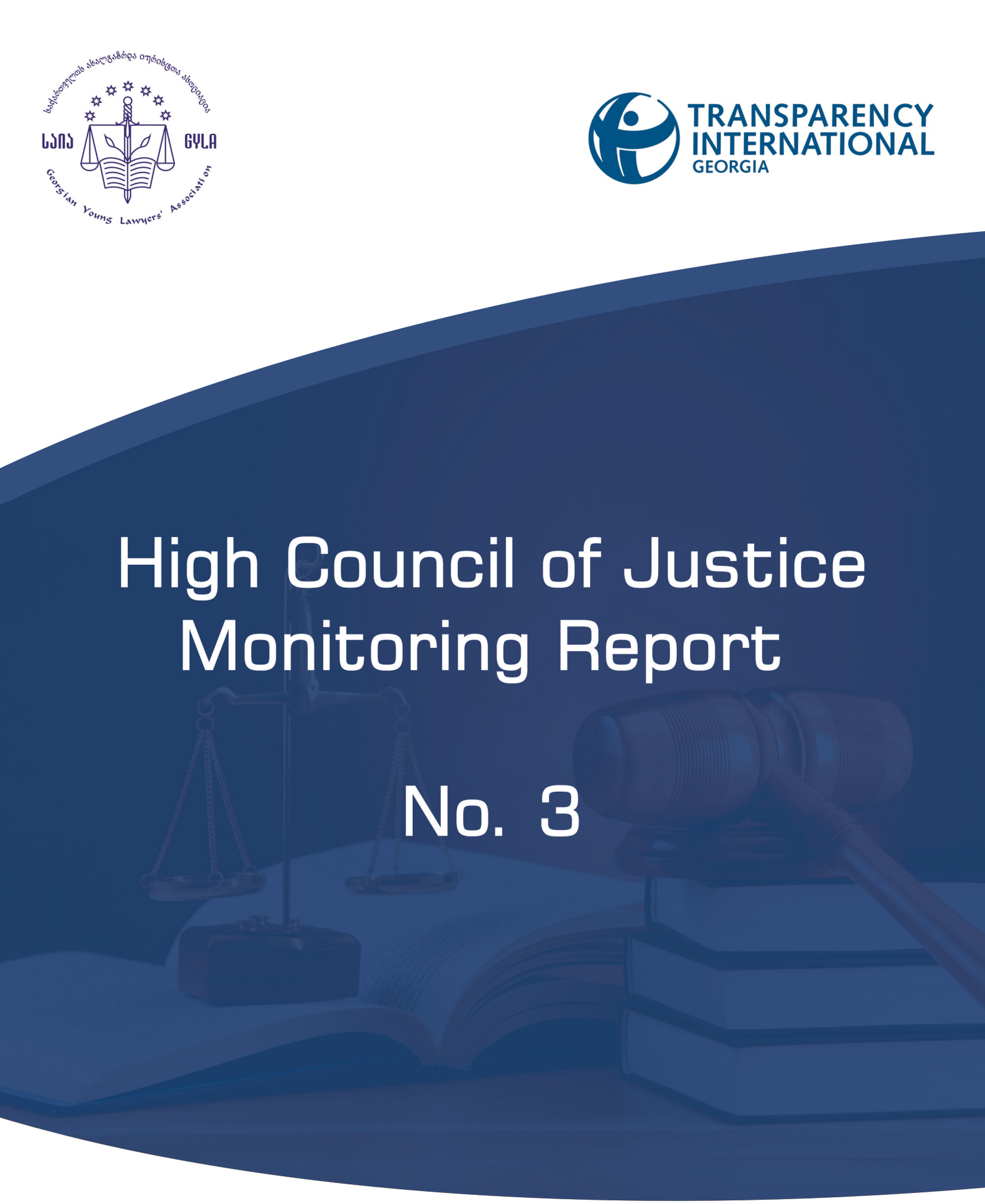
High Council of Justice Monitoring Report

No. 3



Tbilisi 2015

The Judicial Independence and Legal Empowerment Project (JILEP)

HIGH COUNCIL OF JUSTICE

MONITORING REPORT

NO. 3

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I. KEY FINDINGS

The monitoring of the work of the High Council of Justice during the reporting period has led to the following findings:

Key findings regarding the activities of the Council during the monitoring period

- The Council was rather busy during the reporting period. It was quite active in a number of directions and discussed a wide range of issues under its mandate.
- The reporting period once again highlighted existence of gaps and deficiencies in the legislation regulating the work of the Council; In addition, the practice proved incapable of addressing or mitigating the effects of these deficiencies. Thus, the monitoring period reaffirmed that there is a need to amend and improve the legislative framework relevant to the work of the Council.
- One of the key challenges identified is the broad powers of the Council, granted to it by the law, which are not balanced by adequate standards of accountability and transparency; such a situation is incompatible with the principle of good governance of public institutions.
- The legislative framework governing the mandate and the activities of the Council is vague; a number of important issues are left unregulated. This further broadens the powers of the Council and, in multiple cases, provides it with practically unlimited discretion.
- The Council is inconsistent in the application of the General Administrative Code of Georgia [hereinafter GACG] in its work; this creates ambiguities regarding the normative and practical aspects of the Council's work and adversely affects the degree of its transparency and publicity.
- The law fails to clarify the scope, rules and procedures for appealing the Council's decisions to court. This ambiguity leaves the Council's decisions, and in particular their legality and substantiation (reasoning of the decisions), practically beyond any control.
- The flawed legislative framework negatively impacts effective performance of the Council's constitutional functions. In addition, this raises certain questions regarding the legitimacy of the Council's decisions and in some cases even creates an impression that the Council's decisions are motivated not by objective circumstances and the interests of justice, but rather contrary – by somewhat subjective reasons.
- Legislative amendments of 2013 determining the new composition of the Council (9 judge members and 6 non-judge, politically neutral members) positively affected the level of discussions and the work of the Council, as well as the degree of its transparency.
- On the other hand, in many occasions during the monitoring period, it became clear that the Council was divided into two, often radically opposing to each other groups, (on the one hand, judge members and on the other hand, the non-judge members).
- Like in previous years, the work of the Council was marked with a low level of inclusiveness during the monitoring period. Although the interest towards the Council has increased among the local as well as international expert groups or non-governmental organizations, their role remains limited to that of outside observers.
- During the monitoring period, the Council failed to work/take a decision on a number of important issues, such as e.g., determination of the optimal number of judges in the system of common courts of Georgia, criteria and rules for evaluation and promotion of judges, etc.

Transparency of the Council's Activities

- In the majority of cases, contrary to the requirements of the law, information about the date and time of the Council's upcoming session, as well as relevant agenda, was not posted on the Council's official website due time in advance.
- Decisions of the Council are not published on its official website in a systematic manner and in due time.
- Procedure for drafting the upcoming session's agenda is not prescribed. The lack of such regulations weakens transparency of the Council's work and raises further questions regarding the publicity of its activities.

- The law does not clarify the rules and procedure, or the timeframe for assigning the applications and petitions submitted to the Council to its members for preparing the issue for its further discussion by the Council. This may easily lead to a situation in practice when the application is considered only several months or even years after its submission to the Council.
- One of the Decisions of the Council restricts the media in making audio-video recording of the Council's sessions. (Media is entitled to record only the opening part of the session).
- During the reporting period, the Council adopted important decisions (e.g. the decision on the Agenda of the Association Agreement) without making the drafts available to the interested public in advance. This deprived the latter the possibility to submit to the Council their opinions regarding the drafts and feedback for consideration.

The Problem of Unsubstantiated Decisions

- The Decisions of the Council lack reasoning and substantiation, which is caused by the deficiencies in the law as well as in practice.
- In a number of cases, decisions made by the majority vote of the Council left the impression that they were manifestly unsubstantiated and lacked reasoning, particularly when the voting was preceded by discussions during which the majority failed to rebut opposing arguments. Nevertheless, those arguments could not impact the final decision adopted by the majority of the Council.

Appointment and Transfer of Judges; Assignment of Judicial Powers to Reserve Judges

- One of the problems documented during the monitoring period was deficiency in the legal framework regulating the criteria and procedure for the appointment of judges. The voting results during the judges' selection process demonstrated that the Council was clearly divided into two stably opposing groups. The reason for this is the flawed legislative framework enabling the members of the Council to make biased and subjective decisions during the appointment of judges.
- Legal framework regulating the transfer of judges to other courts and assignment of judicial duties to those on the reserve list of judges is also flawed. It provides the Council with practically unlimited discretion during the decision-making process regarding the transfer of judges and assignment of judicial duties to those on the reserve list; this in turn creates a risk of exerting undue influence on the judiciary (including on the outcome of a specific case).

Procedural Matters Regulating the Council's Activities

- The law does not regulate the rules and procedures, including the timeframe, for preparing the Council's sessions and the steps to be taken in preparation. The absence of such regulations creates a number of problems in practice and hinders effective and transparent functioning of the Council.
- It remains contested what are the rules and procedure to be followed when the members of the Council decide to exercise their right to convene the Council's session (as opposed to the situation when the Chairman of the Council convenes the session); this issue requires detailed regulation.
- Neither the law nor by-laws regulate the issue of conflict of interest of the Council members. Unfortunately, practice proved unable to set good examples of addressing this issue.

Position of the Council in the cases of Pressure and Smear Campaigns against Judges

- During the reporting period, the Council made several statements regarding the facts of pressure and/or smear campaigns against judges. It is notable however that, based on formal interpretation of the law, the majority of the Council took a different position on cases of pressure on

judges which took place in previous years and was brought to the attention of the Council during the monitoring period.

Relations between the Council and Outside Actors

- No formalized procedure exists to regulate the relationship between the Council and the outside actors such as e.g., judges, the Ministry of Justice, the Parliament of Georgia, etc.
- During the reporting period, there was no institutional dialogue and cooperation between the Council and the Ministry of Justice when deciding upon important issues where their roles and functions are interrelated.

II. INTRODUCTION

In the framework of the Judicial Independence and Legal Empowerment Project, funded by the USAID and implemented by the East-West Management Institute, the Georgian Young Lawyers' Association (GYLA) and Transparency International – Georgia have been monitoring the work of the High Council of Justice of Georgia (the Council) since March, 2012. In early 2013, the two organizations published the Joint Monitoring Report No.1, which outlined the results of the observations and analysis of the Council's activities from March to December 2012. In early 2014, the Joint Report No.2 was published which reflected the monitoring results for the period from January to 10 December 2013.

In 2014, GYLA and Transparency International– Georgia continued the monitoring of the Council's activities, the results of which are outlined in the present report.

Similar to previous periods, the monitoring carried out in 2014 aimed to assess the work of the High Council of Justice - the main constitutional body charged with the function of administration of the judiciary – in the context of ongoing judicial reforms. It further aimed to evaluate and analyze how the legislation and relevant changes to it, carried out in previous years as well as during the monitoring period, were implemented in practice.

Joint Report No.1 assesses the following areas of the Council's work:

- Procedure for appointing judges;
- Practice of mission of judges;
- Disciplinary proceedings;
- Transparency of the Council's activities.

Joint Report No 2 evaluates the following areas:

- Transparency of the Council's activities;
- Justification of the decisions made by the Council;
- Issues relating to appointment of judges;
- Composition of the High Council of Justice based on the amendments made in 2013 to the Organic Law of Georgia on Common Courts of Georgia.

The present Report No. 3 pays special attention to the above mentioned issues as well as to new areas, including such aspects of the Council's work as the Council's reactions to the facts of duress and defamation of judges, inclusiveness of the Council's work various procedural issues governing the functionality of the Council, etc.

Where relevant, the following Report examines how the trends and issues discussed in the reports of 2012 and 2013 have (not) changed in 2014. With respect to the issues, which are discussed in the present report for the first time during the monitoring project, it is indeed impossible to make such comparative analysis.

The monitoring of 2014 once again demonstrated a set of problems in the work of the Council, *inter alia,* the persistent problem of the lack of justification of the Council's decisions. These problems are the result of vague and/or inconsistent legislative framework. On a positive note, it should be noted however

that the monitoring in 2014 observed a number of improvements including in increased transparency the area of the Council's work.

It is also notable that the events of 2014 posed numerous challenges to the Council, including timely and full compliance with the obligations undertaken in the framework of the Association Agreement. The Council's success in tackling these challenges will significantly impact the Georgian judiciary and its future development.

The goal of this report is to assist the Council in determining the deficiencies and positive trends in its work. We believe this is the basis to the future effective work of the Council. We hope that our work will be of interest to the members of the Council as well as to local and international agencies involved in the judicial reform, experts and organizations, and it will be used for improving the Council's future work.

Methodology

The following report is based on the analysis of information and data obtained as a result of physical presence of the representatives of the monitoring organizations at the Council's sessions and other public meetings. It is also based on the evaluation and analysis of the applicable legislation, as well as the analysis of the information obtained in response to public information requests and via the Council's website. The report also includes the opinions of the Venice Commission in respect of Georgian legislation (draft legislation).

The reporting period covers the period from January 2014 to December included.

III. ACTIVITIES OF THE HIGH COUNCIL OF JUSTICE DURING THE REPORTING PERIOD: MAIN DIRECTIONS AND TRENDS

3.1. Pluralism and Opposing Opinions in the Council

The reforms undertaken in the composition of the Council in 2013 were positively reflected on the discussions and the quality of the work of the Council. Despite the fact that the monitoring team may not have always and/or fully agreed with the positions of the non-judge members, it must be noted that it was the non-judge members who initiated discussions in the Council on several important issues which, in multiple cases, were supported by other members of the Council. For example, initiating the issue of protracted process of discussions on disciplinary complaints filed before the Council, the issue of making important changes to the rule for selection of judges, the issue of improving legislative framework governing the case when the term of office of a judge needs to be prolonged, despite its expiry, until s/he completes cases assigned to her before the expiration of her term of office, the issue of using Article 37 of the Organic Law (appointment of a judge without a competitive procedure) based on objective criteria, etc.

Moreover, as a result of active participation of non-judge members, real dissenting opinions emerged in the Council. Although the non-judge members do not constitute the decision-making power in the Council, the existing composition of the non-judge members enabled emergence of diverse opinions in the Council, including among the non-judge members. Nevertheless, save very rare exceptions, the non-judge members saldomly expressed opinions that differed from those of other non-judge members. Instead, their opinions differed mostly from those of the judge members of the Council. As regards the judge members, they usually expressed similar opinions, which almost always coincided with that of the chairperson of the Council.

Multiple times during the monitoring period, positions taken by judge members on the one hand and those of the non-judge members – on the other hand, were radically different from each other. The points of divergence, among others, included: the issue of the appointment of judges for probation period, response of the Council to the report by the Human Rights Committee of the Parliament of Georgia related to the duress and pressure on judges of the Supreme Court of Georgia in the period of 2005-2006, the ways as to how to solve the problem of the lack of sufficient number of judges in the Tbilisi City Court, the permissible scope of media coverage of the Council's sessions, etc.

In this regard, one of the most interesting examples was the process of selection/appointment of judges during which the existence of two opposing groups within the Council became obvious; in respect of the absolute majority of the candidates the results of the voting were 9 to 5 (or the other way around).

In the second half of the monitoring period, the dynamics of relations between the judge and non-judge members of the Council sharply changed. It became more cooperative and consensus-oriented. The distinctively opposing positions and tone were relatively rare in this period. However, this dynamics again changed towards the end of 2014.

During the reporting period, the members of the Council were not equally active during the Council's sessions as well as in the overall work of the Council. Certain members proactively proposed important initiatives and ideas, actively participated in discussions about the issues raised before the Council. However, there were members who were noticeably passive, Council members listened to their colleagues' opinions with different levels of attention.

3.2. Inclusiveness of the Council's Work

During the reporting period, as before, the work of the Council was marked with a low level of inclusiveness. Although the interest towards the Council has increased among the local as well as international expert groups and non-governmental organizations, their role is mainly limited to observing the Council's work from the outside. In addition, there is no formalized normative act, provision or best practice for the Council's relations with a series of important outside actors (judges, the Ministry of Justice, etc.).

During the monitoring period, the Council adopted decisions on important issues (e.g. the relevant part of the Action Plan of the Association Agreement) without making a draft of the decision public in advance. Consequently, the interested stakeholders were deprived the opportunity to voice their opinions regarding the document during the working process. This indicates low level of transparency and inclusiveness of the Council's work.

Also while working on the relevant part of the Association Agreement, there were no open and public consultations with judges regarding the drafting process of this document. However, it is interesting that, in response to GYLA's question in this regard, the Council did not deny it had such an obligation, instead it noted the following:

> *The Action Plan of 2014 and 2015 prepared for the Association Agreement between Georgia and the European Union in the areas related to judiciary provides for a list of measures, which have been subject of discussions with judges on numerous occasions at various conferences, seminars or meetings. Accordingly, considering the (constrained) timeframe for creating the Action Plan, the mentioned issues were selected based on the necessities for development of the judiciary and their importance for the current times.*

In this regard, the amendment made to the Regulation merits a positive assessment, which provided for the rules and procedures for the Council to convene expanded sessions with the involvement of expert groups, interested persons/organizations.

Involvement of Judges in the Council's Work, Institutional Mechanisms for the Council's interaction with judges

The law does not prescribe the form and procedure for formal interaction between the High Council of Justice and judges. Although representation of judges in the Council is ensured (majority of the Council members are judge members elected by the Conference of Judges, a self-governing body of judges), the judges nonetheless do not have a formalized/institutionalized procedure of communication with the persons elected by them and with the Council as a whole.

The following examples below clearly demonstrate the problems that may arise due to the absence of a formalized and explicitly regulated procedure of communication between the Council and the judges.

> *During the reporting period, the Council drafted a bill regarding reforms in the social security system of judges and the members of the High Council of Justice. The Conference of Judges considered this bill as one of the agenda items on December 20, 2014. At the Conference, one of the sponsors of the bill made a speech of approximately 5 minutes in duration concerning the bill. Afterwards, the judges were given an opportunity to pose questions and engage in discussion regarding specific provisions of the bill. However, it was determined from the very beginning that this could last for maximum 10 minutes, after which the voting procedure would follow. Even though the sponsors of the bill took into consideration and made an amendment to the bill in accordance one comment made by judges during the discussion, which related to making clarifications to one of the provisions, it is notable that*

after the vote, in private conversations, several judges expressed dissatisfaction as to the fact that the bill was not available to them before the Conference. Hence, despite the fact that hard copies of the bill were distributed at the Conference, judges were not given adequate time and opportunity to study the bill in detail and prepare their input regarding the document.

. . .

During the monitoring period, one of the problematic was the issue of judges whose term of office had expired, but was extended by the Council as provided by the law (till concluding the cases assigned to them before the expiration of their term of office).

The non-judge members raised the issue in the Council purporting that the judges were intentionally protracting the conclusion of cases assigned to them. They proposed to summon the judges to the Council's session and discuss this issue together with them. Notably, this was done in a closed session of the Council, even though neither this issue, nor the notice about the closing of the session, was reflected on the agenda of the session.

Later on the monitors learned, that the members of the Council called upon the judges to complete their cases in a timely manner, otherwise disciplinary proceedings could be pursued against them.

The summoning of judges to the Council on this issue, and especially the consideration of the issue in a closed manner posed questions regarding the legitimacy and reasonability of the Council's action.

At another time, the Council summoned those judges whose terms were due to expire on December 15, 2014. The considerations with them took place in an open session. Questions posed included as to how many of their cases were pending, what the previous statistics of completion of cases was and approximately what period of time would be required for them to complete the pending cases.

The monitoring group thinks that, even though the judges may have really be abusing their extended term-of-office (and protracted the completion of assigned cases) actually seemed to be abusing their authority for prolonging their term of office, this issue nevertheless requires to be regulated under the law and resolving it through summoning judges to the Council is absolutely unacceptable.

The examples above demonstrate that it is necessary to have formalized and transparent procedures of communication between the Council and judges. This is, on the one hand, for the Council to be able to effectively resolve problems existing in the judiciary, and that the regulations (or their absence) did not allow judges or other persons to abuse their authority, and, on the other hand, to prevent an abuse of authority, and thereby unduly influence judges, or the perception of it, by the Council.

3.3. Interaction of the Council with Outside Actors

It is to be noted that, during the reporting period, there was practically no institutional connection between the Council and the Ministry of Justice on an array of important issues where their own roles and functions were to be determined. For instance, while working on the part of the Association Agreement's Action Plan related to judicial reforms, there was no cooperation and consultation between these two agencies.

Moreover, representatives of the Council did not participate in the working groups of the Coordinating Inter-Agency Council on the Government's Action Plan (2014-2015) on Human Rights Protection. In these working groups, multiple important issues are discussed that are related to the judiciary and the justice system. According to the representatives of the secretary of the Inter-Agency Council, despite their efforts to include the representatives of the High Council of Justice in the working groups, they did not participate in the meetings.

Studying the reasons of such practice is beyond the scope of this research. However, we think that such practice hinders an informed discussion on challenges in the judiciary and implementation of effective reforms in the system.

3.4. Reaction by the Council on Duress and Smear Campaigns against Judges

During the reporting period, the Council made several statements regarding the facts of duress on judges or smear campaigns against them. However, it is notable that, based on the formalistic interpretation of law, the majority of the Council held a radically different position in the case of duress, which took place in previous years.

In particular, during the session of March 18, 2014, the High Council of Justice (in particular, its judge members) failed to react to the report of the Human Rights and Civil Integration Committee, which the Parliament had sent to the Council on **December 13, 2013**. Regarding this issue, GYLA and the Association Unity of Judges of Georgia made a public statement. This report concerns illegal pre-term termination of authority of Merab Turava, Nino Gvenetadze, Tamar Laliashvili and Murman Isaev, former judges in the Supreme Court of Georgia. The report notes that the previous government conducted disciplinary proceedings against these judges in 2005-2006, which were marked with political motives, illegality and arbitrariness.

During the Council's session when this report was being discussed, the non-judge members of the Council presented their view on the report and a draft declaration, which evaluated the facts described in the report as a violation of the principle of judicial independence and set out a number of important principles in this regard. The non-judge members proposed the Council to adopt this declaration.

The organizations undertaking the monitoring think that the judge members of the Council could have come to agree with the position of the non-judge members expressed in the draft declaration; for example, they might have decided to openly declare that it is inadmissible to abuse the disciplinary proceedings at the detriment of the independence of judges and for intimidation and repression, etc. Moreover, the High Council of Justice could have considered the need for legislative reforms in the regulations governing the system of disciplinary proceedings and propose relevant recommendations or a bill for the Parliament's consideration.

Instead, the judge members of the Council stated that making laws is the prerogative of the Parliament. Such an approach to the issue demonstrated an inconsistent approach in the work of the Council; as it has a track record of proposing legislative changes to the parliament, as well as expressing its position regarding various draft laws discussed in the Parliament.

Eventually, the judge members of the Council, referring to formalistic grounds, decided that the Council was unable to do anything regarding the information provided in the report.

The monitoring group thinks that this decision made by the majority of the Council (judge members) cannot be assessed as consistent, coherent, principled decision, free from any political or narrow group interests. Further, it is notable that this decision was made with the participation of those persons (Council members) who had allegedly participated, due to their powers, in the facts of duress described in the report of the Parliamentary Committee. Nevertheless, they have not made an attempt to distance themselves from the decision-making process due to their conflict of interests and make self-recusals in that particular case.

IV. TRANSPARENCY OF THE COUNCIL'S WORK

4.1. Public Access to the Council's Sessions; Closed Sessions

During the reporting period, information regarding sessions used to become available on the Council's website usually several days prior to the upcoming session. However, the problem persists in meeting the requirement to post the information about a session 7 days prior it. During this period, out of 30 sessions, the information was posted 7 days before the session only in case of 3 sessions. There is an improvement in terms of publishing the agendas – there was only one case where an agenda was not published together with the information about the session. By contrast, during the previous reporting period, there were 19 such cases. Despite these positive changes, during the reporting period, several times, the date and time of the sessions were modified a very short period of time before the planned session. There was one case where no prior information was available about holding a session but there is a decision dated June 6, 2014, available that make us think that a session was held at that date. Notably, there were 14 of such cases in the previous reporting period.

Back in the first monitoring report, it was noted "the Council, as collegial public agency, is required to published information, a week prior to the planned session, on the session, the place where it will be held, the time and the agenda." Under the law, an exception to this rule is allowed only in emergency cases. The monitoring group assesses that, during the reporting period, every case where the Council did not publish information on sessions was a non-compliance with the law.

Current data confirms that deficiencies persist in the Council's practice of publishing information on sessions. The Council should without a deviation follow the General Administrative Code of Georgia (here-

inafter, GACG) and publish the information 7 days prior to the planned session. Further, changes to the date and time of the sessions should be as rare as possible to enable the interested parties to learn about the date and time of such sessions in due time.

The previous report of the monitoring group also pointed out that it is possible to lay down different timeframe, by means of a legislative amendment, for the rule of prior publication of such information other than the one provided by the GACG. Furthermore, the emergency cases could be defined where the publication of information on sessions within the set timeframe is not required.

When discussing the transparency of the Council's sessions, we cannot bypass the issue of closed sessions. During this reporting period, the Council's sessions were closed for several times. The information about closing the session was published in advance only once and even that was done in violation of the 7-day-deadline. In all other cases, no information was published in advance regarding the closing of the sessions. The similar facts were recorded also in the previous monitoring period with the only difference that the chairperson used to unanimously make the decision in the case of closing, whereas in this reporting period, the chairperson consulted with other members of the Council regarding the issue of closing the sessions. Regardless, the requirement of the GACG was breached, which requires that the statement on closing a session must be published 7 days prior to the session, together with the agenda. In this case, there was no emergency necessity, which would justify the deviation from the deadline set out by the law. Accordingly, this issue should also be regulated by the legislation or by-laws governing the activities of the Council.

Notably, in several cases, the non-judge members opposed to the chairperson's motion in one case and in another case to the Council secretary's motion to close the sessions. For example, such an instance took place on November 24, 2014, where just one issue was raised for consideration. Namely, the issue pertained to organizational matters relating the Council's members deliberating the work of judges who are on probation 3-year term. In addition, on December 15, 2014, when judges whose terms were about to lapse were invited to the Council's session. In neither of the cases was the session closed. The monitoring group thinks that there was no ground to close the sessions.

During the monitoring period, the work of the Council enjoyed an increased interest, which further supports the necessity that the Council observed and safeguarded the principle of transparency. Based on the existing standards, the requirement of the GACG applies to the Council. This means that the Council must announce that the upcoming session will be closed 7 days prior to the relevant date. During the reporting period, however, the Council systematically ignored this duty. This issue is also related to the problem of drafting the agenda of the session, as it is not clear what are the procedures according to which the session may be closed. Therefore, this issue should further be regulated by the legislation or by-laws governing the activities of the Council in a way that guarantees the high standard of transparency and safeguarding the interests of the persons who wish to attend the Council's sessions.

4.2. Problems in the Legislation and Practice Related to the Preparation and Invitation of the Council's Sessions

Preparation of the Council's Sessions

The law provides that the secretary of the Council prepares the Council sessions. However, it does not mention anything regarding the actions and procedures for such a preparation, which creates problems in practice.

During the reporting period, the Council postponed making a decision on an agenda item for multiple times for the reason that the issue required that the Council members better studied, prepared the issue or because the relevant materials were not timely made available to all the members of the Council. The non-judge members of the Council have many times expressed their discontent on this matter. In certain cases, decision-making on various issues was delayed as the members of the Council held radically different points of view.

The preparatory work and its timeframe require a detailed legislation under the Regulation. More specifically, it should be provided in the law as to what timeframe should be observed by the secretary of the Council when furnishing all the applications and draft documents to the Council members, which are going to be considered in the upcoming session. It is recommended that these documents were available to the members also in electronic format. It is equally important to timely provide the Council members with all the documents that are to be discussed in the upcoming session and also copy of any document

that are submitted to the Council and falls into its competence. This is to enable the Council members to decide whether to raise the issue at the sessions.

The issue whether the GACG applies to the Council or not is also important in the context of preparation of Council sessions because, if it is agreed that the GACG also applies to this part of the Council's activities, then the Council would be required to publish its draft normative administrative-legal acts in advance. This would significantly change the rules for preparation of the Council sessions and their timeframe.

Invitation of the Council's Session

According to the law, the chairperson of the Supreme Court of Georgia or by his/her authorization – the secretary of the High Council of Justice may convene a session of the Council as necessary but at least once in 3 months. In case the chairperson of the Supreme Court of Georgia cannot perform his duties or in other cases where convening a session of the Council is legally required, a session of the High Council of Justice of Georgia is convened by its secretary. A session of the Council can also be convened by 1/3 of the Council's members.

During the reporting period, the first case of non-judge members convening a session was recorded. They were referring to this very right of theirs as described above. On the session, a discussion was planned relating important challenges before the judiciary. Yet, the session could not be held as none of judge members of the Council attended.

The failure to hold the session was very negatively assessed not only by the non-judge members, but also by representatives of civil society. On the following session, when the non-judge members requested to discuss this issue, both judge members and non-judge members used a drastically different interpretation of the law in their arguments.

In order to avoid such situations in the future, it is necessary that the law or the Regulation of the Council detailed the rules and procedure for the Council members to convene the Council sessions.

Agenda of the Council and Relevant Issues

The preparation of the agenda for the Council's sessions remains a problem. Neither the GACG nor the legal framework regulating the work of the Council provides as to how and though which procedures the agenda of the Council needs to be drafted. The non-regulation of the issue weakens the transparency of the Council and poses further questions regarding the openness of the Council's activities. Back in the previous reporting period, the non-judge members of the Council raised this issue on the Council sessions. Although the non-judge members did not raise this issue again during the reporting period, it remains unresolved.

It is advisable that the law provided for the procedures of preparing the Council's agenda as well as the responsible person for its preparation. Considering the fact that the secretary of the Council is the one who is in charge of the preparation of the sessions of the Council, it is the chairperson of the Council who convenes the sessions. The Regulation of the Council may determine any of these individuals, after a mandatory consultation with other members, to draft the Council's session's agenda in advance. The draft should then be published and be approved by the Council in the beginning of the session. In addition, it would be advisable to have the Council agendas written in as much detail as possible. This, on the one hand, could ensure the transparency of the Council's work, and, on the other hand, the public will be adequately informed about the session. It would also be advisable to make available to the interested persons, together with the agenda, the draft laws before the Council, action plan or other types of documents.

The Regulation does not provide as to who determines the list of issues on the agenda. Also, nothing provides for the right of a member, with observing a certain timeframe and procedures or on sessions, to remove an item from the agenda or make an addition to it. The non-judge members of the Council have several times spoken about this problem.

It is recommended that the secretary of the Council is obliged to add an issue to the agenda if at least one member of the Council requests so.

The chairperson of sessions usually did not inquire, in the beginning of sessions, whether other members had any other important issue to discuss in order to modify the agenda.

During the reporting period, there were several cases where the Council discussed issues that were not on the agenda.

The agenda should be more informative. For instance, in many cases, items are entitled in such a way that it is difficult to understand as to with what or whom the issue concerns. For example, in the agenda of the session dated November 19, 2014, the second item was "Discussing the issue of judges on mission." Naturally, it is impossible to know from this title as to specifically mission of which judges were discussed or whether it regarded the mission of judges in general. Notably, the initiator of this issue (the secretary of the Council) did not mention names of judges; accordingly, the issue remained unclear even for the attendants of the session.

During the monitoring period, at least one case was recorded where an issue prepared by a member of the Council, and the relevant materials provided to other members in advance, did not end up on the agenda. For this, the non-judge members complained to the members of the Council.

4.3. Rules, Procedures and Timeframe for Considering the Issues Raised before the Council

Rules for Considering Applications Submitted to the Council

When discussing the activities of the Council, we cannot avoid discussing the rules and timeframe for the Council to assign and consider applications and petitions submitted to it. During the reporting period, making the decision on this matter was postponed for multiple times including due to unsatisfactory preparation of the issue or non-delivery of the relevant materials to the members of the Council in a timely manner. The non-judge members many times raised the issue to systematize received applications and to determine the rules for delivering them, together with copies of the attached materials, to all members of the Council. However, the issue stays unresolved up till now.

Neither law, nor by-law binds the Council to study, consider and make a decision on this issue within certain timeframe. Including, no regulations apply as to what timeframe is mandatory for the Council to consider an application submitted to it and to make a decision on it. During the reporting period, decision-making on several issues was protracted, including drafting the Agenda for the Association Agreement. On one of the sessions, the secretary of the Council also confirmed that the deadline was missed.

During the monitoring period, there was a case where an application submitted to the Council in 2008 was considered by it in 2014. The decision on it was made after several sessions of the Council. This unequivocally merits a negative assessment and, together with other examples, indicates that deadlines are required to be adopted under the law.

Rules Regulating Conflict of Interest of the Council Members

Similar to the previous reports, this reporting period confirmed once again that need exists to regulate a series of procedural issues. For example, neither law, nor any by-law provides for the issue of conflict of interest among members of the Council. Unfortunately, the issue could not be resolved by practice either. Although, in the reporting period, several issues raised before the Council where participation of one or more members was a classic examples of the conflict of interest, the members never attempted to identify the conflict and accordingly to refrain from voting on this ground.

Possibility for Persons Present at the Council's Session to Make Statements

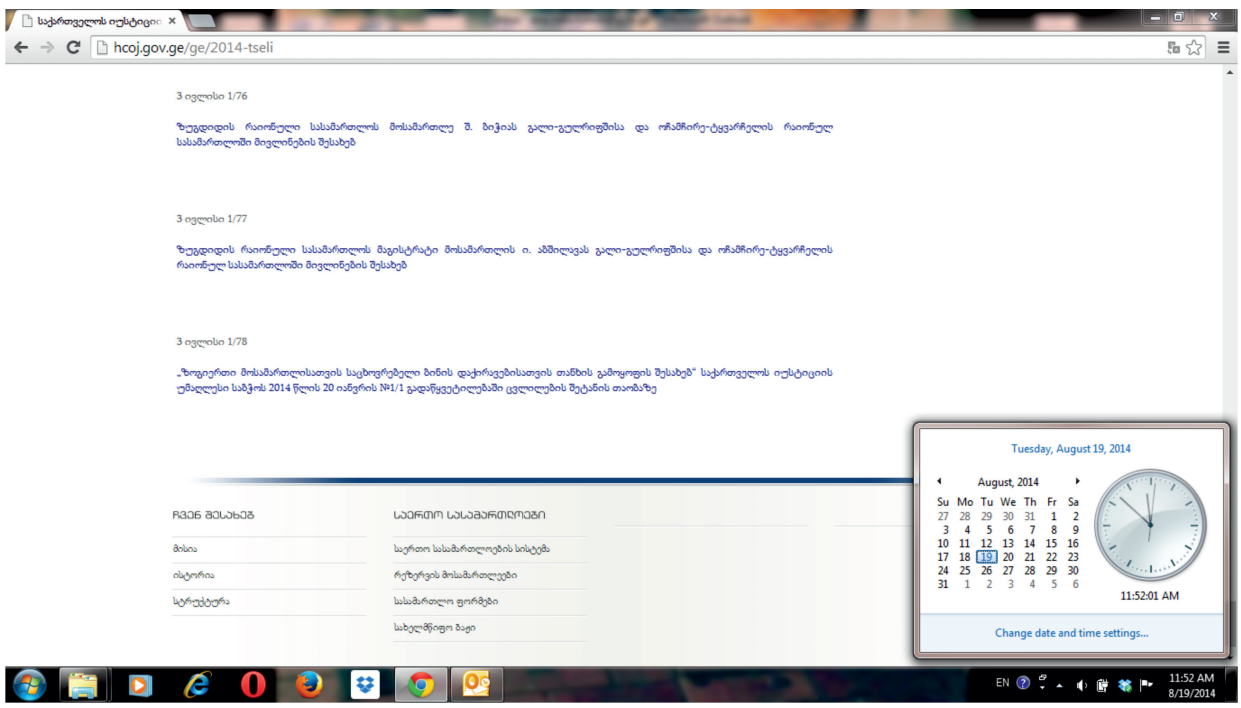
During the monitoring period, both local and international organizations used to seek to attend the Council's sessions as well as judges. Often, the persons present on the sessions would like to express their opinions and they were allowed to so in most of the cases. However, similar to the previous periods of the monitoring, the rules and procedures are not established as to how the persons present on the sessions express their opinions. Consequently, whether they have such an opportunity is the sole discretion of the chairperson of the Council. It is recommended not to leave this issue just to the good will of the chairperson of the Council and instead adopt norms safeguarding such right and the procedures for it. Persons present on sessions could use them to be able to express themselves regarding the issues before the Council.

4.4. Availability of Information Regarding the Council's Work

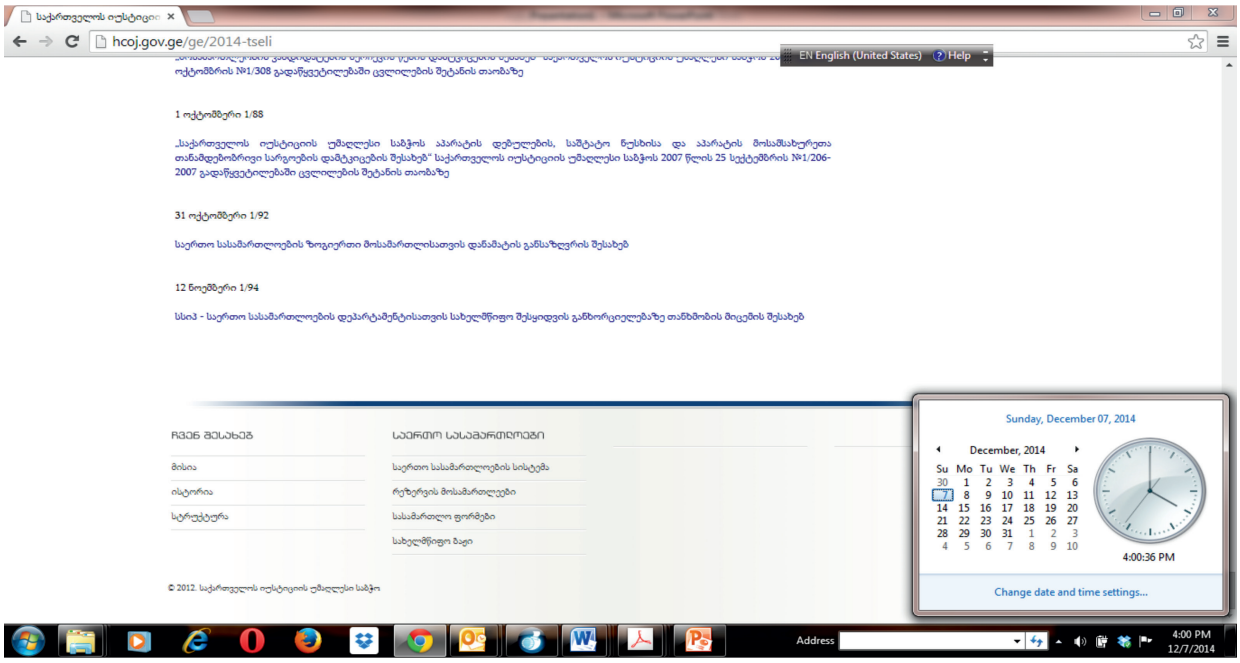
Despite the fact that the Council's website is enabled to post the information on sessions, the agenda and the minutes in a systematized manner, these functions are not actively used. Similar to the previous reporting period, as noted above, the Council prepares its minutes in the format of audio-video recordings. It is recommended that minutes of sessions were uploaded on the official website of the Council instead of only making them available in the internally used Intranet. This issue is of high necessity as decisions made by the Council refer only to legal grounds and they do not provide justification. Consequently, the minutes of the Council sessions remain the only sources to verify the legality and exigency of the Council's decisions.

It is recommended that the laws provided for the obligation of the Council to post the audio-video minutes and the decisions adopted on its website within 5 days of their adoption. This will ensure improvement of the transparency of the Council's work

Regarding the accessibility of adopted decisions, compared to the previous reporting period, this reporting period has showed some improvements, however, with enduring problems. In particular, in the second half of the reporting period, the website of the Council was not updated on time. For example, the decision dated by December 1, 2014 of the Council, approving the form for evaluating work of a judge became available to the monitoring team only in response to our request for public information; it was only later when the decision was uploaded on the Council's website. The decision of the Council, dated by November 19, 2014 which concerns amendments to the Rules and Regulations of the Council and introduces procedure for convening an enlarged session of the Council, was uploaded on the website with considerable delay. On the same day, the Council adopted a number of important decisions, which also were not made available on the website in a timely manner.



With this, it should be noted that, unlike the previous monitoring period, the monitoring group has never encountered a difficulty in obtaining information from the Council. However, just in one case, the requested information was delivered to us in violation of the 10-day-deadline. The minutes of the Council sessions were delivered in audio-video format. However, as noted above, they were not posted on the Council's official website.

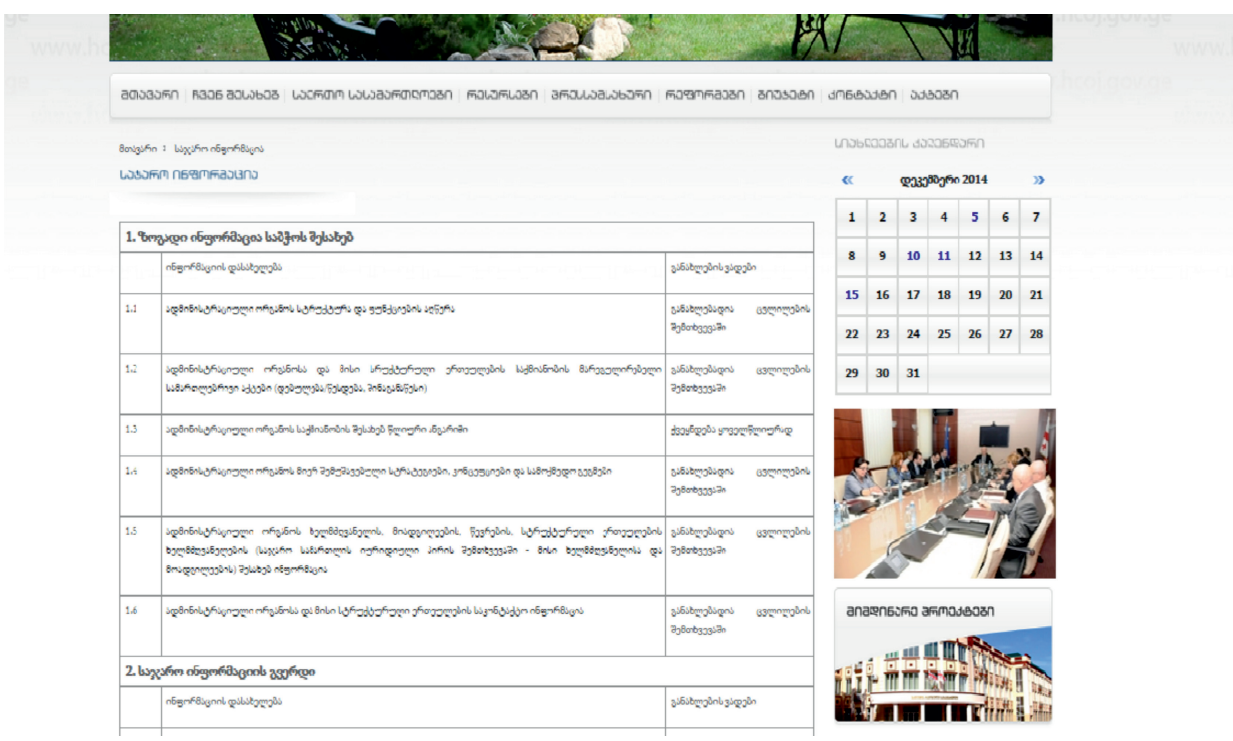


Proactive Publishing of Public Information

Due to the fact that on the international scene there is an increased interest in proactively publishing public information, publishing information by a public agency through its electronic means has a very real purpose. Therefore, the fact that a functionality regarding public information was added to the website of the Council since February 19, 2014, should be welcomed. There, the published information includes the information that is required to be published under Resolution of the Government on "Requesting Public Information in Electronic Form and Proactive Publishing." Adoption of this Resolution was in turn, part of the "Open Governance Partnership Georgia" 2012-2013 Action Plan.

Yet, the functionality does not work without complications. The information is at times not published in the area designated for it.

(For example, Strategies, Conceptions and Action Plans Developed by the Administrative Body; Statistics regarding the Administrative Body; Annual Reports regarding the Administrative Body).



Internet Streaming of the Council's Sessions and Photo-Video Recording

Back in the previous reporting period, the issue was raised by the Association Unity of Judges of Georgia to have the Council's sessions broadcasted live by special closed Intranet functioning in the judiciary which are accessed by judge and non-judge members of the Council. The request was granted in the previous reporting period. However, according to the members of the Association, the system was functioning with some problems. During this reporting period, they have not made such a statement which allows us assume that the system is functioning well and the interested judges have the opportunity to watch the Council's sessions without problems. In addition, under the decision dated February 3, 2014, not only the sessions are streamed, but audio-video recordings are also uploaded to the system allowing the users to download them on their personal computers. This is clearly a positive change. However, the problem remains for other interested persons to have the audio-video recordings as they are not uploaded on the Council's website. The monitoring group obtained them only through a written request.

The High Council of Justice should ensure publishing the audio-video recordings not only on its Intranet but also on its official website, or minutes of sessions should be published at least in written format so that interested parties could have access to them.

The monitoring organizations think that coverage of the Council's sessions remains problematic. Sessions of collegial state bodies are open, as guaranteed under the law, and they do not allow any restrictions for the media representatives to attend such sessions. They are also entitles to attend sessions and capture/record the process of sessions and any issues of their interest by audio-video tools.

Under the decision dated February 17, 2014, mass media representatives may take photos and record video only **opening** of Council sessions. For this reason, on the session of July 17, 2014, where media organizations wanted to record the session, the chairperson of the Council stated that according to the Regulation, the media could record only the opening of the session. After debates between judge and non-judge members of the Council, the chairperson allowed the media to record the whole session.

Despite this problem, the situation has improved compared to the previous monitoring period. In that period, the PR service of the Council allowed the journalists to record only video which the media organizations were recording simultaneously and for a very short period of time. During the previous monitoring period, on one session of the Council, media organizations were not allowed to record video at all. The chairperson himself told them not to record. It is worth noting that that session was open, and, accordingly, it is unclear what caused the need of such a restriction. The session was not closed nor was it raised at the session to be closed.

The monitoring group thinks that it is important to safeguard under the Regulation an uninterrupted and full recording of sessions.

Due to the above mentioned, the High Council of Justice does not adequately ensure the transparency of its work. It should be taken into account that the interest towards sessions of the Council does not come only from the judiciary itself but the interest of various groups of the society has been increasing. Therefore, the Council should allow journalists to record the proceedings of the sessions as well as ensure streaming of sessions on its website, archiving recordings and assuring accessibility to them. This will support the economy of the Council's functioning as well as implementation of a transparent system with relatively less burdensome and economical means.

V. JUSTIFICATION OF DECISIONS MADE BY THE COUNCIL

The monitoring group studied and analyzed the majority of the decisions which were adopted during the monitoring period and are available on the Council's website. The group also monitored the process of their adoption. In many cases, decisions adopted by the majority vote of the Council members made an impression of being unsubstantiated. While opposing and often well argumented ideas were voiced during these sessions, and while those ideas were not rebutted by the majority, nonetheless, the latter's position prevailed in the end.

Lack of substantiation in the Council's decisions is due to the flaws not only in the law, but also in practice. Decisions on the appointment of judges clearly demonstrate these flaws. Therefore, the process of appointment of judges will be analyzed in this report in detail.

5.1. Selection/Appointment of Judges

Amendments to the Rules on the Selection/Appointment of Judges

The Organic Law on Common Courts of Georgia and the Decision No. 1/308 of the High Council of Justice dated by 2009 set out the rules for selection-appointment of judges.

During the reporting period, the Council has introduced amendments to the Decision No. 1/308 at three different stages. The first set of amendments was made on February 17, the second – on March 4 and the third – on September 24.

Before the amendment made in February, under the Decision No. 1/308 of the Council, the competition for appointment of judges included two stages. The first stage was selection of candidates based on their documents. The candidate would be allowed to proceed to the second stage if the Council gave a positive evaluation during the first stage.

February amendments specified that during the first stage of the competition, the Council evaluates whether the documents submitted by the candidate are in compliance with the requirements of the law; the amendments also made the interview during the second stage of the competition a mandatory procedure. Additionally, according to the February amendments, a candidate proceeds to the second stage even if he receives a positive vote of at least one of the Council's members.

February amendments further introduced an important novelty - the Council is authorized to conduct an interview with the candidate in the presence of a professional psychologist. However, in the amendments themselves, the provision on the participation of a psychologist is brief and vague. Namely, Article 12(4) of the Decision No. 1/308 only provides the following: The psychologist shall be entitled to ask questions to the candidate, he shall provide his opinion about the candidate to the members of the High Council of Justice, and shall not be entitled to disclose his opinion to the candidate, the opinion of the psychologist are not binding upon the members of the Council.

Important issues relating the psychologist's involvement in the process on selection-appointment of judges are left unregulated; it is unclear what are the criteria, rules and procedures for the selection of a psychologist, how will the psychologist present his opinions to the members of the Council - verbally or in writing, immediately after the interview or a period thereafter, etc.

The monitoring group requested the information as to which procedures and criteria were used for the selection of a psychologist during the monitoring period. According to the answer received, the psychologist was selected "based on the interview with members of the High Council of Justice."

The monitoring group requested the information from the Council as to whether the psychologist had any type of business meeting/consultation with the Council members before conducting the interviews with regard to the methodology and criteria for the evaluation of candidates. No response was provided to this question. We also asked in what form and timeframe did the psychologist present his opinion to the Council following the interviews. To this question, we received a response that this was done in accordance with No. 1/308 Decision of the Council. Notably, no answer to our query can be found in the Decision. It provides for only the following: "Psychologist shall present his opinions about the candidates to the High Council of Justice."

Another important novelty introduced by February amendment is that the Council is now vested to with the power to seek references or other information about the candidates. However, the amendment does not regulate this issue in further details. Such regulations were added to the relevant decision of the Council in September, 2014; September amendments designated a competent body authorized to gather such information and determined the its rules and procedures for its operation.

Amendments made in March 2014 altered the rules for voting and decision-making on the appointment/selection of judges. In addition to other changes, the amendments introduced the procedure for re-voting in case the candidate fails to receive the necessary number of votes in the first round of voting.

As noted above, important amendments were made to the decision of the Council in September; these amendments determined the renewed criteria for the evaluation of judge candidates, outlined the principles of assessing the candidate's compatibility with the new criteria, specified the rule of submitting the application and the list of necessary accompanying documents, the rules for verification of the documents, for gathering and assessing the information gathered, etc.

The new power of the Council, which authorizes it to gather information regarding the candidates, is

an important novelty. This power was first introduced by the February amendments. However, it was further specified in the amendments made in September. The relevant regulations however contain multiple ambiguous and problematic issues. Such an authority of the Council is itself an important issue and therefore, it is recommended that it becomes a subject of a separate research and analysis.

It should be positively assessed that, under the amendments, the Decision of the Council now contains a provision obliging the Council members to be guided by the principles of objectivity, fairness and impartiality in their decision-making on selection/appointment of judges. However, the importance of this amendment is weakened by the fact that no mechanism is in place to monitor implementation of these principles in practice.

Another important aspect of the amendments made in September was the requirement to hold the interviews with candidates in closed sessions. This amendment does not allow one of the most important functions of the Council to be carried out in a transparent and public way; moreover, the amendment closes the door for observers to scrutinize the process. This amendment undoubtedly merits a negative assessment.

Selection/Appointment of Judges

During the reporting period, the competition for selecting judges was held in a more or less organized manner. The relevant information was posted on the Council's website and it was updated from time to time, albeit with some problems.

The call for submittal of documents for the competition was announced on January 21, 2014. The information about 34 vacancies were posted on the Council's website. For this competition, applications could be submitted only electronically. The timeframe for registration of applications was determined from January 22 to 5 February. However, in accordance with the decision of the Council dated February 3, 2014, the deadline was prolonged to February 9, 2014.

Additionally, the decision of the Council specified the list of the vacant positions in the judiciary by adding the information on chambers and panels where the vacancies are open.

On February 5, 2014, a notice was posted on the Council's website regarding a temporary discontinuation of the registration of applications (due to a technical problem). The notice included that the registration would resume from 4.00 PM the same day.

On February 12, 2014, the information on the number of registered candidates was published as well as their names. In total, 99 candidates were registered.

On February 20, the information was published on the website regarding the judgeship exam based on the decision dated February 17, 2014.

The part one of the qualification exams for judgeship (test exam) was held from June 7 to June 13, 2014. The second part (written exam) was held from June 14 to June 22, 2014. The exam was held in the general field as well as in specializations. The website of the Council also published the information about the minimum required age for takers of the exam (25 years).

On March 14, the shortlist permitted to the second part of the competition was published, in total – 94 candidates.

The interviewing started on April 2 and the information on it was published on the website on March 31. Interviews were held on 2, 3, 4, 10, 11 and 15 April. Candidates were proportionally distributed across days and the Council interviewed either 15 or 16 candidates per day.

However, the schedule of interviews was not always available on the Council's website within the required time. For example, the information about the interview on April 3 was published on the Council's website only on April 2, and for April 4 – only the same day.

On May 23, a notice was published on the website on holding a session of the Council on May 27, 2014. The session would relate to the voting for selection of judgeship candidates. The candidates were once again asked to verify the vacant positions they indicated in accordance with the attached file, as the vote would be held according to the mentioned list. The corresponding verified list was published on May 26.

As a result of the secret vote of the Council on the session of May 27, 2014, 10 judges were selected.

The Practice of Selection/Appointment of Judges in 2014

Unlike the previous years, members of the Council were more engaged and active during the interviews with candidates. However, the interviews still fell short of the required standard.

Members of the Council were able to select only one successful candidate already in the first round. The remaining 9 judges were selected only by means of the second rounds of voting. Out of them, in most cases, this was made possible by means of internal group consultations between the judge members of the Council, or - at times - between the non-judge members.

At times judge members and at times non-judge members of the Council were leaving the session room in groups, discussed the issue outside and after returning to the session room, were getting prepared for the second round of voting. The reason why the members of the Council who were involved in such consultations changed their position held during the first round in the second round, remained unclear. The consultations were not coupled with open discussions between the members regarding a candidate's compliance with the criteria of judgeship. This could have objectively become the basis for changing the opinion by a member.

The monitoring of the selection process in the mentioned period once again demonstrated that the normative framework of that period regulating the judicial appointments was vague, flawed and did not create a fair system for making a completely impartial decisions based on objective criteria, assessment of each candidates' individual education, professional experience and personal character.

However, it should also be noted here that the described selection-appointment process was the first in practice where appointment of judges to the positions was in fact conducted based on 2/3 votes required for it. As it was noted in the previous reports, in previous years an incorrect practice developed whereby on the first step, a candidate would be appointed on the general judgeship position based on 2/3 members of the Council. After this, the judge would be appointed as a judge of a specific court based the vote of majority of the Council (votes of judge members of the Council were sufficient to this end).

Despite the positive events mentioned above, multiple problems were reported during the interviewing process, which will be discussed in detail below.

Participation of the Council's Members in the Process of Selection/Appointment of Judges

The monitoring revealed that two members of the Council, who had not been present at the interviews with candidates, participated in the decision-making regarding the candidates and in the voting procedure. Despite the fact that the non-judge members of the Council raised this issue before the Council, no explanation was offered and no other measures taken to address this issue.

It was further observed by the monitors that some other members of the Council were also not present at all the interviews. There were cases where one or two members of the Council arrived at the session an hour late, or left the session room for certain period of time during an interview process.

GYLA requested the Council to provide a list of members present at the interviews, separately for each candidate (in case this was recorded). The Council responded that no records were made that would show individual attendance of the Council's members at the interview process or note their temporary absence.

The practice of partial attendance (and/or absence) raise questions as to whether the decisions regarding selection/appointment of judges are made by the members based on their individual decisions, and are thus – legitimate.

Not all members of the Council were equally active at the interviews. It was the same group of members who usually raised questions. Some members have never raised any question.

The Role of a Psychologist in the Selection/Appointment Process

Based on the amendments to the Decision No. 1/308 of the High Council of Justice, dated by February 17, the Council is authorized to conduct the interviews for selection/appointment of judges in the presence of a professional psychologist. However, many issues related to the role of the psychologist in this process are left unregulated (see above for details).

The monitoring found that the psychologist was very actively involved in the interviewing process, was actively asking questions and was even engaging with the candidates in discussions on various topics. The questions posed by the psychologist mainly pertained to the issues that are controversial, such as: same-sex marriages, adoption by same-sex couples, etc.

It is interesting, that at the Conference of Judges the chairperson of the Supreme Court of Georgia mentioned a case of "a very corrupt person, about who everybody knows" who participated in the competition for the selection/appointment of judges. According to the chairperson, his candidacy was rejected; justifying this decision, the chairperson referred to the negative evaluation of this candidate by the psychologist. He noted that, immediately after the interview, the psychologist turned to the members of the Council and stated: "this candidate is inclined towards money."

This example raises questions as to what source of information the members of the Council are entitled to use while making decisions regarding the selection/appointment of judges. If a judge, whose corrupt past is allegedly known to everybody, was not dismissed from the court system for a corruption-related crime and no other disciplinary penalty was imposed upon him, then how fair is it to make a decision regarding his candidacy solely based on rumors without even giving an opportunity to the candidate to refute them? How fair and legitimate is it to refer to the opinion of the psychologist as one of the main arguments in justifying the decision?

Topics of the Interviews

Topics of the interviews concerned both: purely legal issues, as well as the candidate's opinions on the overall situation in the judicial system and the ongoing reforms. In addition, questions were asked which intended to gather information about the candidates' worldview in a broader sense. Some candidates were asked about their family members, for instance, the profession and employment of their child and spouse.

Candidates who were dismissed from judgeship in previous years, who resigned prior to the expiration of their term of office or were assigned as reserve judges, the members also asked questions regarding the reasons for these developments. The candidates with the judgeship experience in the past were often asked whether they referred to the case law of the European Court of Human Rights in their decisions. Also, they were asked if disciplinary penalties were used against them in the past.

It should be noted that legal questions asked during the interviews were not very complex and did not in fact require deep analytical thinking from candidates. These questions were, e.g., what is the standard of proof in civil law, how a specific criminal act should be qualified, what does the candidate think about the criminal responsibility of legal entities, what does the candidate think about the jury system, what problems exist in a specific field of law, etc.

Almost all candidates were asked what they thought about the probation period of judges.

The candidates were asked also about the issues that cause controversy in the society – euthanasia, same-sex marriage, abortion, legalization of marihuana, etc. There was practically no question that would test the sensitivity of the candidates towards vulnerable groups such as women, persons with disabilities, ethnic or religious minorities and foreigners.

In many cases, the questions asked on interviews left the impression of superficiality and formality. For example, there was a question as to what the main quality of a judge should be without a follow-up question specifying what does the candidate mean under the named concept (e.g. impartiality) in general and in specific cases.

5.2. Transfer of Judges to Other Courts to Carry Out their Duties

Article 13 of the Law of Georgia on Case Assignment and Assignment of Judicial Duties to Other Judge provides for the authority of the High Council of Justice to transfer a judge both – from regional (city) or appeal court to another regional (city) or appeal court, if there is an absence of a judge or a sharp increase of pending cases in the latter court. If necessary, the transferred judge may also carry out his duties in the court from which he is transferred. The transfer of a judge to another court is permitted only in case of his consent and for the duration of up to 1 year.

In case of necessity, when the interest of justice so requires, the Council may transfer a judge to another

court without his/her consent; such a decision needs to be approved by more than half of the Council.

The monitoring group has many times, including in the last two reports, pointed out the problems in legislation and practice regarding the use of transfer of judges. Even though, under the legislative amendments made in 2012, certain legal safeguards were provided to restrict the full discretion of the Council in this process (namely, the period of mission became limited and the consent of the judge became mandatory), problems still persisted during the reporting period both in practice as well as in the law.

For example, "interest of justice" – which provides the basis for judge's transfer without the latter's consent - is a broad and vague concept. The law itself does not give any indication as to what is (is not) the "interest of justice." The relevant practice also fails to provide a clear and unequivocal definition of the concept, as will be discussed below. None of the decisions of the Council concerning the transfer of judges provides an explanation what did the Council deem as an "interest of justice" in a particular case and why. Understanding the reasoning behind the Council's relevant decisions on the interpretation of the concept was also impossible by attending the relevant sessions of the Council.

This is particularly important due to the fact that the reference to the "interest of justice" allows the Council to, without the consent of the judge, transfer him to another court. This, by its very nature, should happen in only very exceptional cases. The law does not clarify whether the Council is obliged first to seek the judge's consent and then, if s/he refuses, is authorized to transfer the judge to another court, if it is so required by the interest of justice.

The Council could not form a clear and predictable practice with regards to the "interest of justice." Other many issues also remain open-ended in the law, which require a detailed regulation in order to avoid the Council from abusing the authority it has under Article 13. Thus, it is necessary that the legislature itself made the law more specific.

The decisions regarding the mission of judges are available on the Council's website. However, they seem like template and only refer to the relevant article of the law without including any argumentation or substantiation. The decisions do not include anything concerning the Council's efforts to gather information or other measures taken that made the Council convinced that in the given cases there were circumstances envisaged under the law for transferring or sending a judge on mission to another court and which motivated the decision.

For example, based on the decision dated 16 June, 11 judges were transferred to another court.

In every relevant decision, it is written that the transfer of the judge was conducted based on Article 13(1) and 13(2^1).

Out of the 11 transferred judges, 10 were transferred to the Tbilisi City Court and the eleventh judge – to Zestaponi Regional Court, from where two judges were transferred to the Tbilisi Court the same day. It is notable that judge Buachidze was appointed in the Zestaponi Regional Court on May 27 based on 1/44 (by competition) decision, and he was transferred to the Tbilisi City Court on June 16.

However, compared to the previous years, but not with 2013, number of transfers decreased which needs to be positively assessed. According to the information obtained from the High Council of Justice, 42 judges were so-called transferred based on Article 13 of the law in 2011. 40 transfers took place from April 1, 2012 to December 1, 2012, 13 transfers – from January 1, 2013 to December 10, 2013. 17 judges were transferred in 2014.

During the monitoring period, the Council also made a decision on prolonging the mission period for certain judges. It is interesting that these decisions were not substantiated either. On one of the sessions where the decision on the prolongation of the term of these judges was discussed, the secretary of the Council made the following short comment: "These judges are needed where they are transferred." Afterwards, the Council approved the prolongation of the term effectively without any discussion. Notably, these decisions are still not available on the Council's website when writing this report.

5.3. Reserve Judges

In case a judge declines to take up judicial position or is not appointed in another court, or s/he is dismissed from the judicial position, s/he can be listed on a reserve list (*hereinafter* reserve judges) if he requests this in writing. During the period of being on the reserve list, the judge may be appointed for a limited period of time. If a judge is appointed for a limited period of time, he may be transferred to another court only within the period of his judgeship.

The rule, in accordance of which the reserve judges can be appointed has not yet been adopted however. Its absence causes numerous confusions and problems in practice in particular with regards to the transparency and justification of the Council's decisions.

For example, the law does not determine what criteria or procedures should be used by the Council to identify which particular reserve judge should be appointed. Also, the law does not clarify what is the basis for appointing a reserve judge, is it e.g., a high number of cases in a particular court at any particular time or some other reason. The wording of the law *the Council may at any time appoint a reserve judge to a particular court* grants the Council an unlimited discretion and creates the possibility of abuse of power.

The practice also could not redress the abovementioned flaws in the legislation.

Similar to the decisions made concerning the transfers, decisions made on the appointment of judges from the reserve list are very similar to each other. There is no reasoning as to which criteria were used by the Council in deciding as to which judge should be selected from the reserve list and appointed. Additionally, it is unclear as to what criteria are used when selecting the court where the reserve judge is to be appointed. This situation raises many questions, in particular in the light of the following practice:

On June 16, 2014, the Council decided to grant authority to two judges from the reserve. One of them was granted with the authority of magistrate judge in Ozurgeti Regional Court in Lanchkhuti municipality, and another – the authority of magistrate judge in Gurjaani Regional Court in Lagodekhi municipality. It is curious that, the same day, judges from Ozurgeti and Gurjaani Courts were transferred to the Tbilisi City Court.

CONCLUSION

During the monitoring period the High Council of Justice [*hereinafter* the Council] was rather busy. It was quite active in a number of directions and discussed a wide range of issues under its mandate.

Legislative amendments of 2013, determining the new composition of the Council[1] positively affected the ongoing discussions and work of the Council as well as the level of its transparency. As a result of this composition, pluralism of opinions and the practice of a healthy debate emerged within the Council. In the second half of the monitoring period, the relations among the Council members became more oriented on cooperation and consensus.

Transparency

It is worth noting that based on the legislative amendments made during the monitoring period the degree of transparency of the Council's work has improved. However, this area needs further progress.

Agenda of the Council Sessions and Publication of Information

Publishing the information about upcoming Council sessions 7 days in advance, as prescribed by law, remained a problem during the reporting period. However, improvement has been documented in terms of publishing agendas of the upcoming sessions in advance. In a number of instances, the date and time of sessions were changed on a very short notice.

During the previous monitoring period, multiple cases were identified when the information about the session was not published, however as decisions dated by the relevant dates exist, it is clear that sessions were in fact held without making this information public. During the monitoring period only one case of this kind was identified. [2]

[1] As a result of legislative amendments made in 2013, the composition of the Council includes 9 judge and 6 non-judge members, out of which 5 are selected by the Parliament of Georgia, one – by the President of Georgia. In 2014, the President appointed the one member of the Council in accordance with the law. However, the position of the 15th member of Council still remains vacant as despite several attempts the Parliament could not manage to gather required votes to select the member.

[2] http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202014/51-2014.pdf

During the monitoring period, the Council held several closed sessions. Prior notice about such sessions was provided only once, without however adhering to the 7 days in advance notice rule. In the rest of the cases, the information about closed sessions was not published.

It is important to note that unlike the previous monitoring periods, the monitoring group has not experienced problems in obtaining public information from the Council. However, in one case, the information requested was provided with considerable delay. The minutes of the Council sessions were made available to us in the format of audio-video recordings. However, they were not posted on the Council's official website.

On a positive note, one needs to observe that a section was added to the website of the Council, which accumulates information published under the Resolution of the Government on "Requesting Public Information in Electronic Form and Proactive Publishing of Public Information." However, the use of this new section is not without problems.

2014 amendment to the Rules and Regulations of the Council obliged the latter to ensure that each session is audio-video recorded and ac copy of the recording is made available to those interested. The same amendment authorized the media to make photo, video and audio recordings of the opening of the Council's session.[3]

The media did not show a particularly high interest towards the Council's activities during the monitoring period; when such interest was demonstrated the media was allowed by the chairperson of the Council to record the session of the Council. This issue is still problematic, however, since the Council's decision,[4] which is in conflict with the Georgian legislation, allows making photo, audio or video recording of only the *opening part* (but not the entire session) of the Council sessions. This restriction clearly merits a negative assessment.

Inclusiveness of the Work of the Council

The level of public awareness about the discussions within the Council on certain important documents/issues and the level of public's inclusiveness in these processes were very low. For example, the Council developed the Action Plan for the implementation of the Association Agreement without having the judges or other interested parties involved in the working process,[5] despite the calls by civil society organizations to do so.

Similarly, adoption of important amendments, which altered the rules and procedures for selection-appointment of judges three times during the monitoring period, was not preceded by public discussions.[6]

During the reporting period, the Council held several sessions to consider the cases of disciplinary responsibility of judges. However, due to the fact that under the law this process is completely confidential, it is impossible to analyze the work of the Council in this context.

On a positive note, at the end of the year the Council adopted amendments to its Rules and Regulations that prescribed the procedure for convening enlarged sessions of the Council. This amendment provides a format for having broader discussions on a series of issues with the involvement of experts, academic groups and interested organizations, in addition to the Council members themselves. The monitoring group hopes that this procedure will be effectively used for fostering inclusiveness and transparency of the Council's work.

[3] Decision N1/22 of the High Council of Justice, dated February 17, 2014.

[4] Decision N1/22 of the High Council of Justice, dated February 17, 2014 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202014/22-2014.pdf

[5] http://gyla.ge/geo/news?info=2229

[6] According to the information on the website of the Council, various working meetings and discussions were held before the amendments made in September. As a result of the joint work, based on consensus, the members of the High Council of Justice developed a unified complete document regarding the principles, criteria and procedures for assessing candidates of judgeship based on the European experience and recommendations made by foreign expert colleagues. However, the Monitoring Group is unaware of any details regarding this process.

Justification of Decisions

Substantiation of decisions remained a problem. All the decisions of the Council follow the same template and do not provide the possibility to evaluate what kind of information or legal arguments became the basis for taking the decision in question. Important decisions of the Council, such as those on appointment, transfer of judges to other courts or assignment of judicial duties to those on the reserve list of judges, lack practically any substantiation and reasoning.

Procedural Issues Regulating the Work of the Council

A series of important issues pertaining to the functioning of the Council remain unregulated by law.

The issue whether or not the GACG applies to the Council remains unresolved and leads to further vagueness (regarding the applicable standards to the work of the Council).

Neither the practice nor the law regulates the issue of conflict of interest of the Council's members; procedure for appealing the Council's decisions to court is also unregulated by law. Preparatory procedures for the Council's sessions, including the issue of drafting the agenda for the session and the person responsible for it, remain undetermined.

Absence of a specific timeframe for responding to petitions and letters submitted to the Council remain problematic. In one instance the Council considered a petition submitted to it in 2008 only in 2014, after several sessions devoted to the consideration of this issue. Law does not bind the Council with certain limited period of time regarding its decision-making process. This gap grants the Council a practically unlimited discretion and enables it to leave the issue practically unaddressed.

This gap becomes even more important considering the fact that the procedure for drafting the agenda of the Council's upcoming session is not entirely clear. It is further undefined what are the powers of one particular Council member in identifying priority issues pending before the Council, or drafting and amending the agenda for the upcoming session. In reality, the person in charge of organizing the session is also in charge of drafting the relevant agenda (the secretary of the Council). However, non-judge members of the Council have complained a number of times that the issues prepared or raised by one of the non-judge members were not included in the agenda. It is also important that non-judge members have multiple times pointed out that letters or petitions submitted to the Council are not made available to them in a timely manner.

Reactions to Instances of Pressure and Smear Campaigns against Judges

During the reporting period, the Council made several statements regarding the facts of pressure and smear campaigns against judges.[7] However, it is notable that, using a formal interpretation of the law, the majority of the Council held a totally different position in case of pressure on judges which took place several years ago and was brought to the attention of the Council by the Parliament during the reporting period. This case raised certain questions regarding the to neutrality and impartiality of the Council and once again clearly demonstrates the need to introduce conflict of interest regulations in relation to the members of the Council.

Relations with outside Actors

It should be noted that during the reporting period, there was no institutional cooperation between the Council and the Ministry of Justice on a series of important issues where their roles and functions are interrelated. For instance, while working on the part of the Association Agreement's Action Plan relating the judicial reforms, there was no institutional dialogue and cooperation between these two agencies.

[7] See e.g.: http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabchos-gantskhadeba/2332
Also, see: http://hcoj.gov.ge/ge/press/news?year=2014&month=3&day=13

Other Issues

During the monitoring period the Council failed to work and take decisions on a number of important issues, such as: the optimal number of judges in the common courts system of Georgia,[8] criteria and procedure for evaluation and promotion of judges, etc.

RECOMMENDATIONS

General recommendations to address the key problems identified in the work of the Council during the reporting period

- The powers of the Council should be balanced with adequate standards of transparency and accountability;
- Transparency and accountability of the Council should be guaranteed in law as well as in practice;
- The scope, procedure and timeframe for appealing the decisions of the Council to court should be prescribed by law;
- It should be decided without further delay whether the Georgian Administrative Code is fully applicable to the Council and its work or not;
- Even if the Administrative Code is not applicable, it is important to ensure that the work of the Council is inclusive and the interested public - experts, lawyers and others - have the possibility to be involved in the Council's work regarding the issues of high public importance;
- For the purposes of a greater inclusiveness, it is advisable to make an effective use of the procedure (recently prescribed in the Rules and Regulation) of convening enlarged sessions of the Council which envisages participation of other stakeholders in addition to the Council members in its session;
- The law should prescribe the procedure for systematic, open and transparent communication between judges and the Council;

Transparency of the Council's Work

- The law should oblige the Council to publish on its official website the written and audio-video protocols of its sessions, as well as its decisions within the five days of their adoption. This will increase the transparency of the Council's work;
- Sessions of the Council should be live streamed via the website; the website should also make the archived recordings of the sessions available to those interested.
- The Council should be obliged to publish not only the decisions adopted but also those draft decisions which failed to gain the Council's support;
- Important draft decisions should be made available in advance not only to the Council members but also to the interested public; interested public should be provided with a reasonable time in advance to submit its comments and feedback to the Council regarding the draft documents;
- To ensure the higher degree of transparency of the Council's work, agenda of the Council's session should be more detailed;
- Together with the agenda of the session, draft laws, action plans or other documents should also be published on the Council's website;
- Discretionary right of the Council's Chairperson to give the floor to a non-member of the Council attending the session should be limited; clear regulations should be established regarding this issue to minimize the possibility of making a biased and selective decision;
- Media should be granted an unrestricted right to record the sessions of the Council without any hindrance.

[8] To this end, the Council created a working group. However, there have been no concrete results presented to the Council during the monitoring period.

Substantiation of Decisions

- The Council should oblige itself to abide by the general principles established under he Georgia's Administrative Code, including the obligation to take substantiated decisions;
- In case the Council decides that the GACG does not apply to its activities, it should adopt its own regulations regarding the obligation of the Council to substantiate its decisions.

Appointment, Transfer of Judges and Assignment of the Judicial Powers to those on the Reserve List of Judges

- The legislation on appointment of judges should be improved in a manner that reduces the possibility of making subjective decisions and those driven by improper motives;
- The work should continue in order to further improve the 1/308 Decision of the Council; in particular, the Regulation should prescribe the obligation of the Council to make substantiated decisions regarding the appointment of judges and to ensure that the interviewing process is open to public.
- All ambiguities in the laws governing the transfer of judges to other courts and assigning judicial powers to those on the reserve list should be clarified in order to minimize the possibility of making subjective decisions or those driven by improper motives.

Procedural Issues Governing the Council Activities

- The Rules and Regulations of the Council should prescribe preparatory work for the Council's sessions, the relevant timeframe and steps to be take preceding the session;
- Legal framework should set rules and procedure, including the timeframe, for assigning the letters and petitions submitted to the Council to its members and for deciding upon these letters/ petitions;
- Rules and procedure to be followed when the members of the Council want to exercise their right to convene the Council's session should be clearly defined.
- Rules should be adopted to regulate the issue of conflict of interests of the Council members.

Position of the Council regarding pressure and smear campaigns against Judges

- The Council should ensure a uniform approach towards the facts of pressure on judges and in every such case be guided not by a formalistic interpretation of law but by the supremacy of the interests of justice.

Relations of Council with Outside Actors

- It is important to develop the practice of constructive cooperation between the Council and other state agencies, especially the Ministry of Justice.