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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT AMENDMENTS
TO THE LAW
ON THE PROSECUTOR'S OFFICE

OF GEORGIA

AND

THE LAW ON THE PROSECUTOR'S OFFICE
of 21 October 2008

e) verify the facts of violation of the rights of the incarcerated and discharge procedural duties in places of detention and confinement and other facilities executing penitentiary functions or other enforcement measures administered by a court;

f) participate as a party in criminal proceedings and support State prosecution;

g) coordinate the fight against crime;

h) participate, as a plaintiff, on behalf of the State, in civil proceedings on transferring to the State illegal and undocumented property and property resulting from racketeering, property owned by a racket group, a racketeer, an official, a member of the criminal world, a human trafficker, an illegal narcotic drugs distributor, or a person convicted under Article 194(3)(c) of the Criminal Code of Georgia;

i) conduct criminal intelligence activities in the manner laid down by the legislation of Georgia.

2. The Prosecutor's Office may not be assigned a duty that is not provided for by the Constitution of Georgia, this Law or other legislative acts.

Law of Georgia No 2700 of 9 March 2010 – LHG I, No 12, 24.3.2010, Art. 47

Law of Georgia No 3619 of 24 September 2010 – LHG I, No 51, 29.9.2010, Art. 332

Article 4 - Principles of activity of the Prosecutor's Office

The principles of activity of the Prosecutor's Office shall be as follows:

a) legitimacy;

b) protection of rights and freedoms of natural persons, protection of and respect for the rights of legal persons;

c) professionalism and competence;

d) objectiveness and impartiality;

d) unity and centralisation, subordination of all subordinate prosecutors and other officers of the Prosecutor's Office to the Chief Prosecutor;

f) political neutrality.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 5 - Legal grounds for the activity of the Prosecutor's Office

The Constitution of Georgia, international treaties and agreements of Georgia, this Law and other legal acts shall be legal grounds for the activity of the Prosecutor's Office.

Article 6 - International commitments of the Prosecutor's Office

Within the scope of its authority, the Prosecutor's Office shall take part in addressing matters arising from international treaties and agreements of Georgia.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Chapter II

System and Organisation of the Prosecutor's Office

Article 7 - System of the Prosecutor's Office

1. The following shall form the system of the Prosecutor's Office: the Chief Prosecutor's Office of Georgia ('Chief Prosecutor's Office'), the Prosecutor's Offices of the Autonomous Republics of Abkhazia and Ajara, the Prosecutor's Office of the city of Tbilisi, District Prosecutors' Offices, Regional Prosecutors' Offices, and Specialised Prosecutors' Offices where provided for by Article 1(3) of this Law. The term of office of prosecutors of a Specialised Prosecutor's Office shall be limited to the term of authority of the Specialised Prosecutor's Office.

2. On the recommendation of the Chief Prosecutor, the Minister of Justice shall approve the structure and the number of positions on the staff list for bodies of the Prosecutor's Office.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013



Article 8 - Scope of authority of the Ministry of Justice of Georgia

1. For the purposes of this Law, the Minister of Justice shall:

- a) form and dissolve bodies of the Prosecutor's Office, define their territorial scope and lay down the scope of authority of structural units, on the recommendation of the Chief Prosecutor;
- b) issue normative and individual legal acts – orders, instructions and directives based on and for the enforcement of law;
- c) approve criminal policy guidelines, taking into consideration the priority of human rights and freedoms, on the recommendation of the Chief Prosecutor;
- d) approve regulations of the bodies of the Prosecutor's Office and their structural units, and the procedure for internship at the bodies of the Prosecutor's Office, on the recommendation of the Chief Prosecutor;
- e) approve the Code of Ethics of employees of the Prosecutor's Office, on the recommendation of the Chief Prosecutor;
- f) approve salaries of employees of the Prosecutor's Office, within the limit of the allocated payroll, on the recommendation of the Chief Prosecutor;
- g) formulate proposals on funding and logistic support of the Prosecutor's Office, on the recommendation of the Chief Prosecutor;
- h) request from the bodies of the Prosecutor's Office the materials of relevant criminal cases that are needed to represent the State of Georgia before the European Court of Human Rights, other international courts, tribunals and courts of arbitration;
- i) review complaints and applications of natural and legal persons, within his/her scope of authority;
- j) exercise other powers vested in him/her by the legislation of Georgia.

2. The Minister of Justice shall not interfere in the actions performed and decisions made by the Prosecutor's Office concerning investigation of individual criminal cases or criminal prosecution.

3. If the Minister of Justice is absent or his/her powers have been terminated, the powers under the first paragraph of this article shall be exercised by the First Deputy Minister of Justice, and if the First Deputy Minister of Justice is absent or his/her powers have been terminated – by one of the Deputy Ministers of Justice.

4. An order or any other act of the Minister of Justice may be appealed to a court on the grounds of incompatibility with the Constitution or laws of Georgia.

Law of Georgia No 1017 of 27 February 2009 – LHG I, No 4, 12.3.2009, Art. 17

Law of Georgia No 6550 of 22 June 2012 – website, 29.6.2010

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 9 - Chief Prosecutor's Office

1. The Chief Prosecutor's Office shall be headed by the Chief Prosecutor. The Prime Minister of Georgia, on the recommendation of the Minister of Justice, shall appoint to and remove from office the Chief Prosecutor.

2. The Chief Prosecutor shall have a first deputy and deputies whom the Chief Prosecutor shall appoint to and remove from office.

3. The Chief Prosecutor shall:

- a) organise and supervise the activities of the Prosecutor's Office. He/she shall be responsible for the activities of the Prosecutor's Office;
- b) appoint to and remove from office the Prosecutors of the Autonomous Republics of Abkhazia and Ajara, the Prosecutor of the city of Tbilisi, and regional prosecutors, other subordinate prosecutors, investigators and other employees of the Prosecutor's Office;
- c) define the functional duties of his/her first deputy and deputies, as well as of the bodies of the Prosecutor's Office and their structural units;
- d) conduct criminal prosecution in the manner provided for by law, where a crime has been allegedly committed by the President of Georgia, a Member of Parliament of Georgia, the Chairperson of the Supreme Court of Georgia, a judge of the courts of general jurisdiction of Georgia, the Chairperson and a member of the Constitutional Court of Georgia, a member of the Government of Georgia, the Public Defender of Georgia, the General Auditor, the President of the National Bank of Georgia, a member of the Board of the National Bank of Georgia, an Ambassador Extraordinary and Plenipotentiary and an Envoy Extraordinary and Minister Plenipotentiary of Georgia, an incumbent high-ranking military or special rank officer or a person equated with him/her, a prosecutor, an investigator or an advisor to the Prosecutor's Office;
- e) appoint a specially authorised prosecutor who, according to the Law of Georgia on Counterintelligence, reviews motions of a special agency carrying out counterintelligence activities and of the Counter-Terrorist Centre of the Ministry of Internal Affairs of Georgia on conducting technical investigation measures;
- f) appoint a specially authorised prosecutor who files a motion in court to recognise an organisation as a terrorist organisation;
- g) represent the Prosecutor's Office before higher state authorities of Georgia, as well as in relations with international organisations and law-enforcement bodies of foreign states;



- h) issue individual legal acts – orders, instructions and directives based on and for the enforcement of law;
- i) repeal unlawful orders, instructions and directives issued by subordinate prosecutors;
- j) make decisions on imposing a disciplinary punishment upon employees of the Prosecutor’s Office;
- k) submit criminal policy guidelines to the Minister of Justice for approval;
- l) submit draft legal acts for forming or dissolving bodies of the Prosecutor’s Office, defining their territorial scope and the scope of authority of their structural units to the Minister of Justice for approval;
- m) submit the regulations of the bodies of the Prosecutor’s Office and their structural units, and the procedure for undergoing internship at the bodies of the Prosecutor’s Office to the Minister of Justice for approval;
- n) submit the Code of Ethics of Employees of the Prosecutor’s Office to the Minister of Justice for approval;
- o) within the allocated payroll, submit salaries of employees of the Prosecutor’s Office to the Minister of Justice for approval;
- p) within his/her scope of authority, grant special state titles to officers of the Prosecutor’s Office and deprive them of such titles, as determined by law;
- q) develop proposals on funding and logistic support of the Prosecutor’s Office and submit them to the Minister of Justice;
- r) develop information security measures;
- s) ensure statistical reporting, manage generalisation and improvement of prosecution and investigation practices, disseminate advanced practices and scientific and technical applications, and introduce them into practice;
- t) set up advisory boards to facilitate the activities of the Prosecutor’s Office;
- u) review complaints and applications from natural and legal persons;
- v) exercise other powers vested in him/her under the legislation of Georgia.

4. If the Chief Prosecutor is absent or his/her powers have been terminated, his/her duties shall be discharged by the First Deputy Chief Prosecutor, and if the First Deputy Chief Prosecutor is absent or his/her powers have been terminated, his/her powers shall be discharged by one of the deputies designated by the Chief Prosecutor.

5. An order or any other act of the Chief Prosecutor may be appealed to a court on the grounds of incompatibility with the Constitution or law of Georgia.

6. The Chief Prosecutor’s Office shall be comprised of departments, divisions and other structural units and sub-units that shall have heads and may have deputy heads of structural units (sub-units), prosecutors for cases of extraordinary significance, senior prosecutors, forensic prosecutors, prosecutors, senior investigators for cases of extraordinary significance, investigators for cases of extraordinary significance, advisors and specialists.

Law of Georgia No 1017 of 27 February 2009 – LHG I, No 4, 12.3.2009, Art. 17

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Law of Georgia No 1267 of 20 September 2013 – website, 8.10.2013

Article 10 - Prosecutor’s Offices of the Autonomous Republics of Abkhazia and Ajara

1. The Prosecutor’s Offices of the Autonomous Republics of Abkhazia and Ajara shall be headed by the Prosecutors of the Autonomous Republics of Abkhazia and Ajara who shall be appointed to and removed from office by the Chief Prosecutor.

2. Prosecutors of the Autonomous Republics of Abkhazia and Ajara shall have deputies who shall be appointed to and removed from office by the Chief Prosecutor.

3. The Prosecutor’s Offices of the Autonomous Republics of Abkhazia and Ajara shall be comprised of divisions and other structural units that shall have heads and may have deputy heads of structural units, senior prosecutors, forensic prosecutors, senior investigators, investigators, advisors and specialists.

4. Employees of the Prosecutor’s Offices of the Autonomous Republics of Abkhazia and Ajara shall be appointed to and removed from office by the Chief Prosecutor.

5. Within the scope of their authority, Prosecutors of the Prosecutor’s Offices of the Autonomous Republics of Abkhazia and Ajara shall issue individual legal acts – orders that shall be binding on the prosecutors subordinate to them and other employees of the Prosecutor’s Office.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 11 - Prosecutor’s Office of the City of Tbilisi and Regional Prosecutor’s Offices

1. The Prosecutor’s Office of the City of Tbilisi and a Regional Prosecutor’s Office shall be headed by the Prosecutor of the City of Tbilisi and a regional



prosecutor, respectively, who shall be appointed to and removed from office by the Chief Prosecutor.

2. Regional Prosecutor's Offices shall be created based on a territorial principle. The Minister of Justice shall, on the recommendation of the Chief Prosecutor, define the territorial jurisdiction of a Regional Prosecutor's Office.

3. The Prosecutor of the City of Tbilisi and regional prosecutors shall have deputies who shall be appointed to and removed from office by the Chief Prosecutor.

4. The Prosecutor's Office of the City of Tbilisi and Regional Prosecutor's Offices shall be comprised of divisions and other structural units that shall have heads and may have deputy heads of structural units, senior prosecutors, forensic prosecutors, prosecutors, senior investigators, investigators, advisors and specialists.

5. Employees of the Prosecutor's Office of the city of Tbilisi and Regional Prosecutor's Offices shall be appointed to and removed from office by the Chief Prosecutor.

6. The Prosecutor of the City of Tbilisi and regional prosecutors, within their scope of authority, shall issue individual legal acts – orders which shall be binding on employees of the Prosecutor's Office subordinate to them.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 12 – District Prosecutor's Offices

1. District Prosecutor's Offices shall be headed by respective district prosecutors who shall be appointed to and removed from office by the Chief Prosecutor.

2. District Prosecutor's Offices shall be created based on the territorial principle. The Minister of Justice shall, on the recommendation of the Chief Prosecutor, define the territorial jurisdiction of a District Prosecutor Office.

3. District prosecutors may have deputies who shall be appointed to and removed from office by the Chief Prosecutor.

4. District Prosecutor's Offices shall have prosecutors, heads of administration, and may have specialists who shall be appointed to and removed from office by the Chief Prosecutor.

5. District prosecutors, within their scope of authority, shall issue individual legal acts – orders that shall be binding on the officers of the Prosecutor's Office subordinate to them.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 13 – Forms of subordination of a subordinate prosecutor to a superior prosecutor

1. Subordination of a subordinate prosecutor to a superior prosecutor shall imply that:

a) the instructions given by a superior prosecutor to a subordinate prosecutor on the organisation and activities of the Prosecutor's Office shall be binding;

b) a subordinate prosecutor shall report to a superior prosecutor when discharging his/her official duties;

c) a superior prosecutor may, if necessary, exercise the powers of a subordinate prosecutor or assign his/her own certain powers to a subordinate prosecutor;

d) a superior prosecutor may repeal and amend a subordinate prosecutor's decisions and acts or replace them with other decisions and acts;

e) a superior prosecutor shall review complaints against a subordinate prosecutor's decisions and acts;

f) a subordinate prosecutor shall submit reports of his/her activity, information, cases and materials to a superior prosecutor.

2. The Chief Prosecutor may introduce other forms of subordination of a subordinate prosecutor to a superior prosecutor that are not in conflict with the Constitution of Georgia and this Law.

3. A subordinate prosecutor and any other employee of the Prosecutor's Office shall comply with lawful requests and instructions of a superior prosecutor.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Chapter III

Areas of Activity of the Prosecutor's Office

Article 14 – Conducting criminal prosecution

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1. The Prosecutor's Office shall conduct criminal prosecution in the manner and to the extent provided for by the criminal procedure legislation.
2. To ensure criminal prosecution, the Prosecutor's Office shall provide procedural guidance at the investigation stage.

Law of Georgia No 3619 of 24 September 2010 – LHG I, No 51, 29.9.2010, Art. 332

Article 15 - Investigations

In the cases and according to the procedure provided for by the criminal procedure legislation, the Prosecutor's Office shall conduct investigations to the full extent and can carry out criminal investigation activity on crimes and other illegal acts.

Law of Georgia No 3619 of 24 September 2010 – LHG I, No 51, 29.9.2010, Art. 332

Article 16 - Supervision over strict and uniform observance of the law during the activities of criminal investigation authorities

1. To ensure strict and uniform observance of criminal intelligence legislation by criminal investigation authorities, a prosecutor shall supervise the legitimacy of criminal investigation measures performed by the criminal investigation authorities and of the decisions made by such authorities in the course of such activities.

2. The legitimacy and substantiation of a judge's order for conducting, prolonging or terminating a criminal investigation measure shall not be a subject of prosecutorial supervision.

3. The data on a person, who is providing or has provided confidential assistance to, is cooperating or has cooperated with, criminal investigation authorities, as well as tactics and organisation of obtaining criminal intelligence information, and analysis of criminal investigation cases and the classified part of criminal intelligence records shall not be the subject of prosecutorial supervision.

4. The following persons shall have the right to view cases under criminal intelligence analysis and the classified materials of criminal intelligence records: the Chief Prosecutor, his/her first deputy and deputies, heads and deputy heads of relevant structural units of the Chief Prosecutor's Office, prosecutors of the Autonomous Republics of Abkhazia and Ajara and their deputies, regional prosecutors and their deputies, the Prosecutor of the City of Tbilisi and his/her deputies, and district prosecutors within their territorial jurisdiction, as well as other prosecutors designated by the Chief Prosecutor, his/her first deputy and deputies, prosecutors of the Autonomous Republics of Abkhazia and Ajara, regional prosecutors, the Prosecutor of the City of Tbilisi and district prosecutors.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 17 - Protecting the rights of persons and discharging procedural duties in places of detention and detention and confinement facilities

1. A prosecutor may:

a) conduct inspections, to fulfil the requirements of the law, in places of detention and detention and confinement facilities and other facilities executing penitentiary functions or other enforcement measures administered by the court;

b) enter relevant facilities at any time to exercise the powers under subparagraph (a) of this paragraph;

c) question detainees, prisoners, convicts and persons upon whom coercive measures have been imposed;

d) view documents based on which persons have been detained, imprisoned, are serving sentences or have been imposed coercive measures;

e) take immediate measures to release any unlawfully detained, or imprisoned person or a person upon whom other coercive measures have been imposed.

2. A prosecutor shall exercise other powers provided for by the legislation of Georgia.

Law of Georgia No 2700 of 9 March 2010 – LHG I, No 12, 24.3.2010, Art.47

Article 18 - Prosecutor acting as a public prosecutor

1. In the court of first instance a prosecutor shall act as a public prosecutor. The obligation to prove the charge shall rest with him/her.

2. A prosecutor may drop a charge in whole or in part, if the evidence gathered does not confirm the charge. Dropping the charge by a prosecutor shall be substantiated.

3. At the stage of a court hearing, a prosecutor may: file a motion or recusal; furnish evidence; take part in examination of the admissibility of evidence, and in resolving issues of termination of criminal prosecution and/or investigation, suspension of criminal prosecution, administering a case in court and other matters.

4. During legal proceedings before a court of the first instance and in appeal proceedings, a prosecutor shall take part in every trial involving public prosecution. He/she may file a motion or recusal; furnish evidence, and take part in the examination of evidence presented by the defence, express

his/her opinion on all issues raised at a trial, take part in pleadings and inform the court of his/her position regarding proving the charge, criminal qualification of the act, mental capacity of the accused/convict, form and length of punishment administered, criminal liability and releasing from criminal liability and punishment.

5. At the stage of cassation proceedings, a prosecutor shall support his/her appeal or, as a party, express an opinion on appeals filed by other parties to the proceedings.

Law of Georgia No 3619 of 24 September 2010 – LHG I, No 51, 29.9.2010, Art. 332

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 19 - Coordination of the fight against crime

1. The Prosecutor’s Office shall coordinate the fight against crime and reconcile activities of law-enforcement bodies to timely detect, investigate, open, prevent and avoid crime, improve the criminal situation, in order to eliminate the causes of crime and conditions conducive to crime.

2. The procedure for coordination of the fight against crime shall be defined in Regulations that shall be approved by the Government of Georgia.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 20 – A Prosecutor’s claim to seize and transfer to the State illegal, undocumented property and property resulting from racketeering

A prosecutor shall initiate, in the manner and to the extent provided for by the legislation of Georgia on civil procedure, a claim to seize and transfer to the State property of an official, a member of the criminal world, a human trafficker, an illegal narcotic drugs distributor, or a person convicted of a crime under Article 194(3)(c) of the Criminal Code of Georgia, and property resulting from racketeering.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Chapter IV

Prosecutorial Acts

Article 21 - System of prosecutorial acts

When exercising his/her powers, a prosecutor, within the scope of his/her authority, as determined by the legislation of Georgia, shall prepare the following acts: a formal request, a submission, an objection, an ordinance, a consent, a directive, an appeal, and information.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 22 — Formal request

1. A prosecutor may formally request:

- a) an audit of the financial and economic activities of an enterprise, organisation, and institution in relation to a criminal case;
- b) the assignment of specialists to address issues that emerge in the course of exercising the powers provided for by law;
- c) the production of documents, materials, cases, data and other information necessary to provide supervision or procedural guidance.

2. Any requested information must be submitted to the prosecutor within 10 days, regardless of the security level of such information.

3. A document or other information may be verified at the request of a prosecutor *in situ* either by the prosecutor, or at the assignment of the prosecutor, by a specialist, an expert or any other person.

4. At the request of a prosecutor, a document or other information must be submitted at the place indicated by him/her.

5. In the cases provided for by the legislation of Georgia, a prosecutor shall ensure protection of state secrets or other secrets contained in the requested information.

6. Interference with the scope of a court’s authority or request for any information or cases from a court shall be prohibited except as provided for by the criminal procedure legislation.

Article 23 - Submission

1. Within the scope of his/her authority and as provided for by the legislation of Georgia, a prosecutor shall file a submission to eliminate violations of



legislation, the causes and conditions supporting such violations to the parties to legal relations provided for in Articles 14-17 of this Law, who shall, within 10 days, inform the prosecutor about the measures taken.

2. A prosecutor shall be informed of the date of consideration of a submission. He/she shall have the right to take part in the consideration.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 24 - Objection

1. A prosecutor shall submit a written objection to the incompatibility of the acts and actions of the persons indicated in Articles 16 and 17 of this Law with law, as well as in the cases provided for by the Code of Administrative Offences of Georgia.

2. In the objection a prosecutor may request that:

- a) an unlawful act be repealed in whole or in part or brought in line with the law;
- b) an unlawful action be ceased;
- c) a violated right be restored;
- d) an offender be subject to relevant measures.

3. A prosecutor shall file an objection to an unlawful act to the issuing authority or superior authority. An objection to an unlawful action of an official shall be filed according to the same procedure.

4. A prosecutor's objection shall be considered not later than 10 days after the receipt. The prosecutor shall be immediately informed of the results of the consideration.

5. A prosecutor shall be informed of the date of consideration of the submitted objection. He/she may support the objection in person or through his/her representative.

6. A prosecutor having filed an objection, or a superior prosecutor, may withdraw the objection before the consideration commences.

7. A superior prosecutor shall have the right to amend an objection or replace it with a new objection before the consideration commences.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 25 - Ordinance

1. Depending on the character of a violation of the legislation of Georgia by a citizen or an official, a prosecutor, within the scope of his/her authority and according to the procedure determined by law, shall issue an ordinance, in cases provided for by the criminal procedure legislation of Georgia, as well as to initiate an administrative offence proceeding or a disciplinary proceeding.

2. A prosecutor's ordinance initiating an administrative offence proceeding or a disciplinary proceeding shall be considered by an authorised body or official not later than 10 days after its receipt. The prosecutor shall be immediately informed of the results of the consideration.

Article 26 - Consent

Where provided for by law, a prosecutor shall issue a written consent to the actions of state bodies and officials.

Article 27 - Instruction

1. Where provided for by law, a prosecutor may give investigation authorities a written instruction.

2. A prosecutor's instruction on investigation matters shall be binding.

Law of Georgia No 3619 of 24 September 2010 – LHG I, No 51, 29.9.2010, Art. 332

Article 28 - Appeal

1. As determined by the criminal procedure legislation of Georgia, a prosecutor may:

- a) appeal a court judgement in a criminal case to a higher court and take part in the trial as a party;
- b) appeal a court judgement based on newly revealed circumstances and take part in the trial as a party.

2. A prosecutor having filed an appeal, or a superior prosecutor, may withdraw the appeal before a summary judgement has been made.

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Article 29 - Information

Within the scope of his/her authority, a prosecutor shall provide, to relevant state or local self-government bodies, information regarding the legality and legal order.

Article 30 - Appealing prosecutorial acts

- 1. A prosecutor's submission, objection, ordinance and instruction may be appealed to a court, as determined by law, or appealed to a superior prosecutor, within 10 days.
- 2. The act of appealing shall not suspend execution of prosecutorial acts except as provided for by the criminal procedure legislation of Georgia.

Chapter V

Staff of Prosecutor's Office

Article 31 - Requirements set for persons to be appointed to the positions of a prosecutor and an investigator in the Prosecutor's Office

- 1. Any citizen of Georgia who has a higher legal education, has a command of the language of proceedings, has completed six months to one year internship in the bodies of the Prosecutor's Office and has passed a qualification exam with the Qualification Examination Commission in the following disciplines: Constitutional Law, International Human Rights Law, Criminal Law, Law of Criminal Procedure, Penitentiary Law, and Principles of Criminal Intelligence, has taken the oath of an employee of the Prosecutor's Office, and can, based on his/her working and moral qualities, as well as his/her health status, perform the duties of a prosecutor or an investigator of the Prosecutor's Office, may be appointed to the position of a prosecutor or an investigator in the Prosecutor's Office.
- 2. The following shall be excepted from passing the qualification exam for employees of the Prosecutor's Office: the Chief Prosecutor, his/her first deputy and deputies, and a person who has passed a judicial qualification exam or sat for a lawyer's test. Prosecutors of the Autonomous Republics of Abkhazia and Ajara, shall take a qualification exam for employees of the Prosecutor's Office within one year after being appointed to the position, unless they have passed a judicial qualification exam or sat for a lawyer's test.
- 3. The Chief Prosecutor, his/her first deputy and deputies, and a person who meets one of the following requirements shall be excepted from internship in the bodies of the Prosecutor's Office:
 - a) has at least one-year experience of working as a judge, an investigator or a lawyer;
 - b) has passed the judicial qualification exam;
 - c) has at least three-year experience working in a legal speciality.
- 4. A person who meets the requirements for being excepted from an internship as provided for under the third paragraph of this article, may take an internship in the bodies of the Prosecutor's Office at his/her own discretion.
- 5. A qualification exam for employees of the Prosecutor's Office shall be conducted in the form of a test. The Ministry of Justice of Georgia shall ensure preliminary publication of the tests to be used in the exam. The procedure for and frequency of conducting a qualification exam, the examination programme, and the regulations and composition of the Examination Commission shall be approved by the Government of Georgia, on the recommendation of the Minister of Justice. Based on the motion of the Chief Prosecutor, the Prime Minister of Georgia may require an additional qualification exam.
- 6. Persons having at least three-year experiences working in a legal speciality may be appointed to the positions of the Prosecutor of the City of Tbilisi and his/her deputy, regional prosecutors and their deputies, district prosecutors and prosecutors of Specialized Prosecutor's Offices. In a special case, the Chief Prosecutor may reduce the above term to 18 months for the Prosecutor of the City of Tbilisi and his/her deputy, regional prosecutors and their deputies, and to 12 months for district prosecutors and prosecutors of Specialized Prosecutor's offices.
- 7. Employees of the Prosecutor's Office shall sit for an assessment test once in every three years. The Minister of Justice, on the recommendation of the Chief Prosecutor, shall approve the procedure for conducting the assessment testing.
- 8. The Chief Prosecutor shall appoint and discharge advisors to the Prosecutor's Office, support staff and contract employees of the Prosecutor's Office, as determined by the Law of Georgia on Public Service.
- 9. The position of an employee of the Prosecutor's Office shall be incompatible with other positions within state or local self-government bodies, as well as with any entrepreneurial or other paid position other than scientific, creative and pedagogical activity. An employee of the Prosecutor's Office may concurrently perform other paid work and/or hold another position within the system of the Prosecutor's Office.
- 10. An employee of the Prosecutor's Office shall not be a member of a political party or engage in political activity.



11. An employee of the Prosecutor's Office shall be prohibited from organising or taking part in a strike.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 31¹ - Integrated database of persons seeking employment at the bodies of the Prosecutor's Office

1. To ensure a stable and effective operation of the system of the Prosecutor's Office and to staff it with highly qualified personnel, the Chief Prosecutor shall be authorised, if necessary, to set up an integrated database of persons seeking employment at the bodies of the Prosecutor's Office.

2. The Minister of Justice, on the recommendation of the Chief Prosecutor, shall define the procedure for setting up an integrated database of persons seeking employment at the bodies of the Prosecutor's Office.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 32 - Oath of an employee of the Prosecutor's Office

1. When designated to work at the bodies of the Prosecutor's Office, an employee of the Prosecutor's Office shall take a written oath: 'I, (first name, last name), hereby solemnly and sincerely swear before God and the People to perform the duty of an officer of the Prosecutor's Office of Georgia in good faith and in so doing comply only with the Constitution and law of Georgia.'

2. An officer of the Prosecutor's Office may be sworn to office without a religious oath. The oath giver shall sign the oath text that shall be kept in the officer's personal record.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 33 - Grounds for refusal to employ a person in the Prosecutor's Office

The following persons shall not be employed in the Prosecutor's Office:

- a) a person having a criminal record;
- b) a person suffering from alcohol or narcotic drug addiction, toxic substance abuse, mental or other severe chronic disease;
- c) a person recognised by court as having limited competence or as a beneficiary of support, unless otherwise determined under court decision;
- d) a person discharged from another job for committing an act against the general principles of ethics.

Law of Georgia No 3363 of 20 March 2015 – website, 31.3.2015

Article 34 - Discharging an employee of the Prosecutor's Office from the Prosecutor's Office

An employee of the Prosecutor's Office may be discharged from the Prosecutor's Office:

- a) by his/her personal application;
- b) due to any impairment of health status, disability or chronic disease preventing him/her from performing his/her official duties;
- c) upon expiry of a labour contract;
- d) due to non-performance or improper performance of official duties;
- e) due to non-performance or improper performance of requirements under a labour contract;
- f) due to inaptitude to the position held;
- g) due to gross or systematic misconduct at work;
- h) due to staff reduction;
- i) due to being elected or appointed to legislative, executive, judicial, or local self-government bodies or in any other case of incompatibility to hold the position;
- j) due to breaking the oath, disclosing a professional secret or committing any other act unbecoming to an employee of the Prosecutor's Office;
- k) based on a valid guilty verdict;
- l) in the cases provided for by Article 33(a-c) of this Law;



- m) due to loss of the Georgian citizenship;
- n) due to violation of employment requirements;
- o) upon reaching retirement age.

Chapter VI

Legal Protection of Employees of the Prosecutor's Office

Article 35 - Legal protection of employees of the Prosecutor's Office

1. An officer of the Prosecutor's Office is independent in his/her official activity. He/she may not be removed or dismissed from the position held except in cases provided for by this Law.
2. Hindering an employee of the Prosecutor's Office from performing his/her official duties, degrading, threatening, resisting, or using violence against him/her, as well as making an attempt on his/her family member's life, health or property shall entail the punishment determined by law. Upon receipt of any report or information on an attempt on the life, health or property of an employee of the Prosecutor's Office or his/her family member, state bodies shall be obliged to take actions provided for by law to protect their personal safety and property.
3. An employee of the Prosecutor's Office may keep and carry a firearm, as well as special personal defence tools in the manner determined by the legislation of Georgia.

Article 36 - Inadmissibility of interference in the activity of an employee of the Prosecutor's Office

Any interference in the activity of an employee of the Prosecutor's Office by officials, public and political parties, their representatives or by other persons not authorised by law to interfere in the activity of an employee of the Prosecutor's Office or in any way exert influence on him/her, as well as preventing an employee of the Prosecutor's Office from performing his/her activity shall be punishable by law.

Article 37 - Right of an employee of the Prosecutor's Office to apply to court

An employee of the Prosecutor's Office shall have the right to apply to court to protect his/her rights and freedoms.

Article 38 - Responsibility of an employee of the Prosecutor's Office

1. An employee of the Prosecutor's Office shall be held responsible under the general procedure for committing a crime or administrative offence.
2. A detained, confined or convicted employee of the Prosecutor's Office shall be placed and serve his/her sentence in isolation from other prison population.
3. Only the Chief Prosecutor shall initiate a criminal prosecution of a crime allegedly committed by a prosecutor, an investigator or an advisor to the Prosecutor's Office. The Chief Prosecutor's Office shall investigate a crime committed by an employee of the Prosecutor's Office, according to the investigative jurisdiction provided for by the legislation of Georgia.
4. During the period of investigation of a case against an employee of the Prosecutor's Office, pending the delivery of a final decision, the Chief Prosecutor shall remove an employee of the Prosecutor's Office from his/her position, according to the established procedure.
5. In case of breaking an oath, committing misconduct or any act unbecoming to an employee of the Prosecutor's Office, or failure to perform or negligent performance of his/her duty vested by law, an employee of the Prosecutor's Office shall be subject to the following disciplinary measures:
 - a) reprimand
 - b) reproach
 - c) demotion
 - d) discharge from the position held
 - f) dismissal from the Prosecutor's Office.
6. A disciplinary action shall be applied not later than one year after establishing (revealing) a misconduct. This period does not include the period of illness or leave of an employee of the Prosecutor's Office. Disciplinary action shall not be applied if three years have elapsed since the day of the misconduct. In the case of a premeditated crime committed by an employee of the Prosecutor's Office, he/she shall be dismissed from the Prosecutor's Office irrespective of the time elapsed from committing the act. In case of a crime of negligence committed by an employee of the Prosecutor's Office, the Chief Prosecutor shall make a decision on his/her dismissal from the Prosecutor's Office irrespective of the time elapsed from committing the act, except as provided for by the legislation of Georgia.



7. The Chief Prosecutor shall be authorised to apply any of the disciplinary actions provided for in the fifth paragraph of this article in relation to an employee of the Prosecutor's Office.

8. The prosecutors of the Autonomous Republics of Abkhazia and Ajara shall have the right to apply the following disciplinary actions: a reprimand or reproach.

9. If the misconduct committed by an employee of the Prosecutor's Office requires applying a disciplinary action, the imposition of which falls only within the Chief Prosecutor's scope of authority, the head of the respective body of the Prosecutor's Office shall submit to the Chief Prosecutor a proposal on application of the relevant disciplinary action.

10. Only a single disciplinary action shall be applied for committing the same misconduct by an employee of the Prosecutor's Office.

11. The Chief Prosecutor shall have the right to repeal, commute or aggravate a disciplinary action applied in relation to an employee of the Prosecutor's Office.

12. A disciplinary action shall be imposed by the prosecutor's order. Such an order shall be communicated to an employee of the Prosecutor's Office subjected to such disciplinary action. The order on imposition of disciplinary action shall be kept in the personal record of the employee of the Prosecutor's Office.

13. An employee of the Prosecutor's Office shall be deemed free of a disciplinary action, if one year has elapsed since the imposition of the disciplinary action and no new disciplinary action has been imposed on him/her.

14. A disciplinary action imposed on an employee of the Prosecutor's Office may be lifted ahead of the set time in the cases provided for by Article 39 of this Law. A disciplinary action shall be lifted by a relevant order that shall be communicated to an employee of the Prosecutor's Office against whom such an action had been imposed. An order lifting a disciplinary action ahead of the set time shall be kept in the personal record of an employee of the Prosecutor's Office.

15. The prosecutor's order on imposition of a disciplinary action upon an employee of the Prosecutor's Office may be appealed to a superior prosecutor or to a court within 30 days.

16. Appealing an order on the imposition of a disciplinary action shall not suspend the execution of the disciplinary action applied in relation to an employee of the Prosecutor's Office.

Law of Georgia No 1017 of 27 February 2009 – LHG I, No 4, 12.3.2009, Art. 17

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 39 - Granting an employee of the Prosecutor's Office incentive for success at work

For exemplary performance of his/her duty and other achievements, an employee of the Prosecutor's Office may be granted the following incentives:

- a) declaration of appreciation;
- b) paying a bonus or presenting a valuable gift;
- c) allocation of an additional paid leave of 10 calendar days;
- d) granting the next special state rank earlier;
- e) lifting a disciplinary action ahead of time;
- f) granting the title and awarding a badge of 'Honorary Employee of the Prosecutor's Office';
- g) nomination for a state award.

Chapter VII

Social Protection of Employees of the Prosecutor's Office

Article 40 - Social protection of an employee of the Prosecutor's Office

1. Social protection of an employee of the Prosecutor's Office shall be guaranteed by the Constitution of Georgia, this Law and other legal acts of Georgia. The State shall provide the social protection of an employee of the Prosecutor's Office.

2. An employee of the Prosecutor's Office shall be provided with mandatory state insurance financed by the state budget. Any damage borne by an officer of the Prosecutor's Office (or his/her family member) in the course of discharging his/her duties shall be compensated in full from the state budget, as determined by law.

3. An employee of the Prosecutor's Office may claim compensation under the second paragraph of this article within one year after the damage has occurred.

4. In the case of death of an employee of the Prosecutor's Office as a result of an assault in the performance of his/her duty, the family of the deceased shall be paid a one time lump sum benefit of GEL 10 000 from the state budget.
5. An employee of the Prosecutor's Office, who suffered bodily injury as a result of an assault in the performance of his/her duty and was consequently recognised as a person with a disability, or was disabled, shall be paid a one time lump sum disability benefit of up to GEL 7 000 from the state budget.
6. An employee of the Prosecutor's Office shall be entitled to an annual paid leave of 30 calendar days.
7. A prosecutor, an investigator of and an adviser to the Prosecutor's Office shall be entitled to all the benefits of a judge of the court of the relevant level, while the Chief Prosecutor, his first deputy and deputies shall be entitled to the benefits provided for the Chairperson of the Supreme Court of Georgia and his/her deputies, respectively.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 41 - Remuneration of an employee of the Prosecutor's Office

1. Salary of an employee of the Prosecutor's Office shall consist of the salary as per the position, bonuses and other additional payments provided for by the legislation of Georgia.
2. The salary of a prosecutor and investigator of the Chief Prosecutor's Office may not be less than GEL 500, while the salary of a prosecutor and investigator of the prosecutor's offices of the Autonomous Republics of Abkhazia and Ajara, the Prosecutor's Office of the City of Tbilisi, regional prosecutor's offices, district prosecutor's offices and, in the cases provided for by Article 1(3) of this Law, of Specialized Prosecutor's Offices, may not be less than GEL 400.

Article 42 - Special state ranks of employees of the Prosecutor's Office

1. For the position held, scientific degree, qualifications, length of service, exemplary performance of duties or special merits, a prosecutor, investigator of and an advisor to the Prosecutor's Office shall be granted special state ranks.
2. The procedure for granting and depriving of special state ranks is defined by the legislation of Georgia.
3. Special state ranks of a prosecutor and an investigator of the Prosecutor's Office shall be equated with the special ranks established under the legislation of Georgia for military forces personnel and employees of the Ministry of Internal Affairs of Georgia.

Chapter VIII

Logistical Support and Financing of the Prosecutor's Office

Article 43 - Logistical support and financing of the Prosecutor's Office

1. The Prosecutor's Office shall be financed with appropriations allocated from the state budget. Expenditures of the Prosecutor's Office must be provided for in the state budget using a separate organisational code, according to the procedure determined by the legislation of Georgia.
2. A reduction of current expenditures within the sums allocated in the state budget for the Prosecutor's Office, compared to the budgetary funds of the previous year, may take place only by the consent of the Minister of Justice.
3. Logistical support to the Prosecutor's Office shall be provided in a centralised manner.
4. Parcels of land, buildings, premises and equipment, as well as real estate and movable property acquired or created using state budget financing, which are in the possession and/ or use of the Prosecutor's Office, shall be the property of the State.
5. Funds collected by the Prosecutor's Office to reimburse losses incurred by the State shall be transferred to the state budget.
6. Representation expenses of the Prosecutor's Office of Georgia shall be reimbursed as determined by the legislation of Georgia.

Chapter IX

Other Operational and Organisational Matters of the Prosecutor's Office

Article 44 – Continuing education of employees of the Prosecutor's Office

1. Employees of the Prosecutor's Office shall receive continuing education at appropriate academic and training facilities.
2. In the cases provided for by international treaties and agreements, as well as by international programmes, employees of the Prosecutor's Office may receive continuing education at educational institutions, law-enforcement bodies, and research and development centres of foreign states.



Article 45 - Seal, ID card, uniform and insignia

- 1. The Chief Prosecutor's Office and other bodies of the Prosecutor's Office shall have a round seal bearing the national coat of arms of Georgia and the name of the Prosecutor's Office.
- 2. The Prime Minister of Georgia shall issue an official ID card of the established form to the Chief Prosecutor.
- 3. The Chief Prosecutor, his/her first deputy or deputy shall issue official ID cards of an established form to other employees of the Prosecutor's Office.
- 4. (Deleted – 30.5.2013, No 659).

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 46 - Statistical reports

Together with the agencies concerned, the Prosecutor's Office shall develop unified registration forms for statistical reports and establish a unified procedure for compiling statistical reports within the bodies of the Prosecutor's Office.

Article 47 - International relations of the Prosecutor's Office

The Prosecutor's Office may cooperate with the relevant bodies of foreign states and international organisations, according to the procedure provided for by the legislation of Georgia.

Article 48 - Considering incoming applications and complaints

- 1. The Prosecutor's Office, within the scope of its authority and as provided for by the legislation of Georgia, shall consider incoming applications and complaints, and receive citizens.
- 2. An application or complaint on a committed crime filed with the Prosecutor's Office shall be immediately considered.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Chapter X

Control over the Activity of and Use and Spending of State Funds by the Prosecutor's Office

Article 49 - Parliamentary control

Parliamentary control over the activity of the Prosecutor's Office shall be carried out by hearing and subsequent discussion of the Chief Prosecutor's information either on demand of the Parliament or on the Chief Prosecutor's initiative. The information shall not include matters concerning particular criminal case proceedings, except as expressly provided for by the legislation of Georgia and international treaties and agreements of Georgia.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Article 50 - Informing the Prime Minister of Georgia

The Prime Minister of Georgia, as the Head of the Government of Georgia, shall periodically hear the Chief Prosecutor's information. The information shall not include matters concerning criminal case proceedings, except as expressly provided for by the legislation of Georgia and international treaties and agreements of Georgia.

Law of Georgia No 659 of 30 May 2013 – website, 24.6.2013

Law of Georgia No 1267 of 20 September 2013 – website, 8.10.2013

Article 51 - Judicial control

The performance of such investigative and procedural acts by the Prosecutor's Office that limit the human rights and freedoms defined by the Constitution of Georgia shall be permitted by a substantiated decision of a court, as determined by the legislation of Georgia.



Article 52 - Control over the use and spending of state funds

The State Audit Service shall control the use and spending of state funds and other tangible assets of the state allocated to the Prosecutor's Office.

Law of Georgia No 6550 of 22 June 2012 – website, 29.6.2010

Chapter XI
Transitional Provisions

Article 53

1. The Prosecutor's Office of Georgia shall be reorganised into a state subordinate agency within the system of the Ministry of Justice of Georgia.
2. A state subordinate agency within the system of the Ministry of Justice of Georgia - the Prosecutor's Office of Georgia shall be a legal successor to the Prosecutor's Office of Georgia.
3. A state subordinate agency within the system of the Ministry of Justice of Georgia - the Prosecutor's Office of Georgia shall ensure completion of the cases under proceedings in the Prosecutor's Office of Georgia, according to the procedure determined by the Criminal Procedure Code of Georgia.
4. The Ministry of Justice of Georgia shall ensure the conformity of relevant subordinate legal acts with this Law.
5. Normative acts issued by the Prosecutor General of Georgia shall remain in force until the measures under the fourth paragraph of this article are implemented.
6. By the date of entry into force of this Law, according to the procedure determined by the legislation of Georgia, the Government of Georgia shall ensure the transfer of the budget appropriations allocated for the Prosecutor's Office of Georgia to the Prosecutor's Office of Georgia - a State subordinate agency within the system of the Ministry of Justice of Georgia.
7. By the date of entry into force of this Law, the Ministry of Economic Development of Georgia shall ensure the transfer of assets (inter alia, the property recorded on the balance sheet of the Prosecutor's Office of Georgia) necessary for the functioning of the Prosecutor's Office of Georgia - a state subordinate agency under the system of the Ministry of Justice of Georgia, to the Prosecutor's Office of Georgia, according to the procedure determined by the legislation of Georgia.
8. By 1 March 2009, the Ministry of Justice of Georgia shall ensure the development of a draft law of Georgia to determine the place of a legal entity under public law - the Legal Support Service under the Ministry of Justice of Georgia, in the system of state bodies of Georgia.

Chapter XII
Concluding Provisions

Article 54 – Entry into force of the Law

1. This Law, except for Article 53(6) and (7) and Article 54, shall enter into force on the 15th day after its promulgation.
2. Article 53(6) and (7) and Article 54 of this Law shall enter into force upon its promulgation.

President of Georgia

M. Saakashvili

21 October 2008

No 382-IIS



Draft

Law of Georgia

On the Amendments to the Law of Georgia on the Prosecutor's Office

Article 1. The Law of Georgia on the Prosecutor's Office (the legislative Herald of Georgia No 27, 27.10.2008, Art. 170) shall be amended as follows:

1. Article 1(2) shall be amended as follows:

'2. No extraordinary or specialised prosecutor's offices may be established. A special (*ad hoc*) prosecutor shall be appointed in the case specified in Article 9²(2) of this Law'.

2. The following paragraph (a¹) shall be added to Article 2:

'a¹) a special (*ad hoc*) prosecutor – a person provided for by Article 8³ of this Law, who exercises powers prescribed by Article 9² of this Law';

3. Article 8(1) shall be amended as follows:

a) The following paragraphs (a¹-a³) shall be added:

'a¹) shall preside over the Prosecutorial Council;

a²) shall nominate a candidate for the Chief Prosecutor to the Prosecutorial Council for approval';

a³) shall nominate a candidate for the Chief Prosecutor to the Government of Georgia to obtain consent';

b) The following paragraph (d¹) shall be added to Article 8(1):

'd¹) On the basis of the motion of the Chief prosecutor shall appoint additional qualification exam for prosecutors'.

4. The following Articles 8¹ – 8³ shall be added to the Law:

'Article 8¹ - Prosecutorial Council

1. The Prosecutorial Council shall be established at the Ministry of Justice.

2. The Prosecutorial Council shall consist of the following nine members:

a) the Minister of Justice – the chairperson of the Prosecutorial Council;

b) four prosecutor members of the Prosecutorial Council who shall be elected by the Conference of Prosecutors of Georgia as prescribed by Article 8² of this law;

c) two members of the Parliament of Georgia who shall be elected by the Parliament by majority of the members of Parliament on the current nominal list.

d) two members of the Prosecutorial Council who shall be elected by majority of the members of the Parliament of Georgia on the current nominal list from the candidates nominated by the higher educational institutions of Georgia and by civil society organisations.

3. The officials specified in subparagraphs (a) and (c) of paragraph 2 shall be deemed to be the council members until the termination of their term of office. The term of office of the persons specified in subparagraphs (b) and (d) of paragraph 2 shall be four years, except when their powers are terminated before the expiry of this term, the implementation of which became the basis for their election as a member of Prosecutorial Council.

4. A member of the Prosecutorial Council provided for by paragraph 2(b) of this article may be a prosecutor or an investigator of the Prosecutor's Office of Georgia who has at least five years experience of working as a lawyer and at least three years experience of working as a prosecutor or as an investigator of the Prosecutor's Office of Georgia.

5. A representative of a higher educational institution of Georgia or a person nominated by a civil society organization who concurrently practices law as a defence attorney shall not be a member of the Prosecutorial Council provided for by paragraph 2(d) of this article.

6. The Prosecutorial Council shall have the authority:

a) within the scope of its authority to approve a candidate for Chief Prosecutor of Georgia;

b) to appoint a special (*ad hoc*) prosecutor according to Article 9² of this Law;

c) if there is a probable cause that the Chief Prosecutor has committed a crime, to approve the report of the special (*ad hoc*) prosecutor and, within the scope of its authority, to submit a proposal/recommendation to the Government and the Parliament of Georgia for the removal of the Chief prosecutor of Georgia from his/her office;

d) to conduct disciplinary proceedings against the Chief Prosecutor and his/her deputies;

e) at least once every six months, or by decision of the majority of the members of the Council - immediately, to hear a report of the Chief Prosecutor/Deputy Chief Prosecutor on the activities of the the Prosecutor's Office which concerns the situation in terms of crime combating policy, statistical data, protection of human rights and freedoms in the course of legal proceedings, high public interest issues, areas of priority of the Prosecutor's Office, professional retraining and development programmes

for prosecutors and which do not cover specific matters related to criminal investigation, judicial proceedings and/or specific circumstances of the case;

f) to produce recommendations on issues provided for by paragraph 6(e) of this article and submit them to the Chief Prosecutor;

g) to submit recommendations to the Chief Prosecutor with respect to the criminal justice policy, the activities of the Prosecutor's Office and related to such legal issues that are important for the development of the law and coherent practice.

7. The Prosecutorial Council shall not interfere in the investigation and prosecutorial activities carried out by the employees of the Prosecutor's Office.

8. The Prosecutorial Council shall meet at least once in every six months, or by decision of the majority of the members of the Council - immediately upon convocation by the Minister of Justice.

9. Except in cases foreseen in Article 8¹(13), Article 9¹(2) and Article 9²(1, 10 and 13) of this law, a decision of the Prosecutorial Council shall be deemed adopted if it is supported by the majority of the members of the Prosecutorial Council present.

10. If after the examination of the case by the Prosecutorial Council the disciplinary misconduct of the Chief Prosecutor is confirmed, except for the cases foreseen under Article 9²(13) of this law, the Prosecutorial Council shall make a decision regarding the imposition on the Chief Prosecutor or on his/her deputy a disciplinary measure prescribed by this Law. Only the sanctions provided for by Article 38(5) (b and d) of this Law shall be applied to the Chief Prosecutor.

11. If after the examination of the case by the Prosecutorial Council the disciplinary misconduct of the Deputy Chief Prosecutor is confirmed, the Prosecutorial council shall make a recommendation to the Chief Prosecutor to impose on the offender a disciplinary measure prescribed by this Law.

12. Before the decision is made regarding the imposition of a disciplinary measure, the Chief Prosecutor and his/her deputy may appear before the Prosecutorial Council to explain his/her position and provide information confirming his/her position.

13. The decision regarding the imposition of a disciplinary measure is taken by two-thirds of the members of the Prosecutorial Council.

14. The Prosecutorial Council issues decrees with respect to matters falling within its authority.

15. The Chief Prosecutor may participate in the Council meetings without a right to vote, except in cases when his/her early removal from office or his/her disciplinary misconduct is examined according to Article 9² of this Law.'

Article 8² – Conference of Prosecutors of Georgia

1. The Conference of Prosecutors of Georgia is a meeting of prosecutors and investigators of the Prosecutor's Office of Georgia which is authorised to elect members to the Prosecutorial Council.

2. In its activities, the Conference of Prosecutors of Georgia shall be guided by this Law.

3. The Conference of Prosecutors of Georgia shall be convened, as may be necessary, by the Chief Prosecutor to exercise the powers determined by this Law.

4. The Conference of Prosecutors of Georgia is authorised to discuss matters and adopt decisions if more than a half of the prosecutors and investigators of the Prosecutor's Office are present at the meeting.

5. The Conference of Prosecutors of Georgia shall adopt decisions by secret ballot.

6. The Prosecutor's Office of the city of Tbilisi, district Prosecutor's Offices, the Prosecutor's Offices of the Autonomous Republics of Abkhazia and Adjara and the departments of the Chief Prosecutor's Office that exercises the prosecutorial powers provided for by the Criminal Procedure Code of Georgia, shall submit nominations for the Prosecutorial Council membership to the Conference of Prosecutors of Georgia from among the persons specified in Article 8¹(4) of this Law. The candidates for Council membership shall be selected from among the prosecutors and investigators of the Prosecutor's Office of the city of Tbilisi, of the Prosecutor's Offices of the Autonomous Republics of Abkhazia and Adjara, of district Prosecutor's Offices, of departments of the Chief Prosecutor's Office and of the divisions, agencies and regional Prosecutor's Offices under their subordination. The candidates for Council membership shall not be selected from among the heads of Prosecutor's Office of the city of Tbilisi, of the Prosecutor's Offices of the Autonomous Republics of Abkhazia and Adjara and of the heads and deputy heads of the above-mentioned Departments of the Chief Prosecutor's Office.

7. Each prosecutor and investigator participating in the Conference of Prosecutors of Georgia shall vote for one of the Council membership candidates nominated at the Conference. Only the number of the candidates with the best results that is necessary to fill the vacant positions of the Prosecutorial Council shall be deemed to be elected.

8. If two or more candidates receive the equal number of votes, these candidates shall be put to a repeat vote. The candidate with the best result shall be deemed to be elected.

9. If a winning candidate withdraws his/her membership of the Prosecutorial Council before taking office [as the Council member], he/she shall be replaced with the candidate with the next best result. In cases of dismissal or expiration of his/her term as member of the Prosecutorial office, the procedure determined under Article 8²(6) and (7) of this Law shall apply.

Article 8³ - Special (*ad hoc*) prosecutor

1. A special (*ad hoc*) prosecutor shall be appointed in cases foreseen by Article 9²(2) of this Law and he/she shall exercise powers prescribed by the same Article.

2. A special (*ad hoc*) prosecutor shall be guided by the Constitution of Georgia, this Law and other relevant legislation when carrying out his/her activities.

3. A special (*ad hoc*) prosecutor shall be accountable only to the Prosecutorial Council.

4. The Ministry of Justice of Georgia shall allocate adequate financial and material resources in order to assist a special (*ad hoc*) prosecutor in exercising the powers provided for by Article 9² of this Law.

5. A person selected as a special (*ad hoc*) prosecutor shall not have a record of convictions, shall be a former judge, former prosecutor or former investigator with higher legal education and at least five years' experience of working as a judge, prosecutor or investigator. Candidate shall have strong reputation due to his/her moral and professional qualities.

6. A special (*ad hoc*) prosecutor's term of office is terminated by a decision of the Prosecutorial Council.'

5. In Article 9:

a) paragraph (1) shall be amended as follows:

'1. The Chief Prosecutor's Office is headed by the Chief Prosecutor whose term of office shall be six years. The same person may not be elected as Chief Prosecutor for the second consecutive term.';

b) in paragraph (3):

b.a) the following subparagraph (f¹) shall be added:

'f¹) shall convene and preside over the Conference of Prosecutors:'.

b.b) the following subparagraph (s¹) shall be added:

's¹) at least once every six months, or by decision of the majority of the members of the Prosecutorial Council [shall] immediately present to the Prosecutorial Council a report on the activities of the bodies of the Prosecutor's Office, which refers to crime combating policy, statistical data, protection of human rights and freedoms in the course of legal proceedings, high public interest issues, priority areas of the Prosecutor's Office, professional retraining and development programmes for prosecutors and which do not cover specific matters related to criminal investigation, judicial proceedings and/or specific circumstances of the case;

6. The following Articles 9¹ and 9² shall be added to the Law:

Article 9¹ – Procedure for appointment to office of the Chief Prosecutor

1. A candidate for Chief Prosecutor shall be nominated and presented for approval to the Prosecutorial Council by the Minister of Justice.

2. The Prosecutorial Council shall discuss the candidate nominated by the Minister of Justice and approve the candidate by two-thirds of its members. If the candidate fails to receive the required number of votes the Minister of Justice shall nominate a different candidate.

3. The Minister of Justice shall present the candidate approved by the Prosecutorial Council to the Government of Georgia to obtain the Government's consent. If the Government of Georgia does not give its consent the Minister of Justice shall present to the Government of Georgia another candidate approved by the Prosecutorial Council in accordance with paragraph 2 of this article.

4. If the Government of Georgia consents to the presented candidate he/she shall be presented to the Parliament of Georgia for election. The Parliament of Georgia shall by secret ballot and by a majority of its current nominal list elect the Chief Prosecutor of Georgia.

5. If the Parliament of Georgia does not support the candidate presented by the Government of Georgia, the procedure determined by paragraphs (1–4) of this article shall be repeated, starting with the Minister of Justice's nominating and presenting another candidate to the Prosecutorial Council.

Article 9² - Procedure for early removal from office of the Chief Prosecutor

1. If there is a sufficient ground to believe that the Chief Prosecutor has committed a crime, the Prosecutorial Council, at its own initiative and by two-thirds of its members, shall appoint a special (*ad hoc*) prosecutor. The Prosecutorial Council may also discuss the appropriateness of the appointment of a special (*ad hoc*) prosecutor upon the petition of at least one-third of the full membership of the Parliament. If the Prosecutorial Council considers that there is no sufficient ground to believe that the Chief Prosecutor has committed a crime, it shall refuse to appoint a special (*ad hoc*) prosecutor. The refusal shall be grounded.

2. Information concerning the alleged commission of a crime by the Chief Prosecutor must be reliable and convincing. The Prosecutorial Council shall, before the appointment of a special (*ad hoc*) prosecutor, invite to its meeting the author of the information and take his/her explanations, also any person who can confirm or reject the information about the alleged crime. The Prosecutorial Council may request that these persons provide information, if any, confirming their position.

3. The Prosecutorial Council, before making a decision regarding the appointment of a special (*ad hoc*) prosecutor and before approving the report of the special (*ad hoc*) prosecutor, shall hear the

explanations of the Chief Prosecutor. The Chief prosecutor may present to the Prosecutorial Council the information supporting his/her position.

4. A special (*ad hoc*) prosecutor shall prepare a report whether or not there is a probable cause that the Chief Prosecutor has committed a crime and submit it to the Prosecutorial Council within two months of his/her appointment. Upon request of the special (*ad hoc*) prosecutor and the consent of the majority of the members of the Prosecutorial council this time limit may be extended for not longer than two months.

5. Special (*ad hoc*) prosecutor is authorized to request materials in criminal case related to the alleged crime committed by the Chief prosecutor.

6. A special (*ad hoc*) prosecutor may take explanations from any person who can confirm or reject the information about the crime. A special (*ad hoc*) prosecutor may request the information and material necessary for the examination of the matter, except as provided for by law.

7. State bodies, officials, and legal and natural persons shall be obligated to duly hand over to a special (*ad hoc*) prosecutor, within the period specified by the special (*ad hoc*) prosecutor, the information and material necessary for the examination of the matter.

8. Prior to taking explanations, the person shall be warned about the criminal liability for refusing to provide explanations, for avoiding the provision of explanations and for deliberately providing false explanations. A note to that effect shall be made in the text of the explanation and confirmed by the person's signature.

9. The Prosecutorial Council shall warn a special (*ad hoc*) prosecutor, upon his/her appointment, about the criminal liability for disclosing information obtained in the course of the discharge of his/her powers.

10. If there is a probable cause that the Chief Prosecutor has committed a crime, the Prosecutorial Council, by two-thirds of its members, shall approve the report of the special (*ad hoc*) prosecutor, after which it shall apply to the Government of Georgia with a proposal to obtain consent for the removal from office of the Chief Prosecutor. The application shall be accompanied by the report and other necessary material. If the Prosecutorial Council refuses to approve the report, the matter shall be deemed to be removed for the Council's agenda. The same rule shall apply when the report of the special (*ad hoc*) prosecutor does not confirm the probable cause that the Chief Prosecutor committed a crime.

11. If the Government of Georgia consents to the proposal of the Prosecutorial Council, the Government shall address the Parliament with recommendation, accompanied by the report of the special (*ad hoc*) prosecutor and other necessary material, in order for the Parliament to discuss and put to vote the removal from office of the Chief Prosecutor. If the Government does not consent to the

removal from office of the Chief Prosecutor, the matter shall be deemed to be removed from the Government's agenda.

12. The Parliament of Georgia shall discuss and put to vote the recommendation of the Government for the removal from office of the Chief Prosecutor of Georgia. The decision shall be deemed to be adopted if it is supported by a majority of the full membership of the Parliament. If the Parliament fails to adopt, by the required number of votes, the decision on the removal from office of the Chief Prosecutor, the matter shall be deemed to be removed from the Parliament's agenda.

13. The Chief Prosecutor may also be dismissed from office if the Prosecutorial Council, after the examination, decides that he/she committed a disciplinary offence. In this case the decision by the Prosecutorial Council, the Government of Georgia and the Parliament of Georgia respectively shall be adopted in accordance with the sequence and the rules set by this Article, except that a special (*ad hoc*) prosecutor shall not be appointed in case of a disciplinary offence. On the basis of disciplinary proceedings during the Chief Prosecutor's dismissal process the Prosecutorial Council shall elect a speaker by two-thirds of its members among themselves.

7. Article 31(5) shall be amended as follows:

'5. The type of qualification exam for the employees of the Prosecutor's office shall be conducted in the form of tests. The Ministry of Justice of Georgia ensures the publication of the tests in advance. Upon a submission of the Minister of Justice, the Government of Georgia adopts the procedures of the qualification exam, frequency and the exam program, the regulations and the composition of the Commission. On the basis of the motion of the Chief Prosecutor the Minister of Justice is authorized to appoint an additional qualification exam.'

8. In Article 38:

a) paragraph 12 shall be amended as follows:

'12. A disciplinary sanction shall be imposed by the order of the prosecutor in the case provided for in Article 8¹(10) of this law – by the decision of the Prosecutorial Council and in the case provided for in Article 9²(13) by the decision of the Parliament. The employee of the Prosecutor's Office who is subject to the sanction shall be informed on the order of the prosecutor/the decision of the Prosecutorial Council. The order of the prosecutor/the decision of the Prosecutorial Council/the decision of the Parliament on imposing the disciplinary sanction shall be kept in a personal file of the employee.'

b) paragraphs 14 and 15 shall be amended as follows:

14. A disciplinary sanction of a prosecutor may be early removed in the case provided for in Article 39 of this law. A disciplinary sanction shall be removed by the relevant order/decision. The employee of the Prosecutor's office who was subject to the sanction shall be informed on the

order/decision. The order/decision on the early removal of the disciplinary sanction shall be kept in a personal file of the employee.

15. The order of the prosecutor imposing a disciplinary sanction over the employee of the Prosecutor's Office can be appealed to the higher prosecutor or the court, and the decision of the Prosecutorial Council imposing a disciplinary sanction over the Chief Prosecutor – to the court, within 30 days of issuing the order/decision.'

9. Article 45(2) shall be amended as follows:

2. An official ID card of the established form shall be issued to the Chief Prosecutor by the Chairperson of the Parliament of Georgia.'

Article 2.

1. Within one month after this Law enters into force, the Chief Prosecutor's Office of Georgia shall ensure the organisation and conduct of the first Conference of Prosecutors of Georgia.

2. Within two months after this Law enters into force, the Parliament of Georgia and the Conference of Prosecutors of Georgia shall ensure the election of the Prosecutorial Council members.

3. Upon the election of the Prosecutorial Council members by the Parliament of Georgia and by the Conference of Prosecutors of Georgia, the Minister of Justice of Georgia shall ensure the convening of the first meeting of the Prosecutorial Council and the commencement of relevant procedures in accordance with the provisions of Article 1 of this Law.

4. Within two months after this Law enters into force, the appropriate bodies/officials shall ensure the compliance of the Georgian subordinate normative acts with this Law.

Article 3. This Law shall enter into force upon promulgation.

President of Georgia

G.Margvelashvili

Constitution of Georgia

Article 81¹

Bodies of the Prosecutor's Office are under the system of the Ministry for Justice and the Minister for Justice shall provide general management of their operations. The powers and activities of the Prosecutor's Office shall be defined by law.

Constitutional Law of Georgia No 344 of 10 October 2008 - LHG I, No 27, 27.10.2008, Art. 168