

Meetings on the Draft Constitution of Georgia

Venice, 11-12 November 1994

1. During the 21st Plenary Meeting of the Venice Commission, a Georgian delegation headed by Mr DEMETRASHVILI, Secretary of the State Constitutional Commission and member of the Commission presented a draft constitution for the Republic of Georgia which had been prepared by the State Constitutional Commission of the Georgian Parliament. The Georgian delegation was composed of Mr Avtandil DEMETRASHVILI, Secretary of the State Constitutional Commission, Mr Giorgi INTSKIRVELI, Deputy Chairman of the State Constitutional Commission, Mr Vakhtang KHMALADZE, Deputy Chairman of the State Constitutional Commission, Member of Parliament, Mr Johni KHETSURIANI, Member of the State Constitutional Commission and Mr Zaza NAMORADZE, Institute for Constitutional and Legislative Policy, Member of the State Constitutional Commission. The meetings on the draft constitution were presided by Mr. SCHOLSEM and attended by Messrs. BARTOLE, BATLINER, BERCHTOLD, KLUCKA, OZBUDUN, STEINBERGER, SVOBODA and VITROUK as well as Messrs. LAMPONI, and POLAKIEWICZ of the Secretariat.

2. The draft constitution is the result of lengthy discussions within the Constitutional Commission. A former draft had already been examined by the Commission (cf. CDL (94) 8 and Addendum - Draft Constitution of the Republic of Georgia, CDL (94) 13 - Comments on the Draft Constitution of the Republic of Georgia). The new unified draft is based on seven different drafts which had been submitted by political parties and the University of Tbilisi. Many of its provisions are influenced by the 1921 Georgian Constitution. It is expected that it will be submitted to Parliament in December. Due to the difficult political and economical situation of the country, the new constitution will probably not be adopted before October 1996.

3. During the discussions on the draft constitution which were held on 11 and 12 November 1994, the following points were raised:

Chapter 1 - General Provisions

The Georgian delegation explained that the draft constitution which declares Georgia to be "unified and indivisible" (Article 1, paragraph 1) excludes any form of federalism or union.

It was proposed to include an explicit reference to the rule of law principle in Article 1, paragraph 1.

It was welcomed that the draft constitution recognises the preeminence of international law (Article 3, paragraph 2).

The wording of Article 4 which states that "the people and the state are bounded by these rights and freedoms" was considered inappropriate.

Chapter 2 - Man and State (Basic Rights and Freedoms)

The fundamental rights catalogue of the draft constitution received many favourable comments. It was, however, suggested that a clearer distinction should be drawn between individual rights and State obligations. The wording of some of the provisions leaves it unclear whether enforceable fundamental rights of the individual are guaranteed or only obligations of the State (cf., for example, Articles 21, 22, 31 and 33). In some of the provisions it may be useful to specify more clearly whether the rights are only binding for public authorities or whether the State is also under an obligation to ensure an adequate protection of these rights in relationships between private persons.

The regulations on the limitation and restriction of fundamental rights received some criticism. Possible limitations of the different fundamental rights are not clearly stipulated. Article 44 which deals with the restriction of rights during a state of emergency or martial law should be improved. According to the draft, some important rights may be restricted, including the right to life, while others which are of less importance appear to be excluded from the scope of this article. It would also be advisable to state more clearly the conditions and limits of possible restrictions.

The regime of procedural safeguards (Articles 16 et seq.) may be improved. In particular, it would be useful to include a right of access to a court.

It was noted that some of the provisions may prove to be too generous (for example the requirements of "total" and "full" compensation contained in Articles 19, paragraph 3, and Article 41, paragraph 3).

The rigid prohibition of dual nationality contained in Article 10 was criticised by some members.

Chapter 3 - The Parliament of Georgia

It was observed that the constitutional regulations contained in this Chapter were very detailed. Some of the provisions should rather be included in the rules of procedure of Parliament (cf., for example, Articles 55, 56 and 60). It was suggested to define more clearly the respective attributions of the two Chambers of Parliament.

The wording of Article 57 (right to question/right of interpellation) received considerable criticism. In their current formulation, the rights contained therein may give rise to undue interference with the functioning of the judicial and executive powers.

Chapters 6 and 7 - The Constitutional Court and the Judiciary

The institution of a specialised Constitutional Court and the possibility of introducing individual complaints were generally welcomed. It was, however, noted that the limitation of the jurisdiction of the future Court to "normative acts" (Article 90, paragraph 1, lit. a) may be inappropriate.

The organisation of the judiciary is influenced by the French model. Some members recommended that the respective powers of the Ministry of Justice and the future Board of Justice should be more clearly defined in order to ensure effectively the independence of judges. The complete immunity of judges from criminal prosecution currently provided for by Article 101, paragraph 1, goes probably too far. It was also suggested to define more strictly the powers of the General Prosecutor's Office in order to avoid the abuses of the Soviet era.

Conclusion

The new draft constitution marks an important step in the constitutional development of Georgia. Compared with former drafts, considerable improvements have been made. The Commission decided to give a written opinion on the new draft in order to help to overcome the remaining difficulties and to eliminate all ambiguities of the text.

The different parts of the draft constitution were distributed as follows:

Chapter 1	- General Provisions + Articles 111-113	Mr Helgesen
Chapter 2	- Man and State	Messrs Batliner and Zlinsky
Chapter 3	- The Parliament of Georgia	Mr Niemivuo
Chapter 4	- The President of the Republic	Mr ?budun
Chapter 5	- The Cabinet of Ministers	Mr Scholsem
Chapter 6	- The Constitutional Court	Messrs Klu...ka and Steinberger
Chapter 7	- The Judiciary	Messrs Bartole and Svoboda
Chapter 8	- State Finances and Control	Mr Reuter
Chapter 10	- The Territorial Settlement Law	Mr Nicolas
Chapter 11	- Revision of the Constitution	Mr Niemivuo
	- Provisions on International Law	Mr Economides
	- General Observations	Mr Vitrouk