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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

ORGANIC LAW

ON AMENDMENTS (OF DECEMBER 2021) TO THE ORGANIC LAW

ON COMMON COURTS

**Organic Law
On Amendments to the Organic Law on Common Courts**

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

1. In Article 35, after Paragraph 13, the following Paragraph 13¹ shall be added:

„13¹. If a candidate could not be assigned to the vacant position / positions specified in paragraph 5 of this Article, after the end of the voting at least 3 members of the High Council of Justice of Georgia have the right to apply to the Council (with the consent of the candidate), so that this candidate can be re-elected for any vacant position within the current competition. The High Council of Justice of Georgia decides on a repeat vote by a majority of the members present. A repeat vote shall be conducted according to a general procedure.”

2. Article 37¹ shall be formulated as follows:

“Article 37¹. Procedure for imposing powers on another judge/sending a judge on secondment to another court

1. In case of necessity, in the interests of justice (a judge is absent in a district (city) court or the court of appeals, or highly increase of the number of cases to be considered and/or other objective circumstances), the High Council of Justice of Georgia shall make a proposal to judges of other courts to exercise judicial powers. If, within 5 days of the submission of a proposal, any judge gives his/her consent, the Council shall decide whether to send a judge on secondment to another court (including from the court of appeals the district (city) court, or from the district (city) court to the court of appeals) for a period specified by the Council.

2. If a judge cannot be selected under the procedure established by Paragraph 1 of this Article, the High Council of Justice of Georgia shall have the right to make a substantiated decision, without consent of a judge, to send a judge on secondment to another court (including from the court of appeals to the district (city) court, or from the district (city) court to the court of appeals), but not for more than 2 years. Without consent of a judge, a secondment term may be continued for a period not more than 2 years.

3. One and the same judge may be sent on secondment to another court without his/her consent only once during ten years. After appropriate grounds are eliminated, the secondment shall be prematurely terminated.

4. A seconded judge may appeal only once against the decision of the High Council of Justice of Georgia taken according to the procedure laid down by this Article, to the Chamber of Qualification of the Supreme Court within 7 days after the decision is submitted. Proceedings in the Chamber of Qualification of the Supreme Court shall be conducted according to the procedure laid down by Articles 36⁵ and 36⁶ of this Law”.

3. Article 45 shall be formulated as follows:

“Article 45 - Recusing a judge from trial

1. The High Council of Justice of Georgia (hereafter referred to as the Council) is authorized - on the basis of a substantiated motion of the Independent Inspector and with the support of the majority of the full membership, apply to the Disciplinary Board of Judges of the Common Courts of Georgia (hereinafter referred to as the Disciplinary Board) with a recommendation for a decision to recuse a district (city) or court of appeals judge from trials, if:

- a) criminal prosecution is initiated against a judge;

- b) disciplinary prosecution against a district (city) or court of appeals judge is initiated according to the procedure laid down by Article 75⁸ of this Law and there is reasonable belief, that remaining on this position he/she will prevent disciplinary proceedings and/or recovery of damages caused by disciplinary misconduct, and/or will continue violation of labour discipline.
2. Upon making a decision on the appeal with a recommendation, the Council with the support of the majority of the full membership appoints a representative who will take part in the proceedings related to the consideration of the recommendation to the Disciplinary Board, and in case of appeal against the decision of the Disciplinary Board - also in the proceedings related to the appeal to the Chamber of Disciplinary Cases of the Supreme Court of Georgia (hereinafter - the Disciplinary Chamber).
3. The Disciplinary Board considers the recommendation according to the general rules determined by this Law within 5 working days after the recommendation is received. Failure of the parties to appear shall not impede the consideration of the recommendation and a delivery of a decision.
4. If the Disciplinary Board shares the conclusions reflected in the recommendation of the Board on the existence of any of the grounds provided for in Paragraph 1 of this Article, it will make a decision to recuse a judge from trial until the final conclusion of the relevant proceedings; otherwise, the Disciplinary Board will make a decision to reject the recommendation, submitted by the Council.
5. The decision made by the Disciplinary Board on the recommendation of the Council may be appealed by the parties to the Disciplinary Chamber within 3 working days after the submission of the decision; restoration or extension of this term is not allowed. The appeal should be submitted to the Disciplinary Board. Within 2 working days after receiving the appeal, the Chairman of the Disciplinary Board transfers the disciplinary case together with the received appeal to the Disciplinary Chamber and informs about it the parties of the disciplinary case.
6. The Disciplinary Chamber considers the appeal according to the general rules determined by this Law, given the following different procedural time frames:
 - a) Within 2 working days from the receipt of the appeal, the Disciplinary Chamber must check whether the appeal has been filed in compliance with the requirements of Article 75⁵⁵ of this Law. If the appeal complies with the requirements of this Article, the Disciplinary Chamber shall admit it;
 - b) If an appeal fails to comply with the requirements of Article 75⁵⁵ of this Law, the Disciplinary Chamber shall order a person filing the appeal to correct the deficiency and shall allow a time period for this purpose, but not more than 3 working days. If the deficiency has not been corrected within this period, or the deadline determined by law for filing an appeal has not been met, the appeal shall be dismissed without hearing;
 - c) The Disciplinary Chamber shall review the appeal within 5 working days after admitting it for hearing. An appeal may also be considered at an oral hearing if, in the opinion of the Chamber, this will facilitate a lawful and substantiated decision. However, failure of the parties to appear at the oral hearing of the case shall not impede the consideration of the case and a delivery of a decision.
7. Within the period of validity of the decision on recusing a judge from trial, the power of the judge is suspended, due to which the payment of salary and other material benefits are also suspended. In case of acquittal, the judge will be fully reimbursed for unpaid salary and other material benefits. In addition, the judge shall retain the rights provided for in Article 40 of this Law during this period.

8. From the moment of making a decision by the Disciplinary Board on dismissal of a judge in the form of a disciplinary penalty, the judge shall be considered recused from trial, with the legal consequences specified in paragraph 7 of this Article”.

4. Paragraph 12 of the Article 47 shall be formulated as follows:

“12. The term of office of a member of the High Council of Justice of Georgia shall be four years. A member of the High Council of Justice of Georgia may not perform his/her duty after the expiry of the term of office. The new member of the High Council of Justice of Georgia shall be elected (appointed) not earlier than 30 calendar days before and not later than seven calendar days after the expiry of the term of office of the relevant member of the High Council of Justice of Georgia, and if the powers of the member are terminated – within not later than one month after such termination. If during the election of the High Council of Justice members by the Parliament of Georgia the above timeframes coincide, in full or in part, with a period between the sessions of the Parliament of Georgia, the term defined by this Paragraph for the elections shall be prolonged for the corresponding period of time”.

5. Subparagraph "d" of the first paragraph of Article 49 shall be formulated as follows:

“d) approve the structure, job titles, staff list and salaries of the personnel of the Office of the High Council of Justice of Georgia (except of the Office of the Independent Inspector), the salary of a member of the High Council of Justice of Georgia, as well as the structure and staff size of the administrative office of Georgian common courts (except of the Supreme Court)”;

6. Paragraph 3 of the Article 50 shall be formulated as follows:

“3. A decision on disciplinary matters shall be deemed to have been adopted if it is supported by secret ballot by a majority of the full membership of the Council”.

7. Paragraph 1 of the Article 51¹ shall be formulated as follows:

“1. For the purpose of performing an objective, impartial and comprehensive investigation and preliminary examination of an alleged disciplinary misconduct of a judge, the Office of the Independent Inspector shall be established at the High Council of Justice of Georgia to be administered by the Independent Inspector. A structure, job titles, staff list and salaries of the personnel of the Office within the budget allocations for the office shall be approved by the Independent Inspector.”

8. To the Paragraph 8 of the Article 75¹

a) to the Subparagraph “b” shall be added Subparagraph “b.g”:

“b.g.) Expression of opinion by a judge in violation of the principle of political neutrality”;

b) “Subparagraph “f.a.” shall be formulated as follows:

“f.a.) Substantial violation of the term determined by the procedural legislation of Georgia by a judge for an unreasonable excuse. The excuse for the violation of this term shall not be considered unreasonable if the judge was unable to observe the term due to objective circumstances directly related to the administration of justice (number of cases, complexity of the case, etc.)”;

9. Paragraphs 1¹ and 1² shall be added to the Article 75³

“1¹. A rebuke, reprimand, severe reprimand, dismissal of a judge from office can be applied only as a primary disciplinary penalty.

1². A dismissal of the chairperson, the first deputy or a deputy chairperson of a court, the chairperson of a judicial panel or chamber from office and deduction from 5% to 20% from the salary can be used as a primary, as well as additional disciplinary penalty”.

10. Paragraph 3 of the Article 75⁵ shall be formulated as follows:

“If in the complaint (application) under Paragraph 1(a) of this Article an identity of the judge, the case and / or the fact of possible disciplinary misconduct are not specified, the Independent Inspector will identify the deficiency of the complaint (application) and set a deadline of no more than 5 days to eliminate it. In case if the deficiency will not be corrected within the mentioned period, the complaint (application) will not be considered.”

11. Paragraph 1 of the Article 75⁷ shall be formulated as follows:

“1. The Independent Inspector shall, within 1 months after receiving a complaint, application or other information on committing a disciplinary misconduct by a judge, preliminarily examine its justification. In carrying out these procedures, the Independent Inspector relies on the standard of reasonable belief. The period of the preliminary examination may be extended by 2 weeks, or suspended if the examination cannot be conducted”.

12. Paragraph 1 of the Article 75⁸ shall be formulated as follows:

“1. As a result of the preliminary examination, the High Council of Justice of Georgia shall evaluate the validity of the grounds for initiating disciplinary prosecution against a judge and shall, within the overall time limit determined under Article 75⁷(1) of this Law for conducting preliminary examination, make a substantiated decision, by a majority of the total number of members, to initiate disciplinary prosecution against the judge and to take explanations from the judge. In making this decision, the High Council of Justice of Georgia relies on the standard of reasonable belief. If the High Council of Justice of Georgia fails to make such a decision, the disciplinary prosecution against the judge shall be terminated. A member of the High Council of Justice of Georgia who disagrees on this decision may express his/her dissenting opinion in a written form, which will be attached to the disciplinary case.

13. Article 75¹⁰:

a) Paragraph 1 shall be formulated as follows:

“1. Investigation of a disciplinary case must be completed within one month from making the decision to take explanations from a judge. If necessary, this period may be extended by not more than two weeks”.

b) Paragraph 4 shall be formulated as follows:

“4. A judge shall have the right to challenge the Independent Inspector. The challenge must be substantiated. A motion of the judge must be granted if the suspicion of impartiality of the Independent Inspector in a given case is grounded. If the same ground exists, the Independent Inspector shall recuse himself/herself. The issue of challenging the Independent Inspector shall be reviewed by a three-member Panel (2 judges and 1 non-judge) of the High Council of Justice of Georgia to be selected by casting lots. If the motion of the judge is granted, the disciplinary case shall be investigated by a member of the High Council of Justice of Georgia to be identified under the procedure established by the Regulations of the High Council of Justice of Georgia. The issue of challenging this member of the High Council of Justice of Georgia shall be resolved under this Paragraph. A member of the High Council of Justice of Georgia, who is to exercise the powers granted to the Independent Inspector by this Law, shall not be involved in making the decision to impose disciplinary liability on the judge with regard to the given case. The period spent during the decision-making process with regard to challenging the Independent Inspector shall not be included in the disciplinary case investigation period.

14. Paragraph 1 of the Article 75¹³ shall be formulated as follows:

“1. Following the disciplinary case investigation, the High Council of Justice of Georgia shall, within the overall time limit determined under Article 75¹⁰(1) of this Law for the investigation of a disciplinary case, make a substantiated decision, by a majority of the total number of members, to impose disciplinary liability on a judge. If the High Council of Justice of Georgia fails to make such a decision, disciplinary proceedings against the judge shall be terminated. A member of the High Council of Justice of Georgia who disagrees on this decision may express his/her dissenting opinion in a written form, which will be attached to the disciplinary case.

15. Article 75¹⁶ shall be removed.**16. Article 75²⁵ shall be formulated as follows:****“Article 75²⁵ – Time limit for considering a disciplinary case**

The Disciplinary Board shall consider a disciplinary case not later than one month after its admission”.

17. Paragraph 1 of the Article 75³⁵ shall be formulated as follows:

“1. During a disciplinary case hearing, participation of a judge imposed with disciplinary liability and a representative of the High Council of Justice of Georgia in a Disciplinary Board meeting shall be mandatory. If either of the parties fails to appear at the Disciplinary Board meeting, the Disciplinary Board shall adjourn the disciplinary case hearing by not more than two weeks. This time limit shall not be included in a one-month period for considering a disciplinary case by the Disciplinary Board”.

18. Article 75³⁷:**a) Paragraph 1 shall be formulated as follows:**

“1. If, before completing a disciplinary case hearing, the Disciplinary Board receives another disciplinary case initiated against the same judge, the Disciplinary Board shall temporarily suspend the former case hearing, consolidate both disciplinary cases, consider them as a whole and, in case the judge is found guilty of two or more misconducts, to impose on the judge disciplinary liability according to rules determined by Paragraph 2 of the Article 75⁴⁷ of this Law”.

b) Paragraph 3 shall be formulated as follows:

“3. The period of temporary suspension of a case shall not be included in a one-month period for considering a case by the Disciplinary Board”.

19. Article 75⁴⁶ shall be formulated as follows:**“Article 75⁴⁶ – Decision of the Disciplinary Board on finding a judge guilty of committing a disciplinary misconduct and imposing disciplinary liability and penalty on him/her**

The Disciplinary Board shall make a decision on finding a judge guilty of committing a disciplinary misconduct and imposing disciplinary liability and penalty on him/her, if culpable commission of one or several disciplinary misconducts under this Law by the judge has been proved, by inter-compatible and irrefutable evidence collectively, as a result of hearing a disciplinary case by the Disciplinary Board and the Disciplinary Board deems it appropriate to impose on the judge disciplinary liability according to rules determined by Paragraph 2 of the Article 75⁴⁷ of this Law”.

20. Paragraph 2 of the Article 75⁴⁷ shall be formulated as follows:

“2. In general, the Disciplinary Board may apply only one, primary type of a disciplinary penalty. In exceptional cases when only the primary disciplinary penalty fails to ensure the achievement of the purpose of disciplinary liability, the Disciplinary Board is authorized to apply the additional

disciplinary penalty together with it, provided for in Paragraph 1² of Article 75³ of this Law. A disciplinary action shall be applied only individually”.

21. Paragraph 3 of the Article 75⁵⁴ shall be formulated as follows:

“3. A decision to appeal a Disciplinary Board decision shall be made by the High Council of Justice of Georgia at its meeting, by a majority of the total number of members. The High Council of Justice of Georgia shall appeal a Disciplinary Board decision through its representative”.

22. Paragraphs 1 and 2 of the Article 75⁵⁶ shall be formulated as follows:

“1. The Disciplinary Chamber must, within 5 days after an appeal is received, verify whether or not the appeal is filed in compliance with Article 75⁵⁵ of this Law. If the appeal complies with the requirements of this Article, the Disciplinary Chamber shall admit it.

2. If an appeal fails to comply with the requirements of Article 75⁵⁵ of this Law, the Disciplinary Chamber shall order a person filing the appeal to correct the deficiency and shall allow him/her a reasonable time period to do that (not more than 5 days). If the deficiency has not been corrected within this time period, or the deadline determined by law for filing an appeal has not been met, the appeal shall be dismissed without hearing”.

23. Paragraph 1 of the Article 75⁵⁸ shall be formulated as follows:

“1. The Disciplinary Chamber shall consider a disciplinary case within 15 days after admission of an appeal. Under objective circumstances, consideration of the case may be extended once by the Chairperson of the Supreme Court by 15 days.

24. Subparagraph “b” of the Paragraph 1 of the Article 75⁶⁵ shall be formulated as follows:

“b) the Disciplinary Board has applied an unlawful, unfair or inappropriate disciplinary penalty / penalties or disciplinary action. In this case, the Disciplinary Chamber is authorised to:

b.a.) uphold disciplinary penalty / penalties, remove a disciplinary action from, or impose a disciplinary action on a judge;

b.b.) change disciplinary penalty / penalties and uphold a disciplinary action;

b.c.) change disciplinary penalty / penalties, or apply a disciplinary action under Article 75³(2) of this Law;

b.d.) replace a disciplinary action with any disciplinary penalty / penalties.

25. Paragraph 1 of the Article 75⁷² shall be removed.

Article 2. This Law shall enter into force upon promulgation.

President of Georgia

Salome Zourabichvili