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Subject: Legal Framework for the Execution of the Judgments  
of the European Court of Human Rights in Georgia

Sent: Fax/E-mail

Dear Madam,

In 20 May 1999 Georgia became Council of Europe member state. Notwithstanding the Recommendation No R (2000) 2, adopted on 19 January 2000, according to which the Committee of Ministers asked states to provide means of reopening proceedings within their national legal systems following a finding of violation by the Court, Georgian Government did not take any measures in this regard until 2010.

An amendment adopted in Georgian Civil Procedure Code<sup>1</sup> of 4 May 2012 states that for the revision of the final domestic court decision, Judgment of the European Court of Human Rights that finds violation of Convention or Additional Protocol to it, can serve as a ground for its revision. Also, the new law stated the terms of its application<sup>2</sup>, namely, the appeal was to be submitted within three months after the European court judgment become final.

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<sup>1</sup> Para. z, Article 423.

<sup>2</sup> Para 2<sup>1</sup>, Article 426.

By the same law<sup>3</sup>, those parties, whose request on reopening the proceedings were rejected based on the European Court Judgment, granted the right to appeal to the court until 15 June 2012, i.e. during one month and 10 days after adoption of these amendments.

Amendments of the Criminal Procedure Code of Georgia<sup>4</sup> state, that for revision of the final domestic court decision Judgment of the European Court of Human Rights that finds violation of Convention or Additional Protocol to it, can serve as a ground for its revision. In initial version, the term for applying to the court based on newly discovered circumstance, was unlimited<sup>5</sup>, but after 27 March 2012 Amendments, appeals based on the European Court Decision have been ascribed an exceptional ground and the term for its application was limited up to one year, starting from the moment when European Court Decision become final.

Also, the parties that European Court of Human Rights granted favorable decision before January 2012, are entitled to appeal based on this ground before July 1, 2012<sup>6</sup>, i.e. terms is limited by 6 months.

It should be noted, that even after adoption of above mentioned amendments, the problem remains, as there is no effective and proper legal system in place for the execution of European Court Decisions. The only measure is acknowledgment of European Court Decision as the newly discovered circumstance and possibility of revision of the enforced final domestic court decision solely on this ground. Thus, the Georgian government actualized the European Court decision to those circumstances which serves as a ground for revision of final enforced domestic decision. In particular, in Georgian legislation, these circumstances are:

1. In the Criminal Procedure Code – establishment that criminal case was decided by the illegal composition of court.
2. Establishment of anti constitutionality of used criminal law;
3. Establishment of inadmissibility or forgery of used evidence;
4. Establishment of commitment of crime by the judge, procurator, investigator or jury regarding the case.
5. Adoption of a new law, that mitigates or abrogates the criminal liability
6. Discovery of new fact or/and evidence, that can change the decision.

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<sup>3</sup> Article 444.

<sup>4</sup> 28 October 2011.

<sup>5</sup> Article 311.

<sup>6</sup> Para 2<sup>1</sup>, Article 311.

According to the Georgian Civil Procedure Code, newly discovered circumstances are defined:

1. Establishment of forgery of the document used in the decision
2. Deliberately false witness statement
3. Deliberately false forensic conclusion
4. Deliberately false translation
5. Criminal offence committed by the parties and their representatives, or the judge
6. Quashing court decision, court order, or other agency decision, that served as a ground
7. Submitting of enforced final court decision that is made on the same lawsuit.
8. Discovery by the party the circumstance or evidence that if presented to the court during the hearing, would result in granting decision in his /her favor.

The very fact, that European Court judgment itself does not have the special status and in civil proceedings granted only status of newly discovered circumstance, is very worthwhile, if not mention that for its application there is limited term defined, while term of application by other legal grounds is unlimited, what in our view, testifies clear attitude of Georgian state towards the European court judgment.

The Georgian Government scrimshanks and puts unfair burden on victim of convention violation, as amendments of law does not envisage automatic reopening of the proceedings; for revision of the final enforced decision, the law obliges party prepare and submit appeal that exhausted all effective legal remedies at the national legal system and was forced to appeal to the European court of Human Rights, in addition within very limited time by meeting special conditions.

Particularly unfair terms are defined by the law for preparation and submission of appeal on reopening of proceedings - 3 months in civil law and for other categories (for the individuals whose request to reopen proceedings based on European Court Decision was rejected before) granted only 1 month and 10 days; in criminal proceedings 1 year term and in specific cases (that had been decided before January 2102) 6 months. We believe, that treatment of the violated party, that won the case is discriminatory, as it establishes different terms for different category of cases according to amendments of law.

The party that won the case, according to the law, shall appeal to the Appellate court; there exist two Appellate courts in Georgia in Tbilisi and in Kutaisi. This, in our view, creates additional barrier for the execution of European Court Judgment.

According to Civil Procedure Code, if the Applicant is physical body, the court fee is 100 GEL, in case of legal entity fee is 300 GEL. Also, there are additional expenses for services of counsels involved as additional burden and barrier for the party.

This is the first attempt to inform you about the general legal framework existing regarding execution of European Court Judgments in Georgia. We did not try to analyze individual cases and results of their execution. If appropriate information received, we will be pleased to inform you on further finding at our earliest convenience.

*Sincerely yours,*

*Lia Mukhashavria*

*Executive Director*