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

# JOINT OPINION

# OF THE VENICE COMMISSION
# AND
# THE DIRECTORATE OF HUMAN RIGHTS (DHR)
# OF THE DIRECTORATE GENERAL OF HUMAN RIGHTS
# AND RULE OF LAW (DGI)
# OF THE COUNCIL OF EUROPE

# ON THE DRAFT LAW
# ON AMENDMENTS TO THE ORGANIC LAW
# ON GENERAL COURTS

# OF GEORGIA

**Adopted by the Venice Commission**
**at its 100th Plenary Session**
**(Rome, 10-11 October 2014)**

**on the basis of comments by:**

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## I. Introduction

1. In a letter dated 14 May 2014, the Minister of Justice of Georgia requested the opinion of the Venice Commission on the draft law on Amendments to the Organic Law on General Courts of Georgia (hereinafter, "the draft law") (CDL-REF(2014)021).

2. Mr. Johan Hirschfeldt (Sweden) and Ms. Slavica Banič (Croatia) acted as rapporteur on behalf of the Venice Commission.

3. Mr. René Verschuur (the Netherlands) analysed the draft amendments on behalf of the Directorate of Human Rights ("the Directorate" or "DHR").

4. On 30 June and 1 July 2014, a delegation of the Venice Commission accompanied by the DHR expert visited Tbilisi and held meetings with the Deputy Minister of Justice, members of the Parliament and of the High Judicial Council, the President of the Supreme Court, members of the Association of Judges and several NGOs. The Venice Commission and the DHR are grateful to the Georgian authorities and to other stakeholders for the excellent co-operation during the visit.

5. This Joint Opinion is based on the English translation of the draft law, which may not accurately reflect the original version on all points. Some of the issues raised may therefore find their cause in the translation rather than in the substance of the provisions concerned. The Venice commission and the Directorate are thankful to the Georgian authorities for having provided also a translation of the full version of the current Organic Law on General Courts (hereinafter, "the Organic Law). They observe that there is discrepancy between the translation of the provisions subject to amendment which were communicated for review and the translation of these provisions within the full versions of the Law. Therefore, the full version of the Organic Law is used only for the understanding of the legal context of the amendments under review.

*6.* This joint Opinion of the Venice Commission and the Directorate, which was prepared on the basis of the comments submitted by the experts above, was adopted by the Venice Commission at its 100th Plenary Session, in Rome (10-11 October 2014).

## II. Background

7. On 27 June 2014, the Georgian authorities sent to the Venice Commission an "Explanatory Note" on the draft Law on Amendments to the Organic Law on General Courts, providing some explanations on the background to and the purpose of the said amendments.

8. According to the Explanatory note, the draft law aims to introduce increased guarantees for more independence and impartiality of the judiciary as well as for improving some imperfections existing in the current legislation.

9. One of the most important aspects of the amendments seems to be the determination of a minimum number of judges sitting in the Supreme Court. It is explained in the Explanatory Note that the Supreme Court of Georgia, unlike the Constitutional Court or other constitutional bodies, is the unique body whose composition is determined not by the Constitution or in legislative provisions, but by itself (the Plenum of the Supreme Court in Article 15(1) of the Organic Law on General Courts). The minimum number indicated in the draft amendment law is 28, whereas the current number of Supreme Court judges is 14. According to the Explanatory Note, the increase in the number of Supreme Court judges, is due to the increased role of the Supreme Court in particular as a result of the draft

amendments to the Codes of Administrative, Civil and Criminal Code which aim at broadening the admissibility criteria of cassation appeals before the Supreme Court[1] (Section IV B (1) of the present Opinion).

10. The draft law introduces also important amendments to the statute of Court chairpersons (appeal and district courts). It excludes the authority of the High Council of Justice in the appointment of court chairpersons who shall be elected by the judges of the court from among the judges of the same court (draft art. 23(6) and 32(1)). Also, concerning the case distribution system, the draft amendment law proposes the repeal of the Law on Distribution of Cases and Assignment of Authorities to Other Judges in General Courts[2] and introduces an electronic case distribution system (Section I of the present Opinion). It is also explained that the newly introduced provisions on assignment of a judge to another court, which are to replace the provisions of the above mentioned Law to be repealed with the entry into force of the amendments, creates more guarantees for judges in respect of judicial assignments (Section D of the present Opinion).

11. During the meetings held in Tbilisi, several aspects of the current system of appointment of judges were criticised. It appears from the discussions that the current practice of the High Council of Justice on collecting information on candidates for judges does not provide for sufficient guarantees for the candidates in terms of personal data protection and is not clear as to the aspects of the procedure of collecting information, such as the acceptable sources of information, the body entitled to collect information, and the modalities of archiving and protecting the information obtained. The Explanatory Note provided by the authorities explains that the draft law also aims at remedying those issues in the appointment system: draft Articles $35^1$-$35^3$ set rules for search for information on candidates for judges, determine the authority competent to collect information on candidates, regulates situations of conflict of interest between the evaluator (member of the High Council) and the candidate for judicial office and introduce the possibility of appeal against the decisions of the High Council of Justice refusing appointment (See Section IV E(4) and (5) of the present opinion).

12. According to the Explanatory Note the draft amendments also aim at ensuring more transparency of the work of the High Council of Justice, since the draft article 49(1) provides that various information about the decisions made by the High Council, changes in its composition, its agenda shall be posted on the web-page of the High Council (Section IV H (2) of the present Opinion).

13. In its Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia[3], the Venice Commission criticised the probationary periods of "not more than 3 years" for judges, which it considered difficult to reconcile with the principle of the independence of the judiciary and recommended removing this proposal from the draft amendments to the Constitution. Despite the strong criticism in this Opinion, it appears that the probationary periods for judges were maintained in Article 86 (2) of the Constitution and with the amendment of Article 36 of the Organic Law on General Courts in November 2013 (which is not subject to the present Opinion), these periods were also introduced in the Organic Law. Several articles of the draft amendment law refer to those probationary periods (see Section IV C of the present Opinion).

[1] CDL-REF(2014)023, Amendments to the administrative procedure code - Amendments to the civil procedure code - Amendments to the criminal procedure code of Georgia.
[2] See, CDL-REF(2014)021
[3] CDL-AD(2010)028, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, adopted by the Venice Commission at its 84th Plenary Session (Venice 15-16 October 2010), paras. 85-91.

## III. Standards

14. Independence, impartiality, integrity and professionalism are the core values of the judiciary. The draft law under examination aims at improving some aspects of the internal independence and efficiency of the judiciary. The Venice Commission and the DHR will examine the draft amendment law in the light of international standards on the independence of the judiciary, as in particular reflected in:

- Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, "ECHR") and the case-law of the European Court of Human Rights (hereinafter "ECtHR");

- Judicial Appointments, Report adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007) (CDL-AD (2007)028);

- Report on the Independence of the Judicial System Part I: the Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010);

- Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to Member States on Judges: independence, efficiency and responsibilities (which replaces the Recommendation Rec (94)12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges);

- The European Charter on the Statute for Judges (adopted at the multilateral meeting on the statute for judges in Europe, organized by the Council of Europe, between 8-10 July 1998);

- Opinion no. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges;

- Opinion no. 3 (2002) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality;

- Opinion no. 10 (2007) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society;

- The Bangalore Principles of Judicial Conduct, 2001, as revised at the Roundtable Meeting of Chief Justices held in the Peace Palace, The Hague, November 25-26, 2002;

- Consultative Council of European Judges, Magna Carta of Judges (Fundamental Principles), Strasbourg, 17 November 2010);

- United Nations Basic Principles on the Independence of the Judiciary endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

## IV. Analysis

### A. Independence of judges (draft Art. 7(1))

15. In its above-mentioned Report on the Independence of the Judicial System (Part I), the Venice Commission stressed that while the "external independence" shields the judge from influence by other state powers and is an essential element of the rule of law, the internal independence ensures that a judge takes decisions only on the basis of the Constitution and laws and not on the basis of instructions given by high ranking judges. The general principle that "judges are only subject to law" enshrined in several constitutions, protects the judges against undue *external* influence but is also applicable within the judiciary (internal independence): subordination of judges, for instance, to court presidents in their judicial decision making activity is a clear violation of this principle[4]. The Article 84 § 1 of the Georgian Constitution is in line with this standard[5].

16. The draft Article 7(1), aiming at strengthen the integrity of the judge and the judicial independence, does not differ in its essence from the existing provision. However, the wording of the draft provision is not exempt from ambiguity. It is not clear for instance what is meant by the terms "beyond the authority under the procedural law". This clause could be interpreted as limiting the independence of the judge. The clear wording of the constitutional provision (Art. 84) should be followed. In addition, Article 84, unlike the current and draft versions of Article 7(1), states also that "any pressure upon the judge (…) shall be (…) punishable by law" and reflects better the recommendation of the Committee of Ministers that "[t]he law should provide for sanctions against persons seeking to influence judges in an improper manner"[6].

### B. The Supreme Court

#### 1. Number of the Supreme Court judges (draft Art. 15(1))

17. The current version of Article 15(1) confers on the plenum of the Supreme Court the authority to determine the number of the Supreme Court judges while the Article 90 of the Constitution provides that the judges of the Supreme Court shall be elected for a period of not less than 10 years by the Parliament at the suggestion of the President of Georgia[7]. Currently, the number of Supreme Court judges is 14. In contrast, the draft article 15(1) sets a minimum number of Supreme Court judges (28 members) and gives the plenum the power to make a justified recommendation to the President of Georgia concerning the candidates to be elected to fill this vacancy, in order to increase the number of judges in case of growth of

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[4] In a similar vein, the Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities provides in its point 5 that" Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts". See also, UN 1985 Basic Principles on the Independence of the Judiciary (Point 2 – Independence of the Judiciary) and the Bangalore Principles of Judicial Conduct, 2002, point 1.1 (independence).

[5] "*A judge shall be independent in his/her activity and comply with the Constitution and law only. Any pressure upon the judge or any interference in his/her activity in order to influence his/her decision making shall be prohibited and punishable by the law*."

[6] Recommendation CM/Rec (2010)12 of the Committee of Ministers, para. 14. See also the Recommendation No. R (1994)12 of the Committee of Ministers to member states on the independence, efficiency and role of judges, adopted by the Committee of Ministers on 13 October 1993, Principle I.2.d).

[7] This appointment procedure was criticised by the Venice Commission in its Final Opinion on the Draft Law on Constitutional Amendments and Changes to the Constitution of Georgia, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010) (CDL-AD(2010)028), para. 86-87. The Commission recommended the extension of life tenure to Supreme Court judges; it also considered that the requirement that all judges of the Supreme Court have to be proposed by the President did not seem to be a good mechanism for guaranteeing their independence and that it would be preferable to transfer the right to propose candidates to the High Council of Justice.

workload and to avoid delay in legal proceedings. The President presents those candidates to the Parliament and proposes their election as Supreme Court judges.

18. It appears from the meetings held in Tbilisi that this amendment is controversial. While some interlocutors deemed this amendment to be a positive development given the need for measures to prevent excessive delay in proceedings[8], some others claimed that the number of Supreme Court judges should be determined by the Constitution, in order that the Parliament will not be able to easily change this number, for the sake of independence of justice. The President of the Supreme Court was of the view that the current workload of the Supreme Court does not justify an increase of the number of the Supreme Court judges by 100 per cent.

19. The Venice Commission and the Directorate consider that the appropriate body to make the ultimate assessment on the number of Supreme Court judges and of the need for more judges is usually the legislator or the High Council of Justice, given that the choice depends, *inter alia*, on the available budgetary means, which cannot be determined by the Supreme Court judges. It is nevertheless highly recommended that the legislator takes into consideration the opinion of the Supreme Court in the legislative process, for the benefit of the accuracy of the assessment made by the legislator[9].

20. The Venice Commission and the Directorate observe however that, although the draft amendment limits the current power of the Supreme Court in the determination of the number of judges, it still leaves strong power of initiative to that court in this process, since the first assessment concerning the need to increase the number is made by the Supreme Court which subsequently presents a number of candidates to the President of Georgia with a "justified recommendation".

21. The important position of the Supreme Court in the proposed system requires that certain safeguards are foreseen for avoiding possible conflict among the three powers involved in the procedure. For instance, in cases where the President of Georgia does not propose to the Parliament the number of candidates recommended by the Supreme Court or the Supreme Court refuses to present candidates to the President, despite the willingness of the Parliament to increase the number, or presents less candidates than the number expected by the Parliament, the latter, despite its overarching capacity to assess the budgetary means, will be prevented from using its power to increase the number of judges and more generally, its faculty to adjust the number of Supreme Court judges to the needs[10].

22. It is true that there is no indication in Article 90 of the Constitution, or in draft Article 15(1) of the Organic Law, which would prevent the Parliament from electing less judges than the number proposed by the Supreme Court and subsequently by the President, on the basis of its own assessment concerning the budgetary means. But this point is not clearly indicated in the draft amendments, or in the Constitution. In order to overcome these problems, Article 90 of the Constitution should be amended in line with the recommendations made in the Final Opinion on the Draft Law on Constitutional Amendments to the Constitution of Georgia[11].

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[8] During the meeting with the representatives of the High Council of Justice, it was also emphasised that the Association Agreement signed between Georgia and the European Union requires measures against the excessive delay in court proceedings.

[9] See, Point 9 of the Consultative Council of European Judges, Magna Carta of Judges (Fundamental Principles), Strasbourg, 17 November 2010) which provides "[t]he judiciary shall be involved in all decisions which affect the practice of judicial functions (organisation of courts, procedures, other legislation).

[10] Apart from its faculty to modify the minimum number in Article (15)1 of the Organic Law each time the need to increase the number arises.

[11] CDL-AD(2010)028, paras. 86-87.

23. The Venice Commission and the Directorate recommend that the draft amendment provides for some safeguards for avoiding possible conflicts among the three powers involved in the procedure. In this respect, account should be taken of the fact that the legislator is better placed to assess the financial implications of an increase in the number of judges and the budgetary means at disposal.

### 2. Composition of the Plenum of the Supreme Court (draft Art. 18(1))

24. The draft amendment proposes to eliminate the chairpersons of appeal courts from the composition of the plenum[12]. The Venice Commission and the Directorate consider this draft amendment as a positive step since they see no reason for the membership of appeal courts' presidents to the plenum of the Supreme Court.

25. The draft article seems to refer to "chairperson" instead of "chairman" of the Supreme Court as in the current version, at least in the English translation. This amendment is welcome if such a neutral language is also used in the original version of the draft article. However, the same neutral language should then be used throughout the rest of the article and the first deputy chairman should be referred to as "first deputy chairperson".

### 3. Dismissal of a member of the Disciplinary Chamber of the Supreme Court (draft Art. 19(2))

26. According to the draft article, "a member of the Disciplinary Chamber shall be dismissed by the Chairman of the Supreme Court with the consent of the Supreme Court Plenum." The Venice Commission and the Directorate observe that the Chairman of the Supreme Court is also chairman of the High Council of Justice[13] with among others, its tasks in disciplinary matters. The draft Article 19 (2) gives the Chairman yet another task in the same matter and raise concerns with a lots of powers allocated on one single function/person.

27. The task to be a member of the Disciplinary Chamber is a usual judicial task (i.e. to administer justice in one of the areas of law) for a Supreme Court judge and is of same importance as the ordinary judicial tasks. Therefore, it is not clear why there should be a special provision of dismissal of a member of the disciplinary board. It is understood that a dismissal from the specific task as a member of the Disciplinary Chamber does not mean a dismissal from the office as Supreme Court judge. Still however, considering also the constitutional position of the Supreme Court Chairman, such a system obviously seems problematic in the light of the principle of the independence of the judge. Since the Disciplinary Chamber member is a judge, dismissal can only be the consequence of his/her possible disciplinary liability.

28. Lastly, although consent by the Plenum is necessary for this action, a simple majority for the consent is not a sufficient safeguard for the independence of the judge and should be higher (i.e. a qualified majority).

29. The Draft amendment does not provide for any criteria and does not foresee any procedure for dismissal, which would allow the judge to refute any allegations. The Venice Commission and the Directorate recommend removing this provision. Any dismissal would have to be subject to clear and objective criteria set out in the draft article and a transparent procedure must be followed.

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[12] According to the current version of this Article, the plenum of the Supreme Court shall be composed of the Chairperson of the Supreme Court, the first Deputy Chairperson and the Deputy Chairpersons of the Supreme Court, the members of the Supreme Court and the chairpersons of courts of appeal.

[13] Article $86^1$ (2) of the Constitution and Article 47(2) of the Organic Law on General Courts.

### C. Appointment of judges for a definite term – Probationary periods (draft Art. 23(5), 23(6), 30(4), 32(1), 37(1) and 44(3))

30. The Venice Commission and the Directorate observe that the above mentioned articles, for instance the provision in the draft article 23(6) "*unless a judge is appointed for an unlimited term, he/she shall be appointed as a chairperson/deputy chairperson [of the Court of Appeal] within the term of his authorities*", seems to refer to the appointment of judges for a definite term. In its Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, the Venice Commission strongly criticized probationary periods for judges introduced by the Article 86 § 2 of the Constitution and recommended removing the proposal for a trial period for judges[14].

31. The Venice Commission and the Directorate deplore that, despite strong criticism based on the principle of independence of justice, the probationary period for judges is maintained in Article 86 § 2 and with the introduction of the paragraphs $4^{1-3}$ to Article 36 of the Organic Law on General Courts, which are not subject of the present amendment, a three years probationary period before life-time appointment was also introduced in the Organic Law. Several draft articles of the Organic Law refer to definite term appointments for judges as set out in Article 36 of the Organic Law and Article 86 § 2 of the Constitution.

32. The Venice Commission and the Directorate reiterate that setting probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way[15]. They recommend the removal of the trial (probationary) period for judges from the Constitution and the Organic Law, and of the references to the probationary period from the draft amendments. In order to identify suitable candidates, candidate judges could rather assist sitting judges as trainees. They would prepare judgments which would be adopted under the authority of a judge with permanent tenure.

33. Lastly, it appears from the wording of some draft provisions, such as the draft articles 23(5) or 32(1)[16]) and from the information received during the visit in Tbilisi, that a judge with a time-limited appointment (on probation) might even be elected as court chairperson (chairing thus judges with life tenure). However, the different nature of the tasks of a judge on probation period and of the judge elected as court chairperson should be taken into account. Such a possibility could give judges and the public a wrong signal about the importance of constitutional values such as the principle of irremovability of judges. Thus, if the probationary periods for judges were to be maintained in the Georgian legal order, the Venice Commission and the Directorate recommend to remove the possibility of a judge on probation to be elected as court chairperson.

### D. Assignment of a judge to another court/sending on mission (draft Art. 30(5) and $37^{1}$ (3-6))

34. Draft article 30.5 enables the High Council of Justice, at the suggestion of the chairperson of a court in order to avoid delay in the administration of justice, to assign a judge to another court to consider a case. According to draft Article $37^{1}$ (3), "*if necessary and if it is in the interest of justice, the High Council of Justice may make a grounded decision, without the judges consent, on sending the judge on mission to a court who exercises his/her authorities in the court located nearby*".

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[14] CDL-AD (2010)028, paras. 85-91. Similar provisions have been criticized by the Venice Commission in the context of other legal systems. See, e.g., Opinion on the Draft Constitutional Amendments Concerning the Reform of the Judicial System in "The Former Yugoslav Republic of Macedonia", CDL-AD(2005)038, adopted by the Venice Commission at its 64th Plenary Session (Venice 21-22 October 2005), paras. 22-29.

[15] CDL-AD(2010)028, *ibid.*

[16] "Unless a judge is appointed for an unlimited term, he shall be appointed [as court or chamber president] within the term of his/her authorities".

35. The requirements of the Recommendation CM/Rec (2010)12 of the Committee of Ministers, which states in its para. 52 that "[a judge] should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organization of the judicial system" should be taken into account. The European Charter on the Statute for Judges confirms this approach in its para. 3.4 and states that the transfer is only possible in case of disciplinary sanction, lawful alteration of the court system or in case of a temporary assignment to reinforce a neighbouring court, the maximum duration of such assignment being strictly limited by the statute.

36. Therefore, the Venice Commission and the Directorate consider that such assignment/sending on mission should only be possible under strict criteria clearly identified in the law, for instance, the number of cases at the receiving court, the number of cases at the sending court, the number of cases dealt with by the judge who is being assigned. Vague criteria as "in the interests of justice" contained in the draft Art. $37^1$(3) may not be considered as "strict criteria" as required by the above-mentioned standards. Also, the maximum duration of the assignment or the mission should be indicated in the law.

37. In order to avoid the breach of the principle of irremovability, precise conditions and very clear and objective regulations are required. In this respect, the art. $37^1$ (3) which sets out that the judge to be sent on mission to other court shall be identified by lot, while unusual, has the merit of avoiding discretion.

38. If the lot system is to be maintained, it is to be pointed out that the draft provision is not clear on whether or not such a lot procedure is only applied when there is no judge willing to be transferred to other court. Also, the draft provision is not clear as to from which "court located nearby" the judge to be sent on mission will be selected and as to which judges will participate to the drawing of the lot (surrounding courts? Courts located nearby?).

39. Further, the draft Article $37^1$(3) states that the judge identified by lot shall be given the opportunity to "express in writing his/her opinion on [the] mission". The draft provision provides that this opinion is annexed to the decision of the High Council of Justice on judge's mission, but does not provide for any explanation concerning the effects of this opinion. Whether a new drawing of lots will be organised in case the opinion of the judge is accepted by the High Council of Justice is not dealt with in the draft provision.

40. Lastly, draft Article $37^1$(6) provides that if required, the judge sent on mission to another court shall, at the same time exercise his/her duties of judge in the original court. This seems unrealistic and the competent authority to decide whether this is required is not clearly indicated in the draft provision. Clarity should also be provided as to how coordination will be ensured with regard to the workload of the judge in two positions.

41. The Venice Commission and the Directorate reiterate the need for strict criteria and very clear and objective regulations in this field having regard to the principle of irremovability of judges. The draft provisions should be amended in order to improve the clarity and objectivity of its provisions in the light of the above considerations.

42. During the meetings in Tbilisi, concern was expressed that in practice the specialisation of judges is not respected during the assignment procedure and civil judges are often transferred in criminal or administrative branches and vice versa. In addition, the delegation was informed that disciplinary charges have been brought in the past against judges transferred to a different branch for neglecting their duties. In the light of these concerns, the Venice Commission and the Directorate stress the importance of the respect of the specialisation of judges in the transfer procedure and recommend that this requirement be clearly indicated in the draft provisions.

43. According to draft Article $37^1$ (4), one and the same judge may be sent on mission without his/her consent only twice. During the meetings held in Tbilisi, the representatives of the High Council of Justice suggested that the transfer without consent should only be possible once. The Venice Commission and the Directorate support this approach which provides for a better guarantee to the principle of irremovability.

44. Finally, the judge should have a possibility to appeal against such assignment/sending on mission.

### E. Appointment of judges (draft Art. 34 to $35^3$)

#### 1. Preliminary remarks

45. Selection and subsequent career of judges are of primary importance according to all international documents concerning the statute of judges. The Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe[17] sets out that the decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

46. The Venice Commission's Report on the Independence of the Judicial System (Part I)[18] further states that "transparent procedures and a coherent practice are required when [the appointment criteria] are applied". "Merit being the primary criterion, diversity within the judiciary will enable the public trust and accept the judiciary as a whole. While judiciary is not representative, it should be open and access should be provided to all qualified persons in all sectors of society".[19]

47. The Venice Commission and the Directorate welcome the drafters' intention to achieve a higher degree of transparency in the selection of judges enabling thus the development of judiciary in a professional and independent manner. However, some solutions raise serious issues in terms of compliance with the international standards on the judiciary and human right protection.

#### 2. Appointment criteria (draft Art. 35(12))

48. The appointment criteria of judges are not set up in the draft amendment law[20]. According to draft article 35(12) "conditions of a competition and the selection criteria of judges (…) shall be determined by decision of High Council of Justice".

49. During the meetings held in Tbilisi, several interlocutors from the civil society deplored that the selection criteria of judges are not indicated in the Law, which would open the way to political considerations in the appointment procedure.

50. Apart from the newly introduced possibility of appeal against the decisions of the High Council of Justice refusing appointment (draft art. $35^3$ – see paras. 62-63 of the present

[17] Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (17 November 2010), paras. 44-45.
[18] Report on the Independence of the Judicial System, Part I: The Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), paras. 23-27.
[19] *Ibid.* para. 32. See also, Report on Judicial Appointments, adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), para. 48.
[20] Apart from the mere indication in art. 34(1) of the Organic Law that "[a] competent citizen of Georgia of 30 years of age who has a higher legal education with at least a master's or equal academic degree/higher education diploma, at least five years of working experience in the specialty, has the command of the official language, has passed a judge's qualification exam, has completed a full training course of the High School of Justice and is entered on the Justice Trainee Qualifications List may be appointed (elected) as a judge."

Opinion), the draft provision fails to provide sufficient guarantees that the above mentioned principles concerning transparent and merit-based selection system will be taken into account by the High Council of Justice in the practice. The Venice Commission and the Directorate recommend that the selection criteria of judges be clearly indicated in the draft provision to ensure that the objective criteria, such as professional skills, capacities and integrity of judges prevail over political considerations in the selection system.

### 3. Statement on Property (draft Art. 35(6))

51. Draft Article 35(6) obliges the candidates for judge's office to make a property statement to the High Council of Justice and to authorise the latter to take the data in the statement into account when deciding on appointment. First, the statement of property by a candidate is not relevant at this stage, since only an increase of property during the mandate of the judge should trigger further investigation into possible corruption. It might also raise the issue of discrimination on the basis of the social, i.e. property status[21]. In this respect, special attention should be paid to draft Art. 35(9) which states that during the competition, equality for candidates for judges shall be ensured irrespective, among others, of their social status.

52. Furthermore, the possibility of the "structural unit" of the High Council of Justice to collect information on the financial status of the candidates (draft Art. $35^1$) is also problematic for the same reasons and might jeopardise the right of every citizen to hold any public office protected by the Article 29 of the Georgian Constitution.

### 4. Search for information on candidates for judges (Draft art. $35^1$)

53. According to draft Article $35^1$(1), a "structural unit" of the High Council of Justice shall, before conducting the interviews, search for information on the candidates. Paragraph 5 of this draft article enables the structural unit to contact referees of the candidates, their former employees and colleagues, administration and professors of their institutes, banking and other financial institutions and also "the agencies that might keep the information on previous conviction, administrative and disciplinary offences, and disputes of the candidates".

54. First, generally, the investigation on such a wide range of aspects, including the financial status of the candidates, goes beyond the search for information on professional skills of the candidates and risks violating the right to privacy of the candidates. In this respect, there seems to be no justification for unlimited access or any access at all to banking and other financial institutions.

55. The structural unit of the High Council of Justice provided for in draft Article $35^1$(1) seems to be an investigative body with very wide and discretionary powers. It is absolutely free to search all possible information on candidates, without almost any restriction, since these research powers, including those concerning personal details, are covered by the candidate's consent (draft Art. 35(4)). First, it is by no means clear in the draft law how the structural unit of the High Council of Justice will be composed and which working methods will be used. For dealing with highly confidential information, special requirements for the members of such a unit must be laid down in the legislation and also the conditions for their appointment/selection by the High Council and their responsibilities must be made clear.

56. Second, although the consent of the candidate is necessary for that the "structural unit" of the High Council of Justice has access to his/her personal details, in practice, it seems not to be possible for a candidate to refuse this consent.

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[21] According to para. 44 of the Recommendation CM/Rec (2010)12 of the Committee of Ministers, "[t]here should be no discrimination against judges or candidates for judicial office on any ground such as (...) property (...) or other status." See in the same vein, point 10 of the 1985 United Nations Basic Principles on the Independence of the Judiciary.

57. The information on the candidates acquired as a result of information search shall be confidential (draft Art. $35^1$(4)), which is positive. However, the right to access of the candidate to his/her file is regulated in draft Art. $35^1$(10) in a rather vague form. For instance, the candidates may have access to their files at least five days before their interviews, but the draft provision is not clear on whether or not the access is also possible after the interview. In the negative, the restriction can be considered as interference in the right to respect for private life (access to personal data) and should be justified as perceiving a legitimate aim and as "necessary" in a democratic society in the sense of Article 8 ECHR.

58. The draft Article $35^1$(11) provides for the possibility for the candidates to apply to the High Council of Justice for the cancellation of the information acquired about them. The draft provision is not clear as to the consequences of such a request by the candidate. It is not clear whether cancellation means removal of the information, or whether it should be understood as a simple registration of the candidate's objection concerning the acquired information.

59. According to Article $35^1$(12) the information on candidates shall be stored for no less than five years. It is not clear to the Venice Commission and the Directorate why information storing is needed once the selection procedure has been terminated. In any event, a maximum period for data retention, lower than five years, should be introduced in the draft provision.

### 5. Appeal against decisions of the High Council of Justice refusing appointments (draft Art. $35^3$)

60. The draft provision gives a right to an "interested person" to challenge the decision on refusing the appointment. The "interested person" seems to be the candidate whose candidature has been refused. This is in line with paragraph 48 of the Recommendation CM/Rec(2010)12 of the Committee of Ministers which states that "an unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made". However, the draft provision seems to be narrow and excluding the possibility of the unsuccessful candidate to challenge the decision to select another –successful- candidate. During the meetings held in Tbilisi, the representatives of the High Council of Justice underlined the ambiguity of the term "interested person" and considered that its meaning should be clarified in the practice. However, rather than the practice, the law should provide for clear indication concerning the criteria for legal standing against such decisions of the High Council of Justice.

61. Also, it is not clear in the draft provision which court has jurisdiction for the appeal against a decision of the High Council refusing appointment. During the meetings held in Tbilisi, the delegation was informed that this appeal is possible before the general courts. If this is the case, it is recommended that this be clearly indicated in the draft provision.

## F. Promotion of judges (draft Art. 41(1) and draft Art. 37)

62. Draft Article 41(1) states that the promotion criteria for judges shall be developed by the High Council of Justice. Given the importance of this matter, the promotion criteria of judges should be clearly indicated in the draft law.

63. Also, the draft article 37 provides for a possibility to appoint a judge to a superior instance court without competition, if he/she exercised the authorities of a judge in a district court for at least five years according to draft article 41(1). However, Article 41(2) of the Organic Law provides that a judge may be appointed earlier than the term determined in para. 1 (five years), if he/she has made a special contribution to the development of law, formulation of uniform judicial practice and fast and effective administration of justice, also if he/she demonstrated high judicial skills during the exercise of judicial power. These

provisions confer to the High Council of Justice excessive discretionary power in the promotion of judges without competition, bearing in mind that the promotion criteria for regular promotion should also be developed by the High Council of Justice (see para. 62). It appears thus that the draft law provides for two different promotion procedures for judges: with and without competition. In the first procedure, the High Council, according to draft article 41(1), shall develop the criteria of promotion itself, and in the second procedure (without competition), the High Council should determine whether the judge has made a special contribution to the development of law according to Article 42(2).

64. The Venice Commission and the Directorate consider that a competition should be the rule for all promotions of judges in order to prevent any abuse. Also, there is the risk that the promotion procedure without competition negatively affects the development of regular promotion procedure and of its criteria which should be determined and developed by the High Council, as required by Article 41(1) of the Organic Law.

65. It is recommended that the promotion procedure without competition be reconsidered by the authorities and if it is to be maintained in the draft, its exceptional character should also be made clear in the draft law.

### G. Judges in reserve (draft Art. 44)

66. Several articles of the draft law refer to a category of "judges in reserve". The position of a judge in reserve has been discussed during the meetings held in Tbilisi. It is understood that, by virtue of Article 44(1) of the Organic Law on General Courts, in case a court is liquidated or the judge's office is made redundant, he/she may be assigned, by his/her prior written agreement, to discharge the duty of a corresponding or a lower court. According to draft Article 44(2) and the current version of this Article, if the judge is not assigned to exercise authorities of a judge of the other court or if he/she refuses the assignment, he/she shall be dismissed from office and based on his/her written consent, shall be placed in reserve, for three years according to draft Art. 44(2).

67. In case there is a vacancy in the district court or there is drastic growth of pending cases, judges in reserve may be offered to exercise judge's authorities.

68. During the visit in Tbilisi, the rapporteurs were informed that the judges in reserve do not have the possibility to work elsewhere and their salary only amounts to one tenth of the full judge salary. It appears further that the approach to this category of judges is rather confusing and not structured and their statute guarantees almost no security. Moreover, it is necessary to determine clearly the role of these judges since a judge in reserve may also be eliminated from the reserve as a disciplinary sanction.

69. On the other hand, the clause "as determined by the legislation of Georgia" in draft Article 44(2) in relation to the procedure of placement in reserve is incompatible with the principle of legal certainty. If there is such legislation, the law should clearly set out where such regulations can be found rather than making a vague reference.

70. For these reasons, the Venice Commission and the Directorate recommend the removal of this category of judges from the draft law.

## H. High Council of Justice

### 1. Dismissal of a member of the High Council of Justice (draft Art. 48(2))

71. Draft Article 48(2) provides that members of the High Council of Justice shall be dismissed from office by the Parliament, Conference of the judges[22] or the President respectively. According to the draft provision, in the presence of any circumstances laid down in Article 48(1)(h-k) of the Organic Law[23], the Parliament of Georgia or Conference of judges shall vote for a decision on terminating authorities of a member of the High Council of Justice.

72. First, the Venice Commission and the Directorate observe that the authorities indicated in the Draft article, are also, according to Article 47(2) of the Organic Law, appointing authorities. It seems that the idea which lies behind the draft provision is that the appointment of a post holder by a state body necessarily entails the competence for dismissal by the same body. However, the guarantees for dismissal of post holders need to be higher than those for appointment. In particular, it is essential that dismissal due to offences committed by the post holder be investigated by an independent body and not by a political organ as the Parliament or the President. It is those independent bodies or courts which should determine whether the allegations against a post holder are founded. Consequently, it should be that decision that leads to dismissal and not the decision of a political organ. Such dismissal should be distinguished from votes of no-confidence, which Parliament can take against certain state officials, like ministers (political responsibility). A vote of no-confidence is not appropriate for judicial officials who do not have a political responsibility before a representative body[24].

73. Secondly, although the draft article mentions the President of Georgia among the authorities competent to dismiss the members of the High Council of Justice (first sentence), the procedure described in the rest of this draft concerns only a vote of dismissal by the Parliament or the Conference of Judges on the basis of grounds laid down in Article 48(1)(h-k) (see footnote 24). The draft provision does not provide for any procedure or any grounds on the basis of which the President may dismiss a member of the High Council of Justice.

74. The Venice Commission and the Directorate recommend that, if the draft article is to be maintained, it provides clear provisions, in line with the applicable standards, concerning the procedure of dismissal of a member of the High Council by the President, and on the grounds on which such a dismissal decision may be taken by the President. The grounds for dismissal should be determined by an independent body and a political organ should not have any discretion in these matters.

### 2. Web-page of the High Council of Justice (draft Art. 49(1))

75. The draft articles 49(1)j[1] and 49(1)j[2] provide that various information about the decisions made, changes in the composition of the High Council, competitions announced and the sessions and agenda of the High Council, shall be posted on the web-page of the Council. The Venice Commission and the Directorate welcome this development as a positive step in terms of transparency. The Article 49 of the Organic Law concerns the powers of the High

[22] According to Article 63 of the Organic Law on General Courts, the conference of judges is a self-governing body of Georgian common court judges. It shall consist of the Supreme Court, appellate and district (city) court judges. The Conference of Judges of Georgia shall protect and strengthen the independence of the judiciary, promote increased confidence and faith of the people in the courts and enhance reputation of judges.

[23] i.e. "inability to discharge powers for more than four months a year, systemic non-fulfilment or improper fulfilment of duty or holding an incompatible office or engaging in an incompatible activity, being appointed or elected as a member by an unauthorized body or in violation of the procedure laid down by this Law".

[24] CDL-AD (2014)041 Opinion on the Draft amendments to the Law on the High Judicial Council of Serbia.

Council of Justice whereas posting information on the web-page is rather a procedural issue and should not be listed among the powers of the High Council. If posting information on the web-site falls within the duties of the Secretary of the High Council, it is then recommended that those draft provisions (draft articles 49(1)j[1] and 49(1)j[2]) be removed under Article 51 of the Organic Law.

### I. Automatic distribution of cases (draft Art. 58[1])

76. The draft amendment law, in its article 3, declares invalid the Law on Distribution of Cases and Assignment of Authorities to Other Judges in General Courts and regulates the case distribution in the newly introduced draft Article 58[1]. According to this draft provision, "cases between judges in district courts and the Court of Appeal shall be distributed automatically, through electronic system in the sequential order, meaning distribution of cases based on the sequence of incoming cases and sequence of judges".

77. During the meetings held in Tbilisi, the representatives of an association of judges expressed doubts on the respect of the principle of objectivity by the court chairpersons in distribution of cases among judges in the practice of the current system and welcomed this draft provision as a positive step in ensuring the internal independence of the judiciary.

78. The Venice Commission and the Directorate recall in this respect that, according to the recommendation CM/Rec(2010)12 of the Committee of Ministers, "the allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case". They also recall that the power of court presidents to assign cases among judges involves an element of discretion, which could be misused as a means of putting pressure on judges by overburdening them with cases or by assigning them only low-profile cases[25]. On the basis of these principles, the Venice Commission and the Directorate welcome the inclusion of the case distribution system in the Law on General Courts, rather than in a separate law, which makes this Law clearer.

79. However, the draft article 58[1] is very short and provides only that the case distribution shall be made by an electronic system. The existing Law on Distribution of cases and Assignment of authorities to other Judges in General Courts (to be repealed by the draft amendments), in its Articles 4 to 9, provides for detailed technical rules on how cases should be attributed. Such detailed provisions do not exist in draft article 58[1] and it is not clear how the electronic system should operate in the practice. Also, the second paragraph of the draft article, which regulates the case distribution in case the electronic system is temporarily inaccessible, is also drafted in a very concise manner and does not provide for detailed rules on case distribution when the electronic system is out of order.

80. The Venice Commission and the Directorate reiterate that whenever there is an electronic case-attribution system, the rules according to which it operates must be clear and it should be possible to verify their correct application. Ideally, the allocation should be subject to review[26]. The absence of such rules could easily lead to abuse which may jeopardise the internal independence of the judiciary. For these reasons, it is recommended that detailed rules are provided in the draft law on the functioning of the electronic system and on the review of case allocations. The rules laid down in the second paragraph of the draft article, concerning the case-allocation in case the electronic system is out of order, should also be amended in order to provide all technical indications needed, as in the current Law on distribution of cases (articles 4 to 9).

[25] Report on the Independence of the Judicial System, Part I, paras. 79-81.
[26] *Ibid.*, para. 80 in fine.

## J. Court chairpersons (appeal and district courts)

### 1. Appointment of Appeal Court and District courts chairpersons (draft Art. 23 (6) and draft Art. 32(1) respectively)

81. The draft Article 23(6) and draft Article 32(1), the chairperson of the Court of Appeal and chairperson of a district court respectively "shall be elected for a 3 year term from among the judges of the court (…), by the judges of the same court by secret ballot". In the current system, the chairperson of the court of appeal is appointed from among chamber and investigation panel chairpersons for a term of five years by the High Council of Justice. The chairperson of a district court is appointed from among the judges of the relevant court, (…) for a term of five years by the High Council of Justice.

82. The draft amendments thus introduce two main novelties in the current appointment system of chairpersons of district and appeal courts: the appointment authority of court presidents is not the High Council of Justice anymore and the term of appointment is three years, against five years in the current system.

#### *i. Appointment authorities*

83. During the visit in Tbilisi, the delegation of the Venice Commission and the DHR received a positive feedback from different stakeholders concerning the proposed system of election of court presidents, perceived, in view of the powerful position of court presidents in Georgia, as an important step forward to further guarantee the internal independence of the Judiciary. The local NGOs for their part criticised the current system of election of court president by the High Council and informed the Delegation that the election by secret ballot was an NGO recommendation which was duly taken into account by the Ministry of Justice in the preparation of this draft.

84. The Venice Commission and the Directorate welcome the proposed system of election of court presidents by the judges of the same court by secret ballot which is in line with the requirements of the principle of internal independence of the judiciary[27], as well as the information given by the civil society that their input in this respect has been taken into consideration by the authorities.

#### *ii. Limitation of the term of office of court presidents*

85. The term of office of court presidents which is five years in the current system is reduced to three years in the draft amendments.

86. The limitation of term of office of court presidents is generally considered by the Venice Commission as a means to ensure the internal independence of the judiciary. The Commission previously observed that the possible influence of court chairpersons on individual judges can be diminished by rules and principles prohibiting any pressure on individual judges, but also by limitation of terms of office of these chairpersons[28]. In this context, the limitation of the term of office of chairpersons appears to be a guarantee of independence where the executive authorities have a decisive influence on the appointment procedure for chairpersons. In this latter case, according to the Venice Commission, appointments should be for a fixed term and there should be a limit on possible renewals. The influence of chairpersons may grow ever stronger over a long period of time and renewable terms of office may also substantially jeopardise the independence of a

[27] *Ibid.*, para. 68 and seq.
[28] CDL-AD(2014)021 Opinion on the Draft law on Introducing amendments and addenda to the Judicial Code of Armenia (Term of Office of Court Presidents), adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014).

Chairperson, who may at some point be influenced in his/her work by the desire to be reappointed by the executive[29].

87. In their joint opinion on the draft amendments to the Constitution of Georgia[30], having regard to the fact that the chairs of courts are to be appointed by the President on the nomination of the High Council of Justice, the Venice Commission and the OSCE/ODIHR recommended to specify the terms of office of the chairs.

88. However, a short-term appointment risks undermining courts presidents' possibilities to realise effective leadership and to ensure a solid and strong courts' organisation.

89. Consequently, when assessing the limitation of terms of office of court presidents, the Venice Commission seeks to strike a balance between on one hand the requirement of internal independence of the judiciary, and on the other, the requirement to ensure a solid and efficient courts' organisation, the decisive criteria being the level of influence of the executive authorities in the appointment procedure of court chairpersons[31].

90. In the context of the current opinion, it is to be noted first that whether or not the reappointment of court presidents is possible is not clear in the draft amendments or in the current provisions. It is recommended that immediate reappointment be excluded from the draft law. Further, as analysed above, the appointment of court presidents by the judges of the same court ensures a better guarantee for the independence compared to the current system where court presidents are appointed by the High Council of Justice. However, the Venice Commission and the DHR cannot see the reason why the term of office of court presidents which is five years in the current system, is reduced to three years in the draft amendments. On the contrary, in an appointment system which guarantees better internal independence as the newly proposed one, the court presidents may even have a longer term of office to ensure a solid and strong courts' organisation.

91. Having regard in particular to the proposed appointment system of court presidents, three years term appears rather short. The Commission and the Directorate recommend thus the extension of the term of office of court presidents.

92. Lastly, in the light of the principle of irremovability of judges, it is of great importance that the draft provisions clearly establish that the office of a judge as such is not affected when the appointment as a court president of the same judge expires as a result of the fixed term of office[32].

### 2. Tasks of a district court chairperson (draft Art. 32(3))

93. According to draft Article 35(3), chairperson of a district court shall "take measures to eliminate the systemic reasons for delay in proceedings within the competence". The application of such a provision is a sensitive issue, since "the issue of internal independence arises not only between judges (…) but also between the president or presidium of a court

[29] CDL-AD(2011)012 Joint opinion on the constitutional law on the judicial system and status of judges of Kazakhstan, para. 42.
[30] CDL-AD(2005)003 Joint opinion on a proposal for a Constitutional Law on changes and amendments to the Constitution of Georgia by the Venice Commission and OSCE/ODIHR (Venice, 3-4 December 2004), para. 105.
[31] The Commission recently examined the issue in the Armenian context (CDL-AD(2014)021), where, according to the draft amendments to the Judicial Code of Armenia, the chairpersons of courts are elected by the Council of Justice among the judges of the respective court and are proposed to the President of the Republic who can either accept or reject the proposal. In this context, the Commission found that, although the proposed term of office of four years was not incompatible with the European standards on judicial independence, it was rather short in the Armenian context, even though reappointment is possible, and could affect the judicial work in a negative way.
[32] CDL-AD (2014)021 Opinion on the Draft law on Introducing amendments and addenda to the Judicial Code of Armenia (Term of Office of Court Presidents), para. 28.

and the other judges of the same court (…)"[33]. It follows that the competence of the court chairperson should stay purely administrative and should not interfere with the judicial functions of judges.

94. Draft Article 32(3) g) gives the possibility to a chairperson to take measures determined by the "procedural legislation", against an offender who disturbs the order in the court room, shows disregard of the court or disturbs normal functioning of the court[34]. This provision should be rearranged in a manner as to clearly indicate that the measures set out in the "procedural legislation" may be applied by the judges, and not only by the court chairperson, in case of disregard to the court during a hearing in the courtroom. The draft provision should separate this issue from that of disregard to the court outside a hearing where the chairperson of the court might have the exclusive competence to apply measures according to the general legislation.

### 3. Termination of certain mandates with the enactment of the Draft amendment law (Art. 2 of the Draft amendment law)

95. According to Article 2 (3) of the Draft amendment law, upon enactment of this draft law, the mandate of chairpersons of district courts and courts of appeal and deputy chairpersons of courts of appeal shall be terminated. Article 2(4) terminates in the same manner the mandate of chairpersons of court chambers/court panels/investigation panels and Article 2(5) provides for the reappointment of court managers.

96. The amendments provide no justification for such a wide ranging termination of judicial mandates.

97. The Venice Commission and the Directorate consider that the interest of maintaining the independence of the judiciary and the good administration of justice requires that the judiciary be protected against arbitrary dismissal and interference in the exercise of the functions[35]. Also, although currently the term of office of court presidents is limited to five years from the date of their appointment, it might still be argued that the court presidents had legitimate expectations that their past appointments will not be terminated before the term of five years as set out in the Organic Law[36]. This radical change of court presidents could give the impression that the only reason of the transitional rules is to create the opportunity of such a change, which could undermine public trust in the judiciary.

98. For these reasons, such dismissal of court presidents with the enactment of the amendment law can be justified only if compelling reasons are given. However, it does not appear from the explanatory note provided by the authorities, the meetings held in Tbilisi, and from the draft amendment law itself that the need of the removal of the sitting presidents of these courts from their office is so urgent as to justify such a wide ranging termination of judicial mandates.

99. For these reasons, it is recommended that the Article 2 of the Draft amendment law be removed and the sitting court presidents stay in office until the end of their term.

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[33] *Ibid.* paras. 11-17; CDL-AD (2010)004 Report on the Independence of the Judicial System, para. 73.

[34] "A judge shall maintain order and decorum in all proceedings before the court (…)". See point 6.6 of the Bangalore Principles of Judicial Conduct, 2002.

[35] CDL-AD (2014)021 Opinion on the Draft law on Introducing amendments and addenda to the Judicial Code of Armenia (Term of Office of Court Presidents), para. 47.

[36] In case the court presidents are appointed until retirement age and the termination of their office as a result of the enactment of a new amendment law, the interference in this legitimate expectation is more serious. See CDL-AD (2014)021, *ibid,* para. 49.

## V. Conclusion

100. The Draft law on amendments to Organic Law on General Courts introduces improvements to some aspects of the internal independence and efficiency of the judiciary. The Venice Commission and the Directorate welcome the efforts made by the Georgian authorities towards this aim. In particular, the draft provisions providing for the election of court chairpersons by the judges of the same court and the increased guarantees introduced in respect of judicial assignments as well as the increased transparency of the work of the High Council of Justice are positive developments.

101. However, additional work is required to ensure legal clarity and provide, in several respects, the guarantees needed for the full respect of the principles of independence and irremovability of judges:

- Appointment and promotion criteria for judges should be clearly indicated in the draft law and probationary periods for judges should be removed both from the Organic Law on General Courts and from the Constitution. The competition should be the rule for all appointments and the criteria for assignment of a judge to another court or sending a judge on mission to another court should be clearly specified.

- The investigation powers of the special unit of the High Council of justice should be limited in the light of the right to privacy of the candidates and its composition should be clearly specified in the law.

- The dismissal of a member of the High Council of Justice by the Parliament or the President is to be reconsidered. It is essential that dismissal due to offences committed by the post holder be investigated by an independent body and not by a political organ.

- The provisions providing for the automatic termination of the mandates of court chairperson upon the enactment of the draft amendment law is problematic and should be removed.

102. The Venice Commission and the Directorate remain at the disposal of the Georgian authorities should they need further assistance.