

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## GYLA's Opinion on Pending Constitutional Amendments

GYLA has released a statement about draft constitutional amendments proposed by 82 MPs, expressing its opinion about the legal draft.

First and foremost, we are reconvened that the MPs have elaborated the draft without the involvement of public stakeholders. Elaboration of constitutional amendments in a closed format discourages public involvement which we deem necessary in the process of amending the supreme law of the country.

GYLA welcomes part of the proposed amendments that strips the Prime Minister off the power to adopt a law without parliamentary consent. According to the 2010

amendments set to come into force (provided they are not modified) following the 2013 presidential elections, the Prime Minister will have the right to establish a linkage between the government's vote of confidence and the draft submitted to the parliament. Declaring no confidence in government is a complicated process. Failure of the parliament's vote of no confidence will automatically result in adoption of the legal draft, even if it does not gain any support of the parliament at all.

GYLA also welcomes curbing of the Prime Minister's essentially unlimited power to appoint cabinet members.

On the other hand, GYLA expresses its criticism of weakening of the role of the parliament and the president in the budgetary process, as envisaged by the proposed draft, and increasing the role of the government instead. The draft stipulates that if the parliament fails to adopt draft budget in due time, it must declare raise the motion of no confidence in the government, which is a complicated procedure and it is highly likely that the parliament will not always be able to succeed. This is a step backwards in light of the 2004 Constitutional amendments, as the president could choose between dismissing the government or the parliament. The draft proposed by 82 MPs strips the president off the choice, imperatively demanding dismissal of the parliament that voted down the budget. Further, it will no longer matter whether the president favours the position of the legislature in a dispute between the government and the parliament.

The following constitutes weakening of the parliament's role in the budgetary process: a draft budget is proposed by the government, while the draft constitutional amendment strips the parliament off the right to make any modifications in the document without the governmental consent. Already weak role of the parliament is further deteriorated by the fact that if the parliament votes down the proposed budget, it will be dismissed by the president.

Further, GYLA disapproves of reduction of necessary quorum of  $\frac{3}{4}$  of all MPs for overcoming the veto to  $\frac{2}{3}$ . Clearly the higher the degree of public consensus about proposed constitutional amendments, the higher its legitimacy; it also reduces the necessity of any further future revisions/ Further, frequent amendments to the Constitution diminishes the supreme law of the land in importance. High quorum promotes not only the involvement of parliamentary opposition in the process of

constitutional amendments but also public involvement, forcing the parliamentary majority to try harder to justify to its opponents as well as to public the importance of proposed constitutional amendments. High quorum reinforces democracy and promotes active public involvement. Public consensus about constitutional amendments enables initiators of constitutional amendment to overcome the obstacles posed by opponents with destructive approach towards the amendments. Therefore, the quorum established in 2011 must remain intact. The recent history of Georgia and the developments following 2004 in particular have demonstrated that it is not as difficult for a political force to gain 2/3 majority, which poses a risk that the amendments will only serve the narrow interests of a party.

Hence, GYLA welcomes stripping the Prime Minister off the power to adopt a law without parliamentary consent but criticises diminishing of the budgetary role of the parliament and simplifying the process of making constitutional amendments. GYLA is currently elaborating a comprehensive legal opinion about constitutional amendments proposed, and intends to make them public in the nearest future.