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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT CONSTITUTIONAL LAW

ON THE AMENDMENTS TO THE CONSTITUTION

OF GEORGIA

Draft
Constitutional Law of Georgia
on the amendments in the Georgian constitution

Article 1. The following amendments shall be introduced in the Constitution of Georgia ("Sakartvelos Parlamentis Utskebebi", 1995, NN31-33, Art. 668):

1. The following paragraphs of Article 50 shall be formulated with the following redaction:

a) Paragraph 3:

"3. If the date of holding the elections coincides with a state of emergency or martial law, the elections shall be held on the 60th day after the state has been lifted. The President of Georgia shall fix the date of the elections immediately upon lifting the state of emergency or martial law. In case of pre-term dissolution of the parliament, extraordinary elections shall be held on the 60th day after the pre-term dissolution of the Parliament, and the President shall fix the date of extraordinary elections immediately upon pre-term dissolution of the parliament. "

b) Paragraph 3.1

"3.1 The Parliament shall terminate the activity upon the enforcement of the order of the President on the dissolution of the Parliament, or from the day of summing up of the appropriate results of the referendum. From the dissolution of the Parliament to the first convocation of the newly elected parliament, the dissolved parliament shall assemble only in case of declaration of a state of emergency or martial law by the President to decide on the issues of prolongation or approval of a state of emergency or martial law. In case the parliament is not assembled within five days or does not approve (prolong) the order of the President on the declaration (prolongation) of a state of emergency, the announced state of emergency shall be cancelled. In case the Parliament does not approve the order of the President on the declaration (prolongation) of the state of martial law within 48 hours, the state of martial law shall be cancelled. Convocation of the Parliament shall not result in restoration of the offices and salaries of the members of parliament. The Parliament shall terminate an activity upon the adoption of a decision on the above-mentioned issues.

2. Article 51.1 shall be formulated with the following redaction:

"Article 51.1

1. The Parliament shall be dissolved by the President only in cases and by the procedure determined by the Constitution, save for:

- a. within six months from the holding of the elections of the Parliament;*
- b. discharging of an authority determined by Article 63 of the Constitution by the Parliament;*
- c. in time of a state of emergency or martial law;*
- d. within the last 6 months of the term of office of the President of Georgia.*

2. The President has the right to dissolve the parliament of his/her own initiative only once within a term of his/her office.

3. In case the President has already dissolved the parliament within his/her term of office, the dissolution of the parliament a second time is permitted only on the basis of the results of the referendum. The President of Georgia calls the referendum on the dissolution of the parliament.

4. If, in the case provides by paragraph 3 of this Article, more than half of the participants in the referendum support the dissolution of the parliament, the parliament shall be deemed as dissolved from the day of summing up of the results of the referendum, and extraordinary parliamentary elections shall be held. If the majority of the participants in the referendum held on the dissolution of the parliament do not support the dissolution of the parliament of Georgia, extraordinary elections of the President of Georgia shall be held on the 45th day from the summing up of the referendum results. “

3. “o.1 “subparagraph shall be added to paragraph 1 of Article 73:

“o.1 calls a referendum”.

4. Paragraph 2 of Article 76 shall be formulated with the following redaction:

“2. A person acting as the President shall not be entitled to use the rights defined in subparagraphs c) and i) of the first paragraph of Article 73 and the rights defined in the first paragraph of Article 74 and dissolve the Parliament or to call a referendum under Article 51.1 as well.”

5. Paragraph 5 of Article 80 shall be formulated with the following redaction:

“5. In case a composition of the Government and the program of the Governmental thereof do not gain the confidence of the Parliament for three times successively, the President of Georgia shall nominate a new candidate of the Prime Minister within a term of 5 days or appoint the Prime Minister without consent of the Parliament, whereas the Prime Minister shall appoint the Ministers by the consent of the President of Georgia within a term of 5 days as well. In such a case the President of Georgia shall dissolve the Parliament and schedule extraordinary elections, or in the case provided by Paragraph 3 of Article 51.1 shall call the referendum on the dissolution of the parliament.”

6. The following paragraphs of Article 81 shall be formulated with the following redaction:

a) Paragraph 1

“1. The Parliament shall be entitled to declare non-confidence to the Government by the majority of the total number. Not less than one fifth of the total number of the members of the Parliament, also the minority, shall be entitled to raise a question of declaration of non- confidence. It shall not be permitted to raise the question of declaration of non confidence, if 6 months term is not passed from the declaration of confidence to the government. After the declaration of non-confidence to the Government the President of Georgia shall dismiss the Government or not approve the decision of the Parliament. In case the Parliament declares non- confidence to the Government again not earlier than 45 days ant not later than 60 days, the President of Georgia shall dismiss the Government or dissolve the Parliament and schedule extraordinary elections or in the case provided by Paragraph 3 of Article 51.1 [second dissolution of parliament] shall call the referendum on the dissolution of the parliament. In the case the parliament does not manage to declare non-confidence to the Government, the same subjects shall not be authorised to raise the question of non confidence to the Government for the consecutive 6 months. In case of circumstances provided for by subparagraphs “a”-“d” of Article 51.1 re-voting of non-confidence shall be held within 15 days from the end of these circumstances.”

b) Paragraph 4

“4. The Prime Minister shall be entitled to put the question of confidence of the Government on the draft laws on the State Budget, Tax Code and a procedure of the structure, authority and activity of the Government considering at the Parliament. The Parliament shall declare the confidence to the Government by the majority of the total number. In case the Parliament does not declare the confidence to the Government, the President of Georgia shall dismiss the Government or dissolve the Parliament within a week and schedule extraordinary elections or in the case provided by Paragraph 3 of Article 51.1 shall call the referendum on the dissolution of the parliament.”

7. Paragraph 6 of Article 93 shall be formulated with the following redaction:

“6. If the parliament fails to adopt the Budget submitted in accordance with a procedure established by paragraph 2 of this Article within three months, the President of Georgia shall be authorised to dismiss the Government or dissolve the parliament and call extraordinary elections or, in the case provided by Paragraph 3 of Article 51.1, shall call the referendum on the dissolution of the parliament.”

Article 2. This law shall be enacted upon publication.

Explanatory Note

a. General information on the draft law

a.a. Purpose of adoption of the draft law

According to the Constitution of Georgia state authority shall be carried out based on the principle of division of power. In order to strengthen the principle of division power, which envisages system of checks and balances within the branches of authority of state, it is essential to significantly increase powers of the Parliament. For this purpose it is necessary to improve the mechanism and implementation process of dissolution of Parliament. In order to achieve this goal powers of the President of Georgia to dissolve the parliament shall be reviewed and restricted. Current constitutional model empowers the President to dissolve Parliament several times during his/her term of office.

Dissolution of Parliament is a mean to tackle political crises that should take into consideration political situation and interests of voters. Therefore President of Georgia should only have the power to dissolve Parliament only once during his/her term of office. If during one term of office of the President a need arises to dissolve the Parliament again the problem should be resolved by people through referendum and voters should decide on the issue of disagreement between President and Parliament. In case voters do not support dissolution of Parliament, President's term of office shall be terminated and extraordinary presidential elections shall be held.

At the same time, in order to ensure greater accountability of the Government towards the Parliament it is necessary to simplify the procedure of raising issue of confidence towards the Government by the Parliament. It is essential that the right to raise the issue of confidence towards the Government is also granted to the minority in the Parliament. Improvement of the procedure of raising the issue of confidence towards the Government and restricting means for dissolution of the Parliament will grant the parliament a possibility to control Government more efficiently and at the same time, to have additional rights and guarantees.

a.b. Purpose of the draft law

Purpose of the draft law is to restrict the power to dissolve Parliament of Georgia and improve the procedure of declaring distrust of Government by the Parliament, to increase powers of the Parliament of Georgia, to balance efficiently powers of the Parliament and President, to increase accountability of Government before the Parliament of Georgia.

a.c Main idea behind the draft law

According to the draft law President will have a power to dissolve Parliament only once during his/her one term of office. If during this one term of office there are grounds to dissolve Parliament again for the second time issue of dissolution of Parliament shall be decided based on the outcome of referendum.

If simple majority of the valid votes favored dissolution of Parliament, the Parliament shall be deemed as dissolved from the day when outcome of the referendum is known and extraordinary parliamentary elections shall be held. If simple majority of the valid votes are against dissolution of the parliament, on 45th day from the day when outcome of referendum became known extraordinary presidential elections shall be held.

Apart from that, the right to raise the issue of confidence towards the Government shall be granted to not less than 1/5 of members of Parliament and parliamentary minority.

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 budgets 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 obligation and/or taxes.

c. Applicability of the bil of the international legal standards:**c.a. Applicability of the bill to the Directives of the European Unions**

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

c.b. Applicability of the bill of 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.**

During preparation of the draft constitutional law conclusions and recommendations of Council of Europe's Venice Commission on Constitution of Georgia and its amendments were taken into consideration.

d.b. Evaluation of the bill by the participating organizations, (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 service of the Parliamentary Secretary of the President of Georgia.

d.d. The initiator of the bill:

The initiator of the bill is the President of Georgia.