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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**4 CONSTITUTIONAL LAWS
AMENDING THE CONSTITUTION OF
GEORGIA**

1st Constitutional Law

Bill

Georgian Constitutional Law

Regarding Amendments in Georgian Constitution

Article 1. The first paragraph of article 58 of the Georgian Constitution (Georgian Parliamentary reports, 1995, N 31-33, article 668) is to be worded as follows:

„1. The members of the Parliament can join the Parliamentary fraction. The number of fraction members should not be fewer than 6.”

Article 2. This law shall be enacted immediately upon its publication

President of Georgia

Mikhail Saakashvili

Interpretations of the 1st Constitutional Law

Constitutional Amendments Regarding Reduction of the Necessary Number of Deputies to Create a Parliamentary Fraction

According to the Constitutional amendments, the necessary number of deputies in Georgian parliament is being reduced from 7 to 6 in order to create a Parliamentary fraction. The purpose of the proposed amendments is to create increased judicial and political guarantees for the voting subjects who overcame barriers, and to enable them to create an independent fraction in the judicial organ, in order to more effectively implement their political goals.

On February 23, 2005 the number of Parliamentary fraction members has been reduced from 10 to 7 as a result of the Constitutional amendments due to the reduction in numbers of those parliament members who were to be elected under the rule of proportional distribution from 150 to 100.

Such a reduction in deputies' lower limit numbers from 10 to 7 was logical and self-explanatory in order to form a fraction under the conditions of 7 percent voting barrier; however, on March 12, 2008 the number of Parliament members elected under the proportional system of the constitutional law was reduced from 100 to 75, and the voting barriers necessary to obtain mandates have reduced up to 5 percent which created a new reality for those parties who had overcome the barriers.

In theory it is possible for a voting subject to overcome a barrier under the 5% barrier conditions when the amount of mandates to be proportionally distributed equals 75, but to elect only 6 members according to the rule of proportion. It is our opinion that every party who had overcome barriers should have an opportunity to create a fraction in order to actively participate in the life of Parliament.

Under the current political reality in order to take all the above in the consideration and to form a fraction, it became necessary to create a new system of fraction formation using proportional equation. According to the proposed amendments it was determined that the minimum number of Parliament members to create a fraction is 6.

2nd Constitutional Law

Bill

Georgian Constitutional Law

Regarding Amendments in Georgian Constitution

Article 1. To introduce the following amendment in the Georgian Constitution (Georgian Parliamentary Reports, 1995, N 31-33, Article 668):

The first paragraph of article 80 is to be worded as follows:

“1. Government is relieved from its rights and responsibilities before the Georgian President following the inauguration of the Georgian President or following the appointment of the newly elected parliament. The president revokes the rights and responsibilities of the government and he/she himself/herself can also impose such rights and responsibilities until the appointment of a new government.”

Article 2. This law shall be enacted immediately upon its publication

Georgian President

Mikhail Saakashvili

Interpretations of the 2nd Constitutional Law

Regarding the Constitutional Amendments Concerning the Government Trust after granting the Parliament the rights and responsibilities

The Constitution of Georgia (sic) imposes responsibilities to Georgian government before both, the President of Georgia and the Parliament of Georgia. The Parliament of Georgia participates in forming the government body by means of the Constitutional Institution of declaring trust.

According to this Constitutional mechanism, the government of Georgia is relieved from the rights and responsibilities following an inauguration of the newly elected President. The creators of the above Constitutional bill deemed it proper to also use the same mechanism towards the newly elected Parliament in order to more effectively balance Parliaments rights and responsibilities and to strengthen the working relationships between the political institutions. The newly elected Parliament will participate in forming the Government of Georgia and will grant a new trust to the government body, which on the other hand, will considerably facilitate the government to more effectively realize its obligations and responsibilities before the Parliament of Georgia.

The goal of the Constitutional bill is to grant a new trust to the government under the constitutional-legal regulations, in order to effectively balance the rights and responsibilities of the President of Georgia and the Parliament, and to reactivate the mutual working relationships between the political institutions.

3rd Constitutional Law

Bill

Constitutional Law of Georgia

“Regarding the Amendments in Georgian Constitution”

Article 1. To word article 21 of the Georgian Constitution (Reports of the Georgian Parliament, 1995, N 31-33, article 668) as follows:

“Article 21.

1. Property ownership rights and inheritance rights shall be declared and **inviolable**. Voiding the general property rights is inadmissible.
2. Restriction of the rights described in the paragraph one is permissible in the frameworks of the constitution for the purposes of the society needs, so that **the fundamental rights of ownership are not violated**.
3. Forfeiture of the private property is permissible under the needs of society within the framework of the laws directly created for this purpose, by the decision of the court, or by the main laws during emergency situations, **the conditions of which are the advance, full, and just financial reimbursement. The amount of reimbursement shall not be less than the forfeited property’s fair market value. The reimbursement shall be free of financial obligations and tax liabilities.**”

Article 2. This law shall be enacted immediately upon its publication

Georgian President

Mikhail Saakashvili

Interpretations of the 3rd Constitutional Law

Regarding the Amendments to Article 21 of the Georgian Constitution

The foundation of the bill preparation was to further strengthen the constitutional – judicial status of the property ownership rights in Georgia as one of the fundamental human rights.

The study of the world experience in property ownership rights has been conducted. Especially the experience of European countries has been analyzed including the constitutional norms concerning the property ownership rights including the effectiveness and the specificities of their practical applications. A new constitutional bill has been prepared under the consideration of the above experiences the purpose of which is to create an improved and more stable mechanism to protect the property ownership rights, and to more profoundly regulate its important principles.

The amendments touched the article 21 of the constitution which provides the constitutional-legal basis of protection of property ownership rights in Georgia as the most fundamental human rights issue. The bill once again determined that the property ownership right is inviolable and its voidance or restriction in any way and form is not permissible. When property ownership rights are restricted due to the needs of the society, as defined by the law, the fundamentals of the property ownership rights and inheritance right can not be violated in the process.

In case of the property being forfeited in the emergencies or in order meet the needs of the society as determined by law, it is important to provide a full and advance reimbursement to the owner of the property in a just and fair manner. In both situations, the reimbursement should not be less than the property's fair market value.

It is also notable that according to the proposed Constitutional norm, the reimbursement for the forfeited property is freed from any financial obligations and tax liabilities, which provides an additional guarantee for the property owner.

4th Constitutional Law

Bill

Georgian Constitutional Law

Regarding Amendments and Additions in Georgian Constitution

Article 1. To introduce the following amendments in the Georgian Constitution (Georgian Parliamentary Reports, N 31-33, 1995, Article 668 p.6):

1. The first paragraph of article 64 is to be worded as follows:

“1. No fewer than one third of all parliament members have the authority to remove the Judge of the Supreme Court, members of the government, chairman of the Chamber of Control, and the members of the national bank committee from their offices by means of impeachment in the event of violation of the constitutional laws or committing a crime.”

2. To word article 73, paragraph one, subparagraph “g” as follows:

“g) Authorized to remove the government from the office and to dismiss the ministers of Defense, Justice, and Internal Affairs on his/her own initiative, or for other reasons defined by the Constitution”.

3. To remove article 76(1).

4. To add article 84(1) worded as follows:

“Article 81(4)

Departments of the prosecution are under the system of the ministry of Justice. The minister of Justice is overseeing their operations. The rights, responsibilities, and operations of the prosecution office are defined by the law.”

Article 2. This law shall be enacted immediately after the enactment of the Georgian law “Regarding Prosecution”.

President of Georgia

Mikhail Saakashvili

Interpretations of the 4th Constitutional Law

Constitutional Amendments Regarding a Merger of the Ministry of Justice and the Prosecution (Office of Attorney General)

Elaboration of the above bill was necessitated by the need to determine the place of the Georgian prosecution in the government's executive system. According to the initial version of the article 91 of August 24, 1995 Georgian Constitution, the Georgian prosecution was a part of the judicial authority system. Following the implementation of the constitutional amendments of February 6, 2004, the Georgian Prosecution was separated from the judicial authority system; however, neither the Constitution, nor the main Georgian law "Regarding the Prosecution" directly stipulated the independent place of the Georgian prosecution among the other governmental systems.

The existing models of the United States and the other European Countries were pretty successful and remain so as of today according to which, the prosecution (office of the attorney general) is a part of the Ministry of Justice. The above model is very optimal and its application for Georgian reality will provide an effective forefront.

As a result of the proposed Constitutional novelty the place of the Georgian prosecution was determined in the executive system, and the Georgian prosecution became a state sub unit under the ministry of Justice. The governing body of the Georgian prosecution will be the minister of Justice, and the prosecution's institutional issues will be regulated by the law "Regarding Prosecution".(Article 81(4))

As a result of the amendment, the name of the Attorney General is removed from the list of those authorities whose removal from the office is subject to the impeachment laws according to the first paragraph of article 64 of the Georgian Constitution, because the Georgian Parliament is authorized to address the removal of the minister of Justice, as a government member, according to the impeachment rules.

The amendment also concerns the article 73 of the Georgian Constitution which provides a list of the rights and responsibilities of the President of Georgia. If Georgia's Prime Minister is authorized to remove separate members of the government from the office, he/she will not have the authority to remove the Minister of Justice from the office (the same clause already exists in the Constitution with respect to the Minister of Interior and the Minister of Defense). Such authority will belong to the President of Georgia who on his own initiative, or by means of the Constitutional mechanism will remove the Minister of Interior, the Minister of Defense, and the Minister of Justice, from the office, if necessary. The above approach is justified by the necessity to guarantee an independent status of the Attorney General of Georgia in the executive system.

Bill of the Georgian Constitutional Law
“Regarding the Amendments in Georgian Constitution”

a) General Information regarding the bill

a.a.) Reasons for adopting the bill

The adoption of the bill was necessitated by the circumstances under which the initial version of Article 91 as of August 24, 1995 Georgian Constitution defines Georgia's Prosecution (Office of Attorney General) as a Department of Justice. Following February 6, 2004 Constitutional Amendments, the status of the department of Justice was removed from the prosecution (Attorney General's office); however, neither the Constitution, nor the main laws of Georgia “Regarding Prosecution (Office of Attorney General)” delineates the independent place of the prosecution (office of Attorney General) among the other systems of the state authority. The proposed amendments determine **the place of Georgian prosecution (Office of Attorney General) under the system of executive government** and the Georgian prosecution (Attorney General's office) will become a sub unit under the Georgian Ministry of Justice. Georgian prosecution (the office of Attorney General) will be governed by the Minister of Justice, who will simultaneously assume a role of the Attorney General. The institutional model of Georgian prosecution (the Attorney General's office) will be defined as follows: the main prosecution (Office of Attorney General) of Georgia, prosecution (Attorney Generals) of Abkhazian and South Ossetian autonomous republics, Tbilisi city prosecution (Attorney General's office), Regional Offices of prosecution (Attorney General), and specialized prosecutors wherever applicable by law.

a.b) the purpose of adopting the bill:

The purpose of the bill is to determine the place of the Georgian Prosecution in the executive system, and to increase the effectiveness of the prosecution work in general. As already noted, currently the status of the Justice department was removed from Georgian prosecution; however, neither the constitution, nor the main laws of Georgia “Regarding Prosecution” delineate the independent place of the prosecution among the other systems of the state authority. In addition, the model works very successfully both in the United States and the other Western countries where the prosecution is part of the Ministry of Justice system. It is our opinion that the above model is very optimal and creates a good forefront for the prosecution to effectively solve many issues that face prosecution.

Therefore, the purpose of the amendments is to transform the Georgian Prosecution into a sub unit under Georgian Ministry of Justice, which requires rewriting many norms of the Georgian Constitution to create a new version.

a. c.) The main purpose of the bill:

The title of the Attorney General is removed from the list of authorities who are subject to removal from offices by means of impeachment according to article 64, paragraph one of the Georgian constitutional amendments. Hereinafter, the Georgian parliament shall have an authority to address the issue of removal of the Attorney General from the office by means of impeachment.

Amendments will also affect article 73 of the Georgian Constitution which provides the list of authorities granted to the President of Georgia. If Georgia's Prime Minister is authorized to remove various government members from their offices, he/she will not be authorized to remove the Minister of Justice-Attorney General from his/her office. Only the President of

Georgia will have an authority to remove not only Georgia's internal minister and the minister of defense, but also the minister of justice-Attorney General either by his/her own initiative or by means of the Constitution. Such approach is necessary to guarantee an independent status of the Georgian Prosecution in the system among the other executive authorities.

Article 76(1) will be removed from the Constitution of Georgia which covers the rules of appointment of the Attorney General of Georgia. Hereinafter, Georgia's Minister of Justice-Attorney General shall be appointed in the office as a member of the government on general grounds – by the Prime Minister and by the consent of the President.

b) Financial justification of the bill

b.a) Financing source to cover the necessary expenses in connection with the adoption of the bill

The adoption of the bill shall not require any special allotment of funds from the state budget.

b.b.) Impact of the bill on budget receivables.

The adoption of the bill will not impact the budget receivables.

b.c.) Impact of the bill on budget expenditures.

The adoption of the bill will not impact the budget expenditures

b.d.) The state's new financial obligations

The adoption of the bill will not create new financial obligations for the state.

b.e) A potential financial impact of the bill on those individuals who will be impacted by the adoption of the bill.

Adoption of the bill will not worsen the conditions of those individuals who will be impacted by the adoption of the bill

b.f.) Rules to determine the amount of the financial obligations, taxes, and other types of expenses according to the bill.

The bill at issue will not impose any type of financial obligations and/or taxes.

c) Applicability of the bill to the international judicial standards:

c.a) Applicability of the bill to the Directives of the European Union

The adoption of the bill will not contradict the directives of the European Union.

c.b) Applicability of the bill to Georgia's membership obligations in international organizations

The adoption of the bill will not create any membership obligations for Georgia in the international organizations.

c.c.) Applicability of the bill to Georgia's bilateral and multilateral agreements.

The adoption of the bill does not contradict Georgia's bilateral and multilateral agreements.

d.) Consultations received during the preparation of the bill:

d.a) Governmental, non-governmental and/or international organizations/establishments, experts, who participated in preparation of the bill, if applicable.

Consultation has been received from the central state organizations during the preparation of the bill.

d.b.) Evaluation of the bill by the participating organization, (establishment) and/or expert, if applicable.

Expert evaluations do not accompany the bill.

d.c.) The author of the bill:

The author of the bill is the Parliament secretariat of the Georgian president's administration office.

d.d.) The initiator of the bill:

The initiator of the bill is the President of Georgia.