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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

**FOLLOW-UP OPINION
TO FOUR PREVIOUS OPINIONS CONCERNING THE ORGANIC LAW
ON COMMON COURTS**

**Adopted by the Venice Commission
at its 134th Plenary Session
(Venice 10-11 March 2023)**

On the basis of comments by

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I. Introduction

1. By letter of 22 November 2022, Mr Shalva Papuashvili, the Chairman of the Parliament of Georgia, requested a joint opinion of the Venice Commission and ODIHR on a set of draft amendments (“the Draft Amendments”) to the Organic Law of Georgia on Common Courts (“the Law”) and other legislative acts ([CDL-REF\(2023\)006](#) and [CDL-REF\(2023\)007](#)). By a joint letter of 1 February 2023, the Venice Commission and ODIHR informed the Georgian authorities that each of the requested institutions would provide their individual assessments of the Draft Amendments against the background of their respective previous opinions on the Law.

2. Mr Yavuz Atar, Mr Eirik Holmøyvik and Mr Jørgen Steen Sørensen acted as rapporteurs for the present Opinion.

3. On 22 February 2023 the delegation of the Venice Commission had online meetings with the Legal Issues Committee of the Parliament, the Parliamentary Majority, the Parliamentary Opposition, and representatives of the international community. The Commission is grateful to the Council of Europe Office in Georgia for the excellent organisation of the meetings and to the interlocutors for their availability. The Commission also had access to material prepared by civil society organisations on these amendments.

4. The Venice Commission has already produced four opinions on previous sets of amendments to this same Law. The Venice Commission will therefore use the follow-up format for the preparation of this opinion; this format allows the Commission to assess the amendments more globally, in the light of its previous recommendations on this Law, thus reviewing to which extent the authorities have taken into account the Commission's previous recommendations, help the authorities identify priorities in that regard, and provide further guidance and assistance on the implementation of the present and the past recommendations.

5. This Opinion was prepared in reliance on the official English translation of the Draft Amendments. The translation may not accurately reflect the original version on all points.

6. The present Opinion was drafted on the basis of comments by the rapporteurs. It was adopted by the Venice Commission at its 134th Plenary Session (Venice, 10-11 March 2023).

II. Background and the scope of the opinion

7. In 2017 Georgia underwent a constitutional reform. Its new Constitution took effect on 16 December 2018, when the new President of Georgia was sworn in. The new constitutional landscape made it necessary to reform the judiciary. The reform provided for a substantial increase in the number of judges in the Supreme Court who would be nominated by the High Council of Justice (“the HCoJ”) and appointed by Parliament. The Venice Commission examined these issues in its Urgent Opinion on Georgia on the selection and appointment of Supreme Court judges ([CDL-AD\(2019\)009](#))¹ (“the 2019 Opinion”) and recommended, among other things, that the new judges of the Supreme Court be appointed gradually; moreover, the Commission advised ensuring transparent, fair, and merit-based procedure for the appointment of the Supreme Court judges. The Commission made further recommendations on this procedure in the Opinion on the draft Organic Law of Georgia amending the Organic Law on Common Courts

¹ Venice Commission, [CDL-AD\(2019\)009](#), Georgia - Urgent Opinion on the selection and appointment of Supreme Court judges, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 16 April 2019, endorsed by the Venice Commission at its 119th Plenary (Venice, 21-22 June 2019), further referred to as “the 2019 Opinion”.

([CDL-AD\(2020\)021](#))² (“the 2020 Opinion”), and in the Urgent Opinion on the amendments to the Organic Law on Common Courts ([CDL-AD\(2021\)020](#))³ (“the 2021 Opinion”). Finally, in its Opinion on the December 2021 amendments to the Organic Law on Common Courts ([CDL-AD\(2022\)010](#))⁴ (“the 2022 Opinion”), the Venice Commission assessed a new set of amendments to the Law which largely affected the status of judges, notably, by extending the grounds for secondments and disciplinary liability of judges and introducing a new procedure for suspension of judges from office. In that last opinion, the Commission addressed in particular the HCoJ, an institution that plays a central role in the common courts system of Georgia.⁵ The present Follow-up Opinion will examine the Draft Amendments in light of the recommendations and comments made by the Commission in the abovementioned four opinions on the Georgian judiciary.⁶

8. In June 2022 the EU Commission issued an Opinion regarding Georgia's perspective to become a member of the EU. The EU Commission recommended that Georgia be granted candidate status once several priority issues had been addressed. Among the priorities the Commission determined the following one: *“adopt and implement a transparent and effective judicial reform strategy and action plan post-2021 based on a broad, inclusive and cross-party consultation process; ensure a judiciary that is fully and truly independent, accountable and impartial along the entire judicial institutional chain, also to safeguard the separation of powers; notably ensure the proper functioning and integrity of all judicial and prosecutorial institutions, in particular, the Supreme Court and address any shortcomings identified including the nomination of judges at all levels and of the Prosecutor-General; undertake a thorough reform of the High Council of Justice and appoint the High Council’s remaining members. All these measures need to be fully in line with European standards and the recommendations of the Venice Commission.”*⁷

9. According to the Explanatory Note to the Draft Amendments, they were prepared to address the issues identified by the EU Commission in the context of discussions related to the candidate status of Georgia.

III. Analysis

A. Legislative process

10. In the 2022 Opinion, the Commission observed that the last amendment to the Law had been done with haste, lacked transparency as to its motives and aims, and had been conducted without

² Venice Commission, [CDL-AD\(2020\)021](#), Georgia - Opinion on the draft Organic Law amending the Organic Law on Common Courts, adopted by the Venice Commission at its 124th online Plenary Session (8-9 October 2020), further referred to as “the 2020 Opinion”.

³ Venice Commission, [CDL-AD\(2021\)020](#), Georgia - Urgent Opinion on the amendments to the Organic Law on Common Courts, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure on 28 April 2021, endorsed by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021), further referred to as “the 2021 Opinion”.

⁴ Venice Commission, [CDL-AD\(2022\)010](#), Georgia - Opinion on the December 2021 amendments to the organic Law on Common Courts, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), further referred to as “the 2022 Opinion”.

⁵ Under Article 64 para. 2 of the Constitution of Georgia, the HCoJ shall consist of 14 members appointed for a term of 4 years, and the Chairperson of the Supreme Court. More than half of the members of the HCoJ (8 members) shall be elected from among the judges by the self-governing body of judges of the common courts. In addition, the HCoJ shall have one member appointed by the President of Georgia and 5 members elected by a majority of at least three fifths of the total number of the Members of Parliament.

⁶ Venice Commission, the 2019 Opinion ([CDL-AD\(2019\)009](#)), the 2020 Opinion ([CDL-AD\(2020\)021](#)), the 2021 Opinion ([CDL-AD\(2021\)020](#)), the 2022 Opinion ([CDL-AD\(2022\)010](#)).

⁷ EU Commission, [Opinion](#) from the Commission to the European Parliament, the European Council and the Council, 17 June 2022, p. 17.

inclusive and effective consultations.⁸ As to the present Draft Amendments, the Commission has been informed that Parliamentary Majority had made efforts in ensuring an inclusive drafting process involving the Parliamentary Minority and civil society representatives. The genuine inclusiveness of this process has been however contested by the other interlocutors.

11. The Commission reiterates that the adoption of acts of Parliament regulating important aspects of the legal order without genuine consultations with the opposition, experts, or civil society representatives falls short of the standards of democratic law-making.⁹

12. According to the Explanatory Note, the Draft Amendments aim to bring Georgia in compliance with the criteria for becoming an EU candidate State. The Venice Commission notes that the Draft Amendments are limited in scope and do not provide a holistic reform of the Law on Common Courts. During the meetings, the delegation of the Commission was informed that the Draft Amendments were only the first step in the comprehensive strategy for judicial reform in the country, and further reforms were envisaged including in response to the Venice Commission's previous recommendations.

13. Moreover, according to the information provided by the authorities, the work on certain legislative changes, including those discussed in the 2022 Opinion, was postponed because of the pending proceedings before the Constitutional Court where the relevant provisions of the Law were challenged. In those circumstances, the MPs considered it more appropriate to refrain from legislative initiatives on the related issues – in order not to make undue pressure on the constitutional proceedings – and await the outcome of those proceedings to have a definite answer on the constitutionality of certain provisions of the Law. In that context, the authorities explained that it could not be expected that the Draft Amendments under consideration would cover all the issues raised earlier by the Venice Commission.

14. For the Commission, it could be accepted that pending constitutional proceedings may in principle stand in the way of adopting related legislation, however, any such delay should not be more than entirely necessary. In that regard, certain interlocutors insisted that the pending constitutional proceedings should not be manipulated or used as a pretext for suspending the legislative process for a considerable time. The Commission therefore welcomes the statement of the Georgian authorities that they wish to take its recommendations into account and it recommends that they do so without any unjustified delay.

B. High Council of Justice

15. In its 2022 Opinion, the Venice Commission raised several issues concerning the functioning of the HCoJ which were fundamental for increasing the legitimacy of the judiciary in Georgia. The Venice Commission then made the following recommendations (para. 81):

1. Reallocation of judges: It should be clarified that a judicial candidate appointed in the second round must fulfil all the requirements of the specific vacancy, e.g., specialisation requirements.

2. Secondment or transfer of judges: the secondment of judges against their will should only be possible in exceptional cases and justified by a legitimate objective. Clear and narrow criteria as well as shorter time periods for secondment should be provided. A random or objective procedure with a geographical limitation should be reintroduced

3. Recusal of district court and court of appeal judges from trial:

⁸ The 2022 Opinion, paras. 78 and 79.

⁹ The 2022 Opinion, para. 16.

- *Given the severity of recusal, the criterion “reasonable belief, that remaining on this position he/she will prevent disciplinary proceedings and/or recovery of damages caused by disciplinary misconduct, and/or will continue violation of labour discipline.” appears too vague and broad.*
- *The time limits for filing an appeal (three days) and reviewing the appeal (five days) seem to be too short to allow the judge sufficient time to present his or her case before the Disciplinary Chamber.*
- *The salary of a judge should not be suspended before any disciplinary offence is proven and a decision as to disciplinary liability is made.*

4. Disciplinary liability of judges: In conformity with the Venice Commission’s recommendation in its 2014 Opinion, the 2021 Amendments lower the majority requirement from two-thirds majority to absolute majority for the HCoJ’s decisions on “disciplinary matters”. However, the Venice Commission would like to stress that persistent and widespread claims of corporatism and self-interest in the HCoJ damages the public trust in the judiciary and should be taken seriously.

5. New grounds for disciplinary misconduct: If the wording “political neutrality” is to be maintained, the law should qualify the grounds for disciplinary sanctions to only manifest violations of the duty of neutrality or by excluding certain types of issues, such as reforms of the court system and legislative issues.

16. It is relevant that the requirements indicated by the EU Commission in their Opinion (cited above) refer to the “thorough reform of the High Council of Justice”. However, the Draft Amendments neither consist of a thorough reform of the HCoJ, nor do they address the Venice Commission’s recommendations and concerns about the way the HCoJ functions in Georgia. The Commission’s recommendations above have therefore not been met at this stage.

17. The Georgian authorities have stated that those recommendations will be addressed at the next stage of the strategic judicial reform. In this context, the Venice Commission would like to stress once again the fundamental importance of its recommendations relating to the HCoJ. In the 2022 Opinion, in particular, it expressed concerns about the frequent and persistent claims of judicial corporatism within the HCoJ since they may damage the public trust in the judiciary. As a general remark on the HCoJ in Georgia, the Venice Commission stated: “[...] [A] council for the judiciary such as the HCoJ should ultimately exercise its powers to protect judicial independence and the efficiency and quality of justice in a way that reinforces public confidence in the justice system. Public confidence in the justice system would suffer if a council for the judiciary is perceived to act out of self-interest, self-protection, and cronyism. The organisation of a council should not allow for judicial corporatism to serve the self-interests of one group of judges to the detriment of other groups of judges.”¹⁰

18. The Venice Commission also notes with concern that for a long time, the lay members of the HCoJ have not been appointed. Under Article 64 para. 2 of the Constitution, the 3/5th majority is required for the Parliament to elect the HCoJ lay members; however, this majority has never been reached and no anti-deadlock mechanism has been envisaged even though the Venice Commission has earlier emphasised to the Georgian authorities on the importance of such a mechanism in the appointment of lay members to the HCoJ.¹¹ The current practice is not compatible with the idea of pluralism in the composition of the HCoJ embedded in constitutional norm. This problem may be addressed either by way of a constitutional amendment providing for an anti-deadlock mechanism or by reaching a political compromise over the candidates.

¹⁰ The 2022 Opinion, para. 61.

¹¹ Venice Commission, [CDL-AD\(2013\)007](#), Opinion on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia, para. 52; [CDL-AD\(2017\)013](#), Georgia - Opinion on the draft revised Constitution, para. 87.

19. The ideal of pluralism implies that lay members of the HCoJ should participate in that body and have a meaningful role in the decision-making of the HCoJ. Accordingly, it is necessary to ensure not only the full composition of the HCoJ including the lay members, but also their effective participation in the HCoJ. Where the representation of judges and lay members in the judicial council was a matter of constitutional principle, the Commission recommended that – for effective participation of both judicial and non-judicial groups – the decision-making majorities could not be secured exclusively by votes of one of those groups.¹²

20. The Venice Commission recommends that the Georgian legislator revise the decision-making procedure within the Council to ensure an appropriate balance between the two groups represented in the Council (lay and judicial members).

21. There are other ways of addressing the problem of judicial corporatism. One of them consists of the gradual renewal of the composition of the HCoJ, recommended in the 2022 opinion.¹³ The Commission again invites the authorities to make use of this staggered technique.

22. With the amendments to the Law adopted in December 2021, members of the HCoJ have been allowed to serve more than one term in the HCoJ (Article 47 para. 12). In its 2022 opinion, the Venice Commission noted that while there is no international standard, fixed terms are to be preferred to ensure the appearance of independence of the HCoJ members. Considering the public controversies on the composition and independence of the HCoJ, allowing re-appointment to the HCoJ would require a specific justification.¹⁴ The Commission invites the authorities to revisit Article 47 para. 12 in light of these considerations.

23. To prepare and implement a comprehensive reform of the HCoJ, which is urgently needed taking into account the issues covered in this section, besides addressing the issues identified in the previous opinions of the Venice Commission and this follow-up Opinion, the Georgian authorities could consider reform of the manner of election of the judicial members. The Commission stands ready to assist them in this respect.

C. Qualifications for the Supreme Court judges

24. In the 2019 Opinion, the Venice Commission recommended that the age and experience requirements for Supreme Court judges be raised. The Commission found that the requirements were too lenient, *“as it may be questioned whether a person will have acquired the necessary experience to be a Supreme Court judge at the age of 30 and after no more than five years of service as a judge, advocate or academic. These relatively low formal thresholds are all the more questionable as they also apply to the position of Chief Justice.”*¹⁵

25. Draft Article 34 of the Draft Amendments contains detailed requirements for judicial candidates: the age of 30, higher legal education with at least a master’s degree or an equivalent academic degree/diploma of higher education, at least 5 years of professional work experience, command of the state language, passing of qualification examination, completion of a full course of study at the Higher School of Justice and inclusion in the qualification list of justice students. It appears that this provision contains general requirements applicable also for Supreme Court judges. This follows from draft paragraphs 3 and 4 of the same Article, which contain exceptions from the qualification requirements for *i.a.* candidates to Supreme Court positions.

¹² Venice Commission, [CDL-AD\(2022\)019](#), Opinion on the draft law on amending some normative acts (Judiciary) of Moldova, para.49.

¹³ The 2022 Opinion, para. 56.

¹⁴ The 2022 Opinion, para. 55.

¹⁵ The 2019 Opinion, para. 23.

26. Neither this nor other provisions in the Draft Amendments introduce stricter age and experience requirements for the Supreme Court candidates: the Venice Commission's recommendation on this point has therefore not been met. The Commission recommends that this issue be addressed as part of judicial reform planned by the authorities.

D. Nomination of candidates to the Supreme Court

1. Anti-deadlock mechanism for the nomination decision of the HCoJ

27. For the appointments to the Supreme Court, the HCoJ nominates candidates to be elected by Parliament according to the procedure in Article 34¹ which involves: firstly, the evaluation of the candidates by the HCoJ members resulting in a short-list of candidates; and secondly, voting on the shortlisted candidates by 2/3 majority of the HCoJ. The vote takes place for each individual candidate, starting from the top of the list which is formed based on the candidates' scores, and the vote does not continue for subsequent candidates if the previous one has not reached the required majority.

28. In the 2019, 2020, and 2021 Opinions, the Venice Commission recommended that an anti-deadlock mechanism be introduced in case the shortlisted candidates cannot receive the 2/3rd majority in the HCoJ.¹⁶ Revised draft paragraph 13 of Article 34¹ does not introduce any anti-deadlock mechanism: the Commission's recommendations in this respect have therefore not been met. The Commission recommends that this issue be addressed in a further amendment to the Law.

2. Transparency and reasoning in the nomination decisions

29. The 2020 Opinion recommended providing for "*the disclosure, together with the votes and the reasonings, of the identity of the members of the HCoJ who cast the relevant votes*" in the nomination of candidates to the Supreme Court.¹⁷ That measure was necessary to ensure that the unsuccessful candidates can effectively appeal against the decisions of the HCoJ in the nomination procedure.

30. Draft paragraph 11 of Article 34¹ of the Law retains the principle that if a member of the HCoJ does not assess all candidates under the procedure and does not submit these assessments, together with the justifications, to the Office of the HCoJ, it is considered that this member does not participate in the evaluation procedure. In addition, the results of his/her assessment of all candidates shall be cancelled. Likewise, the draft paragraph 13 of Article 34¹ retains the requirements of the open vote as well as publishing the decisions and the reasoning on the website of the HCoJ.

31.. As the legislative text stands, the Venice Commission's recommendation on this point appears to have been met by the amended paragraphs 11 and 13 of Article 34¹. Whether these provisions are sufficient and appropriate will depend on the practice of their application.

3. Right to an effective appeal against the nomination decisions of the HCoJ

- a. The possibility of a repeated appeal to the Supreme Court

32. The candidates for the position of Supreme Court judge shall be nominated by the HCoJ with further approval by Parliament (Article 61 para. 1 of the Constitution). In the 2019 Opinion, the

¹⁶ The 2019 Opinion, paras. 48-49; the 2020 Opinion, para. 32; the 2021 Opinion, para. 14.

¹⁷ The 2020 Opinion, para. 24.

Venice Commission stressed the importance of ensuring the right of appeal by unsuccessful candidates to the Supreme Court.¹⁸ In the 2020 Opinion, the Commission assessed new provisions regulating such appeal procedure (Article 34³ of the Law) and further recommended that the second decision of the HCoJ concerning the nomination of candidates to the Supreme Court (after the first decision has been quashed by the court) should be also open to another appeal to the Supreme Court.¹⁹ The 2021 Opinion found that this recommendation was followed (see Article 34³ para. 13).²⁰

b. Modified composition of the HCoJ for the repeated appeal

33. In the same context, the Venice Commission recommended “modifying the composition of the HCoJ for the subsequent decisions”²¹ by excluding HCoJ members who were biased or otherwise violated the rights of the persons concerned. This recommendation is followed in the draft paragraph 13¹ of Article 34³.

34. However, to avoid any issue as to whether or not a member of the HCoJ should be disqualified in the subsequent round, it is appropriate to foresee the power of the Supreme Court to state expressly, when quashing the HCoJ decision, whether there is a situation as described in Article 34³ para. 13¹.

35. Apart from that, the Draft Amendments do not address the potential problems of the quorum and decision-making capacity that may arise following the recusal of several HCoJ members. The law should include a mechanism that allows the HCoJ to render a decision following an appeal that disqualifies several of its members in the second decision.

36. Furthermore, the draft provision at issue (Article 34³ para. 13¹) requires the recusal of members that “*has shown bias in the selection of candidates, his/her approach was discriminatory and/or he/she exceeded the powers granted to him/her by the legislation of Georgia, as a result of which the rights of the candidate were violated or the independence of the court was threatened*”. The scope of the provision is quite broad, since it not only requires recusal in case “*the rights of the candidate were violated*”, but also where “*the independence of the court was threatened*”. The scope and even relevance of this latter criterion are not clear in the context of the assessment of individual candidates and should be removed.

c. Binding nature of the Supreme Court decisions and suspension of the appointment procedure

37. As the Venice Commission underlined in its 2021 Opinion, the HCoJ in its new decision must abide by the decision and instructions of the Supreme Court, which is necessary for a meaningful right to appeal. Indeed, the power of the HCoJ to nominate judges to the Supreme Court is not unlimited and is bound by the law which gives the Supreme Court the power to check the legality of the procedure.²² In order to avoid any misinterpretation, the binding nature of the decisions and instructions of the Supreme Court could be expressly indicated.

38. In addition, if the right to appeal the HCoJ decisions is to be meaningful, there should be a clear rule staying the appointment procedure until a decision is rendered by the Supreme Court.²³ While the suspension rule has been provided in para. 2 of Article 35³ of the Law, the recommendation on enhancing the mandatory nature of the Supreme Court instructions for the

¹⁸ The 2019 Opinion, para. 40.

¹⁹ The 2020 Opinion, para. 27.

²⁰ The 2021 Opinion, para. 15.

²¹ The 2020 Opinion, para. 27; the 2021 Opinion, para. 15.

²² The 2021 Opinion, para. 16.

²³ The 2021 Opinion, para. 16.

HCoJ still needs to be fully implemented, and the Commission would like to repeat it for the further legislative amendment planned by the authorities.

E. Term of office of the Supreme Court President

39. In its 2019 Opinion, the Venice Commission noted that a term of 10 years for the President of the Supreme Court was excessive and could be reduced.²⁴ While there is no single standard on the duration of the mandate of a court president, the general approach is that such a term should not be too short to exclude the possibility of court presidents exercising effective leadership and maintaining a solid and strong court organisation. On the other hand, the relevant term should not be too long, otherwise, it might affect the internal judicial independence and lead to the domination of one person in a court. As to the current regulation in Georgia, the term of 10 years is entrenched in Article 61 para. 3 of the Constitution, and it is repeated in the new paragraph 1¹ of Article 21 of the Law. The Venice Commission concludes that this recommendation remains relevant and should be considered during future constitutional revision.

F. Reallocation of candidates

40. In the 2022 Opinion, the Venice Commission assessed the amendment by which the HCoJ was empowered to appoint unsuccessful consenting judicial candidates to other vacancies which remained available after the competition (so-called “reallocation” of candidates). The Commission recommended that in the case of the HCoJ reallocating candidates to vacant judicial positions “[i]t should be clarified that a judicial candidate appointed in the second round must fulfil all the requirements of the specific vacancy, e.g., specialisation requirements.” This recommendation referred to the then-new paragraph 13¹ of Article 35 of the Law. In the present Draft Amendments, this rule is being moved to paragraph 3 of Article 35, but no relevant amendment has been made to its contents. The Commission’s recommendation has therefore not been followed, and the Commission would like to repeat it for a further legislative amendment planned by the authorities.

G. Secondment of judges

41. The 2022 Opinion addressed amendments to Article 37¹ of the Law which increased the HCoJ’s powers to second or transfer judges without their consent. The Venice Commission found those provisions highly problematic and recommended that *“the secondment of judges against their will should only be possible in exceptional cases and justified by a legitimate objective. Clear and narrow criteria as well as shorter time periods for secondment should be provided. A random or objective procedure with a geographical limitation should be reintroduced.”*²⁵ As the Draft Amendments do not affect Article 37¹, the Commission’s recommendation has not been met. The Commission recommends that this Article be amended without delay at the subsequent stage of the judicial reform planned by the authorities.

H. Suspension of judges from office

42. In the 2022 Opinion, the Venice Commission commented on the procedure for suspension of judges pending criminal or disciplinary proceedings, as provided in Article 45 of the Law. The Commission critically observed that the suspension criterion formulated as *“reasonable belief, that remaining on this position he/she will prevent disciplinary proceedings and/or recovery of damages caused by disciplinary misconduct, and/or will continue violation of labour discipline”* appeared too vague and broad; the time-limits for filing an appeal (three days) and reviewing the appeal (five days) seemed to be too short to allow the judge sufficient time to present his or her case before the Supreme Court; the salary of a judge should not be suspended before any

²⁴ The 2019 Opinion, para. 53.

²⁵ The 2022 Opinion, para. 81 (2).

disciplinary offence was proven and a decision as to disciplinary liability was made.²⁶ These recommendations have not been addressed in the Draft Amendments. The Commission, therefore, repeats them for further amendment to the Law.

I. Grounds for disciplinary liability

43. The amendments to the Law in 2021 extended the grounds for disciplinary liability of a judge by the new provision which was added to Article 71¹: “*Expression of opinion by a judge in violation of the principle of political neutrality*”. In its 2022 Opinion, the Venice Commission made the following recommendation concerning these new grounds for disciplinary liability: “*If the wording “political neutrality” is to be maintained, the law should qualify the grounds for disciplinary sanctions to only manifest violations of the duty of neutrality or by excluding certain types of issues, such as reforms of the court system and legislative issues.*”²⁷ The relevant provision is not being reviewed. The recommendation has thus not been met but remains valid and should be considered during further amendment to the Law.

J. Initiation of the disciplinary procedures

44. In its 2022 Opinion, the Venice Commission reiterated its previous recommendation to clarify when disciplinary proceedings should be considered as initiated to allow the judge to benefit from his or her right to counsel in the early stages²⁸. The Commission would like to repeat this recommendation, which at this stage has not been met.

K. Access to court decisions

45. The Draft Amendments add Chapter I¹ “*Dissemination of the text of a judicial act as public information*” to the Law. The new chapter regulates the procedure for issuing the complete or partially depersonalised text of the court decision delivered following an open court session, which will have a status of public information. As stated in the Explanatory Note, the purpose of this change is to bring legislation in accordance with the decision of the Constitutional Court of Georgia of 7 June 2019. By that decision, the Constitutional Court found unconstitutional the legislative provisions which unduly restricted access to the full text of court decisions delivered within the public hearings.²⁹ After that decision, however, the common courts continued the practice of refusing to grant access to court decisions by the general public.³⁰

46. In this context, the fact that the legislator has proposed to resolve this issue following the decision of the Constitutional Court is welcome.

47. Undoubtedly, the right to access court decisions by the general public is important in terms of both the right to information and the right to a fair trial. As a result of providing access to court decisions, the administration of justice which is open to the public reaches a more transparent and accountable dimension. However, the exercise of this right is closely related to the right to

²⁶ The 2022 Opinion, para. 81 (3).

²⁷ The 2022 Opinion, para. 81 (5).

²⁸ The 2022 Opinion, para. 77.

²⁹ Brief summary of the Constitutional Court's decision in English is available at: https://www.constcourt.ge/en/judicial-acts?legal=1268&fbclid=IwAR1wQILB_QSyljnRCt5yJl6836FvCyTkQUavyCIBziE10inYCqx1zC1rrr4

³⁰ See, for example, IDFI Statement of 24 September 2020 at https://idfi.ge/en/idfis_statement_on_access_to_court_decisions

privacy and the protection of personal data. While providing the right of access court decisions, it is necessary to strike the right balance between these rights.

48. By way of limited and preliminary assessment, the Commission would observe that the new Chapter I¹ (which includes draft Articles 13³, 13⁴, and 13⁵) provides for a detailed and rather complex regulation that makes access to court decisions a complicated and prolonged process. It appears that the Draft Amendments could provide more practical solutions to facilitate the use of the right of access to a court decision. The Commission also stresses the need to ensure that access be given to past decisions as well as to future ones.

IV. Conclusion

49. Following the request of Mr Shalva Papuashvili, the Chairman of the Parliament of Georgia dated 22 November 2022, the Venice Commission has assessed the current set of amendments as part and parcel of the ongoing reform of the judiciary of Georgia, in relation to which the Commission has already issued four opinions between 2019 and 2022. The present Follow-up Opinion therefore assesses these Draft Amendments against the background of the Commission's previous recommendations concerning the Organic Law on the Common Courts of Georgia.

50. The Draft Amendments under examination have been prepared by the Georgian authorities as a part of legislative measures required by the EU in the context of Georgia's application for EU membership. The European Commission has recommended that Georgia "*adopt and implement a transparent and effective judicial reform strategy and action plan post-2021 based on a broad, inclusive and cross-party consultation process; ensure a judiciary that is fully and truly independent, accountable and impartial along the entire judicial institutional chain, also to safeguard the separation of powers; notably ensure the proper functioning and integrity of all judicial and prosecutorial institutions, in particular, the Supreme Court and address any shortcomings identified including the nomination of judges at all levels and of the Prosecutor-General; undertake a thorough reform of the High Council of Justice and appoint the High Council's remaining members. All these measures need to be fully in line with European standards and the recommendations of the Venice Commission*".

51. The Venice Commission reiterates the importance to achieve an independent, impartial, and well-functioning judiciary. Only an independent judiciary can render justice impartially based on the law and prevent the abuse of power. It is of vital importance for the rule of law that there is public trust in the proficiency of the judiciary to operate in an independent and impartial manner.³¹

52. The Venice Commission notes that the following key recommendations which it has previously made remain to be addressed:

- Addressing the issues of judicial corporatism and self-interest in the High Council of Justice which should involve a comprehensive reform of the High Council of Justice, (as discussed in paragraphs 15 - 23 above);
- Circumscribing the wide powers of the High Council of Justice to second or transfer judges without their consent by adding narrower criteria for the secondment/transfers, introducing time and location limitations on secondments/transfers, providing for a random system of secondments/transfers;

³¹ Venice Commission, [CDL-AD\(2018\)028](#), Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, 17 December 2018, para. 27.

- Revising the procedure for suspension of judges from office by defining more precisely the grounds for suspension, allowing for more time for appealing such decisions and maintaining the salary during the suspension period;
- Restricting the grounds for disciplinary liability of a judge related to the expression of opinion to the manifest violations of the duty of political neutrality, while leaving space for the comments by the judges on such issues as reforms of the court system ;
- Ensuring that the instructions by the Supreme Court are mandatory for the High Council of Justice.

53. The Commission is of the view that the draft provisions regulating access to court decisions are positive, but it recommends that the process be shortened and simplified and that it be ensured that access is provided for past decisions as well as for future ones.

54. The Commission was informed by the Georgian authorities that the Draft Amendments were only the first step in a comprehensive strategy for judicial reform in the country. Indeed, the present legislative initiative is of limited scope and does not provide for a holistic reform of the judiciary, including the High Council of Justice. The need to await a decision by the Constitutional Court was also invoked as a reason not to proceed with amendments that would meet the Venice Commission's recommendations. The Commission welcomes the statement of the Georgian authorities that they wish to take its recommendations into account, and it recommends that they do so without any unjustified delay.

55. The Venice Commission remains at the disposal of the Georgian authorities for further assistance in this matter.