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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT CONSTITUTIONAL LAWS**

**AMENDING TWO CONSTITUTIONAL LAWS AMENDING**

**THE CONSTITUTION OF GEORGIA**

## The Constitutional Law of Georgia

### On Introduction of Changes to the Constitutional Law of Georgia "On Introduction of Changes and Amendments to the Constitution of Georgia"

#### Article 1

To introduce the following change to the Constitutional Law of Georgia "On Introduction of Changes and Amendments to the Constitution of Georgia" (Georgian Legislative News, No 62, 05.11.2010, Article 379):

1. To withdraw Article 81<sup>1</sup>, defined by Paragraph 33 of Article 1 and to formulate the first sentence of this Paragraph with the following wording:

"To formulate Article 81 with the following wording:"

2. To add after the Paragraph 4 of Article 93, defined by Paragraph 39 of Article 1 the Paragraph 4<sup>1</sup> following wording:

"4<sup>1</sup>. If during the two months after the beginning of the new budgetary year the parliament will not be able to adopt the State budget, this will be considered as motion of non-confidence and procedures defined by Paragraphs 2 - 5 of Article 81 will continue. If the Parliament fails to vote non-confidence to the government in the terms defined by Paragraphs 2 – 4 of the same Article, within three days after expiry of those terms, the President of Georgia will dissolve the parliament and will call for extraordinary elections."

3. To withdraw sub-Paragraph "b", Paragraph 44 of Article 1.
4. To formulate Paragraph 3 of Article 3 in the following wording:

"3. Paragraphs 11 ,14, 16 - 21, 24 -35 , 39 and 44 of Article 1 of this law, shall be enacted after the President, elected as a result of 2013 presidential elections, takes oath."

#### Article 2

The law to be enacted upon publication.

President of Georgia

Mikheil Saakashvili

### **Explanatory Note**

#### **On Draft Constitutional Law of Georgia on Introduction of Change to the Constitutional Law of Georgia "On Introduction of Change to the Constitution of Georgia"**

##### A. General Information on the Draft Law

###### a.a) Reason for the adoption of the draft law:

The proposal of the draft law is initiated by the provisions to enter into force after the 2013 Presidential elections, causing the change of excessive presidential powers to the excessive Prime Ministerial competences. Special attention should be drawn to the power of the Prime Minister to force the parliament, by the threat of dissolution, to adopt draft legislation submitted by the government practically without discussion. This will considerably restrict the legislative power of the parliament and violate the essential principal of checks and balances. Furthermore, the enacting of the new edition of Article 81<sup>1</sup> takes away from the Parliament any possibility to control changes in the composition of the government – the Prime Minister will be authorized, to change even all the Ministers at any moment, never seeking parliamentary approval.

At this moment is also important to address the provisions of constitutional review, which causes unnecessary complications in the process of the revision of the Constitution that will impede the timely adoption of the new version of the Constitution (there is a clear need to prepare one).

###### a.b) Aim of the draft law:

The aim of the draft law is to solve three significant problems to be created after the Presidential elections. Namely, it is necessary to maintain the parliament's full legislative authority, parliament's control over the changes in the composition of government and existing mode of the revision of the Constitution. The last will facilitate the timely adoption of the updated version of the Constitution.

###### a.c) Content of the draft law:

In accordance with the draft law the new wording of Article 81<sup>1</sup> shall be withdrawn from Article 1, Paragraph 33 of the Constitutional law of Georgia of 15 October 2010 "On Introduction of Changes and Amendments to the Constitution of Georgia". As a result, the parliament will maintain full legislative authority. Furthermore, as a result there will be maintained the wording in force of the Article 81<sup>1</sup>, thus preserving the possibility of Parliament to control the changes in

the government' composition. Namely, if after the confidence vote to government the initial composition of government is changed by 1/3, parliament shall hold repeated vote on confidence to government.

Based on the above-mentioned change it is necessary to introduce Amendment to the Article 93 (in the wording of this Article that shall be enacted after the Presidential elections of 2013) – it shall be determined, what outcome can follow in case of disagreement between the Parliament and the Government over adoption of the State budget. The State budget is so important that failure to adopt it should result in the change of the government or dissolution of the parliament. That is why the draft law determines that if the parliament cannot adopt the budget on time (during two months after the beginning the new budgetary year) this will be considered as a start of motion of non-confidence and if the Parliament will not be able to elect the new government within the terms defined by the Constitution, the President of Georgia dissolves the parliament and calls for the extraordinary elections.

The draft law provides for the withdrawal of sub-Paragraph “b”, Paragraph 44 of Article 1 of the abovementioned Constitutional law that will cause the maintenance of the existing mode of the revision of the Constitution. At the same time it must be mentioned that the amendment is initiated to introduce the change to the Constitutional Law of Georgia from 27 December 2011 “On Introduction of Change to the Constitution of Georgia”.

It is envisaged also by the draft law to correct the deficiency of Paragraph 3 of Article 2 of the abovementioned Constitutional law. Namely, this Paragraph defined the date of enacting of the norms of this Paragraph as the moment of taking an oath by the president elected in 2013 presidential elections and not “the moment of taking the oath by the president elected in 2013 regular presidential elections”.

Draft  
Initiated In July 2013

**The Constitutional Law of Georgia**  
**“On Changes to the Constitution of Georgia”**

Article 1

To withdraw Paragraph 1<sup>1</sup> of Article 29 of the Constitution of Georgia (The Newsletter of the Parliament of Georgia, 1995, NN 31-33, Article 668).

Article 2

The law to be enacted upon publication.

President of Georgia

MikheilSaakashvili

### The Explanatory Note

#### On Draft Constitutional Law “On Change to the Constitution of Georgia”

##### A. General information on the draft law

###### a.a) Reason for the adoption of the draft law:

Elaboration of the draft law is conditioned with unequal treatment as regards to citizenship rights of the state political figures, including the President of Georgia, the Members of the Parliament and the Speaker of the Parliament, the Ministers and the Prime Minister. Namely, any Georgian citizen can be elected as the Member of the Parliament, even having the citizenship of other country, but the Member of the Parliament with dual citizenship cannot be elected as the Speaker of the Parliament. Also, the person with dual citizenship can be appointed as the Minister, but he/she cannot be appointed as the Prime Minister. The person with dual citizenship cannot be elected as the President of Georgia.

It is noteworthy that under the Constitution of Georgia, the citizen of Georgia cannot willingly have dual citizenship: if he/she accepts citizenship of foreign country, the citizenship of Georgia shall be immediately terminated. The foreign citizen can have dual citizenship, only if granted with Georgian citizenship by the President of Georgia for special merit to the country or deriving from the state interest. Thus, we consider it illogical that if we grant such person the right to be elected as the member of the supreme legislative body, why we prohibit him/her to be elected by his/her peers as the Speaker of the same body or in any other position within the state political institutions.

It is as well noteworthy that, usually, according to the common practice, the person is entitled to occupy the high state political position, who has the right to be elected as the Member of Parliament.

###### a.b) Objective of the draft law:

The objective of the draft law is to suppress above-mentioned inequality, namely establishment of similar requirement of citizenship for occupation of state political position.

###### a.c) Content of the draft law:

In accordance with the draft law, the Paragraph 1<sup>1</sup> of the Article 29 of the Constitution of Georgia shall be withdrawn from the Constitution of Georgia, envisaging that “*The positions of*

*the President of Georgia, the Prime Minister, the Speaker of the Parliament shall not be occupied by the citizen of Georgia, who is the citizen of foreign country at the same time”.*

After adoption of this change, the right to occupy the above-mentioned positions shall be granted to any citizen of Georgia, despite the fact if he/she has dual citizenship.

Draft  
Initiated In July 2013

**The Constitutional Law**

**On Change to the Constitutional Law “On Change to the Constitution of Georgia”**

Article 1

The following change shall be introduced to the Constitutional Law “On Change to the Constitution of Georgia” (The Legislative Herald of Georgia, web-site, 120109020, 09/01/2012, registration code: 010010000.01.001.016004):

1. The Paragraphs 4 and 5 of the Article 1 shall be withdrawn.
2. The Paragraph 3 of the Article 2 shall be withdrawn.

Article 2

The law to be enacted upon publication.

President of Georgia

MikheilSaakashvili



**The Explanatory Note**

**On Draft Constitutional Law “On Change to the Constitution of Georgia”**

A. General information on the draft law

a.a) Reason for the adoption of the draft law:

The proposal of the draft law is initiated by the provisions to enter into force after the 2013 Presidential elections, entailing protraction and complication of the process of revision of the Constitution, which will impede timely adoption of the new edition of the Constitution (necessity of development which is evident), also complication of overriding the presidential veto on the Constitutional Law.

It is noteworthy that the above-mentioned provisions envisage unaccustomed high quorum (3/4 of the full composition of the Parliament) for introduction of the change to the Constitution and overriding the veto by the President on the Constitutional Law.

a.b) Objective of the draft law:

The objective of the draft law is to solve two important problems, which will emerge after the Presidential elections this year, namely, it is necessary to maintain the current rules of revision of the Constitution, which will facilitate timely adoption of the new edition of the Constitution and to maintain the current quorum for overriding the Presidential veto on the Constitutional Law.

a.c) Content of the draft law:

In accordance with the draft law, the Paragraphs 4 and 5 of the Article 1 and the Paragraph 3 of the Article 2 of the Constitution of Georgia of December 27, 2011 “On Change to the Constitution of Georgia” shall be withdrawn from the Constitution of Georgia. It will ensure maintenance of the current rule of revision of the Constitution and the current quorum for overriding the Presidential veto on the Constitutional Law.