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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS ON THE
DRAFT LAW ON AMENDMENTS TO
THE CONSTITUTION OF GEORGIA

by

Mr Henrik Zahle (Member, Denmark)

1. The constitution of Georgia 1995 (with amendments) has established a strong presidential system. The organisational part of the constitution regulates the Parliament, the President and the Judicial Power in separate chapters (ch. 3-5). There is no systematic regulation of the government.

2. The main purpose of the proposed amendment is to introduce a government as additional part of the executive. This is primarily obtained by a separate chapter on "The Government of Georgia" (ch. 4.1). The establishment of a better regulated government has been seen as an occasion to introduce further regulation of the relations between the president and the other powers.

3. My comments are short since I fully agree with the comments already produced by Prof. Malinverni. To ease the reading I have organised my comments systematically.

Presidential powers over the government

4. On article 73, litra b, and article 80 I refer to the paper of Malinverni with whom I agree.

Presidential powers over the parliament

5. The President is given power to dissolve the Parliament, article 51.1, par. 1, and article 73.i.1. This authority may be a legitimate part of a modified presidential system. In this context it seems to represent a strengthening of the President which is not balanced by a governmental power.

6. On article 50 I agree to the question raised by Prof. Malinverni.

Parliaments' control

7. In article 80, par. 4 and 5, and article 81.1 the President is given important powers in relation to the President's 1) appointment of Ministers and 2) the Parliaments vote on confidence. I find it surprising that the Parliament has to repeat its opposition to the Government, cp. Prof Malinverni.

8. Article 81.1, par. 1, refers to a majority of "currently elected members" as necessary for a vote of no confidence. According to par. 2 a similar majority is necessary to give a vote of confidence. I am not able to see the rationale behind these two regulations. A general regulation of the majority necessary in the Parliament may be sufficient.

Budget control

9. Article 73, litra e, and article 93 attribute to the President control over the Government's draft National Budget. This I find extraordinary, cp. Prof. Malinverni.

10. Article 93, litra d, may be expected to create difficulties. If the Parliaments votes "no confidence" (after a non-approval of the budget) the Government has to be dismissed. This obligatory consequence is not in harmony with the fact that the President (and not the Government alone) controls the draft.