoint the Prime Minister, while the Prime Minister shall appoint the ministers within 3 days after his/her appointment. If the President does not appoint the Prime Minister within the defined timeframe the Prime Minister shall be considered appointed.

#### **Article 57. Vote of no confidence**

1. The Parliament shall be entitled to hold a vote of no confidence to the Government.
2. More than one third of the total members of the Parliament shall be entitled to raise a vote of no confidence to the Government. Alongside with raising a vote of no confidence, the initiators shall nominate a candidate for the Prime Minister while the candidate for the Prime Minister shall propose a new composition to the Parliament.
3. If the Parliament passes a vote of confidence to the new Government within not earlier than 7 and not later than 14 days after raising this issue, a vote of no confidence shall be considered as declared. Within three days after voting confidence to the new government, the President of Georgia shall appoint the Prime Minister, while the Prime Minister shall appoint the ministers within 3 days after his/her appointment. If the President of Georgia does not appoint the Prime Minister within the defined timeframe the Prime Minister shall be considered appointed.
4. If after raising a vote of no confidence the Parliament does not declare no confidence to the Government, it shall be inadmissible to raise a vote of no confidence within next 6 months by the same members of the Parliament.

#### **Article 58. Vote of confidence by the initiative of the Prime Minister**

1. The Prime Minister shall be authorized to raise a vote of confidence to the Government before the Parliament.
2. A vote of confidence shall be held not earlier than 7th and not later than 14th day after its initiation. If the Parliament does not vote a confidence to the Government, the President of

Georgia, not earlier than 7th and not later than 14th day after not declaring a vote of confidence, shall dissolve the Parliament and appoint extraordinary parliamentary elections.

3. The President of Georgia shall not dissolve the Parliament if, within seven days after not declaring a vote of confidence to the Government it passes a vote of confidence to the Government proposed by a candidate of the Prime Minister nominated by more than one-third of the total members of Parliament. Within three days after voting confidence in the new Government, the President of Georgia shall appoint the Prime Minister, while the Prime Minister shall appoint the ministers within 3 days after his/her appointment. If the President does not appoint the Prime Minister within the established timeframe the Prime Minister shall be considered appointed. The term of authority of the Government shall be terminated upon appointment of a new prime Minister.

## **Chapter Six. Judiciary and prosecutor's office**

### **Article 59. Judiciary**

1. Judicial authority shall be independent. It shall be exercised by the Constitutional Court of Georgia and common courts of Georgia.

2. The Constitutional Court of Georgia is a judicial body of constitutional control. Its powers, rules for its creation and activities shall be defined by the Constitution and the Organic Law.

3. Justice shall be administered by common courts. Specialized courts may be created only within the system of common courts. Military court may be established under martial law and exclusively within the system of common courts. The creation of extraordinary courts shall be inadmissible. Common courts shall hear cases by juries in cases and according to the procedure prescribed by law. The system of common courts, authority and rules of activities shall be determined by Organic Law.

### **Article 60. Constitutional Court**

1. The Constitutional Court of Georgia shall exercise judicial power by virtue of constitutional legal proceedings.

2. The Constitutional Court shall consist of 9 judges appointed for 10 years, out of which 3 judges shall be appointed by the President of Georgia, 3 judges shall be elected by a majority of the total members of Parliament and 3 judges shall be appointed by the Supreme Court. A judge of the Constitutional Court may be a citizen of Georgia from the age of 35 years who has higher legal education, at least ten-year experience in specialty area and a distinct professional qualification. A judge of the Constitutional Court may not be a person who previously held this position.

3. The Constitutional Court shall elect a chairperson among its composition for a period of five years. The same person may not be elected as a chairperson of the Constitutional Court who previously held this position.

4. The Constitutional Court of Georgia, according to the procedure prescribed by Organic Law shall:

a) on the basis of a claim of an individual, legal entity or the Public Defender consider the constitutionality of a normative act with respect to fundamental human rights enshrined in the Chapter Two of the Constitution;

b) on the basis of a claim of the President of Georgia, not less than one fifth of the members of the Parliament, or the Government take decision on the compliance of a normative act with the Constitution;

c) on the basis of a submission of the common court consider the issue of constitutionality of a normative act which will be used by the common court while hearing a particular case and which the court reasonably assumes that may contravene the Constitution;

d) on the basis of a claim of the President of Georgia, the Parliament, the Government, the High Council of Justice, the General Prosecutor, the Board of National Bank, the General Auditor, the Public Defender, the supreme representative or executive body of the autonomous republics considers dispute over the competence of the authorities;

e) on the basis of a claim of the President of Georgia or the Government of Georgia, as well as on claim or submission of not less than one fifth of members of Parliament consider the constitutionality of international treaties;

f) on the basis of a claim of the President of Georgia, not less than one fifth of the members of the Parliament, the Government or supreme representative bodies of autonomous republics consider the constitutionality of activities of a political party and the termination of powers of the representative body elected by this political party;

g) on the basis of a claim of the President or the Parliament of Georgia, as well as the respective individual consider the constitutionality of the Parliament's decision on recognition or early termination of powers of a member of Parliament;

h) on the basis of a claim of the President of Georgia, not less than one fifth of the members of the Parliament or the Public Defender consider the dispute over the constitutionality of a legal norm on referendum and elections and constitutionality of referendum and elections held on the basis of this norm;

i) on the basis of a claim of the representative body of a self-governing unit, consider the constitutionality of a normative act with respect to the Chapter Nine of the Constitution;

j) exercise other powers defined by the Constitution of Georgia.

5. A judgment of the Constitutional Court shall be final. A normative act or a part thereof recognized as unconstitutional shall cease to have legal effect as soon as the respective judgment of the Constitutional Court is published, unless the relevant decision envisages other timeframe for the loss of legal force of the act or a part thereof.

6. A legal norm on elections shall not be recognized as unconstitutional by the Constitutional Court within the respective elections year unless this norm has been adopted within one year before the respective elections. A subordinate normative act shall not be recognized as unconstitutional within 60 days before the respective elections.

7. Issues on appointment of judges of the Constitutional Court and termination of their terms of authority, as well as other issues on constitutional legal proceedings and other activities of the Constitutional Court shall be determined by Organic Law.

## **Article 61. Supreme Court**

1. The Supreme Court of Georgia shall be the Court of Cassation.

2. The Supreme Court consists of at least 28 judges. The judges of the Supreme Court shall be elected for not less than 10 year , by a majority of the total members of the Parliament upon submission of the High Council of Justice.

3. The Parliament shall elect a Chairperson of the Supreme Court among the members of the Supreme Court upon submission of the High Council of Justice for a term of ten years. The same person may not be elected as a Chairperson of the Supreme Court who previously held this position.

## **Article 62. Judicial proceedings**

1. A court shall award a judgement on behalf of Georgia. Judicial acts shall be binding. Failure to comply with the court decision or interference on its performance shall be punishable by law.

2. Only a court may annul, change, or suspend a court decision according to the procedure established by law.

3. Court hearings shall be open consider a case at an open hearing. Closed hearings shall be permitted only in the cases provided for by law. A court decision shall be published.
4. Legal proceedings shall be conducted in the official language. An individual not having a command of the official language shall be provided with an interpreter services.
5. Legal proceedings shall be conducted on the basis of equality of arms and adversarial proceedings.

### **Article 63. A judge**

1. A judge shall be independent in his/her activity and shall only comply with the Constitution and the law. Any pressure upon a judge or any interference in his/her activity in order to influence his/her decision making shall be prohibited and punishable by law. No one shall have the right to claim a report concerning a particular case from a judge. All acts restricting independence of a judge shall be null and void.
2. Bringing criminal proceedings against a judge, his/her arrest or detention, search of his/her place of residence and place of work, car or any personal search may be permitted only by consent of High Council of Georgia and in case of a judge of the Constitutional Court – by consent of the Constitutional Court, except when caught at the scene of crime, which should be immediately notified to the High Council of Justice or the Constitutional Court respectively. Unless the High Council of Justice or the Constitutional Court gives its consent, the arrested or detained judge shall be released immediately.
3. The State shall ensure the security of a judge and his/her family.
4. The position of a judge shall be incompatible with any other occupation and remunerative activity, except for pedagogical and scientific activities. A judge may not be a member of a political party or participate in a political activity.
5. A judge of common courts may be removed from consideration of a case, dismissed or moved to another position only in cases defined by law. Irreplaceability of a judge shall be guaranteed by the Organic Law. The reorganization or liquidation of the court may not be the basis for dismissal of judges.
6. A judge of common courts may be a citizen of Georgia from the age of 30 who has relevant higher legal education with at least a five-year experience in specialty area. Judges shall be appointed for life unless they reach the age determined by law. In case of the first appointment, before the lifetime appointment, a judge shall be appointed for a trial period for three years. The judge shall be selected based on conscientiousness and competence. The decision on the appointment of a judge shall be made by a majority of two thirds of the total members of the High Council of Justice. The procedure of appointment or dismissal of judges shall be defined by the Constitution and the Organic Law.

### **Article 64. High Council of Justice**

1. A High Council of Justice of Georgia – a body of the common courts system - shall be established with the purpose to ensure independence and effectiveness of common courts, to appoint judges and perform other tasks.
2. The High Council of Justice shall consist of 15 members. More than half of the composition of the High Council of Justice shall constitute members elected by the judicial self-governing body of judges of the common courts of Georgia. Members of the High Council of Justice, who are not elected by the self-governing body of judges of the common courts and who are not appointed by the President of Georgia, shall be elected by a majority of the total members of the Parliament. A High Council of Justice shall be chaired by a Chairperson of the Supreme Court of Georgia.
3. The High Council of Justice shall be accountable to the judicial self-governing body. The rules for reporting shall be defined by Organic Law.

4. The powers and rules for establishment of the High Council of Justice of Georgia shall be defined by Organic Law.

#### **Article 65. Prosecutor's Office**

1. The Prosecutor's Office of Georgia shall be independent in its activities and shall act only in accordance with the law.
2. Prosecutor's Office of Georgia shall be headed by the Prosecutor General, who is elected for a six-year term by a majority of the total members of the Parliament according to the procedure prescribed by Organic Law.
3. The Prosecutor's Office shall be accountable to the Parliament.
4. The powers, organization and rules of activity of the Prosecutor's Office shall be determined by Organic Law.

### **Chapter Seven. Public financing and control**

#### **Article 66. State budget**

1. The Parliament of Georgia shall annually adopt the Law on State Budget by a majority of the total members of Parliament.
2. Only the Government of Georgia shall have the right to present a draft State Budget to the Parliament after it has examined the Basic Data and Directions with the committees of Parliament. The Government shall submit a draft State Budget for the next year to the Parliament not later than 3 months before the end of a budget year. Along with a draft State Budget, the Government shall submit a report of the progress of the execution of the State Budget for the current year. The Government shall submit a report of execution of the State Budget to Parliament for approval not later than 5 months from the end of a budget year.
3. Amendments to a draft State Budget may only be made with the consent of the Government. The Government may request the Parliament to incur additional state expenditure in cases it indicates the source of expenditures. The Parliament may adopt a draft law that causes increase of expenditure of the State Budget for the current year or reduction of income, or places the State under new financial obligations only with the consent of the Government, whereas, a draft law associated with the following financial year - with the consent of the Government or within the scope of the Basic Data and Directions document of the country submitted by the Government to the Parliament.
4. If the Parliament does not adopt the State Budget within 3 months after completion of the Budget year, the expenditures will be covered by the State Budget of the previous year.
5. Reduction of current resources allocated for the Parliament in the State Budget compared with the amount of budgetary resources of the previous year may be only with the prior consent of the Parliament. Parliaments decides on its own upon distribution of resources allocated for the Parliament in the State Budget.
6. The Law on the State Budget shall be signed and promulgated by the President of Georgia in accordance with Article 46 of the Constitution.
7. The procedure for drafting and adopting the State Budget shall be determined by law.

#### **Article 67. Taxes and fees, economic policy**

1. Payment of taxes and fees shall be mandatory in the amount and manner prescribed by law. Only law shall determine the structure of taxes and fees as well as the procedure for introduction thereof, determination of their rates or the scope of rates. Exemption from taxes shall be permitted only by law.

2. Imposing a new type of common state tax, except for excise tax, or increasing the upper limit of the current rate by the type of common state tax may only possible through a referendum, except for cases provided for by Organic Law. Only the Government of Georgia shall have the right to initiate a referendum. Introduction or change of a tax shall not be deemed as an introduction of a new type of common state tax or an increase in the marginal rate, which represents an alternative to the current tax or replaces the current tax and at the same time does not increase the tax burden. Furthermore, tax rate changes by the type of tax within the current marginal rate shall not be deemed as an introduction of a new type of common state tax or an increase in the marginal rate.

3. The fundamental principles of economic policy with a view to ensure long-term, sustainable economic growth shall be defined by Organic Law. Cases of violation of thresholds set by macroeconomic parameters and deviation from prescribed thresholds in case of urgent necessity, also measures to be taken for returning to the parameter thresholds shall be determined by Organic Law.

#### **Article 68. The National Bank**

1. The National Bank of Georgia shall conduct monetary policy to ensure price stability and shall maintain the stable operation of the financial sector. The National Bank shall be the principal bank of Georgia, the banker and fiscal agent of the Government of Georgia.

2. The Board of the National Bank is the supreme body of the National Bank of Georgia. Members of the Board of the National Bank shall be elected by a majority of total members of the Parliament for a term of seven years upon submission of the President of Georgia. The President of Georgia shall appoint the President of the National Bank from among the members of the Board of the National Bank and dismiss him/her from office.

3. The National Bank shall be independent in its activity. The activities of the National Bank shall not subject to supervision of the State Audit Office. The National Bank shall be accountable to the Parliament and shall annually submit it a report of its activities.

4. Only the National Bank shall have the right to money emission. The name and unit of money shall be determined by Organic Law.

5. Powers and rules of activity as well as guarantees for independence of the National Bank shall be defined by Organic Law.

#### **Article 69. State Audit Office**

1. The State Audit Office shall monitor the use and expenditure of public funds and other public resources with the purpose of facilitating the efficiency and accountability of public administration. It shall also have the right to examine the activities of other state bodies of fiscal and economic control and to submit proposals on improvement of tax legislation to the Parliament.

2. The head of the State Audit office is the General Auditor which shall be elected by a majority of the total members of the Parliament of Georgia for a term of five years upon nomination of the Chairperson of the Parliament.

3. The State Audit Office shall be independent in its activity.

4. The State Audit Office shall be accountable to the Parliament. Twice per year, while submitting the preliminary and full reports on the budget execution, the State Audit Office shall submit the Parliament a conclusion on the Government report as well as its annual report.

5. The State Audit Office shall ensure control of public funds by the Parliament.

6. Powers, structure, and rules of activities as well as guarantees for independence of the State Audit Office shall be defined by Organic Law.

7. Other bodies of state control shall be set up in accordance with law.

## **Chapter Eight. State defense and security**

### **Article 70. Military forces**

1. Defensive war shall be a sovereign right of Georgia.
2. Every citizen of Georgia has a duty to defend Georgia. Rules for military service shall be determined by law.
3. Georgia shall have the military and other armed forces with the purpose to defend the independence, sovereignty and territorial integrity of the country, as well as to fulfill other tasks related to defence and security and international commitments. The types and composition of the military forces shall be determined by law. The President of Georgia shall approve the general structure of the military forces upon submission of the Government, while the Parliament of Georgia shall approve the number of the military forces by a majority of its total members.
4. The military forces of Georgia shall operate under the order of the Minister of Defense in accordance with the law while in case of a state emergency and martial law - under the order of the Prime Minister.

### **Article 71. State of emergency and martial law**

1. In case of armed attack on Georgia or its imminent threat, the President of Georgia, upon submission of the Prime Minister shall declare martial law, in case of appropriate conditions conclude cease-fire and submit such decisions to the Parliament for approval immediately.
2. In case of mass unrest, infringement of country's territorial integrity, military coup d'etat and armed insurrection, natural or technogenic disasters or epidemics, or in other cases when the state bodies are unable to normally exercise their constitutional powers, the President of Georgia upon submission of the Government shall declare a state of emergency throughout the whole territory of the country or in any part thereof and submit the decision to the Parliament for approval immediately. Extraordinary powers shall only apply to the territory where the state of emergency is declared.
3. The President of Georgia shall issue decrees having force of law during a state of emergency or martial law that shall be valid until the revocation of the state of emergency or martial law. The decrees shall be submitted to Parliament when it is assembled. The Parliament shall vote on the decree not later than 48 hours after its submission to the Parliament. If the voting has not been held within this timeframe, the decree shall be considered approved. If the voting has been held within this timeframe, but the decree has not been approved, the decree loses its legal force. Decree related to the powers of the National Bank shall be issued with the consent of the National Bank.
4. During a state of emergency or martial law the President of Georgia shall have the right to restrict the rights listed in Articles 13, 14, 15, 17, 18, 19, 21 and 26 of the Constitution by the decree throughout the territory of Georgia or in any part thereof. During a state of emergency or martial law the President of Georgia shall have the right to suspend operation of Paragraphs 2-6 of Article 13, Paragraph 2 of Article 14, Paragraph 2 of Article 15, Paragraphs 3, 5 and 6 of Article 17, Paragraph 2 of Article 18 and Paragraph 3 of Article 19 by the decree. The President of Georgia shall be obliged to immediately submit the decree envisaged by this Paragraph to the Parliament for approval and it shall come into force after upon approval by the Parliament.
5. If a state of emergency or martial law has been introduced throughout the country, universal elections shall be held after revocation of the state of emergency or martial law. If the state of emergency has been introduced in a certain part of the country, a decision for holding elections in the rest of the country shall be made by the Parliament of Georgia.
6. Decision on revocation of a state of emergency or martial law shall be adopted according to the procedure for introduction of relevant condition.

7. The decision of the Parliament on issues envisaged in this Article shall be adopted by the majority of its total members.

#### **Article 72. Use of military forces**

1. The President of Georgia shall make a decision on use of the military forces upon submission of the Government and submit the decision to Parliament for approval immediately. Military forces shall not be used for the fulfillment of international obligations without the consent of the Parliament. Prime Minister shall take a decision on the use of military forces during the martial law, as well as the natural or technogenic disasters or epidemics. This decision shall not require approval by the Parliament.

2. For the purposes of state defense, in special cases as well as in cases provided for by law, the President of Georgia upon submission of the Government shall make a decision on the entry, use and deployment of military forces of another state in the territory of Georgia. The decision shall immediately be submitted to Parliament for approval and shall enter into force after consent of Parliament.

#### **Article 73. National Defense Council**

1. For the purposes of general coordination of the constitutional bodies during martial law, a National Defense Council shall be established and chaired by the President of Georgia. Permanent members of the National Defense Council are the President of Georgia, the Prime Minister, the Chairperson of Parliament and a commander of the armed forces of Georgia. By the decision of the President of Georgia, individual members of the Parliament and the Government may be invited as members of the Council. The National Defense Council shall act until the revocation of martial law.

2. Powers and rules for activities of the National Defense Council shall be determined by law.

### **Chapter Nine. Local self-governance**

#### **Article 74. Self-governing bodies, borders, legal framework**

1. Citizens of Georgia shall arrange local issues through representative and executive self-government bodies. A representative body shall be elected on the basis of universal, equal and direct suffrage, by secret ballot. Executive bodies shall execute decisions of representative bodies and shall be accountable to them.

2. A self-governing unit is a legal entity of public law. The decision to create or abolish a self-governing unit and change its borders shall be adopted by the Parliament of Georgia upon submission of the Government in consultation with relevant self-governing units.

3. Local self-governance shall be carried out according to the procedure prescribed by Organic Law.

#### **Article 75. Powers of self-governing units**

1. The powers of the State authority and self-governing units shall be separated.

2. A self-governing unit shall be entitled to take decisions on its own initiative according to law on all matters which do not fall within the exclusive powers of the State or of the autonomous republics and which are not excluded from the powers of the self-governing unit according to law.

3. A self-governing unit shall exercise its own powers independently and by its own responsibility within the framework of the Georgian legislation. Own powers defined by Organic Law shall be full and exclusive.

4. The delegation of powers of a self-governing unit by the State authority shall be carried out on the basis of a legislative act or a contract by transferring relevant material and financial resources.

5. The State authority shall exercise legal supervision over activities of a self-governing unit. With the purpose of ensuring relevance of decisions, supervision of activities of the self-governing unit shall only be permissible with respect to decisions adopted on the basis of delegated powers. State supervision shall be carried out in accordance with the procedure prescribed by Organic Law, based on the principle of proportionality.

#### **Article 76. Guarantees of self-governance**

1. A self-governing unit shall have its property and finances.

2. A self-governing unit shall define its organizational arrangement independently and take decision on personnel-related issues independently, in accordance with Organic Law and legislation on civil service.

3. With the purposes of exercising its powers, a self-governing unit shall be entitled to cooperate with other self-governing unit according to the procedure prescribed by Organic Law. A self-governing unit shall be entitled to join unions of self-governing units in accordance with Organic Law.

4. State authorities shall make decisions on issues related to local self-governance in consultation with self-governing units. The procedure for consultations shall be defined by Organic Law.

5. Decisions adopted by self-government bodies within the scope of their competence shall be binding on the territory of self-governing units.

### **Chapter Ten. Revision of the Constitution**

#### **Article 77. Rules of revision of the Constitution**

1. The Constitution shall be revised by a constitutional law. More than half of the total members of the Parliament or not less than 200,000 voters shall be entitled to submit a draft constitutional law.

2. A draft constitutional law shall be submitted to the Parliament of Georgia which promulgates it for open discussions. The Parliament shall start discussing the draft law after one month from its promulgation.

3. A constitutional law shall be deemed adopted if it is supported by not less than two thirds of the total members of the Parliament.

4. The Constitutional Law shall be submitted to the President of Georgia for his/her signature after its approval without amendment by not less than two-thirds of the total members of the Parliament of the subsequent convocation. The Constitutional Law shall be submitted to the President of Georgia for signature upon its adoption if it is supported by not less than three quarters of the total members of the Parliament. The Constitutional Law related to the restoration of territorial integrity shall be adopted by a majority of two-thirds of the total members of the Parliament and shall be handed to the President of Georgia for signature upon its adoption.

5. The President of Georgia shall sign and promulgate the Constitutional Law according to the procedure prescribed by Article 46 of the Constitution.

6. Declaration of a state of emergency or martial law shall lead to suspension of discussions of the draft constitutional law until revocation of the state of emergency or martial law.

## **Chapter Eleven. Transitional provisions**

### **Article 78. Integration into European and Euro-Atlantic structures**

Constitutional bodies shall take all measures within the scope of their powers to ensure full integration of Georgia into the European Union and the North Atlantic Treaty Organization.

### **Article 2.**

1. This law shall enter into force upon the oath of the President of Georgia elected after the next presidential elections.
2. Status of organic law shall be granted to the following laws immediately after enactment of this law.
  - a) on Official Language;
  - b) Law of Georgia on Normative Acts;
  - c) Law of Georgia on Agricultural Land Ownership;
  - d) Law of Georgia on Constitutional Proceedings;
  - e) Law on Social Protection Guarantees for the Members of the Constitutional Court of Georgia;
  - f) Law on Remuneration for the Members of the Constitutional Court of Georgia;
  - g) Law on Case Distribution in Common Courts and Rule of Authorization of the other Judges;
  - h) Law of Georgia on Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings;
  - i) Law on Remuneration of the Common Court Judges;
  - j) Law of Georgia on the Procedure for Communication with Judges of Common Courts;
  - k) Law of Georgia on the Prosecutor's Office;
  - l) Law of Georgia on State Audit Office;
3. The new regulations of creating parliamentary factions shall not be enacted until the recognition of authority of the parliament elected in the next parliamentary elections.
4. The life term appointment of the judges shall apply to the judges appointed for a certain term only after expiration of this term.
5. The amendments to the second chapter of the constitution shall not abolish the decision on admissibility of the applications brought to the constitutional court, instead, if needed, changes of admissibility criteria might occur in accordance to the amendments brought in the second chapter of the constitution.
6. The Constitutional Law on Autonomous Republic of Adjara can be adopted with the title different from the title defined by the provision acting before enactment of this law.

**Draft Constitutional Law of Georgia  
on the Autonomous Republic of Adjara**

**Article 1**

1. Autonomous Republic of Adjara is an integral territorial part of Georgia.
2. Autonomous Republic of Adjara shall include the territory within the administrative borders existing at the time of adoption of this Law. The administrative borders of the Autonomous Republic of Adjara may be changed at the initiative of the two thirds of the total members of the Supreme Council of the Autonomous Republic of Adjara under the organic law of Georgia.
3. Authority in the Autonomous Republic of Adjara shall be exercised in accordance with the Constitution and legislation of Georgia. Only those state bodies that are envisaged by the legislative acts of Georgia may be created in the Autonomous Republic of Adjara.
4. The Constitution of the Autonomous Republic of Adjara shall be adopted by two thirds of the total members of the Supreme Council of the Autonomous Republic of Adjara and shall enter into force upon the enactment of the Organic Law of Georgia on Approval of the Constitution of the Autonomous Republic of Adjara.
5. Autonomous Republic of Adjara has a flag and coat of arms, which are determined by the Constitution of the Autonomous Republic of Adjara. The flag and coat of arms the Autonomous Republic of Adjara shall include the elements of the state flag and coat of arms of Georgia. The rule of use of flag and coat of the Autonomous Republic of Adjara shall be determined by the legislation of Georgia and the Autonomous Republic of Adjara.
6. The city of Batumi is the administrative center of the Autonomous Republic of Adjara.

**Article 2**

1. The powers of the Autonomous Republic of Adjara shall be determined by the Constitution of Georgia, this Law, the Constitution of the Autonomous Republic of Adjara, other legislative acts of Georgia and the Autonomous Republic of Adjara.
2. Authorities of the Autonomous Republic of Adjara shall independently exercise the exclusive powers of the Autonomous Republic of Adjara. Exclusive powers of the Autonomous Republic of Adjara are:
  - a) adoption of laws and other normative acts of the Autonomous Republic of Ajara;
  - b) determination of the structure, powers and rules of activity of the Government of the Autonomous Republic of Ajara;
  - c) development and exercise of the budgetary policy of the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara, adoption of the budget of the Autonomous Republic of Adjara and control of its implementation;
  - d) management and administration of the property of the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara;
  - e) management and administration of the land, forest and water resources owned by the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara;
  - f) urban and territorial planning and development of the Autonomous Republic of Adjara in accordance with the legislation of Georgia and the Autonomous Republic of Adjara;
  - g) management of roads and other infrastructure having the importance for the Autonomous Republic;

h) establishment, management and support of educational, scientific, creative and sports institutions having the importance for the Autonomous Republic;

i) defining and awarding the prizes and honorary titles of the Autonomous Republic of Adjara;

j) management of the Archives Administration of the Autonomous Republic of Adjara.

3. Autonomous Republic of Adjara may exercise any authority in the field of economy, agriculture, tourism, health and social security, education, culture, sport and youth policy, environmental protection, which does not belong to the exclusive powers of the state authority or own exclusive powers of local self-governance and exercise of which is not excluded from the powers of the Autonomous Republic of Adjara based on the legislation of Georgia.

4. Delegation of powers to the Autonomous Republic of Adjara by the State shall be permissible under law, by providing relevant material and financial resources.

5. The Autonomous Republic of Adjara shall enjoy financial autonomy within the scope established by legislation of Georgia. With the purpose of ensuring the exercise of powers of the Autonomous Republic of Adjara, part of state tax and non-tax revenues as well as special funding from the state budget may be transferred to the Autonomous Republic of Adjara based on legislation of Georgia. The Autonomous Republic of Adjara shall have a property and its rule of formation shall be determined by legislation of Georgia.

### **Article 3**

1. The Supreme Council of the Autonomous Republic of Adjara is the supreme representative body of the Autonomous Republic of Adjara, which, within the scope of powers of the Autonomous Republic of Adjara, performs law-making activities and monitors the activity of the Government of the Autonomous Republic of Adjara.

2. The Supreme Council shall be composed of not more than 21 deputies elected for a term of four years. The Supreme Council shall be elected by citizens of Georgia registered on the territory of the Autonomous Republic of Adjara on the basis of universal, equal and direct suffrage, by secret ballot. The regular elections of the Supreme Council shall be conducted on the first Sunday of October of the calendar year in which the term of powers of the Supreme Council expires. Elections shall be convened by the President of Georgia not later than 60<sup>th</sup> day before elections, in accordance with procedure established by Organic Law. The number of deputies of the Supreme Council shall be determined by the Constitution of the Autonomous Republic of Adjara while the rules for their election - by legislation of Georgia as well as the Constitution and legislation of the Autonomous Republic of Adjara. The summary report of the Supreme Council elections shall be determined by the Supreme Election Commission of the Autonomous Republic of Adjara in accordance with procedure established by legislation of Georgia and the Autonomous Republic of Adjara.

3. The first sitting of the Supreme Council shall be held not later than one month after the elections and it shall be appointed by the President of Georgia. The Supreme Council shall begin work if powers of at least two thirds of the members of the Supreme Council have been confirmed.

4. A member of the Supreme Council shall not be a member of another representative body or the Government of the Autonomous Republic of Adjara at the same time. Other cases of conflicts of interest shall be determined by the legislation of Georgia, the Constitution of the Autonomous Republic of Adjara and the Rules of Procedure of the Supreme Council.

5. Supreme Council shall:

a) adopt the Constitution of the Autonomous Republic of Adjara and laws of the Autonomous Republic of Adjara;

b) approve the Government of the Autonomous Republic of Adjara;

c) be entitled to hold a vote of no confidence in the Government of the Autonomous Republic of Adjara by a majority of its total members;

d) adopt the budget of the Autonomous Republic of Adjara by a majority of its total members;

e) determine the awards and honorary titles of the Autonomous Republic of Adjara;

e) carry out other powers defined by the legislation of Georgia, the Constitution of the Autonomous Republic of Adjara and the legislation of the Autonomous Republic of Adjara.

6. A law of the Autonomous Republic of Adjara, other than the Constitution, shall be signed and promulgated by a Chairperson of the Government of the Autonomous Republic of Adjara who is authorized to return the draft law with remarks to the Supreme Council. The Supreme Council shall put the remarks of the Chairperson of the Government to a vote. For adopting remarks, the same number of votes shall be needed as it is required for adopting a draft law. For adoption of the initial version of the draft law, it should be supported by a majority of total members of the Supreme Council. If the Chairperson of the Government does not sign the law, a Chairperson of the Supreme Council shall sign and promulgate it.

7. The authority of the Supreme Council of the Autonomous Republic of Adjara shall be terminated immediately upon recognition of powers of the newly elected Supreme Council or upon the entry into force of the decree of the President of Georgia on dissolution of the Supreme Council.

8. With the consent of the Parliament of Georgia, the President of Georgia shall be authorized to dissolve the Supreme Council if its activities jeopardized the sovereignty and territorial integrity of the country and exercise of constitutional powers of the state authorities, it fails to carry out powers granted by this Law and the Constitution of the Autonomous Republic of Adjara or did not approve the Government of the Autonomous Republic of Adjara consecutively twice. The dissolution of the Supreme Council shall cause termination of powers of the Government of the Autonomous Republic of Adjara. In case of dissolution of the Supreme Council, the Provisional State Council shall exercise its powers as well as those of the Government of the Autonomous Republic of Adjara. The Provisional State Council shall be appointed by the President of Georgia. The powers of the Provisional State Council shall be terminated upon recognition of powers of the newly elected Supreme Council. The law adopted by the Provisional State Council shall be subject to approval by the Supreme Council within one month after recognition of its powers. If the Supreme Council does not approve the law adopted by the Provisional State Council within the established timeframe, it shall be deemed invalid. In case of dissolution of the Supreme Council, extraordinary elections shall be held not earlier than 60 and not later than 90 days after its dissolution. In case of declaration of martial law on the whole territory of Georgia or a state of emergency on the territory of the Autonomous Republic of Adjara, extraordinary elections of the Supreme Council shall be held within 60 days after the abolition of the state of emergency or martial law. The President of Georgia shall appoint extraordinary elections of the Supreme Council.

9. Internal organization and rules of activity of the Supreme Council shall be defined by the Constitution of the Autonomous Republic of Adjara and the Rules of Procedure of the Supreme Council.

#### **Article 4**

1. The Government of the Autonomous Republic of Adjara is an executive body of the Autonomous Republic of Adjara.

2. The Government of the Autonomous Republic of Adjara shall consist of a Chairperson of the Autonomous Republic of Adjara and ministers of the Autonomous Republic of Adjara.

3. Within 10 days after recognising powers of the newly elected Supreme Council of the Autonomous Republic of Adjara, or otherwise terminating powers of the Government of the Autonomous Republic of Adjara, the President of Georgia after consultations held with the

political entities represented in the Supreme Council shall submit a candidate for the Chairperson of Government of the Autonomous Republic of Adjara and candidates for ministers proposed by him/her to the Supreme Council for approval. The whole Government of the Autonomous Republic of Adjara shall be put to vote for approval. The Government of the Autonomous Republic of Adjara shall be considered approved if it is supported by the majority of the total members of the Supreme Council. If the Council does not approve the Government, the President of Georgia shall be entitled to submit the same or different composition of the Government to the Supreme Council within 10 days.

4. The Chairperson of the Government of the Autonomous Republic of Adjara is the highest official of the Autonomous Republic of Adjara and shall represent the Autonomous Republic of Adjara. The Government of the Autonomous Republic shall be headed by the Chairperson of the Government of the Autonomous Republic who is entitled to appoint and dismiss ministers of the Autonomous Republic of Adjara in accordance with law, to manage property of the Autonomous Republic of Adjara in a manner prescribed by legislation of Georgia and the Autonomous Republic of Adjara, submit the budget of the Autonomous Republic of Adjara to the Supreme Council for approval and exercise other powers as envisaged by legislation of Georgia and the Autonomous Republic of Adjara.

5. Ministries of the Autonomous Republic of Adjara may only be created in the areas prescribed by the Constitution of the Autonomous Republic of Adjara.

6. The Government of the Autonomous Republic of Adjara shall be accountable to the President of Georgia, the Government of Georgia and the Supreme Council of Autonomous Republic of Adjara.

7. The Government of Georgia shall be authorized to suspend or cancel acts of the Government, a Chairperson of the Government or a member of the Government of the Autonomous Republic of Adjara if they are contrary to the Constitution of Georgia, this Law, international treaties and agreements of Georgia, laws of Georgia and legal acts of the President and the Government of Georgia.

8. Powers of the Government of the Autonomous Republic of Adjara shall be terminated:

a) upon recognising powers of the newly elected Supreme Council of the Autonomous Republic of Adjara;

b) upon voting a no confidence in the Supreme Council of the Autonomous Republic of Adjara;

c) upon resigning the Chairperson of the Government of the Autonomous Republic or otherwise terminating his/her powers;

d) upon dissolving the Supreme Council of the Autonomous Republic.

9. In cases envisaged by Paragraph 8 (a), (b) and (c) of this Article, the Government of the Autonomous Republic of Adjara shall exercise its powers before the approval of a new Government.

10. The structure, powers and rules of activity of the Government of the Autonomous Republic of Adjara shall be defined by the Constitution of the Autonomous Republic of Adjara and the law of the Autonomous Republic of Adjara. The draft of this law shall be submitted to the Supreme Council of the Autonomous Republic of Adjara by the Chairperson of the Government of the Autonomous Republic of Adjara.

## **Article 5**

1. This Law shall enter into force upon its promulgation.

2. Upon enactment of this Law, the Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara shall be declared invalid.

## **EXPLANATORY NOTE**

### **TO THE CONSTITUTIONAL BILL AMENDING THE CONSTITUTION OF GEORGIA**

#### **a) General information about the constitutional bill**

##### **a.a. Reasons of adopting the constitutional bill:**

The current version of the Georgian Constitution needs to be reviewed from both substantive and technical points of view. A series of current constitutional provisions conflict with the fundamental constitutional principles such as the principle of division of powers, as directly mentioned in the Opinion of the Venice Commission produced in 2010. The current text of the Constitution contains a great many contradictions in terms of proper distribution and clear separation of competences among various constitutional bodies – something that has created difficulties in practice many times. The Constitution, as it stands now, does not prescribe sufficient guarantees to ensure high standards for the protection of individual fundamental rights and independence of constitutional bodies. On the whole, the Constitution offers a disorderly system of parliamentary governance. Accordingly, the fundamental law of the country has to be revised.

Furthermore, the Constitution contains a number of defects in the sense of legal technique. First of all, the structure has to be improved; the structure is so much defective that sometimes it is hard to even give the articles their titles. Technical improvement is needed for many individual provisions contained in the Constitution.

##### **a.b. Purpose of the constitutional bill**

The Parliament of Georgia adopted a resolution establishing a State Constitutional Commission with the aim of eliminating the defects in, and devising a better text of, the Constitution. The Parliament tasked the Commission with two specific objectives:

- a) Make the Constitution fully compatible with the fundamental principles of constitutional law; and
- b) Form a constitutional system consistent with the aim of long-term democratic development of the country.

The draft proposed herein completely satisfies the two above-described objectives. It ensures full compatibility of the Constitution with the fundamental legal principles while establishing a very much refined parliamentary governance system for the country's long-term democratic development.

### **a.c. The gist of the constitutional draft law**

The constitutional bill presented herein proposes changes in a majority of provisions of the Georgian Constitution.

#### **Preamble**

In the new version of the Constitution, the preamble remains unchanged.

#### **Chapter one. General Provisions**

Chapter One of the Constitution has been reshaped. Individual articles of Chapter One are dedicated to the principle of State sovereignty, State symbols, democracy principle, rule-of-law State principle, social State principle, economic freedom principle, territorial arrangement of the State and relations between the State and the Georgian Orthodox Church. Chapter One prescribes new guarantees for the protection of the State language and State symbols, lays down inviolable tenure of democratically elected bodies, provides for that the hierarchy of normative acts are regulated through an organic law, envisages social responsibility of the State towards human beings, better regulates issues of territorial arrangement. Chapter One is fully compatible with the principles of constitutional law. It received fully support of the Constitutional Commission.

#### **Article 1**

Provisions of Article 1 remain unchanged in the new version of the Constitution.

#### **Article 2**

Article 2 combines provisions on State symbols.

Paragraphs 1 and 2 have remained unchanged.

Paragraph 3 is expanded to say that the State language is protected by an organic law. Because of special importance of the State language, the new version of the Constitution offers a higher standard of its protection by converting the provisions on State language into the rank of organic law.

Paragraph 4 has been changed. The new version stipulates that organic laws on the flag, coat-of-arms and anthem of the State can be amended through a procedure required for amending the Constitution. It would not be appropriate for an absolute majority of MPs to be able to change the State symbols. This is why the new version offers a higher standard for the protection of State symbols by making it substantially difficult to change them. This change on its turn will cause changes in other legal acts. In particular, the law on State symbols and the

law on how the State symbols should be used need to be separated from each other. More specifically, an organic law will determine the symbols, while a regular law will provide for the rules of their use. These changes will have to be made in the relevant law until the constitutional changes come into force.

### **Article 3**

Article 3 combines provisions strengthening the democratic principle.

Paragraph 2 remains unchanged.

Paragraph 3 changes the sequence of forms of democracy. In particular, it says in the first place that the people exercises its power through its representatives as well as through referendums and other forms of direct democracy. The changed order of these forms of democracy emphasizes that the Georgian Constitution relies mostly on the principle of representative democracy.

A sentence is added in paragraph 3 that says that it is the duty of every citizen of Georgia to vote in elections and referendums. The duty is not of a legal nature – something that would lead to legal liability if breached; it is rather a general civic commitment and responsibility of every individual citizen to do so.

The change in paragraph 4 is of a technical nature. The phrase “or illegally take possession of [power]” is deleted from the first sentence because the term “arrogate” itself implies also the scenario when power is illegally taken possession of.

A provision is added in paragraph 4 prohibiting to decrease or increase, by Constitution or by law, the current tenure of a body elected through universal election. In the recent past, the ruling government breached this fundamental philosophical principle of constitutional law twice and then extended the ongoing presidential tenure for almost a year, by means of amending the Constitution. To make sure such scenarios are avoided in the future, the principle of inviolability of democratic length of tenure should be secure at the level of the Constitution. The new provision in paragraph 4 guarantees inviolability of the ongoing tenure for all: central authorities, authorities of autonomous republics and local self-governments.

Paragraph 5 presents new provisions that emphasize a special role played by political parties in a democratic system. The function of political parties is now determined in accordance with the widespread practices of contemporary constitutionalism (with the phrase “political parties participate in forming the political wishes of the people”). The new Constitution embraces four fundamental principles of the law of political parties: freedom, equality, transparency and in-party democracy.

#### **Article 4**

Article 4 combines provisions under the notion of a rule-of-law State.

The first sentence in paragraph 2 has remained unchanged.

The second sentence in paragraph 2 has been cut and pasted from Chapter Two without changes. For the sake of legal certainty, it is appropriate for lawsuits filed with the Constitutional Court to refer to specific fundamental rights contained in Chapter Two; this would ensure that, in making its judgments, the Constitutional Court will apply clear criteria based on a doctrine of these rights. Also, it should be pointed out, that Chapter Two provides for full-fledged protection of fundamental rights even if some aspects of an individual's freedom are not specifically mentioned in the Constitution. The Constitution upholds the right of an individual to human dignity, the right to free development of personality and other fundamental rights that may be relied upon for the protection of any aspect of individual's freedom and activity.

Paragraph 3 has remained unchanged in the new version of the Constitution.

In paragraph 4, first and second sentences have also remained unchanged. The phrase saying "all other legal acts must conform to the Constitution" has been deleted. This idea derives from the second sentence anyway since it reads: "The Constitution is the supreme law of the State". Accordingly, the change introduced is merely of a technical nature.

The new version of the Constitution stipulates that rules of enacting and publishing legislative and other normative acts and the hierarchy of such acts are determined in an organic law. Since hierarchy of normative acts directly relate to division of competences among the State bodies, it is important for the relevant provisions to be lifted up into the rank of an organic law.

Paragraph 5 remains unchanged in the new version of the Constitution, save a slight technical change.

#### **Article 5**

A new article is being inserted, which combines provisions under the umbrella principle of social State. This novelty serves to reinforce constitutional legal importance of the principle of a social State. Even though constitutional law doctrine does not consider this principle to have normative function but rather presents itself as a general policy objective of a State, its inclusion in the Constitution carries important connotation determining the State's conceptual approach to social responsibility before individuals.

Some of the provisions of Article 5 have been moved from Chapter Two. Those are the provisions that have been merely announcing the State's general social responsibility rather than establishing individual fundamental rights.

Paragraph 2 refers to major elements of the principle of social State, which are social justice, equality and solidarity.

Paragraph 3 has been moved from Chapter Two, with a slight change. In particular, the phrase “prescribes privileges for” has been replaced with the phrase “creates special conditions for”. The idea behind this change is that the State may use both privileges and other forms of encouragement as a tool of developing high mountain regions.

Paragraph 4 establishes the State’s duty of care in the areas such as healthcare, social protection, provision of subsistence minimum and suitable dwelling. Second and third sentences of paragraph 4 have been moved from Chapter Two without changes.

Paragraph 5 prescribes the State’s duty of care in the field of education, science, culture and sports as well as State’s obligation to protect cultural heritage.

### **Article 6**

Article 6 reinforces the fourth fundamental principle referred to in the preamble: economic freedom.

Paragraph 2 has been moved from Chapter Two of the Constitution, with slight changes.

Paragraph 3 has also been moved from Chapter Two, unchanged.

### **Article 7**

Article 7 combines provisions establishing the grounds of territorial arrangement of Georgia as a state.

Paragraph 1 sorts exclusive competences of Georgia’s highest State bodies by areas. Additional areas falling within the exclusive competences have been added in the new draft; these are the National Academy of Sciences, courts and the prosecution office. The term “aviation” replaces the phrase “airports and aerodromes; control over the airspace, transit and air transport; registration of air transport”. Some other technical changes and clarifications have also been inserted in the new paragraph 1.

The phrase “matters belonging to joint competences are determined separately” has been deleted from the text of the Constitution. The applicable legislation does not know the notion “matters falling within joint competences” of the central government and the authorities of autonomous republics. Joint competences are not found in the Code of Local Self-Government either. Hence, it was not reasonable to leave the abovementioned phrase in the Constitution.

Paragraph 2 contains some technical changes. In particular, the word “status” has been replaced with “the competences of, and the rules of exercising their competences by”. Also, the names of the constitutional laws have been deleted.

In paragraph 3, the word “is determined” is replaced with “will be reviewed”: since Georgia’s territorial arrangement is already determined, the term “will be reviewed” better describes the legal reality of the ground.

In paragraph 4, the phrases “registered in self-governing territories” and “without detriment to State sovereignty” have been deleted. The first one is a technical change. The second is based on the rationale that the need for upholding State sovereignty stems from general legal principles anyway and there is no necessity of emphasizing this separately in the Constitution. The Constitution should not be giving the impression as if there is by definition a conflict between the principle of self-government and the principle of State sovereignty.

Two very important entries that are being inserted in the Constitution are the subsidiary principle and availability of funds to self-governments that are equivalent to their competences. These two additions replace the abstract norm currently in place that says that “the bodies of central authority shall promote the development of local self-governments”. Even though the Constitutional Court cannot employ these principles as normative constitutional rules in view of the principle of parliamentary sovereignty, their inclusion in the Constitution is important in legal, conceptual and practical sense for the purposes of further raising the level of decentralization of the governance system in Georgia.

The entry about the status and competences of the Town of Lazika has been deleted from the new text of the Constitution.

### **Article 8**

Article 8 is presented in a practical unchanged manner in the new version of the Constitution, with several technical changes inside.

### **Chapter Two. Fundamental human rights**

Chapter Two has a new structure. First provision of Chapter Two goes to prescribe the fundamental right of human beings to human dignity – something that carries a very important conceptual connotation. Changes made to Chapter Two guarantee the fundamental right to physical integrity, gender equality and realization of the rights and interests of disabled people; toughen the conditions for imposing limitations on the right to private space and inviolability of communication; prescribe the fundamental right to access the Internet; prescribe guarantees for institutional, political and commercial independence of the Public Broadcaster; strengthen the institutional independence of the National Communications Commission; lay down the fundamental right to good governance; increase the standard for accessing public information; establish and emphasize the fundamental right to academic freedom; prescribe the fundamental right to freedom of entrepreneurship; raise the standard of protection of the fundamental right to healthcare; raise the standard of protection of environmental rights; lay down the principle of inviolability of the very essence of individual fundamental rights; vest the Public Defender with official immunities; and introduce other important novelties. Some of the fundamental rights with abstract nature have been deleted from the text of the Constitution – a factor that contributes to making Chapter Two fully compatible with a requirement under Article

4(2) that fundamental rights are “directly applicable law”. The new version of Chapter Two was not supported only by four members of the State Constitutional Commission (the issue of marriage was put to an independent vote, which resulted in six members voting against the new definition). This was caused primarily by the interest to keep the current standard of the fundamental right to labor freedom as it is now. Furthermore, the Public Defender expressed his discontent with the ban on electing a Public Defender for the second term and refusal to include into the Constitution a guarantee of budgetary independence of Public Defender.

### **Article 9**

Article 9 distinguishes between the right to dignity and the right to honor, which will be protected to the full extent under the right to free development of one’s personality. Also, the new version puts an emphasis on the protection of the right to honor by adding the phrase “and is protected by the State”.

Some changes in the terms were made in paragraph 2 to make them compatible with the term established in European legal acts and jurisprudence. A sentence saying “It is prohibited to use physical or mental coercion against a person who is detained or whose freedom is restricted in any other way” has been deleted from the text of Constitution. The rationale behind this change is that physical or mental coercion of detainees cannot be prohibited in absolute terms. Situations like physical or mental coercion for the purpose of obtaining confession are covered anyway by the fundamental rights to human dignity and inviolability of the person.

### **Article 10**

Article 10 reflects the current provision on the right to life but with changes. The phrase “life is an inviolable right of a human being and it is protected by law” has been replaced with the phrase “human life is protected”. It is more appropriate to use the word “inviolable” only in connection with the fundamental right to human dignity – a right that is absolute by its nature. The working “human life is protected” fully encompasses both the negative and positive obligations contemplated by the right to life. Accordingly, the changes introduced do not alter the legal contents of the provision or the standard of protection of the right in question. Second sentence in paragraph 1 has remained unchanged.

### **Article 11**

In paragraph 1, the phrase “Everyone is equal before the law”<sup>1</sup> is replaced with “Everyone is equal before the law”.<sup>2</sup> This change is based on an established theory approach that the right to equality requires not only equality before the law but that the law is made in compliance with the

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<sup>1</sup> Translator’s remark: In the Georgian text, “law” means a compulsory act passed by competent body such as legislature.

<sup>2</sup> Translator’s remark: In the new version of this paragraph, “the law” is used in the sense of the whole body of law; in other words, people are equal not only before the acts passed by the Parliament but the whole body of applicable legislation.

equality principle. A new version of the second sentence then goes on to list the criteria on which basis human beings must not be discriminated.

Paragraph 2 has been formulated in resemblance of Article 38 of the current version of the Constitution, with slight changes; it continues to guarantee protection of the rights of ethnic, religious and linguistic minorities to a high standard.

In the new text, a new provision on gender equality has been added. Now that it has the rank of a fundamental right, the right to equality establishes, in a tangible form, an obligation for the State to care for ensuring essential equality and elimination of gender inequality.

Another provision is added imposing upon the State the duty to create special conditions for the realization of the right and interests of disabled people.

#### **Article 12**

This article has remained unchanged.

#### **Article 13**

Some technical changes were made, which do not alter but simply clarify the contents of Article 13 provisions.

#### **Article 14**

Provisions of Article 14 have not changed, except slight technical modifications.

#### **Article 15**

Paragraph 1 has been amended from technical perspective only. A phrase about the right to private life has been deleted, since this right is protected under the right to free development of own's personality. The right to private space and communication fully covers the aspects of the human freedom contemplated by this provision of the Constitution.

Unlike the current version of the Constitution, the new paragraph 2 specifies legitimate aims for imposing restrictions on these rights – a guarantee raising the constitutional standard of protection of these rights to a higher level. The new Constitution also prescribes a judicial control requirement to check the legality of limitations imposed in a state of necessity *post factum*.

Some technical corrections were made in paragraph 3. Apart from these corrections, the new version of paragraph 3 provides for accessibility of information about individuals contained in official records for the sake of public interests.

#### **Article 16**

Entries about speech, thought and confession have been deleted. The freedom of speech and thought is protected by a new Article 17 of the Constitution. The change in this Article therefore is aimed at avoidance of repetition and simultaneously carries an important legal and practical

connotation. As for the right to confession, this aspect is fully covered by the fundamental right to freedom of belief. Thus, the new version of Article 16 uses two terms to protect the areas covered by two fundamental rights to belief and conscience.

### **Article 17**

Paragraph 1 provides a full-fledged guarantee for the fundamental right to freedom of thought and prohibits persecuting individuals for thoughts or expression of thoughts.

Paragraphs 2 and 3 have been retained unchanged.

A new provision is being inserted that guarantees the fundamental rights to access the Internet and freely use the Internet.

Paragraph 5 has not changed on substance but some slight technical changes have been made in there.

Another provision added inside this Article concerns guarantees for the independence of the Public Broadcaster from State bodies and its freedom from political and substantial commercial influences. These guarantees have been raised up to the standard of fundamental rights.

Finally, a new provision ensuring institutional and financial independence of the regulator in the area of broadcasting and electronic communications has been inserted in Article 17.

### **Article 18**

The Constitution will have a new provision prescribing the right of an individual to have his/her case heard fairly in a reasonable time by an administrative body. Hence, the right to so-called good governance and fair administrative process will be lifted up into the rank of fundamental rights.

The new version of paragraph 2 raises the standard of protection of the right to access public information. In particular, not only citizens but “everyone” will be entitled to access public information. In addition, the word “about himself/herself” is deleted – a change that makes it possible to access any public information. Release of public information will no longer be denied on the motive that the information is a professional secret.

Paragraph 3 has not been changed, save an insignificant terminology change.

### **Article 19**

In paragraph 1, the word “is inviolable” has been replaced with the word “is ensured” (see explanation above).

Paragraph 2 has a new text. The phrase “for pressing social needs” has been replaced with “for public interests”, which is consistent with international practices. It is not prudent to maintain the same standard for imposing limitations on the right to property and for property confiscation.

Civil law and many other branches of law contain legal provisions on imposing limitations on the right to property for the protection of public interests rather than for pressing social needs. Hence, it was decided to amend paragraph 2 accordingly. The sentence prohibiting violation of the very essence of the right to property has been deleted from paragraph 2, since this guarantee, worded in more general terms, is now found in Article 34 of the new version of the Constitution.

Paragraph has remained unchanged, save a slight technical correction.

A new provision has been inserted in the Constitution giving the land the status of a resource of particular importance and mandating that titles to land must be regulated by an organic law. This change will not result in completely limiting the land rights of foreigners and stateless persons but will make it possible to introduce special regulations because of the special status of land.

#### **Article 20**

The new version of paragraph 1 specifies the two aspects of the freedom of intellectual creativity: freedom of art work and freedom of academic activity.

Paragraph 2 has not changed.

In paragraph 3, the word “arrest” has been deleted for the reason that “ban on dissemination” fully covers the relevant component of the freedom of intellectual work. In addition, it is stated that banning the dissemination of a product of creative work is allowed only by decision of a court – a guarantee lifts up the standard of protection of the right concerned. Some editorial corrections have also been made.

Paragraph 4 is presented with some editorial corrections.

#### **Article 21**

In paragraph 1, the phrase “members of the Armed Forces and the Ministry of Internal Affairs” has been replaced with the phrase “members of armed forces” – a catch-all term that puts members of other types of armed forces (such as the Ministry of Internal Affairs, the State Security Services, Intelligence Agency, relevant units of the Ministry of Corrections, etc) out of the circle of individuals whose freedom to gather is protected. Also, the phrase “both indoors and outdoors” has been deleted. The fundamental right to freedom of gathering includes both components of the right of gathering and there is no need to specifically emphasize this.

Paragraphs 2 and 3 have remained unchanged.

#### **Article 22**

Freedom of association has been detached from the freedom of political parties and the freedom of trade unions, and is dealt with in a separate article. The text of paragraph 1 provides for full-fledged protection of the freedom of association.

Paragraph 2 describes the grounds for liquidating an association and ensures a high standard of protection of the freedom of association.

Sentences about the grounds and rules of banning societal associations and trade unions have been deleted from the Constitution. In the event of an association that goes against the constitutional order, independence and other values of the country, the matter will be resolved according to the applicable criminal laws.

### **Article 23**

In paragraph 1, the phrase “other (political) associations” has been deleted. The applicable Georgian legislation, which is the Organic Law on Citizens’ Political Associations, does not distinguish between political parties and other political associations. Under the Organic Law, a citizens’ political association is the same as a political party – and that is logical. A fundamental right should be protecting political parties as organizations and concepts – this is the idea behind the change contemplated.

In paragraph 2, the phrase “members of the Armed Forces or the bodies of internal affairs” has been replaced with the phrase “members of armed forces” (see the reasoning above). Also, the term “political party” has been substituted for the term “political association”.

Paragraph 3 adds “kindling an ethnic strife” as another ground for prohibiting a political party. The new provision also prohibits creating political parties by the principle of territory. This prohibition has been existing only in the organic law this far.

A provision saying that political parties may not create armed formations has been deleted, since this issue has lost its importance since the 1990s.

Paragraph 4 specifies that a political party may be banned only on the basis of a judgment of the Constitutional Court. The current version of the Constitution contains only a general reference concerning the banning of political parties by judgment of the Constitutional Court.

### **Article 24**

In paragraph 1, the phrase “autonomous republics” has been added. Otherwise, no changes have been made in the text.

In paragraph 2, the word “incapable” has been replaced with the phrase “a citizen who has been found an aid-receiver or has been admitted to a relevant inpatient medical institution”. The change is consonant with a judgment of the Constitutional Court that broadened the circle of persons having the voting rights.

In addition, by the change, citizens who have committed a serious crime or committed a very serious crime by carelessness will no longer be prevented from voting. This change has introduced a relatively higher standard of voting rights.

### **Article 25**

The provisions in this Article have not changed on substance. Some terminology changes have been made. Terms “State position” and “State service” have been replaced with “public position” and “public service”. Accordingly, the rule contained in this Article will now extend to both central authorities and authorities of autonomous republics and municipalities in full.

#### **Article 26**

In paragraph 1, a concise statement that “Labor shall be free” is replaced with a lengthier version providing for full-fledged protection of the freedom of labor and the right to freely choose a job. Also, the sentence in the current version of the Constitution, which lists several labor rights and gives the legislator the privilege to specify them (“An organic law shall regulate the issues related to protection of labor rights, fair remuneration, safe and healthy working conditions and working conditions for juveniles and women”) has been replaced with a broader and stronger normative text saying that “Labor rights are protected by an organic law.”

Paragraph 2 prescribes the right to freedom of trade unions – a right which the current version of the Constitution considers to be part of an article on freedom of association. The new version of the Constitution specifies that trade unions are established according to an organic law, while the current version refers to a regular law.

Paragraph 3 governs the right to strike. The re-formulated provision says that both rules and conditions for exercising the right to strike will be determined by an organic law. The current version of the Constitution, however, refers to a regular law. The sentence saying that “a law establishes guarantees for the functioning of services having vital importance” has been deleted from the text of the Constitution. A new sentence that reads that “An organic law determines rules and conditions for exercising the right to strike” allows the legislator to create guarantees for the functioning of vitally important services. Accordingly, the above-referenced sentence is unnecessary from the legal point of view.

An abstract phrase in paragraph 4 that was obliging the State to promote the development of free entrepreneurial activity and competition has been replaced with a provision prescribing the fundamental right to freedom of entrepreneurship. Other provisions in the Article have remained without changes.

A sentence saying that “On the basis of international agreements in the area of labor relations, the State protects the labor rights of the citizens of Georgia abroad” has been deleted. Inclusion of this provision in the Constitution is unnecessary from legal point of view.

#### **Article 27**

Paragraph 1 has remained unchanged.

Paragraph 2 contains a change that allows for pre-school education to be ensured by both central authorities and local self-governments. Otherwise, the text of paragraph 2 remains the same.

Abstract sentences saying that “the State ensures harmonization of the national educational system with the international educational framework” and “the State supports educational institution according to rules established by law” have been deleted from the Constitution. These sentences do not create individual rights and it is therefore not prudent to leave them up in Chapter Two of the Constitution.

### **Article 28**

Paragraph 1 prescribes a strong guarantee for citizens’ rights in the area of healthcare. In particular, the new version stipulates that a citizen has the right to enjoy State health insurance as an affordable and effective means of medical assistance. The new text significantly raises the standard of protection of citizens’ right to healthcare.

Paragraph 2 is virtually the same, with just one clarification: instead of “trade in” pharmaceuticals, the new version of the Constitution uses the word “circulation”.

### **Article 29**

The updated Constitution allocates a separate article to the right to protection of environment. The new Constitution additionally reinforces the right of an individual to use public space. In addition, a new provision has been inserted saying that a law ensures the right to participate in decision-making on environmental issues. The word “objective” has been deleted from the second sentence, since the term “full” encompasses that the information must also be objective.

A sentence saying that individuals must take care of natural and cultural environment has been deleted from the Constitution. This change derives from the general approach that Chapter Two should only prescribe rights but not obligations.

Paragraph 2 has been edited technically, without changes on substance.

### **Article 30**

A sentence is added that specifies a civil law definition of marriage at the constitutional level. According to the definition, marriage is a monogamous union between a man and a woman for the purpose of creating a family. This change has been warranted by societal concerns related to the notion of marriage. The issue of expansion of the definition of marriage often times becomes a matter of speculations and manipulations – a circumstance that facilitates the kindling of homophobic attitudes in the society. In order to avoid such speculations and manipulations, it was considered appropriate to provide a definition of the notion of marriage at the constitutional level. It should be pointed out that Georgia has an anti-discrimination legislation in place that ensures legal protection of all types of minorities against infringement upon their rights and against discrimination.

### **Article 31**

A sentence that specifies the right to fair and expeditious hearing of a case by the court has been added.

Paragraph 2 is presented without changes.

Paragraph 3 specifies the right to defense. In particular, it stipulates that one may defend his/her rights in the court himself/herself or through an attorney and that, in the events described in the law – through a representative. In addition, a sentence is added to ensure that rights of attorneys must be exercised without impediment and that attorneys have the right to organize themselves.

Paragraph 4 contains a clarification with the effect of expanding the contents of the right to ask for calling witnesses.

Paragraphs 5 and 6 have not changed.

The new version of paragraph 7 distinguishes between standards of proof for indictment and conviction. According to the new text, indictment must be based on probable cause, while conviction must only be based on irrefutable evidence.

Paragraph 8 contains a slight technical change.

Paragraph 9, 10 and 11 have remained unchanged.

### **Article 32**

Paragraph 1 is presented without changes.

The new version of paragraph 2 no longer considers acquirement of foreign country's citizenship an automatic ground for losing the Georgian citizenship. According to the new paragraph 2, an organic law determines terms and conditions of granting Georgian citizenship to foreign citizens and combining foreign citizenship with the Georgian citizenship.

Paragraphs 3, 4 and 5 remain unchanged.

A new provision has been added obliging the State to support compatriots living abroad to maintain and develop their contacts with the homeland.

### **Article 33**

Provisions of this article are presented without changes. A sentence saying that "It is prohibited to surrender to another State a person who has taken shelter in Georgia and who is being persecuted for his/her political beliefs or for an action that is not considered a crime under the legislation of Georgia" has been deleted from the text of the Constitution. The fundamental right to asylum is guaranteed in paragraph 3 of Article 33. Accordingly, the above-mentioned

provision that was overly narrowing the grounds for denying the surrender of people taking refuge in Georgia is no longer necessary from legal point of view.

#### **Article 34**

Slight technical changes have been made in paragraphs 1 and 2

A new provision has been added stipulating that limitations imposed on a right must not undermine the very essence of that right. The sentence saying that “Everyone residing in Georgia shall be obliged to observe the requirements of the Constitution and legislation of Georgia” has been deleted. Again, Chapter Two of the Constitution must only prescribe rights but not obligations. Accordingly, the said sentence is unnecessary in the constitution.

#### **Article 35**

Paragraph 1 contains a slight technical change. It also prohibits the same person to be re-elected Public Defender.

Paragraph 2 has not changed.

A new provision has been added vesting Public Defender with official immunity. This change serves to increase the independence of Public Defender.

Paragraph 4 has remained unchanged.

The sentence that limits the powers of the Public Defender has been deleted. In particular, the now-in-force version of the Constitution says that “the Public Defender shall be authorized to reveal violations of human rights and freedoms and to report on them to relevant bodies and officials.” By deleting this sentence, the doors are now open for the legislator to expand the powers of Public Defender through an organic law.

### **Chapter Three. The Parliament**

A new version of Chapter Three envisages fundamental changes in the electoral system, prescribes new rules of setting up parliamentary factions according to the European standards, grants parliamentary opposition the right to set up *ad hoc* investigation commissions, provides for high standards of official immunity for persons subject to the impeachment procedure and introduces other important changes. The new version of Chapter Three gained almost full support of the members of the State Constitution Commission (only one member voted against), save the election regulations. The new election regulations were not supported by 12 members of the Constitutional Commission, mostly because of their negative views about the procedure of distribution of undistributed mandates.

#### **Article 36**

The paragraph 1 provision has remained unchanged.

Paragraph 2 specifies the subjects entitled to submit a bill of Parliamentary Rules of Procedure to the Parliament (a Member of the Parliament, a faction or a committee), the quorum for adopting Rule of Procedure (a majority of all members), the legal force (Rules of Procedure have the force of a law) and the signatory person (Chairperson of the Parliament).

A sentence determining the seat of the Parliament has been deleted from the Constitution. This change has been contemplated for the reason that the Constitution does not indicate the seats of other constitutional bodies. After the change comes into force, the Rules and Procedures of the Parliament will determine the seat of the Parliament.

### **Article 37**

Article 37 prescribes new rules of Parliament election. The current system which is a mix of proportional and majoritarian elections has been replaced with a proportional electoral system. Even though the mixed system currently in force does not contradict the legal principles and is used by many democratic countries, it was considered prudent to abolish it because of the country's past experience. In particular, it was the mixed system that made it possible for the Union of Citizens of Georgia at first and the United National Movement later to gain a constitutional majority in the Parliament and abuse this power for subjective political ends. In order to prevent recurrence of similar threats in the long run, the new text of the Constitution introduces an electoral system that excludes chances of a single political party to gain either a constitutional majority or an excessive majority, in general.

The new version of the Constitution prescribes a proportional electoral system with some major reservations, as follow:

- a) Electoral blocs (alliances) as a notion is given up. For the last two decades, this model has been a major obstacle to the development of the party system in Georgia. An institutionalized party system has not yet formed in the country. Nowadays, 20 political parties have the status of the so-called qualified parties despite the fact that a majority of these parties are not meeting minimum requirements to be called political parties and some of them are even fictitious. Apart from that, the notion of political blocs allows political parties to manipulate to artificially gain additional privileges (such as additional State funding, additional free-of-charge advertisement time, additional members and representatives at all levels of electoral administration, etc.) All of these reasons have made it clear that the notion of electoral blocs plays a negative role in the sense of development of party system in Georgia and it is not prudent to keep it alive. Political subjects and, accordingly, electoral subjects must be political parties – something that corresponds to best European practices in the area of functioning political systems;
- b) The 5-percent electoral threshold is maintained. Electoral systems of democratic countries seek to ensure two major objectives: political pluralism and stability of the political system. An electoral system should take into account particularities of the

country concerned and should ensure best balance between the two legitimate interests. When high levels of pluralism are ensured through a proportional system, the aim of an electoral threshold is to serve as a legal guarantee for stable functioning of democratic system. The 5-percent threshold for political parties has been considered legitimate universally and is proven by the practices of European Union countries (Germany, Belgium, Czech Republic, Slovakia, Poland, Hungary, Romania, Lithuania, Latvia, Estonia, etc);

- c) Undistributed mandates are awarded to a winning party. This clause serves the same legitimate objective, which is the reason why electoral thresholds are introduced in democratic systems: to ensure stable functioning of a democratic system. With the Georgian reality in mind, which is that an institutionalized party system has not yet formed and the democratic system is still facing serious challenges, the objective of ensuring stability is more than relevant. Awarding undistributed mandates to a winning political party creates an additional avenue for ensuring stable functioning of the system. Also, this rule is way softer than the Italian and Greek models of giving the winning party larger odds. The Italian system guarantees the winner the getting of an absolute majority of mandates in the Parliament, while the Greek model, which gives the winning party 17 percent of parliament mandates right away, maximizes the chances for the winner to gain the absolute majority. As regards a model envisaged by the new version of the Georgian Constitution, it gives the winning party much lesser odds when it comes to distribution of mandates. Looking at the results of last five elections, these odds are 5 percent on average, and if the results of last four elections are looked at, they are as low as just 3.1 percent average. Accordingly, the proposed electoral system maintains the “winner-takes-all” principle – a principle universally recognized as legitimate in the world of electoral law – to only a very small extent.

The new electoral system balances pluralism and stability in the best way creating a fertile ground for the stable development of the country’s democratic system in the long run. The decision to introduce a proportional system is based on an optimistic expectation that in the four coming years the political system in Georgia will move to substantially different level and risks associated with a proportional system will minimize.

Paragraph 3 specifies the date of parliamentary election – last Saturday in October. This clarification will help avoid manipulations related to determination of the Election Day and shed more light to the electoral process. In addition, paragraph 3 specifies periods in which elections should be appointed in the events the parliament is dismissed or the states of emergency or war are proclaimed.

Paragraph 4 increases the age limitation for candidates from 21 to 25. Also, it exhaustively describes candidate eligibility for passive suffrage thereby ensuring a high standard of voting rights' protection.

Paragraph 5 requires collecting 25 thousand signatures for a political party wishing to participate in election. Since 25 thousand is less than 1 percent of the total number of voters, this requirement is fully consistent with the European standards.

### **Article 38**

Paragraph 1 provides a relatively better way of determining the date of first session of the Parliament (not later than 10<sup>th</sup> day after election results are officially announced). Furthermore, grounds for the Parliament to start working and to become fully competent are specified.

Paragraph 2 has remained unchanged.

### **Article 39**

Paragraph 1 has not changed.

In paragraph 2, some technical changes have been made; also, it now specifies the timeframe in which the Parliament should consent to waiving an MP's immunity.

Some technical clarifications have been made in paragraph 3.

Paragraph 4 specifies incompatible offices stipulating that a Member of Parliament may engage in public activities or scientific, pedagogic or arts work if the work does not include administrative functions. This clause allows chiefs of sports federations and other public associations to combine their office with the status of a Member of Parliament – a practice that has been acceptable and established in Georgia for years already.

Technical clarifications were added in paragraph 5. The ground of terminating an MP's status on account of MPs' passive participation in the work of the Parliament has become more stringent. In particular, an MP's status will terminate if he/she does not attend more than a half of meetings during a regular sitting of the Parliament for invalid reasons.

### **Article 40**

Paragraphs 1 and 2 specify the quorum required for electing Chairperson of the Parliament and deputy chairpersons (a majority of full composition). A slight change concerns deputy chairpersons who are elected from the autonomous republics. The change relates to transitioning to a proportional system. Other sentences in Article 40 have remained unchanged.

### **Article 41**

No changes have been made to paragraph 1.

Corrections made to paragraph 2 are of technical nature at most.

According to paragraph 3, a parliamentary faction must have at least seven members, instead of six. This change relates to transitioning to a proportional system with a 5-percent electoral threshold in place; this will ensure that parties that have overcome the electoral threshold will get at least seven mandates.

The paragraph contains new regulations on the setting up of parliamentary factions. In particular, elected Members of Parliament who have been nominated by one party may unite in only one faction. This clause will introduce European practice and tradition in Georgia in the sense that a faction is a kind of parliamentary equivalent of a party.

The paragraph has also been amended to say that rules of setting up factions and rules of their operation are determined only by the Rules of Procedure of the Parliament rather than by both a law and the Rules of Procedure. There is no legal reasoning to justify adoption of a separate law to govern factions.

#### **Article 42**

Some technical corrections have been made in paragraph 1.

Paragraph 2 enables a parliamentary opposition to establish an *ad hoc* investigation commission. In particular, the new text stipulates that an investigation commission can be set up by the so-called qualified minority, by a decision of one-third of full composition of the Parliament. Also, the new text better protects the interests of the opposition and factions in setting up *ad hoc* commissions.

Paragraph 3 lays down the obligation of furnishing an investigation commission with both documents and information.

#### **Article 43**

Provisions of the article have been amended mainly from a technical point of view. The new version prescribes the obligation to respond to MPs' questions in full and in a timely manner.

A sentence allowing the Parliament to raise the issue of liability of individual ministers has been deleted. The constitutional system of interrelations between the Parliament and the Government is based on the principle that the Government is liable collectively. Accordingly, it is not prudent in this system to allow for raising the issue of liability of individual ministers. Apart from that, the said norm of the Constitution is very weak by its nature (the Prime Minister may simply ignore the Parliament's decision in question) and does not give the Parliament any effective levers.

#### **Article 44**

Paragraph 1 remains unchanged.

Paragraph 2 specifies that *ad hoc* meetings are held according to the agenda determined by their initiators.

Paragraph 3 has been amended to say that the Parliament meets immediately after a state of emergency or a state of war has been announced rather than within 48 hours after it has been announced. The Parliament is therefore required to meet as soon as possible.

Paragraph 4 specifies that a decision to close a meeting of the Parliament in full or in part is to be made *in camera*.

No changes have been made to paragraph 5.

Paragraph 6 re-defines a list of those persons who are obliged to attend the meetings of the Parliament and are vested with relevant rights and obligations.

#### **Article 45**

Technical changes have been made in paragraph 1.

Paragraph 2 stipulates that the Parliament adopts laws rather than bills (draft laws). The quorum required for adoption of organic laws has changed: a majority of full composition of the Parliament instead of a majority of current real number of MPs.

The new version of paragraph 3 states that decisions of the Parliament are called resolutions and determines the rules for adoption of resolutions.

#### **Article 46**

Procedures of signing and promulgating laws and applicable timeframes have been revised and specified. The changes are mostly of a technical nature.

Paragraph 5 stipulates that President may not veto a constitutional law that has been adopted by Parliaments of two convocations or that relates to restoration of territorial integrity of the country.

#### **Article 47**

Technical corrections have been made in the text.

A new version of paragraph 1 says that an international treaty that relates to territorial integrity or modification of State frontiers requires the support of two-thirds of all of the MPs.

A provision containing rules of submitting international treaties to the Parliament for ratification has been deleted. These rules need not be regulate by the Constitution but by a regular law.

#### **Article 48**

The article combines rules of impeaching the President and other officials.

According to the new version of Article 48, rules of impeachment now apply also to justices of the Supreme Court and the Prosecutor-General.

Paragraph 1 establishes a 30-day timeframe for deciding the matter by the Constitutional Court.

Paragraph 5 stipulates that officials indicated in this Article (except members of the Government) may be removed only by impeachment. This clause contains a very important new guarantee in terms of protection of independence of constitutional bodies.

#### **Chapter Four. President of Georgia**

In new Chapter Four, rules of election of the President and presidential powers have been revised according to the best practices of European parliamentary democracies. Chapter Four introduces an indirect rule of electing the President – a procedure that excludes imbalance between the level of legitimacy and the power accorded to the Head of State. It also provides for a proper regulation of presidential powers and rules of countersigning presidential acts. The new version of Chapter Four gained full support of the State Constitutional Commission, except for indirect election of President. Six members of the Constitutional Commission supported the current rule of direct election of the President.

#### **Article 49**

The new version of the Constitution present the high symbolic status of the President in an unchanged manner. Only the sentence saying “Within its competences envisaged by the Constitution, the President of Georgia ensures functioning of State organs” has been deleted. This sentence lacks both legal and symbolic meaning and hence it was decided to remove it from the text of the Constitution.

Even though the following terms used in Article 49 are causing misconceptions in the Georgian society, it was decided to leave them unchanged:

- a) The term “Head of State” is often understood as if the Constitution was endowing the President with the function of governing the country – something that is a misunderstanding. Presidents and monarchs are referred to as “Heads of State” by all of the constitutions of democratic countries regardless of whether these officials actually have the function of governing the country. Hence, the mentioned term should not be interpreted incorrectly;
- b) Likewise, the term “command-in-chief of the military forces” is often understood in the sense that the Constitution subordinates the military forces to the President thus conferring a significant power on the President. Again, almost all of the constitutions of democratic countries (save rare exceptions such as Germany and the Netherlands) refer to presidents and monarchs as “commanders-in-chief” whether or not they actually have the function of directing the armed forces. Against the background of having a parliamentary governance, the status of a commander-in-chief carries rather a ceremonial meaning and in such systems the military is under the command of the executive, which is the Government. Accordingly, the term in question should not become a matter of incorrect interpretations;

- c) The phrase “President represents Georgia in foreign relations” is misunderstood to denote as if the Constitution vests the right to guide the country’s foreign policy in the President. It should be noted again that almost all of the constitutions of democratic countries grant presidents and monarchs a high representative status but this does not mean they actually have foreign policy powers. In a situation of parliamentary governance, foreign policy is implemented by the Government and hence the Head of the Government is the one to possess privileged representative powers. Accordingly, the phrase in question should not become an object of incorrect interpretation.

### **Article 50**

The new Constitution introduces a new system of indirect election of the President. President will be elected by a special electoral collegium consisting of 150 members of the parliament, all the members of High Councils of the Autonomous Republics, and electors named by parties according to their results of the last local self-governance elections.

There are a number of factors speaking of appropriateness of electing the President indirectly in a system of parliamentary governance:

- a) If a President is directly elected in a parliamentary system, there is a great imbalance between the President’s legitimacy and the powers the President has – something that often triggers serious systemic problems;
- b) That has been confirmed by European experience. In no parliamentary republic or monarchy that elects its President directly, have systemic problems arisen this far. Contrary to that, systemic problems (such as rightist radicals, odious and anti-West candidates being successful in elections, problematic disputes between a president and a government about division of competences, etc) are not uncommon to a majority of parliamentary republics, which elect their presidents directly;
- c) In a parliamentary system, the President must be a leader who stands above party interests – something that is virtually impossible with direct election system in place. Direct election requires all party units’ full engagement in the election campaigning, multimillion funding of the campaign by the party, etc. Also, in case of direct election, campaigns are built on hot confrontation among the political parties and their candidates, and on harsh criticism of each other, which completely excludes chances of electing somebody who can stand above of all these as President.

With these reasons in mind, and in order to improve the parliamentary governance system, it is prudent to introduce a system in which a President of Georgia will be elected indirectly.

Article 50 establishes a relatively high demand for the minimum age of a President. A person may be elected President of Georgia if he/she is a citizen of Georgia who has attained the age of 40 (instead of 35) and has lived in Georgia for at least 15 years.

## **Article 51**

The sentence saying that the President delivers a programmatic (keynote) speech before taking an oath has been deleted from paragraph 1. In a parliamentary system, a President can have no program and hence can make no programmatic speech. The new provision entitles the President “to address the people”.

The text of oath of office of the President has remained unchanged, albeit its contents do not correspond to the competences and power held by the President. Such inconsistency is normal to countries with parliamentary system and is explained by the high symbolic status of a President.

Technical corrections have been made in paragraph 2.

Paragraph 3 continues to award absolute immunity to President.

Under paragraph 4, not only a President is prohibited to occupy a position in a political party but also to be a member of a political party. This covenant is designed to ensure the above-the-party status of the President.

If the President of Georgia is unable to perform his/her duties or if his/her presidency is terminated, the Parliament Chairperson shall be the acting President. The Constitution does not prescribe further regulations on President’s replacement.

## **Article 52**

The following major changes have been made to the Constitution with a view to regularizing his/her competences:

- a) The Government’s consent is now required for not only negotiating with foreign States and international organizations, entering into international treaties and accepting ambassadors and other diplomatic representatives, but also for exercising representative powers in foreign relations. Since implementation of a foreign policy remains an exclusive domain of the Government, it was fully logical given the new constitutional system to give the Government of Georgia a privileged role and function of conducting international negotiations, entering into international treaties and exercising representative powers;
- b) The President will keep the right to appoint and dismiss ambassadors and other diplomatic representatives at the Government’s recommendation – this is one of the historic and traditional powers held by Heads of State. However, since appointment of diplomatic representatives is a major instrument of implementing foreign policy, this privilege should be construed as rather ceremonial power of the President. The real competence to appoint diplomatic representatives should be vested in the Government as a body having an exclusive power to implement foreign policy. Such a division of roles and competences is well recognized by traditional parliamentary democracies.

The same principle should apply to other competences relating to implementing the country's internal and foreign policies – an area that belongs to the powers of the executive government.

- c) President will make citizenship decisions based on an organic law. President will also be authorized to decide on asylum based on a law. On practice, these competences are already exercised on the basis of an organic law and a law, respectively.
- d) President will continue to award State awards and bonuses, highest military, special and honorary ranks, and highest diplomatic ranks – a practice that has already been in place in Georgia.

Technical corrections have been made to paragraph 2.

In paragraph 3, the sentence “President is authorized to address the people and the Parliament” has been replaced with “President is authorized to address the people”. There is a record of incorrect interpretation of this phrase in the past as if the President had the right to address the Parliament any time he/she would want to do so. To exclude such misunderstanding, it was decided to make the above-mentioned change in paragraph 3.

An article concerning the Administration of the President has been deleted from the Constitution. The current article in the Constitution creates the impression as though the presidential administration is an independent constitutional body. The Presidential Administration, much like the Government's Administration, the Parliament Apparatus and other similar bodies will be set up and will function on the basis of legal acts that are subordinated to the Constitution.

### **Article 53**

In the new version of the Article, the following major amendments have been made in a list of presidential acts that are subject to countersigning:

- a) Acts issued in a state of war have to be countersigned;
- b) Legal acts related to nomination, appointment, dismissal or removal of officials will no longer be excluded from the countersignature requirement;
- c) Awarding special ranks will be subjected to countersignature but not the awarding of State bonuses and honorary ranks;
- d) Asylum acts will no longer need to be countersigned;
- e) Acts issued at the recommendation or with the prior consent of the Government will no longer be excluded from a list of acts requiring countersignature.

The Constitution retains a provision saying that if a presidential act is countersigned by the Government, only the Government remains responsible for the act. By completely releasing the President from legal and political liability, the Constitution confers the real right to issue the relevant acts on the Government, while the formal right on the President. The same logic

applies when an act that need to be countersigned is not issued. The sentence saying that “The Government is responsible for legal acts issued with countersignature” gives the Government a real right to decide whether to issue or not to issue a relevant act.

### **Chapter Five. The Government of Georgia**

Chapter Five has gone through a major overhaul. The Government chapter, which is currently the main weakness of the Constitution now in force and which harshly conflicts with the principle of division of power, has been redacted so as to fully conform to the fundamental principles of constitutional law. The Government chapter gained full support of the members of the State Constitutional Commission.

#### **Article 54**

Paragraph 1 has not changed; it continues to vest the exclusive rights of implementing the country’s internal and foreign policies and exercising executive powers in the Government.

Paragraph 2 prescribes that the Government is both accountable and responsible to the Parliament. The Government’s responsibility is materialized in practical legal terms on the basis of a vote of no confidence.

Paragraph 3 remains unchanged.

Paragraph 4 determines the functions of ministries and ministers in a concise but comprehensive manner.

With slight technical changes, paragraph 5 determines the status of a State Minister and rules of creating the position of a State Minister.

The new version of paragraph 6 prevents MPs from carrying out creative activity but allows them to found companies. For the sake of conciseness, the sentence saying that a Government member has the right to resign has been deleted from paragraph 6.

With some technical changes, paragraph 7 determines the status, functions and rules of appointing State representatives (governors).

Paragraph 8 remains without substantive changes, with some slight technical corrections.

A provision entitling the President to request that a Government meeting be convened and to participate in such a meeting has been deleted from the Constitution. Because of the President’s highly symbolic status, it is not prudent for him/her to participate in Government meetings. Also, having in mind the principle of division of powers, it is not appropriate for the President to directly intervene in determining the Government’s agenda.

#### **Article 55**

Paragraph 1 remains unchanged.

No substantive changes have been made in paragraph 2, except some slight technical corrections.

Paragraph 3 continues to prescribe the high status of a Prime Minister and his/her broad competences in the area of foreign policy. The Prime Minister of Georgia represents Georgia in foreign relations and concludes international treaties on behalf of Georgia. Since the Government has exclusive powers to implement foreign policy, the Constitution confers privileged competences in the area of conducting international negotiations and conclusion of international treaties onto the Prime Minister.

Provisions of paragraphs 4 and 5 have remained almost unchanged.

#### **Article 56**

Procedures of forming the Government have been fully refurbished. The Parliament makes a motion of confidence in the Government with a simplified procedure – something that fully conforms to the principles of constitutional law.

#### **Article 57**

The procedure of passing a motion of no confidence has been completely redesigned. The procedure introduced by the new version of the Constitution differs from the one currently prescribed by the Constitution in that it fully conforms to the principle of constitutional law. The new Constitution introduces a constructive vote of no confidence in accordance with the recommendations of the Venice Commission and thereby increases the role and power of the Parliament in the system of division of powers. A major shortcoming of the Constitution that harshly contradicted the fundamental principle of division of powers has been eliminated.

An article saying that substitution of one-third of the members of the Government must necessarily cause initiation of a motion of confidence in the Government has been deleted from the Constitution. Since the procedure of declaring a vote of no confidence has been revised, it is no longer needed to retain the said article.

#### **Article 58**

A new procedure has been introduced whereby the Prime Minister may raise the issue of confidence in the Government before the Parliament. The procedure is fully compatible with the principle of constitutional law.

### **Chapter Six. Judiciary and Prosecution**

Highly important modifications have been made in Chapter Six to the effect of further enhancing judicial independence: provisions describing the competences of the Constitutional Court have improved, the High Council of Justice has been empowered to nominate the Supreme Court justices, a minimum number of the Supreme Court justices has been determined, the principle of irremovability of judges and related guarantees have been articulated, rules by which the

High Council of Justice decides to appoint judges have toughened, the composition of the High Council of Justice has been determined in more clear terms, the principle of accountability of the High Council of Justice before the Judicial Conference has been introduced, and the Prosecution Office has become an independent constitutional body. The new version of Chapter Six has been voted against by six members of the State Constitutional Commission; the negative vote was based largely on the new proposal that the High Council of Justice nominate the Supreme Court justices. Commission members who voted against regarded it more appropriate to leave the competence of making nominations up to the President.

#### **Article 59**

Paragraph 1 clearly stipulates the subjects that form the Georgian judiciary: the Constitutional Court and the courts of general jurisdiction.

Paragraph 2 has not changed.

In paragraph 3 a sentence has been added allowing for establishment of specialized courts within the system of courts of general jurisdiction.

Some technical corrections have been made in other provisions of the article.

#### **Article 60**

No changes have been made to paragraph 1.

Paragraph 2 introduces a relatively higher age requirements for the justices of the Constitutional Court (35 instead of 30). A justice of the Constitutional Court must also have a 10-year length of service in occupation and must possess distinguished professional qualifications.

New paragraph 3 prohibits re-electing the same person as Chairperson of the Constitutional Court.

Paragraph 4 outlines the competences of the Constitutional Court in more precise terms:

- a) A sentence on exercising control over the so-called concrete provisions has been added;
- b) The Public Defender, the Council of the National Bank, the Auditor General, the Prosecutor General and highest bodies of the autonomous republics have expressly been granted the right to participate in disputes over competences of State bodies;
- c) The Constitutional Court is now authorized to decide, along with the banning of a political party, whether to terminate the competency of MPs elected at that party's nomination;
- d) The Constitutional Court has been granted the power to decide on recognition of the competency of MPs and premature termination of competency of MPs;

- e) The Constitutional Court will no longer discuss constitutionality of elections already held. Under the new Constitution, it is prohibited to declare election-related provisions unconstitutional unless these provisions had been adopted during a year preceding the relevant election. It has also been prohibited to declare an election-regulating bylaw within 60 days before the Election Day. These regulations are aimed at preventing the Constitutional Court's undue intervention in the political process;
- f) The new Constitution stipulates that the Constitution determines an exhaustive list of competences of the Constitutional Court.

Paragraph 7 has been amended from technical point of view. It is also states that an organic law regulates issues related to legal proceedings before the Constitutional Court. This change will cause the relevant law to transform into an organic law.

### **Article 61**

Paragraph 1 remains without changes.

Paragraph 2 establishes a minimum number of justices of the Supreme Court (at least 25 justices). Under the new version, the Chief Justice and justices of the Supreme Court are elected at the nomination of the High Council of Justice, but not the President. This change is based on a recommendation of the Venice Commission issued in 2010. The new version of the article prohibits a person to be re-elected Chief Justice.

### **Article 62**

Paragraph 2 envisages that sanctions are established for failure to comply with a court decision or for impeding the fulfillment of a court decision.

Paragraph 2 and 3 have remained unchanged.

A sentence in paragraph 4 concerning the teaching of the State language and how this issue should be resolved in the context of legal proceedings has been deleted. This provision was misplaced because the Chapter in question governs issue related to the judiciary.

Paragraph 5 remains the same.

### **Article 63**

Paragraph 1 has not changed.

Paragraph 2 combines provisions on the immunities of judges of courts of general jurisdiction and justices of the Constitutional Court.

No changes have been made in paragraph 3.

Paragraph 4 is unchanged, except for a slight technical correction.

Paragraph 5 introduces important new guarantees for irremovability of judges. In particular, the new Constitution says that reorganization or liquidation of a court may not serve as a reason for

dismissing a judge appointed for lifetime. This provision will protect the independence of the judiciary and individual judges at a high standard.

Paragraph 6 establishes lifetime appointment of judges. A 3-year term of probation may apply only to a judge appointed for the first time. This reservation is necessary because of the fact that the High School of Justice as it stands now in Georgia is not equipped with appropriate resources capable of producing properly trained and experienced personnel for judicial appointment.

Paragraph 6 provides that judges are appointed according to the criteria of integrity and competence. This provision requires the High Council of Justice to decide on judicial appointments with a qualified majority (two thirds).

#### **Article 64**

In paragraph 1, the function of the High Council of Justice has been redefined.

New version of paragraph 2 specifies number of members of the High Council of Justice. It stipulates that those members of the High Council of Justice that are neither elected by the Judicial Conference nor appointed by the President of Georgia shall be elected by the Parliament.

Paragraph 3 makes the High Council of Justice accountable before the Judicial Conference.

Paragraph 4 has been amended from a technical perspective.

#### **Article 65**

In the new version of the Constitution, the Prosecution Office is no longer part of the executive branch of the Government but has been transformed into an independent constitutional body. The Prosecutor General is elected by the Parliament for 6 years. The Prosecution Office is accountable to the Parliament. Paragraph 4 envisages that issues related to the Prosecution Office are governed by an organic law.

### **Chapter Seven. State Finance and Control**

Chapter Seven incorporates the proposals made by the National Bank and the State Audit Office concerning amending the provisions on budget and taxes. Only two members of the State Constitutional Commission voted against Chapter Seven for the reason that they disagreed with the referendum requirement envisaged by Article 67(2).

#### **Article 66**

Some slight changes have been made in paragraph 1.

Paragraph 2 has substantially remained the same. The new version does not make it compulsory for a budget year to match a calendar year.

No changes have been made to paragraph 3.

Some technical changes were made in paragraph 4.

Paragraph 5 has been amended slightly from a technical point of view.

Paragraph 6 underlines the President's right to veto a budget law.

Paragraph 7 has remained unchanged.

#### **Article 67**

New version of paragraph 1 requires that the rates of taxes and fees or, in case of self-governments, the scope of rates, be determined by a law.

Paragraphs 2 and 3 are presented with some technical changes.

#### **Article 68**

Some technical corrections have been made in paragraphs 1 and 2.

New version of paragraph 3 stipulates that the National Bank is not supervised by the State Audit Office. This provision aims at further reinforcing independence of the National Bank.

Paragraph 4 specifies that money units and name are determined by an organic law.

Paragraph 5 has some technical changes.

#### **Article 69**

Paragraph 1 specifies the function of the State Audit Office.

Corrections made in paragraph 2 are mostly of a technical nature.

Paragraphs 3 and 4 have not changed.

Paragraph 5 has been corrected from a technical point of view.

Paragraphs 6 and 7 have not been amended.

#### **Chapter Eight**

The refurbished Chapter Eight contains ultimate regulation of the issues of defense and security and the states of emergency and war – matters that are fairly vaguely articulated in the Constitution now in force. The new version prescribes rules of military command, specifies the grounds for declares the states of emergency and war, regularizes the terms and conditions of imposing limitations on human rights in time of emergency and war, specifies the conditions for activating the armed forces, and replaces the National Security Council with a National Defense Council whose status and competences fully conform to the general rationale of the constitutional system introduced. The new version of Chapter Eight gained full support of the State Constitutional Commission members.

#### **Article 70**

Paragraph 1 has not changed.

In paragraph 2, the sentence saying “a law determines the form of compulsory military service” has been substituted with the phrase “a law determines the rules of military service”. The new version no longer requires that military service to be compulsory.

Paragraph 3 specifies the functions of military and other armed forces. Under the new text, the President approves a general structure of the military forces at the Government’s proposition, while the Parliament approves the number of military personnel at the Government’s proposition.

According to the text, military forces are directed by the Defense Minister in accordance with rules determined by law, while in a state of emergency or a state of war, the Prime Minister takes the command. The provision regulates a system of command in times of emergency and war – an issue that is not regulated by the current text of the Constitution. In particular, the new provision stipulates that the system of subordination will be the same in time of peace and in time of war or emergency. It is expected that such an arrangement will ensure a more effective management the said circumstances.

#### **Article 71**

Paragraph 1 adds an additional circumstance for declaring a state of war in territory of Georgia: an imminent threat of armed attack against Georgia. The President declares a state of war at the Prime Minister’s recommendation and submits his/her decision to the Parliament immediately for approval.

In paragraph 2, the phrase “in cases of war” has been deleted from the grounds warranting proclamation of a state of emergency, since the term was too vague from a legal point of view. The phrase “ecologic catastrophe” has been replaced with “natural and technological catastrophe”. The President declares a state of emergency at the Government’s recommendation and submits his/her decision to the Parliament immediately for approval.

A new version of paragraph 3 considers decrees issued in a state of war or a state of emergency to have the force of an organic law rather than of a regular law. With the aim of ensuring proper preservation of currency reserves, paragraph 3 also stipulates that decrees relating to the competencies of the National Bank are issued at the consent of the National Bank. Paragraph 3 articulates the procedure of approval of such decrees and subsequent legal consequences.

Paragraph 4 indicates those provisions of Chapter Two of the Constitution the validity of which may be suspended by a presidential decree. It may become necessary, for effectively managing a state of war or a state of emergency, to suspend the said provisions.

Corrections made in paragraph 5 are essentially of a technical nature.

Paragraph 6 prescribes a procedure for cancelling a state of war or a state of emergency; nowadays, no such procedure is envisaged by the current version of the Constitution.

Paragraph 7 lays down a quorum (which is a majority of full composition of the Parliament) required for decision-making by the Parliament on issues referred to in Article 71.

#### **Article 71**

Under the new version of paragraph 1, the President makes a decision to use military force at the Government's recommendation and submits his/her decision immediately to the Parliament for approval. Apart from that, the Prime Minister is entitled to use military force independently in the cases of war, natural and technological catastrophes, and epidemics.

Under new version of the Article, decisions on issues referred to in paragraph 2 are decided by the President on the basis of the Government's recommendation.

#### **Article 73**

The new Constitution replaces the National Security Council with a National Defense Council. Against the existing background, it was decided that the existence of the National Security Council lacked legal reasoning. The Security Council advises the President on issues that fall within the domain of Government powers (such as building up the military and organization of the defense). Such a division of competences is clearly wrong. Unlike the National Security Council, a National Defense Council will be set up in time of war in order to coordinate the actions of constitutional bodies. The National Defense Council will be chaired by President; Prime Minister, Parliament Chairperson and Chief of Military will be permanent members of the Defense Council.

### **Chapter Nine**

Chapter Nine introduces new guarantees for local self-governments. The new version determines the corporate status of each self-governing territory, strengthens the principle of autonomous organizational and staff policy, prescribes the right to cooperation and association, requires that central authorities consult with local self-governments in respect of decisions concerning the self-governments, etc. The new Chapter Nine is fully consistent with the European Charter of Local Self-Government and it gained full support among the members of the Constitutional Commission.

#### **Article 74**

Changes made in paragraph 1 are largely of a technical nature.

Paragraph 2 describes the corporate status of a self-governing unit and stipulates that self-governing units are entities under public law.

Paragraph 3 says that local self-governments exercise their competences according to rules established by an organic law.

### **Article 75**

The principle of division of competences is prescribed in paragraph 1, the principle of universal competences in paragraph 2, the principle of exclusive own competences in paragraph 3, rules of delegating powers to self-governments in paragraph 4, and the principle of supervision of local self-governments for the sake of legality and appropriateness in paragraph 5. Each of the paragraphs of the article are fully compatible with the principles and norms of the European Charter of Local Self-Government.

### **Article 76**

Paragraph 1 has remained unchanged. It ensures that funds and property of local self-governments are separated from the resources of the central authorities and those of authorities of autonomous republics. Paragraph 2 enshrines the principle of autonomy of organizational and staff policy. Paragraph 3 prescribes the right of self-governing units to cooperate with each other and their right to form associations. Paragraph 4 prescribes a requirement on compulsory involvement of self-governing units when decisions affecting them are made at the central level. Paragraph 5 lays down the principle of jurisdictional autonomy of local self-governments.

## **Chapter Ten. Revising the Constitution**

The new version of Chapter Ten introduces the so-called plural voting system for revising the Constitution – an important innovation in the Georgian constitutional practice. Chapter Ten gained full support of the State Constitutional Commission members.

### **Article 77**

Technical changes have been made in paragraphs 1, 2, 5, and 6 of Article 77.

Under paragraphs 3 and 4, the system of plural voting is introduced. In particular, a constitutional bill passes if a majority of two-thirds of two convocations of Parliament vote for the bill. A single convocation of Parliament can also pass a constitutional bill if three-fourths of its members support it. One convocation of Parliament can pass a constitutional bill with a two-thirds majority of its members only if the changes is about restoring Georgia's territorial independence.

## **Chapter Eleven. Transitional clauses**

Chapter Eleven contains a single provision. It obliges constitutional bodies to take all measures in order to ensure that Georgia joins the European Union and the NATO. Chapter Eleven has gained full support of the State Constitutional Commission members.

### **Article 78**

A temporary provision is inserted in the Constitution giving the constitutional bodies a special task. In particular, the bodies envisaged by the Georgian Constitution are obliged to take all

measures, within the scope of their competences, to ensure that Georgia fully integrates into European and Euro-Atlantic structures.

### **Transitional Provisions**

The constitutional bill contains transitional provisions to ensure unimpeded entry into force of the provisions of the new version of the Constitution:

- a) The constitutional changes will take effect immediately after a President of Georgia elected in the next presidential election take the oath of office. Next year, presidential election will be conducted according to the rules of current Constitution; this means that the new system of governance will fully gain force only after 6 years. This change is based on a political decision warranted by a personal factor.
- b) Each and every law, which the new version of the Constitution envisions to be an organic law, has been granted the status of organic laws;
- c) New limitations for setting up parliamentary factions (a minimum of seven members, one nominator – one faction) will not apply to factions already created or factions that will be created in the future in this convocation of the Parliament;
- d) Current judges who have been appointed for life will not be extended for life. They will be appointed for lifetime only if they are appointed for life after their tenures expire;
- e) The substantive, structural or technical changes made in Chapter Two of the Constitution will not entail as a consequence cancellation of the admissibility decisions rendered by the Constitutional Court in the cases already lodged with the Court. Transitional clauses only allow for re-classification of relevant judgments,<sup>3</sup> which should be done through consultations between the Constitutional Court and the plaintiffs;
- f) It is stipulated in the Transitional Clauses that the Constitutional Law on the Achara Autonomous Republic may be enacted with a title that differs from the one envisaged by the current version of the Constitution.

### **b) Financial reasoning**

#### **b.a. Source of funding the necessary costs related to adoption of the constitutional bill**

If passed, the constitutional bill will not generate any additional costs.

#### **b.b. Implications of the constitutional bill for budget revenues**

Adoption of the constitutional bill will not affect the revenue part of the State Budget.

#### **b.c. Implications of the constitutional bill for budget expenditures**

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<sup>3</sup> Translator's remark: This phrase may indicate that references to the provisions of the Constitution in the judgements will change because the numbering of articles has changed in the new Constitution. If that is so, the translation could specify that it is allowed to correct references to constitutional provisions resulting from the changed number of the Constitution articles.

The constitutional bill envisages substitution of the National Security Council with the National Defense Council, which is not a standing body. This change will result in a decrease in the relevant costs by 1.8 million Lari.

**b.d. Any new financial obligations for the State**

The constitutional bill, if passed, will not cause the State to assume any new financial obligations.

**b.e. Financial implications of the constitutional bill for persons who will be affected by the draft if passed**

The constitutional bill will have no financial implications for the persons covered by the bill.

**b.f. Rates and rules of determining the rates of taxes, fees or other payables introduced by the constitutional bill**

The constitutional bill does not introduce any taxes, fees or other payables and does not contemplate changes in the rules of determining their rates.

**c) Compatibility of the draft law with international legal standards**

**c.a. Compatibility of the constitutional bill with European Union directives:**

The constitutional bill is fully consistent with the EU directives.

**c.b. Compatibility of the constitutional bill with Georgia's obligations related to its membership into international organizations**

The constitutional bill is fully consistent with Georgia's obligations related to its membership into international organizations.

**c.c. Compatibility of the constitutional bill with Georgia's bilateral and multilateral international treaties**

The constitutional bill is fully consistent with the bilateral and international treaties entered into by Georgia.

**d) Consultations obtained in the process of preparation of the constitutional bill**

**d.a. State, non-state and/or international organizations/institutions or experts who have taken part in preparing the constitutional bill, if any.**

The constitutional bill was prepared in the format of a State Constitutional Commission established by the Parliament of Georgia. The Commission was composed of representatives of parliamentary and non-parliamentary political parties, constitutional bodies and non-governmental organizations, and experts. The constitutional bill was approved by the Commission members by 43 votes to 8.

**d.b. Evaluation of the draft law valuation by organizations (institutions) and/or experts that have taken part in preparation of the draft law, if any.**

The constitutional bill is not accompanied with evaluations by organizations, institutions or experts participating in the producing of the bill.

**e) Author of the draft law**

The constitutional bill has been prepared by the State Constitutional Commission.

**f) Initiator of the draft law**

The constitutional bill has been initiated 108 members of the Parliament:

Irakli Kobakhidze, Tamar Chugoshvili, Giorgi Volski, Sofio Kiladze, Gogi Meshveliani, Davit Matikashvili, Irakli (Dachi) Beraia, Goga Gulordava, Kakhaber Kuchava, Giorgi Kopadze, Guram Macharashvili, Eka Beselia, Paata Kvizhinidze, Fati Khalvashi, Zviad Dzidziguri, Sul Khan Makhatadze, Giorgi Mosidze, Giorgi Kakhiani, Tsotne Zurabiani, Shalva Kiknavelidze, Gela Samkharauli, Irine Fruidze, Samvel Manukyan, Mamuka Mdinaradze, Tamaz Naveriani, Irakli Sesiashvili, Makhir Darziev, Isko Dassen, Grigol Mikeladze, Irakli Shiolashvili, Teimuraz Chkuaseli, Svetlana Kudba, Levan Gogichaishvili, Zaza Khutsishvili, Nino Tsilosani, Koba Narchemashvili, Giorgi Gachechiladze, Mariam Jashi, Dimitri Khundadze, Goderdzi Chankseliani, Rati Ionatamishvili, Teimuraz Muchiashvili, Akaki Zoidze, Mikheil Kavelashvili, Koba Lursmanashvili, Giorgi Khatidze, Anri Okhanashvili, Zaza Gabunia, Vano Zardiashvili, Tamar Khulordava, Archil Khabadze, Giga Bukia, Mukhran Vakhtangadze, Elguja Gotsiridze, Iliia Nakashidze, Paata Mkheidze, Ioseb Makrakhidze, Irakli Kovzanadze, Roman Kakulia, Revaz Arveladze, Shota Khabaraeli, Genadi Margvelashvili, Alexandre Kantaria, Archil Talakvadze, Simon Nozadze, Dimitri Mkheidze, Bidzina Gegidze, Zaza Papuashvili, Irakli Abuseridze, Giorgi Totladze, Victor Japaridze, Alexandre Erkvania, Irakli Mezurnishvili, Beka Natsvlisvili, Giorgi Begadze, Savalan Mirzoev, Irakli Beraia, Ruslan Gajiev, Gedevan Popkhadze, Leval Kobiashvili, Erekle Tripolski, Anzor Bolkvadze, Karlo Kopalani, Gia Benashvili, Gocha Enukidze, Koba Nakaidze, Davit Songulashvili, Levan Bezhanidze, Leri Khabelovi, Dimitri Samkharadze, Mirian Tsiklauri, Ruslan Pogosyan, Nino Gogvadze, Sofio Katsarava, Davit Chichinadze, Tengiz Khubuluri, Irakli Khakhubia, Endzela Machavariani, Iviane Tsulaia, Dimitri Tskitishvili, Levan Koberidze, Otar Danelia, Guguli Magradze.