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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

PROPOSALS FOR AMENDING THE ORGANIC LAW
ON THE CONSTITUTIONAL COURT OF GEORGIA
AND THE LAW ON CONSTITUTIONAL PROCEEDINGS

Proposals for Amending the Organic Law on the Constitutional Court of Georgia and the Law on Constitutional Proceedings

I. Amendments which affect the competence of the Constitutional Court

1. *Essence of the draft:* the Constitutional Court shall issue an official legally binding interpretation of its decision following receipt of the appropriate request from a complainant, respondent or the body responsible for the execution of the Constitutional Court decision.

Hence:

a) word “interpretation” shall be inserted after word “conclusion” in Item “D” of Article 12 of the Organic Law on the Constitutional Court of Georgia.

b) Article 42₁ shall be inserted in the Organic Law which shall read as follows:

“Article 42₁

A claimant, respondent and the bodies and officials, which participate in the execution of the Court decision shall be empowered to submit a written request to the Constitutional Court in order to receive an official interpretation of the Constitutional Court decision.”

c) Item 1 of Article 43 of The Organic Law shall read as follows:

“1. The Constitutional Court shall issue rulings, decisions, conclusions and interpretations.”

d) Article 42₁ shall be inserted in the enumeration of articles in the Item 2 of Article 1 of the Law on Constitutional Proceedings.

e) Article 34₁ shall be inserted in the Law on the Constitutional Proceedings which shall read as follows:

“Article 34₁

1. The Constitutional Court shall interpret its decision following receipt of a relevant written request from a claimant, respondent and bodies and officials, who participate in the execution of the Court decision.

2. The interpretation of the decision, issued by the Constitutional Court shall have a binding force.

3. The time limit for submission of a request on interpretation of a Court decision by the bodies mentioned in the Item 1 of this Article shall not exceed a month since the decision is published in the official gazette.”

II. Amendments which affect the Rules of Procedure of the Court

1. *Essence of the proposal:* If, when deciding the case in the conference room, the votes of the members of a chamber are equally divided, the case shall be submitted to the Full Court (Plenum) of the Constitutional Court.

Hence:

Item 3 of Article 21 of the Organic Law on the Constitutional Court shall read as follows:

“3. a) If, when deciding the case in the conference room, the votes of the members of a chamber are equally divided, the case shall be submitted to the Full Court (Plenum) of the Constitutional Court. If, when deciding the case, the votes of the members of the Plenum are equally divided, the claim shall be considered as rejected.

b) If, when adopting a decision on the filed petition, conclusion as determined by Item “h” of Article 19 of the Organic Law and interpretation, the votes of the members of the Full Court (Plenum), are equally divided, the vote of the President shall break the tie.”

2. Essence of the proposal: The Full Court or a chamber shall be empowered to issue a ruling in order to correct inexactitudes, omissions of editorial and technical character within an already published Constitutional Court decision. Such a ruling shall be published by the procedure determined for publishing a Court judgement.

Hence:

Item 4 shall be inserted in Article 33 of the law on Constitutional Proceedings, which shall read as follows:

“4. A ruling of the Full Court or a chamber may correct inexactitudes, omissions of editorial and technical character within an already published decision of the Full Court or relevant chamber. Such a ruling shall be published in the official gazette by the procedure determined for publishing a Court decision.”

3. Essence of the proposal: The legal entities shall be empowered to file a complaint to the Constitutional Court if they consider that their rights ensured by Chapter II of the Constitution are breached.

Hence:

Words “and legal entities” shall be inserted following the words - “physical persons of other states” in Item 1 of Article 39 of the Organic Law on the Constitutional Court.

4. Essence of the proposal: A judge participating in the examination of a case has the rights to form a dissenting opinion while reaching a decision. Existence of a dissenting opinion shall be noted during announcing the Court decision upon the request of the author of the opinion. The opinion shall be enclosed to the records of the Court sitting and upon the request of its author shall be published together with the Court decision.

Hence:

a) Item 2 of Article 47 of the Organic Law shall read as follows:

“Existence of a dissenting opinion shall be noted during announcement of the Court decision upon the request of the author of the opinion. It shall be enclosed to the records of the sitting of the Constitutional Court and published together with the Court decision upon the request of its author.”

b) Item 4 of Article 7 of the Law on Constitutional Proceedings shall be deleted. New reading of Item 3 of the mentioned article shall be as follows:

“Existence of a dissenting opinion shall be noted during announcement of a Court decision upon the request of its author. It shall be enclosed to the records of the Court sitting and published together with the Court decision upon the request of its author.”

5. *Essence of the amendment:* If examination of a certain case is postponed, examination of another case may be initiated.

Hence:

a) Word “not” shall be deleted in Item 4 of Article 6 of the Law on Constitutional proceedings.

b) Item 2 of Article 17 of the Law on Constitutional Proceedings shall read as follows:
“The chamber shall be obliged to consider and decide on the issue of the admissibility of the complaint or application at a procedural sitting within a time-limit of 10 days after receiving the complaint or application.”

c) Item “g” shall be deleted in Article 21 of the Law on Constitutional Proceedings and accordingly Item “h” shall become Item “g”.

6. *Essence of the proposal:* A copy of the text of the disputed normative act with the State registry code, certified by the Ministry of Justice shall be enclosed to the complaint or application where relevant necessity arises.

Hence:

a) The first sentence of Item 2 of Article 16 of the Law on Constitutional Proceedings shall read as follows:

“following (files and documents) shall be enclosed to the complaint or application where necessary:”

c) Item “a” of Article 16 of the Law on Constitutional Proceedings shall read as follows:

“A copy of the text of the disputed normative act, provided by the Ministry of Justice, where State registration code shall appear.”

7. *Essence of the proposal:* The decision of the Constitutional Court shall take effect from the moment of its public announcement at the Court sitting unless otherwise provided for by the decision.

Hence:

a) Item 1 of Article 23 of the Organic Law on the Constitutional Court shall read as follows:

“Satisfaction of a complaint concerning the issues envisaged in Items “a” and “e” of Article 19 of the present Law shall result in recognition of invalidity of the relevant unconstitutional normative act or of its part, once appropriate decision of the Constitutional Court is published, unless otherwise provided for by the decision.”

b) Item 8 shall be inserted in Article 23 of the Organic Law on the Constitutional Court, which shall read as follows:

“8. If a normative act or its part is recognized as unconstitutional on the basis of application lodged in by a court of ordinary jurisdiction, relevant normative act or its part loses effect from the moment when appropriate Court decision is published, unless otherwise provided for by the decision.”

c) Item I of Article 33 of the Law on Constitutional Proceedings shall read as follows:

“The decision of the Constitutional Court of Georgia shall take effect from the moment of its public announcement at the sitting unless otherwise provided for by the decision”.

Proposals for Redressing the Defects in the Legislation on the Constitutional Court

9. *Essence of the proposal:* Inexactitudes omitted in the text of the law have to be corrected with regard to the form and mechanism of adoption of a decision on filed applications.

Hence:

a) words “and Article 20” shall be deleted in Item I of Article 23 of the Organic Law on Constitutional Court.

b) Item 8 shall be inserted in Article 8 of the Organic Law on the Constitutional Court, which shall read as follows:

“8. If a normative act or its part is recognized as unconstitutional on the basis of application lodged in by a court of ordinary jurisdiction, relevant normative act or its part loses effect from the moment when appropriate Court decision is published, unless otherwise provided for by the decision.”

c) words “or application” shall be deleted in Article 34 of the Organic Law on Constitutional Court.

d) words “or application” shall be deleted in Item 2 of Article 44 of the Organic Law on Constitutional Court.

e) Item 3 shall be inserted in Article 44 of the Organic Law on the Constitutional Court which shall read as follows:

“3. A normative act or its part shall be recognized as unconstitutional on the basis of an application, if the relevant decision is supported by the majority votes of the Full Court (Plenum).”

f) words “or ruling” shall be inserted after the word “decision” in item 1 of Article 45 of the Organic Law on the Constitutional Court.

- g) Words “or application” shall be deleted in item 2 of Article 45 of the Organic Law on Constitutional Court.

III. Amendments which affect the structure of the Constitutional Court

1. Essence of the draft: Office of the President, Vice Presidents and Secretary of the Constitutional Court shall be prematurely terminated if at least six judges shall vote for it in a secret ballot on the basis of a written proposal of three judges of the Constitutional Court.

Hence:

1. Item 7 of Article 10 of the Organic Law on the Constitutional Court shall read as follows:
“The office of the President, Vice Presidents and Secretary of the Constitutional Court shall be prematurely terminated for non performance of their duties imposed on them by Item 1 of Article 16 and Article 17 of the present law.”

Article 161 shall be inserted in the Organic Law on the Constitutional Court which shall read as follows:

“At least three judges of the Constitutional Court shall be empowered to bring the issue of premature termination of office of the President, Vice Presidents and Secretary of the Constitutional Court by the procedure determined by the Rules of Procedure of the Constitutional Court. The decision on the termination of office shall be considered adopted, if at least six judges shall vote in its favor at the Court Plenum.”

2. Essence of the draft: The Secretary of the Constitutional Court shall supervise execution of the Court decisions. He will report to the Full Court on the situation with regard to the execution of the Court decisions at least twice a year.

Hence:

Words “once a month shall be changed by the words “at least twice a year” in Article 51 of the Organic Law on the Constitutional Court of Georgia.

3. Essence of the draft: The President of the Constitutional Court, in the capacity of a member of a Court chamber, shall participate in the procedural hearings as well as substantial examination of a case, when the relevant chamber reviews a complaint of an individual or legal entity on the violation of their rights ensured by Chapter II of the Constitution.

Hence:

a) Item 3 of Article 11 of the Organic Law on the Constitutional Court shall read as follows:

“The composition of each chamber shall include four members of the Constitutional Court, except for cases envisaged by Item 3 of Article 12 of the present law.”

b) Item 3 shall be inserted in Article 12 of the Organic Law on the Constitutional Court, which shall read as follows:

“3. The president of the Constitutional Court, with a status of a member of a chamber, shall participate in the procedural hearing as well as substantial examination of a case, when the chamber reviews a complain filed by an individual or legal entity on the violation of rights and freedoms envisaged by Chapter II of the Constitution.”

4. Essence of the draft: The President, also the judge, who performs the duties of the Court President and the Secretary of the Constitutional Court by the authorization of the President shall be empowered to manage the budget allocation of the Constitutional Court.

Hence:

Item “g” shall be inserted in Article 14 of the Organic Law on the Constitutional Court, which shall read as follows:

“g. manage the budget allocations of the Constitutional Court upon the task of the President of the Court.”

5. Essence of the draft: The Constitutional Court of Georgia shall sit in Tbilisi

Hence:

Word “Mtskheta” shall be replaced by word “Tbilisi” in Item 2 of Article 53 of the Organic Law on the Constitutional Court.

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Explanatory notes:

For the purposes of these laws:

Ruling means a procedural decision taken by the Constitutional Court with regard to admissibility of the filed case to the subsequent substantial review.

Decision means a final judgement delivered by the Constitutional Court after the substantial review of the case

Conclusion means a final judgement taken by the Constitutional Court following the review of the case filed under Item “h” of the Organic Law on the Constitutional Court.