Public Constitutional Commission

COMPREHENSIVE CONCEPT OF THE REVISED CONSTITUTION OF GEORGIA

Tbilisi

April 9, 2010

The Public Constitutional Commission was established on May 1, 2009. The Commission carries its work independently, pro bono and without any financing.

The Commission accords heartily thanks to Mr. Yuri Tabutsidze and Mr. Vakhtang Khmaladze for presentation of their Draft New Version of Some Chapters of Constitution of Georgia, a great part of which is presented in this project.

We would also like to appreciate the fruitful cooperation and valuable contribution of invited experts Vakhtang Tordia, Konstantine Kandelaki, Davit Losaberidze and Tengiz Shergelashvili made in the elaboration of the concept of territorial division of Georgia

Our acknowledgment of Mrs. Naira Gelasvhili and the Caucasian House for their active and effective support.

Public Constitutional Commission Members: Otar Benidze, Otar Gamkrelidze, Ekaterine Gasitashvili, Nino Gvenetadze, Giorgi Inauri, Valerian Loria, Lia Mukhashavria, Merab Turava, Mindia Ugrekhelidze, Zviad Koridze, Zakaria Kutsnashvili, Nina Tsikhistavi, Vakhtang Dzabiradze, Vakhtang Khmaladze, Geogre Khutsishvili, Zaur Jinjolava, Zurab Jibgashvili.

Content

X. National Defence

National Defence Council

Use of armed forces

XI. Judicial Branch

Age and service qualification of judges

Appointment of judges

Judges' immunity

Social protection

Council of Justice

Power of Constitutional Court

XII. State territorial division and local self-government

XIII. Revision of constitution

I. Introduction

The fact that after fifteen years it became again necessary to develop the Georgian Constitution makes it clear that the first attempt to establish the constitutional order in the country has failed. This failure was proved by the Rose Revolution as far as in 2003 when the crisis was not overcome in a peaceful constitutional way and the state power was changed by a violent method. Then the so called “revolutionary” authorities changed the existed model of presidential republic with that model of the state system which is known in the theory as the superpresidnetial republic where the principles of distribution of power are violated.. The presidential power increased enormously at the expense of other power branches that in its turn promoted a new crisis situation instead of the overcoming of the previous crisis by a peaceful and constitutional way, and, moreover, its rapid escalation (the maturity of the crisis which brought to the Rose Revolution had required eight years (1995-2003) while the new crisis matured in four years (2003-2007).

In order to avoid the misfortune of a new attempt the process of elaboration of constitution and its result shall not be considered from the legal aspect only, apart from the political and social processes and ignoring them. Besides, it shall fully comply with the principles of constitutionalism which imply bounding the authorities and people in frames of reasonability.

There are several models of the government which comply with the principles of constitutionalism and, at first sight, the choice of this or that is not so significant. However, all models do not equally fit to a concrete state, as every country is unique by its historical experience, passed way, traditions, culture, relationships formed in the country and the current situation at the time of adoption of constitution. Respectively, the first and pivotal problem which faced the Public Constitutional Commission was to choose the adequate constitutional model of the government for our country.

When choosing the model of government it is very important to take into consideration that compliance with the constitutionalism principles is the necessary condition for attainment of the desirable goal but not the only one. The fact is that various models complying with those principles are characterized with the different quality of the activity of authorities and control over the activity of the executive power by the parliament. At

the same time the models differ by the more or less probability of occurrence of a political crisis and the possibility or impossibility of “smooth” overcoming of that situation.

There are three forms of constitutional government: parliamentary, presidential and semi-presidential. Each of them has both advantages and disadvantages. Therefore, our aim was to make the comparative analysis of conditional governments, on the one hand and on the other, to assess the sociopolitical situation in the country, to reveal those problems which have promoted origination of the crisis and to retrieve the genesis of the problems.

In our opinion, only such approach would enable us not only to choose the political system in general but to elaborate within the frames of constitutionalism and inside the chosen system such variant of this system which would rightly and effectively settle the existing problems and at the same time avoid the expected complications.

It is universally known, that the constitutionalism lays the principle of reciprocity, mutual control and balance between the legislative, executive and judicial powers. The state administration is impossible without the reciprocity between the power branches as it creates the threat of anarchy. Besides, the breach of balance between the branches would promote the formation of dictatorship, or the authoritarian ruling at the best. In both cases the judicial power as the independent branch of the state looses its main function – to “administer”, “reveal”, establish justice. Therefore, when we were considering the model of constitution we subjected it, first of all, to our reality and tried to find out how sustainable would this or that system be in the face of those threats.

The sociopolitical process which has taken place in Georgia for the last 20 years is characterized with the radical confrontation which has been promoting the appearance of charismatic leaders. But the rise to power of such leader always leads to a new stage of confrontation in the country because all such leaders aim to intend their own authority. This process is also backed by the factor that the winning political power which represents the majority, begins to form the one-party administration. Such administration assists the charismatic leader to concentrate the power in one’s hands at the very first stage of his ruling and to legitimate such order constitutionally smoothly and without extra efforts, against the background of public confidence and support. At the same time,

this process is accompanied with the process of replacement of old cadres with new ones in the governmental bureaucratic machinery.

Such trend results in the transition from the administration of the political majority to the one-party administration and after the almost total replacement of the bureaucratic machinery, the one-party administration is formed in kind of the one-party ruling system where the governmental and party structures merges (unfortunately, the one-party administration system inherited from the communists remains unchanged in the period of sovereignty as well, with the only one distinction, expressed in the appearance of political opposition representing the decorative function of democracy).

However, the process is not finished with this and passes to the second stage when the one-party administration system reigns and tries to take under its control all spheres of the public life: education, culture, science, medicine, mass media, business and so on. Thus, the one-party administration system obtains the repressive function thus resulting in process of estrangement between the government and the people. The formation of crisis situation begins. The government acknowledges that the people is no longer the source of its power and that it can maintain the authority only using the repressive machinery. The government extends the sphere of operation of the repressive machinery, increases the aggression quality and establishes the authoritarian ruling. There is no factor to contain the government because the political opposition has no real political levers to bar the authoritarian drives of the government (majority) and the civil sector and free media together with the same political opposition fail to organize a strong civil protest because the process of estrangement in population is still underdeveloped. Taking the advantage of the lack of the civil activity in this period the government succeeds to create the servile governmental-bureaucratic machinery. However, further when the government looses the support of the population this machinery may be still broken by means of revolutions only. For this reason when choosing the form of political system of a state we shall think not about the model most admissible for this or that person or a political or social group but about the model which will be more effective to solve the problems related to the existence and democratic development of the country and about the model which will protect us better from the abuse of power or any other forcible actions of any ruler.

The passed twenty-year period has proved that the presidential system of government has failed to fit the national character and, unfortunately, is fed with the soviet mentality. It is known that in those countries where the civil sector is weakly developed, the civil consciousness is low and the socioeconomic situation is grave the presidential government becomes the source of permanent confrontation and destabilization. Moreover, as in the presidential model of government the parliament and president represent the institutes almost independent from each other from the aspect of interconnection and mutual control, we are facing a great temptation and possibility of the executive power (the president) to implement the authoritarian government especially in those countries which are lacking the public containment factor or where the public reaction delays. The similar situation emerges in the conditions of the semi-presidential government as well. However, for many times the choice in favor of a strong presidential government was made just by the motive of overcoming of those weaknesses. Consequently, this is one more wrong public idea to be overcome.

Subject to the foregoing we have concluded that as long as the country has the presidential or semi-presidential political system we will not avoid the authoritarian form of government, actual politicization of the state structures, permanent sharing of property, terrorization of free media and business, ignorance of human rights and freedoms and the most important thing - taking power by revolutionary way.

The way out of such situation is to choose such government model which will be more effective for national consolidation, economic development and gradual transition of the public life to the liberal-democratic principles. However, this process cannot be implemented without the actual involvement of the national sociopolitical forces in the political life, stable legislative base and stable government accountable before the parliament. At the same time this provides the full compliance with the distribution of power that implies delimitation of powers between the power branches, effective mutual control (mutual containment) and balance.

In our opinion, such system is the model of parliamentary republic, namely its variant which on the one hand ensures the government stability and on the other hand provides to the political opposition the real levers for implementation of the effective and timely control over the activity of the state. At the same time this shall be

accompanied by the introduction of such election system which would enable to get the result conforming to the electoral wish and, accordingly, to represent the main political forces acting in the country, in the parliament.

Indeed, the parliamentary system of government is not a kind of "magic wand" one touch of which will settle our problems but is the political system which, unlike other systems, enables to settle, in frames of constitution and based on it, all those problems which prevent formation of democratic institutions.

The absolutely different approach and consideration shall be found for the judicial power which, though does not participate in the political life directly, but determines to a great extent its character and stability.

The old wisdom states that "there is no peace without justice" and the paramount designation of a court in any democratic society is to establish such justice. The own experience of Georgia have proved not once that the peace and harmony would not be settled until the administration of justice is under the political pressure. A man can get used to poverty and distress but cannot get used to injustice. The inner protest against the injustice is the essence of human personality. It easily originates but does not disappear even when it is not or cannot be expressed outwardly. This results in the depressed tension which always generates the explosive situation and creates serious danger to the peace, stability and wellbeing of the society. This situation sets particular objectives from the aspect of constitutional structure of the judicial power.

Let's mention the principles on which the court (judicial power) is based:

1. the paramount principle is that the court shall be free of any, including political, pressure; therefore it shall be <u>independent</u> in its activity and judgments;

2. however, as an independent court may have any bias, the second mandatory condition is that it shall be <u>objective, impartial</u>;

3. as an independent and unbiased court sometimes is not able to exercise its power in proper way due to the lack of knowledge, experience or skills, one more obligatory requirement for the court is its <u>qualification, professionalism and competence</u>;

4. no one of the above mentioned principles is effective, if the court is not fair. For this we shall have institutional, structural, organizational, financial, educational and other mechanisms to provide the justice;

5. as the people are the users of the law and justice and the people cannot be satisfied by ungrounded promises and useless effects, the court shall be prompt, effective and efficient;

6. however, even the effective court loses its sense and purpose, if for some reasons it is not available for people (here we imply the inadequate number of courts or judges; their overloading; state duty rate; delayed processes and hence, the queues; remoteness or inconvenience of court institutions, their buildings and structures and so on). Therefore, the court shall be available and this availability also implies the proper equipment and the well-reasoned management[1];

7. The activity of court and its product are connected with very delicate, sensible, sometimes, painful emotions. This fact naturally generates the acute need in the high confidence in the court which is higher than in any other institution. From this aspect the top importance is given to evidence which implies that "the justice not only shall be administered in proper way but is shall be clear, open and evident". This requirement is in close relation with the respectability of the court, personal dignity, steadiness and reliability of judges and their professional and personal worth. This condition is one of the basic provisions of independence of judges (and the court).

The listed above requirements made to the court (judicial power) shall serve the priority protection of supremacy of court and human rights in a normal constitutional state; however, they shall not be only declared but there shall be found out the optimal balance of their reciprocity. Otherwise, none of them will be able to fulfill their purpose. For example, the independence of court is for no purpose if it cannot provide the proper service to the people; or, how can the justice be administered at the high professional level, if it falls in the hands of non-professional judges.

Subject to the foregoing we can conclude that irrespective of high importance of independence of the court and judges (not once declared on the international and

[1] Case Flow Management and Acceleration of Process at Courts. Overview of Basic Principles. Tbilisi, 2010

legislative level), it is neither the end in itself nor the value as it is. Therefore, it shall be always balanced with appropriate accountability or ethical, disciplinary, legal and political responsibility.

The arguments given above have based the decision of the Public Constitutional Commission to elaborate the concept of constitution in several directions. We do our best endeavors in order to:

- balance to the maximum extent the reciprocity and mutual control mechanisms of power branches;

- create for the parliamentary opposition the real possibility of the permanent control over the activity of the executive power from the aspect of protection of human rights and freedoms and spending of budgetary funds;

- strengthen the constitutional provision for protection of human rights and freedoms;

- confirm the legal conditions for the proper implementation of demands made to the judicial power;

- determine the principles of territorial division and basics of the local self-government system;

- complicate the procedure of revision of the constitution.

Such approach has resulted in the essential changes of those chapters of the Constitution which concern the president and government as well as the procedure of making amendments in the constitution; addition of the chapter of territorial division and local self-government; more or less change of those chapters which are devoted to:

- authority of the Chamber of Control and procedure of its staffing;

- tax system (common state taxes, procedure of introduction and effect of taxes and duties);

- election system (presidential and parliamentary elections; procedure of staffing the election administration);

- fundamental human rights and freedoms (matters related to the social protection of citizens, including the working day and week duration limits, annual paid leave, nontaxable living wage, reduction of taxable income by the expenses spent for education and health care and so on; security of ownership; protection of public servant's rights; principles of financing of political parties);

- constitutional institute of public defender (authority, qualification and election).

In addition, due to the great public significance of the mass media we thought it reasonable to establish as a transitional provision the obligation of adoption of the law and main provisions of this law which shall ensure the operation of the mass media, especially the public broadcaster, in favor of the public but not for the interests of the government or certain groups, and transparency of their activity (see Section II "Mass Media").

The new version of Constitution will boost the necessity of legislative changes thus creating the danger of the arbitrary interpretation of constitutional provisions in the legislation. For this reason we think as necessary the maximum strengthening of the safeguards for the exercise and protection of political and civil rights and freedoms by the Constitution. The constitutional safeguards shall be worded in the understandable language and measurable criteria. On the one hand, this will play the preventive role and on the other, will facilitate unconstitutionality of a norm in case of adoption of a law contravening the constitution. Hence, the constitutional norm shall be full as much as possible: from the recognition of rights and freedoms to the mechanisms securing their exercise and protection. This shall be one of the objectives of new version of constitution. In addition, in the transitional provisions of constitution shall be recorded the obligation of adoption of certain laws, its term and if necessary the basic provisions.

It is also necessary to determine and draft at least at the level of theses, along with the constitution and based on it, the legislative base which will cover the fundamental human rights and freedoms, elections, protection of public servants from the changes in political competition and control of the financial activity of the government. These are the issues which, subject to the specific character of the constitution, will be reflected neither in the general part of the constitution nor in the transitional provisions.

Noteworthy also is that a part of our society treats the adoption of new version of the constitution as the instrument of changing the government. May be the change of constitution will really cause the change of the government or play the function of a catalyst but it will be better if we will treat the constitution as the form of state organization and will discuss its advantages and disadvantages from the aspect of their effectiveness of protection of rights and freedoms of every citizen.

Below is provided the opinion of the Public Constitutional Commission on those issues. We are sure that our society and political spectrum will take active part in the public consideration of the concept of constitution that will enable us to enhance and sophisticate the present draft subject to the provided proposals and comments. This will promote creation of a constitution which would become the bases for public concord and building of the Georgian democratic state.

II. Fundamental Human Rights and Freedoms

The topic of fundamental human rights and freedoms is not only a priority but determinant of those aims and objectives which are deemed by the Public Constitutional Commission as vital and effective for creation of the fundamental law. Subject to amendments made in 2004, in the relevant chapter of the Constitution of 1994 was set forth the condition describing that common situation which was created by those amendments both in the Constitution and in the real public and political life of Georgia. However, it will not be enough to mention only this fact. We shall also highlight some specific moments without which the concrete concern of the Commission will be incomprehensible.

First of all, it should be mentioned that in the Constitution of 1995 more or less adequate reflection of minimal standards of protection of fundamental human rights and freedoms were found which had been already established by the international treaties and conventions, international law, and approved in the countries of old democracy, if nothing to say about their quantity, amount, actuality and significance. One thing which can be directly stated is the obscure wording of some provisions and, thus, the quality of

transparency which can again originate difficulties in process of their interpretation and implementation.

The second noteworthy factor is the quick dynamics and progress observed in the sphere of human rights, mainly in the line of their gradual rational extension (ratione materiae) and more reliable protection of rights. From this point the most important is consideration of new standards and doctrines elaborated by the jurisprudence (judicial practice) of the Strasbourg Court of Human Rights (on the one hand) and the list of fundamental rights and freedoms provided by the EU Charter of Fundamental Rights (on the other hand) which much exceeded the list of clause of the European Convention on Human Rights.

The next factor is the political, economic, social and other processes taking place in Georgia, including the current and expected consequences of the acute political crisis. This factor is also aggravated by the acute drives caused by the global warming and the global economic crisis.

In spite of the strong orientation to the present and future, the Public Constitutional Commission considers that in the constitutional lawmaking process the due attention shall be paid to the Georgian political, moral and legal culture. This does not mean at all that we have “remained in the past”. We are taking into consideration the traditions of the Georgians and those of population of Georgia in general to the extent which will not remove the problems but to the contrary will create them and will require additional efforts for establishment of true constitutionalism in Georgia.

We shall consider without fail the recent foreign experience in the sphere of constitutional safeguarding of rights. In this line we will not come to nothing more that the experience of “old democracies” but we think that not less interesting and noteworthy is the experience of so called “new democracies”, first of all, of East and Central Europe countries.

As our bitter experience of last years has made it evident how necessary are the “procedural lightning rods” for the effective security of the rights declared, established or recognized by the Constitution, the Constitution shall be “enriched’ and sophisticated from this aspect as well.

Mass Media

The most important issue is to secure the freedom and transparency of mass media (especially electronic means) because a mass medium represents the means of not only information but disinformation and dissemination of information aggression, which may be used both against a state and against the public interests and democratic processes. For this reason we deem it reasonable to provide in the Constitution (its transitional provisions) the obligation of passing a law which will specify that:

- an owner and founder of a mass medium cannot be a person registered in the offshore area;

- the information about the owners and founders of mass medium as well as about its balance-sheet, budget and tax liabilities shall be available for public;

- the owner and founder of mass medium shall provide annually the declarations of property and finance to be available publicly;

- the non-disclosure of such information causes liability under the law.

In this line noteworthy is the public broadcaster as the medium of freedom of expression and free receipt and dissemination of information. It is financed by the society and therefore shall fulfill its order. It should be mentioned that the problem of operation of the public broadcaster is one of those which has not been solved and on the fair solution of which depends to a great extent the development, irreversibility of democratic processes in the country and creation of the stable sociopolitical environment. For this reason we believe that the transitional provision of the Constitution shall set the obligation of adoption of the law which will specify the objectives of the public broadcaster, the state's obligation to create and finance the public broadcaster, minimum amount of financing (say, a certain percent of the state budget) and the following rule of its temporary (say within 10 years) management:

- the public broadcaster is managed by the supervisory board consisting of 7-9 members which will determine the public broadcaster's policy, appoint by the

majority of votes and release the General Director, and is authorized to revoke the latter's decisions;

- the term of office of the Board member shall be 5 years. One member shall be appointed by the President of Georgia, one – by the Ombudsman (Sakhalkho Qomagi) and other members will be elected by the Parliament under presentation of the association of public organizations (the Parliament shall elect the Board members either by the high quorum in order to secure participation of the opposition in the voting, or the procedure of election shall provide that out of 7 members 3 shall be appointed by the majority and 4 – by the opposition);

- a person who is the founder and/or owner of the mass medium, conducts the entrepreneurial activity at the moment of appointment or has been a public servant or member of the political party for the last 3 years, cannot be appointed a member of the Board or General Director.

Ombudsman (Sakhalkho Qomagi)

The institute of Ombudsman (Sakhalkho Qomagi) is one of the most important components of the democratic system and effective mechanism for implementation of the permanent control over government activity (from the aspect of human rights protection). Therefore its powers shall be provided in the Constitution. The Constitution shall also determine the rule of formation of this institute and principles of its activity. We consider that together with the Ombudsman (Sakhalkho Qomagi) the Constitution shall establish the opportunity of introduction of positions of one or several public defenders in special issues (e.g. a public defender for children, a public defender in mass media) for urgent response and effective settlement of problems, subject to the current situation in the country.

In order to provide independence of Ombudsman (Sakhalkho Qomagi) the Constitution shall provide:

- creation of the Ombudsman's (Sakhalkho Qomagi) institute for supervision over the protection of human rights and freedoms all over the territory of Georgia;

- the Ombudsman (Sakhalkho Qomagi) is independent in its activity. It shall be accountable before the Parliament;

- the Ombudsman (Sakhalkho Qomagi) shall be elected for the term of 5 years. One and the same person may be elected the Ombudsman (Sakhalkho Qomagi) only twice;

- the Ombudsman (Sakhalkho Qomagi) enjoys the immunity like a MP of Georgia;

- the terms of office of the Ombudsman (Sakhalkho Qomagi) may be terminated only in the following cases:

  a) if s/he attains the age of 75;

  b) if s/he resigns;

  c) if the court recognizes him/her incapable, missed or deceased;

  d) if s/he has lost the citizenship of Georgia;

  e) if s/he is not able to perform the public defender's duty due to the state of health;

  f) if s/he has held the position non-compatible with the status of public defender or conducts the incompatible activity;

  g) if against him/her is passed the effective verdict "guilty";

  h) in case of death.

- the Ombudsman (Sakhalkho Qomagi) shall establish his/her office: s/he can delegate temporarily a part of his/her authority to the employer of the public defender's office. For this period that person will enjoy the public defender's rights and immunity within the delegated authorities;

- the right to nominate the Ombudsman (Sakhalkho Qomagi) is given to a parliamentary faction after consultations with the public organization for protection of rights.

Alternative (Z. Kutsnashvili): the right to nominate a public defender to the Parliament is given to the parliamentary faction and public association of citizens

- only a citizen of Georgia who has attained the age of 30 and carries out the public, creative, scientific, pedagogical or human rights protection activity, has not been a member of any political organization or public servant for the past 3 years and lived in Georgia for the last 5 years, can be elected the public defender;

- the public defender is deemed as elected if voted by the majority of total MPs, including at least 2/3 of the parliamentary opposition roll. If the candidate fails to gain the Parliamentary support, the parliamentary opposition shall have the right to nominate a candidature by itself and elect the public defender by ¾ of the roll. If the parliamentary opposition fails to elect the public defender, the latter will be elected by the majority of votes of the President of Georgia, chairpersons of the Supreme Court and the Constitutional Court of Georgia from the nominees presented to the Parliament, subject to formalization under the presidential order cosigned by the chairpersons of the Courts.

- the Ombudsman (Sakhalkho Qomagi) shall twice a year within one week following the opening of the parliamentary session produce the report on the performed work to the Parliament and the Parliament shall, within one month following presentation of the report, consider in kind of the debates at the first plenary session and assess the public defender's report and reasonability of performance of its recommendations;

- the Ombudsman (Sakhalkho Qomagi) has the right to:

  a) motion before the Parliament or respective body the question on resignation of a public servant, if the case concerns violation of fundamental human rights;

  b) apply to the Constitutional Court with a constitutional appeal on the constitutionality of a law or another normative act.

Right of property

The Constitution shall provide that:

- confiscation of property may be allowed only in the cases directly provided by the organic law On Property Confiscation for the Necessary Social Need, court decision

and with the adequate preliminary compensation, or for the emergency necessity provided by the law with the further proper and timely compensation. The amount of compensation shall not be less than the market value of the confiscated property. Compensation of the confiscated property both in kind and in cash shall not be deemed as the income and not subject to any tax and fee;

- a legal entity where a foreign country, territorial unit of a foreign country or a legal person under the public law of a foreign country or any of them, together with any of above-mentioned subject, holds directly or indirectly 20% or more interest has not right of property on the real estate in Georgia.

Social Sphere

In consideration of the current situation in Georgia and subject to the current tendencies in the world we deem as necessary to specify in the Constitution the issues which concern protection of social rights. Namely, the Constitution shall create the safeguards to provide protection of the right of labor and rest, living environment, motherhood and health, family as well as improvement of grave demographical situation, promotion of education.

We think it reasonable to establish constitutionally that:

- the working hours shall not exceed 8 and the working week – 41 hours; extra payment for the overtime; an employee has the right of annual paid leave for at least 15 days;

- it is obligatory to pass a law which will determine the minimum hourly rate of employee's work;

- the government together with adoption of the annual state budget shall determine under the law the minimum living wage;

- a family whose annual income does not exceed the living wage shall be exempted from any state and local taxes. Such family shall enjoy special governmental programs for health and education. A member of such family shall enjoy the right of full financing of his/her studies at a higher institution;

- the annual taxable income of a family shall be reduced by the amount of the family's living wage, and in the cases established by the law, by the amount of the expenses borne for education, treatment and health insurance of a family member within a year;

- a pregnant woman shall enjoy the right of maternity leave for the term of at least 12 calendar weeks before and at least 6 calendar weeks after the birth of her child; also the right of medical service before, during and after delivery; the right to receive maternity allowance in the amount sufficient for her and her child maintenance; the right of leave to attend a child. The right on leave and allowance shall be extended to the child adoption as well. The law shall be passed which determines the source of allowance (the government fund, social insurance);

- the parliamentary family and demography committee shall be established.

The total replacement of public servants with the leaders representing the political power and departments is mostly resulted from not bad faith or low professional level of the servants (though, this fact has reasoned such decisions) but from the desire to meet the demand of own supporters and to form the servile officialdom which will be used for creation of corruption (elite or mass) system, falsification of elections, business terror and monopolization. We think that in order to change such situation and to form the honest and stable professional corps the Constitution shall provide:

- that a public servant may be dismissed only in the cases strictly defined by the law under the reason of bad faith, professional incompetence, inadequate qualification, age limit, the state of health, committed offence. Compelling a public servant to resign shall be subject to legal liability;

- the obligation to pass a law which will provide that the mass dismissal of public servants is prohibited by any motive. In case of reorganization of the public service or its part, the former employees shall have the priority right of employment in the reorganized structure in other equal conditions. In case of liquidation of the public service or its part, the employees of liquidated public service shall have the priority right of employment in the public service for 1 year, in other equal conditions. The state shall pay to the public servants dismissed by the motive of reorganization or

liquidation of the service, 70% of their salary in kind of compensation within 1 year but before a new employment only.

Development of Civil Society

Taking into consideration the significance of civil society for the existence of democratic state we think that the Constitution shall determine the state's obligation to promote the civil sector.

III. Elections

The only instrument of implementation of the representative democracy, or establishment of state or local authority is elections. For this reason, the great importance is attached to the election system which shall create the necessary conditions for the adequate reflection of electorate will. Of course, only this factor will not ensure the fair election results: such result may be attained only if both the authorities and the electorate comply strictly with the electoral rules and procedures. However, ex facto is that if the equitable conditions of elections are not established, including the equitable rules for resolution of election disputes, the fair election results cannot be attained. Just for this reason the constitutions of many countries provide not only the election principles but a number of procedural norms which shall ensure the existence of fair and stable election environment. The Public Constitutional Commission is of the opinion that we shall also hold this way.

The dispute on the procedure of staffing of the election administration has been lasted for some 15 years, and this procedure changed almost before every election. However, irrespective of the fact who holds the power, one principle remains the same: the majority in the election commission of all levels belongs, obviously or secretly, to the ruling party. For this reason, nothing speaking about other ones, the society is lacking confidence in the election administration and elections in whole, and this becomes a main reason of the growing abstention. It should be also mentioned that such rule of staffing of the election administration has been the object of criticism from the side of the Venice Commission

of the European Council and OSCE Election Observation Mission (EOM) time and again.

The rule of making the electoral lists is also the issue of concern. It is obvious, that out of 4.3 million residents of Georgia 3.6 million (84% of population) cannot be the voters. The “inflated” list of voters is one of those factors which enable falsification of the election results.

Subject to out realty, the important and often critical role in the final results of the elections is played by the so called “administrative resources”, which amount, according to different estimates, covers 15-20% of total voters. If we add here the venal or intimidated voters (some 10%), we may conclude that the ruling political power, as compared with other political forces starts the elections with 25-30% handicap.

The use of “administrative resource” and hidden or open illegal influence on the electorate provides the maximum result within some election systems. Such one is the election system operated in Georgia (the elections by the united party lists and majoritarian system of relative majority).

In order to ensure the stable election process and to regulate the sociopolitical life in general we think it necessary to replace the existing election system with such a system which will enable us to reduce much the effect of the above-mentioned negative factors. By this way we can ensure the proper reflection of public attitude towards the political spectrum in the final results and decrease of unhealthy confrontation.

Subject to the foregoing we consider it necessary to determine the following procedures in the general constitutional provisions, or at least in the transitional provisions:

1. Procedure of establishment of election administration.

2. Procedure of making electoral lists

3. Election system.

1. Procedure of establishment of election administration

Election commissions shall be staffed according to the method of appointment by election subjects, under the parity rule, of persons of proper qualification as commission members, and the number of members appointed by the government shall be limited by an adequate minimum for commencement of organizational activity – one-two persons. It is reasonable to set the term of effect of this rule as the term sufficient for parliamentary elections under the new version of the Constitution and for holding the next parliamentary elections. Namely, we propose the following model:

- Every commission shall be composed of at least 9 members. The right to appoint commission members shall be given in equal quantity to no more than those eight parties who have independently participated in the last parliamentary elections and election blocs, which have got more votes in those elections but at least 1 percent of the voters by all constituencies, or their legal successors;

- The chairperson of the Central Election Commission shall be appointed by the President of Georgia with the consent of the Georgian Parliament, if this nominee is also supported by the absolute majority of the parliamentary opposition; the chairperson of constituency commission – by the Central Election Commission and the chairperson of precinct – by the respective constituency commission. The commission secretary shall be elected by the commission members.

  The Central Election Commission shall be established within 2 months and constituency commissions – within 4 months following the regular parliamentary elections. In the case the President does not get the Parliament's consent within 14 days following nomination of the chairperson of the Central Election Commission, the latter shall be elected by the majority of votes of the President of Georgia, chairperson of the Constitution Court and chairperson of Supreme Court of Georgia;

- Only a person qualified according to the organic law may be appointed a member of the Central Election and constituency commissions and chairperson of a precinct.

2. Procedure of making electoral lists

The problem of credibility of electoral lists may be solved by that method of registration of voters which is used in many countries. This is the method of preliminary registration of voters. So we deem it reasonable to determine by the transitional provision of the Constitution that, the electoral lists shall be made based on the preliminary registration of voters, using biometrical parameters say, in 10 years. The use of biometrical parameters will exclude the repeated registration of one and the same voter, though with the different first name, surname or false document.

3. Election system

In order to take into maximum consideration of the electorate's will we deem it necessary to establish by the Constitution that the elections of the Parliament and other representative authorities shall be held according to the proportional system and multi-member constituency. The Public Constitutional Commission proposes the system of single transferable vote.

Alternative (V. Dzabiradze): the system of elections by the regional party lists when the voter shall make the preferential choice of 3 subjects.

Both systems will accelerate the end of the époque of "single-person" parties, the development of territorial structures of parties and formation of stable party system, revival of political life in regions, identification of local political leaders, reinforcement of local representations and understanding by the population of Georgia that the Georgian Parliament is the political body of all Georgia.

Below are described the election systems and their main properties proposed by the Commission and presented as the alternatives.

a) Single transferable vote system

In case of choice of such system Georgia shall be divided into four- and five-member constituencies in such a way that the number of members should be approximately equal (in exclusive cases the three- and six-member constituencies may be established as well).

During the voting, a voter mark with the figure “1” the name of that candidate whom s/he wants to elect, “2” –the name of that candidate whom s/he would elect if not the first candidate, “3” –the name of that candidate whom s/he would elect if not the first two etc. The voters mark their ballot, allocating preferences to their preferred ranking for some or all candidates.

A successful candidate must achieve a quota, being the total number of votes received divided by the number of candidates to be elected plus one. If a candidate wins election her/his surplus vote (in excess of the quota) is transferred to her/his voters' second choices; and if the candidate marked “2” has been elected already, the surplus vote is transferred to the candidate marked “3” and so on. The same takes place if the candidate who has held the second place has got surplus votes. As soon as any candidate gets the votes equal to the quota as a result of transfer of ballots, s/he is deemed as elected. If after transfer of all surplus votes there are left non distributed seats, all votes of the candidate who has held the last place shall be transferred to the candidates marked “2” in the ballots and if the candidate marked “2” has been elected already, the vote will be transferred to the candidate marked “3” and so on. If still some seats remain non-distributed, the votes of the candidate which has held the place before last will be distributed according to the same rule and so on, until all seats are distributed.

Advantages of this system:

- Unlike the majoritarian system, the sharp decrease in the number of so called “lost” votes[2], or the decrease in the number of those voters which votes were not counted. As a result we can get the parliament with the high-grade legitimacy (which members represent the major part of the population);

- Providing representation of territorial units that is impossible in the elections held by the common national party lists;

- Providing representation of those political forces which are influent only in one or some regions;

[2] When using the classic majoritarian system (two-round election) when the winner of the first round is the candidate who gets more than 50%, the number of “lost” votes may attain to 50%. However, the system used in our country in the last years provides 70% of “lost” votes.

- Minimization of that negative result when many persons unknown for the society enter the parliament due to their leader only;

- Minimization of the negative effect of use of administrative resource because the use of administrative resource in one constituency will not have effect on the election results in other constituencies;

- This system provides election of a representative of political minority, if the number of his/her voters is equal to the quote. For example, if the number of candidate's voters in the four-member constituency is more than 1/5 and in the five-member constituency – more than 1/6, his/her election is guaranteed. At the same time, if the voters of any party, say, do not exceed 60%, they can present maximum 2 candidates in the four-member constituency and 3 candidates in the five-member constituency.

b) Regional party list election system when a voter shall make preferential choice of 3 subjects

By this system the voter shall give his/her vote to three political subjects (party lists) more or less desirable for him/her and rank them: s/he shall mark the most admissible as "1", the next one – as "2" and the last as "3". During the process of counting figure "1" marked for the subject is appraised with 10 scores, "2" – with 9 scores and "3" – with 8 scores. Then the scores got by each subject are summed and seats are distributed according to the so called "election quote and largest remainder method".

The seats at all constituencies got as a result of the elections are attributed only to those parties and election blocs which will got at least 4%[3] of the score conforming to the voters in the respective constituency (the number of voters x 27). To establish the election quote the product of number of true ballots and 27 is divided by the number of distributable seats; the integer of the obtained figure represents the election quote. To

[3] The higher election threshold against the background of weakly developed party system and lack of democratic traditions helps the dominant party, the so called ruling party, to win. For example, under the conditions of 7% threshold in 1999 the threshold was overcome by only three subjects, and in 2004 – by only two subjects, provided that every subject in both cases got some more than 7% and it was a great possibility that we would got simply single-party parliament that is the violation of the parliamentarianism and pluralistic democracy system. So we may conclude that in case such high threshold is kept, the probability of the single-party parliament is rather high.

establish the number of seats received by a party the total scores of this party shall be divided by the election quote; the integer of the obtained figure is the number of received seats. There, ordinarily, occurs the remainder and one or some undistributed seats each of which is attributed to the parties having the largest remainder.

Indeed, such rule of voting restricts the freedom of election but in practice, proceeding from our reality, this rule will give to the voters a chance that their votes, in full or partially, will be reflected in the final election results: the probability that all three subjects elected by the voter will remain outside the parliament is very small. Consequently, the will of absolute majority of voters will be reflected more or less that will increase the people's confidence in the parliament as the very important factor in the parliamentary government conditions.

In addition, such rule of voting will minimize the administrative resource, influence of a venal or intimidated voters on the final election results: moreover, to some extent it will free the electorate from the violence and blackmail from the side of the government and enables the voters to make at least the 2nd or 3rd choice at own discretion.

IV. Majority and Opposition

The balance between the power branches is a necessary but insuffucuent condition for establishment of democratic institutes of the government. One of the top factors of establishment and good work of those institutes is the balanced relationship between majority and opposition, the quality of expectation of their cooperation or confrontation. In other words, for the stable operation of governmental institutes the country needs a real political pluralism that implies not confrontation between the political forces - the majority and opposition - but the general competition and in some matters – cooperation as well.

Reduction of the balance between the majority and opposition to the relations of political forces only is one more dummy stereotype set in our society. In practice it reflects and implies the relationship of the authorities and society. Depending on the nature and aims of the opposition, the opposition is "forced" on the one side, to assess critically the

activity of the government and on the other side, to actualize those problems which represent the public concern, therefore the opposition tries to be mouthpiece and defender of the public interests, including the interests of those people who have supported the winner-political party but not the opposition.

In the countries of old democracy where the century-old tradition of relations between the government and opposition are regulated by the democratic state institutes and social mechanisms, the criticism of the government is quite an adequate mechanism for the opposition to form the public opinion and to pass the public verdict that usually leads to the change of government.

However, in the conditions of our country which is lacking such mechanisms and always facing the threat of the authoritarian ruling, “disclosure” of the government and even the public verdict is not the guarantee of change of the power. In addition, the passed twenty years have exposed that the political parties which have swept into power, mainly abuse the principle of “democratic majoritarism” and totally ignore the opposition’s opinion. For this reason the opposition and the society in general need more strong and effective mechanisms in order to prevent the authoritarian ruling and at the same time to ensure the more or less full reflection of the public mood in the election results.

Subject to the foregoing we consider that:

- The Parliament shall establish committees for human rights and petition, which chairpersons and majority of members of will be representatives of the opposition, either the composition of committees shall be backed by the majority of the parliament and majority of parliamentary opposition;

- Adoption of the parliamentary regulations shall be backed by the absolute majority of both the parliament and parliamentary opposition;

- The parliament shall be entitled to establish an investigation or another ad hoc commission. If at least one-fourth of MP roll requires this, it is obliged to establish such commission. At the same time, representation of the parliamentary majority in the ad hoc commission shall be less than a half of its total members and the

chairperson of the ad hoc investigation commission shall not represent the parliamentary majority;

- In case of request of the ad hoc investigation commission the parliament shall appoint a special prosecutor (see about the Special Prosecutor in Section VI – "Parliament");

- The parliament shall be entitled to make decision on appointment of special prosecutor for investigation of cases of particular national importance with the elements of crime and if the activity of top state officials reveals the elements of crime,;

- The parliament shall vote on the issue on termination of the MP's office under the motive of official incompatibility or nonparticipation in the parliament work only after the conclusion made by the human rights committee;

- In case of election of the Ombudsman (Sakhalkho Qomagi) the support of the parliamentary opposition shall be decisive, and if the parliament fails to elect the public defender in the term established by the Constitution, the public defender shall be appointed by the majority of votes of the President of Georgia, chairperson of the Constitutional Court and Chairperson of Supreme Court of Georgia (see Section II – "Public Defender");

- During the appointment of the chairperson and members of the Chamber of Control, chairperson of the Central Election Commission, chiefs of the state investigation department and state statistics agency the great importance shall be attached to the support of the parliamentary opposition (see Section III "Election System", Section VIII "Government", Section IX "State Finances and Control").

V. Relations between the Parliament, President and Government

One of the main factors which determines the constitutional form of the state authority, quality of distribution and sustainability of government and effectiveness of its activity is the mechanism of relations between the parliament, president and government, the

quality of their independence and balance. So we deemed it reasonable to describe those relations at first and then present other characteristics of those state institutions.

The constitutional status of institutes determining the relations between the parliament, president and government:

- Parliament is the highest representative authority of the country which on the assumption of the people's sovereignty exercises the legislative power, determines the guidelines of the national interior and foreign policy, forms the government and exercises the parliamentary control and other powers within the frames determined by the Constitution and law;

- President of Georgia is head of the state of Georgia. S/he personifies the integrity of country, represents the state of Georgia and performs the duties entrusted by the Constitution and law.

  The President of Georgia shall not interfere in the activity of executive power (government) but s\he has the adequate authority to ensure the stable activity of state institutes in accordance with the Constitution. For this purpose s/he performs the arbitrator's function between the state power branches as well as between the state and the society;

- Government of Georgia (Cabinet) is the higher executive authority of the national state power which conducts and implements the interior and foreign policy, leads the civil and military departments within the frames established by the Constitution and law.

  The Cabinet consists of the chairperson (prime minister) and ministers. The prime-minister leads the government and is responsible for its activity before the Parliament. The ministers are jointly responsible for the government's activity before the Parliament and personally – for the activity of their departments, before the prime-minister and the Parliament.

Formation of the Government

The Government abdicates the power before the newly elected parliament. However, under the president's instruction it continues its activity before formation of a new Government.

The term for formation of a new government is limited: it shall be completed within 32 days[4] following the first session of the parliament or resignation of the Government (in case of availability of the stable parliamentary majority this term is actually reduced to 10 days).

The Government is composed according to the following rule:

- The President of Georgia shall, after consultations with the parliamentary factions, nominate to the parliament the candidature of prime-minister within the 10-day term from the first session of the parliament or resignation of the Government;

- The parliament shall vote the candidature of the prime-minister at the first session after presentation of the political program and the Government members without debates. The prime minister is deemed as elected if voted by the majority of the MPs roll. Within 48 hours following the election the elected person shall be appointed to the post by the President of Georgia.

- If the parliament fails to approve the President's nominee, it can elect the prime-minister by itself without participation of the president, by the majority of total MPs within the next 10 days. The President shall within 48 hours appoint the prime-minister elected by the Parliament, to the post;

- Nomination of candidature of prime minister requires the signatures of at least 30 MPs. At the same time, a MP shall have the right to sign nomination of one candidature only;

[4] This term consists of the following components: 10-day term (nomination of the prime-minister by the president) + 5-day term (presentation by the prime minister of political platform and the cabinet members) +2-3-day term (voting of the prime-minister candidature) +10-day term (selection of the prime-minister, if the parliament did not approve the candidature nominated by the president) +2-day term (appointment of the selected prime-minister to the post) +2-day term (appointment of ministers) = max. 32 days.

- The minister shall be appointed to the post by the President of Georgia within 48 hours after nomination the ministers by the prime-minister;

- If the parliament fails to elect the prime minister in the above mentioned term, there shall be urgently held the next round of elections where all candidates nominated in the previous two rounds have the right to participate. A candidate who will win the votes of the majority of total MPs will be deemed as elected and the President of Georgia shall appoint the candidature as the prime minster within 48 hours following his/her election.

- If in the final election round no candidate gets the votes required for election, the President of Georgia shall within the next 7 days appoint to the post of the prime-minister the candidate who has got the best result in the final round, or dissolve the Parliament.

This decision shall be based on the consultation with the parliamentary factions and possibility of cooperation of the minority with the Government. In the case the President does not dissolve the Parliament and the candidate with the best result got in the final round is appointed the prime minister, the Government will have no support of the parliamentary majority but such situation does not create the deadlock situation because:

- The Parliament is entitled to vote no confidence to the prime minister subject to the latter's reassignment provided that the majority of MPs will elect his/her legal successor, or if the parliamentary majority is formed (otherwise, the parliament will not dissolve the cabinet). The President shall within the next 48 hours allow this request and appoint the elected person as the prime minister and the persons nominated by the latter –as the ministers;

- The right of motivated motion of no confidence is given to at least one-fifth of the MPs provided that the motion contains the prospective prime minister successor (the constructive vote of no confidence).

Therefore, the majority, if formed in the parliament, can "painlessly" change the Government; at the same time termination of the cabinet's effective activity is excluded

as resignation of the prime minister and election of a new one takes place through one voting.

Resignation of the prime minister, termination of his/her powers or his/her failure to perform the powers within more than 60 days causes the resignation of the Government.

Parliament- Government

The Parliament forms the Government and controls its activity but this does not mean that the Government shall implicitly obey to the Parliament's will. The Government shall have the high quality of independence before the Parliament.

Therefore we consider that:

- One and the same MP during one session shall have the right to sign the motion of no confidence once only;

- In addition, the Government shall be able to have some influence on the Parliament for implementation of its policy. Namely, if the parliament does not approve the bill or program presented by the Government, the prime minister shall have the right to motion confidence before the parliament. If then the Parliament declares confidence to the prime minister by the majority of the MPs roll, the defeated bill or program shall be deemed as approved. However, if the Parliament does not declare confidence to the prime-minister (that causes resignation of the Government), it is entitled within the next 48 hours motion the President for dissolution of the parliament. If then within 14 days the parliament by the majority of roll elects a new prime minister, the motion for dissolution of the parliament is null and void, the president appoints the elected person as the prime minister and the persons nominated by him/her as the ministers. However, if the parliament could not elect the prime minister, the president shall decide whether to dissolve the parliament (if s/he does not dissolve it, s/he shall start formation of a new Government together with the parliament).

The disagreement may arise between the parliament and a minister or between the prime minister and a minister.

In the first case:

- The parliament is entitled to vote no confidence to a minister by the majority roll. The no confidence may be motioned only by interpellation after hearing the response on the put question;

- If the parliament votes no confidence to the minister, the President of Georgia shall dismiss him/her from the post.

In the second case:

- The prime minister is entitled to motion no confidence to a minister before the parliament. The no confidence is deemed as voted if backed by the majority present but at least one-third of the total MPs;

- If the Parliament did not back the prime-minister's motion, the prime-minister is entitled to motion his/her no confidence before the parliament. If after the motion, the parliament does not motion any confidence to the prime-minister, or motions it but does not vote any confidence to the prime-minister, the no confidence to the minister is deemed voted and the President of Georgia shall dismiss it from the post.

Parliament-President

The President shall sign a bill into a law and has the suspensory veto right. This right enables the President to return to the parliament the passed law with own notes and bind upon the parliament to revise the respective provisions of the law.

The President is entitled to suspend, with the consent of the parliamentary majority roll, the activity of the self-government or another representation authority of territorial units, or dissolve them if their activity has endangered the national sovereignty, territorial integrity, implementation of constitutional powers of the state authorities.

The president shall dissolve the parliament if:

- The parliamentary sitting was not held or the parliament could not pass decision within two months running during one session period;

- The number of MPs reduced to the half of its total members or more and its roll cannot be filled;

- During 60 days following the beginning of the budgetary year the parliament could not pass the state budget law and did not vote any confidence to the cabinet.

The president has the discrete right (the right to decide whether to dissolve or not dissolve the parliament) to dissolve the parliament if:

- The parliament did not approve the prime-minister nominated by the president and failed to elect him/her by itself in the established term;

- After motioning by the prime-minister no confidence to the cabinet the parliament failed to vote no confidence under the constructive voting procedure.

The obligation and right to dissolve the parliament has no force during the period from the beginning of the procedure of impeachment against the president or persons holding the post specified by the constitution, instituted by the parliament, to its end.

In order to prevent the abuse of presidential power to dissolve the parliament, the presidential order thereof may be appealed against to the Constitutional Court.

The parliament has the right to dismiss the president by impeachment. The impeachment procedure as compared with the applicable rule is slightly facilitated and the terms of its stages are determined.

President-Cabinet

The president shall not interfere in the activity of the executive power, but as the head of state and Supreme Commander-in-Chief s/he shall have the right to call and preside the cabinet's sitting for consideration of the national defense issues as well as during the

states of emergency and martial law. The decision made by the sitting shall be enacted by the presidential order cosigned by the prime-minister.

In case of the state of emergency of martial law and under presentation of the Cabinet the President shall have the right to issue the presidential instruments with the law effect – decrees as in the state of emergency decisions of normative kind shall be passed without delay. However, the urgently passed decisions always contain a certain threat. For this reason it is expedient that the issue of decree shall involve the participation of both the President and the Cabinet. The decree shall be effective upon promulgation but shall be approved by the Parliament as soon as possible and be null and void if not approved.

The presidential instrument shall be verified, except for the cases provided by the Constitution or law, by the signatures of the prime-minister, authorized minister or chairperson of the parliament (countersign). The responsibility for those enactments shall be borne by cosignors.

VI. Parliament

Above we have determined the constitutional status of the Parliament and its relations with the President and the Cabinet. In this section are presented the important characteristics of parliament formation and its activity.

Unicameral or bicameral parliament?

We think that formation of the bicameral parliament is not reasonable until we have the opportunities of political resolution of the problem related to the separatist regions of Georgia. In future, or after resolution of this problem, it will be expedient to pass to the bicameral system and this drive shall be used for promotion of the political decision of this problem. If not this problem we do not feel the need in the bicameral parliament. In

spite of some advantages, the legislative process in the bicameral parliament sometimes is decelerated. Besides, the maintenance of such parliament is more expensive[5].

Electoral qualifications

The electoral qualifications (those of citizenship, age, residence, moral) shall be specified by the Constitution only, in order to avoid its use as the tool for the competitive ideas to get rid of undesirable people in the elections. We think that election of a person with dual citizenship as a MP shall be prohibited.

Parliamentary term and first session

- We deem it reasonable to hold the regular parliamentary elections at one and the same time, on the third Sunday of May[6] of the fourth year following the parliamentary elections, and the extraordinary elections – within 60 days after dissolution of the parliament.

- The first session of newly elected parliament shall be held with at least two-thirds of total members no later the tenth day following the official announcement of election results. The first session day shall be appointed by the President of Georgia.

- The first session is valid if attended by the majority of total MPs. The parliament acquires the full authority after recognition of terms of at least two-thirds of total MPs.

- The terms of the acting parliament are stopped upon the first session of the newly elected parliament. The first session is deemed as valid if attended by the majority of total MPs.

[5] For information: 22 European countries where the population does not exceed 16 millions have the unicameral parliament.
[6] In case the parliamentary elections are held in May the Parliament and the Cabinet will have enough time to draft the next year budget.

Rules of the Parliament

The internal structure of the Parliament, its work and relations with the state and local authorities are determined by the law on parliamentary regulations to be passed by the parliamentary majority roll provided that it will be backed by the majority roll of the parliamentary opposition.

MP Immunity

We consider it necessary to specify the procedure of removal of immunity of a MP.

Special prosecutor

As the prosecutor's office represents the component of the executive power, we think it reasonable to introduce the institute of special prosecutor: the parliament shall have the right and in case of motion of the ad hoc investigation commission, is obliged to appoint the special prosecutor: a) for investigation of cases of particular national importance with the elements of crime; b) for investigation of the activity of top state officials, if the elements of crime are detected.

- The special prosecutor is accountable before the Parliament only. During the period of his/her terms of office all his/her other official powers shall be suspended;

- The special prosecutor shall investigate the case with the same powers and limitations as the investigation agency;

- Only a person who is not a public servant and meets the requirements for appointment to the post of high-rank prosecutor or the judge of appeals or supreme court may be appointed a special prosecutor. The right to nominate the candidature of special prosecutor is vested in at least one-fifth total MPs.

- Appointment of special prosecutor requires the support of the majority of total MPs provided that the majority of the parliamentary opposition has backed the nominee. If

the parliament could not elect the special prosecutor by this procedure, the special prosecutor shall be elected from the existing candidates by the majority of the chairman of the Parliament, chairpersons of committees for legal matters, human rights and petition; in case of equal votes the vote of the chairperson of parliament will be decisive.

Impeachment

We are intending to facilitate and specify the impeachment procedure. In particular, we deem it reasonable to cancel the interim voting provided by the applicable Constitution which shall determine, after the judgment is passed by court, whether the procedure of impeachment of the president shall be voted. In addition, we think it necessary to determine the term for preparation of the court's opinion and the term for consideration and voting of the issue in the parliament after passing of the court's opinion.

Resignation under the impeachment procedure shall be extended to the President of Georgia, member of the Cabinet, chairperson and member of the Supreme Court, chairperson and member of the Chamber of Control, member of the Board of the National Bank, chief prosecutor, director of the national investigation department and the elected member of the Council of Justice in case of violation of the Constitution or/and commitment of crime by the above listed persons.

Question and interpellation

- A MP is entitled to apply with a question to any authority accountable before the Parliament, to the prime-minister, minister, any representative of the state power and local self-government, public institution and receive the exhaustive response from them;

- A parliamentary faction as well as at least ten-person group of MPs is entitled to question by interpellation any authority accountable before the Parliament, the cabinet, minister, who are obliged to respond on the set question at the parliamentary

setting. In case of interpellation by the parliamentary faction as well as by at least ten-person group of the MPs, the response shall become the subject of the parliamentary consideration.

Approval of President's decree

We consider that all presidential decrees shall be subject to approval and not only those which regard the restriction of human rights and freedoms. At the same time the latter decrees shall be approved by the majority roll of MPs and other decrees – by the majority present but by at least one-third of the total MPs.

We deem it necessary that in case of announcement of the state of emergency or war the time of obligatory gathering of the parliament shall be reduced to 24 hours (instead of 48 hours). The time of submission of a decree by the President to the Parliament shall be also decreased: the decree shall be urgently submitted to the Parliament. The term of approval of decree shall be determined. We believe this term shall not exceed 48 hours and if within this term the voting for decree is not held, it shall be deemed as approved, and if the voting is held but not approved – it shall be deemed as invalid.

Legislative acts

We think the Constitution shall determine the kinds and hierarchy of legislative acts, procedure of their adoption and effect, persons authorized to adopt/issue regulatory normative acts (the President of Georgia, the Government, other state and local self-government bodies, other bodies and officials exercising the public authority) and shall provide that such act may be adopted/issued only in the cases specified by the Constitution or law (at the same time the law shall determine the purpose, content and amount of those powers). It is reasonable to establish that the kinds and forms of legislative acts (both normative and individual), rules of their drafting, adoption, promulgation, effect and registration shall be specified by the organic law.

VII. President

Above we have determined the constitutional status of the President and his/her relations with the Parliament and the Cabinet. In this Section we present some other important features of the presidential power and the rule of his/her election.

The functions and place of the President in the state power system are conditioned by his/her status as the head of state and higher representative of the state. Subject to this status:

- The president's role in overcoming of the political crisis in the country is very important. In particular, in some cases the president enjoys the duty of dissolution of the Parliament and in some cases – the discrete right of dissolution (see Section IV "Parliament-President);

- The president has no right to be a member of the political association and to participate in the election campaign due to the necessity of the president's political neutrality;

- The president shall enjoy such powers typical for the head of state as:

  - To nominate candidature of the prime-minister to the Parliament and appoint ministers under nomination of the prime-minister (see Section IV "Formation of Cabinet");

  - To sign and promulgate the law passed by the Parliament;

  - The suspensory veto right;

  - To represent the state in foreign relations;

  - To enter into international agreements but under the negotiations held by the Cabinet;

  - To accredit ambassadors; to appoint the ambassadors and persons of other higher diplomatic position nominated by the Cabinet and under consent of the parliament;

  - To confer higher military ranks under presentation of the Cabinet;

- To appoint elections;
- To make decisions on naturalization and giving shelter;
- Clemency;
- To declare the states of emergency and martial law in the cases provided by the constitution and so on.

- The President as the head of state is the Supreme Commander-in-Chief of the Georgian armed forces and the chairperson of the national council of defense. In case of declaration of the martial law, under recommendation and with consent of the Council of Defense the President appoints the Commander-in-Chief of the armed forces;

- The president as the head of state who for his/her institutional character is devoted to protect the constitutional legitimacy, shall have the right to suspend, with the consent of the parliament, the activity of the self-government or another representation authorities of territorial units, or dissolve them (see Section IV "Parliament-President"); as well as to issue under presentation of the Cabinet the enactments having the effect of law – decrees (see Section IV "President –Cabinet") to be submitted to the Parliament for approval during the state of emergency or martial law;

- The president as the head of state and supreme commander-in-chief, the person who personifies the national integrity shall have the right to call the cabinet's sitting for consideration of the national defense issues as well as during the states of emergency and martial law (see Section IV "President-Cabinet");

- We consider it reasonable that the president as the head of state, politically neutral person who is attributed to no power branch and by the institutional nature is devoted to protect the constitutional legitimacy, shall preside the council of justice of Georgia and take part in the appointment of judges (see Section X "Judicial Power").

Countersign of Presidential Acts

Except for the cases provided by the Constitution or law the presidential instruments shall be verified, subject to the content of the instrument, by the signatures of the chairperson of the parliament, prime-minister or the respective industry minister (countersign). The responsibility for those enactments shall be borne by cosignatories.

Immunity

The President as far as s/he holds the post cannot be arrested or held criminally liable.

Termination of president's office

The ground for termination of the president's office is resignation, inability to exercise powers, dismissal from the post under the impeachment procedure.

We deem it necessary to specify by the Constitution the rule of identification of inability to exercise the presidential powers. The Public Constitutional Commission proposes the following rule: the inability of the president to exercise the powers shall be established by the 2/3 majority of the total MPs of Georgia under the reasoned proposal of the Cabinet. The president may appeal against this resolution to the Constitutional Court.

Presidential elections

We deem it reasonable to elect the president through the indirect elections, by the election board or by the Parliament, according to the qualified (2/3) majority in the first round of elections. Such procedure of election of the president creates the background for harmonic cooperation of the president with the parliament, i.e. with the government as well, and representative bodies of territorial units because s/he enjoys the support of their

qualified majority[7] not for the election moment but for more or less long time[8]. Such situation in consideration of the president's authority increases the outlooks of harmonic activity of the system of power. In addition, such rule to some extent protects from such possible undesirable events as the excess political arrogance of the president elected by the direct general elections, caused by the high quality of his/her legitimacy that may threat political stability.

The Public Constitutional Commission proposed the following main conditions and rule of presidential elections:

- The President of Georgia is elected for the term of 5 years by the electoral assembly by secret ballot without debates. One and the same person may be elected the president for two terms only. If the elections are caused by the termination of the President's office, the president has no right to take part in the elections;

- A born citizen of Georgia other than the person who is simultaneously the citizen of another country, who has attained the age of 40, enjoys election rights and has lived in Georgia at least 15 years, including at least 5 last years before the elections, may be elected the president of Georgia,;

- The electoral assembly shall be composed of all MPs, delegates elected from the members of higher representative bodies of Ajara and Abkhazia, capital of Georgia – Tbilisi, other regions of Georgia and Tskhinvali region (total 295 members). The higher representative bodies of Abkhazia and Ajara as well as Tbilisi representative body shall elect fifteen delegates each, and the regional representative bodies – ten delegates each (total 154 delegates). During election of delegates shall be secured the proportional representation of the minority. The election of delegates (voters) shall be held after the convocation of the electoral assembly no later the 10th days prior to the presidential election;

- The elections of the President of Georgia shall be held not earlier the 45th and no later the 30th day before the expiration of the presidential term and in case of termination

[7] Election of the president by the qualified majority means the support of not only the parliamentary majority but the part of opposition as well.
[8] There should be taken into consideration that the parliamentary term is 4 years and presidential term – 5 years.

of presidential office – no later the 30th day following termination of his/her office. The electoral assembly shall be convened by the chairperson of the Parliament at least 20 days prior to the elections;

- The elections will be held if the assembly is attended by more than two-thirds of the total members of the electoral assembly (197 or more). The right to nominate the candidate for presidency is vested in more than one-fifth of the attended members of the electoral assembly. One person has the right to sign nomination of one candidate only[9];

- The first round of elections shall be held by the single transferable vote system and the candidate who will get at least 2/3 votes of the attended members of the electoral assembly shall be deemed as elected provided that this number will exceed the half of the total electoral assembly[10];

- In the winner is not revealed in the first round, the run-off shall be held where those two candidates who have got more votes than others as a result of transfer of votes in the first round, will take part. The winner will be the candidate who will get more votes.

VIII. Executive Branch

The Cabinet

[9] In these conditions the number of candidates will not exceed 4.

[10] During the voting, a member of the electoral assembly shall mark "1" the name of that candidate whom s/he wants to elect, "2" –the name of that candidate whom s/he would elect if not the first candidate, "3" –the name of that candidate whom s/he would elected if not the first two etc. The voter can make preferences of any number. If no candidate gets the number of "1" required for election, the candidate who has got the last place will be withdrawn from the elections and all his/her ballots will be transferred to the candidate marked "2" . If after such transfer no candidate again gets the ballots required for election, the candidate who has got the place next to the last will be withdrawn from the elections and all his/her ballots will be transferred to the candidates marked "2" (if "2" was marked the candidate got the last place, the ballots will be transferred to the candidate marked "3") and so on, until one candidate collects the number of votes sufficient for election or until only one candidate is left. In the latter case the second round will be held.

Above we have determined the constitutional status of the Cabinet, rule of its formation and relations with the parliament and president. In this section are presented the structure of cabinet and some other features of its terms of office.

- The Cabinet consists of the prime-minister and ministers. The prime-minister under his/her order entrusts one minister with the functions of vice-prime-minister. The vice-prime minister in case of absence of the prime-minister or in case of the temporary inability of the latter to perform his/her duties, shall perform the prime-minister's functions;

- Only a Georgian MP may be elected the prime-minister (the MP elected as the prime-minister will be suspended the MP powers for the period of his/her stay on the post). A minister may be appointed only the person entitled to be elected a MP. Only a civil person may be appointed the prime-minister and minister. The former military serviceman or the person equated to such may be appointed only if that person retired at least 3 years ago.

- The prime-minister or a minister has no right to hold any position other than with the party, to carry any commercial or professional activity (including the pedagogical), be the member of management of an entity established for this purpose, establish an entity or have another source of remuneration. This restriction is not extended to the party activity.

- The prime minister and the Cabinet, respectively, abdicates before the elected parliament. The authority of the newly established Cabinet commences from the day of appointment of the prime-minister and all ministers and continues until the resignation of the cabinet.

- Resignation, termination of powers of the prime-minister or his/her inability to perform his/her powers for more than 60 days causes resignation of the total cabinet;

- The cabinet is deemed as resigned if the parliament does not motion confidence or motions no confidence towards the prime minister. A minister is deemed as resigned if the parliament motions no confidence.

- The prime-minister at request of the President of Georgia and a minister at request of the prime-minister of President of Georgia shall prolong performance of his/her duties before appointment of legal successor.

- In case of absence of a minister his/her duties shall be performed by deputy minister and in case of temporary inability by the minister to perform duties his/her duties shall be combined by another minister to whom the President of Georgia entrusts that duty under presentation of the prime-minister for the term not exceeding 60 days[11].

- The inability of the minister to perform his/her duty for more than 60 years leads to his/her resignation.

- The procedure of establishment of inability of performance of their functions by the prime-minister or minister shall be explicitly determined. Otherwise we can face a problem in the case of actual inability of performance of functions by the prime-minister of minister when they do not or fail to announce this. In such case the legitimacy of transfer of their powers to the acting person identified by the Constitution may become disputable.

  The following procedure of establishment of inability of performance of powers is proposed: the inability of the prime-minister to perform his/her functions shall be established by the Parliament of Georgia under the reasoned proposal of the president of Georgia and the inability of the minister to perform his/her duties shall be established by the President of Georgia under the reasoned proposal of the Cabinet.

- It shall be established that the authority, structure and rule of activity of the executive power are determined by the Constitution and organic law, provided that any merger or otherwise integration of those departments, which are responsible for the armed forces, national security and police, shall be prohibited. This prohibition is very important for elimination of any attempted encroachment and provision of the national security, and determination of the executive power structure and rule of activity by the organic law will promote the sustainability of the structure.

[11] Such rule provides performance of the minister's duty only by that person who has credibility of the minister in one case, and credibility of the parliament in the other case.

- The prime-minister determines the guidelines of the cabinet's activity and, consequently, is responsible before the Parliament for the general policy of the Cabinet. On the political platform approved by the Parliament the prime-minister shall set forth for the ministers the main guidelines in frames of which the minister will independently and under own responsibility decide the issues covered by his/her competence and perform other functions determined by the organic law.

- Under and in pursuance of the Constitution and the law the Government shall adopt the legal act – resolution and individual act – order. The Government makes decision jointly by the majority of total Government members. The decision of the Government shall be signed by the prime-minister. Within their terms of office the prime-minister and ministers issue individual legislative acts – orders.

State Investigation Department

For prevention of any political or institutional pressure on investigation of a crime we deem it reasonable to establish an independent structural unit of the executive power – the state investigation department. We also consider it necessary to prohibit establishment of another departmental or interdepartmental investigation agencies other than: a) the prosecutor's office which shall perform investigation in a crime if a suspect is a responsible officer of the State Investigation Department, b) the special prosecutor appointed by the Parliament and c) police, which terms of reference cover the investigation in misdemeanors.

In order to provide the independence of the State Investigation Department we consider it reasonable that its director for the term of 5 years shall be appointed by the President of Georgia with the consent of the majority of MPs roll, provided that the nominee is backed by the parliamentary opposition, and that termination of the director's office is possible only under the impeachment procedure or under the reasoned decision of the President of Georgia with the consent of the majority of MPs roll.

Prosecutor's office

Proceeding from the universally recognized purpose of prosecutor's office and aiming prevention of its transformation into an institute for repression, the function of the prosecutor's office and its place in the system of central authorities shall be determined by the Constitution and the terms of office, structure and regulations – by the organic law.

The function of the prosecutor's office shall cover the support of the public prosecution and investigation in a crime, if a suspect is the responsible officer of the State Investigation department.

In our opinion the prosecutor's office shall be a structural unit of the Ministry of Justice with the high quality of independence, namely: a) the chief prosecutor shall head directly the prosecutor's office, b) the chief prosecutor for the term of 5 years is appointed by the President of Georgia with the consent of the majority of MP roll, c) the chief prosecutor may be dismissed before expiration of his/her term only under the impeachment procedure or under the reasoned decision of the President of Georgia backed by the consent of the majority of MP roll, d) termination of powers of the prime-minister or minister of justice does not lead to termination of powers of the chief prosecutor.

IX. State Finances and Control

State Budget

Within adoption of the state budget the most important thing is the mutual responsibility of the Parliament and Government. The first word in this issue shall be attributed to the Government and the last one – to the Parliament. This implies that only the Government shall be entitled to draft the budget and no change that results in the increase in the state expenditures or decrease in revenues, shall be made in the draft budget without the Government's approval. On the other hand, the Government shall have no right to take the public loan or undertake any financial liability as well as to carry the expenditure from one part of the budget to another, without the approval by the Parliament.

If the Parliament before the next budgetary year fails to pass the state budget law, the Government shall have the right to bear expenses only for performance of liabilities undertaken by the state previously and only according to the past year budget.

If the Parliament, within 60-day term following the budgetary year beginning as specified by the Constitution fails to pass the state budget law neither resigns the Government under the constitutional vote of no confidence (or fails to elect a new prime-minister), the President shall dissolve the Parliament.

The Parliament shall have the right to control the legitimacy of spending of the state budgetary funds and in case of detection of any breach shall stop the respective spending under the resolution passed by the majority of MP roll.

If the Parliament does not approve the state budget performance report because of the non-execution of the state budget, the Government shall resign.

If the new state budget law results in the growth of the state budget revenues of the current year, decrease in revenues or undertaking new financial liabilities by the state to be performed within the current year, adoption of this law requires the Government's consent. The Government's consent is not obligatory if the above-mentioned results occur in the next budgetary year.

Chamber of Control

The main function of the Chamber of Control is the control over the use of the state funds and other national values, and the legitimacy and substantiation of their spending. In addition, it shall have the right to examine the activity of other state agencies of tax and financial and economic control, submit to the Parliament the proposals for enhancement of the legislation regulating the matters of tax and state control.

As the basic spender of the state funds is the executive power which enjoys the support of the parliamentary majority, in order to provide the unbiased control the last word in establishment of a body controlling those funds shall not be attributed to the

parliamentary majority only. For this reason we think that the Chamber of Control shall be the five-member collegial body established for the term of 5 years. Its chairperson shall be elected by the Parliament out of candidates nominated by at least 1/5 of its members. The election shall be supported by the majority of the MP roll, provided that it has obtained the absolute majority of the parliamentary opposition. If the parliament fails to elect the chairperson of the Chamber of Control in the established term, the latter shall be elected out of the nominated candidates by the majority of votes of the President of Georgia, chairpersons of the Constitutional and Supreme Courts under the presidential order cosigned by the chairpersons of the Constitutional and Supreme Courts. Such approach, in our opinion will provide the political neutrality and imparity of the chairperson of the Chamber of Control. As to the Chamber members, two members shall be elected by the majority of MP roll and two members – by the absolute majority of the parliamentary opposition. In order to ensure the independence of the chairperson and members of the Chamber of Control, they may be dismissed before expiration of their terms of office only under the impeachment procedure.

State Statistics Agency

Determination of the state policy requires the objective evaluation of the situation in the country. For this purpose, along with other data, we need the objective statistical information. This information is also required in order to provide the effective parliamentary control over the activity of the Cabinet. As only the high-professional, impartial agency independent from the Cabinet is able to perform this task, we think it reasonable to determine constitutionally that:

- the State Statistics Agency is the independent institution accountable before the Parliament;

- the chief of the State Statistics Agency shall be appointed for the term of 5 years by the President of Georgia with the consent of the majority of MP roll, including the majority of the parliamentary opposition. If the President fails to get such consent in the established term, the chief of this agency shall be elected by the majority of votes of the President of Georgia and chairpersons of the Constitutional and Supreme

Courts under the presidential order cosigned by the chairpersons of the Constitutional and Supreme Courts. Dismissal of the chief of the state statistics agency may take place only by the reasoned decision of the President of Georgia under the consent of the majority of MP roll or under the impeachment procedure;

- the functions, authority, structure and rule of activity of the State Statistics Agency shall be determined by the law.

Taxation

In our opinion, the Constitution shall provide that:

- the taxes are national and local. At the same time, out of the national taxes the income and profit taxes are the shared taxes which are divided between the state and territorial units (autonomous unit/region and local self-government) pro rata determined by the law provided that the respective representative authority will have the right to establish the tax rate by itself within the limits of its share. Local taxes shall be paid in total to the local budget. Such rule will promote the independence of local budgetary revenues from the central authority and will enable the local government to exercise own powers independently;

- setting of taxes and duties as well as establishment of the limits of rates for local taxes and duties is allowed only under the law of Georgia and the procedure provided for adoption of the organic law of Georgia. Such procedure will promote the sustainability of the tax environment;

- introduction of local tax and duty and establishment of their rates (in frames provided by the law) shall be the empowered to the respective representative body only;

- Introduction of a new tax or duty as well as increase of their rates shall become effective only after the beginning of the next budgetary year but no earlier 3 months following their introduction. Such rule will protect an entrepreneur from expected risks and enable to plan business operations better.

X. National Defense

Right and duty of a citizen

In our opinion, the Constitution shall provide that:

- the defense of Georgia is the right and duty of every citizen of Georgia;
- the form of military service as well as the choice of alternative service and release from those liabilities shall be established by the law;

National Defense Council

Ensuring the national (or state) security is one of the main missions of the authorities and execution of this task is mainly entrusted on the Cabinet. The important part of this versatile mission is to provide the defense of the state against the external aggression by means of the armed forces. Due to the function and specific character of the armed forces they shall be fully depoliticized and their use for solution of home problems shall be prohibited (except for the state of emergency). For that reason on the one hand, and on the other hand in order to avoid direct subordination of all defense and law enforcement agencies to the executive power (the Government) in the period of peace we think it necessary to establish for organization of the military development and national defense the National Defense Council headed by the President of Georgia – the Supreme Commander-in-Chief. In case of declaration of the martial law the President of Georgia under the recommendations and with the consent of the National Defense Council will appoint the commander-in-chief of the armed forces.

The composition of the National Defense Council shall be provided by the Constitution and the powers and activity by the Constitution and organic law.

In our opinion the composition of the National Defense Council shall include the President of Georgia, chairperson of the Parliament, prime-minister, foreign minister, finance minister, defense minister, chairperson of the respective parliamentary

commission, heads of executive power of political autonomies, Chief of the General Staff of Armed Forces and no more 3 members appointed by the President of Georgia with the consent of Parliament as well as the Commander-in-Chief in case of the war.

Use of armed forces

In our opinion the Constitution shall provide that:

During the state of emergency the armed forces may be used only under the decision of the President of Georgia backed by the consent of the National Defense Council. This decision shall be urgently presented to the Parliament for approval. The Parliament shall make decision by the majority of total members provided that the majority of parliamentary opposition supports it.

The armed forces cannot be used for execution of international duty without the consent of the majority of total MPs.

In case of aggression against Georgia the President of Georgia shall declare martial law and thereafter under the consent of the National Defense Council is entitled to start the use of armed forces. These decisions shall be urgently presented to the Parliament for approval.

XI. Judicial Power

The particular and specific function in providing distribution of powers, mutual control and balance of power branches, protection of human rights and freedoms belongs to the judicial power.

The ideas of the Public Constitutional Commission about the constitutional system of Georgian court provide, may be slightly fragmentarily but explicitly, the concrete proposals regarding the creation and introduction, through the Constitution and respective laws, of such judicial system which will to the maximum extent meet the universally recognized requirements for this apolitical power branch. We do not imply that all those

requirements shall be always met equally and fully. This is impossible. The main thing is that they shall be considered in integrity, in the continuous and close relation with each other, maintaining the optimal and delicate balance. In other words, sometimes one (or some) requirements shall have priority and sometimes – the other (others). However, in each certain case such balance shall be adequately reasoned and justified in line with the general social or legal policy. Such approach may be called conventionally the dynamic balance principle. The concept proposed by us is based just on this principle and the basis for its practical implementation is the scientific method of legimetric analysis (quantitative aspects of all legal issues) of confronting, opposing or mutually exclusive factors.

The Commission has specially considered one of the themes very important and problematic for Georgia and already reflected in the Georgian procedural law. However, in the course of nature this theme did not become the object of adequate consideration and was discussed mainly from its secondary aspects and without the comparison with the basic requirements of the justice. Below we are trying to fill the shortage in this sphere.

Jury Trial

The following factors (arguments) are usually thought to be the benefits of trial in some categories of cases with participation of the jury: (1) more democracy (from the aspect of involvement of people); (2) more guarantee of adversariality and (3) more confidence in the justice by the people.

1. Involvement of people or higher quality of democracy does not represent the aim of justice; it is only the means for its independence and confidence. Instead, because of lack of competence and qualification, excess expensiveness and inflexibility neither the justice nor its real legal effect will be obtained. However, this shall be the main object and purpose of the judicial system.

2. The adversariality is also not the aim of the justice; it is also the facility to obtain the equality between the counterparts and, consequently, to make the justified judgments

in order to eliminate the influence on the judges from the side of bureaucracy. Instead, because of lack of professionalism the probability and threat of mistakes infinitely grows. However, the judicial power first of all shall strive for and serve the goal of infallible justice.

3. The people's confidence in the justice implicated to them is the same doubtful presumption which in older times just succeeded to perform its historical mission; however, it has exhausted its resource. It has lost its early appeal and actuality that is evidenced by the recent sociological polls. By the way, the people's opinion on professional matters is often biased and unfair. It easily obeys to strong pressure of the judicial rhetoric of eloquence by well-trained professional barristers and often becomes the source and drive of grave mistakes. This is also aggravated by the fact that the jury panel needs to provide no reason, they shall simply put the verdict "guilty" or "not guilty". In turn, the unreasoned verdict will be never completely convincing and trustful.

For all those reasons almost in all countries worldwide the jury institute loses its authority and practical use. Noteworthy is that even in the native land of the jury system – England, the jury trial considers only 20% of the criminal cases and in the USA this figure is reduced to 3.4%[12]. Consequently, the critical pathos and publications against this institute have increased much.[13] It would be clear if it took place after the catastrophic and absolutely scandalous O. J. Simpson trial verdict, but the matter is that the process of "devaluation" of the jury system has began much earlier that may evidence its relevancy.[14] Noteworthy is that in spite of these facts the jury system is launched carefully in the so called "countries of new democracy", including Georgia.

Georgian reality analysis

[12] Ia Chkheidze, Problem of Admissibility of Proofs in Criminal Proceeding, (in Georgian language), Meridian, Tbilisi, 2010, p.193

[13] William Burnham. Introduction to the Law and Legal System of the United States (in Russian), Moscow, RIO "Novaia iustitsia", 2006, pp. 225-232

[14] Jerome Frank. Courts on Trial. Princeton, 1949; Jeffrey Abramson. We, the Jury; Jury System and Ideal of Democracy. Basic Books, 1994; Stephen J. Adler. The Jury: Disorder in the Courts Doubleday, 1994

Whereas the jury trial is in fact two courts of absolutely different nature put in one "casing" (the "questions of fact" court plus "questions of law" court), so it is evident that this system not only will not be able to solve the serious problems facing the Georgian justice but will create new ones. In fact what is the worth of the system which sometimes originates the necessity of limitation of such concepts as "facts" and "norms", factuality of norms" and "normativity of facts". There may be set a question: if in our reality we have failed to grasp in the simple "unicellular" court, would we be able to deal with a more complicated "multicellular" one? Taking into account the time only, we can calculate that the jury trial requires by 40% more time[15] for investigation in a case than a common trial, the more so that this will take place in the countries of respective traditions. There has never been the jury trial tradition in Georgia, so why shall we introduce it now when this system itself faces its "decadence"? Or, will it settle down if launched? Of course, not. By the way, this strongest argument against the jury trial system played its decisive role in Japan when they considered the issue on restoration of the jury trial[16]. It is well known that Russia has faced insurmountable difficulties as a result of experimental introduction of the jury trial system. Even in the most competent sources of the American juridical literature it is recognized that the jury trial is not reasonable in other judicial systems as it reflects the American values.[17] It should be for that reason that FRG the number of claims against which filed to the Strasbourg Court is less in percentage[18], mentions but does not use and has never used the jury institute. However, the additional reason may be the fact that even in the USA, native for the jury trial, the opinions of the justices and non-professional jurors at the jury trial match in 78% and 22% of justices have absolutely different opinion regarding the designation of jurors.[19]

Subject to the foregoing, the Commission attitude to legitimizing the jury institute constitutionally is rather restrained.

[15] William Burnham, Ibid, p. 226.
[16] Richard O. Lempert. A Jury for Japan. AJCL, 1992, vol. 40, p.37
[17] William W. Schwarzer. Reforming Jury Trial. University of Chicago Legal Forum, 190, pp.121-125
[18] ECHR, Annual Report 2009. Provisional Edition. January 2010, pp. 136-137
[19] Harry Kalven, Hans Zeisel. The American Jury. Little, Brown, 1966, pp. 55-56

Life tenure of judges

The strongest guarantee of independent of the court and judges is the life tenure principle for judges. Therefore we shall check if introduction of this principle contradicts other necessary requirements set forth before the judicial system, or other reasonable opinions?

As we see it is the rarest case when one concrete requirement at first sight excludes its explicit opposition or incompatibility to other requirements; though its introduction and implementation in principle contradicts those universally recognized aims which serve all those requirements in integrity. Those are strong and healthy, prestigious and competent, impeccable court and justice full of people's trust.

What is the situation with all these things in Georgia?

Here in Georgia we have not yet formed and staffed the more or less full corps of high-skilled and worthy judges. A great part of them were found to be in excess subordination to the state authority. Consequently, the quality of people's confidence in them is very low. Of course, appointment of such judges to such honorable and responsible official post for the life term will be unjustified, unreasoned and unfair. The life tenure factor would close, for the indefinite period, the doors for young, talented well-educated lawyers with contemporary experience and adequate training and thus would result in the immeasurable harm and moral loss for the Georgian justice. Moreover, such factor could cause the outflow of promising lawyers or many other unhealthy tendencies some of which cannot be preliminarily imagined.

Subject to the foregoing the Public Constitutional Commission brings up for discussion the conceptually new idea of loading with the stimulating purpose of life term for judges. According to this idea, appointment of a judge for the life term will be possible, firstly, with adherence to very strict conditions and applied to a very narrow category of professionals; secondly, it will be applied not only for the purpose of providing the independence of court but for the purpose for them to maintain their universally recognized authority and image as the universally model judges. By this the confidence in judges and their prestige will arise; the next generations will obtain the adequate example and the true chivalry of justice will pass the worthy and glorious years until the natural end of their famous carrier.

Below are given the conditions which, in our opinion shall be provided in the Constitution to ensure the judicial power to perform its functions adequately. Namely, we think it necessary to increase the age qualification and establishment of the service qualification of a judge; determination of the term and rule of appointment of a judge, including the life tenure; total depoliticization of the Council of Justice, extension of powers of the Constitutional Court and limitation of the circle of persons having the right to be appointed as judge.

Age and service qualifications of judges

A citizen of Georgia who has attained the age of 30 but not exceeded the age of 60 may be appointed a judge of the trial court, if s/he has got the higher education in law, length of service by specialty for at least 5 years and has passed the judge exams. A judge of court of appeals –the age of 35 and not exceeded 65 having at least 5 year service as the first instance judge and a judge of the Supreme Court –the age of 40 and not exceeded 70 having at least 4 year experience of work as the judge at the court of appeals.

Due to the specific nature of cases subject to consideration at the Constitutional Court we deem it reasonable that the circle of those persons who can be appointed a judge of the Constitutional Court shall be limited with the judges having the experience of work as the judge of Supreme Court and court of appeals, barristers having at least 15-eyar experience and legal scholars. In addition, their age qualification shall be determined at 40-75 years.

Appointment of judges

The President of Georgia shall appoint a judge of the trial court under presentation of the judicial power council for the term of 10 years but in case of the first appointment – for the term of 5 years. The President of Georgia shall appoint a judge of the court of appeals under presentation of the judicial power council and with the consent of majority of the Georgian MP roll for the term of 15 years. A judge of the Supreme Court of Georgia

shall be appointed for the term of 20 years or life term by the majority of MP roll under presentation of the President of Georgia.

The chairpersons of trial courts and courts of appeals shall be elected for the term of 5 years by the judges of those courts out of the panel. At those courts where the panel includes less than three judges, the chairpersons shall be appointed by the President of Georgia for the term of 5 years out of the judges of those courts. One and the same judge may be elected/appointed the chairperson of one and the same court for two terms only.

The chairperson of the Supreme Court shall be elected for the term of 5 years by the Parliament of Georgia (majority roll) under presentation of the President of Georgia out of the judges of that court. One and the same judge may be elected a chairperson for two terms only.

The term and procedure of appointment of members of the Constitutional Court shall not be changed.

Judges' immunity

We think it obligatory to reinforce the judges' immunity and specify the procedure of removal of immunity, viz.:

Bringing a judge of a trial court and court of appeals to criminal liability, his/her arrest or imprisonment, searching his/her apartment, motorcar, working place or body as well as wiretapping of his/her telephone calls or messages and withdrawal of correspondence is allowed only with the consent of the chairperson of the Supreme Court of Georgia. The exception is the case of detention for real evidences on the scene of crime that shall be immediately informed to the Supreme Court of Georgia. If the Supreme Court refuses to give its consent the detained judge shall be immediately released. In such case the Supreme Court shall make decision on its consent within 48 hours following the receipt of respective request.

Bringing the chairperson and member of the Supreme Court to criminal liability, his/her arrest or imprisonment, searching his/her apartment, motorcar, working place or body as

well as wiretapping of his/her telephone calls or messages and withdrawal of correspondence is allowed only with the consent of the Parliament. The exception is the case of detention for real evidences on the scene of crime that shall be immediately informed to the Parliament of Georgia. If the Parliament refuses to give its consent the detained judge shall be immediately released. In such case the Parliament shall vote on its consent within 48 hours following the receipt of respective request.

Bringing the member of the Constitutional Court to criminal liability, his/her arrest or imprisonment, searching his/her apartment, motorcar, working place or body as well as wiretapping of his/her telephone calls or messages and withdrawal of correspondence is allowed only with the consent of the Constitutional Court. The exception is the case of detention for real evidences on the scene of crime that shall be immediately informed to the Constitutional Court. If the Constitutional Court refuses to give its consent the detained member shall be immediately released. In such case the Constitutional Court shall vote on its consent within 48 hours following the receipt of respective request.

Social Protection

In our opinion the social protection of judges shall be guaranteed by the Constitution, viz.:

The judges of Constitutional Court and courts of general jurisdiction shall be guaranteed creation of such working conditions and such remuneration which will ensure their independence de facto.

A judge resigned on expiration of the term of his/her office or because of attainment to the limit age established by the Constitution shall be granted pension the amount of which shall not be less than two-thirds of the remuneration of the judge of the same court.

Council of Justice

For ensuring the independence of the judicial power shall be established the Council of Justice chaired by the President of Georgia. We think is necessary to ensure the total

depoliticization of the Council and provide its main authority, procedure of establishment, member qualification and reasons for termination of member's office by the Constitution, viz.:

The Council is composed of the chairpersons of Constitutional and Supreme Courts of Georgia and 12 members elected for the term of 8 years in equal quantity by the Parliament of Georgia (majority roll) and conference of the Georgian judges (in accordance with the procedure established by the law).

If the President of Georgia fails to perform the duties of the chairperson of the Council for some good reasons the Council shall be chaired by the chairperson of the Constitutional Court of Georgia.

The Parliament elects six members out of advocates (3 members) and legal scholars (3 members) having at least 15 (10) year length of professional work and the conference of judges elects 6 members out of the judges having at least 15 (10) year length of professional work, including the former judges.

One and the same person cannot be elected the member of the Council for two terms running.

The status of member of the Council is incompatible with the membership of any political party, political activity and public service. The latter restriction is not applied to the judge in charge.

A member of the Council other than the President of Georgia, chairpersons of the Constitutional and Supreme Courts and judges in charge shall receive remuneration provided by the law.

The term of elected member of the Council of Justice may be terminated really in case of his/her attainment to the age of 70 as well as if s/he resigned, lost citizenship of Georgia or was naturalized a citizen of another country, is not able to perform his/her duties for the state of health, holds the position or carries activity incompatible with his/her status, is under the effect of the judgment of conviction.

The terms of reference of the Council, shall cover:

Selection of nominees for judges of trial courts and presentation to the President of Georgia for appointment;

Nomination of candidatures of judges of the court of appeals to the President;

Making decision on disciplinary liability of judges of courts of all instances;

The authority, procedure of establishment and activity of the Council shall be provided by the Constitution and organic law.

Power of Constitutional Court

We think it necessary to extend the category of persons who have the right to file a constitutional appeal to the Constitutional Court, with the representative bodies of the local self-government as political parties (appealing the constitutionality of appointment of referenda and elections and their results). The scope of cases jurisdiction of the Constitutional Court shall also be extended. Namely, the Constitutional Court shall resolve the following disputes:

- on the constitutionality of dissolution of the Parliament of Georgia and appointment and dismissal of persons holding the positions specified in the Constitution;
- on violation of the procedures provided by the Constitution;
- on constitutionality of appointment of referenda and elections and their results;
- on constitutionality of final judgments of courts if the subject of dispute is the constitutionality of a legal norms applied by the court or/and its interpretation (this provision will rather improve the quality of court judgments and, accordingly, the state of protection of human rights).

XII. State Territorial Division and Local Self-government

The important component of the problem of the general optimal organization of the power is the issue of territorial self-government. The local self-government is based on the subsidiarity principle: the power shall be exercised on that level of authority which is the closest to the citizens. The subsidiarity principle is the necessary condition for implementation of the successful public policy on all power levels and involvement of wide strata of population. The system standing on a higher step may involve in the settlement of problems of a system standing on a lower step only if the latter cannot solve the problem by own forces.

The main function of the self-government bodies is to provide service to the population, to satisfy their everyday needs. The necessary condition for this is the closeness to the citizens that enable the citizens to have the permanent and direct relations with the representatives of local self-government elected by them, to control their activity and to involve directly in the decision-making process.

The existence of real self-government requires availability of 3 main elements:

Administrative decentralization – transfer to the self-government as much power as it can implement;

Political decentralization – election of local self-government bodies and granting them the right of independent decision-making within their own terms of reference;

Fiscal decentralization – providing to the self-government the financial resources necessary for implementation of its authority.

In addition to the above mentioned main function of the self-government, its reinforcement and decentralization promotes creation of the local political elite that is necessary both for the growth of the local cadres of the political parties (and thus intensification of political pluralism) and for formation of the qualified corps of public servants.

Noteworthy is that in many countries establishment of strong self-government in the country has become the facility for satisfaction of rights of minorities (political, ethnical, religious) in a way which not harms the national interests but promotes integration processes.

For creation of the sustainable effective self-government system it is very important to determine correctly the number of self-government levels and size of self-governing units that shall be solved by each country according to its own traditions, realities and needs.

One more important thing is to determine the authority of units of one and the same levels. The matter is that for the objective reasons the territorial units of one and the same level are often differ much from each other by the territory, number of population, economic development level and potentiality that makes impossible to vest in them one and the same authority. This can take us to the so called asymmetric regionalism. The necessity of the asymmetric regionalism in or country is also intensified by the existence of political autonomies (units with special powers).

Referring to the European countries we can see there that irrespective of the federal or unitary system the self-government in medium-size countries (with 3-15 million populations) is two-level (see Table below).

Upper level population	100 000 (Poland, Estonia, USA) – 1 000 000 (Spain, the Netherlands) 200 000 – 400 000 (Germany, the UK, Sweden, Denmark, Lithuania, Greece, Switzerland, Ireland, Finland) 500 000 - 600 000 (Italy, France, Hungary, Romania)
Lower municipal level population	2000 (France, Portugal, Czech Republic, Slovakia, Switzerland) – 20 000 and more (Ireland, the Netherlands, Sweden, Lithuania, Bulgaria) Average 7 000-18 000 (almost all European countries, the USA, Russian Federation)

Big cities, especially capital-cities, as a rule have the special status. The key problem of their administration is to establish the optimal size of primary government units that depends on many factors. In the majority of capital-cities of medium and small European

countries the number of population of their administrative units varies from 30000 to 60000 (Bratislava, Oslo, Vienna, Vilnius, Stockholm, Amsterdam, Brussels, Sofia, Tallinn, Zagreb, Skopje and other) and in the capital-cities (megapolises) of large countries the number of inhabitants of the administrative units varies from 90000 to 140000 (London, Warsaw, Paris, Madrid etc.). Almost in all those cities the territorial units represent self-governments.

Historically, the administrative-territorial division of Georgia has represented two levels: first, local level (city, town, settlement, village) and second, regional level (area, district). For many centuries these levels had been created on the definite, geographically specified territories having united economical and social conditions. Even in the period of occupation of Georgia by aliens (Rome, Arabs, Mongols, Iran, the Ottoman Empire, Russia and others) the border of separate provinces in spite of being under the control of foreign administration remained almost unchanged. Naturally, the sustainability of borders of some administrative units was determined not by the will not to break the established traditions but under the influence of the economical and geographical factors.

After disintegration of the Soviet Union, in spite of radical changes that had place in many spheres of public life of Georgia the soviet administrative-territorial system has not been practically changed. Also, only on the level of declarations remained the formation of self-government. This was the result of the state authority's opinion that the only way of the national salvation and preservation of the statehood is the strictly centralized administration system.

In 2006 the administrative-territorial system of the countries changed: the self-government of lower level (city, town, settlement, village) were cancelled and the only self-government unit within the former regions was declared the formed municipality. As a result of this the even so weak local self-government became more estranged from the citizens. At the same time the centralization process intensified. The even so limited rights of the self-government were restricted more. In 2005-2006 this limitation was of unofficial character, beginning from 2007 the restricting provisions were legalized in kind of new legislative acts and amendments made in the laws.

At present the territorial division of Georgia is two-level in fact:

- the upper, so called territorial level: Abkhazia and Ajara autonomous republics, Tbilisi whose status is determined by a separate law and 9 regions which exist de facto but not established legally (in these 9 regions are appointed the state commissioners, or the governors). After the August 2008 war the territories of Abkhazia autonomous republic and former South-Ossetian autonomous district were given the status of occupied territories.

- The lower level: 59 municipalities and 5 self-governing cities[20], including Tbilisi[21]. In these units the representative body – sakrebulo is elected by direct elections and then established the executive body – the council/municipality.

This model of national territorial system where the units of lower level are excessively large but have restricted authority and the representative bodies of upper level doe not exist at all explicitly contradicts the aspiration and requirements of the European Charter of Local Self-Government. The status and outlooks of development of villages, settlements, tows and cities are absolutely obscure and the status of Ajara autonomous republic only conventionally meets the status of autonomous republic.

For the defects and low effectiveness of the existing system of self-government we think is necessary to reform it. It is obvious the necessity of establishment of territorial units which will be smaller than regions but larger than the self-government units existed before 2006 that will naturally lead to the necessity of establishment of larger territorial units of regional level. This is evidenced by not only the above provided analysis but by the experience of developed countries.[22]

Thus, we will get the two-level system of the territorial system: on the lower level – large municipalities and on the upper level – autonomies and constituent territories (but not subjects/entities of federation):

- **Lower level**: on this level shall be established about 350 municipalities with 10-15 thousand inhabitants each where will be united 3755 settlements existing in Georgia

[20] This number does not include the units existing on the occupied territories.
[21] Tbilisi may be attributed to the lower level only formally but in fact it is the unit of the upper level, or even more.
[22] For comparison: if in the former self-government of the first level were 4 354 inhabitants in average, the average figure of population of the present municipality, not accounting Tbilisi, is 48380. In the municipalities of absolute majority of European countries (40 countries-members of 47 integrated in EU) as well as in other developed countries (the USA, Japan etc.) there are from 7000 to 18000 inhabitants in average.

(this does not concern Abkhazia and Tskhinvali region). All cities, towns and large villages will have independent municipality and small settlements and villages will be united in communities. The integration in communities shall be based on the traditional relations and accommodation of settlements as well as on the economical and natural conditions (such communities existed in the Middle Ages and until the 30-ies of the 20th century). The criteria of this reform shall be provision of such level of the local territory, population, natural resources, economic potential, tax base and local revenues which will be adequate for implementation of powers of the lower level of local self-government. This reform will ensure the significant growth of local self-government resources and, concurrently, the adequate closeness of the local authorities to the citizens that will extend the public service, improve its quality and make it more affordable (the growth of resources of the lower level self-government enables to transfer the major part of power of the present region to them). The self-government bodies of the municipality are: the representative body elected by the direct elections – sakrebulo, and the executive body – city administration (in cities)/councils (in communities). The head of city administration/council will be the mayor (in cities)/head of council (in community, large settlement, large village elected by the populating by direct elections. For protection of interests of citizens in all inhabited localities included in the community (except for the center of the self-governing units) and in areas of the city will be elected a headman and board of advisers (on voluntary basis).

- **Upper level** (autonomies, constituent territories, capital city):

- ***constituent territory***. Establishment of the territorial (regional) self-government shall be based on **traditional relations** (naturally formed existence of regions which in addition to the integrity caused by the historical factors is characterized with the socioeconomic factors) and **self-sustainability** (for the majority of Georgian territories are typical the complementariness of various social, economic and other resources inside a territory that increases its socioeconomic potentiality). Their authority shall cover those kinds of public service which implementation will be difficult or impossible on the municipal level and which, subject to the subsidiarity principle shall not be covered with the authority of the central power. When

determining the special (exclusive) powers of territories there shall be taken into consideration their rather different potentialities (number of population, territory, economical potentiality). The status of territories shall be similar while their special (exclusive) powers shall comply with their potentialities. The self-government bodies of the constituent territory are: the representative body elected by the direct elections – the council and the executive body established by the council – the administration. The government shall be chaired by the head of administration elected by the council.

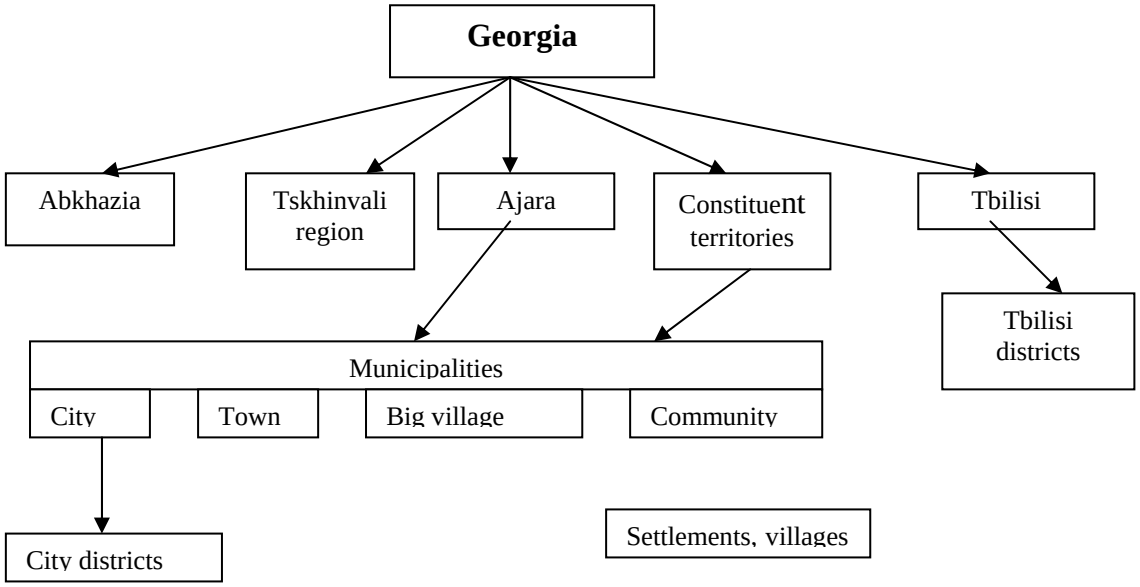
- ***capital city***. In our opinion, the capital city of Georgia – Tbilisi shall have the status of constituent territory. It shall perform the excusive functions granted by the law to the self-administration and capital city. Tbilisi shall be divided into municipalities-districts (approx. 25 units). Unlike other self-governing units the power of capital city districts shall be more restricted that is conditioned by the necessity of continuous functionality of the city as the united urban organism. Tbilisi self-government bodies are: the representative body elected by the direct elections (the Council) and the executive body established by the Council – the administration. The administration is headed by the mayor elected by the council. Self-government bodies of Tbilisi municipalities-districts are: the district sakrebulo directly elected by the district inhabitants, district head of administration elected by sakrebulo and the board approved under the presentation of the head of administration.

- ***autonomies:***

Ajara – based on the national territorial system and self-government principles Ajara shall obtain the powers attributed to the autonomy which shall be (1) special, (2) delegated by the state, (3) provided by a separate law. The system of higher bodies of Ajara power which includes the Supreme Council and Government shall base on the model of parliamentary republic and its establishment shall not depend on the central authorities of Georgia;

Abkhazia and ***Tskhinvali region*** – Abkhazia and former South Ossetian autonomous district shall have special statuses which shall be determined in the process of political solution of the existing problem along with their names.

The chart of this state territorial system may be presented as follows:



The reform in compliance with this concept, especially establishment of the lower level self-government will require a lot of time and this time shall be provided in the transitional provisions of the Constitution.

In our opinion the main provisions of the presented concept shall be specified by the Constitution. Otherwise it will be impossible to implement the reform consequently and to form the sustainable system that will aggravate the above-mentioned problems more. In particular, the constitution shall specify:

- the structure of the state territorial system and self-government of Georgia: Abkhazia, Ajara, Tskhinvali region and list of constituent territories as well as the structure of local self-government (the transitional provisions shall indicate that the statuses of Abkhazia and Takhinvali region will be determined on the principle of delimitation of powers in the process of political solution of the existing problems and will be reflected in the Constitution);

- the systems of administration of Ajara, constituent territories, capital city and municipalities and procedure of their establishment, the issues attributed to the special (exclusive) authority (both obligatory n\and voluntary) and general authority as well as the procedure of adoption of the Ajara Constitution;

- self-government units have their territory, title, self-government unit center, own assets (including unalienable property), own revenues, independent budget;

- the budgetary system of Ajara, constituent regions, capital city and municipalities is based on the principles of integrity, comprehensiveness, transparency, independence, accountability, equality, balance, target-orientation and universality of the national budgetary system; the own revenues of their budgets are composed of the tax revenues (local taxes and shared general national taxes), nontax revenues, capital revenues, equalization transfers (only for municipalities), purpose and capital transfers (for constituent territories), grants and loans;

- the kinds of local taxes, their limit rates and conditions for tax exemptions are established by the law of Georgia and their introduction and establishment of concrete rates is the authority of local self-government; local taxes shall be paid in total to the local budgets; the profit and income taxes are shared taxes and the law will determine the share of the territory and self-government in these taxes provided that the respective representative body shall have the right to establish the tax rate within its share.

XIII. Revision of Constitution

To provide the constancy of the Constitution we think it necessary to complicated radically the procedure of its revision. The Public Conditional Commission proposes the following procedure of revision of Constitution:

- The power to submit the draft law on revision of the Constitution shall be granted to the one-third of the MPs and at least 200 000 voters;

- the draft law on revision of the Constitution prepared by those subjects shall be submitted to the President of Georgia who will establish the state constitutional commission and will give it the draft law for consideration. The commission shall equally represent all those parties which have got the seats as a result of the last parliamentary elections. The composition of the commission shall also include the well-known authorities in the field of constitutional law provided that their number

shall not exceed ¼ of other members of the Commission. Thereafter the Commission shall publish the draft law for the general public discussion which shall last for at least 1 month. The commission will then present its opinion prepared in consideration of the public discussion and will publish not earlier 2 and not later 3 months following the establishment of the commission. The review of the draft law at the parliamentary plenary session shall start one month after presentation of the opinion;

- We think it necessary to introduce the mechanism of constitutional control in the process of constitution revision: within 5 days following the receipt of the project for revision of the Constitution the state constitutional commission will provide it to the Constitutional Court which shall establish the constitutionality of commencement of the revision process. If the court establishes the non-compliance of the initiative with the Constitution, the process of constitution revision stops;

- The project for revision of constitution is deemed as approved if it is supported with two hearings by at least 2/3 of the majority of total members of the Parliament of Georgia. If the parliamentary majority holds 2/3 of the total MPs that is enough to deem the project for constitution revision as approved, it shall be supported by the absolute majority of the parliamentary opposition. Such rule will protect us against the constitutional changes caused by the narrow corporate interests and provide the sustainability of constitution;

- A constitutional amendment will take effect when it is approved by the above mentioned majority of the next parliament in first reading;

- Before transfer of the law on revision of constitution to the President the Parliament shall within 5 days following the receipt of the law will provide it to the Constitutional Court which shall consider and establish the constitutionality of procedure of the constitution revision. If the court establishes its unconstitutionality the adopted amendment shall be null and void;

- The law on revision of Constitution shall be signed and promulgated by the President of Georgia. He president is not entitled to refuse signature.

- The Parliament has no right to commence the process of revision of constitution in the first and last 6 months of its term as well as it is dissolved.

- The transitional provisions shall specify that the rules established for revision of constitution shall not be extended to the constitutional changes related to the determination of the statuses of Abkhazia autonomous republic and former South Ossetia autonomous district. The rule on making those amendments shall be provided by the special law in compliance with the agreement achieved in the process of political resolution of the existing problem.