Assessment of the work of the State Constitutional Commission

The State Constitutional Commission was established on December 15, 2016, and the last session was held on April 22, 2017. Transparency International Georgia was actively involved in the work of the Commission. Below is presented our assessment of the work of the Commission. We believe, that the most important issues for the discussion of the Commission were the parliamentary and presidential electoral systems.

I. Assessment of the process

1. Timeline

In spite of the intensive work schedule of the Constitutional Commission, four months is not sufficient time for preparing fundamental amendments to the constitution, especially since there was no reason to formulate the constitutional amendments so hastily.

2. The composition of the Commission and inclusiveness of the process

The Commission consisted of 73 members.[1] The Commission included of representatives of all constitutional bodies, as well as experts and non-governmental organizations. Representatives of parliamentary and non-parliamentary opposition were also part of the Commission. Notably, the Commission was made up largely of representatives of the ruling party and state agencies.

The State Constitutional Commission took into account several recommendations from the experts and non-governmental organizations. Prior to the commencement of the work of the Commission, the members had the possibility to send their opinions and proposals to the Commission. The proposals were also submitted by the individuals and the organizations that were not members of the Commission. As the

[1] The Constitutional Commission was composed of: 24 members of Parliamentary majority and 8 members of Parliamentary minority, as well as two members of the Faction "Georgian Patriots" and one independent member of the Parliament, representatives from the 4 political parties participating in recent elections that received 3 per cent of votes but failed to pass the threshold, 2 representatives of the President's Administration and Secretary of the Security Council, one member of Government and parliamentary secretary, the Supreme and Constitutional Court Chairpersons, chairmen of Supreme Council and Government of Adjara Autonomous Republic, chairmen of Supreme Council and Government of the Autonomous Republic of Abkhazia, Public Defender of Georgia, President of the National Bank, General Audit of the State Audit Office, 20 members of the Constitutional Commission were composed from NGO sector and experts.

chairperson of the Commission noted, the proposals amounted to roughly 700 pages and it was impossible to discuss them all in detail. However, it remained unclear to the members of the Commission what criteria were applied in selecting the proposals for discussion and including them in session agendas. The Commission took into consideration nearly all recommendations made by Transparency International Georgia. However, our recommendations on important issues, such as the electoral system, the rule for electing the president, and several others, we mostly ignored.

The inclusiveness of the process and the involvement of all constitutional agencies, as well civil society organizations, was essential for the effective work of the State Constitutional Commission. In spite of the fact that consultations were held with different civil society groups, experts from specialized fields were not represented in the Commission. For example, experts from the economic and financial fields, as well as experts specializing in environmental protection and a number of other areas, were not invited to the Commission. This made it difficult for the Commission to work on some specific issues.

After the establishment of the Commission, the President of Georgia noted that he would not participate in the work of the Commission as a gesture of protest. This decision was largely based on the fact that the President's proposal on the rule of formation of the Commission was not taken into account and also because he was not appointed co-chairman of the Commission. Three representatives of the Presidential Administration (head of the Presidential Administration, secretary of the National Security Council of Georgia and the parliamentary secretary of the President), which were ex-officio members of the Commission, did not participate in the work of the Commission. The lack of involvement from the head of state in the process of constitutional reform should be assessed negatively, especially since the constitutional amendments directly relate to the powers of the President and the rule for the President's election.

Prior to the final vote, the representatives of the opposition parties boycotted and left the Commission. The reason for the boycott was the non-acceptance of the proposals related to the electoral system made by the oppositional parties.

The interests of the ruling party were distinctly noticeable immediately after the establishment of the constitutional Commission, which related to the parliamentary electoral system, the rule of direct election of the President and the inclusion of a provision on marriage in the constitution. In spite of the fact that the ruling party was prepared to collaborate on other issues, the constitutional Commission did not take into consideration the opinions of civil society organizations and oppositional parties regarding the aforementioned issues.

The final constitutional draft did not receive support from the majority of the non-governmental organizations and the public defender because of the lack of agreement with the government and ruling party on the most strategic issues (parliamentary electoral system, rule of the election of the President, and others).

Below, we will provide a more detailed assessment of the significant constitutional amendments, regarding which Transparency International Georgia had presented proposals to the Commission.

II. Draft constitutional amendments which should be assessed negatively

1. Parliamentary electoral system

Nearly all of the members of the Commission acknowledged that the current electoral system in Georgia is unfair, because the will of the voters is not reflected proportionally in the allocation of parliamentary mandates. This problem of the current system primarily stems from its single-mandate (so called majoritarian) component.. In order to address this problem, the ruling party proposed the following electoral system (Article 37):

- All 150 members of Parliament will be elected through the proportional system
- The 5% threshold will be reatined
- Electoral blocs will be prohibited
- Unallocated mandates will be awarded to the party that wins the first place in the elections

Assessment, justification

The changes in the parliamentary electoral system and transition to a fully proportional system should be assessed positively. The main reason of changing the electoral system was to allow a proportional reflection of the number of the votes received in the number of mandates won, and the reduction of the number of lost votes, which would be possible in a proportional system. It is commendable that the State Constitutional Commission adopted this view and proposed a fully proportional electoral system. However, a number of shortcomings remain: **According to the proposed amendments to the constitution, all unallocated mandates will be awarded to the electoral subject that wins first place in the elections. With the 5% threshold retained and the prohibition of electoral blocs, unallocated mandates could possibly amount to 20% or more of the total number of mandates. Awarding all of those unallocated mandates to a single party will once again cause huge disproportion between the number of votes received and the number of mandates won. This will obviously not fix the shortcomings that exist under the current electoral system.**

We believe that the unallocated mandates should be allocated proportionally to all political subjects passing the 5% threshold. One of the justifications for awarding all of the unallocated mandates to the winning party was to avoid a crisis, which may arise in the process of forming a coalition government. To address these risks, several members of the Commission suggested two alternative versions. The first version proposed reducing the threshold to 3% and to divide the unallocated mandates proportionally between all parties. The second version proposed establishing the maximum number of unallocated mandates which can be awarded to the winning party, which would be sufficient for forming a government. In this case, the reduction of the threshold to 3% was also proposed, so that parties would have a better chance of crossing the threshold, especially in a situation where electoral blocs can no longer be formed. This would allow for fairer representation within Parliament. **None of the alternative proposals on the electoral system were taken into consideration by the Commission.**

All of these reduces the benefits of transition to a proportional system and does not address the shortcomings of the current electoral system.

2. Presidential electoral system

According to Article 70 of the current Constitution, the President of Georgia is elected through universal, equal, and direct suffrage by secret ballot for a term of five years.

According to the version proposed by the State Constitutional Commission (Article 50), the direct election of the President is abolished and the President is elected indirectly, through an electoral college. The college is composed of 300 electors, including all representatives of the Parliament of Georgia and the supreme representative bodies of the autonomous republics of Abkhazia and Adjara. On the basis of the organic law issued by the Central Electoral Commission of Georgia, all other electors will be chosen from the local self-government representative bodies by respective political parties, according to the principle of geographic representation and the quotas defined through the local-self government elections held through the proportional system.

The following amendment will come into effect following the taking of the oath by the elected President in 2018. Therefore, these changes will enter into force in 2023.

Assessment, justification

In spite of the fact that indirect election of the President, especially in a parliamentary republic, is in line with the principles of constitutionality, it is important to take into consideration **the level of democracy in Georgia, insufficient traditions and experience of parliamentarianism, low level of development of party systems, and the voters' interests. Direct election of the President determines high legitimacy of the office, which is essential in the President's role as an effective arbiter and in terms of preserving a balancing between the government's branches. Moreover, it is important not to discuss the rule of electing the President separately from the parliamentary and local self-government elections. Since the local self-government electoral system requires reforms and the distribution of mandates under the parliamentary electoral system proposed by the ruling party remains unfair, the chances are high that, under the indirect election system, a candidate representing to a single party will be elected President. For this reason, we believe that the rule of direct election of the President should not be changed.**

3. Renewing the government entirely without the approval of Parliament

According to Article 81^1 of the current Constitution, after Parliament gives a vote of confidence in the Government and the Government's programme, if the initial composition of the Government is subsequently renewed by one third but not less than five members of the Government, the President of Georgia shall present a composition of the Government to Parliament for giving a vote of confidence within one week.

The constitutional project abolishes the aforementioned provision. Therefore, it is possible for the Parliament of Georgia to express a vote of confidence in the Government and afterwards, without the approval of the Parliament, the government may be fully renewed.

Assessment, justification

The aforementioned amendment should be assessed negatively, as it is important for parliamentary oversight mechanisms to be strengthened in a parliamentary system of government. To increase parliamentary oversight, it is important to strengthen the role of the Parliament in the process of appointment of the members of the government.

4. Lack of control of Parliament over state finances and budget

According to Article 93 of the current Constitution, amendments may be made to a draft State Budget only with the consent of the Government. The Government may demand that Parliament incur additional state expenditure only if it indicates the source for covering the expenditure. This provision is left unchanged in the constitutional project.

Assessment, justification

It is advisable for Parliament's role and influence to increase in relation to budgetary issues. Parliament should be able to make amendments to the State Budget and its individual articles without the consent of the government. The existing rule, which allows Parliament to issue either a full approval or disapproval over the draft state budget, is a significant shortcoming in parliamentary oversight as it doesn't allow for substantial influence over the draft state budget. The insufficient control over state finances and budget does not allow the Parliament to fully exercise its oversight role.

The following recommendation is also provided in the "Final opinion on the draft constitutional law on amendments and changes to the constitution of Georgia" adopted by the Venice Commission (CDL-AD(2010)028)[2]

5. Changes to the rules on appointments to the Supreme Court

The chairperson and the judges of the Supreme Court of Georgia shall be elected for a period of not less than 10 years by a majority of the total number of members of Parliament upon the submission of the President of Georgia.

[2] European Commission for Democracy Through Law (Venice Commission), Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia. Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), CDL-AD(2010)028, para. 98

According to Article 61 of draft constitutional law, Parliament will elect, by a simple majority of vote and based on the nomination from the High Council of Justice, the judges of the Supreme Court of Georgia for indefinite period until a judge reaches the statutory age limit.

Assessment, justification

Considering the continuing deficient practice of selection and appointment of the first and second instance judges by the High Council of Justice, the deficient rule for the composition of the Council itself and other problems characterizing this institution, we believe that at this stage, expanding the powers of the Council will award it full authority to appoint the entire judicial system. This will seriously jeopardize the independence of courts and the ability of the system to protect itself from the influence of powerful groups.

According to the opinion of the Venice Commission (CDL-AD(2005)005)[3], the nomination of candidates for the Supreme Court Judges only by the President creates a disbalanced system, therefore, in the interests of supporting independence of the judges, the involvement of the High Council of Justice in this process is important.

Bearing in mind the historical context, we believe that **it would be advisable for both the High Council of Justice and the President of Georgia, who under the current constitution has the function of balancing the branches of government, to be involved in the nomination of candidates**. Moreover, in parallel to the changes in the rule of election, it is important to timely carry out fundamental reforms in the High Council of Justice and, more broadly, in the judicial system.

6. Probation period for judges

Article 63 of the draft constitutional law envisages a three-year probation period in case of initial appointment of a judge.

According to Article 86 of the current Constitution, the judge shall be appointed for an indefinite period, although a probationary period might be imposed by law, which should not exceed three years.

Assessment, justification

According to the recommendation of the Venice Commission (CDL-AD(2010)028)[4] the probationary periods of "not more than three years" for judges are considered difficult to reconcile with the principle of the independence of the judiciary and Commission recommended removing this proposal from the draft amendments to the Constitution. In addition according to the Venice Commission "setting probationary

[3] Opinion on Draft Constitutional Amendments relating to the Reform of the Judiciary in Georgia adopted by the Venice Commission at its 62nd Plenary Session (Venice, 11-12 March 2005) paras. 5 and 16.

[4] EUROPEAN Commission for Democracy Through Law, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, adopted by the Venice Commission at its 84th Plenary Session, CDL-AD(2010)028, (Venice 15-16 October 2010), paras. 85-91.

periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way".

The existing constitutional provision has been a target of criticism from the local and international organisations on multiple occasions. Unfortunately, the new Constitutional provision is even worse than the current constitutional regulation as it imperatively defines an obligatory three-year probation period.

In the current context in Georgia, these risks are much more profound, as there is no established tradition of respecting the independence of the individual judges. It is therefore advisable for the state, with the engagement of the civil society organizations, to support the creation of a system that will minimize risks to the independence of the court, while also achieving the primary goal of building a fair and effective judiciary.

7. Election of the members of the High Council of Justice by Parliament

According to Article 73 of the current constitution, members of the High council of Justice are elected by Parliament according to the procedure established by the law. According to Article 64 of the draft constitutional law, members of the High Council of Justice, who are not elected by self-government body of the judges of general courts of Georgia or not appointed by the President, are elected by the majority of the total number of members of Parliament.

Assessment, justification

Non-judge members of the High Council must be neutral individuals and must not represent the interests of a specific political party. **To address this issue, we proposed the election of High Council members (or at least of one member) through a qualified majority. This recommendation was not taken into considerations.**

According to the Opinion no.10 (2007) of the Consultative Council of European Judges[5] and the opinion (CDL-AD(2013)007-e) of the Venice Commission[6], the non-judge members of the High Council of Justice should be elected by Parliament with a qualified majority, which requires significant support of the opposition.

8. Rule for the appointment of the judges of the Constitutional Court

According to Article 88 of the current constitution, the Constitutional Court of Georgia shall consist of nine judges – the members of the Constitutional Court. Three members of the Constitutional Court shall be appointed by the President of Georgia, three members shall be elected by not less than three-fifths of the total number of Parliament's members, three members shall be appointed by the Supreme Court.

[5] Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, Strasbourg, 23 November 2007, P.32

[6] EUROPEAN Commission for Democracy Through Law Commission) Opinion on the Draft Amendments to the Organic Law on Court of General Jurisdiction of Georgia, Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013), paras. 52-53.

According to Article 60 of the draft constitutional law, the subjects, which appoint judges to the constitutional court, remain the same.

Assessment, justification

We believe that the appointment of judges to the constitutional court on the judiciary's behalf should take place through the Conference of Georgian Judges, which should be guaranteed by the Constitution. While it is true that, under the current constitution, the President does not represent the executive branch, however the process of formation of the constitutional court implied the equal participation of all three branches of the government. Due to this, giving such responsibilities to the Supreme Court designates it as a representative body of the judiciary system, which is not in line with its functions. Moreover, the Conference of Georgian Judges is a representative body that is able to provide a better reflection of the will of the judiciary.

9. Selection of judges – the process of appointment

Neither the current constitution nor the proposed constitutional draft law provide for the selection of the judges of the first and second instance by the High Council of Justice through substantiated decisions.

Assessment, justification

Non-governmental organizations repeatedly highlighted at the sessions of the State Constitutional Commission the need for adopting amendments in this regard. **It is vital that the selection and appointment of judges take place through an open processes, so that the Council adopts substantiated decisions which the candidates would subsequently be able to appeal.**

10. Definition of Marriage in the Constitution

According to Article 30 of the draft constitutional law, marriage will be defined as a union between a man and a woman for the purpose of creating a family, based upon the spouses' equal rights and free will. According to Article 36 of the current constitution, the formulation is as follows: Marriage shall be based upon equality of rights and free will of spouses.

Assessment, justification

The following amendment should be assessed negatively due to its implications for the protection of human rights. Since same-sex marriage is currently not allowed by law and LGBT groups have not called for the equality of marriage, the proposed amendment can be considered only as a populist move, which serves the purpose of scoring political points by deliberately rendering the subject topical. The prohibition of same-sex marriage was a pre-election promise by the Georgian Dream party and this was the justification offered for including the provision in the draft constitutional law.

III. Amendments to the draft of the Constitution that merit positive assessment

1. Inclusion of a statement on European and Euro-Atlantic course in transitional provisions of the Constitution

A clause on European and Euro-Atlantic integration has been included in the transitional provisions set out in Chapter 11 (Article 78) in the following wording:

The constitutional authorities shall take all measures within their competence to ensure full integration of Georgia into the European Union and the North Atlantic Treaty Organization.

As soon as the Constitutional Commission started to elaborate on the matter, Transparency International Georgia submitted its proposals to the Commission. **One of the proposals envisaged inclusion of the clause on European and Euro-Atlantic course of Georgia in the preamble of the Constitution.** The same recommendation was given by Georgian Young Lawyers Association.

As for the ruling political force, it proposed to define commitment on ensuring full integration of Georgia into the European Union and the North Atlantic Treaty Organization as a kind of assignment to the constitutional authorities set out in transitional provisions of the Constitution.

Assessment, justification

The proposed amendment should be given a positive assessment in the light of promoting stability and security of the country. Definition of such issues in the Constitution is not common. However, taking into consideration the geopolitical location of our country and the existing external political situation, **it is important to include a provision on Georgia's foreign policy priorities in the Constitution, which apart from being a legal document, is primarily a political one.**

In certain states, decisions on foreign political course, membership of international organizations, terms of accession to various alliances are regulated by the Constitution. For example, Article 150 of the 1992 Constitution of Lithuania prohibits Lithuania from joining the structures established in the former Soviet area. To prevent Yugoslav nationalism and preserve national identity, Croatians defined in Article 142 of the Constitution that Croatia shall not become a member of the alliance or association that aims to renew the community of Southern Slavic States or Balkan States. Articles 148 and 149 of the Constitution of Romania pertain to the accession of Romania to the European Union and the North Atlantic Treaty Organization.

2. Including the notion of economic freedom in the Constitution and retaining the rule of determining new taxes through a referendum

In the first chapter of the Constitution (general provisions), the notion of economic freedom has been defined and the state's obligation to protect a free and open economy, free entrepreneurship and

competition has been outlined. Against the background of heated discussions, a record of the current Constitution has been retained, whereby introduction of a new type of nationwide tax (except for an excise tax) or increase of the upper limit of the current tax rate may be accomplished only through a referendum, except for the cases prescribed by the Organic Law.

Assessment, justification

In the first chapter of the draft Constitution, two separate articles are dedicated to the essence of legal and social state defined in the preamble of the Constitution and related obligations of the State. **Transparency International Georgia proposed to introduce a separate article on economic freedom as well and to define the state's commitment to protect a free and open economy, free entrepreneurship and competition.**

Introduction of a new tax or increase of the upper limit for existing rates through a referendum is an important record in terms of ensuring attractive investment climate and predictability of business environment. Although the presence of such a provision is not common practice, its inclusion in the Constitution is essential for ensuring the country's economic stability and development of the business environment. Removal of the provision from the Constitution was actively considered by the Constitutional Commission and was regarded as one of the alternative courses of actions. However, the business sector negatively reacted to the idea of removing the norm from the Constitution. Following consultations between the business sector and Parliament, members of the Constitutional Commission became convinced that removal of the provision would be detrimental to the country's investment climate and business environment. It is noteworthy that this norm itself provided the basis for the organic law, which also defines (based on Maastricht criteria) the limits of the budget deficit, state debt and state expenditures relative to Gross Domestic Product.

3. The role of the opposition in the establishment of interim investigation commissions

Under Article 42 of the draft Constitution, the procedure for the establishment of parliamentary investigative and other interim commissions is to be amended; in particular, in cases envisaged by the Constitution and the Rules of Procedure, as well as in case of request by **at least one fifths** of the Members of Parliament, an interim investigative or other type of Commission is established. Decision on the establishment of an interim Commission needs to be supported by **one-third** of the total number of MPs. Parliamentary factions must be represented in an interim commission by at least one member. Representation of the opposition factions in an interim commission should not be less than half of the total number of the commission members.

Paragraph 2, Article 56 of the current Constitution regulates establishment of an interim investigative Commission. An interim Commission is established at the request of one-fifth of MPs. However, the Constitution does not specify what number of votes is required to establish an investigative commission. According to the Parliamentary Rules of Procedure, Parliament adopts the decision to establish an interim investigative commission through a vote by a majority of its total number of members.

Assessment, justification

The amendment merits positive assessment. An interim investigative commission represents an important lever of parliamentary control, which should be actively applied by the parliamentary minority. Consequently, the opposition has a crucial role in the work of the investigative commission as well as in the process of its establishment. It is essential to embed relevant guarantees in the Constitution. The amendment to the rules for the establishment of an investigative commission was proposed by Transparency International – Georgia. The current legislation, which sets high quorum for decision-making and eliminates the possibility of establishing an investigative commission without the will of the majority, is associated with much problems in practical application. For instance, while there were 14 requests for the establishment of an investigative commission registered in the 8th Parliament, only one was actually established.

Expansion of the opposition's role in investigative and other types of interim commissions is brought to the spotlight in the opinion of the Venice Commission on the "draft constitutional law on amendments and changes to the Constitution of Georgia" (CDL-AD(2010)028): "nevertheless, it must be stressed that the requirement of a "resolution" cannot be interpreted as giving an arbitrary power to the majority in this process, which would undermine the right of the opposition. Otherwise, the change of the text would be counterproductive to the aim of improving the status of the opposition in Parliament. The rules of procedure of Parliament should not, therefore, add a hurdle to the setting up of parliamentary Commission, once the relevant decision has been duly taken by one-fifth of the MPs".[7]

4. Prime Minister's obligation to deliver annual speech in Parliament

Congruent to Article 55 of the draft Constitution, Prime Minister is accountable for the actions of the Government to Parliament. Once a year, he submits to the Government a report on the implementation of the Government Program, as well as a report on the implementation of separate parts of it at the request of Parliament.

Under the current Constitution (Paragraph 3, Article 79), the Prime Minister is to present a report to Parliament, upon request from the latter, regarding the implementation of the Government Programme. Neither the Constitution, nor any other legislative act envisages the obligation of the Prime Minister to deliver a speech in Parliament.

As an alternative proposal, the above-mentioned amendment was presented to the Constitutional Commission by its member NGOs and several expert. the Commission approved the proposal at its final session.

[7] EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) FINAL OPINION ON THE DRAFT CONSTITUTIONAL LAW ON AMENDMENTS AND CHANGES TO THE CONSTITUTION OF GEORGIA Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010), CDL-AD(2010)028, para. 25

Assessment, justification

In terms of strengthening Parliament's oversight function, it is essential for Parliament to have a lever, which would allow it to monitor the implementation of the entire Government Program as well as separate parts of it on a regular basis. Delivery of a speech by the head of the executive branch to Parliament would be a step forward in terms of increasing accountability of the Government as well as ensuring transparent exercise of parliamentary control. The amendment was proposed to the Constitutional Commission by NGOs, including Transparency International Georgia and certain experts.

5. Simplified procedure for declaring of no-confidence in the Government

Procedure of declaring a vote of no-confidence in the Government is regulated by Article 81 of the Constitution of Georgia. Two-fifths of the full list of MPs are entitled to present a motion of non-confidence to Parliament. Parliament must discuss it no less than 20 days and no more than 25 days after its submission. A procedure of no-confidence shall commence if the decision is supported by more than half of the members of Parliament. If Parliament does not adopt a decision on calling for a vote of no-confidence, the same MPs may not apply to Parliament over calling a vote for a period of six months after holding a vote. Not earlier than 20 days and not later than 25 days after calling for a vote of no-confidence, Parliament must vote for the nomination of the candidate for Prime Minister proposed by at least two-fifths of the full list of MPs to the President. If two candidates are nominated under this provision, both of them shall be put to the vote. A candidate for Prime Minister shall be presented to the President, if he/she has secured support from more than half of the full list of MPs. Failure to nominate a candidate for Prime Minister as prescribed by this provision shall mean termination of the procedure for giving a vote of no confidence.

The draft Constitution simplifies the procedure for declaring non-confidence. At least one-third of the full list of MPs is required to present a motion of non-confidence to Parliament. In parallel to calling for a vote of no-confidence, initiators will nominate a candidate for Prime Minister, whereas the latter will present new cabinet of ministers to Parliament. If between 7 and 14 days of the decision to vote, majority of MPs give confidence in the new Government, a vote of no-confidence in the Government will be deemed successful. Within three days from the declaration of confidence in the new Government, the President of Georgia will appoint the Prime Minister. Within three days after his/her appointment, the Prime Minister will appoint the ministers. If the President of Georgia fails to appoint the Prime Minister within the defined timeframe, he/she will be deemed as appointed. Authority of the Government is terminated immediately upon appointment of a new Prime Minister. Unless call for a vote of no confidence is followed by declaration of no-confidence in the Government, the same MPs will not be entitled to call for a vote of no-confidence for a period of six months.

Assessment, justification

Simplification of procedures for declaration of non-confidence in the Government merits approval, as it provides for the strengthening of parliamentary control.

6. Enhanced guarantees for independence of the Prosecutor's Office

Article 65 of the draft Constitution states that the Prosecutor's Office of Georgia is independent in its activities and is guided solely by the rule of law. The Prosecutor's Office of Georgia is headed by the Chief Prosecutor, who is elected for a term of 6 years by Parliament through a vote by a majority of the total number of its members in accordance with the procedure prescribed by the Organic Law. The Prosecutor's Office is accountable to Parliament. Congruent to the effective Constitution, bodies of the Prosecutor's Office operate under the system of the Ministry of Justice and the Minister of Justice provides for general management of their operations. Powers and activities of the Prosecutor's Office are to be determined by law.

Assessment, justification

For purposes of independent justice and fair trial proceedings, it is important for the prosecution authorities to enjoy appropriate guarantees of independence. It is noteworthy that legislative amendments were passed in 2015, according to which the appointment of the Chief Prosecutor became parliamentary prerogative. However, the implementation of the reform was impeded by the provision in the Constitution, stating that the prosecution authorities operate under the system of the Ministry of Justice and the Minister of Justice is in charge of their general management. Recognition of independence of the Prosecutor's Office in the Constitution will also facilitate subsequent reforms at the level of organic law.

7. Substantive equality of men and women

Article 11 of the draft Constitution establishes that ,apart from prohibiting discrimination, the state provides for equal rights and opportunities for men and women. The state takes special measures to ensure substantive equality of men and women and eliminate all types of inequality. It establishes special conditions to protect the rights and interests of persons with disabilities.

Article 14 of the current Constitution contains a general record: everyone is born free and is equal before the law regardless of race, color, language, sex, religion, political or other opinions, national, ethnic and social belonging, origin, property status and title, place of residence.

Assessment, justification

In terms of protection of human rights, an equality clause is of great importance: The state undertakes to take special measures to ensure equality of men and women and eliminate disparities. This obligation of the State, as well as its commitment to provide special conditions for disabled people, are definitely welcome.

8. Independence of the Public Broadcaster

Congruent to Article 17, paragraph 9 of the Constitution of Georgia, the law provides for the independence of the Public Broadcaster from state agencies and freedom from political and substantial commercial influence. The currently effective Constitution does not contain an entry on independence of the Public Broadcaster.

Assessment, justification

The record represents an important step forward, promoting freedom of information and increasing the guarantees for institutional independence of the Public Broadcaster.

9. Right of access to Internet guaranteed by the Constitution

According to Article 17, paragraph 4 of the draft Constitution, everyone has the right to freely use and have access to the Internet. The current Constitution does not include such a provision.

Assessment, justification

The presented change merits positive assessment. Accessibility of Internet is essential for ensuring access to and freedom of information, which is a major problem in the modern world.

10. The procedure for lifting judges' immunity

According to Article 87 of the current Constitution, if a judge is caught in *flagrante delicto* (caught in the act of committing an offence), the Chairperson of the Supreme Court is to be immediately notified. Unless the Chairperson of the Supreme Court gives his/her consent to the arrest or detention, the detained or arrested judge shall be immediately released.

Under the draft Constitution (article 63), the rule is amended. Instead of the Supreme Court chairperson, the Supreme Council of Justice will be in charge of giving its consent to the judge's arrest or detention.

Assessment, evaluation

The given change should be assessed positively. Resting of the right to remove immunity from judges of district (City) and appeal courts in the sole discretion of the Chairperson of the Supreme Court results in excessive hierarchy between courts of various instances. It also unlawfully expands powers of the Supreme Court Chairperson. **Consequently, with respect to lifting immunity of judges of the district (city) and appeal courts, it is advisable to grant decision-making authority to a representative and independent institution, such as the Supreme Council of Justice**.

11. The principle of the immovability of judges

According to the draft amendments to the Constitution, the principle of the immovability of judges will be added to the Constitution. In particular, according to Article 62 (5) of the draft, immovability of a judge is guaranteed by the organic law. Reorganization or liquidation of the court cannot serve as a basis for dismissal of a judge, who has been appointed for a lifetime.

Assessment, evaluation

For effective judiciary system, it is important to introduce guarantees of constitutional independence for each judge. Taking into consideration past experiences, when replacement of judges used to be applied to restrict their independence, the given change merits positive assessment.

12. Defining fundamental direction for the Supreme Council of Justice

Article 64 of the draft Constitution defines the fundamental direction of the Council of Justice - ensuring the independence and effectiveness of courts. Congruent to Article 86^1 of the current Constitution, the function of the Supreme Council of Justice is defined as follows: - the Supreme Council of Justice of Georgia shall be established to appoint and dismiss judges from/to office and for other purposes.

Assessment, justification

For ensuring independence of the judiciary system, it is crucial to have key function of the Supreme Council of Justice defined by the Constitution.