EXPLANATORY NOTE TO THE CONSTITUTIONAL BILL

AMENDING THE CONSTITUTION OF GEORGIA

a) General information about the constitutional bill

a.a. Reasons of adopting the constitutional bill:

The current version of the Georgian Constitution needs to be reviewed from both substantive and technical points of view. A series of current constitutional provisions conflict with the fundamental constitutional principles such as the principle of division of powers, as directly mentioned in the Opinion of the Venice Commission produced in 2010. The current text of the Constitution contains a great many contradictions in terms of proper distribution and clear separation of competences among various constitutional bodies – something that has created difficulties in practice many times. The Constitution, as it stands now, does not prescribe sufficient guarantees to ensure high standards for the protection of individual fundamental rights and independence of constitutional bodies. On the whole, the Constitution offers a disorderly system of parliamentary governance. Accordingly, the fundamental law of the country has to be revised.

Furthermore, the Constitution contains a number of defects in the sense of legal technique. First of all, the structure has to be improved; the structure is so much defective that sometimes it is hard to even give the articles their titles. Technical improvement is needed for many individual provisions contained in the Constitution.

a.b. Purpose of the constitutional bill

The Parliament of Georgia adopted a resolution establishing a State Constitutional Commission with the aim of eliminating the defects in, and devising a better text of, the Constitution. The Parliament tasked the Commission with two specific objectives:

a) Make the Constitution fully compatible with the fundamental principles of constitutional law; and
b) Form a constitutional system consistent with the aim of long-term democratic development of the country.

The draft proposed herein completely satisfies the two above-described objectives. It ensures full compatibility of the Constitution with the fundamental legal principles while establishing a very much refined parliamentary governance system for the country's long-term democratic development.

a.c. The gist of the constitutional draft law

The constitutional bill presented herein proposes changes in a majority of provisions of the Georgian Constitution.

Preamble

In the new version of the Constitution, the preamble remains unchanged.

Chapter one. General Provisions

Chapter One of the Constitution has been reshaped. Individual articles of Chapter One are dedicated to the principle of State sovereignty, State symbols, democracy principle, rule-of-law State principle, social State principle, economic freedom principle, territorial arrangement of the State and relations between the State and the Georgian Orthodox Church. Chapter One prescribes new guarantees for the protection of the State language and State symbols, lays down inviolable tenure of democratically elected bodies, provides for that the hierarchy of normative acts are regulated through an organic law, envisages social responsibility of the State towards human beings, better regulates issues of territorial arrangement. Chapter One is fully compatible with the principles of constitutional law. It received fully support of the Constitutional Commission.

Article 1

Provisions of Article 1 remain unchanged in the new version of the Constitution.

Article 2

Article 2 combines provisions on State symbols.

Paragraphs 1 and 2 have remained unchanged.

Paragraph 3 is expanded to say that the State language is protected by an organic law. Because of special importance of the State language, the new version of the Constitution offers a higher standard of its protection by converting the provisions on State language into the rank of organic law.

Paragraph 4 has been changed. The new version stipulates that organic laws on the flag, coat-of-arms and anthem of the State can be amended through a procedure required for amending the Constitution. It would not be appropriate for an absolute majority of MPs to be able to change the State symbols. This is why the new version offers a higher standard for the protection of State symbols by making it substantially difficult to change them. This change on its turn will cause changes in other legal acts. In particular, the law on State symbols and the law on how the State symbols should be used need to be separated from each other. More specifically, an organic law will determine the symbols, while a regular law will provide for the rules of their use. These changes will have to be made in the relevant law until the constitutional changes come into force.

Article 3

Article 3 combines provisions strengthening the democratic principle.

Paragraph 2 remains unchanged.

Paragraph 3 changes the sequence of forms of democracy. In particular, it says in the first place that the people exercises its power through its representatives as well as through referendums and other forms of direct democracy. The changed order of these forms of democracy emphasizes that the Georgian Constitution relies mostly on the principle of representative democracy.

A sentence is added in paragraph 3 that says that it is the duty of every citizen of Georgia to vote in elections and referendums. The duty is not of a legal nature – something that would lead to legal liability if breached; it is rather a general civic commitment and responsibility of every individual citizen to do so.

The change in paragraph 4 is of a technical nature. The phrase "or illegally take possession of [power]" is deleted from the first sentence because the term "arrogate" itself implies also the scenario when power is illegally taken possession of.

A provision is added in paragraph 4 prohibiting to decrease or increase, by Constitution or by law, the current tenure of a body elected through universal election. In the recent past, the ruling government breached this fundamental philosophical principle of constitutional law twice and then extended the ongoing presidential tenure for almost a year, by means of amending the Constition. To make sure such scenarios are avoided in the future, the principle of inviolability of democratic length of tenure should be secure at the level of the Constitution. The new provision in paragraph 4 guarantees inviolability of the ongoing tenure for all: central authorities, authorities of autonomous republics and local self-governments.

Paragraph 5 presents new provisions that emphasize a special role played by political parties in a democratic system. The function of political parties is now determined in accordance with the widespread practices of contemporary constitutionalism (with the phrase "political parties participate in forming the political wishes of the people"). The new Constitution embraces four fundamental principles of the law of political parties: freedom, equality, transparency and in-party democracy.

Article 4

Article 4 combines provisions under the notion of a rule-of-law State.

The first sentence in paragraph 2 has remained unchanged.

The second sentence in paragraph 2 has been cut and pasted from Chapter Two without changes. For the sake of legal certainty, it is appropriate for lawsuits filed with the Constitutional Court to refer to specific fundamental rights contained in Chapter Two; this would ensure that, in making its judgments, the Constitutional Court will apply clear criteria based on a doctrine of these rights. Also, it should be pointed out, that Chapter Two provides for full-fledged protection of fundamental rights even if some aspects of an individual's freedom are not specifically mentioned in the Constitution. The

Constitution upholds the right of an individual to human dignity, the right to free development of personality and other fundamental rights that may be relied upon for the protection of any aspect of individual's freedom and activity.

Paragraph 3 has remained unchanged in the new version of the Constitution.

In paragraph 4, first and second sentences have also remained unchanged. The phrase saying "all other legal acts must conform to the Constitution" has been deleted. This idea derives from the second sentence anyway since it reads: "The Constitution is the supreme law of the State". Accordingly, the change introduced is merely of a technical nature.

The new version of the Constitution stipulates that rules of enacting and publishing legislative and other normative acts and the hierarchy of such acts are determined in an organic law. Since hierarchy of normative acts directly relate to division of competences among the State bodies, it is important for the relevant provisions to be lifted up into the rank of an organic law.

Paragraph 5 remains unchanged in the new version of the Constitution, save a slight technical change.

Article 5

A new article is being inserted, which combines provisions under the umbrella principle of social State. This novelty serves to reinforce constitutional legal importance of the principle of a social State. Even though constitutional law doctrine does not consider this principle to have normative function but rather presents itself as a general policy objective of a State, its inclusion in the Constitution carries important connotation determining the State's conceptual approach to social responsibility before individuals.

Some of the provisions of Article 5 have been moved from Chapter Two. Those are the provisions that have been merely announcing the State's general social responsibility rather than establishing individual fundamental rights.

Paragraph 2 refers to major elements of the principle of social State, which are social justice, equality and solidarity.

Paragraph 3 has been moved from Chapter Two, with a slight change. In particular, the phrase "prescribes privileges for" has been replaced with the phrase "creates special conditions for". The idea behind this change is that the State may use both privileges and other forms of encouragement as a tool of developing high mountain regions.

Paragraph 4 establishes the State's duty of care in the areas such as healthcare, social protection, provision of subsistence minimum and suitable dwelling. Second and third sentences of paragraph 4 have been moved from Chapter Two without changes.

Paragraph 5 prescribes the State's duty of care in the field of education, science, culture and sports as well as State's obligation to protect cultural heritage.

Article 6

Article 6 reinforces the fourth fundamental principle referred to in the preamble: economic freedom.

Paragraph 2 has been moved from Chapter Two of the Constitution, with slight changes.

Paragraph 3 has also been moved from Chapter Two, unchanged.

Article 7

Article 7 combines provisions establishing the grounds of territorial arrangement of Georgia as a state.

Paragraph 1 sorts exclusive competences of Georgia's highest State bodies by areas. Additional areas falling within the exclusive competences have been added in the new draft; these are the National Academy of Sciences, courts and the prosecution office. The term "aviation" replaces the phrase "airports and aerodromes; control over the airspace, transit and air transport; registration of air transport". Some other technical changes and clarifications have also been inserted in the new paragraph 1.

The phrase "matters belonging to joint competences are determined separately" has been deleted from the text of the Constitution. The applicable legislation does not know the notion "matters falling within joint competences" of the central government and the authorities of autonomous republics. Joint competences are not found in the Code of Local Self-Government either. Hence, it was not reasonable to leave the abovementioned phrase in the Constitution.

Paragraph 2 contains some technical changes. In particular, the word "status" has been replaced with "the competences of, and the rules of exercising their competences by". Also, the names of the constitutional laws have been deleted.

In paragraph 3, the word "is determined" is replaced with "will be reviewed": since Georgia's territorial arrangement is already determined, the term "will be reviewed" better describes the legal reality of the ground.

In paragraph 4, the phrases "registered in self-governing territories" and "without detriment to State sovereignty" have been deleted. The first one is a technical change. The second is based on the rationale that the need for upholding State sovereignty stems from general legal principles anyway and there is no necessity of emphasizing this separately in the Constitution. The Constitution should not be giving the impression as if there is by definition a conflict between the principle of self-government and the principle of State sovereignty.

Two very important entries that are being inserted in the Constitution are the subsidiary principle and availability of funds to self-governments that are equivalent to their competences. These two additions replace the abstract norm currently in place that says that "the bodies of central authority shall promote the development of local self-governments". Even though the Constitutional Court cannot employ these principles as normative constitutional rules in view of the principle of parliamentary sovereignty, their inclusion in the Constitution is important in legal, conceptual and practical sense for the purposes of further raising the level of decentralization of the governance system in Georgia.

The entry about the status and competences of the Town of Lazika has been deleted from the new text of the Constitution.

Article 8

Article 8 is presented in a practical unchanged manner in the new version of the Constitution, with several technical changes inside.

Chapter Two. Fundamental human rights

Chapter Two has a new structure. First provision of Chapter Two goes to prescribe the fundamental right of human beings to human dignity – something that carries a very important conceptual connotation. Changes made to Chapter Two guarantee the fundamental right to physical integrity, gender equality and realization of the rights and interests of disabled people; toughen the conditions for imposing limitations on the right to private space and inviolability of communication; prescribe the fundamental right to access the Internet; prescribe guarantees for institutional, political and commercial independence of the Public Broadcaster; strengthen the institutional independence of the National Communications Commission; lay down the fundamental right to good governance; increase the standard for accessing public information; establish and emphasize the fundamental right to academic freedom; prescribe the fundamental right to freedom of entrepreneurship; raise the standard of protection of the fundamental right to healthcare; raise the standard of protection of environmental rights; lay down the principle of inviolability of the very essence of individual fundamental rights; vest the Public Defender with official immunities; and introduce other important novelties. Some of the fundamental rights with abstract nature have been deleted from the text of the Constitution – a factor that contributes to making Chapter Two fully compatible with a requirement under Article 4(2) that fundamental rights are "directly applicable law". The new version of Chapter Two was not supported only by four members of the State Constitutional Commission (the issue of marriage was put to an independent vote, which resulted in six members voting against the new definition). This was caused primarily by the interest to keep the current standard of the fundamental right to labor freedom as it is now. Furthermore, the Public Defender expressed his discontent with the ban on electing a Public Defender for the second term and refusal to include into the Constitution a guarantee of budgetary independence of Public Defender.

Article 9

Article 9 distinguishes between the right to dignity and the right to honor, which will be protected to the full extent under the right to free development of one's personality. Also, the new version puts an emphasis on the protection of the right to honor by adding the phrase "and is protected by the State".

Some changes in the terms were made in paragraph 2 to make them compatible with the term established in European legal acts and jurisprudence. A sentence saying "It is prohibited to use physical or mental coercion against a person who is detained or whose freedom is restricted in

any other way" has been deleted from the text of Constitution. The rationale behind this change is that physical or mental coercion of detainees cannot be prohibited in absolute terms. Situations like physical or mental coercion for the purpose of obtaining confession are covered anyway by the fundamental rights to human dignity and inviolability of the person.

Article 10

Article 10 reflects the current provision on the right to life but with changes. The phrase "life is an inviolable right of a human being and it is protected by law" has been replaced with the phrase "human life is protected". It is more appropriate to use the word "inviolable" only in connection with the fundamental right to human dignity – a right that is absolute by its nature. The working "human life is protected" fully encompasses both the negative and positive obligations contemplated by the right to life. Accordingly, the changes introduced do not alter the legal contents of the provision or the standard of protection of the right in question. Second sentence in paragraph 1 has remained unchanged.

Article 11

In paragraph 1, the phrase "Everyone is equal before the law"[1] is replaced with "Everyone is equal before the law".[2] This change is based on an established theory approach that the right to equality requires not only equality before the law but that the law is made in compliance with the equality principle. A new version of the second sentence then goes on to list the criteria on which basis human beings must not be discriminated.

Paragraph 2 has been formulated in resemblance of Article 38 of the current version of the Constitution, with slight changes; it continues to guarantee protection of the rights of ethnic, religious and linguistic minorities to a high standard.

In the new text, a new provision on gender equality has been added. Now that it has the rank of a fundamental right, the right to equality establishes, in a tangible form, an obligation for the State to care for ensuring essential equality and elimination of gender inequality.

Another provision is added imposing upon the State the duty to create special conditions for the realization of the right and interests of disabled people.

Article 12

This article has remained unchanged.

Article 13

---

[1] Translator's remark: In the Georgian text, "law" means a compulsory act passed by competent body such as legislature.

[2] Translator's remark: In the new version of this paragraph, "the law" is used in the sense of the whole body of law; in other words, people are equal not only before the acts passed by the Parliament but the whole body of applicable legislation.

Some technical changes were made, which do not alter but simply clarify the contents of Article 13 provisions.

Article 14

Provisions of Article 14 have not changed, except slight technical modifications.

Article 15

Paragraph 1 has been amended from technical perspective only. A phrase about the right to private life has been deleted, since this right is protected under the right to free development of own's personality. The right to private space and communication fully covers the aspects of the human freedom contemplated by this provision of the Constitution.

Unlike the current version of the Constitution, the new paragraph 2 specifies legitimate aims for imposing restrictions on these rights – a guarantee raising the constitutional standard of protection of these rights to a higher level. The new Constitution also prescribes a judicial control requirement to check the legality of limitations imposed in a state of necessity *post factum*.

Some technical corrections were made in paragraph 3. Apart from these corrections, the new version of paragraph 3 provides for accessibility of information about individuals contained in official records for the sake of public interests.

Article 16

Entries about speech, thought and confession have been deleted. The freedom of speech and thought is protected by a new Article 17 of the Constitution. The change in this Article therefore is aimed at avoidance of repetition and simultaneously carries an important legal and practical connotation. As for the right to confession, this aspect is fully covered by the fundamental right to freedom of belief. Thus, the new version of Article 16 uses two terms to protect the areas covered by two fundamental rights to belief and conscience.

Article 17

Paragraph 1 provides a full-fledged guarantee for the fundamental right to freedom of thought and prohibits persecuting individuals for thoughts or expression of thoughts.

Paragraphs 2 and 3 have been retained unchanged.

A new provision is being inserted that guarantees the fundamental rights to access the Internet and freely use the Internet.

Paragraph 5 has not changed on substance but some slight technical changes have been made in there.

Another provision added inside this Article concerns guarantees for the independence of the Public Broadcaster from State bodies and its freedom from political and substantial commercial influences. These guarantees have been raised up to the standard of fundamental rights.

Finally, a new provision ensuring institutional and financial independence of the regulator in the area of broadcasting and electronic communications has been inserted in Article 17.

Article 18

The Constitution will have a new provision prescribing the right of an individual to have his/her case heard fairly in a reasonable time by an administrative body. Hence, the right to so-called good governance and fair administrative process will be lifted up into the rank of fundamental rights.

The new version of paragraph 2 raises the standard of protection of the right to access public information. In particular, not only citizens but "everyone" will be entitled to access public information. In addition, the word "about himself/herself" is deleted – a change that makes it possible to access any public information. Release of public information will no longer be denied on the motive that the information is a professional secret.

Paragraph 3 has not been changed, save an insignificant terminology change.

Article 19

In paragraph 1, the word "is inviolable" has been replaced with the word "is ensured" (see explanation above).

Paragraph 2 has a new text. The phrase "for pressing social needs" has been replaced with "for public interests", which is consistent with international practices. It is not prudent to maintain the same standard for imposing limitations on the right to property and for property confiscation. Civil law and many other branches of law contain legal provisions on imposing limitations on the right to property for the protection of public interests rather than for pressing social needs. Hence, it was decided to amend paragraph 2 accordingly. The sentence prohibiting violation of the very essence of the right to property has been deleted from paragraph 2, since this guarantee, worded in more general terms, is now found in Article 34 of the new version of the Constitution.

Paragraph has remained unchanged, save a slight technical correction.

A new provision has been inserted in the Constitution giving the land the status of a resource of particular importance and mandating that titles to land must be regulated by an organic law. This change will not result in completely limiting the land rights of foreigners and stateless persons but will make it possible to introduce special regulations because of the special status of land.

Article 20

The new version of paragraph 1 specifies the two aspects of the freedom of intellectual creativity: freedom of art work and freedom of academic activity.

Paragraph 2 has not changed.

In paragraph 3, the word "arrest" has been deleted for the reason that "ban on dissemination" fully covers the relevant component of the freedom of intellectual work. In addition, it is stated that banning the dissemination of a product of creative work is allowed only by decision of a court – a guarantee lifts up the standard of protection of the right concerned. Some editorial corrections have also been made.

Paragraph 4 is presented with some editorial corrections.

Article 21

In paragraph 1, the phrase "members of the Armed Forces and the Ministry of Internal Affairs" has been replaced with the phrase "members of armed forces" – a catch-all term that puts members of other types of armed forces (such as the Ministry of Internal Affairs, the State Security Services, Intelligence Agency, relevant units of the Ministry of Corrections, etc) out of the circle of individuals whose freedom to gather is protected. Also, the phrase "both indoors and outdoors" has been deleted. The fundamental right to freedom of gathering includes both components of the right of gathering and there is no need to specifically emphasize this.

Paragraphs 2 and 3 have remained unchanged.

Article 22

Freedom of association has been detached from the freedom of political parties and the freedom of trade unions, and is dealt with in a separate article. The text of paragraph 1 provides for full-fledged protection of the freedom of association.

Paragraph 2 describes the grounds for liquidating an association and ensures a high standard of protection of the freedom of association.

Sentences about the grounds and rules of banning societal associations and trade unions have been deleted from the Constitution. In the event of an association that goes against the constitutional order, independence and other values of the country, the matter will be resolved according to the applicable criminal laws.

Article 23

In paragraph 1, the phrase "other (political) associations" has been deleted. The applicable Georgian legislation, which is the Organic Law on Citizens' Political Associations, does not distinguish between political parties and other political associations. Under the Organic Law, a

citizens' political association is the same as a political party – and that is logical. A fundamental right should be protecting political parties as organizations and concepts – this is the idea behind the change contemplated.

In paragraph 2, the phrase "members of the Armed Forces or the bodies of internal affairs" has been replaced with the phrase "members of armed forces" (see the reasoning above). Also, the term "political party" has been substituted for the term "political association".

Paragraph 3 adds "kindling an ethnic strife" as another ground for prohibiting a political party. The new provision also prohibits creating political parties by the principle of territory. This prohibition has been existing only in the organic law this far.

A provision saying that political parties may not create armed formations has been deleted, since this issue has lost is importance since the 1990s.

Paragraph 4 specifies that a political party may be banned only on the basis of a judgment of the Constitutional Court. The current version of the Constitution contains only a general reference concerning the banning of political parties by judgment of the Constitutional Court.

Article 24

In paragraph 1, the phrase "autonomous republics" has been added. Otherwise, no changes have been made in the text.

In paragraph 2, the word "incapable" has been replaced with the phrase "a citizen who has been found an aid-receiver or has been admitted to a relevant inpatient medical institution". The change is consonant with a judgment of the Constitutional Court that broadened the circle of persons having the voting rights.

In addition, by the change, citizens who have committed a serious crime or committed a very serious crime by carelessness will no longer be prevented from voting. This change has introduced a relatively higher standard of voting rights.

Article 25

The provisions in this Article have not changed on substance. Some terminology changes have been made. Terms "State position" and "State service" have been replaced with "public position" and "public service". Accordingly, the rule contained in this Article will now extend to both central authorities and authorities of autonomous republics and municipalities in full.

Article 26

In paragraph 1, a concise statement that "Labor shall be free" is replaced with a lengthier version providing for full-fledged protection of the freedom of labor and the right to freely choose a job. Also, the sentence in the current version of the Constitution, which lists several labor rights and

gives the legislator the privilege to specify them ("An organic law shall regulate the issues related to protection of labor rights, fair remuneration, safe and healthy working conditions and working conditions for juveniles and women") has been replaced with a broader and stronger normative text saying that "Labor rights are protected by an organic law."

Paragraph 2 prescribes the right to freedom of trade unions – a right which the current version of the Constitution considers to be part of an article on freedom of association. The new version of the Constitution specifies that trade unions are established according to an organic law, while the current version refers to a regular law.

Paragraph 3 governs the right to strike. The re-formulated provision says that both rules and conditions for exercising the right to strike will be determined by an organic law. The current version of the Constitution, however, refers to a regular law. The sentence saying that "a law establishes guarantees for the functioning of services having vital importance" has been deleted from the text of the Constitution. A new sentence that reads that "An organic law determines rules and conditions for exercising the right to strike" allows the legislator to create guarantees for the functioning of vitally important services. Accordingly, the above-referenced sentence is unnecessary from the legal point of view.

An abstract phrase in paragraph 4 that was obliging the State to promote the development of free entrepreneurial activity and competition has been replaced with a provision prescribing the fundamental right to freedom of entrepreneurship. Other provisions in the Article have remained without changes.

A sentence saying that "On the basis of international agreements in the area of labor relations, the State protects the labor rights of the citizens of Georgia abroad" has been deleted. Inclusion of this provision in the Constitution is unnecessary from legal point of view.

Article 27

Paragraph 1 has remained unchanged.

Paragraph 2 contains a change that allows for pre-school education to be ensured by both central authorities and local self-governments. Otherwise, the text of paragraph 2 remains the same.

Abstract sentences saying that "the State ensures harmonization of the national educational system with the international educational framework" and "the State supports educational institution according to rules established by law" have been deleted from the Constitution. These sentences do not create individual rights and it is therefore not prudent to leave them up in Chapter Two of the Constitution.

Article 28

Paragraph 1 prescribes a strong guarantee for citizens' rights in the area of healthcare. In particular, the new version stipulates that a citizen has the right to enjoy State health insurance as an affordable and effective means of medical assistance. The new text significantly raises the standard of protection of citizens' right to healthcare.

Paragraph 2 is virtually the same, with just one clarification: instead of "trade in" pharmaceuticals, the new version of the Constitution uses the word "circulation".

Article 29

The updated Constitution allocates a separate article to the right to protection of environment. The new Constitution additionally reinforces the right of an individual to use public space. In addition, a new provision has been inserted saying that a law ensures the right to participate in decision-making on environmental issues. The word "objective" has been deleted from the second sentence, since the term "full" encompasses that the information must also be objective.

A sentence saying that individuals must take care of natural and cultural environment has been deleted from the Constitution. This change derives from the general approach that Chapter Two should only prescribe rights but not obligations.

Paragraph 2 has been edited technically, without changes on substance.

Article 30

A sentence is added that specifies a civil law definition of marriage at the constitutional level. According to the definition, marriage is a monogamous union between a man and a woman for the purpose of creating a family. This change has been warranted by societal concerns related to the notion of marriage. The issue of expansion of the definition of marriage often times becomes a matter of speculations and manipulations – a circumstance that facilitates the kindling of homophobic attitudes in the society. In order to avoid such speculations and manipulations, it was considered appropriate to provide a definition of the notion of marriage at the constitutional level. It should be pointed out that Georgia has an anti-discrimination legislation in place that ensures legal protection of all types of minorities against infringement upon their rights and against discrimination.

Article 31

A sentence that specifies the right to fair and expeditious hearing of a case by the court has been added.

Paragraph 2 is presented without changes.

Paragraph 3 specifies the right to defense. In particular, it stipulates that one may defend his/her rights in the court himself/herself or through an attorney and that, in the events described in the law – through a representative. In addition, a sentence is added to ensure that rights of attorneys must be exercised without impediment and that attorneys have the right to organize themselves.

Paragraph 4 contains a clarification with the effect of expanding the contents of the right to ask for calling witnesses.

Paragraphs 5 and 6 have not changed.

The new version of paragraph 7 distinguishes between standards of proof for indictment and conviction. According to the new text, indictment must be based on probable cause, while conviction must only be based on irrefutable evidence.

Paragraph 8 contains a slight technical change.

Paragraph 9, 10 and 11 have remained unchanged.

Article 32

Paragraph 1 is presented without changes.

The new version of paragraph 2 no longer considers acquirement of foreign country's citizenship an automatic ground for losing the Georgian citizenship. According to the new paragraph 2, an organic law determines terms and conditions of granting Georgian citizenship to foreign citizens and combining foreign citizenship with the Georgian citizenship.

Paragraphs 3, 4 and 5 remain unchanged.

A new provision has been added obliging the State to support compatriots living abroad to maintain and develop their contacts with the homeland.

Article 33

Provisions of this article are presented without changes. A sentence saying that "It is prohibited to surrender to another State a person who has taken shelter in Georgia and who is being persecuted for his/her political beliefs or for an action that is not considered a crime under the legislation of Georgia" has been deleted from the text of the Constitution. The fundamental right to asylum is guaranteed in paragraph 3 of Article 33. Accordingly, the above-mentioned provision that was overly narrowing the grounds for denying the surrender of people taking refuge in Georgia is no longer necessary from legal point of view.

Article 34

Slight technical changes have been made in paragraphs 1 and 2

A new provision has been added stipulating that limitations imposed on a right must not undermine the very essence of that right. The sentence saying that "Everyone residing in Georgia shall be obliged to observe the requirements of the Constitution and legislation of Georgia" has been deleted. Again, Chapter Two of the Constitution must only prescribe rights but not obligations. Accordingly, the said sentence is unnecessary in the constitution.

Article 35

Paragraph 1 contains a slight technical change. It also prohibits the same person to be re-elected Public Defender.

Paragraph 2 has not changed.

A new provision has been added vesting Public Defender with official immunity. This change serves to increase the independence of Public Defender.

Paragraph 4 has remained unchanged.

The sentence that limits the powers of the Public Defender has been deleted. In particular, the now-in-force version of the Constitution says that "the Public Defender shall be authorized to reveal violations of human rights and freedoms and to report on them to relevant bodies and officials." By deleting this sentence, the doors are now open for the legislator to expand the powers of Public Defender through an organic law.

Chapter Three. The Parliament

A new version of Chapter Three envisages fundamental changes in the electoral system, prescribes new rules of setting up parliamentary factions according to the European standards, grants parliamentary opposition the right to set up *ad hoc* investigation commissions, provides for high standards of official immunity for persons subject to the impeachment procedure and introduces other important changes. The new version of Chapter Three gained almost full support of the members of the State Constitution Commission (only one member voted against), save the election regulations. The new election regulations were not supported by 12 members of the Constitutional Commission, mostly because of their negative views about the procedure of distribution of undistributed mandates.

Article 36

The paragraph 1 provision has remained unchanged.

Paragraph 2 specifies the subjects entitled to submit a bill of Parliamentary Rules of Procedure to the Parliament (a Member of the Parliament, a faction or a committee), the quorum for adopting Rule of Procedure (a majority of all members), the legal force (Rules of Procedure have the force of a law) and the signatory person (Chairperson of the Parliament).

A sentence determining the seat of the Parliament has been deleted from the Constitution. This change has been contemplated for the reason that the Constitution does not indicate the seats of other constitutional bodies. After the change comes into force, the Rules and Procedures of the Parliament will determine the seat of the Parliament.

Article 37

Article 37 prescribes new rules of Parliament election. The current system which is a mix of proportional and majoritarian elections has been replaced with a proportional electoral system. Even though the mixed system currently in force does not contradict the legal principles and is used by many democratic countries, it was considered prudent to abolish it because of the country's past experience. In particular, it was the mixed system that made it possible for the Union of Citizens of Georgia at first and the United National Movement later to gain a constitutional majority in the Parliament and abuse this power for subjective political ends. In order to prevent recurrence of similar threats in the long run, the new text of the Constitution introduces an electoral system that excludes chances of a single political party to gain either a constitutional majority or an excessive majority, in general.

The new version of the Constitution prescribes a proportional electoral system with some major reservations, as follow:

a) Electoral blocs (alliances) as a notion is given up. For the last two decades, this model has been a major obstacle to the development of the party system in Georgia. An institutionalized party system has not yet formed in the country. Nowadays, 20 political parties have the status of the so-called qualified parties despite the fact that a majority of these parties are not meeting minimum requirements to be called political parties and some of them are even fictitious. Apart from that, the notion of political blocs allows political parties to manipulate to artificially gain additional privileges (such as additional State funding, additional free-of-charge advertisement time, additional members and representatives at all levels of electoral administration, etc.) All of these reasons have made it clear that the notion of electoral blocs plays a negative role in the sense of development of party system in Georgia and it is not prudent to keep it alive. Political subjects and, accordingly, electoral subjects must be political parties – something that corresponds to best European practices in the area of functioning political systems;
b) The 5-percent electoral threshold is maintained. Electoral systems of democratic countries seek to ensure two major objectives: political pluralism and stability of the political system. An electoral system should take into account particularities of the country concerned and should ensure best balance between the two legitimate interests. When high levels of pluralism are ensured through a proportional system, the aim of an electoral threshold is to serve as a legal guarantee for stabile functioning of democratic system. The 5-percent threshold for political parties has been considered legitimate universally and is proven by the practices of European Union countries (Germany, Belgium, Czech Republic, Slovakia, Poland, Hungary, Romania, Lithuania, Latvia, Estonia, etc);
c) Undistributed mandates are awarded to a winning party. This clause serves the same legitimate objective, which is the reason why electoral thresholds are introduced in

democratic systems: to ensure stabile functioning of a democratic system. With the Georgian reality in mind, which is that an institutionalized party system has not yet formed and the democratic system is still facing serious challenges, the objective of ensuring stability is more than relevant. Awarding undistributed mandates to a winning political party creates an additional avenue for ensuring stabile functioning of the system. Also, this rule is way softer than the Italian and Greek models of giving the winning party larger odds. The Italian system guarantees the winner the getting of an absolute majority of mandates in the Parliament, while the Greek model, which gives the winning party 17 percent of parliament mandates right away, maximizes the chances for the winner to gain the absolute majority. As regards a model envisaged by the new version of the Georgian Constitution, it gives the winning party much lesser odds when it comes to distribution of mandates. Looking at the results of last five elections, these odds are 5 percent on average, and if the results of last four elections are looked at, they are as low as just 3.1 percent average. Accordingly, the proposed electoral system maintains the "winner-takes-all" principle – a principle universally recognized as legitimate in the world of electoral law – to only a very small extent.

The new electoral system balances pluralism and stability in the best way creating a fertile ground for the stabile development of the country's democratic system in the long run. The decision to introduce a proportional system is based on an optimistic expectation that in the four coming years the political system in Georgia will move to substantially different level and risks associated with a proportional system will minimize.

Paragraph 3 specifies the date of parliamentary election – last Saturday in October. This clarification will help avoid manipulations related to determination of the Election Day and shed more light to the electoral process. In addition, paragraph 3 specifies periods in which elections should be appointed in the events the parliament is dismissed or the states of emergency or war are proclaimed.

Paragraph 4 increases the age limitation for candidates from 21 to 25. Also, it exhaustively describes candidate eligibility for passive suffrage thereby ensuring a high standard of voting rights' protection.

Paragraph 5 requires collecting 25 thousand signatures for a political party wishing to participate in election. Since 25 thousand is less than 1 percent of the total number of voters, this requirement is fully consistent with the European standards.

Article 38

Paragraph 1 provides a relatively better way of determining the date of first session of the Parliament (not later than 10th day after election results are officially announced). Furthermore, grounds for the Parliament to start working and to become fully competent are specified.

Paragraph 2 has remained unchanged.

Article 39

Paragraph 1 has not changed.

In paragraph 2, some technical changes have been made; also, it now specifies the timeframe in which the Parliament should consent to waiving an MP's immunity.

Some technical clarifications have been made in paragraph 3.

Paragraph 4 specifies incompatible offices stipulating that a Member of Parliament may engage in public activities or scientific, pedagogic or arts work if the work does not include administrative functions. This clause allows chiefs of sports federations and other public associations to combine their office with the status of a Member of Parliament – a practice that has been acceptable and established in Georgia for years already.

Technical clarifications were added in paragraph 5. The ground of terminating an MP's status on account of MPs' passive participation in the work of the Parliament has become more stringent. In particular, an MP's status will terminate if he/she does not attend more than a half of meetings during a regular sitting of the Parliament for invalid reasons.

Article 40

Paragraphs 1 and 2 specify the quorum required for electing Chairperson of the Parliament and deputy chairpersons (a majority of full composition). A slight change concerns deputy chairpersons who are elected from the autonomous republics. The change relates to transitioning to a proportional system. Other sentences in Article 40 have remained unchanged.

Article 41

No changes have been made to paragraph 1.

Corrections made to paragraph 2 are of technical nature at most.

According to paragraph 3, a parliamentary faction must have at least seven members, instead of six. This change relates to transitioning to a proportional system with a 5-percent electoral threshold in place; this will ensure that parties that have overcome the electoral threshold will get at least seven mandates.

The paragraph contains new regulations on the setting up of parliamentary factions. In particular, elected Members of Parliament who have been nominated by one party may unite in only one

faction. This clause will introduce European practice and tradition in Georgia in the sense that a faction is a kind of parliamentary equivalent of a party.

The paragraph has also been amended to say that rules of setting up factions and rules of their operation are determined only by the Rules of Procedure of the Parliament rather than by both a law and the Rules of Procedure. There is no legal reasoning to justify adoption of a separate law to govern factions.

Article 42

Some technical corrections have been made in paragraph 1.

Paragraph 2 enables a parliamentary opposition to establish an *ad hoc* investigation commission. In particular, the new text stipulates that an investigation commission can be set up by the so-called qualified minority, by a decision of one-third of full composition of the Parliament. Also, the new text better protects the interests of the opposition and factions in setting up *ad hoc* commissions.

Paragraph 3 lays down the obligation of furnishing an investigation commission with both documents and information.

Article 43

Provisions of the article have been amended mainly from a technical point of view. The new version prescribes the obligation to respond to MPs' questions in full and in a timely manner.

A sentence allowing the Parliament to raise the issue of liability of individual ministers has been deleted. The constitutional system of interrelations between the Parliament and the Government is based on the principle that the Government is liable collectively. Accordingly, it is not prudent in this system to allow for raising the issue of liability of individual ministers. Apart from that, the said norm of the Constitution is very weak by its nature (the Prime Minister may simply ignore the Parliament's decision in question) and does not give the Parliament any effective levers.

Article 44

Paragraph 1 remains unchanged.

Paragraph 2 specifies that *ad hoc* meetings are held according to the agenda determined by their initiators.

Paragraph 3 has been amended to say that the Parliament meets immediately after a state of emergency or a state of war has been announced rather than within 48 hours after it has been announced. The Parliament is therefore required to meet as soon as possible.

Paragraph 4 specifies that a decision to close a meeting of the Parliament in full or in part is to be made *in camera*.

No changes have been made to paragraph 5.

Paragraph 6 re-defines a list of those persons who are obliged to attend the meetings of the Parliament and are vested with relevant rights and obligations.

Article 45

Technical changes have been made in paragraph 1.

Paragraph 2 stipulates that the Parliament adopts laws rather than bills (draft laws). The quorum required for adoption of organic laws has changed: a majority of full composition of the Parliament instead of a majority of current real number of MPs.

The new version of paragraph 3 states that decisions of the Parliament are called resolutions and determines the rules for adoption of resolutions.

Article 46

Procedures of signing and promulgating laws and applicable timeframes have been revised and specified. The changes are mostly of a technical nature.

Paragraph 5 stipulates that President may not veto a constitutional law that has been adopted by Parliaments of two convocations or that relates to restoration of territorial integrity of the country.

Article 47

Technical corrections have been made in the text.

A new version of paragraph 1 says that an international treaty that relates to territorial integrity or modification of State frontiers requires the support of two-thirds of all of the MPs.

A provision containing rules of submitting international treaties to the Parliament for ratification has been deleted. These rules need not be regulate by the Constitution but by a regular law.

Article 48

The article combines rules of impeaching the President and other officials.

According to the new version of Article 48, rules of impeachment now apply also to justices of the Supreme Court and the Prosecutor-General.

Paragraph 1 establishes a 30-day timeframe for deciding the matter by the Constitutional Court.

Paragraph 5 stipulates that officials indicated in this Article (except members of the Government) may be removed only by impeachment. This clause contains a very important new guarantee in terms of protection of independence of constitutional bodies.

Chapter Four. President of Georgia

In new Chapter Four, rules of election of the President and presidential powers have been revised according to the best practices of European parliamentary democracies. Chapter Four introduces an indirect rule of electing the President – a procedure that excludes imbalance between the level of legitimacy and the power accorded to the Head of State. It also provides for a proper regulation of presidential powers and rules of countersigning presidential acts. The new version of Chapter Four gained full support of the State Constitutional Commission, except for indirect election of President. Six members of the Constitutional Commission supported the current rule of direct election of the President.

Article 49

The new version of the Constitution present the high symbolic status of the President in an unchanged manner. Only the sentence saying "Within its competences envisaged by the Constitution, the President of Georgia ensures functioning of State organs" has been deleted. This sentence lacks both legal and symbolic meaning and hence it was decided to remove it from the text of the Constitution.

Even though the following terms used in Article 49 are causing misconceptions in the Georgian society, it was decided to leave them unchanged:

a) The term "Head of State" is often understood as if the Constitution was endowing the President with the function of governing the country – something that is a misunderstanding. Presidents and monarchs are referred to as "Heads of State" by all of the constitutions of democratic countries regardless of whether these officials actually have the function of governing the country. Hence, the mentioned term should not be interpreted incorrectly;
b) Likewise, the term "command-in-chief of the military forces" is often understood in the sense that the Constitution subordinates the military forces to the President thus conferring a significant power on the President. Again, almost all of the constitutions of democratic countries (save rare exceptions such as Germany and the Netherlands) refer to presidents and monarchs as "commanders-in-chief" whether or not they actually have the function of directing the armed forces. Against the background of having a parliamentary governance, the status of a commander-in-chief carries rather a ceremonial meaning and in such systems the military is under the command of the executive, which is the Government. Accordingly, the term in question should not become a matter of incorrect interpretations;
c) The phrase "President represents Georgia in foreign relations" is misunderstood to denote as if the Constitution vests the right to guide the country's foreign policy in the President. It should be noted again that almost all of the constitutions of democratic countries grant presidents and monarchs a high representative status but this does not mean they actually

have foreign policy powers. In a situation of parliamentary governance, foreign policy is implemented by the Government and hence the Head of the Government is the one to possess privileged representative powers. Accordingly, the phrase in question should not become an object of incorrect interpretation.

Article 50

The new Constitution introduces a new system of indirect election of the President. President will be elected by a special electoral collegium consisting of 150 members of the parliament, all the members of High Councils of the Autonomous Republics, and electors named by parties according to their results of the last local self-governance elections.

There are a number of factors speaking of appropriateness of electing the President indirectly in a system of parliamentary governance:

a) If a President is directly elected in a parliamentary system, there is a great imbalance between the President's legitimacy and the powers the President has – something that often triggers serious systemic problems;
b) That has been confirmed by European experience. In no parliamentary republic or monarchy that elects its President directly, have systemic problems arisen this far. Contrary to that, systemic problems (such as rightist radicals, odious and anti-West candidates being successful in elections, problematic disputes between a president and a government about division of competences, etc) are not uncommon to a majority of parliamentary republics, which elect their presidents directly;
c) In a parliamentary system, the President must be a leader who stands above party interests – something that is virtually impossible with direct election system in place. Direct election requires all party units' full engagement in the election campaigning, multimillion funding of the campaign by the party, etc. Also, in case of direct election, campaigns are built on hot confrontation among the political parties and their candidates, and on harsh criticism of each other, which completely excludes chances of electing somebody who can stand above of all these as President.

With these reasons in mind, and in order to improve the parliamentary governance system, it is prudent to introduce a system in which a President of Georgia will be elected indirectly.

Article 50 establishes a relatively high demand for the minimum age of a President. A person may be elected President of Georgia if he/she is a citizen of Georgia who has attained the age of 40 (instead of 35) and has lived in Georgia for at least 15 years.

Article 51

The sentence saying that the President delivers a programmatic (keynote) speech before taking an oath has been deleted from paragraph 1. In a parliamentary system, a President can have no

program and hence can make no programmatic speech. The new provision entitles the President "to address the people".

The text of oath of office of the President has remained unchanged, albeit its contents do not correspond to the competences and power held by the President. Such inconsistency is normal to countries with parliamentary system and is explained by the high symbolic status of a President.

Technical corrections have been made in paragraph 2.

Paragraph 3 continues to award absolute immunity to President.

Under paragraph 4, not only a President is prohibited to occupy a position in a political party but also to be a member of a political party. This covenant is designed to ensure the above-the-party status of the President.

If the President of Georgia is unable to perform his/her duties or if his/her presidency is terminated, the Parliament Chairperson shall be the acting President. The Constitution does not prescribe further regulations on President's replacement.

Article 52

The following major changes have been made to the Constitution with a view to regularizing his/her competences:

a) The Government's consent is now required for not only negotiating with foreign States and international organizations, entering into international treaties and accepting ambassadors and other diplomatic representatives, but also for exercising representative powers in foreign relations. Since implementation of a foreign policy remains an exclusive domain of the Government, it was fully logical given the new constitutional system to give the Government of Georgia a privileged role and function of conducting international negotiations, entering into international treaties and exercising representative powers;
b) The President will keep the right to appoint and dismiss ambassadors and other diplomatic representatives at the Government's recommendation – this is one of the historic and traditional powers held by Heads of State. However, since appointment of diplomatic representatives is a major instrument of implementing foreign policy, this privilege should be construed as rather ceremonial power of the President. The real competence to appoint diplomatic representatives should be vested in the Government as a body having an exclusive power to implement foreign policy. Such a division of roles and competences is well recognized by traditional parliamentary democracies. The same principle should apply to other competences relating to implementing the country's internal and foreign policies – an area that belongs to the powers of the executive government.

c) President will make citizenship decisions based on an organic law. President will also be authorized to decide on asylum based on a law. On practice, these competences are already exercised on the basis of an organic law and a law, respectively.
d) President will continue to award State awards and bonuses, highest military, special and honorary ranks, and highest diplomatic ranks – a practice that has already been in place in Georgia.

Technical corrections have been made to paragraph 2.

In paragraph 3, the sentence "President is authorized to address the people and the Parliament" has been replaced with "President is authorized to address the people". There is a record of incorrect interpretation of this phrase in the past as if the President had the right to address the Parliament any time he/she would want to do so. To exclude such misunderstanding, it was decided to make the above-mentioned change in paragraph 3.

An article concerning the Administration of the President has been deleted from the Constitution. The current article in the Constitution creates the impression as though the presidential administration is an independent constitutional body. The Presidential Administration, much like the Government's Administration, the Parliament Apparatus and other similar bodies will be set up and will function on the basis of legal acts that are subordinated to the Constitution.

Article 53

In the new version of the Article, the following major amendments have been made in a list of presidential acts that are subject to countersigning:

a) Acts issued in a state of war have to be countersigned;
b) Legal acts related to nomination, appointment, dismissal or removal of officials will no longer be excluded from the countersignature requirement;
c) Awarding special ranks will be subjected to countersignature but not the awarding of State bonuses and honorary ranks;
d) Asylum acts will no longer need to be countersigned;
e) Acts issued at the recommendation or with the prior consent of the Government will no longer be excluded from a list of acts requiring countersignature.

The Constitution retains a provision saying that if a presidential act is countersigned by the Government, only the Government remains responsible for the act. By completely releasing the President from legal and political liability, the Constitution confers the real right to issue the relevant acts on the Government, while the formal right on the President. The same logic applies when an act that need to be countersigned is not issued. The sentence saying that "The Government is responsible for legal acts issued with countersignature" gives the Government a real right to decide whether to issue or not to issue a relevant act.

Chapter Five. The Government of Georgia

Chapter Five has gone through a major overhaul. The Government chapter, which is currently the main weakness of the Constitution now in force and which harshly conflicts with the principle of division of power, has been redacted so as to fully conform to the fundamental principles of constitutional law. The Government chapter gained full support of the members of the State Constitutional Commission.

Article 54

Paragraph 1 has not changed; it continues to vest the exclusive rights of implementing the country's internal and foreign policies and exercising executive powers in the Government.

Paragraph 2 prescribes that the Government is both accountable and responsible to the Parliament. The Government's responsibility is materialized in practical legal terms on the basis of a vote of no confidence.

Paragraph 3 remains unchanged.

Paragraph 4 determines the functions of ministries and ministers in a concise but comprehensive manner.

With slight technical changes, paragraph 5 determines the status of a State Minister and rules of creating the position of a State Minister.

The new version of paragraph 6 prevents MPs from carrying out creative activity but allows them to found companies. For the sake of conciseness, the sentence saying that a Government member has the right to resign has been deleted from paragraph 6.

With some technical changes, paragraph 7 determines the status, functions and rules of appointing State representatives (governors).

Paragraph 8 remains without substantive changes, with some slight technical corrections.

A provision entitling the President to request that a Government meeting be convened and to participate in such a meeting has been deleted from the Constitution. Because of the President's highly symbolic status, it is not prudent for him/her to participate in Government meetings. Also, having in mind the principle of division of powers, it is not appropriate for the President to directly intervene in determining the Government's agenda.

Article 55

Paragraph 1 remains unchanged.

No substantive changes have been made in paragraph 2, except some slight technical corrections.

Paragraph 3 continues to prescribe the high status of a Prime Minister and his/her broad competences in the area of foreign policy. The Prime Minister of Georgia represents Georgia in foreign relations and concludes international treaties on behalf of Georgia. Since the Government has exclusive powers to implement foreign policy, the Constitution confers privileged competences in the area of conducting international negotiations and conclusion of international treaties onto the Prime Minister.

Provisions of paragraphs 4 and 5 have remained almost unchanged.

Article 56

Procedures of forming the Government have been fully refurbished. The Parliament makes a motion of confidence in the Government with a simplified procedure – something that fully conforms to the principles of constitutional law.

Article 57

The procedure of passing a motion of no confidence has been completely redesigned. The procedure introduced by the new version of the Constitution differs from the one currently prescribed by the Constitution in that it fully conforms to the principle of constitutional law. The new Constitution introduces a constructive vote of no confidence in accordance with the recommendations of the Venice Commission and thereby increases the role and power of the Parliament in the system of division of powers. A major shortcoming of the Constitution that harshly contradicted the fundamental principle of division of powers has been eliminated.

An article saying that substitution of one-third of the members of the Government must necessarily cause initiation of a motion of confidence in the Government has been deleted from the Constitution. Since the procedure of declaring a vote of no confidence has been revised, it is no longer needed to retain the said article.

Article 58

A new procedure has been introduced whereby the Prime Minister may raise the issue of confidence in the Government before the Parliament. The procedure is fully compatible with the principle of constitutional law.

Chapter Six. Judiciary and Prosecution

Highly important modifications have been made in Chapter Six to the effect of further enhancing judicial independence: provisions describing the competences of the Constitutional Court have improved, the High Council of Justice has been empowered to nominate the Supreme Court justices, a minimum number of the Supreme Court justices has been determined, the principle of irremovability of judges and related guarantees have been articulated, rules by which the High Council of Justice decides to appoint judges have toughened, the composition of the High Council

of Justice has been determined in more clear terms, the principle of accountability of the High Council of Justice before the Judicial Conference has been introduced, and the Prosecution Office has become an independent constitutional body. The new version of Chapter Six has been voted against by six members of the State Constitutional Commission; the negative vote was based largely on the new proposal that the High Council of Justice nominate the Supreme Court justices. Commission members who voted against regarded it more appropriate to leave the competence of making nominations up to the President.

Article 59

Paragraph 1 clearly stipulates the subjects that form the Georgian judiciary: the Constitutional Court and the courts of general jurisdiction.

Paragraph 2 has not changed.

In paragraph 3 a sentence has been added allowing for establishment of specialized courts within the system of courts of general jurisdiction.

Some technical corrections have been made in other provisions of the article.

Article 60

No changes have been made to paragraph 1.

Paragraph 2 introduces a relatively higher age requirements for the justices of the Constitutional Court (35 instead of 30). A justice of the Constitutional Court must also have a 10-year length of service in occupation and must possess distinguished professional qualifications.

New paragraph 3 prohibits re-electing the same person as Chairperson of the Constitutional Court.

Paragraph 4 outlines the competences of the Constitutional Court in more precise terms:

a) A sentence on exercising control over the so-called concrete provisions has been added;
b) The Public Defender, the Council of the National Bank, the Auditor General, the Prosecutor General and highest bodies of the autonomous republics have expressly been granted the right to participate in disputes over competences of State bodies;
c) The Constitutional Court is now authorized to decide, along with the banning of a political party, whether to terminate the competency of MPs elected at that party's nomination;
d) The Constitutional Court has been granted the power to decide on recognition of the competency of MPs and premature termination of competency of MPs;
e) The Constitutional Court will no longer discuss constitutionality of elections already held. Under the new Constitution, it is prohibited to declare election-related provisions unconstitutional unless these provisions had been adopted during a year preceding the relevant election. It has also been prohibited to declare an election-regulating bylaw within

60 days before the Election Day. These regulations are aimed at preventing the Constitutional Court's undue intervention in the political process;

f) The new Constitution stipulates that the Constitution determines an exhaustive list of competences of the Constitutional Court.

Paragraph 7 has been amended from technical point of view. It is also states that an organic law regulates issues related to legal proceedings before the Constitutional Court. This change will cause the relevant law to transform into an organic law.

Article 61

Paragraph 1 remains without changes.

Paragraph 2 establishes a minimum number of justices of the Supreme Court (at least 25 justices). Under the new version, the Chief Justice and justices of the Supreme Court are elected at the nomination of the High Council of Justice, but not the President. This change is based on a recommendation of the Venice Commission issued in 2010. The new version of the article prohibits a person to be re-elected Chief Justice.

Article 62

Paragraph 2 envisages that sanctions are established for failure to comply with a court decision or for impeding the fulfillment of a court decision.

Paragraph 2 and 3 have remained unchanged.

A sentence in paragraph 4 concerning the teaching of the State language and how this issue should be resolved in the context of legal proceedings has been deleted. This provision was misplaced because the Chapter in question governs issue related to the judiciary.

Paragraph 5 remains the same.

Article 63

Paragraph 1 has not changed.

Paragraph 2 combines provisions on the immunities of judges of courts of general jurisdiction and justices of the Constitutional Court.

No changes have been made in paragraph 3.

Paragraph 4 is unchanged, except for a slight technical correction.

Paragraph 5 introduces important new guarantees for irremovability of judges. In particular, the new Constitution says that reorganization or liquidation of a court may not serve as a reason for dismissing a judge appointed for lifetime. This provision will protect the independence of the judiciary and individual judges at a high standard.

Paragraph 6 establishes lifetime appointment of judges. A 3-year term of probation may apply only to a judge appointed for the first time. This reservation is necessary because of the fact that the High School of Justice as it stands now in Georgia is not equipped with appropriate resources capable of producing properly trained and experienced personnel for judicial appointment.

Paragraph 6 provides that judges are appointed according to the criteria of integrity and competence. This provision requires the High Council of Justice to decide on judicial appointments with a qualified majority (two thirds).

Article 64

In paragraph 1, the function of the High Council of Justice has been redefined.

New version of paragraph 2 specifies number of members of the High Council of Justice. It stipulates that those members of the High Council of Justice that are neither elected by the Judicial Conference nor appointed by the President of Georgia shall be elected by the Parliament.

Paragraph 3 makes the High Council of Justice accountable before the Judicial Conference.

Paragraph 4 has been amended from a technical perspective.

Article 65

In the new version of the Constitution, the Prosecution Office is no longer part of the executive branch of the Government but has been transformed into an independent constitutional body. The Prosecutor General is elected by the Parliament for 6 years. The Prosecution Office is accountable to the Parliament. Paragraph 4 envisages that issues related to the Prosecution Office are governed by an organic law.

Chapter Seven. State Finance and Control

Chapter Seven incorporates the proposals made by the National Bank and the State Audit Office concerning amending the provisions on budget and taxes. Only two members of the State Constitutional Commission voted against Chapter Seven for the reason that they disagreed with the referendum requirement envisaged by Article 67(2).

Article 66

Some slight changes have been made in paragraph 1.

Paragraph 2 has substantially remained the same. The new version does not make it compulsory for a budget year to match a calendar year.

No changes have been made to paragraph 3.

Some technical changes were made in paragraph 4.

Paragraph 5 has been amended slightly from a technical point of view.

Paragraph 6 underlines the President's right to veto a budget law.

Paragraph 7 has remained unchanged.

Article 67

New version of paragraph 1 requires that the rates of taxes and fees or, in case of self-governments, the scope of rates, be determined by a law.

Paragraphs 2 and 3 are presented with some technical changes.

Article 68

Some technical corrections have been made in paragraphs 1 and 2.

New version of paragraph 3 stipulates that the National Bank is not supervised by the State Audit Office. This provision aims at further reinforcing independence of the National Bank.

Paragraph 4 specifies that money units and name are determined by an organic law.

Paragraph 5 has some technical changes.

Article 69

Paragraph 1 specifies the function of the State Audit Office.

Corrections made in paragraph 2 are mostly of a technical nature.

Paragraphs 3 and 4 have not changed.

Paragraph 5 has been corrected from a technical point of view.

Paragraphs 6 and 7 have not been amended.

Chapter Eight

The refurbished Chapter Eight contains ultimate regulation of the issues of defense and security and the states of emergency and war – matters that are fairly vaguely articulated in the Constitution now in force. The new version prescribes rules of military command, specifies the grounds for declares the states of emergency and war, regularizes the terms and conditions of imposing limitations on human rights in time of emergency and war, specifies the conditions for activating the armed forces, and replaces the National Security Council with a National Defense Council whose status and competences fully conform to the general rationale of the constitutional system introduced. The new version of Chapter Eight gained full support of the State Constitutional Commission members.

Article 70

Paragraph 1 has not changed.

In paragraph 2, the sentence saying “a law determines the form of compulsory military service” has been substituted with the phrase “a law determines the rules of military service”. The new version no longer requires that military service to be compulsory.

Paragraph 3 specifies the functions of military and other armed forces. Under the new text, the President approves a general structure of the military forces at the Government's proposition, while the Parliament approves the number of military personnel at the Government's proposition.

According to the text, military forces are directed by the Defense Minister in accordance with rules determined by law, while in a state or emergency or a state of war, the Prime Minister takes the command. The provision regulates a system of command in times of emergency and war – an issue that is not regulated by the current text of the Constitution. In particular, the new provision stipulates that the system of subordination will be the same in time of peace and in time of war or emergency. It is expected that such an arrangement will ensure a more effective management the said circumstances.

Article 71

Paragraph 1 adds an additional circumstance for declaring a state of war in territory of Georgia: an imminent threat of armed attack against Georgia. The President declares a state of war at the Prime Minister's recommendation and submits his/her decision to the Parliament immediately for approval.

In paragraph 2, the phrase "in cases of war" has been deleted from the grounds warranting proclamation of a state of emergency, since the term was too vague from a legal point of view. The phrase "ecologic catastrophe" has been replaced with "natural and technological catastrophe". The President declares a state of emergency at the Government's recommendation and submits his/her decision to the Parliament immediately for approval.

A new version of paragraph 3 considers decrees issued in a state of war or a state of emergency to have the force of an organic law rather than of a regular law. With the aim of ensuring proper preservation of currency reserves, paragraph 3 also stipulates that decrees relating to the competencies of the National Bank are issued at the consent of the National Bank. Paragraph 3 articulates the procedure of approval of such decrees and subsequent legal consequences.

Paragraph 4 indicates those provisions of Chapter Two of the Constitution the validity of which may be suspended by a presidential decree. It may become necessary, for effectively managing a state of war or a state of emergency, to suspend the said provisions.

Corrections made in paragraph 5 are essentially of a technical nature.

Paragraph 6 prescribes a procedure for cancelling a state of war or a state of emergency; nowadays, no such procedure is envisaged by the current version of the Constitution.

Paragraph 7 lays down a quorum (which is a majority of full composition of the Parliament) required for decision-making by the Parliament on issues referred to in Article 71.

Article 71

Under the new version of paragraph 1, the President makes a decision to use military force at the Government's recommendation and submits his/her decision immediately to the Parliament for

approval. Apart from that, the Prime Minister is entitled to use military force independently in the cases of war, natural and technological catastrophes, and epidemies.

Under new version of the Article, decisions on issues referred to in paragraph 2 are decided by the President on the basis of the Government's recommendation.

Article 73

The new Constitution replaces the National Security Council with a National Defense Council. Against the existing background, it was decided that the existence of the National Security Council lacked legal reasoning. The Security Council advises the President on issues that fall within the domain of Government powers (such as building up the military and organization of the defense). Such a division of competences is clearly wrong. Unlike the National Security Council, a National Defense Council will be set up in time of war in order to coordinate the actions of constitutional bodies. The National Defense Council will be chaired by President; Prime Minister, Parliament Chairperson and Chief of Military will be permanent members of the Defense Council.

Chapter Nine

Chapter Nine introduces new guarantees for local self-governments. The new version determines the corporate status of each self-governing territory, strengthens the principle of autonomous organizational and staff policy, prescribes the right to cooperation and association, requires that central authorities consult with local self-governments in respect of decisions concerning the self-governments, etc. The new Chapter Nine is fully consistent with the European Charter of Local Self-Government and it gained full support among the members of the Constitutional Commission.

Article 74

Changes made in paragraph 1 are largely of a technical nature.

Paragraph 2 describes the corporate status of a self-governing unit and stipulates that self-governing units are entities under public law.

Paragraph 3 says that local self-governments exercise their competences according to rules established by an organic law.

Article 75

The principle of division of competences is prescribed in paragraph 1, the principle of universal competences in paragraph 2, the principle of exclusive own competences in paragraph 3, rules of delegating powers to self-governments in paragraph 4, and the principle of supervision of local self-governments for the sake of legality and appropriateness in paragraph 5. Each of the paragraphs of the article are fully compatible with the principles and norms of the European Charter of Local Self-Government.

Article 76

Paragraph 1 has remained unchanged. It ensures that funds and property of local self-governments are separated from the resources of the central authorities and those of authorities of autonomous republics. Paragraph 2 enshrines the principle of autonomy of organizational and staff policy. Paragraph 3 prescribes the right of self-governing units to cooperate with each other and their right to form associations. Paragraph 4 prescribes a requirement on compulsory involvement of self-governing units when decisions affecting them are made at the central level. Paragraph 5 lays down the principle of jurisdictional autonomy of local self-governments.

Chapter Ten. Revising the Constitution

The new version of Chapter Ten introduces the so-called plural voting system for revising the Constitution – an important innovation in the Georgian constitutional practice. Chapter Ten gained full support of the State Constitutional Commission members.

Article 77

Technical changes have been made in paragraphs 1, 2, 5, and 6 of Article 77.

Under paragraphs 3 and 4, the system of plural voting is introduced. In particular, a constitutional bill passes if a majority of two-thirds of two convocations of Parliament vote for the bill. A single convocation of Parliament can also pass a constitutional bill if three-fourths of its members support it. One convocation of Parliament can pass a constitutional bill with a two-thirds majority of its members only if the changes is about restoring Georgia's territorial independence.

Chapter Eleven. Transitional clauses

Chapter Eleven contains a single provision. It obliges constitutional bodies to take all measures in order to ensure that Georgia joins the European Union and the NATO. Chapter Eleven has gained full support of the State Constitutional Commission members.

Article 78

A temporary provision is inserted in the Constitution giving the constitutional bodies a special task. In particular, the bodies envisaged by the Georgian Constitution are obliged to take all measures, within the scope of their competences, to ensure that Georgia fully integrates into European and Euro-Atlantic structures.

Transitional Provisions

The constitutional bill contains transitional provisions to ensure unimpeded entry into force of the provisions of the new version of the Constitution:

a) The constitutional changes will take effect immediately after a President of Georgia elected in the next presidential election take the oath of office. Next year, presidential election will be conducted according to the rules of current Constitution; this means that the new system of governance will fully gain force only after 6 years. This change is based on a political decision warranted by a personal factor.

b) Each and every law, which the new version of the Constitution envisions to be an organic law, has been granted the status of organic laws;
c) New limitations for setting up parliamentary factions (a minimum of seven members, one nominator – one faction) will not apply to factions already created or factions that will be created in the future in this convocation of the Parliament;
d) Current judges who have been appointed for life will not be extended for life. They will be appointed for lifetime only if they are appointed for life after their tenures expire;
e) The substantive, structural or technical changes made in Chapter Two of the Constitution will not entail as a consequence cancellation of the admissibility decisions rendered by the Constitutional Court in the cases already lodged with the Court. Transitional clauses only allow for re-classification of relevant judgments,[3] which should be done through consultations between the Constitutional Court and the plaintiffs;
f) It is stipulated in the Transitional Clauses that the Constitutional Law on the Achara Autonomous Republic may be enacted with a title that differs from the one envisaged by the current version of the Constitution.

b) Financial reasoning

b.a. Source of funding the necessary costs related to adoption of the constitutional bill

If passed, the constitutional bill will not generate any additional costs.

b.b. Implications of the constitutional bill for budget revenues

Adoption of the constitutional bill will not affect the revenue part of the State Budget.

b.c. Implications of the constitutional bill for budget expenditures

The constitutional bill envisages substitution of the National Security Council with the National Defense Council, which is not a standing body. This change will result in a decrease in the relevant costs by 1.8 million Lari.

b.d. Any new financial obligations for the State

The constitutional bill, if passed, will not cause the State to assume any new financial obligations.

b.e. Financial implications of the constitutional bill for persons who will be affected by the draft if passed

The constitutional bill will have no financial implications for the persons covered by the bill.

[3] Translator's remark: This phrase may indicate that references to the provisions of the Constitution in the judgements will change because the numbering of articles has changed in the new Constitution. If that is so, the translation could specify that it is allowed to correct references to constitutional provisions resulting from the changed number of the Constitution articles.

b.f. Rates and rules of determining the rates of taxes, fees or other payables introduced by the constitutional bill

The constitutional bill does not introduce any taxes, fees or other payables and does not contemplate changes in the rules of determining their rates.

c) Compatibility of the draft law with international legal standards

c.a. Compatibility of the constitutional bill with European Union directives:

The constitutional bill is fully consistent with the EU directives.

c.b. Compatibility of the constitutional bill with Georgia's obligations related to its membership into international organizations

The constitutional bill is fully consistent with Georgia's obligations related to its membership into international organizations.

c.c. Compatibility of the constitutional bill with Georgia's bilateral and multilateral international treaties

The constitutional bill is fully consistent with the bilateral and international treaties entered into by Georgia.

d) Consultations obtained in the process of preparation of the constitutional bill

d.a. State, non-state and/or international organizations/institutions or experts who have taken part in preparing the constitutional bill, if any.

The constitutional bill was prepared in the format of a State Constitutional Commission established by the Parliament of Georgia. The Commission was composed of representatives of parliamentary and non-parliamentary political parties, constitutional bodies and non-governmental organizations, and experts. The constitutional bill was approved by the Commission members by 43 votes to 8.

d.b. Evaluation of the draft law valuation by organizations (institutions) and/or experts that have taken part in preparation of the draft law, if any.

The constitutional bill is not accompanied with evaluations by organizations, institutions or experts participating in the producing of the bill.

e) Author of the draft law

The constitutional bill has been prepared by the State Constitutional Commission.

f) Initiator of the draft law

The constitutional bill has been initiated 108 members of the Parliament:

Irakli Kobakhidze, Tamar Chugoshvili, Giorgi Volski, Sofio Kiladze, Gogi Meshveliani, Davit Matikashvili, Irakli (Dachi) Beraia, Goga Gulordava, Kakhaber Kuchava, Giorgi Kopadze, Guram Macharashvili, Eka Beselia, Paata Kvizhinidze, Fati Khalvashi, Zviad Dzidziguri, Sulkhan Makhatadze, Giorgi Mosidze, Giorgi Kakhiani, Tsotne Zurabiani, Shalva Kiknavelidze, Gela Samkharauli, Irine Fruidze, Samvel Manukyan, Mamuka Mdinaradze, Tamaz Naveriani, Irakli Sesiashvili, Makhir Darziev, Isko Dassen, Grigol Mikeladze, Irakli Shiolashvili, Teimuraz Chkuaseli, Svetlana Kudba, Levan Gogichaishvili, Zaza Khutsishvili, Nino Tsilosani, Koba Narchemashvili, Giorgi Gachechiladze, Mariam Jashi, Dimitri Khundadze, Goderdzi Chankseliani, Rati Ionatamishvili, Teimuraz Muchiashvili, Akaki Zoidze, Mikheil Kavelashvili, Koba Lursmanashvili, Giorgi Khatidze, Anri Okhanashvili, Zaza Gabunia, Vano Zardiashvili, Tamar Khulordava, Archil Khabadze, Giga Bukia, Mukhran Vakhtangadze, Elguja Gotsiridze, Ilia Nakashidze, Paata Mkheidze, Ioseb Makrakhidze, Irakli Kovzanadze, Roman Kakulia, Revaz Arveladze, Shota Khabaraeli, Genadi Margvelashvili, Alexandre Kantaria, Archil Talakvadze, Simon Nozadze, Dimitri Mkheidze, Bidzina Gegidze, Zaza Papuashvili, Irakli Abuseridze, Giorgi Totladze, Victor Japaridze, Alexandre Erkvania, Irakli Mezurnishvili, Beka Natsvlishvili, Giorgi Begadze, Savalan Mirzoev, Irakli Beraia, Ruslan Gajiev, Gedevan Popkhadze, Leval Kobiashvili, Erekle Tripolski, Anzor Bolkvadze, Karlo Kopaliani, Gia Benashvili, Gocha Enukidze, Koba Nakaidze, Davit Songulashvili, Levan Bezhanidze, Leri Khabelovi, Dimitri Samkharadze, Mirian Tsiklauri, Ruslan Pogosyan, Nino Goguadze, Sofio Katsarava, Davit Chichinadze, Tengiz Khubuluri, Irakli Khakhubia, Endzela Machavariani, Ivliane Tsulaia, Dimitri Tskitishvili, Levan Koberidze, Otar Danelia, Guguli Magradze.