



საქართველოს სახალხო დამცველი  
Public Defender of Georgia

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To: the European Commission for Democracy through Law/the Venice Commission

Comments and Opinion on the draft constitutional law of Georgia on Amendments to the  
Constitution of Georgia

In this letter I would like to draw your attention to the fundamental issues that have not been reflected in the draft law on the revision of the Constitution of Georgia (hereinafter - draft law). I hope that the information below will be significantly helpful for you in analyze and evaluation of the draft law.

In December 2016, the Parliament of Georgia approved the Resolution on the Creation of the State Constitutional Commission (hereinafter Commission)<sup>1</sup> and Composition of the Commission<sup>2</sup>. The goal of the Commission was to draft a bill on the revision of the Constitution of Georgia. The Public Defender of Georgia was assigned as a member of a group of the Commission working on the issues of fundamental human rights and freedoms, judiciary, preamble to the Constitution of

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<sup>1</sup> See: The Resolution on the Creation of the Commission, Parliament of Georgia, December 15, 2016, Available at :< <http://constitution.parliament.ge/en-54>> [Accessed on 28<sup>th</sup> of April 2017]. Also see: The Charter of the State Constitutional Commission, Parliament of Georgia, Available at :< <http://constitution.parliament.ge/en-52>> [Last accessed on April 28, 2017].

<sup>2</sup> See: Order of the Chairman of Parliament on the Composition of the State Constitutional Commission, Order No253/3, Parliament of Georgia, December 23<sup>rd</sup>, 2016, Available at :< <http://constitution.parliament.ge/en-53>> [Last Accessed on April 28, 2017].

Georgia, and general and transitional provisions. After few-month efforts, the State Constitutional Commission put the draft law to the vote and approved it on April 22, 2017.<sup>3</sup>

First of all, the hurry-up timetable of the commission that did not allow proper participation in the process should be assessed negatively. In particular, the time assigned for the performance of this very important task - 4 months and the number of meetings scheduled for the working groups were not enough for substantive and grounded discussions on a number of issues. Unfortunately, there were occasions when meetings were unexpectedly scheduled for the next day, which made it impossible to participate or properly get ready for them. At the same time, the rule of decision making was vague. According to the existing agreement, decisions were to be made on the basis of a consensus. However, several decisions taken unanimously by the working group were later changed beyond the working group. There are some provisions in the final draft law that had not been agreed between the working group members on the basis of a consensus.

I, as a member of the State Constitutional Commission, submitted several initiatives to the Commission, which were aimed at creating solid constitutional safeguards for the protection of the fundamental human rights and freedoms. The State Constitutional Commission took into account small part of my proposals. However, it must be mentioned with regret that some important and principled issues have not been reflected in the draft law. In addition, human rights standards have been weakened in a number of articles of the human rights chapter of the draft Constitution (in other words, the current edition of the Constitution of Georgia establishes higher human rights standards), which, I believe, must be rectified.

It must be emphasized that the draft law does not provide sufficient basic guarantees for the protection of social rights. First of all, I'd like to draw your attention to the issue of **establishment of an effective state mechanism for monitoring the protection of labour rights**. The draft law does not provide for the establishment of an effective state mechanism for supervising the protection of labour rights, which had been proposed by the Public Defender and other members of the Commission. The acuteness of labour rights violations for decades shows the need for the establishment of a constitutional supervisory body for the elimination and prevention of the violations. Namely, according to the joint data of the Ministry of Internal Affairs of Georgia and the Trade Union of Georgia, 416 people were killed and 716 were seriously injured as a result of work-related traumas in 2007-2016.<sup>4</sup> According to the data of 2015, the number of persons

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<sup>3</sup> See the Parliament of Georgia news on the State Constitutional Commission Meeting: "The State Constitutional Commission Supported the Draft of Revision of the Constitution", Parliament of Georgia, April 22, 2017, Available at :< <http://www.parliament.ge/en/parlamentarebi/chairman/chairmannews/saxelmwifo-sakonstitucio-komisiyam-saqartvelos-konstituciis-gadasindjvis-proeqls-mxari-dauchira.page>> [Last Accessed on April 30, 2017].

<sup>4</sup> Radio Tavisupleba on the World Day for Safety and Health at Work, 28<sup>th</sup> of April 2017, Available at :< <http://www.radiotavisupleba.ge/a/28456986.html>> [Last Accessed on May 1, 2017].

injured in the workplace was 82, while the number of deaths was 42<sup>5</sup>. Compared to 2015, the situation sharply deteriorated in 2016. In particular, according to the data of 2016, 58 people were killed and 85 were injured as a result of accidents in the workplace<sup>6</sup>. Unfortunately, in the process of preparing this letter, on May 9, 2017, 4 miners died while performing repair efforts in one of the mines on a public holiday.<sup>7</sup> Under such circumstances, the sharpest challenge in the country is the absence of an effective state mechanism for monitoring labour rights and labour safety.

Moreover, the necessity of reflecting **various components of labour right in the text of the Constitution** has been intensely discussed in the Commission but was not taken into consideration. In addition, the changes in the norm regulating labour rights should be disapproved. In particular, paragraph 4 of Article 30 of the Constitution of Georgia stipulates that "The protection of labour rights, fair remuneration and safe, healthy working conditions and the working conditions of minors and women shall be determined by the organic law". This norm has not been included in the draft law. The draft law includes only general phrase - "Labour rights are protected by the organic law".<sup>8</sup> I believe that the text of the country's main law should necessarily and clearly reflect the basic principles of the labour right, such as fair remuneration, safe and healthy working environment, dignified working conditions, equal treatment and protection from discrimination in order to ensure proper realization of the rights. It is important the country's main law to provide special safeguards for women (during pregnancy and after childbirth), minors, persons with disabilities and those whose work is hazardous for health or life due to its specific nature.

In addition, it should be noted that the proposed draft law, to a significant extent, worsens the **existing constitutional human rights standards**. In particular, the passage of Article 32 of the second chapter (which establishes fundamental human rights and freedoms) of the current Constitution, according to which, conditions for ensuring some minimum standard of living shall be determined by law and the State shall promote helping the unemployed find a job<sup>9</sup>, has been moved to the general provisions, which makes it of a declarative nature and limits the opportunities for the realization of these rights.

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<sup>5</sup> See: Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia 2015, Public Defender of Georgia, p.470, Available at :< <http://www.ombudsman.ge/en/reports/saparlameto-angarishebi>> [Last Accessed on April 28, 2017].

<sup>6</sup> Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia 2016, Public Defender of Georgia, p.12, Available at :< <http://www.ombudsman.ge/uploads/other/4/4336.pdf>> [Last Accessed on May 1, 2017].

<sup>7</sup> See: Public Defender's Statement on Death of Miners, 10.05.2017, Available at: <http://www.ombudsman.ge/en/news/public-defenders-statement-on-death-of-miners.page> [Accessed on: 16.05.2017].

<sup>8</sup> See Article 26 (1) of the proposed draft law.

<sup>9</sup> See the Constitution of Georgia, 24 August 1995, Parliament of Georgia, Art. 32. Available at:< <http://www.parliament.ge/en/kanonmdebloba/constitution-of-georgia-68>>

**The transfer of Article 39 of the Constitution to the general provisions of the draft law should be disapproved as well.** According to Article 39, the Constitution of Georgia does not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen which are not indicated in the text of the Constitution but stem inherently from the principles of the Constitution<sup>10</sup>. The Constitutional Court of Georgia has repeatedly applied this norm and established violations of specific rights, among which the practice of application of Article 39 in relation to social rights should be emphasized. According to the reasoning of the Constitutional Court, the aim of Article 39 of the Constitution is to ensure protection of rights and freedoms if they are not explicitly indicated in the Constitution, but stem from the constitutional principles and international obligations undertaken by the State in the field of human rights<sup>11</sup>. The abovementioned Article should remain in the second chapter of the Constitution of Georgia in order to ensure defense and promotion of high standards of human rights.

In addition to the fact that the provisions on social rights in the Constitution is incomplete and weak, **the list of social rights** in the current edition of the Constitution, unlike the constitutions of most of the European countries, is very poor. This is especially important given the acute socio-economic inequality in the country. Poverty and unemployment rates are high, which cannot be responded by the weak social protection system.<sup>12</sup> Severity of the situation is reflected in the Public Defender's parliamentary reports every year. Like many other members of the Commission, I believe that it is important to expand the list of social rights in the country's main law and create solid constitutional safeguards for the realization of these rights.

In view of the above, I would like to draw your attention to the fact that the civil society representatives<sup>13</sup> - members of the Commission, in order to properly and thoroughly reflect social rights in the Constitution, appealed to the Commission with proposals with regard to the following issues: the right to housing, the labour rights and the right to education. However, the proposals have not been reflected in the draft law.<sup>14</sup>

**I would also like to focus your attention to the proposed amendment aiming the constitutional regulation of the notion of marriage as a union of a man and a woman.** I believe that the proposed

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<sup>10</sup> Ibid: Article 39.

<sup>11</sup> Tughushi T. Burjanadze G. Mshvenieradze G. Gotsiridze G. Menabde V., Human Rights and Practice of Legal Proceedings at the Constitutional Court of Georgia (court practice in 1996-2012), Constitutional Court of Georgia, Public Defender of Georgia, Georgian Young Lawyers' Association, Ltd. Sezani, Tbilisi, 2013, pp. 534-553.

<sup>12</sup> Ibid: p. 637. Also see Annual Reports of the Public Defender of Georgia where you can find chapters on Labor Rights, Right to Healthy Environment, Right to Health, Right to Adequate Housing, Right to Social Security, Rights of Older Persons etc.. Available at: < <http://www.ombudsman.ge/en/reports/saparlamento-angarishebi> >

<sup>13</sup> "The Human Rights Education and Monitoring Center (EMC) addressed the State Constitutional Commission on the inclusion of the guarantees for social rights in the Constitutional text", EMC, 12.04.2017, Available at: <https://emc.org.ge/2017/04/12/emc-248/> [Last Accessed on May 1, 2017].

<sup>14</sup> EMC addressed the members of the State Constitutional Commission not to support the deterioration of standards for the protection of social rights. EMC, 24.04.2017. Available at: <https://emc.org.ge/2017/04/22/emc-254/> > [Last Accessed on May 1, 2017].

constitutional amendment concerning the definition of marriage should be disapproved, since it will encourage homophobic and negative attitudes towards LGBT persons. It is noteworthy that the legislation of Georgia does not allow marriage between persons of the same sex<sup>15</sup> and therefore, the aim of the constitutional regulation of this prohibition, especially given that the issue of equality of marriage has never been raised by LGBT groups, is unclear. In addition, as it has been underlined in the Public Defender's annual parliamentary reports, the rights situation of LGBT persons is particularly grave<sup>16</sup>. On the one hand, LGBT persons do not feel safe as the rate of expression of hatred against them is high, and on the other hand, there still remain shortcomings at the legislative level, which deprive LGBT persons of the opportunity to equally enjoy the rights enshrined in the Constitution<sup>17</sup>. In addition, the state policy on the investigation of the hate crimes committed against LGBT persons is absolutely ineffective. In response to the existing homophobic and transphobic attitudes, the constitutional amendments proposed by the Government will further aggravate the rights situation of LGBT persons and increase negative attitudes towards them.

If the mentioned amendments are made to the Constitution, it is important that other forms of recognition of the legal status of same-sex couples be introduced, otherwise, the text of the Constitution will contradict the standards of the European Court of Human Rights<sup>18</sup> and the recommendations of the Parliamentary Assembly of the Council of Europe and the Committee of Ministers of the Council of Europe<sup>19</sup>.

**It should also be emphasized that the draft law, compared to the current edition of the Constitution, weakens the human rights standard in relation to a number of other rights.** In particular, pursuant to paragraph 1 of Article 37 of the current edition of the Constitution, "Free medical aid shall be provided in accordance with the procedure prescribed by law". The draft law does not include similar passage (Article 28), which, in my belief, , will significantly weaken the existing standards for the protection of the right. The standard for the protection of the right to property has also been weakened. Pursuant to paragraph 2 of Article 21 of the current edition of the Constitution, "The rights set out in paragraph 1 of this article can be restricted in the event of pressing social needs, in the cases determined by law and in accordance with the procedure established by law, so that the essence of the right to property is not violated." In the draft law

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<sup>15</sup> Article 1106 of the Civil Code of Georgia stipulates that marriage is a voluntary union of a man and a woman for creating a family.

<sup>16</sup> For example see: The Situation of Human Rights and Freedoms in Georgia, Annual Report of the Public Defender of Georgia, 2015, pp. 434, 581.

<sup>17</sup> The situation of Human Rights and Freedom in Georgia, Annual Report of the Public defender of Georgia, 2016, p.646.

<sup>18</sup> See: Vallianatos and Others v. Greece; Oliari and Others v. Italy; Schalk & Kopf v. Austria.

<sup>19</sup> Combating Discrimination on Grounds of Sexual Orientation or Gender Identity, Council of Europe Standards, 2011, Available at :<

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047f2a6>

(paragraph 2 of Article 19), the words "pressing social needs" are replaced by "public interest", which, in my belief, proposes a lower standard for the protection of the right to property. I believe that the Constitution should establish equally high standards both in relation to limitation of the right to property and deprivation of the right (as it is enshrined in the current edition of the Constitution).

The applicable Constitution, compared to the proposed draft law, provides broader reflection of cultural rights and, therefore, creates higher guarantees for the protection of these rights. In particular, according to Article 34 of the current edition of the Constitution, "The State shall promote development of culture, unrestricted participation of citizens in cultural life, expression and enrichment of cultural identity, recognition of national and common values and deepening of international cultural relations". In addition, the Article obliges every citizen to care for the protection and preservation of cultural heritage. Instead of the mentioned, only the following phrase of the current edition of the Constitution: "Cultural heritage shall be protected by law" has been left in the draft law (paragraph 4 of Article 20). I think that the given phrase covers all areas of the protection of cultural heritage, but it is important to underline certain aspects of cultural rights in the main law of the country, given the need for their special protection.

Like the above, the draft law provides for negative changes in the current provisions of the Constitution regarding the right to live in a healthy environment. In particular, pursuant to paragraph 4 of Article 37 of the current edition of the Constitution, "The State, in view of the interests of present and future generations, shall ensure environmental protection and rational use of natural resources, sustainable development of the county in the economic and ecological interests of the public, in order to ensure safe environment for human health", while the proposed draft law (paragraph 2 of Article 29) stipulates that "Environmental protection, rational use of natural resources and sustainable ecological development shall be ensured by law, taking into account the interests of present and future generations". Although this phrase in fact covers all areas of the protection of the right, I believe that a clear reference to the obligation of the State to ensure protection of rights enshrines a higher standard for the protection of rights (that is already provided by the current edition of the Constitution). In addition, the draft law does not mention anything on the right to receive objective information about the situation of the environment. Pursuant to paragraph 5 of Article 37 of the current edition of the Constitution, "Everyone has the right to receive full, objective and timely information about the situation of the environment", while paragraph 1 of Article 29 of the draft law envisages only the right to receive full information about the situation of the environment. The right to receive objective information about the environment obliges the State to process and keep sufficient data in this field. I consider that the right to live in a healthy environment, its all areas, should be the subject of outstanding protection in the Constitution, given the grave situation in Georgia in this direction. Accordingly,

it is important that the passage concerning the right to receive objective information about the situation of the environment be maintained in the Constitution.

In addition, the proposed draft law does not provide for the obligation to protect natural and cultural environment (paragraph 3 of Article 37 of the current edition of the Constitution). I believe it is important to preserve this passage in the Constitution. In addition, the current edition of the Constitution (paragraph 3 of Article 37) recognizes everyone's right "...to enjoy natural and cultural environment," while the draft law provides for everyone's right to "...enjoy natural environment and public space (paragraph 1 of Article 29). It is important this part of the Constitution to remain unchanged in order to ensure high standards for the protection of the right.

Attention should also be paid to the amendments concerning freedom of assembly. In particular, the current edition of the Constitution (paragraph 1 of Article 25) specifies that freedom of assembly implies assembly "...either indoors or outdoors ", though this phrase has not been included in the draft law. I believe that the abovementioned phrase should be included in the draft law in order to observe the principle of legal certainty.

The current edition of the Constitution of Georgia provides for important guarantees for foreign citizens. In particular, according to paragraph 3 of Article 47 of the Constitution, " No asylum seeker shall be transferred to another state if he/she is persecuted for his/her political creed or an action not considered a crime under the legislation of Georgia."The abovementioned passage has not been reflected in the draft law, which should be disapproved. I believe it is necessary the Constitution to provide similar guarantees for foreign citizens.

**Special attention should be paid to the issues of freedom of religion and secularism in the draft constitutional amendments.** I believe that the amendments to Articles 9 and 19 contribute to weakening of the principles of freedom of belief and religion and secularism. It must be underlined that Tolerance Centre and the members of the Council of Religions under the Auspices of the Public Defender of Georgia support this position and following assessment.<sup>20</sup>

Article 16 of the draft law concerns only freedom of belief and conscience and says nothing about freedom of religion. Article 19 of the current edition of the Constitution provides for freedom of speech, thought, conscience, religion and belief for everyone. Although belief and conscience are broad notions and incorporate freedom of religion, the term "religion " is the only notion on the list that is directly associated with an organized form of religious belief and thus protects those aspects of freedom of religion that are not explicitly indicated in the current constitutional norm.

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<sup>20</sup> For more information see website of the Tolerance Centre under the Auspices of the Public Defender of Georgia, Available at: <http://www.tolerantoba.ge/index.php?id=1317642755>

In addition, Article 9 of the current edition of the Constitution, which recognizes the independence of the Georgian Apostolic Autocephalous Church from the State and declares the principles of secularism and separation of the State and the religion, has been deteriorated in the draft law. In particular, Article 8 of the proposed draft law is entitled "Relationship between the State and the Orthodox Church of Georgia". Instead of strengthening the current text of the Constitution in relation to this issue, more focusing on secularism and determining this very principle as the general provision of the Constitution, the principle of separation of the State and the religion has been weakened by the proposed amendments (by adding the abovementioned title). As for the content of this provision, Article 9 of the current edition of the Constitution starts with the following phrase: "The State shall declare full freedom of belief and religion ", which has been reflected in the draft law (Article 8) as of secondary importance, while the word "full" has been removed and the norm has been formulated as follows: "Along with freedom of belief and religion , the State shall recognize the outstanding role of the Georgian Apostolic Autocephalous Orthodox Church in the history of Georgia..". Such phrasing creates a norm that can be interpreted as follows: Full freedom of belief and religion is restricted by recognizing the special role of the Apostolic Autocephalous Orthodox Church of Georgia, which, of course, will lead to worsening of the standard of the protection of the right. An important issue, with regard to which I have addressed the Commission with a proposal, is **reflection of the issue of establishment of an independent mechanism for investigating the crimes of torture and ill-treatment committed by law enforcement officers in the text of the Constitution**. Unfortunately, the efforts of the Prosecutor's Office in investigating the crimes of torture, inhuman and degrading treatment and prosecution of perpetrators are ineffective, which has been identified by the study of cases by the Public Defender's Office for years.<sup>21</sup> Consequently, over the years, the subject of the Public Defender's recommendations has been the establishment of an independent mechanism for effective investigation of alleged cases of deprivation of life, torture, inhuman and degrading treatment of citizens or defendants/convicts in the penitentiary institutions by law enforcement officers. The issue was reflected in the Public Defender's parliamentary<sup>22</sup> and special reports<sup>23</sup> in 2013-2016. In addition, establishment of an independent investigative mechanism has been a demand of the non-governmental organizations of Georgia and a subject of a number of

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<sup>21</sup> See: Georgia in Transition, Report on Human Rights Dimension: Background, Steps Taken and Remaining Challenges, Assessment and Recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, European Union, Public Defender of Georgia, September 2013, pp. 16-27. Available at :< [http://eeas.europa.eu/archives/delegations/georgia/documents/human\\_rights\\_2012/20130920\\_report\\_en.pdf](http://eeas.europa.eu/archives/delegations/georgia/documents/human_rights_2012/20130920_report_en.pdf)> [Last Accessed on May 1, 2017].

<sup>22</sup> See, for ex. Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia 2015, Public Defender of Georgia, pp. 21-22; 144; 335: Available at:< <http://www.ombudsman.ge/uploads/other/3/3892.pdf>> [Last Accessed on May 1, 2017].

<sup>23</sup> For example, see: Special Report on Practice of Investigation of Alleged Crimes Committed by Law Enforcement Officials, Regulations and International Standards on Effective Investigation, Public Defender of Georgia, 2014, Available at :< <http://www.ombudsman.ge/uploads/other/1/1704.pdf>> [Last Accessed on May 1, 2017].



recommendations of international organizations<sup>24</sup>. Reflection of this issue in the Constitution is the necessary precondition for the elimination and prevention of torture and inhuman treatment by law enforcement agencies.

Another important issue, with regard to which I have addressed the State Constitutional Commission, was the issue of **expansion of the authority of the Constitutional Court of Georgia**.<sup>25</sup> The need for the elimination of gaps in the justice system has been crucial for decades. According to the official statistics of the European Court of Human Rights, violation of the right to a fair trial was established in 37 out of the 55 judgments delivered against Georgia before 2012.<sup>26</sup> The high rate of violations of this fundamental right indicates that the protection of the right to a fair trial by common courts, especially in criminal cases, requires reforms at the internal level and an effective mechanism of the protection of rights. Supervision over the final judgments of common courts by the Constitutional Court of Georgia, in order to protect fundamental rights and freedoms enshrined in the Constitution of Georgia, would be such mechanism. In particular, according to the submitted proposal, the authority of the Constitutional Court goes beyond exercising control of norms and carries out constitutional control on the basis of a real claim in order to check the constitutionality of individual legal acts and judgments of common courts that have entered into force. Unfortunately, this proposal has not been taken into account.<sup>27</sup> I believe that reflection of the issue of expansion of the authority of the Constitutional Court in the Constitution would contribute to strengthening of the justice system and increase the trust of the population in the system.

Finally, I would like to draw your attention to **the amendments proposed by the Commission to the Article that regulates the activities of the Public Defender of Georgia, which could be described as an attempt of weakening the mandate of the institution instead of strengthening it**. In particular, removal of the passage of the Constitution that regulates the authority of the Public Defender should be disapproved. Specifically, according to the amendments, the part of Article 43

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<sup>24</sup> See the press release on the Presentation of the Draft Law on the Establishment of Independent Investigation Mechanism, Open Society Georgia Foundation, Funded by the European Union and the Council of Europe, 25 February, 2015. Available at :< [http://www.osgf.ge/index.php?lang\\_id=ENG&sec\\_id=15&info\\_id=4077](http://www.osgf.ge/index.php?lang_id=ENG&sec_id=15&info_id=4077)> [Last Accessed on May 1, 2017].

<sup>25</sup> It is noteworthy that I appealed to the State Constitutional Commission set up on October 4, 2014, with a proposal, though the Commission did not present a draft law on the revision of the Constitution of Georgia, see the website of the State Constitutional Commission of 2013, available at:< <http://constcommission.parliament.ge/3-1>> [Last seen on February 16, 2017].

<sup>26</sup> See Statistics of the ECHR, ECtHR, Available at: <http://www.echr.coe.int/Pages/home.aspx?p=reports>

<sup>27</sup> It should be noted that in January 2016, within the framework of the mandate of the Public Defender of Georgia, I appealed to the Parliament of Georgia with an initiative concerning expansion of the authority of the Constitutional Court. The Parliament of Georgia discussed the issue only at the committee meeting, but no further response has been made to this very important legislative proposal. See: Public Defender's Initiative on Expansion of Powers of Constitutional Court, January 26, 2016. Available at:< <http://www.ombudsman.ge/en/news/public-defenders-initiative-on-expansion-of-powers-of-constitutional-court.page>> [Accessed on 1<sup>st</sup> of May 2017].

<sup>28</sup> of the current edition of the Constitution, according to which, the Public Defender is authorized to detect violations of human rights and freedoms and inform relevant agencies and individuals of the cases, will be abolished. We believe that the supreme law of the country should define the role and authority of the Public Defender.

The Commission has not taken into account my initiative concerning the budgetary inviolability aimed at ensuring the financial independence of the Public Defender's institution. In particular, the initiative provided for the possibility of reduction of the ongoing expenditure of the Public Defender in the state budget, compared to the previous year's budgetary funds, only on the basis of prior consent of the Public Defender. Unfortunately, the abovementioned has not been reflected in the draft law.

According to the draft law on the constitutional amendments, same person cannot be reelected as Public Defender. As you are well aware, there is no such limitation in most European countries<sup>29</sup>, while where similar limitation is applied, Public Defender is elected for more than 5 years.<sup>30</sup> In addition, the need for this limitation is unclear given that there has never been a precedent of reelection of same person to this position for 20 years of functioning of the Public Defender's Office of Georgia. No well grounded argument has been provided in the Constitutional Commission, which would have substantiated the necessity for reflection of such limitation in the Constitution.

**I would also like to touch upon the amendments concerning the judiciary.** In particular, the rule of staffing the Supreme Court has been changed. According to the applicable Constitution, the Supreme Court judges are elected by the Parliament of Georgia after relevant candidates are submitted by the President of Georgia. According to the draft law, the authority of submitting Supreme Court judicial candidates will be transferred from the President to the High Council of Justice. It should be noted that the activities of the High Council of Justice has repeatedly been the subject of substantiated criticism by the Public Defender and NGOs.<sup>31</sup> Particular attention should be paid to the selection and appointment of judges of various instances by the High Council of Justice, which is often non-transparent and contains significant gaps.<sup>32</sup> Given the above, granting High Council of Justice the authority of submitting judicial candidates of the Supreme Court to the Parliament will have negative impact on the independence of the judicial

<sup>28</sup> Article 35 of the proposed draft law.

<sup>29</sup> Austria, Belgium, the Netherlands, Latvia, the Czech Republic, Slovakia, Ireland, Poland, Portugal, Hungary, etc.

<sup>30</sup> France, Luxemburg, Italy, Northern Ireland (United Kingdom).

<sup>31</sup> See: Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia 2015, Public Defender of Georgia, p.g. 9, 360. Available at: < <http://www.ombudsman.ge/uploads/other/3/3892.pdf> > [Last Accessed on May 1, 2017]. Also see the report of the Coalition for an Independent and Transparent Judiciary, "The Judicial System: past reform and future perspectives", 2017, Available at: [http://coalition.ge/files/the\\_judicial\\_system.pdf](http://coalition.ge/files/the_judicial_system.pdf) [Last Accessed on May 17, 2017].

<sup>32</sup> See the statements of the Coalition for an Independent and Transparent Judiciary; Available at [http://coalition.ge/index.php?article\\_id=1&clang=1](http://coalition.ge/index.php?article_id=1&clang=1) [Last Accessed on May 17, 2017].

system and public trust in it. In addition, it should be noted that the issue of necessity of justification of the decisions, concerning appointment of judges, made by the High Council of Justice was discussed within the framework of the State Constitutional Commission. In particular, it should have been enshrined in the draft law that judges shall be selected on the basis of a substantiated decision of the High Council of Justice, through open voting. This would ensure transparency of the appointment of judges in the courts of various instances by the High Council of Justice and justification of decisions. Unfortunately, the abovementioned progressive provision has not been reflected in the draft law.

Based on all of the above, I express my hope that the bill on the revision of the Constitution of Georgia will be analyzed and evaluated based on the presented information. I believe that consideration of the Public Defender's positions and comments on the constitutional amendments of Georgia will facilitate improvement of the proposed draft law and provide solid constitutional guarantees for the protection of human rights and fundamental freedoms.

I express my readiness for additional consultations and further cooperation with regard to the abovementioned issues.

Yours Sincerely,

Ucha Nanuashvili

Public Defender (Ombudsman) of Georgia

A handwritten signature in black ink, appearing to read 'U. N. N. N.', with a large, stylized flourish underneath.