



Strasbourg, 17 December 2011

CDL-REF(2012)045

Opinion No. 701 / 2012

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT AMENDMENTS**  
**TO THE ORGANIC LAW OF GEORGIA**  
**ON**  
**GENERAL COURTS**  
**AND**  
**EXPLANATORY REPORT**

The Organic Law of Georgia

Amendments to  
the Organic Law of Georgia on "General Courts"

Article 1. Following amendment shall be made to the Organic Law of Georgia on "Common Courts" (Legislative Gazette of Georgia, № 41, 08.12.2009, Art. 300):

1. Article 13, paragraph 4 shall be amended to read as follows:

"4. In the court and in the courtroom photo, film or video recording and broadcasting of the proceedings is carried out in accordance with the rule established by this Law. "

2. Article 13<sup>1</sup> shall be added to the Law to read as follows:

**"Article 13<sup>1</sup>. Media Coverage of Court Sessions**

1. The court is obliged to carry out the audio / video recording during the trial. Upon request the court must provide available audio / video recording to the parties and / or other people, unless the court has ordered full or partial closure of the session. If the court ordered full or partial closure of the session, the audio / video recordings can be transferred only to the parties who shall sign the non-disclosure agreement in respect with audio / video recordings.

2. Public broadcaster shall be entitled to take photos, carry out film - video - and audio recording and broadcasting of the judicial proceedings, unless the court has ordered full or partial closure of the session. Public broadcaster shall ensure transfer of the records to other representatives of mass media upon their request.

3. If the Public broadcaster does not use the authority defined in paragraph 2 of this article, such authority can be used by another entity possessing a general broadcasting license, on the basis of a written application to the judge adjudicating the case, prior to the beginning of the court session. If such an application is filed by more than one owner of a general broadcasting license, the authorized person will be selected by the judge, by casting lots. A person who uses the authority specified in paragraph 2 of this Article, shall carry out the duties provided by the same paragraph.

4. With the consent of the court, other representatives of mass media, the parties and / or other people shall also be entitled to take photos, carry out film - video - and audio recording and broadcasting of the court session on the basis of a reasoned request. This right may be restricted by the reasoned decision of the court (judge). "

5. Photo of the court room, film or video recording and transmission shall be carried out from the seats/places allocated by the Court in advance for this purpose. Any person in the court room has the right of an audio recording of the session from their place. Carrying out these activities, movements, noise, light, or other such emissions in the court room, which interferes with the normal procedure of administration of justice, are prohibited. In case of violation of this rule, the judge (court) may apply the measures defined by the Criminal Procedure and Civil Procedure legislation.

6. If the jury is participating in the court session, taking photo, film, video or audio recording and transmission must be carried out without depiction of images of the jury, without the disclosure of their identity, their appearance, and / or other personal data.

7. Taking photo, film, video or audio recording and transmission is allowed without any restriction in the court yard and corridors of building, unless the security interest requires otherwise. It is not allowed to seize the belongings, including mobile phone, computer, photo, video or audio devices of a person, who entered the court in accordance with the court rules. "

3. Sub-paragraph "c" of paragraph 1 of article 21, shall be annulled.

4. Article 47 shall be amended to read as follows:

"Article 47. The High Council of Justice of Georgia

1. To ensure independence of the court (judge), quality and efficiency of justice, to appoint and dismiss judges, to organize qualifying exam, to elaborate the proposals of reform of judiciary, and to carry out the other tasks provided by the Law the High Council of Justice shall be established.

2. The High Council of Justice of Georgia consists of 15 members elected by the Judiciary of Georgia and the Parliament of Georgia. The Chairman of the Supreme Court presides over the High Council of Justice of Georgia.

3. More than half of the members of the High Council of Justice of Georgia are elected by the members of the self-government body of the judges of the Common Courts in accordance with this Law.

4. The Common Courts are represented in the High Council of Justice of Georgia by the Chairman of Supreme Court and 8 members elected by the Judicial Conference of Georgia, one of which shall be the secretary of the High Council of Justice of Georgia. Only the judge of a Common Court may be a member elected by the Judicial Conference. Any judge attending the Judicial Conference is entitled to propose the candidate of member judge before the Judicial Conference of Georgia. The Chairman of the court, first Deputy Chairman, the deputy chairman, the chairman of the board or the chamber, or any person who has held any of the listed positions during previous 1 year, can not be elected by the Judicial Conference of Georgia.

5. The Parliament of Georgia by a majority of its members elects 6 members in the High Council of Justice of Georgia who are selected from the scholars working in the high education Institutions, members of a non-profit (non-commercial) legal persons working in the field of law and / or the members of Georgian Bar Association, based on the recommendations of the managerial authorities of the same organizations.

6. Member elected by the Parliament of Georgia in the High Council of Justice of Georgia may be a citizen who is at least 30 years old, and has a high legal education, enjoys a high reputation and is a recognized expert in the field of law. The Parliament of Georgia takes into account candidate's professional background, reputation and moral and ethical standards when electing the member of the High Council of Justice of Georgia.

7. To elect a member of the High Council of Justice of Georgia prior written consent of the candidate is necessary, unless a person is member of the High Council of Justice of Georgia due to his or her position.

8. Term of office of a member of the High Council of Justice of Georgia shall be 4 years, with the exception of a person, who is member of the High Council of Justice of Georgia due to his or her position. The same person cannot be elected twice as a member of the High Council of Justice of Georgia, except the Chairman of the Supreme Court. Member of the High Council of Justice of Georgia can not fulfill his duties after expiry of the term of office. A new member of the High Council of Justice of Georgia should be elected not earlier than 30 days before the expiration of the term of office of a corresponding member of the High Council of Justice of Georgia and no later than 7 days from the end of this term. In the case provided by article 48, paragraph 1 of this Law, a new member of the High Council of Justice of Georgia must be elected not later than one month from the date of dismissal of a corresponding member of the High Council of Justice of Georgia and if the the Parliament sessions are not held during that time, then – at the next closest Parliament session.

9. A member of the High Council of Justice of Georgia, if he is not a judge, may not hold any other office in the State or local self-government body, or be engaged in other remunerated



activity, except for scientific, pedagogical and creative activities. He/she can not be a member of any political union, or be engaged in political activity.

10. The High Council of Justice of Georgia may set up the additional remuneration for a member judge of the High Council of Justice of Georgia, to ensure effective implementation of his/her functions as the member of the High Council of Justice of Georgia and members elected by the Parliament of Georgia shall be paid adequate remuneration for the performance of their duties. Measures provided for in this paragraph is financed from the budget allotments allocated for the Common Courts.

11. The Chairman of the Supreme Court or under his or her instruction, the secretary of the High Council of Justice of Georgia convokes sessions of the High Council of Justice of Georgia when necessary, but at least once every three months. In case of inability of the Chairman of the Supreme Court to perform his/her duty or in any other case, if there is a necessity to hold a session of the High Council of Justice of Georgia established by Law, the secretary of the High Council of Justice of Georgia shall convoke the session of the High Council of Justice of Georgia.

12. Sessions of the High Council of Justice of Georgia are chaired by the Chairman of the Supreme Court, and in the case provided for in paragraph 11 of this article - The Secretary of the High Council of Justice of Georgia.

13. Decisions of the High Council of Justice of Georgia shall be signed by the Secretary of the High Council of Justice of Georgia, except for the cases provided in the paragraph 14 of this article.

14. Decisions of the High Council of Justice of Georgia on appointment and dismissal of a Judge, on authorization of a different judge the chairman of a court (judicial board or chamber), as well as on imposition or suspension of the competence of a judge in case of the elimination of the court and or a position of a judge position and the issues of the judge's authority or suspension of the authority, shall be signed by the chairman of the Supreme Court, and in his absence – the Secretary of the Supreme Council of Justice of Georgia. \*

5. Article 48 shall be amended to read as follows:

**\*Article 48. Termination of Authority of a Member of the High Council of Justice of Georgia**

1. The grounds for termination of authority of a member of the High Council of Justice of Georgia, with the exception of members who hold an office in the High Council of Justice of Georgia due to their position, are as follows:

- A) His or her will;
- B) Transfer or election to another position with his/her consent;
- C) Inability of implementation of his powers for more than 4 months in a year;
- D) Systematic failure to perform or improper performance of his/her duties;
- E) Undertaking of position or activity that is inconsistent or incompatible with the position;

- F) Recognition as incapable or of limited capacity by the court;
- G) A guilty judgment against him or her, that entered into force;
- H) Termination of citizenship of Georgia;
- I) The expiration of the term of office provided by this law;
- J) Death.

2. A member of the High Council of Justice of Georgia shall be dismissed by the Parliament of Georgia or the Judicial Conference of Georgia, respectively. The Judicial Conference of Georgia shall dismiss a member of the High Council of Justice of Georgia based on the information of the Chairman or Secretary of the High Council of Justice of Georgia.

3. The ground for dismissal of the judge and a member, who holds an office in the High Council of Justice of Georgia due to his or her position, in addition to the grounds specified in the first paragraph of this article, is dismissal(resignation) of the judge or a member of the High Council of Justice of Georgia who holds an office in the High Council of Justice of Georgia due to his or her position respectively."

6. Article 49:

A) Subparagraph "d 1" in paragraph 1 shall be emended and read as follows:

"d) issues the cost reimbursement rule for the business trips of the members of the High Council of Justice of Georgia elected by the Parliament of Georgia";

B) Paragraph 2 shall be amended and read as follows:

"2. Rules of work of the High Council of Justice of Georgia is set forth in the regulations, which is approved by two-thirds of total number of members of the High Council of Justice of Georgia. ".

7. Article 50 shall be amended and read as follows:

"Article 50. Rule for Resolution of Issues of the High Council of Justice of Georgia

1. The High Council of Justice of Georgia is authorized to consider the issue and take a decision, if the session is attended by more than half of its members.

2. Decision of the High Council of Justice of Georgia can be adopted if it is supported by the majority of the members present at the session, except forcases provided by the Georgian legislation.

3. The decision on the disciplinary issueis considered adopted if it is supported by at least two-thirds of the total number of the members of the Council.

4. A person will be appointed as a judge by the High Council of Justice, if the candidate is supported by at least two-thirds of the total number of members of the Council.

5. The High Council of Justice takes decision by voting. ".

8. Paragraph of Article 51 shall be amended and read as follows:

"1. The Secretary of the High Council of Justice of Georgia is elected by the Judicial Conference of Georgia for a term of four years from the judge members of the High Council of Justice of Georgia ".

9. Paragraph 2 and Paragraph 3 of Article 64 shall be amended and read as follows:



"2. The Administrative Committee of the Judicial Conference consists of 9 members. The Administrative Committee is authorized to make decisions and elaborate acts on the administrative issues of the Common Courts, and submit the acts to the judicial conference of Georgia.

3. The members of Administrative Committee and the Chairman of the Committee shall be elected by the Judicial Conference of Georgia for a term of 3 years. The chairman, the first deputy chairman, the deputy chairman of a court, the chairman of the board or chamber of a court shall not be a member of the Administrative Committee. "

10. Article 65 shall be amended and read as follows:

"Article 65. The authority of the Judicial Conference of Georgia

1. The Judicial Conference of Georgia:

A) Shall elect by the votes of not less than 2/3 majority of the members present at the meeting:

A. A) The Chairman and members of the Administrative Committee;

A. B) The Secretary and other members of the High Council of Justice of Georgia;

A. G) The judge members of the Disciplinary Panel of Judges of the Common Courts of Georgia;

B) Shall approve the charter and the Regulations of the Judicial Conference of Georgia;

C) Shall hear the annual reports of the head of the Judicial Conference of Georgia and the chairman of the Department of Common Courts of Georgia on the activities of these bodies;

D) Shall implement the other authorities prescribed by the law, the charter and the regulations of the Judicial Conference of Georgia;

E) Shall adopt the Rules of Judicial Ethics proposed by the High Council of Justice of Georgia.

2. Any of the judges attending the Judicial Conference shall be entitled to nominate a candidate for election carried out in accordance with the provisions of subparagraph "a" of paragraph 1 of this article,

3. If during the execution of its duties by the High Council of Justice of Georgia in accordance with the provisions of subparagraph "a" of paragraph 1 of this article, the required number of votes are received by more candidates then should be elected, then that number of candidates with the best results shall be deemed elected, which is needed to fill up the vacancies. In the case if two or more candidates received an equal amount of votes, voting for these candidates will be held again. A candidate with the best results shall be deemed elected, if he received not less than ¼ of the votes of total number of members of the Judicial Conference. "

4. If during the execution of its duty by the High Council of Justice of Georgia in accordance with the provisions of subparagraph "a" of paragraph 1 of this article, the required number of votes are received by less candidates then should be elected, voting for the candidates who did not receive the required number of votes will be held again. That number of candidates with the best results shall be deemed elected, which is needed to fill up the vacancies. Only the candidate winning not less than ¼ of the votes of total number of members of the Judicial Conference shall be deemed elected. "

11. Paragraph 1 and paragraph 2 of article 64 shall be amended and read as follows:

"1. The Judicial Conference of Georgia shall be convened at least once a year. The Special Conference shall be convened at the initiative of the Administrative Committee or by written request of one-fifth of the judges of the Common Courts of Georgia. Convention of a Special conference is mandatory when, in accordance with the Law, a judge member (judge members) of the High Council of Justice of Georgia, a judge member (judge members) of the Disciplinary Panel of Judges of the General Courts of Georgia, a member (members) of the Administrative Committee must be elected. The Special session of the Judicial Conference of Georgia shall be held with the pre-defined agenda and is closed upon its completion. The agenda of the Judicial

Conference session is published via the web-site of the Supreme Court not less than 7 calendar days prior to the session.

2. The session of the Judicial Conference of Georgia is open. Judicial Conference is authorized to consider the issue and make a decision if the meeting is attended by more than half of the judges of the Common Courts of Georgia. The decision of the Judicial Conference is adopted by secret balloting procedure by a majority of vote of those present at the session, unless otherwise prescribed by this law. "

#### Article 2

In implement the rules for reimbursement of travel costs and reimbursement for fulfillment of their duties by the members of the High Council of Justice of Georgia elected by the Parliament of Georgia, the High Council of Justice shall define the amount of reimbursement in accordance with the requirements of the following provisions of this Law: article 1, paragraph 6, and article 49, paragraph 1, sub-paragraph " d " and article 1, paragraph 4 and article 47, paragraph 10.

#### Article 3

1. Within 3 weeks from the enactment of this Law the authorized entities must ensure the election of members of the High Council of Justice of Georgia in accordance with the procedures prescribed by this law.

2. Upon enactment of this law, authority of the members of the High Council of Justice, except the chairman of the Council, is terminated. They are responsible for fulfillment of duties of the members of the Council until the completion of the procedures specified by the first paragraph of this article.

3. The new composition of the High Council of Justice of Georgia, shall ensure completion of the cases pending before the High Council of Justice at the moment of entry into force of this Law in the manner provided by the legislation.

4. Within 3 weeks from the enactment of this law, the chairman of the Administrative Committee shall be elected in accordance with procedures established by this Law. The authority of the chairman of the Administrative Committee assigned to the Chairman of the Supreme Court of Georgia shall be terminated upon enactment of this Law. He/she shall be responsible for fulfillment of duties of the chairman of the Administrative Committee until election of a new chairman.

#### Article 4

This Law shall enter into force upon its publication.

The President of Georgia

M. Saakashvili



## Explanatory letter

### The Draft Law of Georgia on "Amendments to the Organic Law of Georgia on "Common Courts"

#### A) General information about the Draft Law

##### A.A) The reason for the adoption of the Draft Law:

The motivation for adoption of the Draft Law is the inefficient regulations in the current legislation for the formation of an independent and impartial corps of judges. In particular, according to the Organic Law on "Common Courts", nomination for election of the judge members and the secretary of the High Council of Justice of Georgia is the competence of the Chairman of the Supreme Court of Georgia, which can not ensure the independence of the Council in view of the fact that the Council is the body entitled to consider the disciplinary proceedings against judges, to appoint and dismiss the judges. At the same time, the current wording of the Law is not providing a high degree of independence of the Disciplinary Board, because its composition is determined by members of the High Council of Justice. In addition, there is not provided public representation in determination of composition of the High Council of Justice as well as public participation in the activity of the Council. The current wording of the Law does not ensure the principle of full transparency of proceedings - photo, film and video recording as well as broadcasting of proceedings is not permitted unless it is carried out by the court or a person authorized by the court.

##### A. B) The purpose of the Draft Law:

The aim for adoption of the Draft Law is the reorganization of the High Council of Justice of Georgia, for setting forth an effective regulatory system of formation of an independent and impartial corps of judges, and changing of rules of formation of the Disciplinary Board and the High Council of Justice. Specifically, in accordance with regulation proposed by the Draft Law, the degree of independence of the Disciplinary Board and the High Council of Justice from the Chairman of the Supreme Court is increased and participation of the community in the activities of the Council is secured. To ensure adequately the principles of more democracy and openness of the judiciary, the Draft Law provides enhanced powers for audio and video recording of the judicial procedures for public broadcaster, other representatives of mass media and private entities. The aim of the Draft Law is also to enhance the role of the self-governing body of judges in formation of the High Council of Justice

##### A. C) The basic idea of the Draft Law:

According to the Draft Law:

1. The new rule is determined for the composition of the High Council of Justice – 6 (six) non-judge members of the Council shall be elected by the Parliament of Georgia from the representatives of society. Such requirements and criteria are set forth for the members elected by the Parliament which secure that recognized experts of this field with good reputation will participate in the High Council of Justice.

2. Judge-members and the Secretary of the High Council of Justice are elected by the Judicial Conference without nomination of candidates by the Chairman of the Supreme Court. Any judge attending the Judicial Conference may nominate the candidate. Member elected by the Conference can not be the chairman of Court, First Deputy Chairman, Deputy Chairman of the chairman of Board or Chamber or a person who occupied any of the listed positions within the previous 1 year.



3. The same person can not be a member of the High Council of Justice for consecutive two terms, other than the Chairman of the Supreme Court.

4. The Administrative Committee of the Judicial Conference will be managed by the person elected by the Judicial Conference instead of the Chairman of the Supreme Court. Any judge attending the Judicial Conference has right to nominate the candidate.

5. According to the Draft, the members of the High Council of Justice will be separated from the Disciplinary Board members.

6. The new regulations provide the greater transparency of the court sessions and availability of their video / audio recordings to the public.

B) the Financial Justification of the Draft Law:

B. A) The source of funding costs related to the adoption of the Draft Law.

The adoption of the Draft Law will result in the allocation of additional funds in the state budget in the amount of compensation determined by the Council for six members of the High Council of Justice elected by the Parliament of Georgia.

B. B) Impact of the Draft Law on the income part of the budget

Adoption of the Draft Law will not affect the income part of the state budget.

B. C) Impact of the Draft Law on the expenditures part of the budget

Adoption of amendments to the Draft Law may result in changes to the expenditure part of the budget.

B. D) The new financial liabilities of the State

Adoption of the Draft Law will not cause creation of new financial liabilities of the State.

B. E) The expected financial results for the people to whom applies the actions of this Draft law.

The member of the High Council of Justice of Georgia elected by the Parliament of Georgia will receive the remuneration for the performance of his/her duties.

B. F) The rules (principles) of determination of the tax, fee or other amount payable under the Draft Law.

The Draft Law does not define taxes, fees or other amounts payable and respectively, does not establish the rule for their determination.

C) The compliance of the draft Law with the international legal standards

C. A) The compliance of the draft Law with the directives of the European Union

The Draft Law does not conflict with EU directives.

C. B) The compliance of the Draft Law with the obligations of Georgia related to the membership of international organizations.

Adoption of the draft law is not inconsistent with the obligations of Georgia related to the international organizations membership.

C. C) The Draft Law in respect of bilateral and multilateral treaties of Georgia.

Adoption of the draft law does not violate and is not inconsistent with the commitments under bilateral and multilateral international treaties of Georgia.

D) Consultations for the preparation of the Draft Law

D. A) the State, non-governmental and / or international organizations / institutions, experts, who participated in drafting the Draft Law, if any.

During the Draft Law preparation process consultations were received from the representatives of the Common Courts, the High Council of Justice as well as from the non-governmental organizations.

D. B) Assessment of the Draft Law by the organization (institution) and / or expert participating in the preparation of the Draft Law.

No such assessment is available.

E) The Author of the Draft Law

The author of the Draft Law is the Ministry of Justice of Georgia.

F) The initiator of the Draft Law

The initiator of the Draft Law is the Government of Georgia.