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# JUDICIAL POWER AND BASIC RIGHTS IN THE NEW EDITION OF THE GEORGIAN CONSTITUTION

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Intensive work is being carried out to elaborate a new draft of the acting Georgian Constitution — the supreme law of the state. The State Constitutional Commission was established and its composition was defined. The charter of the Constitution was approved by a Presidential Decree issued on 23 June, 2009. The State Constitutional Commission consists of various working groups which focus on a range of issues including: legislative power, the institution of the president, executive power, judicial power and basic rights, territorial issues, local self-government, and the revision of the Constitution, among others.

According to the decree, the fundamental task of the Constitutional Commission is to elaborate constitutional draft law which ensures the modern, sustainable and stable development of the state, and supports the relationship between civil society and the state. After the revision of the constitution, the state's power was placed under certain limitations, and an effective, balanced system of state bodies and a new vision of other constitutional regulations will be created.

The State Constitutional Commission is a diverse body whose representatives are connected with a wide variety of interests, including Unions defined by order of the president of Georgia; non-governmental organizations; the high councils of the Autonomous Republics of Abkhazia and Adjara; the administration of the temporary administrative-territorial unit of the former South Ossetia Autonomous region; and members of the state bodies defined in the current Constitution of Georgia and presented by high officials, as well as academic personnel and other specialists as defined by the order of the President of Georgia.

The thoughtfully-selected composition of the Constitutional Commission gives us hope that, at the end of the process, a wise, quality product will be developed.

Unfortunately, representatives of the non-parliamentary opposition — which includes some important specialists and political leaders — have chosen not to take part in the activities of the State Constitutional Commission. Instead, they have formed a parallel committee — the Public Constitutional Commission — and are acting separately. Obviously, the best option would be to work together on the establishment of constitutional amendments. However, working separately should not be seen as a disaster: the members of the two commissions are not "enemies", but rather they are mutually supportive and the fact that they are thinking and working on answers to these similar problems is encouraging. The proposed draft of the Constitutional amendments was elaborated on the bases of the work of both these groups. Let us hope that both sides take on the responsibility for finding ways to integrate their respective ideas

Because the constitution is the basic law and the supreme law, it requires appropriate respect. The Georgian Constitution is a product of complex and thorough collective work. Indeed, this is how the constitutions of most successful, democratic countries were developed. With the elaboration and adoption of the draft of an initial constitution, it has been proven that if allowances are not made for so-called "big compromises", these attempts to create a comprehensive, basic state legislation will be destined for failure. This should be taken into account in Georgia's case as well, which means that the general public and the political forces of the state should be ready to compromise.

It will be impossible for the State Constitutional Commission to complete the whole project in the 5-6 month period that has been allocated for this work. Therefore, the commission's mandate should basically be regarded as successful if the government branches are reasonably balanced and the proposed

model is relevant for the Georgian state. Such an outcome would solve the most sensitive internal problem facing the development of the contemporary state of Georgia.

The guidelines governing the management of the modern Georgian state should be developed on time, otherwise the state could find itself mired in a disastrous deadlock. The state cannot be properly governed if the Constitution is tailor-made to suit the needs of specific political parties or individuals, or any kind of special interests, instead of society as a whole.

From the point of view of stable development, Georgian statehood is not in a very attractive position. The use of violence to overthrow the legally installed authorities in 1991-1992 has come to serve as the legitimizing force behind the destructive tendencies that have come to characterize modern Georgian statehood. For almost 20 years, the process of changing the state authorities legitimately and in legitimate terms — as required by normal public and state life — has been highly problematic. The definition of a clear constitutional regulation is crucial, so that any armed activities carried out in the so-called "name of the people" are considered to be a revolt instead of some sort of "rescue reevaluation" aimed at changing the authorities.

Constitutional reform is a multifaceted process and it is impossible to discuss all the pursuant issues together. Therefore, the presented article focuses mainly on the activities of the "Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission," which has been primarily considering Chapters Two and Five of the Constitution of Georgia. These chapters of the Constitution of Georgia accordingly cover basic human rights and freedoms and issues concerning judicial power. At the same time, this particular working group should also focus on other chapters dealing with the norms, principles and regulations which address and are related to justice and/or basic human rights. The basic directions of this topic are covered in this article only in general and on the example of separate probable constitutional amendments.

The goal and the defining principle of the working group is to ensure the independence and impartiality of the entire justice system: the courts and judges on the one hand, and on the other hand, the development of solid and effective constitutional guarantees for the protection of basic human rights and freedoms.

Legal mechanisms relevant to the Georgian reality, that will simultaneously limit and place responsibility on the state authorities and ensure the practical realization of human rights need to be developed.

The working group takes into account the actual working experience of the norms defined in the relevant chapters of the constitution. The results of their usage in practice are reviewed and the negative aspects identified. Legal gaps, deformations and deviations are in this way revealed, the reasons for these problems are identified and appropriate constitutional-legal innovations are drawn up. To eradicate any gaps, new norms will be elaborated in detail and the existing problematic norms — those that need to be partially or completely rejected — will be formulated as needed with relevant editing, or recommendations will be made that they be omitted from the text altogether.

The Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission started its activities on 8 July, 2009. The topics identified in this article were discussed at working group sessions. Some topics were also reviewed at the larger session of the editorial group of the Georgian State Constitutional Commission held in Batumi on 5-7 August, 2009.

This article presents the basic results of these short-term (three week) activities. These are the opinions about the suggested reforms to the acting Constitution of Georgia relating to human rights and judiciary powers. The basic directions and anticipated specific constitutional amendments are planned first with regard to the judiciary authorities, and then to the field of basic human rights. The problems raised in the process of revising the constitutional bases of the judiciary powers are major topics of discussion. The discussion concerning these revisions is to consider both major judicial outlets: primarily it will address the Common Courts and partially it will address the Constitutional Court.

It is thought that, unlike the presidential, legislative and executive branches of the state, no substantial changes are required in the current constitution with relation to the judicial branch and basic rights. However, as will be proven through the examples presented in this article, the reality is different and this sphere of Georgian statehood is actually responsible for one of the basic arguments that the current constitution be amended in the first place.

The judicial branch, and how it is defined in the constitution, forms the very basis of state power.

Therefore, to admit that the constitution needs to be reformed but at the same time to say that the sections dealing with the judicial system require no modification does not make sense. Since the 1995 inception of the current constitution (which remains in force to this day), the state of the judicial system has been absolutely unacceptable and in need of fundamental change. This fact reflects the inherently flawed nature of the current constitution, and by extension the disregard our supreme state legislation exhibits towards the sanctity of the legal principle. This is a situation which is unacceptable not only for a lawful state, but for a generally civilized nation.

Let us discuss the circumstances which serve as the bases for this type of strict but fair, and ultimately useful evaluation of the current situation. We will examine the relationship between Paragraph 2, Article 83 and Paragraph 3, Article 90 of the Constitution of Georgia with the Organic Laws of Georgia on the Supreme Court and the Common Courts of Georgia.

According to Paragraph 3, Article 90 of the Constitution of Georgia, the "Rule for the authority, organization, activity and pre-term cancellation of the authorities of the members of the Supreme Court is defined by the law."

In the given case, the usage of the term "law" without a qualifying word such as "organic" is a direct indication that the constitution envisages the adoption of a general, or current law. Notwithstanding, the Organic Law on "The Georgian Supreme Court" was adopted on 12 May, 1999. It is completely unfathomable and inadmissible: the Constitution of Georgia states one thing and they are doing another.

The regulation of Paragraph 1, Article 107 of the "Transitional Regulation" of the Constitution of Georgia cannot serve as an explanation that "according to the constitution, the acting legislation of the court organization remains in force until the relevant organic laws on judicial organization are adopted." This means that the organic laws on judicial organization are adopted in accordance with the constitution. But the constitution does not cover such organic laws and accordingly their adoption can not be regarded as legal. The quotation of Article 107 is an indication of the fact that there is inconsistency and discord between the separate regulations of the constitution in relationship to the definition of the constitutional-legal bases of judicial powers.

In addition, it needs to be asked: what served as the basis for the adoption of organic law in 1999? Even if it was envisaged by the constitution, according to Paragraph 2, Article 106 of the "Transitional Regulations", it should have been adopted within two years from when the basic law entered into force, which means the deadline should have been 25 November, 1997.

Accordingly, the Organic Law on the "Supreme Court of Georgia" does not have a constitutional basis. It is therefore an "unlawful law."

According to the original edition of Paragraph 2, Article 83 of the Constitution of Georgia, "justice is executed by the common courts. Their system and rule of justice is defined by the law". It is obvious that the constitution envisages the adoption of a general law in this case as well. At the same time, in apparent opposition to the constitution, the Organic Law on "Common Courts" was adopted on 13 June, 1997. Unlike the Organic Law on the "Supreme Court of Georgia" it fits into the two year limit as defined by the constitution. Notwithstanding, the adoption of the organic law, instead of the normal law as defined by the constitution is a willful act and cannot be regarded as a lawful act.

One more condition should be mentioned in this case: the illegally adopted Organic Law on the "Supreme Court of Georgia" has been in place for 12 years and is still functioning — although there was an attempt, after nine years, to fit the illegally adapted Organic Law on "Common Courts" into the legislative framework.

Paragraph 2, Article 83 of the Constitution of Georgia was formulated with this addition on 27 December, 2006: "Justice is executed by the Common Courts. Their system is defined by the Organic Law."

Although these changes were undertaken, the illegally adopted Organic Law on "Common Courts" still cannot be considered legitimate without proper approval. The main issue is the following awkward inconsistency: after the mentioned changes, according to the current situation the Constitution of Georgia envisages the adoption of an "Organic Law on Common Courts" in general on the one hand and another law dealing specifically with the Supreme Court on the other hand. According to the opinions expressed in the Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission, it would be preferable if, instead of two different levels of normative acts envisaged under the Constitution of Georgia — the Organic Law on "Common Courts" and formally (according to the constitution) the law on the "Supreme Court of Georgia" — only one law — the Organic Law on Common Courts — be approved.

This normative act would define the legal status of all courts at all levels (including the Supreme Court of Georgia).

As for Paragraph 2, Article 83 of the Constitution of Georgia, in the new edition the "Rule of Judicial Administration" is omitted from the text. The original text envisaged the need for defining the rule of judicial administration, which is not included in the new edition. This is very important, for theoretically there is a possibility of defining the "Rule of Judicial Administration" through a bylaw. Despite the fact that Paragraph 1, Subparagraph J, Article 3 of the Constitution of Georgia envisages "Procedural Legislation" ("belonging to special *gamgeobas* ("city councils") of the higher state bodies of Georgia — procedural legislation"), this is not helpful, for the "Rule of Judicial Administration" and "Procedural Legislation" do not have identical meanings.

The status of the "Highest Cassation Court" (Article 90.1 of the Constitution of Georgia) of the Supreme Court of Georgia still needs to be defined. In the absence of a lower level cassation court, the defining term "highest" needs to be extracted from the text of the constitution.

These examples provide clear proof that one of the important directions of constitutional reform should be the creation of a consistent definition and management of the constitutional-legal foundation of the country's judicial power. In other cases, without overcoming the existing gaps and misunderstandings on the constitutional level, the judicial branch will not function comprehensively and it would be groundless to rely on it from both an ethical, as well as a legal point of view.

Strengthening the guarantees of judicial independence — a process that can be achieved with a variety of methods and tools — is an extremely complicated and multifaceted aspect in the reformation of the constitutional foundation of judicial power. We will discuss some of them.

Currently, Paragraph 2, Article 84; Paragraph 2, Article 86; and Paragraph 3, Article 90 of the Constitution of Georgia all define certain rules for handling judicial power: requiting, appointing, depriving a judge of a case, preterm discharge, preterm termination of the authorities, or moving a judge to a different position. To advance the constitutional-legal status of the judge and guarantee his/her independence, it is recommended that these issues be regulated through organic rules, instead of the current, or "normal" rules.

Special attention should be devoted to district, city and appellate courts, for their activities serve as the basis for the opinion of the execution of justice in the state. According to the acting rule (introduced on 27 December, 2006), which is guaranteed by Paragraph 1, Article $86^1$ of the constitution, the appointment and discharge of judges at the mentioned courts falls under the jurisdiction of the High Council of Justice of Georgia. The introduction of such a rule should be considered neither proper nor appropriate.

The High Council of Justice was established almost 11 years ago, but general public's level of trust towards this institution as well as the public reputations of its judges remains quite low.

It is a fact that the High Council of Justice cannot fix the situation that it has inherited from the Soviet era. Furthermore, the reformation of this body was not helped by a series of changes undertaken during 2004-2007 to improve its image and effectiveness. Five apparent reforms were carried out over these four years (June, 2004; November, 2005; May, 2006; and December, 2007), but they failed to produce any appropriate results. All this clearly reveals that more active measures need to be taken.

The Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission is covering the issue of changing the rule for appointing and discharging the judges of the district, city, and appellate courts. In this regard, the general principles of the European Charter attract our attention: the charter envisages only the participation of the body with the actual status of the High Council of Justice in making decisions that are related to the selection, recruitment, appointment, promotion, and termination of judges (Paragraph 1.3, chapter 1). Taking into account this principle, the constitutional change concerning the appointment of judges can be imagined in this way: judicial candidates for position on district, city and appellate courts shall be selected by the High Council of Justice. The selected candidates will be presented to the Parliament of Georgia by the President of Georgia. The Parliament will then approve or reject the presented candidates with the help of a predefined number of votes (for example, a majority of the list composition). At the same time, when making this change, we should take into account that Supreme Court judges are elected by Parliament after they have been nominated by the President. If these suggested changes are implemented, the rules for appointing judges to the common court system will be more or less similar, judicial independence will

be considerably strengthened, the quality indicators for the selection of candidates will be improved, publicity will be increased, and the process will no longer be limited to a closed circle of judicial power. Finally, the mechanism of cooperation and balances among the different branches of government will start functioning.

The suggested rule concerning the appointment of common court judges by the highest representative body of the state has some precedent. For example, Latvia, Serbia, Slovenia, the Ukraine, Azerbaijan, Lithuania and Japan employ similar systems: in Latvia, according to Article 84 of the Latvian Constitution, judges are approved by the Seim (parliament). According to Article 147 of the Constitution of Serbia, a person who has been selected top serve as a judge for the first time, is selected by the national council on the basis of nominations made by the highest judicial council. According to Article 130 of the Constitution of Slovenia, judges are selected by the state board after being nominated by the judicial council. Article 128 of the Constitution of the Ukraine states that the judges of the common courts are selected by the Rada (for his/her initial five year term, the judge is first appointed by the President of the Ukraine). The judges of the Azerbaijani Appellate Court, similar to the judges of the Supreme Court, are nominated by the President and approved by the Mili board (Articles 131-132 of the Constitution of Azerbaijan). In Lithuania, according to the article 112, the judges of the Appellate Court and the chairman are appointed by the president at the approval of the Seim. In some places, common court judges are not only appointed by the highest representative body — the parliament — but by the government as well. According to Articles 79 and 80 of the Constitution of Japan, all the judges of the Supreme Court (except for the Chief Justice) are appointed by the "offices" (the implementing body of the executive authority). The judges of the lower instance courts are appointed by the offices from a list of persons nominated by the Supreme Court.

Accordingly, these examples of constitutions from foreign countries prove that the procedure for appointing judges of the district, city, and appellate courts, which has been suggested for Georgia, is acceptable and needs to be taken into account.

The Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission discusses the issue of solving the discharge of Common Court judges in a new way. Impeachment is one of the options. Some of the procedures of the impeachment of judges (for example, the method of filing the case) still needs to be ruminated upon and, hopefully, solved (currently the impeachment rule can only be applied to the head of the Supreme Court, and only in cases of violation against the constitution and/or the commission of a crime). Obviously, considering the relevant experience of foreign countries, the elaboration of other active mechanisms for relieving common court judges of their positions should not be excluded. For example, impeachment could be achieved through an ordinary vote of Parliament, or through the involvement of the Georgian High Council of Justice. Whatever the change, it should not concern the Constitutional Court of Georgia as this body makes all decisions about the pre-term dismissal of its members by itself.

According to the constitutions of some foreign states, the dismissal of a judge can be undertaken by the Parliament through impeachment proceedings, or through a general vote.

In the U.S. the pre-term dismissal of a judge can only be carried out through the impeachment process. The removal of a judge only through impeachment is one of the 12 basic principles that serve as the bases to ensure the independence of the U.S. judicial system. The impeachment process is used to carry out judicial dismissal in Japan as well. Article 78 of the Constitution of Japan stipulates that judge cannot be dismissed through impeachment without a public trial, except for those cases in which the court finds the judge in question to be mentally deficient or physically unable to fulfill his/her responsibilities.

The example of Lithuania is also interesting. Here, both possibilities are legal. According to Article 112 of the Constitution of Lithuania, the Head of the Supreme Court and any other judge can be dismissed by the Seim (Parliament) after being nominated by the President. As for the head of the appellate court and the judges — they can be dismissed by the President with the approval of the Seim. According to Article 116 of the Constitution of Lithuania, any judge — the head and other justices of the Supreme Court, as well as the head and other justices of the Lithuanian Appellate Court — who violates the constitution, breaks his/her oath, or is found guilty of committing a crime, may be impeached by the Seim.

Dismissal of common court judges through normal voting by the parliament is accepted, for example, in the Ukraine (Article 126 and 128 of the Ukrainian Constitution). The Constitution of Latvia (Article 84) stipulates that the Seim can dismiss judges against

their wish only in cases envisaged by law on the bases of the decision of the judicial disciplinary board, or on the bases of a guilty court verdict concerning a criminal case. The Constitution of Australia states (Paragraph 2, Article 72) that judges can be dismissed at the recommendation of both chambers. There is a special rule in Argentina which states that judges can be dismissed on the basis of a case filed by the lower chamber of parliament and a special commission established jointly by both chambers (see Article 115 of the Constitution of Argentina).

The Mili of Azerbaijan, on the bases of the nomination of the president, is authorized to dismiss constitutional court, supreme court and court of appeal judges with a minimum of 83 votes and other judges with a minimum of 63 votes (Paragraph V, Article 128 of the Constitution of Azerbaijan).

Considering all these examples, it would be acceptable for Georgia if common court judges can be dismissed by the Georgian Parliament through normal voting on the bases of the nomination of the High Council of Justice.

The existence of lifelong judicial tenure is accepted in many countries throughout the world and forms one of the principles which serves as the basis for the independence of the judiciary system. Certain types of judges are appointed for life in countries including the U.S., Argentina, France, Belgium, Luxemburg, Poland, the Czech Republic, Croatia, Serbia, Ukraine, Russia, Kazakhstan, Kyrgyzstan, Moldova, Armenia, Estonia, Latvia, Israel, Greece, Macedonia, Germany, Spain, Turkey and Romania.

At the moment in Georgia, a term of judicial authority runs for ten years. It is already time that, from the point of view of the interests of the judiciary, the rule on the lifelong tenure of common court judges — as in other states — be introduced in Georgia as well. Relevant amendments would have to be made in Articles 86.2 and 90.2 of the Constitution of Georgia. It is true, that the formula of the mentioned article does not exclude the determination of the rule concerning the appointment of Judges for a term of "not less than 10 years", but for greater clarification, the text still needs to be changed and new additions created. The practice of lifelong judicial tenure shall not apply to members of the Georgian Constitutional Court, considering the fact that these judges cannot be appointed to the same position for a second term.

This particular approach to the appointment of common court judges, as well as members of those agencies of constitutional control or supervision, has been legalized by the constitutions of such states as: France, Poland, the Czech Republic, Slovenia and the Ukraine. A member of the French Constitutional Council is appointed to a term of nine years and reappointment is not allowed (Article 56 of the French Constitution), and judges of the common courts are irreplaceable (Article 64); the judges of the Polish Common Court are also appointed for an indefinite period (Articles 179-189), while the term of authority of the constitutional tribunal equals nine years and a justice it is not allowed to be reappointed (Article 194). Constitutional Court Judges in the Czech Republic are appointed for ten year terms (Article 84.1), while judges of the Czech Common Courts are appointed for an indefinite period (Article 93.1). A judge of the Constitutional Court in Slovakia is appointed for a 12 year term (Article 134.2) and a Slovak Common Court judge is appointed for life (145.1). In the Ukraine, the first time a common court judge is appointed it is for five years. After this term has passed they are then elected for life (Article 128). Ukrainian Constitutional Court judges are appointed for nine year terms without the permission for reappointment (Article 148).

Therefore the rule being suggested for Georgia is approved and acceptable.

In the original draft of the Georgian Constitution, the minimum age limit for common court judges and members of the constitutional court was 30 and 35 years respectively. On 25 December, 2005 an amendment was made to the constitution, reducing the minimum age limit to 28 years for common court judges and 30 years for judges of the constitutional court. In order to justify this reduction of the minimum age limit, a shortage of skilled legal personnel was cited. But it is inappropriate to invoke a shortage of legal personnel in a small country like Georgia, where several hundred students are enrolled in the law school of only one of the many universities in just one academic year. Undoubtedly, some other remedy should be sought here. It is inadmissible to try to fill these vacancies through the reduction of the minimum age limit for the judicial chair, as it is a potentially harmful factor for the administration of justice and constitutional control, as this limits the possibilities of acquiring a relatively full volume of knowledge and the skills necessary to serve in the position of judge.

For participants in legal proceedings, with regard to winning confidence and respect through the acquisition of the necessary knowledge, experience and precedent suitable for their official position, it is ap-

propriate to again increase the minimum judicial age limit: back to 30 years for judges of law courts; and back to 35 years for members of the Georgian Constitutional Court.

There is nothing unusual or unacceptable in this presumptive constitutional amendment. This can be confirmed by a quick look at the respective minimum age limits which have been set in other countries. For example, in accordance with Article 101 of the Constitution of Brazil, a citizen who has reached the age of 35 years can be appointed as a judge of the Supreme Federal Court. In Asian countries, Tajikistan for example, the constitution has established that lawyers who are at least 30 years of age can be appointed to the Tajikistani Supreme Court, the Supreme Economic Court, the Court of the Gorno-Badakhshan Autonomous Province, district courts and the Court of Dushanbe (Article 85). Likewise, in Azerbaijan, a citizen who has reached the age of 30 can be appointed as a judge (the Constitution of Azerbaijan, Article 126.1). It might be interesting to mention that this minimum age (30 years) is also set for the office of the Prime Minister of the Republic of Azerbaijan (Art. 121.1). Also in the Republic of Slovakia, a citizen who has reached the age of 30 can be appointed as a judge (the Constitution of Slovakia, Article 145.2). It should be especially worthwhile to point out that, in accordance with the Constitution of Slovakia (Article 143.3), a citizen who has reached at least 40 years of age can appointed as a judge at the Constitutional Court. Furthermore, in the Ukraine, in accordance with Article 148 of the constitution, a citizen who has reached the age of 40 by the date of his/her appointment can become a judge of the constitutional court.

There was a discussion at the working group about expanding the authority of the Constitutional Court of Georgia, which would further increase its role and importance.

With this end in view, a draft is being prepared for supplements to be introduced in Article 89 of the Constitution of Georgia. It is supposed that the constitutional court should be the final arbiter of any issues of constitutionality with regard to a particular case, rendered by a court of law, after all the intrastate means of judicial defense have been used up. As a result of the implementation of this novelty the activities of law courts will be improved.

On behalf of such a presumptive constitutional amendment, it is important to mention that the Constitutional Court of the Federal Republic of Germany has a similar authority. A review of the respective procedure in fundamental laws of former Soviet republics similar to Georgia — such as Azerbaijan, Belarus, Russia, Armenia, Tajikistan and possibly others — must be of interest for Georgia.

The Constitution of Azerbaijan (Article 130) grants the Constitutional Court authorization to consider issues of conformity to the Supreme Court's decisions with the Constitution and the laws of the Republic. Any person is authorized to apply to the Constitutional Court about this issue in accordance with the procedure established by law and lodge a complaint against judicial acts which violated his/her rights and freedoms. The public defender (ombudsman) also has this same authority.

In accordance with the Constitution of Belarus, the Constitutional Court gives its opinions on the conformity of acts by the Supreme Court, the Supreme Economic Court and the Prosecutor General with the Constitution of Belarus, the respective international legal acts, laws, decrees and resolutions (Article 116).

The Constitutional Court of the Russian Federation checks the constitutionality of laws implemented in particular cases in accordance with the procedure established by federal law on the basis of complaints filed concerning the violation of the constitutional rights and freedoms of the country's citizens (see the Constitution of Russian Federation, Article 125.4).

In accordance with Article 89 of the Constitution of Tajikistan, the Constitutional Court is authorized to determine the conformity of judicial acts by the Supreme Court and the Supreme Economic Court.

The Constitution of Armenia stipulates that any person can address the Armenian Constitutional Court regarding any particular case — in accordance with the procedure, established by the Constitution and the Constitutional Court, when there is a final act of court, no means of court defense are left and the constitutionality of the implemented provision of law is being appealed (Article 101.6).

It is especially noteworthy that the mentioned provision of the Constitution of Armenia was not included in the first version (1995) of the fundamental law. It was added to the constitution at the referendum of November 27, 2005. This circumstance indicates that a similar amendment is necessary in the Georgian Constitution as well, and it should be implemented in due time.

Seriously, the issue of establishing a judicial institute in Georgia should be carefully considered and thought out (Paragraph 5, Article 82 of the Constitution of Georgia).

At the same time, it can be stated for certain that it would be patently unacceptable to introduce a judicial institute on a "phased" basis: for example, to first establish such an institute in the capital only. This would be a form of discrimination against residents of all the other regions of Georgia (those who live outside of the capital), which is clearly prohibited by Article 14 of the Constitution of Georgia. It must be stressed that this has to do with fundamental, universal human rights that are equally applied to everybody. Experiments in this field are inadmissible.

It was exactly on this pretext of so-called "residential" discrimination that the Constitutional Court of Georgia ruled the appointment of the Mayors in Tbilisi and Poti as unconstitutional (given the fact that the mayors of other cities are elected by local residents of their respective regions).

Generally, the selection of judges is an excessively complicated, prolonged and multifaceted process.

Together with general contradictory arguments in relation to jurors, some particularities and specific characteristic features typical to Georgia must also be taken into account, in particular, the circumstances that in Georgia (a) considering the general number of residents, it will be very difficult to select the required number of qualified jurors; (b) the general level of the legal culture of the overall populace is low; (c) it is practically impossible to observe the principle of impartiality, as in this small country everybody is everybody's relative or friend or fellow-sponsor, and furthermore, there is the centuries-old national tradition of mutual assistance, and; (d) the settlement of matters by backdoor influence is widespread and deep-rooted.

In order to eliminate the possibility of adding new difficulties to the problems which already exist in the field of judicial power, it is necessary that the State Constitutional Committee discuss the problems related to establishing a judicial institute and expresses its attitude towards this important issue.

The experience of Armenia is noteworthy in connection with the establishment of an institute of jurors. In the first (1995) version of the Constitution of the Republic of Armenia, in the chapter dealing with judicial power (Article 91) it was indicated that cases set by legal-judicial proceedings are implemented with the participation of a juror. This provision was repealed — it is not indicated in the new effectual version of the Constitution of Republic of Armenia (amendments were made to the Constitution through the referendum of November 27, 2005). This situation is undoubtedly worth considering and being taken into account.

As for basic human rights and freedoms in general, various significant constitutional amendments are expected to be implemented in this field as well. Among these, some likely amendments, which can be more or less confidently discussed at this stage of activities of the Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission, are briefly considered in the present article.

The group works intensively on the problems of social rights. The issue of their presentation in the Constitution of Georgia is to be considered and decided upon. The fact that social rights are very important must be taken into account; they are related to the vital interests of humanity. The central and determinative provision for working in the field of social rights is presented in the preamble of the Constitution of Georgia. Here is declared the firm will of Georgian citizens on the establishment of the social state. Of course, establishing such a state would be impossible without the acknowledgment and implementation of social rights. Through the involvement of community: in particular representatives of trade unions and invited experts; and the taking into account of the experience of foreign countries, the Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission tries to find out, particularly which social rights need attention and to what extent they should be indicated in the Constitution of Georgia.

The issue of the reinforcement of efficient constitutional guarantees for property rights protection is extremely urgent in the field of human rights and judicial power and cannot be disregarded by the respective working group of the Constitutional Commission. For this purpose, it is intended to prepare proposals and make respective modifications and amendments for the revision of Article 21 of the Constitution of Georgia.

The interrelation of Clauses 2 and 3 of Article 22 of the Constitution of Georgia should be altered in the segment where the possibility of limiting the basic right of free entrance to Georgia for Georgian citizens is illegitimately created: the right of free entrance to Georgia for Georgian citizens is included in Clause 2, which is covered by limitations set forth in Clause 3. Such a limitation is inadmissible. A Georgian citizen should be able to enter Georgia absolutely freely, without any restraint. The amendment must be im-

plemented considering that the right of Georgian citizen to enter Georgia without restraint must be excluded from the interrelation of Clauses 2 and 3 (the limitations set forth in Clause 3). For this purpose, the provision under discussion must be excluded from Clause 2. The place for it should be assigned elsewhere (in particular, it can be placed after Clause 3, or even as a separate clause).

The provision of Clause 6, Article 18, according to which the pre-trial detention of a defendant must not exceed a period of nine months, should also be modified. Such a reading means that the maximum nine month term of pre-trial detention is set for defendants only. In reality, the situation is different: along with "defendant" a "person on trial" is also meant which is a party having a different legal status. Therefore, the period of nine months set forth in Clause 6, Article 18 is the total pre-trial detention term for a defendant, as well as for a person on trial. Accordingly, the respective text in the constitution needs to be modified — the term "person on trial" must be added and a constitutional provision must be formulated in a way that the pre-trial detention term for a defendant and person on trial should not exceed nine months.

Otherwise, the term of pre-trial detention of a person on trial is not implied in the nine-month period set by the constitution. And this means an increase of the nine-month term of pre-trial detention and a significant violation of the fundamental human right of freedom.

Two more expected modifications in the field of fundamental rights apply to Clause 9 of Article 42. Unfortunately, there are many cases in Georgia, when citizens fall victim to malpractice or malfeasance of functionaries. Clause 9 of Article 42 of the Constitution defines that "full compensation of damage illegally caused by state and local self-administration agencies and officials is guaranteed for everyone, from the state funds." The cited constitutional provision is generally good, but it is not satisfactorily complete and needs to be clarified.

The considered constitutional provision first of all should be modified from the point of view that, issuing from the legal status of local self-administration, the full compensation of damage illegally caused by local self-administration agencies and officials should be judicially guaranteed from the funds of self-administration itself, and not from state funds.

Besides, we cannot consider lawful the fact that the Georgian Constitution ignores the responsibility of a functionary who violates the law and that attention is paid to the compensation of the damage caused only from state and self-administration funds. For preventive consideration, it is appropriate to add the following provision to Clause 9 of Article 42 of the Constitution: "In cases determined by law and in accordance with the established procedure, compensation of the mentioned damage will also be incurred on the respective official." This provision is reasonable, and besides it will contain an implication of warning which will have a beneficial effect on the reduction of cases featuring a violation of human rights. In this regard, it is interesting to note that the Constitution of Greece states that if before the term of detention is expired and no prescribed action has been implemented, any prison supervisor or any civil or military servant responsible for supervision of a detained person must immediately release this person. Any infringer will be punished for illegal imprisionment, and compensation for all damages caused to the affected person will be incurred by the infringer in accordance with the procedure prescribed by law, including pecuniary compensation for moral damage (the Constitution of Greece, Article 6.3).

Finally, let us formulate the results of the subject discussion, underline individual modifications and amendments to be presumably included in the Georgian Constitution in the fields of (I) judicial power and (II) fundamental rights:

I. 1. Instead of separate organic laws adopted through the violation of Articles 83.2 and 90.3 of the Constitution regarding law courts and the Supreme Court of Georgia, only one organic law "On law courts" should be adopted, which will define the legal status of all levels of law court (including the Supreme Court of Georgia).

I. 2. The status of the Supreme Court of Georgia should be clarified, meaning that it is "the supreme appellate court" (Article 90.1): in the absence of inferior appellate courts thereof, the word "supreme" should be withdrawn from the text of the Constitution.

I. 3. Judicial selection for law courts, appointments, temporary suspension, pre-term dismissal and pre-term termination of powers or other procedures concerning change of office should be defined by organic law and not by current public law.

I. 4. The procedure of the appointment of judges in law courts should be modified (Clause 1 of Article $86^1$ of the Constitution): judicial candidates

for regional (municipal) appellate courts should be selected by the Supreme Council of Justice; the selected candidates should be presented by the President of Georgia to the Parliament for ratification; and the Parliament, for its part, should ratify or reject the presented candidates by a pre-determined number of votes (say, by majority of party list).

I. 5. The procedure for the dismissal of judges from regional (municipal) appellate courts should be modified: with proper involvement of the Supreme Council of Justice of Georgia, they should be dismissed by the Parliament through impeachment or through an ordinary poll.

I. 5. The rule of the non-replacement of law court judges should be directly established according to Articles 86.2 and 90.2 of the Constitution, that is, their appointment without term.

I. 7. The minimum age limit necessary to take the office of judge should be increased: 30 years instead of 28 years for law court judges; and 35 years instead of 30 years for members of the Constitutional Court.

I. 8. The authority of the Constitutional Court of Georgia should be expanded: the Constitutional Court should consider and decide upon the issue of constitutionality of the final act on a particular case, rendered by a law court, when all the intrastate means of judicial defense are used up.

I. 9. It is necessary that the State Constitutional Committee discuss problems related to establishing an institute of jurors and expresses its attitude towards this important issue.

II. 1. The Constitution should indicate the fundamental social human rights in a relatively completed and guaranteed manner.

II. 2. In order to consolidate the constitutional guarantees for property rights protection, proposals should be prepared for revision of Article 21 of the Constitution and for making respective modifications and amendments to it.

II. 3. The possibility legalized in accordance with Clauses 2 and 3 of Article 22, regarding limitation of the right of free entrance to Georgia for Georgian citizens, should be eliminated.

II. 4. The provision of Clause 6 of Article 18, according to which the term of pre-trial detention must not exceed 9 months: the text should be formulated in such a way that the term of pre-trial detention for a defendant and a person on trial must not exceed 9 months.

II. 5. Clause 9 of Article 42 of the Constitution of Georgia should by modified in such a way that through judicial procedures full compensation of damage illegally caused by state and local self-administration agencies and officials should be guaranteed for everyone, from the funds of self-administration and not from the state funds, as it is defined by the text currently in effect.

II. 6. The provision: "In cases determined by law and in accordance with the established procedure, compensation of the mentioned damage will be incurred on respective official, too" — will be added to the new version of Clause 9 of Article 42 — through judicial procedures full compensation of damage illegally caused by state and local self-administration agencies and officials should be guaranteed for everyone, from the state and self-administration funds.

Such are the individual presumable constitutional amendments in the field of judicial power and fundamental rights. If the proposed modifications and amendments are adopted and if it is necessary, in "transitional provisions" there will be indicated that any of amendments in the field of judicial power and fundamental rights will come into effect in accordance with stipulation thereof (for example, the new minimum age limit necessary to take an office will not extend to judges who have already been appointed); or they will come into effect with a deferral — after a certain period of time (for example, consummation of the procedure of the consideration and deciding upon the constitutionality of final acts by a law court will be deferred for the necessary term).

For the future, obviously there will be more considerations and proposals to be worked out. We hope that the final results of the activities of the Working Group on Judicial Powers and Basic Rights of the Georgian State Constitutional Commission on the whole will be satisfactory.