



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 6 February 2004
Opinion no. 281/2004

CDL(2004)003
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT CONSTITUTIONAL LAW
ON AMENDMENTS
TO THE CONSTITUTION OF GEORGIA***

* *Text translated into English by the Georgian authorities.*

This constitutional law presents amendments and changes to Constitution of Georgia (Published in the Gazette of the Parliament of Georgia#31-33, 1995 w. mux.; 668)

Article 1

1. Article 2 paragraph 4 should be formulated as follows:

"4. The citizens of Georgia regulate matters of local importance through local self-government without encroachment of national sovereignty. Heads of local executive agencies are elected according to the organic law. Organic law determines the procedure for the creation of local executive agencies and their powers and relationship with state bodies."

2. Article 2 should be added paragraph 5 as follows:

"5. President is entitled to appoint President representatives in territories defined by Georgian law presented by Prime –Minister."

Article 2

Paragraph 2 of Article 12 of the Constitution should be formulated as follows:

"2. A citizen of Georgia may not simultaneously be a citizen of another country. President of Georgia may confer citizenship, with his/her consent, to citizen of another country or stateless person, who has special desert toward Georgia or humanity by his scientific or public work, or possesses profession or qualifications that is in the interests of Georgia and conferring the citizenship to him/her is in the state interest."

Article 3

Paragraph 2 of article 46 should be formulated as follows:

2. If a state of emergency or martial law is introduced elections for the President, Parliament and other representative bodies of Georgia, can only be held once the state of emergency or martial law has been removed, except in case of decision of parliament concerning by-elections.

Article 4.

1. Paragraph 3 of article 50 should be added with following sentence:

In case of termination of authority of parliament, President of Georgia appoints by-elections, which should be held not earlier than 45 days of termination of powers of parliament and no later than 60 days.

2. Paragraph 3¹ should be added to article 50:

3¹ After entry into force of Presidential order of dismissal of Parliament before the first session of parliament, elected as a result of by-elections, dismissed Parliament is assembled only in case of declaration of state of emergency or martial law in order to adopts decision determined by Constitution.

Article 5

Article 51¹ should be added to the Constitution:

"Article 51¹

1. President may dismiss parliament in cases determined by the Constitution.
2. Parliament may not be dismissed:
 - a) during six months after the elections of Parliament except in cases determined by paragraph 5 of article 80 and paragraph 4 of article 93 (alternative: during six months (or one year) after the elections of parliament). In this case powers of President should be added the following provision _ f paragraph 1 of article 73 should be added sub-paragraph "q":
 - q) In case of declaration of distrust by newly elected parliament towards government and failure to adopt state budget, Prime-Minister should be appointed and state budget should be adopted by Presidential Decree.
 - b) In case of carrying out of functions by Parliament determined by article 63 of the Constitution;
 - c) In case of state of emergency and martial law
 - d) during last six months of authority of President of Georgia"

Article 6

Paragraph 2 of Article 52 should be formulated as follows:

"2. It is permitted to detain or arrest member of Parliament unless Parliament adopts different decision by resolution. In this case detained or arrested member of parliament should be immediately released."

Article 7

1. the word "government" should be added after word "body" in paragraph 2 of article 59.
2. Paragraph 3 should be added to Article 59, formulated as follows: "Parliament is entitled to present issues of official responsibility of each member of government before Prime Minister."

Article 8

Paragraph 2 of article 62 should be formulated as follows:

" 2. In case of dismissal of parliament, declaration of state of emergency or martial law by president, parliament is obliged to assemble in every 45 days and approve continuation of state of emergency or martial law."

Article 9

1. words "only in special circumstances, government" should be added after words "president" in paragraph 1 of article 67"
2. Word "government" should be added after the word "President" in paragraph 2 of article 67.

Article 11

Words "state and executive branch" should be replaced with word "state" in paragraph 1 of article 69.

Article 12

Paragraph 4 of article 70 should be removed.

Article 13

1. sub-paragraph "b" of paragraph 1 of article 73 should be formulated as follows:

"b) appoints Prime Minister, approves appointment of members of government-Minister by Prime Minister"

2. sub paragraph "c" of paragraph 1 of article 73 should be formulated as follows:

"c) is entitled to dismiss Ministers of Internal Affairs, Defence and State Security."

3. sub-paragraph "d" of paragraph 1 of article 73 should be formulated as follows:

"d) receives the resignation of ministers and other officials determined by law; is authorised to require that members of government perform their duties until lack of trust by parliament towards new government is restored.

4. Sub paragraph "e" of paragraph 1 of article 73 should be formulated as follows:

"e) approves submission of draft budget of state in parliament by government"

5. Sub paragraph "o" should be added to paragraph 1 of article 73:

"o) dismisses parliament according to rules and circumstances prescribed by Constitution"

6. Sub paragraph "p" should be added to paragraph 1 of article 73:

"p) Chairs Supreme Council of Justice of Georgia, appoints and dismisses the judges according to the constitution and organic law."

7. sub paragraph "q" should be added to paragraph 1 of article 73

"q) after entry into force of order of dismissal of parliament and before assembly of new parliament is entitled to issue decree with force of law concerning tax and budget issues, which is automatically recused unless newly elected parliament does not approve it within one month after its first session"

8. sub paragraph "r" should be added to paragraph 1 of article 73:

"r) appoints members of National Security Council"

9. sub paragraph "s" should be added to paragraph 1 of article 73:

"s) presents candidate of Prosecutor General to Parliament for approval"

9. paragraph 3 of article 73 should be formulated as follows:

"3. The President is authorised to abrogate acts of government and executive branch if they contradict with Constitution of Georgia, International Treaties and Agreements, laws and normative acts of President."

10. Paragraph 4 of article 73 should be formulated as follows: "4. The President is the supreme commander in chief of the armed forces of Georgia. He appoints Members of the National Security Council, appoints and dismisses Head of General Staff and other generals. "

Article 14

1. Paragraph 1 of article 76 should be formulated as follows:

"1. In cases where the President is unable to perform his/her duties or in the case of pre-term expiration, the powers of the President are delegated to the Chairman of Parliament. In cases where the Chairman of Parliament is unable to perform his/her duties, powers of President are delegated to Prime Minister. Within the period when powers of President are delegated to Chairman of Parliament the duties of the Chairman of Parliament are performed by one of his substitutes mandated by Chairman and in case when powers of President are delegated to Prime

Minister, duties of Prime Minister are performed by one of the ministers designated by Prime Minister."

2. Words "also dismiss parliament" should be added to paragraph 2 of article 76.

Article 15

Article 77 should be formulated as follows:

"Article 77

In order to support implementation of powers of President Administration of President is created. President appoints and dismisses head of administration, defines its structure and functions."

Article 16

Chapter 4 (1) should be added to the constitution after article 77, accordingly article 78-81 should be reformulated and article 81 (1), 81 (2) and 81 (3) should be added to the constitution:

Chapter 4 (1) Government of Georgia

Article 78

1. Government in accordance with Georgian legislation ensures implementation of policy of executive branch and domestic and foreign policy.
2. Government consists of Prime Minister, State Ministers and Ministers. Government and members of government remove authority before president.
3. Government based on Constitution, laws and Normative Acts of President and for their implementation adopts resolutions and orders, signed by Prime Minister.
4. President is entitled to convene and preside sittings of government concerning the important issues.
5. Structure of government, its powers and rule of operation is defined by Constitution and law, which is presented to Parliament for approval by Prime Minister with prior approval of President.
6. Government is entitled to resign with its own decision.

Article 79

1. Prime Minister is the chairman of Government.
2. Prime Minister defines basic activities of government, ensures organization of activities of government, coordinates and controls work of Ministers, reports to President about activities of government and is responsible for the activities of government towards President and Parliament.
3. Prime Minister, upon request of Parliament presents report concerning the implementation of approved governmental program to the Parliament.
4. Prime Minister, within his/her functions, is entitled to issue individual legal acts_ orders.
5. Prime Minister is entitled to dismiss ministers.
6. In case of resignation or cessation of authority of Prime Minister authority of ministers is terminated. In case of resignation or dismissal of member of government Prime Minister with consent of President appoints new member within two weeks.

ARTICLE 80

1. After taking the oath by the President of Georgia, the government abdicates its responsibility before the President. The President accepts the abdication of the government and may impose upon it an obligation to exercise duties until new government gets confidence from the Parliament.
2. Within 7 days after the resignation of or abdication by the government, the President of Georgia, having consulted the parliamentary factions, nominates the Prime-Minister, and the candidate for Prime –Minister nominates the ministers upon the President approval. Within three days, after the procedures envisaged by paragraph 1 of this Article are concluded, the President of Georgia submits the composition of government to the parliament for the confidence.
3. Within one week after the submission, the Parliament considers and votes on the composition of the government and the Government Proposal. Confidence is granted by the majority. The Parliament may not grant the confidence and raise a question of rejection (substitution) of a particular member of the government in appropriate decree. The appointment of the rejected member in the same composition of government is prohibited.
4. The parliament, on the submission of the President, approves the basic concepts of the Government Proposal (alternatively – the parliament may approve separately the basic concepts of the Government Proposal).
5. In case the Parliament does not grant the confidence to the composition of government and the Government Proposal, the President of Georgia, within one week, in accordance with paragraph 2 of this Article, submits to the Parliament the same or the new composition of government. The parliament carries out the procedures envisaged in paragraph 3 of this Article.
6. In case the government and Government Proposal fails to get a confidence from the parliament three times consecutively, the President of Georgia appoints the Prime-Minister without parliament approval within 5 days, and the Prime-Minister appoints the Ministers upon president approval within 5 days. In this case, the President of Georgia dissolves the Parliament and fixes the date for the new election.
7. While the procedures under this Article are undertaken, it is prohibited to start the impeachment of the President.

ARTICLE 81

Armed forces, state security forces and police forces shall not be integrated or otherwise united.

ARTICLE 81¹

1. Parliament withdraws the confidence to the government by majority of its composition. Not less than one –third of the parliament composition is authorized to raise a question on the withdrawal of confidence to the government. After withdrawal of the confidence by the Parliament, the President either dismisses the government or does not accept the decision of the Parliament. If Parliament withdraws the confidence within three months again, the President of Georgia either dismisses the government or dissolves the Parliament and fixes the date for new election.
2. The Prime-Minister is authorized to raise a question of confidence to the government on the governmental bills under Parliament consideration, regarding the basic concepts determined by Government Proposal. (Alternatively – the issues related to the budget, taxation and the structure and Rules of the Activity of Government). Parliament grants the confidence to the government by majority of its (listed) composition. If Parliament does not grant confidence to

the government the President of Georgia either dismisses the government or dissolves the Parliament and fixes the date for new election.

3. While the procedures under this Article are undertaken it is prohibited to start the impeachment of the President.

ARTICLE 81²

1. After the Parliament grants the confidence to the government and Government Proposal, in case the composition of the government is renewed by 1/3, but not less than 5 members, the Prime-Minister submits to the Parliament the new composition of government within 7 days.

2. The Parliament grants the confidence to the government in accordance with the procedure established by Article 80 of the Constitution.

ARTICLE 81³

1. Ministries are created to ensure the governance in specific fields of state and public life.

2. Ministry is governed by minister, who is independent in taking decisions on the issues within his competence. Minister issues individual legal acts – orders – on the basis and for the enforcement of the laws, the normative acts of the President of Georgia or the government decrees.

3. The Prime-Minister appoints the State Minister in accordance with the rules established by the Constitution for execution of the tasks of significant state importance.

4. Member of government is not allowed to hold any office, rather than political party position, such as to establish enterprise, to exercise entrepreneurial activity, to get salary or other remuneration for any activity other than scientific, pedagogical, creative or artistic work

5. Member of the government has the right to resign.

6. Member of the government may be dismissed by the President of Georgia or the Prime-Minister in conformity with the Constitution or by the Parliament in accordance with the procedure envisaged by Article 64.

ARTICLE 17

Paragraph 4 formulated as follows shall be added to Article 86:

“4. The Government ensures the security of the judge and his family.”

ARTICLE 18

Article 87 shall be removed.

ARTICLE 19

1. In the first sentence of Paragraph 1 of Article 89 the words “of the government” shall be added after the words “of the President”.

2. In sub-paragraph “a” of paragraph 1 the words “of the Law and President.” shall be replaced by the words “of the law, the President and the Government”.

ARTICLE 20

Article 91 shall be removed.

ARTICLE 21

1. Paragraph 1 of Article 93 shall be formulated as follows:

“1. Only the government of Georgia, after prior agreement with the parliamentary committees on the basic concepts and principles and upon the President approval, is entitled to submit the draft state budget to the Parliament”.

2. In the first, second and third sentences of paragraph 2 of Article 93 the word “president” shall be replaced by the word “government”.

3. In the first sentence of paragraph three of Article 93 the words “of the President” shall be replaced by the words “of the government”, and in the second sentence the word “president” shall be replaced by the word “government”.

4. The following sentence shall be added to paragraph 2 of Article 93: “In case the Parliament does not approve the report on the implementation of the budget because it is not implemented, the Parliament is authorized to raise the question of withdrawal the confidence to the government. In case the Parliament withdraws the confidence to the government by the majority of its composition, the President of Georgia either dismisses the government or dissolves the Parliament and fixes the date for new election.

5. Paragraph 3¹ formulated as follows shall be added to the paragraph 3 of Article 93: “3¹The Parliament is authorized to exercise control over the lawfulness of the expenditure of the state budgetary funds and in case the breach is found, the Parliament may address the President with a motion to seize spending funds.

6. Paragraph 4 of Article 93 shall be formulated as follows:

“4. In case the Parliament fails to pass the budget in accordance with the procedure established by paragraph 2 of this Article the President of Georgia either dismisses the government or dissolves the Parliament and fixes the date for new election. In this case the expenditures needed to fulfill the state obligations are made in accordance with the budget of the prior fiscal year.

7. Paragraph 5 formulated as follows shall be added to Article 93:

“5. The bill which causes the increase in the expenditure of state budget, the decrease of income or the incurrence of financial obligation by the government in current year, may be considered (alternatively - passed) by the Parliament only after the prior approval of the government, and the abovementioned bills regarding the next budgetary year - within the framework of main budgetary parameters.

ARTICLE 22

Paragraph 2 of 97 shall be formulated as follows”

“2. Head of the Chamber of Control of Georgia is appointed for 5 years term by the majority of listed composition of Parliament upon the nomination of the Speaker of Parliament.”

ARTICLE 23

1. The procedures envisaged in paragraphs 1 and 2 of Article 80 shall be exercised within 15 days after this law enters into force.

2. The old government is abdicated immediately after the new government gets the confidence from the parliament.

3. Within 2 years after this law enters into force, the Parliament of Georgia, the President of Georgia and the government of Georgia ensure the compatibility of the legal acts, adopted before this law entered into force, to the Constitution, as well as the adoption of legal acts envisaged by this law.

4. The law of Georgia on the “Structure and Rules of Activity of the Executive Branch” shall be considered invalid immediately after the law of Georgia on the structure and rules of activity of the government adopted in accordance with Article 81 of the Constitution enters into force.
5. This law enters into force immediately after publication.