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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

DRAFT ORGANIC LAW

**AMENDING THE ORGANIC LAW
ON COMMON COURTS**

Draft
Organic Law of Georgia amending
Organic Law of Georgia on Common Courts

Article 1. The organic law on common courts (Georgia Legislation Herald, no. 41, 08.12.2009, art. 300) is hereby amended as follows:

1. Article 34¹:

A) Paragraph 7 shall be removed.

B) Paragraph 8 shall be formulated as follows:

“8. High Council of Justice of Georgia, no earlier than 10 days and no later than 20 days from the expiry of the term for review of appeal provided for by paragraph 5 of this Article, shall start public interviews with persons registered as candidates. In 5 business days after expiry of the indicated term for review of appeal, persons registered as candidates shall submit to the Council a certificate issued in accordance with the Georgian legislation confirming the filing of the Asset Declaration Form for Public Officials of Georgia and a certificate about drug examination. The certificate about drug examination submitted by the candidate will be published on the HCOJ website within 2 business days from its submission. If a candidate fails to submit a certificate about filing of the Asset Declaration Form, or a certificate on drug examination within the set timeline, his registration as a candidate will be cancelled”.

C) Paragraph 10 shall be formulated as follows:

“10. Candidates are interviewed individually. Members of the High Council of Justice have a right to ask a question to every candidate. Public hearing is held in accordance with the rule set by the High Council of Justice”.

D) Paragraph 11 shall be formulated as follows:

“11. After completion of interviews with the candidates, before the nearest session of the HCOJ, taking the Article 36³ into consideration, the Council members evaluate the candidates without judicial experience with scores in accordance with paragraph 16 of Article 35¹ of this Law; and the candidates with judicial experience in accordance with paragraph 8 of Article 36⁴ of this Law. HCOJ members also evaluate the candidates in accordance with paragraph 15 of Article 35¹ of this law. At the same time, HCOJ member shall provide written justification for each score given under paragraph 16 of Article 35¹ and paragraph 8 of Article 36⁴, and for each characteristic of integrity under Article 36³ of this law. Name, surname and signature of relevant HCOJ member will be indicated in these assessments and reasonings. This information is available only to the rest of HCOJ members, and the public servants of HCOJ administration authorized by HCOJ Secretary. Revealing this information to third party causes criminal liability.

The scores accumulated by the candidates, reasoning of these scores, evaluations and reasoning of these evaluations provided for under paragraph 15 of Article 35¹ are published on the HCOJ website without providing identity of HCOJ members and instead indicating their conditional identification marks”.

E) Paragraph 12 shall be formulated as follows:

“12. After the completion of the hearing of candidates, the High Council of Justice of Georgia shall, at a nearest session and under the rules established by this paragraph, vote for the candidates to reduce the number of candidates to the number of vacancy announced in the Call for Candidates to be presented to the Parliament of Georgia. If the number of selected candidates is less or equals the number of candidates to be moved to the next stage, they will move to the next stage without voting. Secretary of HCOJ prepares and conveys, before voting, to the Council

members the assessments and reasoning of assessments on each candidate provided for under paragraph 11 of this Article as well as the summarized written information on assessments of integrity and competence criteria of the candidates. There will be a voting on a candidate only if the candidate receives at least 70% of the maximum number of points in competency criteria, and at least 10 Council members considers that the candidate complies with the integrity criteria. At the session of the HCOJ, each Council member shall circle candidates in bulletin but no more than the amount of announced vacancies. Name, surname and signature of the HCOJ member shall be indicated in the bulletin. These bulletins will be placed in a sealed box. Upon the completion of the voting, each member of the HCOJ of Georgia shall present to the HCOJ Secretary the written reasoning of voting on each candidate he/she supported. Name, surname and signature of the member of HCOJ of Georgia will be indicated in this reasoning. Upon the completion of the voting, the box shall be opened in presence of the members of HCOJ of Georgia, and the Secretary of HCOJ of Georgia shall count the votes at a closed meeting of the Council. If a HCOJ member circles more candidates than the number of announced vacancies, the bulletin will be considered void. Upon the completion of the voting procedure, relevant protocol will be filled out and signed by the Secretary of the HCOJ of Georgia. As many candidates with the best result as the number of announced vacancies shall be transferred to the next stage. If the candidates receive the equal number of votes, preference shall be given to a candidate with the highest score given in the assessment provided for under paragraph 11 of this Article; if these scores are same, preference shall be given to a candidate with longer professional working experience. Upon the completion of the voting, the High Council of Justice of Georgia adopts an Ordinance on the voting decision of the HCOJ, indicating those candidates who moved to the next stage and those who did not. A list of the candidates moving to the next stage as well as the protocol provided for under this paragraph, the Ordinance of the HCOJ of Georgia and the reasonings of the HCOJ members shall be published on the website of the HCOJ of Georgia without providing identity of HCOJ members and instead indicating their conditional identification marks. While publishing this information on the HCOJ website, conditional identification mark of each Council member as well as the identity of the candidate supported or not supported by this Council member shall also be provided. Voting procedure provided for under this paragraph is open, meaning that the information on which candidate the member of HCOJ supported or not supported is available only to the rest of HCOJ members as well as the public servants of HCOJ administration authorized by the Secretary of HCOJ of Georgia. Revealing this information to third party causes criminal liability”.

F. Paragraph 13 shall be formulated as following:

„13. Following the publication of the list of candidates according to paragraph 12 of this article, the nomination of candidates for a judge of the Supreme Court to the Parliament of Georgia shall be put to vote individually. A candidate shall be considered nominated if at least two-thirds of the full list of members of the High Council of Justice of Georgia votes for him/her at an open session of the Council. If during the voting, member of HCOJ does not support the candidate whom he/she supported during the voting provided for under paragraph 12 of this Article, the HCOJ member shall provide, upon the completion of the voting, a written reasoning of his/her decision to the Secretary of HCOJ of Georgia. Name, surname and signature of the HCOJ member shall be indicated in this reasoning. The decision of the High Council of Justice of Georgia on the candidates nominated to the Parliament of Georgia for election to the position of a judge of the Supreme Court as well as the justifications of HCOJ members provided for under this paragraph shall be published on the Council's website without providing identity of HCOJ members and instead indicating their conditional identification marks. While publishing this information on the HCOJ website, conditional identification mark of each Council member as well as the identity of the candidate supported or not supported by this Council member shall also be provided. Voting procedure provided for under this paragraph is open, meaning that the information on which candidate the member of HCOJ supported or not supported is available only to the rest of HCOJ members as well as the public servants of HCOJ administration authorized by the Secretary of HCOJ of Georgia. Revealing this information to third party causes criminal liability”.

G. Paragraph 14 shall be formulated as following:

“14. A member of the HCOJ may render dissenting opinion in a written form after any voting provided for under this Article. All dissenting opinions shall be presented to the Parliament of Georgia and published on the HCOJ website. The HCOJ shall also convey to the Parliament of Georgia the information and documentation published on HCOJ website in accordance with paragraphs 11-13 and 15 of this article”.

H) Paragraph 15 shall be formulated as follows:

“15. If the Parliament of Georgia fails to elect a candidate for the position of a judge of the Supreme Court, during two weeks, under the procedure established by paragraph 12 of this article, the equal number of candidates of announced vacancies are selected from the list of registered candidates; and he/she/they will be presented, under the procedure established by paragraph 13 of this article, to the Parliament of Georgia for election to the position of a judge of the Supreme Court. At the same time, publishing of information and documentation on the HCOJ website is made in accordance to the same paragraphs. The procedure established by this paragraph can take place only once”.

2. Article 34² paragraph 1 shall be formulated as follows:

“1. In order to objectively and comprehensively evaluate the candidates to be elected as the Supreme Court Judges, the respective structural entity of the HCOJ defined in the Article 36⁴ paragraph 5 of this law, immediately after the registration of the candidates, starts collecting credible information about these candidates in compliance with the rules set by this law”.

3. New Article 34³ is hereby added to the Law:

“Article 34³. Challenging a High Council of Justice decision.

1. A candidate who participates in the selection of candidates to be nominated to the Parliament for election to the Supreme Court is authorized to challenge the High Council of Justice decision adopted under paragraphs 12, 13 or 15 of Article 34¹ of this Law in the Qualifications Chamber of the Supreme Court if he/she participated on the stage defined by the same paragraph and if he/she considers that:

- a) A member of High Council of Justice was biased during the candidate selection process;
- b) A member of High Council of Justice demonstrated discriminatory approach during the candidate selection process;
- c) A member of High Council of Justice exceeded his/her rights under the Georgian law thereby causing a violation of the candidate's rights or jeopardizing judicial independence;
- d) information on which the impugned decision rests is essentially false and the candidate has adduced relevant evidence to that effect;
- e) the candidate selection process was held in breach of the established legal procedure to an extent as to be able to essentially affect the final outcome.

2. A complaint shall be submitted to the HCOJ within one week after the publication of the HCOJ decision made at each stage under Article 34¹ Par. 12, 13 or 15. The HCOJ shall immediately convey the complaint to the Supreme Court's Qualification Chamber. HCOJ shall suspend the selection procedure established by Article 34¹ of this law at relevant stage, until the Qualifications Chamber of the Supreme Court adopts a decision.

3. No fees can be levied on a complaint challenging the HCOJ decision.

4. The Complaint shall provide:

- a. Name of the qualification chamber
- b. identity and the address of the applicant as well as the respondent
- c. exact title of the decision challenged and the title of the decision-making body

- d. indication to a ground of the complaint considered in the par.1 of this article, as well as to the facts and evidences proving presence of this ground
- e. list of the written materials accompanying the complaint
- f. signature of the petitioner

5. The complaint must be accompanied with all evidence materials mentioned in it. If a complaint is lodged by a representative, it must come with a power of attorney showing that the representative is authorized to lodge the complaint.

6. The Supreme Court's Qualification Chamber checks whether the complaint is filed by a candidate authorized to appeal, in compliance with the requirements of paragraphs 4 and 5 of this Article. If the complaint is filed by an authorized candidate and the requirements of paragraphs 4 and 5 are met, the Qualification Chamber will accept the complaint for examination. If the complaint is filed by an authorized candidate and the requirements of paragraphs 4 and 5 are not met, the Qualifications Chamber will instruct the petitioner to eliminate the shortcoming giving him/her a reasonable time to do so, which should not exceed 2 days. If the shortcoming is not eliminated in the indicated time, the complaint is not filed by an authorized candidate or the complaint is filed in breach of the legally established timeframe, the complaint will not be examined. The Qualifications Chamber decides on admissibility of a complaint without an oral hearing.

7. Once a complaint is accepted for examination, the complaint and the copies of the complaint materials must be sent to the respondent. The Qualifications Chamber of the Supreme Court may unite two and more than two complaints to be examined as one proceeding.

8. The Supreme Court Qualifications Chamber shall examine a complaint within 2 weeks after receipt for examination from the HCOJ. In its order accepting the complaint for review, the Qualifications Chamber also determines the time of oral hearing of the case and informs the parties within a day thereabout. The Qualifications Chamber invites the parties/participants to participate in the hearing.

9. The High Council of Justice shall appoint its representative to participate in the complaint examination by the Supreme Court Qualifications Chamber.

10. Examination by the Supreme Court Qualifications Chamber results in the Chamber rendering one of the following decisions:

- a) a decision to leave the [impugned] High Council of Justice decision unchanged.
- b) a decision to cancel the [impugned] High Council of Justice decision and remand the case to the Council for de novo review.

11. The finding by the Supreme Court Qualifications Chamber of the ground listed in paragraph 1 of this Article to have occurred will serve as a ground for cancelling an impugned High Council of Justice decision only if the Supreme Court's Qualifications Chamber deems that the breach affected the final outcome and caused the High Council of Justice to render an essentially incorrect decision.

12. If the Supreme Court Qualifications Chamber decides to cancel a High Council of Justice decision and remand the case to the Council for de novo review, the HCOJ will, while heeding the decision of the Qualifications Chamber, take the decision anew in accordance with paragraphs 12, 13 or 15 of Article 34¹.

13. A second decision of the High Council of Justice adopted in accordance with paragraph 12 of this article may not be appealed any further."

14. The information defined by paragraphs 11-13 and 15 of the Article 34¹, forbidden in accordance with these paragraphs to be revealed, is available for the purpose of implementing the procedure established by this article to the Supreme Court's Qualifications Chamber, an

author of a complaint, his/her legal representative and a representative of the High Council of Justice of Georgia. Revealing this information causes criminal liability. The HCOJ sends this information to the candidate in 2 days after the request”.

Article 2. Supreme Court judge candidates nominated for election to the Parliament by the time this law enters into force, shall be considered withdrawn.

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

Salome Zurabishvili

President of Georgia