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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT AMENDMENTS
TO THE ADMINISTRATIVE PROCEDURE CODE**

**DRAFT AMENDMENTS
TO THE CIVIL PROCEDURE CODE**

**DRAFT AMENDMENTS
TO THE CRIMINAL PROCEDURE CODE**

**RELEVANT ARTICLES OF THE ADMINISTRATIVE,
CIVIL AND CRIMINAL CODES
(TO BE AMENDED BY THE DRAFT AMENDMENTS)**

OF GEORGIA

Draft**Georgian Law****On Amendments to the Administrative Procedure Code of Georgia**

Article 1. Paragraph 3 of Article 34 of the Administrative Procedure Code of Georgia (Legislative Herald of Georgia , #39(46), 1999, Art. 190) shall be revised to read as follows:

“3. The Supreme Court of Georgia shall find a cassation appeal admissible if:

- (a) The case is important for the development of law and:
 - (a.a) The Supreme Court of Georgia has never delivered before its decision in any case containing analogous or essentially similar facts;
 - (a.b) The Supreme Court of Georgia believes that after having reviewed the cassation appeal in the given case it is likely that the Supreme Court of Georgia may deliver a decision which will differ from the decision(s) that the Supreme Court of Georgia has delivered in the case(s) containing analogous or essentially similar facts;
- (b) The decision of the appeals court differs from the latest decision(s) of the Supreme Court of Georgia delivered in the case(s) containing analogous or essentially similar facts;
- (c) The appeals court has considered the case in significant breach of substantive and/or procedural law which breach might essentially have impaired the effects of adjudication in the given case;
- (d) The decision of the appeals court contradicts the precedent decision(s) of the European Court of Human Rights in the case(s) in which Georgia was a party.”;

Article 2. This law shall be effective in 30 days following its publication.

President of Georgia

G. Margvelashvili

**Full Texts of the Articles of Georgian Administrative Procedure Code where the
Amendments should be made by the Proposed Draft Law**

Article 34. Admissibility of the appeals and cassation appeals

1. Appeals and cassation appeals shall be acceptable in administrative procedure, irrespective of the amount of claim. In such case requirements of Article 365 and Section 1² of Article 391 of Civil Procedure Code of Georgia shall not be applied¹.

1¹. Judge of the department of administrative cases of the court of appeal shall be entitled to consider the appeal acting alone:

- a) With respect of the decisions made on cases specified by Article 6 of this Code;
- b) With respect of individual administrative-judicial act issued in relation with disclosure of the public information;
- c) With respect of disputes related to the records with the Public Registry;
- d) With respect of disputes related to privatization of the dwelling apartment;
- e) With respect of dispute related to administrative agreement on lease¹;
- f) With respect of dispute originating from the construction relations;
- g) With respect of private claim;
- h) In cases specified in Section 8 of Article 21²³ of this Code;
- i) With respect of dispute related to payment of money compensation to a person recognized as a victim of political repressions or his/her heir of the first order;
- j) With respect of cases related to sending of the minors to boarding school.

2. Decisions of the court of appeal may be appealed by the parties and the third parties involved in the case as per Section 2 of Article 16 of this Code within the terms established by the law at the court of cassation.

3. Supreme Court of Georgia allows the cassation appeals if:

- a) The case is of significance for development of the law and formation of the uniform judicial practice;
- b) Decision of the court of appeal differs from the existing practice of Supreme Court of Georgia with respect of the cases of the similar category;
- c) The court of appeal has considered the case with significant legal or procedural violations and this could substantially affect the outcome.

3¹. Term of examination of admissibility on the basis of Section 3 of this Article shall not exceed 3 months.

4. Term of acceptance of the cassation appeal for administrative case and making decision thereon shall be 6 months.

¹ These articles specify possibility of appeal based on the price of the subject of dispute.

Draft

Georgian Law
On Amendments to the Civil Procedure Code of Georgia

Article 1. The following amendments shall be made to the Civil Procedure Code of Georgia (The Gazette, #47-48, 31.12.1997, p. 21):

1. In Article 391:

(a) The following Paragraph 1¹ shall be added after Paragraph 1:

“1¹. The cassation appeal shall be submitted to the court that has delivered a decision. The cassation appeal shall meet the requirements provided for in paragraphs 2 and 3 of Article 177 of this Code.”;

(b) Paragraph 5 shall read as follows:

“5. The cassation appeal in property and non-property disputes shall be admissible if:

(a) The case is important for the development of law and:

(a.a) The Supreme Court of Georgia has never delivered before its decision in any case containing analogous or essentially similar facts;

(a.b) The Supreme Court of Georgia believes that after having reviewed the cassation appeal in the given case it is likely that the Supreme Court of Georgia may deliver a decision which will differ from the decision(s) that the Supreme Court of Georgia has delivered in the case(s) containing analogous or essentially similar facts;

(b) The decision of the appeals court differs from the latest decision(s) of the Supreme Court of Georgia delivered in the case(s) containing analogous or essentially similar facts;

(c) The appeals court has considered the case in significant breach of substantive and/or procedural law which breach might essentially have impaired the effects of adjudication in the given case;

(d) The decision of the appeals court contradicts the precedent decision(s) of the European Court of Human Rights in the case(s) in which Georgia was a party;

(e) A party has appealed the second default judgment or a decision on upholding the default judgment.”.

2. Article 395 shall be deleted.

3. The following paragraph 4 shall be added to Article 396:

“4. Within 10 days following the submission of the cassation appeal, the judge rapporteur shall examine whether the cassation appeal was submitted in accordance with the requirements of this Article. The judge rapporteur shall decide on this issue without holding an oral hearing.”.

4. Article 401 shall be revised to read as follows:

“Article 401. Examination of admissibility of cassation appeal

1. Within 3 months following the submission of the cassation appeal, the cassation court shall examine whether or not the cassation appeal is admissible under Article 391 of this Code. If the cassation appeal complies with the requirements of the said article, it shall be found admissible.

2. The admissibility of the cassation appeal under Article 391 of this Code shall be examined by a panel of judges. The panel may decide on this matter without holding an oral hearing.

3. Any decision by which the court finds the cassation appeal inadmissible shall be reasoned. The decision shall contain explanations why the appellant’s arguments in favor of admissibility have been rejected.

4. If the cassation appeal is considered inadmissible, 70 per cent of the state duty paid by the applicant shall be returned to him/her.”.

Article 2. This law shall be effective in 30 days following its publication.

President of Georgia

G. Margvelashvili

**Full Texts of the Articles of Georgian Civil Procedure Code where the Amendments
should be Made by the Proposed Draft Law**

Article 391. Filing of the cassation appeal

1. The parties and the third persons may appeal against the decisions of the court of appeal by independent claims, filed to the court of cassation within the term specified by the law.
2. (Omitted)
3. Value of the subject of cassation appeal shall be determined based on the extent of change to the appealed decision claimed by the party. If the value causes doubts, the person filing cassation appeal shall argue such value reliably.
4. In non-property law disputes the cassation appeal shall be acceptable for the disputes related to the freedom of speech and freedom of expression.
5. Cassation appeals dealing with the property and non-property disputes shall be acceptable if:
 - a) The case is of significance for development of the law and formation of the uniform judicial practice;
 - b) Decision of the court of appeal differs from the existing practice of Supreme Court of Georgia with respect of the cases of the similar category;
 - c) The court of appeal has considered the case with significant legal or procedural violations and this could substantially affect the outcome;
 - d) The appeal is made against the second decision made in absence of any party by the court of appeal or the decision on leaving the decision made in absence of any party unchanged.
6. Term of acceptance of the cassation appeal for civil cases and making decision thereon shall be 6 months.

Article 395. Filing of the cassation appeal

Cassation appeal shall be filed to the court which has made the decision. Cassation appeal shall comply with the requirements specified in Sections 2 and 3 of Article 177 of this Code

Article 401 Examination of admissibility of cassation appeal

1. Within 10 days from the date of filing of the cassation appeal the reporting judge shall examine whether the cassation appeal was filed in compliance with the requirements of Article 396 of this Code. If cassation appeal complies with the requirements of the said article, it shall be accepted for examination of its admissibility as per Article 391 of this Code.
2. Reporting judge shall make decision on the issues specified in Section 1 of this Article without oral consideration.
3. Admissibility of the cassation appeal as per Article 391 of this Code shall be examined by the judicial panel. The panel shall be entitled to make decision with respect of this issue without oral hearing. Term of examination of eligibility shall not exceed 3 months.
4. If the cassation appeal is regarded as ineligible, the person shall be returned 70 per cent of the state dues paid by him/her.

Draft

**Georgian Law
On Amendments to Criminal Procedure Code of Georgia**

Article 1. The following amendments shall be made to the Criminal Procedure Code of Georgia (Legislative Herald of Georgia, #31, 3.11.2009, Art. 190):

1. In Article 303:

- (a) Paragraph 2 shall be deleted;
- (b) Paragraph 3 shall be revised to read as follows:
“3. A cassation appeal shall be admissible if:

- (a) The case is important for the development of law and:

- (a.a) The Supreme Court of Georgia has never delivered before its decision in any case containing analogous or essentially similar facts;

- (a.b) The Supreme Court of Georgia believes that after having reviewed the cassation appeal in the given case it is likely that the Supreme Court of Georgia may deliver a decision which will differ from the decision(s) that the Supreme Court of Georgia has delivered in the case(s) containing analogous or essentially similar facts;

- (b) The decision of the appeals court differs from the latest decision(s) of the Supreme Court of Georgia delivered in the case(s) containing analogous or essentially similar facts;

- (c) The appeals court has considered the case in significant breach of substantive and/or procedural law which breach might essentially have impaired the effects of adjudication in the given case;

- (d) The decision of the appeals court contradicts the precedent decision(s) of the European Court of Human Rights in the case(s) in which Georgia was a party;

- (e) The case is about the crime allegedly committed by a minor.”;

(c) New paragraphs 3¹-3³ shall be added after paragraph 3 to read as follows:

“3¹. The cassation court shall examine whether or not the cassation appeal is admissible in accordance with the provisions of paragraph 3 of this Article. If the cassation appeal meets the established requirements it shall be found admissible.

3². The cassation court may examine the admissibility of the case without holding an oral hearing.

3³. Any decision by which the court finds the cassation appeal inadmissible shall be reasoned. The decision shall contain explanations why the appellant’s arguments in favor of admissibility have been rejected.”

Article 2. This law shall be effective in 30 days following its publication.

President of Georgia

G. Margvelashvili

Full Texts of the Effective Articles of Georgian Criminal Procedure Code where the Amendments should be made by the Proposed Draft Law

Article 303. Decision on Admissibility of Cassation Appeal

1. If the appeal does not satisfy the requirements of Section 2, Article 301 of this Code, the court of cassation, by the order without oral hearings, gives to the appellant 5-day term required to improve the appeal. If the appellant fails to comply with the said requirement, the court of cassation shall reject the appeal and such rejection shall be final and shall not be subject to further appeal.
2. Court of cassation shall be entitled to examine admissibility of the cassation appeal without oral hearing.
3. Cassation appeal shall be admissible if:
 - a) The case is of significance for development of the law and formation of the uniform judicial practice;
 - b) Decision of the court of appeal differs from the existing practice of Supreme Court of Georgia with respect of the cases of the similar category;
 - c) The court of appeal has considered the case with significant legal or procedural violations and this could substantially affect the outcome.
4. Decision of the court of cassation on recognition of inadmissibility of the appeal shall be final and shall not be subject to further appeal. Within 5 days from the date of decision on rejection of cassation appeal the court of cassation shall give to the parties the written notification and if the cassation appeal of the prosecutor is rejected, the court of cassation shall notify the prosecutor as well.
5. If the court of cassation accepts the cassation appeal for consideration, it shall appoint the date of cassation session. Cassation session shall be arranged within 1 month from the date of recognition of eligibility of the cassation appeal.
6. Court of cassation shall be entitled to consider the case without oral hearing.
7. Appellant shall be entitled to withdraw his/her appeal before final decision. In such case the court of cassation shall be authorized to make decision on rejection of the appeal without oral hearing and such decision shall be final and shall not be subject to further appeal. No repeated appeal is allowed.
8. Final decision on the cassation appeal at the court of cassation shall be made no later than within 6 months from the date of submission of the cassation case and appeal.