



Strasbourg, 16 April 2021

**CDL-REF(2021)033**

**Opinion No. 1039 / 2021**

Engl. only

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

**GEORGIA**

**ORGANIC LAW OF GEORGIA  
ON AMENDMENTS TO THE ORGANIC LAW OF GEORGIA  
ON COMMON COURTS**

**Article 1.** The following amendments shall be made to the Organic Law of Georgia on Common Courts (Legislative Herald of Georgia, №41, 08.12.2009, Art. 300):

**1. A) the 6<sup>th</sup> paragraph of the Article 34<sup>1</sup> shall be deleted.**

**B) Paragraphs 10<sup>th</sup> to 13<sup>th</sup> of the Article 34<sup>1</sup> shall be formulated as follows:**

“10. Candidates appear individually on public hearing. Members of High Council of Justice of Georgia have the right to ask questions to each candidate. A public hearing of candidates shall be held in accordance with the principle of equal treatment towards all candidates. The public hearing of the candidates shall be held in accordance with the rules established by the High Council of Justice of Georgia.

11. After completing the public hearing of the candidates, before the next sitting of the High Council of Justice of Georgia, the members of the Council, in accordance with Article 36<sup>3</sup> of this Law, shall evaluate a candidate with no judicial experience with points in accordance with the Paragraph 16 of the article 35<sup>1</sup> of this Law and a candidate with judicial experience is evaluated with points in accordance with paragraph 8 of the Article 36<sup>4</sup> of this Law. The members of the High Council of Justice of Georgia also evaluate the candidates in accordance with paragraph 15 of Article 35<sup>1</sup> of this Law. Herewith, each member of the High Council of Justice of Georgia shall substantiate in written form each point provided for in the paragraph 16<sup>th</sup> of the Article 35<sup>1</sup>/ paragraph 8<sup>th</sup> of the article 36<sup>4</sup> and each characteristic of the good faith criterion provided for in Article 36<sup>3</sup> of this Law while evaluating the candidate. The above-mentioned evaluations and justifications shall indicate the name, surname and signature of the relevant member of the High Council of Justice of Georgia. If a member of the High Council of Justice of Georgia does not evaluate all candidates in accordance with this paragraph and does not submit the above-mentioned evaluations to the Office of the High Council of Justice of Georgia together with the justifications specified in this paragraph, it is considered that he/she does not participate in the procedure provided for in this paragraph, herewith, the evaluation results of all the candidates carried out by him/her are annulled. If a member of the High Council of Justice of Georgia submits to the office of the High Council of Justice of Georgia an incomplete evaluation or evaluation of the candidate without justification, the office of the Council shall inform this member of the Council about the mentioned deficiency. A member of the High Council of Justice of Georgia can eliminate this deficiency within 2 working days, and if the deficiency is not eliminated within this period, then it is considered that he/she does not participate in the procedure provided for in this paragraph, and the evaluation results of all candidates carried out by him/her are annulled. The number of points accumulated by the candidates and the justifications for these points, the evaluations provided for in paragraph 15 of Article 35<sup>1</sup> of this Law and the justifications for these evaluations are public and are published on the website of the High Council of Justice of Georgia with the indication of the identities of the members of the High Council of Justice of Georgia.

12. After the publication of the candidates' evaluations and the justifications for these evaluations in accordance with paragraph 11 of this Article, the High Council of Justice of Georgia shall issue an order, indicating the names of the candidates who have moved to the next stage, as well as the identities of those candidates who failed to move to the next stage. The Secretary of the High Council of Justice of Georgia shall submit to the members of the Council, prior to the adoption of the said order, the evaluations of each candidate provided for in paragraph 11 of this Article and the justifications for these evaluations, as well as written summary information on the evaluations of candidates. The next stage is passed by so many candidates, having the best results according to the sum of points accumulated while evaluation in accordance with the competency criterion, as vacancies are announced. In addition, the candidate will move to the next stage only if the sum of points accumulated by him/her while evaluation in accordance with the competency criterion is not less than 70 percent of the maximum number of points and at least 10 members of the High Council of Justice of Georgia consider that he meets or fully meets the Good Faith Criterion. Otherwise, that next candidate, having the best results according to the sum of points accumulated while evaluation in accordance with the competency criterion, shall move to the

next stage, whose total accumulated points are not less than 70 percent of the maximum number of points and who, according to the assessment of at least 10 members of the High Council of Justice of Georgia, meets or fully meets the Good Faith Criterion. If the number of candidates who meet the above-mentioned requirements is less than the number of vacancies announced, only these candidates will move to the next stage. If, in accordance with the procedure established by this paragraph, it turns out that the sum of points accumulated by two or more candidates while evaluation in accordance with competency criterion is equal, the preference will be given to the candidate among them, who has been better evaluated by most members of the High Council of Justice of Georgia on the basis of Good Faith Criterion, and if this evaluation is equal too - to that candidate who has a longer experience of working by the specialty. The list of candidates who have moved to the next stage and the order of the High Council of Justice of Georgia provided for in this paragraph shall be public and shall be published on the website of the High Council of Justice of Georgia.

13. After the publication of the list of candidates moved to the next stage in accordance with paragraph 12 of this Article and the order of the High Council of Justice of Georgia, for the purpose of introducing to the Parliament of Georgia the candidate, to be elected on the position of a judge of the Supreme Court, the candidates on the above-mentioned list shall be voted on one by one at the open session of the Council in accordance with the following rule: First of all, the candidate having the best result among these candidates according to the sum of points accumulated while evaluation in accordance with the competency criterion shall be voted and then, in accordance with the same principle, the other candidates are voted in sequence. In addition, if any of the candidates fails to gain the support of at least two-thirds of the full membership of the High Council of Justice of Georgia during the voting, the remaining candidates shall not be voted. If it turns out that the sum of points accumulated by two or more candidates while evaluation in accordance with competency criterion is equal, the preference will be given in the sequence of voting to the candidate among them, who has been better evaluated by most members of the High Council of Justice of Georgia on the basis of Good Faith Criterion, and if this evaluation is equal too - to that candidate who has a longer experience of working by the specialty. Voting provided for in this paragraph is open. When voting, the members of the High Council of Justice of Georgia shall be guided by the criteria set forth in 1<sup>st</sup> and 3<sup>rd</sup> to 14<sup>th</sup> paragraphs of the article 35<sup>1</sup> and article 36<sup>3</sup> of this law. A member of the High Council of Justice of Georgia participating in the voting shall submit a written justification of his/her decision made during the voting to the Secretary of the High Council of Justice of Georgia upon the end of the voting. A candidate shall be introduced to the Parliament of Georgia for election to the position of a judge of the Supreme Court, if he/she is supported by at least two thirds of the full membership of the High Council of Justice of Georgia. Candidates shall be jointly introduced to the Parliament of Georgia by the nomination of the High Council of Justice of Georgia. This nomination, as well as the voting results provided for in this paragraph, the decisions made by the members of the High Council of Justice of Georgia while voting and the justifications for these decisions shall be published on the website of the Council. ”

**2. The title of the Article 34<sup>3</sup> shall be formulated as follows:**

"Appeal against the order of the High Council of Justice of Georgia and the nomination of the Council adopted in the process of selecting the candidates to be introduced to the Parliament of Georgia for electing on the position of a judge of the Supreme Court";

**B) Paragraphs 1st and 2nd shall be formulated as follows:**

“1. The candidate participating in the process of selecting the candidates to be introduced to the Parliament of Georgia for electing on the position of a judge of the Supreme Court, has the right, to appeal in the Qualification Chamber of the Supreme Court against the order of the High Council of Justice of Georgia adopted in accordance with paragraph 12 of Article 34<sup>1</sup> of this Law or the nomination of the High Council of Justice of Georgia provided for in paragraph 13 or 15 of the same article, if he/she participated in the relevant stage of selection of the candidates specified by the same paragraph and considers that:

- A) A member of the High Council of Justice of Georgia was biased in the process of selecting candidates;
  - B) The approach of a member of the High Council of Justice of Georgia in the process of selecting candidates was discriminatory;
  - C) A member of the High Council of Justice of Georgia has exceeded the authority granted to him/her by the legislation of Georgia, as a result of which the rights of the candidate have been violated or the independence of the court has been endangered;
  - D) The information on which this order/nomination was based is substantially incorrect and the candidate has submitted relevant evidence to prove it;
  - E) The candidate selection process was conducted in violation of the procedure established by the legislation of Georgia, which could have a significant impact on the final result.
2. An appeal shall be submitted to the High Council of Justice of Georgia within 1 week after the publication of the order of the High Council of Justice of Georgia specified by paragraph 12 of Article 34<sup>1</sup> of this Law or the nomination of the High Council of Justice of Georgia provided for in paragraph 13 or 15 of the same Article on the web-site. The High Council of Justice of Georgia shall immediately transfer the received appeal to the Qualification Chamber of the Supreme Court. In case of submitting an appeal to the High Council of Justice of Georgia, the procedure specified by Article 34<sup>1</sup> of this Law shall be suspended at the relevant stage until the Qualification Chamber of the Supreme Court makes a decision”;

**C) Subparagraphs “c” and “d” of the paragraph 4 shall be formulated as follows:**

“C) The exact name of the appealed order/nomination and the name of the body adopting this order/nomination;

D) The grounds for appealing the order/nomination provided for in paragraph 1<sup>st</sup> of this Article, as well as the facts and evidences confirming the existence of this ground;”

**D) The paragraphs 10<sup>th</sup> to 13<sup>th</sup> shall be formulated as follows:**

„10. The Qualification Chamber of the Supreme Court makes one of the following decisions after considering the case:

- A) On leaving the order/nomination of the High Council of Justice of Georgia unchanged;
- B) On annulment of the order/nomination of the High Council of Justice of Georgia and return of the case for reconsideration.

11. Determining the grounds for appealing the order/nomination provided for in paragraph 1<sup>st</sup> of this Article by the Qualification Chamber of the Supreme Court can only become a ground for annulment of the order/nomination of the High Council of Justice of Georgia, If the Qualification Chamber considers that the relevant violation affected the final result and led to the adoption of a substantially incorrect order/nomination by the High Council of Justice of Georgia.

12. If the Qualification Chamber of Supreme Court decides to annul the order/nomination of the High Council of Justice of Georgia and return the case for reconsideration:

A) The relevant evaluation of the relevant candidate shall be reviewed in accordance with the procedure established by Paragraph 11 of Article 34<sup>1</sup> of this Law and the High Council of Justice of Georgia shall re-issue the order in accordance with paragraph 12 of the same Article, If the Qualification Chamber of the Supreme Court annuls the order of the High Council of Justice of Georgia provided for in paragraph 12 of Article 34<sup>1</sup> of this Law. In addition, when revising a candidate's evaluation, it is not allowed to evaluate a candidate with a lower result;

B) The nomination of the High Council of Justice of Georgia provided for in the same paragraph shall be revised in accordance with the procedure established by Paragraph 13/15 of Article 34<sup>1</sup> of this Law and the High Council of Justice of Georgia shall draw up a new nomination according

to the same paragraph, if the Qualification Chamber of the Supreme Court annuls the nomination of the High Council of Justice of Georgia provided for in Paragraph 13/15 of Article 34<sup>1</sup> of this Law. Making the decision on the annulment of the nomination of the High Council of Justice of Georgia provided for in paragraph 13/15 of the Article 34<sup>1</sup> of this Law and the return of the case for reconsideration by the Qualification Chamber of the Supreme Court does not affect on that decision of the Council by which the High Council of Justice of Georgia approved the introduction of the candidate to the Parliament of Georgia for electing on the position of a judge of the Supreme Court and in this case this candidate will no longer be re-voted and the other candidates at the current stage of selection shall be re-voted in accordance with the paragraph 13/15 of the article 34<sup>1</sup>.

13. A new order/new nomination of the High Council of Justice of Georgia may be appealed in accordance with the rules established by this Article, within 3 working days after its publication on the Council's website. The Qualification Chamber of the Supreme Court shall consider the appeal within 1 week after the submission of this appeal to it by the High Council of Justice of Georgia in accordance with the rules established by the same article. In this case, the Council's order/nomination adopted as a result of decision made by the Qualification Chamber of the Supreme Court on annulment of the order/nomination of the High Council of Justice of Georgia and return of the case for reconsideration, is no longer subject to appeal.

**E) Paragraph 14 shall be deleted.**

**Article 2.** The procedure ongoing before the entry of this law into force, for selection of candidates to be introduced to the Parliament of Georgia for election on the position of the judge of the Supreme Court shall be continued in accordance with the norms determined by the Organic Law of Georgia on Common Courts provided by this Law. Herewith, the High Council of Justice of Georgia, within 5 working days since the entry of this law into force, shall provide the possibility of submission, during 1 week, of additional applications for participating in the aforesaid procedure and the possibility for such applicants to participate in that procedure under the law. The High Council of Justice of Georgia, in 10 working days since the expiration of the term of hearing of a complaint provided by paragraph 5 of Article 34<sup>1</sup> of the Organic Law of Georgia on Common Courts, shall start public hearing of those from those applicants, which meet the criteria of a judge of the Supreme Court of Georgia and which submit the complete application and attached documents under the law.

**Article 3.** This law shall enter into force upon its publication.

The President of Georgia

Salome Zourabichvili