



Strasbourg, 3 March 2005

Opinion no. 334 / 2005

Restricted
CDL(2005)028
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT CONSTITUTIONAL LAW
“ON THE CHANGES AND ADDENDA
TO THE CONSTITUTION OF GEORGIA”
(REFORM OF THE JUDICIARY)

Article 1. The following changes and addenda shall be introduced to the constitution of Georgia:

1. Paragraph 1 of Article 82 shall be formulated as follows:

“1. Judicial power shall be exercised by means of justice and other forms determined by organic law.”

2. Article 83 shall be for formulated as follows:

“1. Justice shall be administered by the common courts. Their structure, system, rules of formation and activities shall be defined by the organic law and the rules of legal proceedings by law.

2. Creation of military courts shall be permissible at war and only within the system of common courts.

3. Creation of extraordinary courts is prohibited.”

3. Paragraph 3 of Article 86 shall be formulated as follows:

“3. Position of a judge shall be incompatible with any other position and remunerated activity except for a pedagogical and scientific work. A judge shall not be a member of a political party or participate in a political activity.”

4. Article 87¹ shall be added:

“1. The Supreme Court of Georgia is the highest Court of Cassation.

2. The President and the judges of the Supreme Court are elected by the majority of the members of the Parliament of Georgia on the nominal list for a term of 10 years upon proposal by the President.

3. The competence, organisation, activities and the number of judges of the Supreme Court shall be defined by the organic law as set by para. 1 of Article 83.

4. The chairman and judges of the Supreme Court are inviolable. Initiation of criminal proceedings against them, detention and arrest, search of their car, private house or working place is only permitted with the consent of the Parliament. If the parliament does not give its consent the detained or arrested person should be immediately released.”

5. Chapter V¹ “Constitutional Control” which shall include Articles 88, 90 and 91 shall be added after the Article 87¹.

6. Article 88:

a) Paragraph 1 shall be formulated as follows:

“1. The Constitutional Court of Georgia, rules of formation, activities and competence of which shall be determined by the Constitution and organic law, exercises the constitutional control by virtue of the constitutional legal proceedings.”

b) Paragraph 2 shall be formulated as follows:

“2. The Constitutional Court of Georgia, shall consist of 15 judges – members of the Constitutional Court. The Parliament of Georgia elects the members by the three fifth majority of the members of the Parliament of Georgia on the current nominal list upon proposals by the President. The tenure of the members is 10 years. The Constitutional Court

elects its President from its composition for 5 year term. The President shall not be re-elected.”

c) Paragraph 4 shall be formulated as follows:

“4) A member of the Constitutional Court may be a citizen of Georgia, who has attained the age of 30 and has the higher legal education. Issues of activities of the Court, the rules of the constitutional legal proceedings and expiration of tenure of judges shall be determined by law.”

7. Article 89:

a) Sub-paragraph “d)” of paragraph 1 shall be formulated as follows:

“d) Consider disputes of constitutionality of norms regulating elections and referenda and the constitutionality of held or next elections and referenda.”

“b) Sub-paragraph “f)” of paragraph 1 shall be formulated as follows:

“f) Consider constitutionality of normative acts with regard to the fundamental human rights and freedoms set forth in the Chapter II of the Constitution on the basis of a claim of a person.”

“c) Paragraph 1 shall be added by following sub-paragraph (f²):

“f²) Consider constitutionality of decisions of courts with regard to fundamental human rights and freedoms set forth in the Chapter II of the Constitution on the basis of a claim of an individual or the application by the Public Defender of Georgia. The application to the Constitutional Court on these grounds is permitted only after exhaustion of all domestic remedies for rights’ protection.”

8. Article 97 shall be added with the following paragraph 2¹:

“2¹ Parliament is entitled to declare non-confidence to the chairman of Chamber of Control of Georgia. At least one fourth of the members of the Parliament on the current nominal list may raise the issue of declaration of non-confidence. The Chairman of the Chamber of Commerce is considered dismissed under the decision of three fifth of the members of the Parliament on the current nominal list”.

Article 2.

- a) This law is in force after its promulgation.
- b) Within one month following the promulgation of this law the President of Georgia should propose to the Parliament 6 members of the Constitutional Court for election.
- c) Application to the Constitutional Court under the sub-paragraph f² of the paragraph 1 of the Article 89 is permitted only on court decisions rendered after the promulgation of this law.”

President of Georgia

Mikheil Saakashvili