

Le Président
The President

Mr. Irakli Kobakhidze
Chairman of Parliament of Georgia
8 Rustaveli Ave.
Tbilisi 0118 Georgia

Brussels, 6 February 2017

RE: Georgian Bar Association

Dear Mr. Kobakhidze,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) which represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers. The CCBE represents European bars and law societies in their common interests before European and other international institutions.

Among the CCBE's most important missions are the regulation of the legal profession, the defence of the rule of law, human rights, and democratic values.

The CCBE has been informed about the establishment of the State Constitutional Commission which will prepare and present amendments to the Georgian Constitution. One of the CCBE priorities is promoting consultations with national bars when important legislative developments are under way. In this context, we appreciate the fact that the Georgian Bar Association are able to give their input in shaping the constitutional framework of the legal profession.

We have been informed that the GBA proposes amendments guaranteeing legal rights of citizens and lawyers. Especially important is that these proposed amendments concern the right to fair trial, by proposing to: *change the wording of paragraph 3 of Article 42 of Constitution of Georgia: “3. The right to defence shall be guaranteed. Everyone has the right to defend his/her rights and freedoms personally and/or through the assistance of advocate, also, in cases prescribed by law, to have the assistance of advocate at the expense of the State.”* The citizen's right to legal defence and the right to free legal aid are crucial for a democracy based on equal rights. Likewise, the GBA intends to: *change the word “defender” by the term – “Advocate” in the Article 18th of the Georgian Constitution,* which also aims to guarantee the right to qualified legal assistance in cases of arrest and detention for the purpose of complying with the fundamental right to a fair trial.

Similarly, the GBA proposes to enshrine lawyers' rights in the Constitution, by adding: *the Article 91¹ as a new one, to Chapter 5 (Judicial Authority) of Constitution of Georgia as follows:*

1. *State shall ensure that advocates perform their professional functions without intimidation, hindrance or any other improper interference.*
2. *Georgian Bar Association is an independent, unified and self-governing organization, which shall provide an entry into profession for advocates, establish professional ethical standards, ensure professional development of its members, prevent harassment and ill-treatment towards advocates and defend their professional dignity.*
3. *Authority, organization and rule of operation of Georgian Bar Association shall be determined by the Organic Law of Georgia;*

This amendment is drafted according to international guidelines¹ and recognises the importance of the legal profession. Furthermore, the proposed provisions guarantee lawyers' rights to organise

¹ [United Nations Basic principles on the Role of Lawyers](#), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

themselves in a unified and self-regulated Bar, which has a crucial role in ensuring the independence of the legal profession and the proper administering of justice in a democratic society.

Following the spirit of the suggested constitutional changes, we also support the GBA's proposed amendments to the Civil Procedure Code of Georgia:

(1) *Subparagraph "D" of paragraph 1 of Article 94 shall be removed.*

(2) *Article 440 shall be formed as it follows:*

Article 440. Restriction of the Activity of a Representative in Civil Procedure.

"Individuals who are not members of Georgian Bar Association, are not allowed to exercise the authority of the representative in the first instance of the court, as well as the Courts of appeal and Cassation, except the employees of state agencies, local government bodies, organizations – on the cases of these bodies and organizations."

These proposed amendments aim to ensure a proper enjoyment of a person's right to have a trusted and qualified legal counsel in civil litigations (where, under the current legislation, the representative may be any person with legal capacity, i.e. everyone including non-advocates). Representation by non-advocates could lead to more errors (unsatisfactory legal representation) and more work for the courts, as higher courts find it very difficult to recover legal mistakes made while proceeding at the first instance. Moreover, parties/clients have unequal positions when one of them is being represented by an advocate and the other by a non-advocate or by a person with no legal qualifications who is not bound by the Code of Ethics of the Advocates, and is not aware of the rules of conduct in courtrooms, professional secrecy, or the binding principles of collegiality.

Therefore, to ensure a fair trial it is very important for a party to be represented by a properly qualified, experienced, and skilled professional at first instance courts. The CCBE has considered the issue of lawyers' representation before the courts in recent years² and believes that advocates who are qualified to appear in court serve the interest of the administration of justice best, which benefits the client and society as a whole.

For the reasons set out above, the CCBE would like to express its support to the Georgian Bar Association and their stance regarding the amendment of the Georgian Constitution and the Civil Procedure Code, which fully correspond and comply with EU and CCBE standards.

Yours sincerely,



Ruthven Gemmell WS
CCBE President

CC: Tamar Chugoshvili, First Deputy chairperson of Parliament of Georgia
Ekaterine Beselia, Head of Parliament Legal Issue Committee
David Asatiani, GBA International Affairs Secretary

² Please see positions of the CCBE regarding legal representation in courts in [Latvia](#), [Ukraine](#), [Republic of Moldova](#), as well as joint report IBA-CCBE-UNBA-ELF "[Improving the quality of legal services in Ukraine](#)".