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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

DRAFT LAW
ON THE AMENDMENTS
TO THE CRIMINAL PROCEDURE CODE OF GEORGIA

Law of Georgia
on the Amendments to the Criminal Procedure Code of Georgia

Article 1. Criminal Procedure Code of Georgia (Legislative Herald of Georgia, N31, 03.11.2009, Article 190) be amended as follows:

1. Paragraph 1¹ be added to Article 86:

“1¹. When calculating the period for covert investigative action, the day and hour on which such covert investigative action commences shall be taken into account.”.

2. Article 143³:

a) Paragraph 2(a) be amended as follows:

“a) an investigation has been initiated and/or criminal prosecution is conducted due to an intentionally serious and/or particularly serious crime or to any of the crimes provided for by the following articles and chapter of the Criminal Code of Georgia: Article 134, Article 139(1), Article 142, Article 142¹(1)-(2), Article 143(1), Article 143³(1), Article 144², Article 155, Article 180(1), Article 181(1), Article 186(2), Article 187(2), Article 192, Article 198(1), Article 210(1), Article 223(3)-(6), Article 223³(1), Article 226, Article 235, Article 239¹, Article 252, Article 253(1), Article 254(1) and (2), Article 259⁴, Article 261(5), Article 262(1¹), Article 263, Article 284(1) and (2), Article 285(1), Article 286²(1), Article 287, Article 288(1) and (2), Articles 289, 290 and 292-302, Article 303(1-3), Article 304(1), Articles 305-306¹, Article 317, Article 318(1), Article 320(1), Article 321(1), Article 322¹, Article 322²(1), Article 330¹(1), Article 331², Chapter XXXIX, Article 343, Article 343¹, Article 344, Article 344¹(1), Article 344²(1), Article 345(1) and Article 405;”;

b) Paragraph 12 be amended as follows:

“12. Covert investigative action shall be conducted for the period set out in the judge’s ruling. Such period shall be of such duration required to achieve the purpose of the investigation.”;

c) Following paragraphs 12¹-12⁹ be added to Paragraph 12:

“12¹. Covert investigative action may be conducted in three stages, except as provided under Paragraph 12⁷ hereof. On the first stage, covert investigative action shall be conducted under court ruling based on reasoned motion of the prosecutor for no more than 90 days; on the second stage - under court ruling based on reasoned motion of the superior prosecutor for no more than 90 days; and on the third stage - under court ruling based on reasoned motion of the General Prosecutor of Georgia or First Deputy General Prosecutor of Georgia for no more than 90 days.

12². If, during first stage of covert investigative action, relevant objective is not reached and the period for conducting first stage of covert investigative action is not yet expired, the prosecutor shall be entitled to apply to the court with the motion to extend the period of covert investigative action for the remaining period.

12³. If the 90-day period established for the first stage of covert investigative action has expired and no relevant objective is achieved, under the court ruling based on reasoned motion of the superior prosecutor, the period of conducting covert investigative action may be extended for no more than the term established for conducting second stage of covert investigative action – 90 days.

12⁴. If relevant objective is not reached at the second stage of covert investigative action and the period for conducting covert investigative action on the second stage has not yet expired, superior prosecutor shall be entitled to apply to the court with the motion to extend the period of covert investigative action for the remaining period.

12⁵. If the 90-day period established for the second stage of covert investigative action has expired and no relevant objective is achieved, under the court ruling based on reasoned motion of the General Prosecutor of Georgia or First Deputy General Prosecutor of Georgia, the period

of conducting covert investigative action may be extended for no more than the term established for conducting third stage of covert investigative action – 90 days.

12⁶. If, during third stage of covert investigative action, relevant objective is not reached and the period for conducting third stage of covert investigative action has not yet expired, the General Prosecutor of Georgia or First Deputy General Prosecutor of Georgia shall be entitled to apply to the court with the motion to extend the period of covert investigative action for the remaining period. Further extension of the period for conducting covert investigative action shall not be allowed, except as provided under Paragraph 12⁷ hereof.

12⁷. If the 90 day period defined for conducting the third stage of covert investigative action has expired and relevant objective has not been reached, under court ruling based on the reasoned motion of the General Prosecutor of Georgia or First Deputy General Prosecutor of Georgia:

a) period for conducting covert investigative action may be extended one more time for no more than 90 days, if the covert investigative action is conducted on the basis of the court ruling adopted in the event provided for under the Law of Georgia on International Cooperation in the Field of Criminal Law. If no relevant objective is achieved even at this stage of conducting covert investigative action and the period defined for this stage of covert investigative action has not yet expired, General Prosecutor of Georgia or First Deputy General Prosecutor of Georgia shall be entitled to apply to the court with the motion to extend the period of covert investigative action for the remaining period. Further extension of the period for conducting covert investigative action shall not be allowed.

b) Period for conducting covert investigative action may be extended as many times as the relevant legal basis under this chapter required for conducting covert investigative action exists, if the investigation is conducted in connection with crimes provided for under Articles 108, 109, 143-143², 144-144³, 223-224¹, 230-232, 234-235¹ and 255¹, 260(4) to (7), 261(4) to (8), 262, 263, chapter XXXVII-XXXVIII of the Criminal Procedure Code of Georgia. In such case, the period for conducting covert investigative action may be extended for no more than 90 days for each occurrence.

12⁸. The motion for extending the period for conducting covert investigative action under Paragraph 12¹-12⁷ hereof shall, in addition to circumstances under Paragraph 2 hereof, reflect information about the data obtained as a result of commenced covert investigative action and indicate the reason for failure to obtain adequate data for investigation. When ruling on cases under 12¹-12⁷ hereof, the judge takes into account the relevant legal grounds necessary to conduct covert investigative action under this Chapter.

12⁹. If the covert investigative actions are terminated and relevant legal grounds required for conducting covert investigative action are further created, the covert investigative action shall resume from the stage at which it was terminated. Covert investigative action shall resume in accordance with the rule provided for under this Chapter.”

3. Article 143⁹:

a) Paragraph 4 be amended as follows:

“4. If a prosecutor decides not to notify a person of the carrying out of covert investigative actions against him/her within 12 months after the carrying out of the covert investigative actions, the prosecutor shall be obliged, within not later than 72 hours before the expiration of the above term, to file a motion with the court whose judge rendered the ruling on the carrying out of the covert investigative action, and request the postponement, for no longer than 12 months, of the provision of information to the relevant person on the carrying out of the covert investigative actions. The motion shall provide reasons why the notification of the person could pose a risk to the achievement of the legitimate goal of the investigative actions, to the accomplishment of the objectives and to the interests of legal proceedings. A judge shall review the motion in the manner prescribed by Article 112 of this Code within 48 hours after it has been filed, at his/her own discretion, with or without an oral hearing. When reviewing a motion with an oral hearing, the

judge shall ensure the participation of the relevant prosecutor in the review with a relevant notification. His/her non-appearance shall not impede the review of the motion. After the review, the judge shall make a decision to grant the prosecutor's motion and to postpone the notification of the relevant person or to reject the motion and refuse to postpone the provision of such information to the relevant person.”;

b) Paragraphs 5-7 be added following Paragraph 4:

“5. If, upon granting the motion under Paragraph 4 hereof and expiration of the relevant period, the risk under same section persists, the prosecutor shall be entitled to postponement of notification of relevant person about carrying out the covert investigative action twice, under the rule prescribed in the relevant section. The prosecutor shall be entitled to request, at each occasion, the postponement of such notification for no more than 12 months.

6. If the covert investigative action was conducted in connection with crimes provided for under Articles 108, 109, 143-143², 144-144³, 223-224¹, 230-232, 234-235¹ and 255¹, 260(4) to (7), 261(4) to (8), 262, 263, chapter XXXVII-XXXVIII and XLVII of the Criminal Procedure Code of Georgia, notification of the person against whom such investigation was conducted may be postponed as many times as is required to avoid threat to the State security, public order and interest of legal proceedings. In such case, notification of relevant person about carrying out the covert investigative action in accordance with the rule prescribed in Paragraph 4 hereof may be postponed for no more than 12 months for each occasion.

7. If, under circumstances prescribed in Paragraph 6 hereof, the prosecutor made conclusive decision on the criminal case, the person against whom the covert investigative action was conducted shall be notified immediately upon making of such decision.”.

Article 2. This Law shall enter into force immediately upon publication.

Tbilisi

June 7, 2022

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