To the Chairperson of the State Constitutional Commission, Irakli Kobakhidze,
And to the respective members of the Commission,
The proposals and opinions on the amendments to the Constitution,
From Eka Gigauri, Transparency International Georgia's Executive Director

Amendment to the Preamble of the Constitution

The European and Euro-Atlantic foreign policy course of Georgia is written in the Constitution

Explanation:
To support the security and stable development of the country, it is expedient for the aspiration towards a European and Euro-Atlantic future to be outlined in the Constitution. In some countries, the foreign policy course, membership of international organizations, terms and decisions of entering into alliances are regulated by the Constitution. For example, under the Article 150 of the 1992 Constitution of Lithuania, membership in Post-Soviet Unions is forbidden. An example of a Post-Soviet Union would be the Commonwealth of Independent States.

In an effort to avoid Yugoslavian nationalism, Article 142 of the Croatian Constitution prohibits the initiation of any procedure for the association of the Republic of Croatia into alliances with other states if such association leads, or might lead, to a renewal of a South Slav state community or to any Balkan state form of any kind.

Constitutional Amendments for the strengthening of parliamentary oversight

1. Strengthening parliamentary oversight for state finances and budget control

A change should be made to **Article 93 of the Constitution**, which states that only the Government of Georgia has the right to present a draft State Budget to Parliament and that amendments may be made to a draft State Budget only by 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.

It is expedient to increase the role and importance of the Parliament in issues related to the budget. The Parliament should be able to make changes to the budget without consent of the Government.
The following recommendation is also indicated in the Final opinion of the Venice Commission on the draft constitutional law on amendments and changes to the constitution of Georgia (Venice, 15-16 October, 2010).

2. Strengthening parliamentary oversight through the bolstering of the role of the opposition in the formation of investigative or other temporary committees

A change should be made to **Article 56 of the Constitution**, which defines the rules of the formation of investigative and other temporary committees. The role of the opposition should be increased in the decision-making process related to the formation of the committees, which will in turn strengthen parliamentary oversight. **The decision should not be made solely on the will of the majority.**

According to Article 56 of the Constitution, investigative or other temporary commissions are established in Parliament in the cases envisaged by the Constitution and Parliamentary Rules, as well as if requested by at least one fifth of MPs. Parliament decides to establish an interim commission as determined by Parliamentary Rules.

Explanation:

The role of the opposition in the interim investigative commission is defined by Article 56 (2) of the Constitution, which states that the parliamentary majority in an interim commission shall not represent more than half of the total number of commission members.

It is also important to strengthen the role of the opposition in the decision-making process related to the formation of investigative and other interim commissions. According to the Parliamentary Rules of Procedure, the decision on creation of the temporary investigative commission is made by the majority of votes of the acting MPs. Therefore, a temporary investigative commission cannot be

created without the will of the majority. During the 8th convocation of the Parliament, 14 requests were made for the creation of a temporary investigative commission and only one was approved.

The increase of the role of the opposition in the activities of the investigative and other temporary commissions is indicated in the Final opinion of the Venice Commission on the draft constitutional law on amendments and changes to the constitution of Georgia (Venice, 15-16 October, 2010): "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 counter-productive 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."

3. Constitutional regulation of deputy questions

A change should be made to **Article 59 of the Constitution**, which relates to the right of an MP to pose questions to and get answers from the bodies accountable to Parliament.

In addition to parliamentary factions, a group of six MPs (instead of 10) should have the right to pose questions. Moreover, it should be clearly defined what happens if the Prime Minister does not dismiss a member of the government should the majority of MPs raise the issue of individual ministerial responsibility. If the Prime Minister does not dismiss the Minister, then he should appear before the Parliament during a two-week period and present the reasoning behind the decision. (The following measure was in place before the amendments to the Constitution of Georgia in 15 October, 2010).

Explanation:

The right of an MP to pose a question and the obligation of the government to respond is a crucial instrument of parliamentary oversight, which is currently ineffectively used in Georgia. For example, the government hour was not held during the 8th convocation of the Parliament. It is important to increase the constitutional guarantees of accountability of members of the governments. The right to pose questions should be given to a group of six MPs, so that independent deputies are not put in an unfair position with deputies who are faction members.

It is also important to increase the accountability of the Prime Minister. If he does not agree with the opinions of the majority of the Parliament, then a motivated decision should be presented to the Parliament.

Constitutional amendments on security:

It is expedient for the legislative basis for security strategy and involved organs (representatives of the executive government, state legislature and President) to be defined in the Constitution.

Amendments to increase constitutional guarantees of the independence of the Prosecutor's Office (Chapter Four[1]. Government of Georgia)

- The following wording should be removed: "Bodies of the Prosecutor's Office are under the system of the Ministry for Justice and the Minister for Justice shall provide general management of their operations." The Prosecutor's Office should be formed as an independent organ, the chairperson of which will be selected by the Parliament.
- *(Amendment to Article 81⁴ of the Georgian Constitution)*

Amendments to increase the constitutional guarantees of the independence of the court (Chapter Five. Judiciary)

Article 84

2. A judge may be removed from consideration of a case or dismissed from office early or moved to another position only in the cases defined by organic law.

$2^{1.}$ The dismissal of a judge from position shall be allowed only though disciplinary proceedings as defined by organic law. The dismissal of a judge before the term should be substantiated and based on a thorough and objective research of the case.[1]

2^{2}. A legal error which is based on the internal conviction of a judge, is not a disciplinary violation and a judge should not be made liable for it. The exception is case when is it proven that the legal error is based on the subjectivity of the judge, disrespect towards human rights and equality, or any other motive, which is not connected to the integrity of the judge.

2^{3}. The transfer of a judge to another position in court shall be allowed only with the consent of the judge or the dissolution of the respective court. The exception shall be when this is required in

[1] CDL-AD (2005)003 par.105: The Article provides that the selection, appointment and dismissal of judges is to be determined by law. Again, guarantees for nonremovability ought to be provided for in the Constitution. At the least, the Constitutional provisions should determine the minimum conditions under which a judge can be dismissed or suspended. The law also provides for disciplinary liability for judges, suspension from case hearing, removal from the post before the term or transfer to another office according to law. Again, it appears undesirable that ordinary law can provide for such matters without any Constitutional guidance.

interests of the judiciary, the temporary transfer without the consent of the judge shall be allowed only once every 10 years, for a period of one year.

6. The state funding of the court shall fully support the integrity and independent work of the judiciary. A cut in budget of the judiciary compared to the last year shall be permissible only with the consent of the High Council of Justice, in case of the Supreme Court – with the consent of the Plenum of the Supreme Court, and in the case of Constitutional Court – with the consent of the Plenum of the Constitutional Court.

Explanation:
The practice of temporary transfer of judges has represented an effective mechanism for pressure for years, which naturally undermined the independence of the court and challenged the right of a fair trial in the country. Given the past experience, it is important for the mains principles of the institution of temporary transfers to be regulated through the Constitution, in order to avoid malpractice on the level of the legislation.

Another important issue today is the issue of disciplinary proceedings against judges during the judiciary process. This issue has frequently been criticized by international organizations. In 2007, the Venice Commission stated the Georgian legislation is incompatible with European and international standards, since it enables interference into the work of judges to interpret the law through internal conviction. In spite of the amendments, problems today still persist in practice and in the legislation. Therefore, we believe that this issue should be reflected in the Constitution to support the independence of the court.

One of the crucial components of judiciary independence is financial autonomy. It is important for the Constitution to state that other branches of the government cannot cut the budget of the judiciary without the consent of the judiciary itself.

Article 86

2. Judges shall be appointed for life unless they reach the age determined by law. The selection, appointment, or dismissal procedure for judges shall be laid down in the Constitution and organic law.

2[1]. The selection of judges shall happen through an open contest as defined by the organic law. The decision to appoint a judge based on the open contest shall be substantiated and based on an objective and independent assessment process. [2]

Explanation: According to the recommendation by the Venice Commission, the setting of probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way. The Commission considers that the probationary period should be removed from the legislation and the Constitution.

The Coalition for an Independent and Transparent Judiciary has numerously stated that the appointment of judges for probationary periods was intended to serve the important purpose of ensuring adequate qualifications and ethical principles of the judiciary, especially in view of the life-long character of the judicial appointment. Yet the institute of probationary periods poses significant risks for judicial independence, and it would be unjustified to ignore the risks. In the existing context of Georgia, the risks are even more critical as the country does not have a long and solid tradition of respecting judicial independence. It would be therefore better for the State, with the assistance and involvement of the civil society, to create a system posing minimum risks for judicial independence yet serving the aim of a fair and effective judiciary.

[2] **CDL-AD(2006)040, par 11** `What would be required is to clearly provide in the Constitution the composition and powers of the Council of Justice and to enshrine in its text rules on the appointment and dismissal of judges safeguarding their independence"; **CDL-AD(2005)003, par.102,105**

Article 86[1]

1. The High Council of Justice of Georgia is created to ensure the independence of courts (judges) and the quality and effectiveness of justice, to appoint and dismiss judges, to organize judicial qualification examinations, to formulate proposals towards implementing a judicial reform, and to accomplish other objectives determined by law.
2. The High Council of Justice of Georgia consists of 15 members. Eight members of the Council are elected by a self-governing body of Georgian common court judges according to procedures prescribed by the Organic Law, five members are elected by the Parliament of Georgia and one member is appointed by the President of Georgia. From the five members elected by the Parliament, at least one should be elected with 2/3 majority vote. The chairperson of the Supreme Court who is a member of the High Council of Justice of Georgia presides over the High Council of Justice of Georgia. The appointment of members to the High Council of Justice by the Parliament and President is held in an open contest as defined by the Organic law.
3. The powers and the rules of formation of the High Council of Justice of Georgia is defined by Organic law.

Article 87

1. A judge shall enjoy personal immunity. No one has the right to arrest, detain, or bring criminal proceedings against a judge, search his/her apartment, car, workplace, or conduct a personal search without the consent of the Chairperson of the Supreme Court of Georgia, except when he/she is caught at the scene of crime, in which case the Chairperson of the Supreme Court of Georgia shall immediately be notified. Unless the Chairperson of the Supreme Court of Georgia gives his/her consent, the arrested or detained judge shall immediately be released.

3. It is forbidden to conduct operative-investigative activities against a judge without the consent of the Chairperson of the Supreme Court of Georgia

Explanation:

Giving the Chairperson of the Supreme Court the power to remove the immunity from criminal cases of judges of regional (city) and courts of appeal should be avoided, because it creates too much hierarchy between different instances of the courts. Due to this, it is expedient that the decision to remove this immunity be taken by a representative and institutionally independent institution, such as the High Council of Justice.

To avoid interference of other branches of the government into the work of the judiciary, it is expedient for operative-investigative activities be prohibited against judges without the consent of the Chairperson of the Supreme Court. Due to the specifics and nature of operative-investigative activities, it is expedient for the consent to be personally issued by the Chairperson of the Supreme Court rather than by the High Council of Justice, a 15-member collegial body.

Article 88

2. The Constitutional Court of Georgia consists of 9 judges who are members of the Constitutional Court. Three members of the Court shall be appointed by the President of Georgia, three members shall be elected by more than half of the full list of MPs, and three members shall be appointed by the Conference of Judges. Members of the Constitutional Court shall be appointed for 10 years. The Constitutional Court shall elect its chairperson among its composition for a period of five years.

5. A member of the Constitutional Court shall enjoy personal immunity. No one has the right to arrest, detain, or bring criminal proceeding against a member of the Constitutional Court, search his/her apartment, car, workplace, or conduct a personal search without the consent of the Constitutional Court, except when he/she is caught at the scene of crime, in which case the Plenum of the Constitutional Court of Georgia shall immediately be notified. Unless the Constitutional Court gives its consent, the arrested or detained member of the Constitutional Court shall immediately be released

Explanation:

While it is true that under the current Constitution the President does not represent the executive government, the idea of the rule of formation of the Constitutional Court initially represented equal participation of all three branches of the government. Due to this, the conferring of such rights to the Supreme Court represents it as a representative organ of the general courts, which does not correspond to its functions. Because of this, the appointment of judges to the Constitutional Court from the judiciary should be made by the Conference of Judges, which is a representative body for the judges.

It is expedient to specify that the Plenum of the Constitutional Court has the right to remove personal immunity from a judge of the Constitutional Court.

Article 89

1. Based on an action brought or a nomination made by the President of Georgia, the Government of Georgia, not less than one fifth of MPs, the court, supreme representative bodies of the Autonomous Republics of Abkhazia and Ajara, self-government representative bodies - Sakrebulos, the High Council of Justice, the Public Defender or a citizen, under the procedure determined by an organic law, the Constitutional Court of Georgia shall:

f) consider the constitutionality of normative acts and final decisions of the general courts in terms of fundamental human rights and freedoms enshrined in Chapter Two of the Constitution on the basis of an individual's lawsuit;

2. A judgement of the Constitutional Court shall be final. A normative act or part of it recognised as unconstitutional shall cease to have legal effect as soon as the respective judgement of the Constitutional Court is published.

Explanation:

The Constitution of Georgia does not directly define the right of the Constitutional Court to delay the entry into force of decisions, while Article 25(3) of the Organic law of Georgia on the Constitutional Court of Georgia states that an act of the Constitutional Court must be enforced immediately after promulgation, unless a different time limit is set in the act. The delay of the decisions by the Constitutional Court, in certain cases, is an important mechanism to protect the constitutional rights of specific individuals. Therefore, it is expedient to legitimatize the mechanism in the Constitution.

Article 90

2. The chairperson and judges of the Supreme Court of Georgia are elected for a period of not less than 10 years by Parliament, by a majority of the full list of MPs, on the recommendation of the President of Georgia. Electing a person who has already held the position of a judge of the Supreme Court is not permitted.

3. The powers, structure, rules of operation and procedure for early termination of the office of the Supreme Court judges shall be defined by organic law

4. The chairperson and members of the Supreme Court of Georgia shall enjoy personal immunity. No one has the right to arrest, detain, or bring criminal proceeding against the chairperson and members of the Supreme Court, search his/her apartment, car, workplace, or conduct a personal search without the consent of Parliament, except when he/she is caught at the scene of crime, in which case the Parliament of Georgia shall immediately be notified. Unless the Parliament of Georgia gives its consent, the arrested or detained person shall immediately be released.

5. The Supreme Court of Georgia consists of 16 judges. If required, the Plenum of the Supreme Court makes a decision to expand the number of judges in the Supreme Court. This decision is sent to the President of Georgia, so that he may present the candidates of the expanded Supreme Court to the Georgian Parliament.

Prescribing constitutional guarantees to economic rights and liberty

An article on economic rights and liberty guarantees should be added to "Chapter Two: Citizenship of Georgia; Fundamental Human Rights and Freedoms" of the Georgian Constitution:

The state guarantees economic rights and liberty, which should be based on the development of the society, well-being of the people and the long-term and stable economic growth. The guarantees for economic rights and liberty are defined by the organic law.

Amendments to the Electoral System

Georgia's Constitutional Law

On the Amendments to the Georgian Constitution

Article 1. The following amendments shall be made to the Georgian Constitution (Georgian Parliament Departments, 1995, №№31-33, Article. 668)

1. Article 49 (1) shall be formulated with the following amendment:
Before the conditions under Article 4 of the Constitution of Georgia have been created, the Parliament of Georgia shall be elected through universal, equal, and direct suffrage by secret ballot for a term of four years, with 75 members elected through a unified proportional voting system and 75 members elected through a regional proportional system.

2. Article 50(1)(2) shall be formulated with the following amendment:

„1. A political union of citizens, registered as determined by law, shall have the right to stand for elections if the initiative is supported by the signatures of voters under an organic law or if it has a representative in Parliament at the time when elections are scheduled. The number of signatures of voters determined by organic law shall not exceed 1% of the number of voters. The procedure and conditions for participating in an election under the regional proportional system shall be determined by electoral legislation.

2. MP seats, as a result of an election held under the unified proportional system, shall be distributed only among political associations and electoral blocks that have obtained at least 5% of votes from those participating in the elections. The electoral subjects who have obtained fewer seats than needed for the creation of a parliamentary faction shall be given seats, after the distribution of

MP seats, to fill seats based on the minimum amount necessary to set up a faction under the legislation of Georgia. The seats obtained through the regional proportional system shall belong to the party/bloc that has obtained at least 5% or more in the unified proportional electoral system. The procedure for distribution of MP seats shall be determined by electoral legislation.

Article 2. This law shall enter into force upon its publication

President of Georgia Giorgi Margvelashvili

Explanatory Note

Draft Constitutional Law on the Amendments to the Constitution of Georgia

A) General information on the draft law:
a.a) Reason for adopting the draft law:

According to the current legislation, the Georgian Parliament consists of 77 MPs elected by a proportional voting system and 73 members elected by a majoritarian voting system. The electoral system includes the holding of proportional and majoritarian elections. Majoritarian MPs are elected based on the majoritarian electoral districts. The drawbacks of the Majoritarian system have been frequently criticized. The existence of the Majoritarian system does not support the formation of a fair electoral environment and does not reflect the political environment on the actual results of the elections.

a.b) The goal of the draft law

The Georgian Parliament is the country's highest representative body, which is directly elected every four years. The goal of the draft law is to change the current electoral system and to adopt a unified proportional and regional proportional system instead of the proportional and majoritarian system. 75 MPs will be elected through the unified proportional system, while 75 will be elected through the regional proportional system. Such a change will mean that the formation of the representative body will depend on the actual distribution of political power in the country. Moreover, the parliament will be more legitimized as a representative body. Public trust towards the electoral system will also increase.

a.c) The substance of the draft law;

The substance of the draft law is to adopt a new electoral system, which will replace the Majoritarian system with a regional proportional system. This requires amendments to Article 49 (1) and Article 50 (1)(2) of the Georgian Constitution. With the presented amendments, the Georgian Parliament will consist of 75 MPs elected through the unified proportional system and 75 MPs elected through the regional proportional system.

b) Financial Justification of the Draft Law

b.a) The source of necessary expenditures related to adoption of the draft law:

Adoption of the draft law will not cause assignment of additional expenditures from the state budget.

b.b) The impact of the draft law on the revenues' section of the budget:

The adoption of the draft law does not have an effect on the revenues' section of the budget

b.c) The impact of the draft law on the expenditures' section of the budget:

The adoption of the draft law will not have an effect on the expenditures' section of the budget.

b.d) New Financial Obligations for the State:

The adoption of the draft law will not create new financial obligations for the state.

b.e) Expected financial results for those whom the law applies to:

The adoption of the draft law does not have a negative impact for those whom it applies to

b.f) The amount and the principle of determining the amount of taxes, dues or other type of taxes as determined by the draft law:

The draft law is not related to adopting a new tax, due or other type of taxes, neither – amending the existing amounts thereof.

c) The draft law's relation with international law standards:

c.a) The draft law's relation with the EU's directives:

The draft law does not contradict the EU's directives.

c.b) The draft law's relation with Georgia's commitments with regards to its membership in international organizations:

The draft law does not create Georgia's commitments with regards to its membership in international organizations.

c.c) The draft law's relation with Georgia's bilateral and multilateral treaties: The draft law does not contradict Georgia's bilateral and multilateral treaties.

d) Conducted consultations in preparing the draft law:

d.a) Governmental, non-governmental or/and international organization/institution, experts, which participated in preparing the draft law, if any:

None