



## A Brief Assessment of the Draft Constitutional Amendments by Commission member NGOs

The State Constitutional Commission, which was established on December 15, 2016, will hold a summing-up meeting at the end of the week. The NGOs in the Commission would like to briefly review the constitutional amendments proposed so far.

First of all, we would like to note that **the Constitution as the Supreme Law of the State should be based on a broader public and political consensus that excludes disregard of expressly negative positions of the members of the Commission and other members of the public.**

As a result of the discussions, the government has accepted some important positive

changes:

- **The provision on integration in European and Euro-Atlantic structures has been added**- the constitutional bodies within their competence undertake to take all necessary actions to ensure full integration of Georgia in the European Union and the North Atlantic Treaty Organization.
- **A number of human rights safeguards have been strengthened and improved** - particularly noticeable is the provision on the substantive equality under which the State undertakes to provide special measures to ensure essential equality for men and women and to eliminate inequalities that exists today; also, the right to access to the internet is expressly stated in the Constitution.
- **Guarantees of constitutional independence for a number of institutions have increased/emerged, such as:**

**Public Broadcaster** - The law shall guarantee the independence of the Public Broadcaster from state agencies and its freedom from political and substantial commercial influences.

**Prosecutor's Office** - The Prosecutor's Office is defined as a body independent from the executive authority.

**Judiciary** - It has been defined that a judge shall be elected based on substantiated decisions of the High Council of Justice through open ballot, based on judge's integrity and competence.

The fundamental direction of the work of the High Council of Justice has been defined - ensuring the independence and effectiveness of the courts, and that its rule of conduct shall be determined by an organic law.

- **The parliamentary control mechanism has relatively enhanced, in particular:**
- **Commission** - In contrast to the current legislation, lower quorum required for the establishment of an investigative commission has been established, in particular the decision shall be made with the support of one third of the total number of the Parliament members.

**Despite a number of positive changes, the draft law for revising the Constitution envisages many negative initiatives. Among them are:**

- ***Unfair rules for selection of the Parliament, in particular:***

***Rule of Distribution of Mandates*** - The draft law for revising the constitution proposes granting all undistributed mandates to only one political party which takes the first place. Under the conditions where the number of unallocated mandates accounts for 10% or more, awarding these mandates to only one party will significantly increase the disproportion between the votes and mandates obtained by the party. This approach greatly weakens the purpose of abolishing the majoritarian electoral system and will compromise the principle of fair redistribution of mandates. We believe that along with the transition to the proportional system, the undistributed mandates should be allocated among the parties in proportion to their votes.

***Abolition of blocs*** - The proposed changes provide for the abolition of election blocs for further development and strengthening of parties. We believe that the change is a radical measure and is not justified by the legitimate interest.

These change will be especially unfavourable if the 5% barrier is maintained.

- ***Cancellation of the rule of direct presidential election*** - the proposed version abolishes direct election of the President who will be elected indirectly by the Parliament. Considering the quality of democracy in Georgia and the interests of voters, we believe that the president should be elected directly, especially in the conditions when the cancellation of direct presidential elections is not necessitated by the parliamentary model.

- ***A number of steps back in the area of human rights, especially the provision on the right to a marriage***

- according to the version proposed, a marriage is a union of a man and a woman with the view to starting a family. Under the condition where the same sex marriage is already not allowed by the law in GEorgia, and LGBT groups have never made any requests for the marriage equality, such initiative can only be considered as populist that aims to gain political points by artificially intensifying this topic.

- **Increased risks for judicial independence, in particular:**

**Amendment of the rule of the Supreme Court composition-** According to the proposed version, the Parliament elects Supreme Court judges by simple majority for life based on the proposal of the High Council of Justice. Bearing in mind the perennial corrupt practice of electing 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 compose the judiciary (all three instances). This will seriously jeopardize the independence of the court and the ability of the system to be free from influence of powerful groups.

**Probation period of Judges -** According to the draft law for revising the Constitution, the probation period of judges is maintained, which according to the evaluations of local as well as international experts, is a significant risk for judicial independence.

With all the mentioned issues in mind, we consider that a number of issues envisaged by the draft law for the amendment of the Constitution requires elaboration and future refinement in order to ensure the adoption of the Constitution which will be in line with international standards and principles of democracy.

With respect to all problematic issues raised above, we will recommend alternative proposals at the Commission meeting tomorrow.

We hope that above-mentioned problematic provisions will be altered during the

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concluding session of the Commission and subsequent parliamentary discussions and all the positive changes will be preserved.