



31 May 2017

To: European Commission for Democracy through Law (Venice Commission)

Re: Draft Constitution of Georgia/Nomination of Justices at Supreme Court

Dear all,

First of all, I would like to mention that a cooperation with the State Constitutional Commission of Georgia took place in a transparent environment; each member of the Commission was given an opportunity to actively participate in the process and we believe that the text of draft constitution experienced improvement in respect with a legal structure and strengthening of human rights' standards.

We sincerely welcome the fact that for the first time, constitutional guarantees for activities, independency and self-regulation of the advocates are recorded in the text of the Constitution of Georgia, which will definitely support further development of legal profession and administration of the qualitative justice.

In addition, we want to represent an opinion of Georgian Bar Association to the Venice Commission in relation to amendment of Article 61 to the draft constitution in regard with the procedures for nomination/election of the justices at Supreme Court.

We think that it is very insecure to grant the High Council of Justice of Georgia with the exclusive right to nominate the justices at Supreme Court, while in reality given, the level of self-government of judges is that low that it cannot respond to the critical requirements for building independent judiciary.

The level of self-governance and independence of the judges directly and significantly determines impartiality and effectiveness of the High Council of Justice, which is subject to harsh criticism from the local and international non-governmental organizations.

Observations made during the recent years have shown that the supreme self-governance body of the judges – **Judicial Conference**, which unites practically all judges of Georgia, makes the most important decisions almost univocally, without any substantial discussion; there is no effective form of discussion or debate; there is no competition between the candidates to be elected; mostly candidates do not have respective alternatives; there is intolerance toward different views, even in those seldom occasions when such different opinions are expressed.

Transfer of such right solely and exclusively to the High Council of Justice may also threaten appointment of other representatives of legal profession (advocates, prosecutors,



notaries) or members of scientific societies and academia at Supreme Court, as long as there will always be a high probability that High Council of Justice will focus mostly on judges or/and on candidates related to the court.

Representative of the Georgian Bar Association in the State Constitutional Commission addressed the Commission with an alternative proposal to amend Article 61 to the draft constitution so that the candidates representing legal profession would be granted with equal opportunities and thus, the environment of healthy competition would be established. This proposal is drafted as follows:

"Article 61. Supreme Court

1. The Supreme Court of Georgia shall be the cassation court.
2. There shall be no less than 25 judges at the Supreme Court. The Justice of the Supreme Court shall be a citizen of Georgia with the highest legal education, with at least 5-years' working experience as a judge, advocate or prosecutor; or at least 10-years' working experience on legal speciality; or having distinguished professional qualification.
3. The Justices at the Supreme Court shall be elected for indefinite term by the majority of the members of the Parliament upon nomination by the High Council of Justice, Georgian Bar Association, law faculties of Highest Educational Institution of Georgia or/and non-governmental organizations operating in the legal sphere, until the elected candidate reaches the age determined by the organic law.
4. The Chairman of the Supreme Court shall be elected by the members of Supreme Court for the term of 10 years. Election of the same person for two times at the position of the Chairman of the Supreme Court is prohibited."

We hope that the Venice Commission will carefully consider opinions of Georgian Bar Association expressed herein at this very crucial stage of development of justice in Georgia.

Sincerely,

Zaza Khatiashvili
Chairman of Georgian Bar Association