

Law of Georgia

on

Independent National Regulatory Authorities

Chapter I

General Provisions

Article 1 Purpose of the Law

1. The purpose of this Law is to create a reliable legal framework and perfect institutional environment for stable functioning of the independent national regulatory Authorities operating in Georgia, with a view to ensuring in various fields of economy the equilibrium of interests of licence holders and consumers, efficient price formation and supply in respect to the goods and services.

2. This Law establishes: the independence of the independent regulatory Authorities operating in Georgia from political pressure of any kind, from improper influence and illegal interference of State Authorities or other persons, as well as from any acts as may infringe on their independence; the authority to effect perfect regulation of any specific field; the responsibility to ensure the transparency and reliability of decision-making process; the main principles of the creation, activities and organization of independent regulatory Authorities.
(31.03.2006. No 2830 shall become effective from June 1, 2006)

Article 2 Scope of the Law *(31.03.2006. No 2830 shall become effective from June 1, 2006)*

1. This Law shall apply to all those Authorities, which are independent regulatory Authorities in accordance with this Law and the Georgian Legislation. *(5.06.2007 No 4864)*

2. The independent regulatory Authorities operating in Georgia are as follows:

- (a) Georgian National Communications Commission;
- (b) Georgian National Energy and Water Regulatory Commission; *(20.11.2007 No 5468)*
- (c) Deleted *(5.06.2007 No 4864)*
- (d) Deleted *(30.03.2007 No 4595)*

Article 3 Definition of Terms

The terms used in this Law shall have following meanings:

(a) Improper influence and illegal interference – the act of a person, namely any influence on, interference in, obstruction of or any other kind of influence on the results of discussions held in an independent regulatory Authority, or on the decisions taken by the said Authority, or on free and independent judgments of the Commissioner, or on the activities of the members of the Administrative Staff, in a manner which is inconsistent with this Law and the Georgian Legislation, with the object of receiving benefit or special treatment;

(b) Decision – a legal act (resolution, decision, etc.) adopted by an independent regulatory Authority in accordance with the Legislation;

(c) Independent regulatory Authority – a legal entity of public law with special legal capacity, created by the State with a view to regulating a particular field, which has no State controlling Authority, is independent from the State Authorities and operates within the limits of the authority as defined pursuant to this Law and the applicable law; *(31.03.2006. No 2830 shall become effective from June 1, 2006)*

(d) Independence – the ability of both an independent regulatory Authority and the Commissioner, without improper influence and illegal interference to exercise the authority of a regulatory Authority as determined under the applicable law, including discussing, investigating and deciding the matters assigned to its authority; any interference in the activities of an

independent regulatory Authority, control of the said activities and demanding accounts of such activities on the part of any State Authority shall be inadmissible, if this is not explicitly provided for by the applicable law;

(e) Commissioner – a person who, pursuant to the procedure established under this Law and an applicable law of an independent regulatory Authority, is designated as a member of such regulatory Authority pursuant to an appropriate legal act; (5.06.2007 No 4864)

(f) Member of family – father, mother, spouse or a child of the Commissioner;

(g) Political pressure – the act of improper influence or illegal interference, motivated by political considerations, or by the desire on the part of a person (or a group of persons) to attain political objectives;

(h) Authority – the rights and obligations of an independent regulatory Authority defined by the applicable law and delegated to such regulating Authority;

(i) Legal capacity – the ability of a person to have rights and obligations;

(j) Applicable law – a Georgian law which determines the basic functions and rights and obligations of an independent regulating Authority;

(k) Person – natural persons and legal persons of any organizational and legal form, as well as State Authorities, Agencies of the Executive Branch, Authorities of local self-government and government, other State Authorities;

(l) Regulation – the adoption of legal acts, issuance of licences/permits, monitoring, coordination, supervision and the exertion of control over the fulfilment of licensing/permit terms and conditions by an independent regulatory Authority, within the limits of authority established by the applicable law. (31.03.2006. No 2830 shall become effective from June 1, 2006)

(m) Public Defender of Consumers Interests (Public Defender) – the defender of interests of the consumers from the relevant field of service business. (22.07.2003 No 2535)

Article 4 Principles of the Law

1. In its activities, an independent regulatory Authority shall be guided by the principles of independence, publicity and responsibility.

2. Any interference in the activities of an independent regulatory Authority, control of the said activities and demanding accounts of such activities shall be inadmissible, if this is not explicitly provided for by the applicable law.

3. The main principles determining independence are:

(a) Prohibition of any kind of control over an independent regulatory Authority; submission of reports only to the Georgian President and Parliament pursuant to the procedure established by the applicable law;

(b) Determination of the responsibility of a regulatory Authority and Commissioners only by court of law, pursuant to the procedure established by the procedural legislation;

(c) Appointment of Commissioners only pursuant to the procedure established by the applicable law;

(d) Prohibition of transferring the public functions (including the function of ensuring the equilibrium of interests of licence holders and consumers), assigned under the applicable law, to other Authorities and persons of private law.

4. If an Authority, in accordance with the applicable law, fails to simultaneously act in compliance with all principles as set out in paragraph 3 of this Article, or acts pursuant to different rules or procedures, such Authority shall not be deemed to be an independent regulatory Authority.

5. An independent regulatory Authority shall be obliged to hold, pursuant to the procedure as established under Chapter IX of General Administrative Code of Georgia, public discussions concerning the exercise of licensing and tariff authorities. Taking any decision without such procedure entails invalidity of the decision concerned.

6. Only a court of law shall have the right to revise the decisions of an independent regulatory Authority, pursuant to the procedure established under Article 18 of this Law.

7. The requirement of paragraph 5 of this Article does not apply to the decisions taken before the coming into force of this Law.

Chapter II

Main Characteristics of Authorities

Article 5 Authority

1. Applicable law determines the matters assigned to the authority of an independent regulatory Authority. This authority shall be free from improper influence and illegal interference.

2. Independent regulatory Authority and Commissioner shall enjoy full independence within the framework of the applicable law in taking decisions and implementing legal acts in respect to the matters assigned to their authority. At the time of discharging professional duties by a Commissioner, any improper influence and illegal interference in respect to the Commissioner concerned shall be inadmissible.

3. Improper influence and illegal interference or any attempt at such influence or interference in respect to the plans, beliefs, decisions, acts or omissions of a Commissioner or a member of the Administrative Staff shall be illegal, and taking any decision under such improper influence and illegal interference shall entail the invalidity of the decision concerned.

4. Commissioner shall be entitled to lodge a petition with a court of law with the purpose of preventing or/and eliminating such improper influence or illegal interference in respect to him/her.

Article 6 Independence

1. Independent regulatory Authority and Commissioner shall be independent within the scope of their activities and shall comply only with the Georgian Legislation. Only an independent regulatory Authority shall have the right to exercise the full authority in respect to the matters which are delegated to it under the applicable law.

2. Dual, concurrent regulatory authority shall be inadmissible.

3. Any attempt of any person to exercise the jurisdiction over the sphere of authority of an Independent regulatory Authority shall be illegal, and the results thereof shall be of no legal force.

4. An independent regulatory Authority may become a member of, cooperate with, receive consultations from or have other types of relations with international organizations (associations) and foundations and local non-profit (non-commercial) legal entities, which have the same or similar sphere of authorities as the regulatory Authority concerned. *(14.12.2006 No 3970)*

5. It shall be inadmissible for an independent regulatory Authority, to conclude an agreement which imposes certain obligations on Georgia, except for the cases as provided for in the Georgian Legislation.

Article 7 Financial Independence

1. The expenses of an independent regulatory Authority shall be financed by the Regulation Fee and other proceeds provided for by the Georgian Legislation.

2. Any person carrying out or intending to carry out activities within the sphere of authorities of an independent regulatory Authority shall be obliged to pay the Regulation Fee.

3. The Regulation Fee must be determined in a way as to suffice to cover the expenses provided for by the Budget of an independent regulatory Authority. It shall be transferred to a separate banking account, where it will be available to the relevant regulatory Authority, which will have full authority to use it for specified purposes. *(31.03.2006. No 2830 shall become effective from June 1, 2006)*

4. The funds which are not used by an independent regulatory Authority during any current year shall be transferred onto the account of the subsequent year and shall be taken into consideration in the event of a change in Regulation Fees.

5. The reception of Regulation Fees by an independent regulatory Authority does not constitute economic activities.

Article 8 Budget

1. An independent regulatory Authority shall annually, within the time limits established by the applicable law, draw up its Budget.

2. The expenditure side of the Budget of an independent regulatory Authority shall consist of the annual current and capital expenses, necessary for the exercise of the authority delegated by the applicable law, as well as of the expenses specified under paragraph 1 of Article 17 of this Law.

3. It shall be inadmissible for an independent regulatory Authority, by use of the funds from its own Budget, to create charitable or other similar non-profit (non-commercial) legal entities or to incur such expenses (including for the purposes of providing allowances of different kinds or sponsorship), which are inconsistent with the functions determined for it by the applicable law. *(14.12.2006 No 3970)*

4. The requirements specified in paragraph 3 of this Article shall not apply to the membership fees paid by an independent regulatory Authority in connection with the membership of international organizations (associations) and foundations and local non-profit (non-commercial) legal entities *(14.12.2006 No 3970)*

Article 9 Authority to Adopt Normative Acts

1. An independent regulatory Authority shall be authorized within its competence to adopt obligatory rules of conduct of legal nature (normative acts).

1¹. A normative act of an independent regulatory Authority shall be a resolution of the National Commission. *(31.03.2006. No 2830 shall become effective from June 1, 2006)*

2. An independent regulatory Authority shall adopt its normative acts in conformity with the Law of Georgia on Normative Acts.

Article 10 Authority in Respect to Licences and Permits

1. An independent regulatory Authority shall have full authority, within its competence to grant licences and permits, to suspend them, to extend their terms, to modify or to revoke them.

2. It shall be inadmissible to interfere in the authority of an independent regulatory Authority in respect to licences and permits and to exercise control over such authority.

3. Deleted *(24.06.2005 N 1796)*

4. Deleted *(24.06.2005 N 1796)*

Article 11 Authority in Respect to Tariffs

1. An independent regulatory Authority shall have full authority, within its competence to establish and regulate tariffs within the limits as provided for by the Law.

2. It shall be inadmissible to interfere in the authority of an independent regulatory Authority in respect to tariffs and to exercise control over such authority

Article 12 Authority to Settle Disputes

1. An independent regulatory Authority shall be authorized to settle the disputes related to the matters assigned to its competence between the holders of licences or/and permits issued by the said Authority, or between the holders of licences or/and permits and consumers.

2. The decisions of an independent regulatory Authority concerning the disputes as provided for in paragraph 1 of this Article may be appealed against in a court of law pursuant to the procedure determined under Article 18 of this Law.

Article 13 Protection of Consumers Interests

1. One of the main functions of an independent regulatory Authority shall be to provide consumers with public information, to review and solve their petitions and complaints. Petitions and complaints shall be received every business day.

2. Petitions and complaints from consumers shall be examined by means of public hearing, exclusive of the exceptions established under the General Administrative Code of Georgia and the cases when the solution of matters in dispute does not require the conduct of organized proceedings. Independent regulatory Authority must invite the parties concerned at least 7 days prior to the conduct of the public hearing. The notification concerning the invitation may be published by any means, where there must be indicated the matter to be discussed, the date of the conduct of hearing, its venue and time.

3. Public hearing shall be chaired by an authorized official who must ensure the investigation of the circumstances which are of importance for the case, the summoning of the documentation related to the matter, and the exercise on the part of those present at the hearing of their right to express their views. A protocol concerning the public hearing shall be drawn up in a manner established under the Georgian Legislation.

4. The main objective of the public hearing must be to solve the dispute between the parties amicably.

5. In respect to the public hearing, the independent regulatory Authority shall, in conformity with the Legislation, take a decision which is binding upon the parties. The decision may be appealed against in accordance with established procedure and within established time-limits.

6. Other procedural aspects of the examination and solution of petitions and complaints shall be determined pursuant to the decision of the independent regulatory Authority concerned.

7. With a view to providing additional guarantees of the protection of consumers' interests, independently from the Administrative Staff of the Regulatory Commission, at the regulatory Authority there shall be set up the Service of the Public Defender of Consumers Interests. (22.07.2003 No 2535)

Article 14 Commissioner

1. Commissioner shall be appointed to the office and dismissed from the office pursuant to the procedure established under the applicable law.

2. Except as otherwise provided for by the applicable law, the Commissioner shall be dismissed from the office for one of the following reasons:

- (a) Coming into force of the verdict of guilty taken by a court of law;
- (b) The violation of the norms of ethics;
- (c) Failure to discharge professional duties within the time limits established by the applicable law;
- (d) Decision of the court on the recognition of a Commissioner as legally incapable or gone missing, or on his/her pronouncement dead;
- (e) The loss of the Georgian citizenship;
- (f) Retirement;
- (g) Death.

3. Commissioner shall have the right to appeal against the decision on his/her dismissal from the office pursuant to the procedure established under the Georgian Legislation.

Article 15 Norms of Ethics

1. In respect to the ethics and conflict of interests, only the procedure established under this Law shall apply to the Commissioner.

2. Commissioner must suspend his/her political party membership for the whole period of his/her activity as a Commissioner. The creation of a political party, public organization or

structural units thereof within an independent regulatory Authority or within its Administrative Staff shall be inadmissible.

3. A Commissioner and a member of his/her family, as well as a member of the Administrative Staff of an independent regulatory Authority shall have no right to have any direct or indirect economic interests in respect to a holder of licence, or to hold any office in an enterprise holding a licence.

4. A Commissioner and a member of the Administrative Staff shall have no right to receive presents from such person or organization as is subject to the sphere of authority of the relevant independent regulatory Authority, or to make use of preferential or free services rendered by the same person or organization, except for the cases when such services are generally available.

5. A Commissioner and a member of the Administrative Staff shall have the right to be a consumer of such person as is subject to the sphere of authority of the relevant independent regulatory Authority.

6. A Commissioner shall be obliged annually to complete and submit his/her Property Status Statement and Financial Statement pursuant to the procedure established under the Law of Georgia on Corruption and the Incompatibility of Interests in Public Service.

Chapter II¹

Public Defender of Consumers Interests

Article 15¹ Authorities of the Public Defender

1. The Public Defender shall have the right:
 - (a) to protect the interests of consumers;
 - (b) to assess the impact of tariff and other regulatory changes on consumers;
 - (c) to appear before a regulatory Authority on behalf of consumers as a Party;
 - (d) to examine all the documentation or materials, which the Regulatory Commission is permitted to examine under the Legislation;
 - (e) to represent an individual consumer in a dispute with a service company;
 - (f) to participate in the development by the Legislative and Executive Authorities of such draft normative acts, as may influence consumers' interests.
2. For the purposes of the protection of consumers' interests, the Public Defender shall have assistants of relevant speciality, who shall be selected on an open contest basis.
3. The activities of the Public Defender shall be a constituent part of regulatory activities, they shall be financed by the Regulation Fees paid to the relevant regulatory Authority, and shall be reflected in the Budget of such regulatory Authority.
4. The salaries of the Public Defender and his/her assistants shall be determined under the terms and conditions of the contest to select the Public Defender and his/her assistants.
5. The Public Defender and his/her assistants shall have no right to receive any remuneration from consumers.
6. The participation of the Public Defender in the proceedings shall not impose any restrictions on other parties as may represent consumers.
7. This Chapter is without prejudice to the rights and obligations of the Regulatory Commission and its Administrative Staff to protect consumers in accordance with the Legislation.

Article 15² Appointment and Term of Office of Public Defenders

1. The Public Defender shall be appointed on an open contest basis. The decision of the contest commission shall be validated within the period of 10 days pursuant to the order from the Chairperson of the relevant regulatory Authority.
2. The Contest Commission to select the Public Defender, consisting of at least 15 members, shall be set up by the People's Defender of Georgia (Ombudsman). Such Commission shall

comprise the representatives of both Public and non-governmental sectors. The decisions of the Contest Commission concerning the Chairperson of the Commission, the contest terms, and the election of the Public Defender shall be taken by a majority of votes.

3. The Public Defender shall be appointed for the period of 2 years.

4. Pre-term dismissal of the Public Defender from office may take place only in the event of the violation of the requirements of Articles 15³, 15⁴ of this Law, or for one of the following reasons:

- (a) Pursuant to his/her application in person;
- (b) In the event of the coming into force of the guilty verdict taken by a court of law in respect to him/her, envisaging imprisonment or deprivation of liberty as a punishment; and
- (c) In the event of a decision of the court on the recognition of a Public Defender as legally incapable or gone missing, or on his/her pronouncement dead.

Article 15³ Qualification and Incompatibility of Duties of Public Defender

1. A Public Defender must have higher legal education, qualified knowledge of the relevant field of natural monopolies and consumer rights, and the authorization to practise law.

2. A Public Defender cannot be member of any political party.

3. All requirements which apply to public officials under the Law of Georgia on Corruption and the Incompatibility of Interests in Public Service shall apply to the Public Defender.

Article 15⁴ Publicity

No later than in March of each year, the Public Defender shall submit to the relevant regulatory commission the financial report for the previous year and the report on the activities carried out, as well as supply the same data to the general public by means of press and other information media. The expenses of the Service of the Public Defender must be reflected in the Budget of the relevant regulatory Authority as a separate article of expenditure. (22.07.2003 N 2535)

Chapter III Publicity

Article 16 Sessions of Independent Regulatory Authority. Confidentiality of the Information

1. The sessions of an independent regulatory Authority shall be open to public, except for the cases provided for by the applicable law. The decisions of an independent regulatory Authority shall be published pursuant to the established procedure.

2. An independent regulatory Authority must retain the minutes of its sessions and other relevant documentation for the period of at least 7 years. Commissioner and interested persons may have unrestricted access to all records and other documentation available at the relevant regulatory Authority.

3. All decisions, records and other documentation of an independent regulatory Authority shall be available for public discussions. The procedure for the maintenance of confidentiality of the information kept by an independent regulatory Authority shall be determined by the regulatory Authority concerned in conformity with the Georgian Legislation.

4. An independent regulatory Authority shall be obliged to hold public discussions pursuant to the procedure established under Chapter IX of General Administrative Code of Georgia, concerning the grant, modification, revocation or suspension of licences, as well as concerning the establishment, modification or revocation of tariffs, before taking any decisions concerning the said matters. The decisions taken without such procedure shall be invalid.

Article 17 Reporting (31.03. 2006. No 2830 shall become effective from June 1, 2006)

1. An independent regulatory Authority shall annually prepare a report on its activities and conduct financial audit of its expenses and accounting in conformity with international accounting standards. The Georgian Parliament shall be authorized to take decision concerning the conduct of the audit of the compliance of an independent regulatory Authority with the approved Budget. The audit of an independent regulatory Authority shall be conducted by independent auditors selected by a tender commission, whose composition shall be approved by the Parliament on presentation of the Sector Economy and Economic Policy Committee thereof. The compensatory expenses for the auditor selected for the inspection of financial activities shall in any even be borne by the relevant independent regulatory Authority. An independent regulatory Authority shall make public the report on its financial activities and the results of the financial audit.

Article 18 Appeal of Decision

The decision of an independent regulatory Authority, in accordance with the jurisdiction, may be appealed against in the Constitutional Court of Georgia and the common law courts of Georgia. Within the system of common law courts, decisions of an independent regulatory Authority shall be examined in the first instance only by district courts.

Article 19 Responsibility

The violation of the requirements of this Law shall entail the responsibility pursuant to the procedure established under the Georgian Legislation.

Chapter IV Transitional Provisions

Article 20 Measures Related to the Coming of the Law into Effect

1. Within 5 months from the publication of this Law, the Georgian National Energy Regulatory Commission and the Georgian National Communications Commission shall develop and adopt following regulatory rules:

- (a) Concerning the professional performance and ethical conduct of the members of the Commission and the members of the Administrative Staff, including the rules for *ex parte* notification and the rules of conduct of the former members of the Commission and the former members of the Administrative Staff in respect to the matters related to the Commission;
- (b) Concerning the procedures for the relations with mass information media;
- (c) Concerning the safekeeping and availability of the decisions, records and other documentation of the Commission, including confidential information and the information received during the discussions;
- (d) Concerning the procedures for holding public discussions with the view to ensuring the transparency of the process of regulation and the involvement of general public;
- (e) Concerning the procedures for the reception, reviewing and solution of the petitions in respect to licences, tariffs and other matters assigned to the authority of the Commission;
- (f) Concerning the procedures for the preparation and publication of the decisions of the Commission;
- (g) Concerning the investigation of the facts of alleged incompliance with the decisions of the Commission and the response thereto;
- (h) Concerning the settlement of disputes between the holders of licences, as well as between the holders of licences and consumers; and
- (i) Concerning the procedures for the reception, reviewing and solution of the complaints from consumers.

2. Within the period of 3 months from the promulgation of this Law, the Executive Authority of Georgia shall prepare and submit to the Georgian Parliament a draft legislation

concerning the changes and amendments to the Law of Georgia on Consumers Rights Protection, with a view to enhancing the mechanisms of protection of consumer rights in the areas regulated by the independent regulatory Authorities as defined by this Law.

3. Prior to the enactment of this Law, the authorities of the Public Defender as defined by this Law shall extend to the Defender of Consumer Rights selected on an open contest basis in the National Regulatory Authority. (22.07.2003 N 2535)

Article 20¹ Deleted (30.03.2007 N4595)

Chapter V Final Provision

Article 21 Coming of the Law into Effect

This Law shall come into effect from October 15, 2002.

Eduard Shevardnadze

President of Georgia

Tbilisi,
September 13, 2002
No 1666 - Is