



# Monitoring Report of the High Council of Justice Three-Year Summary (2012-2014)



**USAID**  
FROM THE AMERICAN PEOPLE



Tbilisi, 2015

**MONITORING REPORT OF THE HIGH  
COUNCIL OF JUSTICE**

**THREE-YEAR SUMMARY**

**(2012-2014)**

This report is prepared under the auspices of the project Promoting Rule of Law in Georgia. The Project is funded by the United States Agency for International Development (USAID) and implemented by the East-West Management Institute (EWMI).

The contents are the responsibility of Georgian Young Lawyers' Association and Transparency International Georgia and do not necessarily reflect the views of USAID, the United States Government or EWMI.

**Tbilisi**  
**2015**

**Authors: EKATERINE TSIMAKURIDZE**  
**(Georgian Young Lawyers' Association)**  
**KETEVAN MEZVRISHVILI**  
**(Transparency International Georgia)**

**Editor: KHATUNA KVIRALASHVILI**

**Tech. Editor: IRAKLI SVANIDZE**

**Responsible of publication: ANA NATSVLISHVILI**  
**(Georgian Young Lawyers' Association)**  
**GIA GVILAVA**  
**(Transparency International Georgia)**



Was edited and published  
in the Georgian Young Lawyers' Association  
15, J. Kakhidze st. Tbilisi 0102, Georgia  
(+99532) 293 61 01, 295 23 53

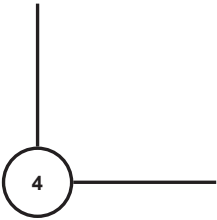
Coping or Disseminating of publication for commercial purpose without  
written permission of organizations is prohibited

---

© 2015, *The Georgian Young Lawyers' Association*  
*Transparency International Georgia*

# CONTENTS

INTRODUCTION .....	5
1. SELECTION AND APPOINTMENT OF JUDGES .....	6
2. TRANSFER OF JUDGES TO OTHER COURTS TO CARRY OUT THEIR DUTIES .....	9
3. TRANSPARENCY OF THE WORK OF THE COUNCIL .....	14
4. DISCIPLINARY PROCEEDINGS .....	18
5. NEW PROCEDURE OF STAFFING THE COUNCIL .....	20
6. OTHER ISSUES RELATED TO THE WORK OF THE COUNCIL .....	21
CONCLUSION .....	22
RECOMMENDATION .....	23



## INTRODUCTION

As part of the Judicial Independence and legal Empowerment Project (JILEP) funded by the USAID and implemented by the East-West Management Institute, the Georgian Young Lawyers' Association (GYLA) and Transparency International – Georgia (TI Georgia) has been monitoring the High Council of Justice of Georgia since March 2012. The monitoring was carried out in three stages:

- First stage – March 2012 – December 2012
- Second stage – January 2013 – December 2013
- Third stage – January 2014 – December 2014

The Monitoring aimed to assess the activities of the key constitutional body of administration in the judicial authorities – the High Council of Justice – against the background of pending reforms in the judicial system, as well as to assess the implementation of new legislative amendments and to analyze the outcome of those reforms, to document the situation within the judicial system, thus allowing later to observe the ongoing processes and reforms in dynamics.

At all three stages of the monitoring the object of the monitoring was: rules and procedure for appointment of judges; rules and procedure regulating transfer of judges and practice of the transfers; transparency of the work of the Council. At the first stage the object of the monitoring also was to assess publicly available information about disciplinary proceedings of judges. In addition, following the new developments of the day the process of staffing the Council was assessed at the first and second stages of the monitoring.

Three-year monitoring makes it possible to assess dynamic of improvements and flaws of the work of the Council, which will help to improve the legislation regulating the work of the Council, to raise the transparency of its work and the quality of substantiation of the Council decisions.

## 1. SELECTION AND APPOINTMENT OF JUDGES

The GYLA was monitoring the rules and procedure for the selection and appointment of judges by the Council at all three stages of the monitoring. During the whole monitoring period the following problems remained:

- *The vagueness of legislative procedures<sup>1</sup> regulating appointment of judges which fail to ensure fair and transparent selection and appointment of judges based on objective assessments of candidates.*
- *Insufficient transparency of selection/appointment process of judges;*
- *The lack of substantiation of the Council's decisions on appointment of judges.*

The Georgian legislation provides for two alternative ways to appoint a person on a position of a judge: The process of appointing the students of the High School of Justice and appointing persons on the basis of a competition who are relieved from attending the high school of justice.

### The Legislation

At the first and second stages of the monitoring **the vagueness of the procedure for the appointment** of judges failed to guarantee the fairness and transparency of the process. At the third stage of the monitoring, during the period of 2014, the Council adopted important amendments to the Council Decision #1/308 from October 9, 2009 specifying procedures for appointment of judges.

Despite number of positive legislative changes, the issue of **implementation of those changes** in practice and the need for more legislative amendments remains a problem. **Still does not exist a mechanism for monitoring the Council's decisions** which would make possible to assess the objectivity, fairness and impartiality of the decisions made by the Council. According to the legislation in place **the Council shall conduct interviews with the candidate judges at the closed session**. This procedure does not ensure principle of transparency and makes impossible to assess objectivity and neutrality of the pro-

---

<sup>1</sup> The procedures for appointment of judges are established with the Organic Law on General Courts and the Decision of the High Council of Justice #1/308 of October 9, 2009

cess<sup>2</sup>. It should be noted that the Council amended its #1/308 decision from 2009 in September 2014 and closed the process of interviewing candidates by the Council which is obviously a negative development. **The new regulations covering participation of a psychologist in the appointment process** are vague and need to be improved. At the same time the legislation still does not establish the process of open competition for the **appointment on judicial position of students of the High School of Justice** which also makes the process of appointment of judges less transparent.

At the second stage of the monitoring a significant problem appeared to be an **appointment of judges by the Council through the so called “two-stage process of appointment of judges”** which meant the decision to appoint a judge as the first stage and the decision to designate the appointed person to the particular court as the second stage. This practice does not comply with the Georgian Law on General Courts which provides for appointment of judges with 2/3 votes of the Council and does not envisage so called two-stage process of appointment of judges. The practice of designating an appointed judge to the specific court with simple majority of votes creates even more ambiguity of the process<sup>3</sup>. The practice of two-stage process of appointment of judges (appointment as a judge and afterwards designation of the same judge to a particular court) was sharply criticized by the organizations involved in the monitoring of the Council’s work. In March 2014 the amendments were made to the “regulation on the selection of candidates for judges” approved by the Council which specified the following: “the decision on the appointment of students of the High School of Justice as well as appointment of participants of the competition process shall be made in written decision of the Council. The decision shall state particular district (city) court or appellate court and a specific panel or chamber of the court where the candidate is being appointed.” This regulation is different from the broad wording that was established by law before the amendments were made when the Council had a practice of appointing a judge to the vacant position in a district (city) court or an appellate court without indicating particular

---

<sup>2</sup> However, it is interesting that the interviews conducted in January 2015 were held in open sessions and interested groups could attend those sessions.

<sup>3</sup> It should be mentioned that the decision of the Council made on June 17, 2013, when the Council appointed 6 judges, indicates particular courts where the judges were appointed and the Council did not hold so called second stage of designating an appointed judge to a particular court.



position in that court and afterwards was making a decision of designating a judge to particular position in that court.

It should be mentioned that at the third stage of the monitoring the improper practice of appointing judges through the so called “two-stage process of appointment” was not observed. The judges were appointed to the specific vacant positions based on the Council’s decisions with 2/3 votes as it is required by the law. The GYLA remains hopeful that the legislative amendment mentioned above will put an end to the previous improper practice of the Council.

### The Practice

The procedures carried out by the Council for conducting competition for the selection and appointment of judges, also, the practice of appointing the students of the High School of Justice to the judicial positions as well as the practice of admitting students to the High School of Justice by the Council **failed to meet transparency requirements and the relevant decisions were not substantiated**. This can be assessed as the result of the flaws in the legislation and regulations and their ambiguity mentioned above as well as the outcome of **inadequate work of the Council for legislative interpretation** of those regulations **failing to establish good practice** of the ambiguous legislation and regulations.

As for the third stage of the monitoring, **some improvements have been observed in the process of appointment of judges though number of problems still remained at this stage.**

At the third stage of the monitoring, compared to the first and second stages, the competition for the judicial appointments took a more or less organized form. The Council was able to **publicize information related to the competition through its web-page** and update it from time to time, however certain gaps still occurred. At the third stage of the monitoring, compared to the previous stages, **the members of the Council were more active during the interviews with the candidates**, however the interviews conducted in 2014 did not meet proper standards. Being present at the public sessions of the Council did not help to assess the motive of the Council member for voting for or against a candidate or to assess the reasons why a Council member was changing his/her decision between the first and second voting. The consultations on the above mentioned issues were held outside

the Council's session area, the members of the Council were leaving the session hall and had deliberations outside the area. The motive for which a member votes for or against the candidate is important not only for the transparency reasons but also to assess if the aim of the competition - to appoint as a judge a person who is professional and possesses all necessary skills and personal characteristics envisaged by law – was met.

The procedure for the appointment of the students of the High School of Justice was held by the Council at the second stage of the monitoring. The non-judge members of the Council were more active during the interviews with candidates. The issue of the appointment of the graduates of 2013 of the High School of Justice was first raised at the July 5, 2013 meeting of the Council. The Council devoted five sessions to this issue and several times postponed the voting for different reasons. The final decision was made only in November 19, 2013 where the Council appointed only 3 candidates out of 18. As it was revealed **the process of appointment of judges is frequently delayed** which must be caused by the flaws of the legislation on one hand and by the need to reach a consensus between judge members and non-judge members of the Council on the other. The process shows lack of individual decision-making which should be characteristic to secret voting and apolitical process.

During the monitoring of appointment of judges through the competition and process admission of the students to the High School of Justice it was observed that **the candidate evaluation sheet** does not require the Council member to present reasoning and argument-based evaluation of a candidate. Nor the Council decisions contain such substantiation. Therefore, despite the established list of requirements for qualification, skills, and personal characteristics of a candidate, there is no mechanism to assess if the Council's decision to appoint a judge was driven by those criteria.

## 2. **TRANSFER OF JUDGES TO OTHER COURTS TO CARRY OUT THEIR DUTIES**

At all three stages of the object of the monitoring was the legislation and practice of transfer of judges to other courts in order to carry out their duties. **At all three stages of the monitoring the following problems remained:**

- **The ambiguity of the legislation and regulations on transfer of judges which gives the Council almost unlimited discretion to decide on the issue of transfers.**
- **The lack of substantiation of the Council's decisions on transfer of judges and tamplate (typical) approach to all decisions.**
- **The absence of protocols on the Council's decisions to transfer the judges.**
- **The Lack of transparency of the work of the Council related to transfers of judges.**

### **The Legislation**

Before the amendments of March 2012 made to the Law on “Case Assignment and Delegation of Authority to a Judge in Common Courts” the legislation regulating transfer of judges established two basis for the decision to transfer a judge: if there is no a judge available in the court of transfer or if there is a substantial increase of the caselog in the court of transfer. Also, the law did not establish any additional requirements or restrictions on the frequency or duration of transfers. Nor did the law establish requirement for advance consultations or consent of a judge to be transferred to different court. Consequently, before the amendments of March 2012 the transfer of a judge was possible solely on the basis of one of the above mentioned two criteria and with the decision of the Council.

The amendments made to the Law on “Case Assignment and Delegation of Authority to a Judge in Common Courts” of March 2012 **the one-year limit was set for transfer of judges to different courts** and the **consent of a judge** to be transferred became mandatory, save to exceptional cases. These amendments are unequivocally positive as it sets additional guarantees for the independence of a judge. However, the issue of setting legislative **requirement to substantiate the Council's decisions on transfer of judges** still remains unresolved which makes impossible to assess reasonableness of those decisions.

The legislation establishes the authority of the Council, in case of necessity and **in the interests of justice to transfer a judge to a different court without the consent of the judge** if the simple majority of the Council votes in favor of the transfer. The team monitoring the

work of the Council was constantly stressing this shortcoming of the legislation. “The interests of justice” is a broad and ambiguous notion and the law does not clarify the meaning of “the interest of justice”. Nor the practice could establish the clear and uniform definition of this notion as none of the Council’s decisions on transfer of judges contain the reasoning as to what the Council considered “the interest of justice” and why. Nor during the Council meetings the members expressed their position on this matter. This issue is even more important in the situation when the law regards the transfer of judges in “the interests of justice” an exceptional procedure. It is not clear if the Council has an obligation to ask a judge for consent to be transferred in the first place and only in case if he/she refuses but the transfer is required in the interests of justice, the Council is authorized to make such decision.

The Georgian legislation does not set a procedure which would clarify the rules for **delegation of authority to reserve judges** established by the article 44 of the Law on General Courts. This issue causes ambiguity and problems in practice especially in terms of substantiation and transparency of the work of the Council. For instance, there are no criteria or procedure established as to how the Council shall choose a judge from reserve list to delegate a judicial authority; or in which cases the Council is authorized to delegate a judicial authority to a reserve judge; The definition of the law which states that the Council is authorized any time delegate judicial authority to a reserve judge gives the Council unlimited discretion and allows the use of this authority for improper motives.

## The Practice

At the first stage the object of the monitoring was the practice of transfer of judges during one year period before the legislative amendments, based on the relevant public information. In 2011 42 transfers were made. It was revealed that the **analysis solely of the Council’s decisions does not explain the reasons for transfer of particular judge** since the majority of the Council’s decisions indicate only specific article of the law without giving any additional reasoning. Therefore the monitoring team had to study minutes of the Council meetings which provided for some explanations for the transfer of particular judges. Also, it was revealed that **out of 42 decisions on transfer of judges the minutes of the Council meetings were drawn up only in 19 cases**. Therefore, due to the lack of information it was impossible to as-

sess reasonableness and substantiation of the decisions in remaining 23 cases. Additionally the fact that the issue of transfers is not reflected in minutes of the Council meetings raises concern about the legality of such decisions. The Council shall be making its decisions only in the session and it should be reflected in the minutes of the session.

None of the Council's decisions except one establishes **period of transfer of a judge**. It was revealed that the transfers were made to the courts of the same or nearby districts but exceptions occurred too. Also, the study of the minutes revealed that **only 5 out of 42 judges expressed their consent to be transferred**. The Council's decisions on transfer of judges did not explain particular grounds for transfers while study of minutes revealed that in most of the cases the transfers were made due to absence of a judge in the court of transfer which made it necessary to transfer a judge from different court. Another reason for transfers was sharp increase in case log. There were cases of transfer of judges due to the liquidation of particular court while the legislation establishes reappointment of a judge to a different court of the same resort or to a lower court in case of liquidation of the court of designation.

The study of the practice of transfers made in 2011 revealed that the **transfers had consequences for a court from which a judge was transferred** if there was no enough number of judges left in the court. There were cases when the Council had to transfer a judge to the court from which judges were transferred to other courts.

After the legislative amendments the Council made 40 decisions of transfer of judges. However, the Council did not disclose information about transfers for the period of April 20, 2012 to December 1, 2012 which made impossible to assess the process and substantiation of the transfers.

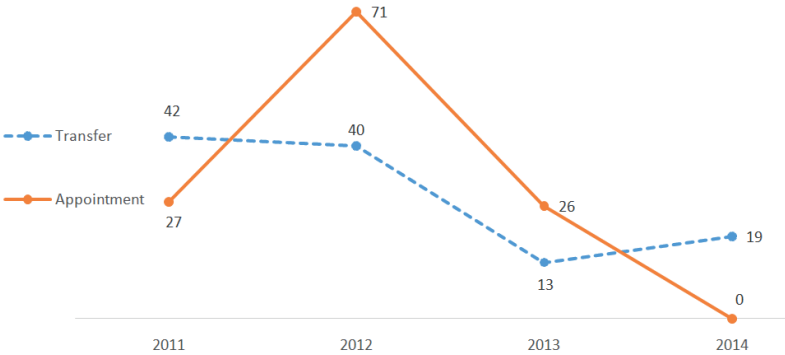
It is positive that compared to the first stage of the monitoring at the second stage a significant decrease in number of transfers was observed. In the period from January 1, 2013 to December 10, 2013 only 10 judges were transferred to different courts. This might be caused by the sharp public criticism of the mechanism which raised doubts that it was used as a punitive measure against judges, as well as by the tightening the legislation. However, it should be noted that in the same period, parallel with the decrease in transfer of judges the was observed significant increase in the use of mechanism established by the

article 37 of the Law on General Courts which establishes a mechanism for dismissal of a judge from a court and his/her appointment to another court for the remaining term of office which constitutes a judicial appointment without any competition. This raises a reasonable doubt that **the appointment of judges without competition could have replaced flawed practice of transfer of judges** which raises questions concerning legitimacy of the process and the work of the Council especially because the decisions of appointment of judges based on the article 37 of the Law on General Courts does not contain the criteria for choosing a judge for appointment, the decisions does not assess the possible consequences of such reappointment, and does not assess if a particular judge's experience meets special requirements of the court of reappointment. Nor is it possible to assess the reasonableness of the Council's decisions based on the minutes requested from the Council. Based on the article 37 of the Law on General Courts 27 judges were reappointed in 2011; 71 judges were reappointed in 2012; and 26 judges were reappointed during 11 months of 2013.

The diagram #1 below depicts practice of transfer of judges compared to the practice of reappointments of judges according to the article 37 of the Law on General Courts:

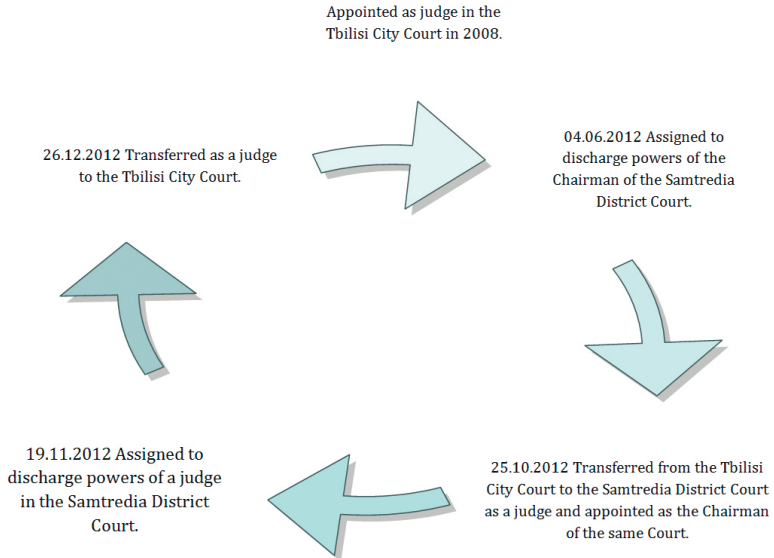
Diagram #1

Dinamic of Transfers/Appointments in 2011-2014



The diagram #2 below depicts one particular example of reappointment of the judge based on the article 37 of the Law on General Courts:

Diagram #2



In 2014 the Council kept sample (typical) approach to the decisions on the transfer of judges and only indicated relevant article of the law without proper substantiation. The decisions do not specify if the Council collected information required to make those decisions or if the Council took any other measure which assured it that at the point of making that decision there existed circumstances prescribed by law to transfer or reappoint particular judge and which became a basis for that decision.

In this period the Council did **not substantiate its decisions to extend the term of transfer of judges**. The same shortcomings were observed in the process of **granting judicial authority to reserve judges**.

### 3. TRANSPARENCY OF THE WORK OF THE COUNCIL

The object of the monitoring was transparency of the work of the Council. The monitoring included assessment of availability of information

about scheduled sessions, closed sessions, media coverage of sessions, availability of the Council decisions, etc.

During the three-year monitoring period **improvements were observed in the transparency of the work of the Council**. For instance, improvements were observed in the practice of publicizing information about upcoming sessions, availability of the council decisions, and media coverage of the council sessions. However, significant problems were observed in the availability of audio-video recording of the council sessions, absence of procedural regulations for closing the council sessions, absence of norms on conflict of interests, problems related to drawing up an agenda and preparing the council sessions.

The Council as a collegial public body is obliged to announce the date, the time, the place and the agenda of its session a week before holding a session. According to the law the exception from this rule is only the state of urgency.<sup>4</sup>

**During the first stage of the monitoring** the Council published information about scheduled sessions in advance only in two cases while there are tens of decisions made by the Council in the same monitoring period. It should be mentioned that during the first stage of the monitoring the lack of transparency of the work of the Council hindered the whole monitoring process, hindered the effective observation of the work of the Council by the public and did not meet proper standards of publicity.

**At the second stage of the monitoring** significant improvements were observed in the transparency of the work of the Council, however problems still remained. According to the information available from the Council's web-page 28 sessions were held while the information about upcoming session of the Council was published in advance only in 4 cases. After the Parliamentary elections of 2012 the information about upcoming sessions were not published in 14 cases while in the same period tens of important decisions were made (overall 245 decisions), important decisions on personnel being among others. It should be noted that only one such case was observed in the third monitoring period (June 6, 2014).

**At the third stage of the monitoring** similar to the previous monitoring stage, the problem remained with advance availability of informa-

---

<sup>4</sup> Articles 34.2 and 34.3. of the General Administrative Code of Georgia.



tion on upcoming council sessions. Out of 30 sessions held, only in 3 cases the information about upcoming session was published 7 days in advance. Improvement was observed in publishing agendas of upcoming sessions. Only in one occasion agenda was not published along with the information on upcoming session, while in second monitoring period 19 such cases were observed. Despite this positive development several cases were observed when a scheduled date of a session was changed shortly before the session.

When talking about the transparency of the work of the council it is necessary to mention the practice of **closing the council sessions**. During the second and the third stages of the monitoring when the Council closed its sessions several times, only in one case the information on the closure of the session was published according to law<sup>5</sup>, in advance, however the 7-day term was not observed. In addition, at the second stage of the monitoring the decisions on closure of the sessions were made individually by the chairman of the Council. But in the third stage of the monitoring the chairman agreed the decisions on closure of the sessions with other members of the Council. This issue is also related to **the problems with drawing up an agenda** of a session since the procedure on closure of a session is not clear and a procedure for closure of a session is not regulated by the General Administrative Code of Georgia, nor is it regulated by the legislation covering the works of the Council. There is no regulation as to who defines the list of issues to be included in the agenda of the council session. Nor is there any regulation authorizing a member of the Council to request to add to or remove an issue from an agenda.

**The publicity of decisions** is one more important component of transparency of the work of the Council. Compared to the second stage of the monitoring when the council decisions were published on its web-page with delays, in the third stage of the monitoring the improvements were observed, however there still were some flaws in this regard. In addition, despite the fact that the information about scheduled sessions, agendas and minutes can be published on the Council's web-page in a systematized manner this feature was not actively used in the monitoring periods.

The step forward was made in terms of transparency when during the second stage of the monitoring the Council made a decision of **live cov-**

---

<sup>5</sup> Article 34.1 of the General Administrative Code of Georgia.

**erage of the sessions** through the intranet available for judges of general courts. Also the sessions could be downloaded into the personal computers of judges. This system worked with minor deficiencies but in the third stage of the monitoring the deficiencies were corrected and interested judges had opportunity to watch the sessions. The problem remained with public access to audio-video recordings of the sessions since they were not published on the web page of the Council.

The monitoring team considers **very problematic the issue of media coverage of the sessions**. The legislation does not establish any restrictions for media representatives to cover the work of collegial bodies. According to the Council's decision of February 17, 2014 the media is allowed to the sessions only at the **opening stage of the sessions**.<sup>6</sup> Relying on this regulation at the council session of July 17, 2014 the chairman of the Council informed one of the media outlets that they could only cover opening part of the session. Later the chairman allowed the media to cover the session fully. Despite this problem, the situation with media coverage of the sessions was improved compared to the second stage of the monitoring when the department of public relations of the Council would allow the media to take some pictures of the sessions, and in one case the media was not allowed to make video recording of the session.<sup>7</sup>

One more important component for transparency of the work of the Council is **whether interested groups have opportunity to attend and participate in the council sessions**. During the second stage of the monitoring judges frequently had a desire to express their opinions and the chairman of the Council would allow them express themselves, however; there were cases observed when the chairman would not allow the attending judges to express their opinions not stating the reasons for such restrictions. At the third stage of the monitoring judges attending the sessions most of the times were given the opportunity to express their opinions. However the problem remained with **absence of rules and procedure for participation of interested groups in the council sessions** and granting such opportunity is in a full discretion of a chairperson of the Council.

At the third stage of the monitoring number of issues were raised which

---

<sup>6</sup> <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202014/22-2014.pdf>

<sup>7</sup> A representative of magazine "Liberali" attended the session of June 12, 2013.

need to be regulated and constitute a problem in practice. For instance, procedural issues of preparing the sessions, rules for consideration of applications submitted to the Council, terms for consideration of those applications, and absence of regulations against conflict of interests.

The terms for study, review, and make decisions on the applications are not established by the legislation. Therefore, in the monitoring period decisions on several applications were delayed.

The legislation states that secretary of the Council prepares the sessions, however nothing is said about **procedure and preparatory work of the sessions**, for instance terms for sending documents listed in an agenda of the sessions to the members of the Council are not defined. In the reporting period the Council postponed decisions listed in the agenda of the sessions several times due to the fact that the issue required better preparation of the Council members or because the documents related to the issue under consideration were not provided to the members in a timely manner. It is desirable that the documents under consideration of the Council were available for the members electronically. Also, it is important to provide members of the Council with not only documents listed in the agenda of nearest session but also all documents submitted to the Council so that the members can individually request to include in the agenda particular issue and request its consideration by the Council.

**Absence of the regulations against the conflict of interests** also constitutes a problem. The legislation does not regulate the issue of conflict of interests of the council members. Unfortunately, nor this issue was regulated by the practice. In the monitoring period there were several cases where the conflict of interests of particular council members was obvious, however, the members did not try to identify the conflict of interest and did not refuse to vote on this ground.

#### 4. DISCIPLINARY PROCEEDINGS

The GYLA was monitoring disciplinary proceedings against judges at the first stage of the monitoring period. The object of the monitoring was periods before and after legislative amendments of March 2012 made in the legislation regulating disciplinary proceedings of judges based only on statistical data published by the Council. The objects of the study were periods before and after the amendments to the law on

disciplinary proceedings made in March 2012. Although, at the third stage of the monitoring the Council held several sessions to discuss the claims of disciplinary violations of judges, since the law establishes the confidentiality of disciplinary proceedings of judges, and the Council did not publish the decisions made on the disciplinary proceedings, it was not possible to make detailed assessment of the work of the Council concerning disciplinary proceedings.

Until March 2012 disciplinary proceedings against judges were confidential which did not allow for study of the practice of disciplinary proceedings. Due to the reason mentioned above the study was conducted based only on statistical data. As for the period after the legislative amendments, despite very important amendments aiming at more transparency of disciplinary proceedings<sup>8</sup> **the Council did not observe the law and did not publicize decisions of the Disciplinary Panel through its web-page** which hindered a content assessment of the disciplinary proceedings. Nor did it disclose decisions made on disciplinary proceedings on our request. When refusing to disclose information the Council followed the article 5 of the Law on Disciplinary Responsibility and Disciplinary Proceedings. According to this article the disciplinary proceedings are confidential except where the law provides otherwise. The Council should not have followed the general rule but the special regulation established by the article 81.1 of the law on “Disciplinary Responsibility and Disciplinary Proceedings of Judges of General Courts” which states that the disciplinary panel and disciplinary chamber are obliged to publicize their decisions.

The number of disciplinary cases considered and the number of disciplinary decisions made in 2010 and 2011 dramatically differ (In 2010 the Council received 1113 complaints, and in 2011 – 940 complaints. In 2010 – 30 judges were held responsible for disciplinary violation and in 2011 – only 2 judges were held responsible for disciplinary violation). As for the statistical data of 2012 the Council received 844 new complaints and 61 complaints continued to be pending from 2011. Out of these cases the Council terminated disciplinary proceedings in

---

<sup>8</sup> The 2012 March-December edition of article 81.1 of the law on “Disciplinary Responsibility and Disciplinary Proceedings of Judges of General Courts”

The civil society organizations in the framework of the Coalition for Independent and Transparent Judiciary” demanded to ensure transparency of disciplinary proceedings of judges: <http://goo.gl/GB4sDQ>, <http://goo.gl/Xhjj54>

201 cases, in four cases a judge was held responsible for disciplinary violation and remaining cases were still pending. Despite significant differences in statistical data, **since the Council did not fulfill the requirement of the law to disclose the outcome of disciplinary proceedings, the decisions made, it was impossible to assess their reasonableness and substantiation.**

## 5. NEW PROCEDURE OF STAFFING THE COUNCIL

In the monitoring period particularly relevant was the issue of staffing the Council according to new amendments made to the Law on General Courts. The amendments significantly altered previous procedure for staffing the Council in respect of the Conference of Judges as well as in terms of elections of members by the Parliament of Georgia. Considering these changes the object of the monitoring also became to assess the process of electing new Council members which took place in May-July of 2013.

Pursuant to the legislative amendments there was particularly great public interest towards the work of the Conference of Judges. Accordingly, considering the large number of people willing to attend the Conference meeting, the topical issue was to choose the venue for the Conference meeting. The Administrative Committee of the Conference decided to convene the Conference in one of the court rooms of Tbilisi City Court but considering the remarks from civil society the administrative Committee changed the venue of the meeting. As a result all interested parties and media were able to attend the Conference meeting.

The Conference lasted for two days. The monitoring team overall positively assessed the Conference meeting. There were no procedural irregularities observed and the process was transparent. However, the majority of participants of the Conference narrowly interpreted the power of the Conference as a supreme self-government authority and did not support the amendment which would authorize the Conference to approve the agenda of a special meeting of the Conference. Further, by the decision of the attending majority, the Conference refused to use the power of asking questions to the nominees for membership of the Council. The Conference was authorized to make such decision from a formal-legal standpoint. However, in general, the right of the voter to receive information on a candidate's visions or plans is in-

ferred from the essence of election. Therefore, it would be reasonable for the Conference to make a different decision and give each judge an opportunity to ask questions to candidates.

As for the competition announced by the Parliament of Georgia for the election of non-judge members of the Council, this process was not transparent. The interested organizations requested the Parliament to conduct public interviews with the candidates and introduce their visions to the society. Despite the request the interviews with the candidates were held behind closed doors and the society was not able to track the process.

The changes in the composition of the Council made in the first and second stages of the monitoring allowed the GYLA to observe the impact of those changes on the work of the Council. The monitoring revealed that the important changes made in the composition of the Council in 2013 had positive impact on the quality of the work of the Council. Several discussions on important issues were initiated and the Council became more diverse. However, it was also revealed that frequently the council's views were divided between member and non-member judges.

## **6. OTHER ISSUES RELATED TO THE WORK OF THE COUNCIL**

During the all three stages of the monitoring the work of the Council was less inclusive. The participation of interested parties and expert groups in the work of the Council was limited to an outside observation. There is no any regulation or good practice of institutional cooperation between the Council and important actors in the field of justice such as judges, the Ministry of Justice, etc.

The cases of inconsistent approach of judge members of the Council to number of issues were observed. In the third monitoring 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<sup>9</sup>.

---

<sup>9</sup> Georgian Young Lawyers Association and Transparency International – Georgia: High Council of Justice Monitoring Report #3, 2015. pp. 11, 12.

## CONCLUSION

The summary of findings of the three-year monitoring of legislation and the work of the Council revealed the following trends: the legislative amendments made the regulations of the work of the Council more precise, the procedures of appointment and transfer of judges was specified. However, this legislation still needs more improvements in order to establish the effective mechanisms for monitoring the transparency of the work of the Council and legality of its decisions. During the all three stages of the monitoring the Council could not establish uniform interpretation of and a good practice with regard to ambiguous legislation regulating appointment and transfer of judges, granting judicial authority to reserve judges, substantiation of the Council's decisions. The Council was not able to implement positive legislative changes introduced into the law on disciplinary proceedings of judges and publicity of disciplinary decisions. Significant improvements were observed in the transparency of the work of the Council, in terms of publication of information about scheduled sessions of the Council, access to the Council's decisions and media coverage of sessions. However, significant problems were revealed in terms of publishing audio-video recordings of council sessions on its official web-site, absence of legislative regulation for closing council sessions and of conflict of interests, problems with drawing up an agenda of session and problems related to preparation phase of the Council's sessions. It should be mentioned that the legislative amendments made in 2013 had a positive impact on the work of the Council. Several important discussions were initiated in the Council and pluralistic views appeared in the Council's work. However, it was also revealed that frequently the council's views were divided between judge and non-judge members of the Council.

## RECOMMENDATION

- In the wake of increased interest towards the work of the Council, and the ongoing third stage of reforms in the judiciary, in our view it is extremely important that the work of the Council is as open as possible and meets high standards of transparency. The transparency and accountability of the Council shall be guaranteed by the legislation as well as proper practice;
- Every decision made by the Council must be substantiated. The obligation to substantiate the decisions must be required by law and authorities granted to the Council must be balanced with relevant standards of transparency and accountability;
- The legislation regulating appointment/transfer/reserve of judges must be further developed so that the possibility of making decisions by subjective or other improper motives is minimized;
- In order to increase the transparency of the work of the Council, the legislative obligation of the Council to publish its decisions and minutes on its web-page in 5 days after their adoption should be established. The draft decisions on especially important issues must be published in advance so that the interested parties can submit their comments to the Council. The interested groups should have access to agenda and documents to be discussed at the Council meeting. Any interested party should have an access to the audio-video recording of the Council minutes through its official web-page. Full access of the media to the Council sessions must be established by law. The procedure for drawing up an agenda of the Council meeting and closure of the meeting must be established by law;
- Through the legislative amendments the procedure for decision making, procedure for appeal, scope and terms of appeal of decisions of the Council among others should be established. The similar procedure envisaged by the General Administrative Code of Georgia should apply to the work of the Council;
- The work of the Council should become more inclusive and the Council should ensure involvement of interested groups, lawyers, etc. in its work. To achieve this the Council should make



effective use of the existing mechanism of holding conference sessions;

- The legislation should establish procedure for systematic, open and transparent communication between the Council and judges.

**MONITORING REPORT OF THE HIGH  
COUNCIL OF JUSTICE**

**THREE-YEAR SUMMARY**

**(2012-2014)**

This report is prepared under the auspices of the project Promoting Rule of Law in Georgia. The Project is funded by the United States Agency for International Development (USAID) and implemented by the East-West Management Institute (EWMI).

The contents are the responsibility of Georgian Young Lawyers' Association and Transparency International Georgia and do not necessarily reflect the views of USAID, the United States Government or EWMI.

**Tbilisi  
2015**

**Authors: EKATERINE TSIMAKURIDZE**  
**(Georgian Young Lawyers' Association)**  
**KETEVAN MEZVRISHVILI**  
**(Transparency International Georgia)**

**Editor: KHATUNA KVIRALASHVILI**

**Tech. Editor: IRAKLI SVANIDZE**

**Responsible of publication: ANA NATSVLISHVILI**  
**(Georgian Young Lawyers' Association)**  
**GIA GVILAVA**  
**(Transparency International Georgia)**



Was edited and published  
in the Georgian Young Lawyers' Association  
15, J. Kakhidze st. Tbilisi 0102, Georgia  
(+99532) 293 61 01, 295 23 53

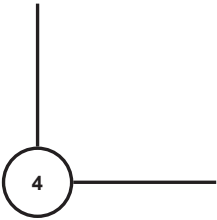
Coping or Disseminating of publication for commercial purpose without  
written permission of organizations is prohibited

---

© 2015, *The Georgian Young Lawyers' Association*  
*Transparency International Georgia*

# CONTENTS

INTRODUCTION .....	5
1. SELECTION AND APPOINTMENT OF JUDGES .....	6
2. TRANSFER OF JUDGES TO OTHER COURTS TO CARRY OUT THEIR DUTIES .....	9
3. TRANSPARENCY OF THE WORK OF THE COUNCIL .....	14
4. DISCIPLINARY PROCEEDINGS .....	18
5. NEW PROCEDURE OF STAFFING THE COUNCIL .....	20
6. OTHER ISSUES RELATED TO THE WORK OF THE COUNCIL .....	21
CONCLUSION .....	22
RECOMMENDATION .....	23



## INTRODUCTION

As part of the Judicial Independence and legal Empowerment Project (JILEP) funded by the USAID and implemented by the East-West Management Institute, the Georgian Young Lawyers' Association (GYLA) and Transparency International – Georgia (TI Georgia) has been monitoring the High Council of Justice of Georgia since March 2012. The monitoring was carried out in three stages:

- First stage – March 2012 – December 2012
- Second stage – January 2013 – December 2013
- Third stage – January 2014 – December 2014

The Monitoring aimed to assess the activities of the key constitutional body of administration in the judicial authorities – the High Council of Justice – against the background of pending reforms in the judicial system, as well as to assess the implementation of new legislative amendments and to analyze the outcome of those reforms, to document the situation within the judicial system, thus allowing later to observe the ongoing processes and reforms in dynamics.

At all three stages of the monitoring the object of the monitoring was: rules and procedure for appointment of judges; rules and procedure regulating transfer of judges and practice of the transfers; transparency of the work of the Council. At the first stage the object of the monitoring also was to assess publicly available information about disciplinary proceedings of judges. In addition, following the new developments of the day the process of staffing the Council was assessed at the first and second stages of the monitoring.

Three-year monitoring makes it possible to assess dynamic of improvements and flaws of the work of the Council, which will help to improve the legislation regulating the work of the Council, to raise the transparency of its work and the quality of substantiation of the Council decisions.

## 1. SELECTION AND APPOINTMENT OF JUDGES

The GYLA was monitoring the rules and procedure for the selection and appointment of judges by the Council at all three stages of the monitoring. During the whole monitoring period the following problems remained:

- *The vagueness of legislative procedures<sup>1</sup> regulating appointment of judges which fail to ensure fair and transparent selection and appointment of judges based on objective assessments of candidates.*
- *Insufficient transparency of selection/appointment process of judges;*
- *The lack of substantiation of the Council's decisions on appointment of judges.*

The Georgian legislation provides for two alternative ways to appoint a person on a position of a judge: The process of appointing the students of the High School of Justice and appointing persons on the basis of a competition who are relieved from attending the high school of justice.

### The Legislation

At the first and second stages of the monitoring **the vagueness of the procedure for the appointment** of judges failed to guarantee the fairness and transparency of the process. At the third stage of the monitoring, during the period of 2014, the Council adopted important amendments to the Council Decision #1/308 from October 9, 2009 specifying procedures for appointment of judges.

Despite number of positive legislative changes, the issue of **implementation of those changes** in practice and the need for more legislative amendments remains a problem. **Still does not exist a mechanism for monitoring the Council's decisions** which would make possible to assess the objectivity, fairness and impartiality of the decisions made by the Council. According to the legislation in place **the Council shall conduct interviews with the candidate judges at the closed session**. This procedure does not ensure principle of transparency and makes impossible to assess objectivity and neutrality of the pro-

---

<sup>1</sup> The procedures for appointment of judges are established with the Organic Law on General Courts and the Decision of the High Council of Justice #1/308 of October 9, 2009

cess<sup>2</sup>. It should be noted that the Council amended its #1/308 decision from 2009 in September 2014 and closed the process of interviewing candidates by the Council which is obviously a negative development. **The new regulations covering participation of a psychologist in the appointment process** are vague and need to be improved. At the same time the legislation still does not establish the process of open competition for the **appointment on judicial position of students of the High School of Justice** which also makes the process of appointment of judges less transparent.

At the second stage of the monitoring a significant problem appeared to be an **appointment of judges by the Council through the so called “two-stage process of appointment of judges”** which meant the decision to appoint a judge as the first stage and the decision to designate the appointed person to the particular court as the second stage. This practice does not comply with the Georgian Law on General Courts which provides for appointment of judges with 2/3 votes of the Council and does not envisage so called two-stage process of appointment of judges. The practice of designating an appointed judge to the specific court with simple majority of votes creates even more ambiguity of the process<sup>3</sup>. The practice of two-stage process of appointment of judges (appointment as a judge and afterwards designation of the same judge to a particular court) was sharply criticized by the organizations involved in the monitoring of the Council’s work. In March 2014 the amendments were made to the “regulation on the selection of candidates for judges” approved by the Council which specified the following: “the decision on the appointment of students of the High School of Justice as well as appointment of participants of the competition process shall be made in written decision of the Council. The decision shall state particular district (city) court or appellate court and a specific panel or chamber of the court where the candidate is being appointed.” This regulation is different from the broad wording that was established by law before the amendments were made when the Council had a practice of appointing a judge to the vacant position in a district (city) court or an appellate court without indicating particular

---

<sup>2</sup> However, it is interesting that the interviews conducted in January 2015 were held in open sessions and interested groups could attend those sessions.

<sup>3</sup> It should be mentioned that the decision of the Council made on June 17, 2013, when the Council appointed 6 judges, indicates particular courts where the judges were appointed and the Council did not hold so called second stage of designating an appointed judge to a particular court.



position in that court and afterwards was making a decision of designating a judge to particular position in that court.

It should be mentioned that at the third stage of the monitoring the improper practice of appointing judges through the so called “two-stage process of appointment” was not observed. The judges were appointed to the specific vacant positions based on the Council’s decisions with 2/3 votes as it is required by the law. The GYLA remains hopeful that the legislative amendment mentioned above will put an end to the previous improper practice of the Council.

### **The Practice**

The procedures carried out by the Council for conducting competition for the selection and appointment of judges, also, the practice of appointing the students of the High School of Justice to the judicial positions as well as the practice of admitting students to the High School of Justice by the Council **failed to meet transparency requirements and the relevant decisions were not substantiated**. This can be assessed as the result of the flaws in the legislation and regulations and their ambiguity mentioned above as well as the outcome of **inadequate work of the Council for legislative interpretation** of those regulations **failing to establish good practice** of the ambiguous legislation and regulations.

As for the third stage of the monitoring, **some improvements have been observed in the process of appointment of judges though number of problems still remained at this stage**.

At the third stage of the monitoring, compared to the first and second stages, the competition for the judicial appointments took a more or less organized form. The Council was able to **publicize information related to the competition through its web-page** and update it from time to time, however certain gaps still occurred. At the third stage of the monitoring, compared to the previous stages, **the members of the Council were more active during the interviews with the candidates**, however the interviews conducted in 2014 did not meet proper standards. Being present at the public sessions of the Council did not help to assess the motive of the Council member for voting for or against a candidate or to assess the reasons why a Council member was changing his/her decision between the first and second voting. The consultations on the above mentioned issues were held outside

the Council's session area, the members of the Council were leaving the session hall and had deliberations outside the area. The motive for which a member votes for or against the candidate is important not only for the transparency reasons but also to assess if the aim of the competition - to appoint as a judge a person who is professional and possesses all necessary skills and personal characteristics envisaged by law – was met.

The procedure for the appointment of the students of the High School of Justice was held by the Council at the second stage of the monitoring. The non-judge members of the Council were more active during the interviews with candidates. The issue of the appointment of the graduates of 2013 of the High School of Justice was first raised at the July 5, 2013 meeting of the Council. The Council devoted five sessions to this issue and several times postponed the voting for different reasons. The final decision was made only in November 19, 2013 where the Council appointed only 3 candidates out of 18. As it was revealed **the process of appointment of judges is frequently delayed** which must be caused by the flaws of the legislation on one hand and by the need to reach a consensus between judge members and non-judge members of the Council on the other. The process shows lack of individual decision-making which should be characteristic to secret voting and apolitical process.

During the monitoring of appointment of judges through the competition and process admission of the students to the High School of Justice it was observed that **the candidate evaluation sheet** does not require the Council member to present reasoning and argument-based evaluation of a candidate. Nor the Council decisions contain such substantiation. Therefore, despite the established list of requirements for qualification, skills, and personal characteristics of a candidate, there is no mechanism to assess if the Council's decision to appoint a judge was driven by those criteria.

## 2. **TRANSFER OF JUDGES TO OTHER COURTS TO CARRY OUT THEIR DUTIES**

At all three stages of the object of the monitoring was the legislation and practice of transfer of judges to other courts in order to carry out their duties. **At all three stages of the monitoring the following problems remained:**

- **The ambiguity of the legislation and regulations on transfer of judges which gives the Council almost unlimited discretion to decide on the issue of transfers.**
- **The lack of substantiation of the Council's decisions on transfer of judges and tamplate (typical) approach to all decisions.**
- **The absence of protocols on the Council's decisions to transfer the judges.**
- **The Lack of transparency of the work of the Council related to transfers of judges.**

### **The Legislation**

Before the amendments of March 2012 made to the Law on “Case Assignment and Delegation of Authority to a Judge in Common Courts” the legislation regulating transfer of judges established two basis for the decision to transfer a judge: if there is no a judge available in the court of transfer or if there is a substantial increase of the caselog in the court of transfer. Also, the law did not establish any additional requirements or restrictions on the frequency or duration of transfers. Nor did the law establish requirement for advance consultations or consent of a judge to be transferred to different court. Consequently, before the amendments of March 2012 the transfer of a judge was possible solely on the basis of one of the above mentioned two criteria and with the decision of the Council.

The amendments made to the Law on “Case Assignment and Delegation of Authority to a Judge in Common Courts” of March 2012 **the one-year limit was set for transfer of judges to different courts** and the **consent of a judge** to be transferred became mandatory, save to exceptional cases. These amendments are unequivocally positive as it sets additional guarantees for the independence of a judge. However, the issue of setting legislative **requirement to substantiate the Council's decisions on transfer of judges** still remains unresolved which makes impossible to assess reasonableness of those decisions.

The legislation establishes the authority of the Council, in case of necessity and **in the interests of justice to transfer a judge to a different court without the consent of the judge** if the simple majority of the Council votes in favor of the transfer. The team monitoring the

work of the Council was constantly stressing this shortcoming of the legislation. “The interests of justice” is a broad and ambiguous notion and the law does not clarify the meaning of “the interest of justice”. Nor the practice could establish the clear and uniform definition of this notion as none of the Council’s decisions on transfer of judges contain the reasoning as to what the Council considered “the interest of justice” and why. Nor during the Council meetings the members expressed their position on this matter. This issue is even more important in the situation when the law regards the transfer of judges in “the interests of justice” an exceptional procedure. It is not clear if the Council has an obligation to ask a judge for consent to be transferred in the first place and only in case if he/she refuses but the transfer is required in the interests of justice, the Council is authorized to make such decision.

The Georgian legislation does not set a procedure which would clarify the rules for **delegation of authority to reserve judges** established by the article 44 of the Law on General Courts. This issue causes ambiguity and problems in practice especially in terms of substantiation and transparency of the work of the Council. For instance, there are no criteria or procedure established as to how the Council shall choose a judge from reserve list to delegate a judicial authority; or in which cases the Council is authorized to delegate a judicial authority to a reserve judge; The definition of the law which states that the Council is authorized any time delegate judicial authority to a reserve judge gives the Council unlimited discretion and allows the use of this authority for improper motives.

## The Practice

At the first stage the object of the monitoring was the practice of transfer of judges during one year period before the legislative amendments, based on the relevant public information. In 2011 42 transfers were made. It was revealed that the **analysis solely of the Council’s decisions does not explain the reasons for transfer of particular judge** since the majority of the Council’s decisions indicate only specific article of the law without giving any additional reasoning. Therefore the monitoring team had to study minutes of the Council meetings which provided for some explanations for the transfer of particular judges. Also, it was revealed that **out of 42 decisions on transfer of judges the minutes of the Council meetings were drawn up only in 19 cases**. Therefore, due to the lack of information it was impossible to as-

sess reasonableness and substantiation of the decisions in remaining 23 cases. Additionally the fact that the issue of transfers is not reflected in minutes of the Council meetings raises concern about the legality of such decisions. The Council shall be making its decisions only in the session and it should be reflected in the minutes of the session.

None of the Council's decisions except one establishes **period of transfer of a judge**. It was revealed that the transfers were made to the courts of the same or nearby districts but exceptions occurred too. Also, the study of the minutes revealed that **only 5 out of 42 judges expressed their consent to be transferred**. The Council's decisions on transfer of judges did not explain particular grounds for transfers while study of minutes revealed that in most of the cases the transfers were made due to absence of a judge in the court of transfer which made it necessary to transfer a judge from different court. Another reason for transfers was sharp increase in case log. There were cases of transfer of judges due to the liquidation of particular court while the legislation establishes reappointment of a judge to a different court of the same resort or to a lower court in case of liquidation of the court of designation.

The study of the practice of transfers made in 2011 revealed that the **transfers had consequences for a court from which a judge was transferred** if there was no enough number of judges left in the court. There were cases when the Council had to transfer a judge to the court from which judges were transferred to other courts.

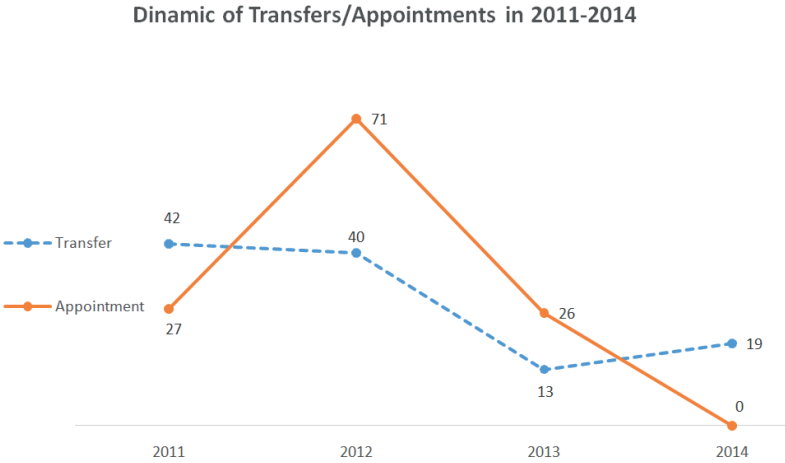
After the legislative amendments the Council made 40 decisions of transfer of judges. However, the Council did not disclose information about transfers for the period of April 20, 2012 to December 1, 2012 which made impossible to assess the process and substantiation of the transfers.

It is positive that compared to the first stage of the monitoring at the second stage a significant decrease in number of transfers was observed. In the period from January 1, 2013 to December 10, 2013 only 10 judges were transferred to different courts. This might be caused by the sharp public criticism of the mechanism which raised doubts that it was used as a punitive measure against judges, as well as by the tightening the legislation. However, it should be noted that in the same period, parallel with the decrease in transfer of judges the was observed significant increase in the use of mechanism established by the

article 37 of the Law on General Courts which establishes a mechanism for dismissal of a judge from a court and his/her appointment to another court for the remaining term of office which constitutes a judicial appointment without any competition. This raises a reasonable doubt that **the appointment of judges without competition could have replaced flawed practice of transfer of judges** which raises questions concerning legitimacy of the process and the work of the Council especially because the decisions of appointment of judges based on the article 37 of the Law on General Courts does not contain the criteria for choosing a judge for appointment, the decisions does not assess the possible consequences of such reappointment, and does not assess if a particular judge's experience meets special requirements of the court of reappointment. Nor is it possible to assess the reasonableness of the Council's decisions based on the minutes requested from the Council. Based on the article 37 of the Law on General Courts 27 judges were reappointed in 2011; 71 judges were reappointed in 2012; and 26 judges were reappointed during 11 months of 2013.

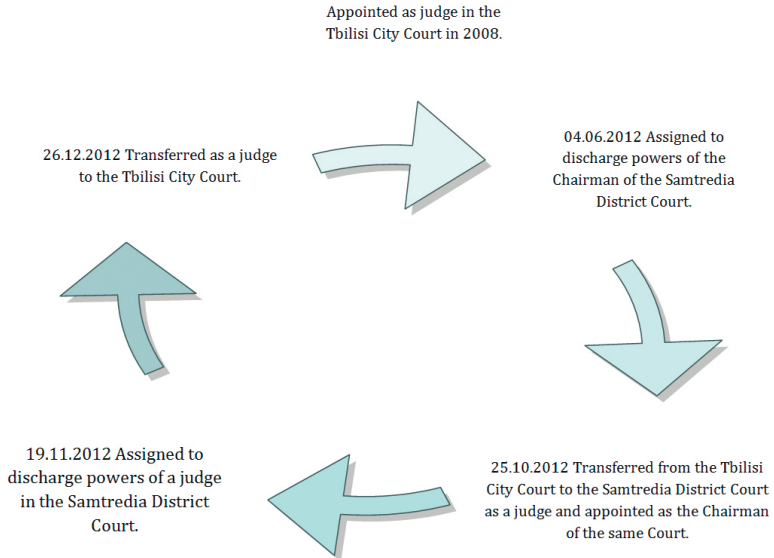
The diagram #1 below depicts practice of transfer of judges compared to the practice of reappointments of judges according to the article 37 of the Law on General Courts:

Diagram #1



The diagram #2 below depicts one particular example of reappointment of the judge based on the article 37 of the Law on General Courts:

Diagram #2



In 2014 the Council kept sample (typical) approach to the decisions on the transfer of judges and only indicated relevant article of the law without proper substantiation. The decisions do not specify if the Council collected information required to make those decisions or if the Council took any other measure which assured it that at the point of making that decision there existed circumstances prescribed by law to transfer or reappoint particular judge and which became a basis for that decision.

In this period the Council did **not substantiate its decisions to extend the term of transfer of judges**. The same shortcomings were observed in the process of **granting judicial authority to reserve judges**.

### 3. TRANSPARENCY OF THE WORK OF THE COUNCIL

The object of the monitoring was transparency of the work of the Council. The monitoring included assessment of availability of information

about scheduled sessions, closed sessions, media coverage of sessions, availability of the Council decisions, etc.

During the three-year monitoring period **improvements were observed in the transparency of the work of the Council**. For instance, improvements were observed in the practice of publicizing information about upcoming sessions, availability of the council decisions, and media coverage of the council sessions. However, significant problems were observed in the availability of audio-video recording of the council sessions, absence of procedural regulations for closing the council sessions, absence of norms on conflict of interests, problems related to drawing up an agenda and preparing the council sessions.

The Council as a collegial public body is obliged to announce the date, the time, the place and the agenda of its session a week before holding a session. According to the law the exception from this rule is only the state of urgency.<sup>4</sup>

**During the first stage of the monitoring** the Council published information about scheduled sessions in advance only in two cases while there are tens of decisions made by the Council in the same monitoring period. It should be mentioned that during the first stage of the monitoring the lack of transparency of the work of the Council hindered the whole monitoring process, hindered the effective observation of the work of the Council by the public and did not meet proper standards of publicity.

**At the second stage of the monitoring** significant improvements were observed in the transparency of the work of the Council, however problems still remained. According to the information available from the Council's web-page 28 sessions were held while the information about upcoming session of the Council was published in advance only in 4 cases. After the Parliamentary elections of 2012 the information about upcoming sessions were not published in 14 cases while in the same period tens of important decisions were made (overall 245 decisions), important decisions on personnel being among others. It should be noted that only one such case was observed in the third monitoring period (June 6, 2014).

**At the third stage of the monitoring** similar to the previous monitoring stage, the problem remained with advance availability of informa-

---

<sup>4</sup> Articles 34.2 and 34.3. of the General Administrative Code of Georgia.



tion on upcoming council sessions. Out of 30 sessions held, only in 3 cases the information about upcoming session was published 7 days in advance. Improvement was observed in publishing agendas of upcoming sessions. Only in one occasion agenda was not published along with the information on upcoming session, while in second monitoring period 19 such cases were observed. Despite this positive development several cases were observed when a scheduled date of a session was changed shortly before the session.

When talking about the transparency of the work of the council it is necessary to mention the practice of **closing the council sessions**. During the second and the third stages of the monitoring when the Council closed its sessions several times, only in one case the information on the closure of the session was published according to law<sup>5</sup>, in advance, however the 7-day term was not observed. In addition, at the second stage of the monitoring the decisions on closure of the sessions were made individually by the chairman of the Council. But in the third stage of the monitoring the chairman agreed the decisions on closure of the sessions with other members of the Council. This issue is also related to **the problems with drawing up an agenda** of a session since the procedure on closure of a session is not clear and a procedure for closure of a session is not regulated by the General Administrative Code of Georgia, nor is it regulated by the legislation covering the works of the Council. There is no regulation as to who defines the list of issues to be included in the agenda of the council session. Nor is there any regulation authorizing a member of the Council to request to add to or remove an issue from an agenda.

**The publicity of decisions** is one more important component of transparency of the work of the Council. Compared to the second stage of the monitoring when the council decisions were published on its web-page with delays, in the third stage of the monitoring the improvements were observed, however there still were some flaws in this regard. In addition, despite the fact that the information about scheduled sessions, agendas and minutes can be published on the Council's web-page in a systematized manner this feature was not actively used in the monitoring periods.

The step forward was made in terms of transparency when during the second stage of the monitoring the Council made a decision of **live cov-**

---

<sup>5</sup> Article 34.1 of the General Administrative Code of Georgia.

**erage of the sessions** through the intranet available for judges of general courts. Also the sessions could be downloaded into the personal computers of judges. This system worked with minor deficiencies but in the third stage of the monitoring the deficiencies were corrected and interested judges had opportunity to watch the sessions. The problem remained with public access to audio-video recordings of the sessions since they were not published on the web page of the Council.

The monitoring team considers **very problematic the issue of media coverage of the sessions**. The legislation does not establish any restrictions for media representatives to cover the work of collegial bodies. According to the Council's decision of February 17, 2014 the media is allowed to the sessions only at the **opening stage of the sessions**.<sup>6</sup> Relying on this regulation at the council session of July 17, 2014 the chairman of the Council informed one of the media outlets that they could only cover opening part of the session. Later the chairman allowed the media to cover the session fully. Despite this problem, the situation with media coverage of the sessions was improved compared to the second stage of the monitoring when the department of public relations of the Council would allow the media to take some pictures of the sessions, and in one case the media was not allowed to make video recording of the session.<sup>7</sup>

One more important component for transparency of the work of the Council is **whether interested groups have opportunity to attend and participate in the council sessions**. During the second stage of the monitoring judges frequently had a desire to express their opinions and the chairman of the Council would allow them express themselves, however; there were cases observed when the chairman would not allow the attending judges to express their opinions not stating the reasons for such restrictions. At the third stage of the monitoring judges attending the sessions most of the times were given the opportunity to express their opinions. However the problem remained with **absence of rules and procedure for participation of interested groups in the council sessions** and granting such opportunity is in a full discretion of a chairperson of the Council.

At the third stage of the monitoring number of issues were raised which

---

<sup>6</sup> <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202014/22-2014.pdf>

<sup>7</sup> A representative of magazine "Liberali" attended the session of June 12, 2013.

need to be regulated and constitute a problem in practice. For instance, procedural issues of preparing the sessions, rules for consideration of applications submitted to the Council, terms for consideration of those applications, and absence of regulations against conflict of interests.

The terms for study, review, and make decisions on the applications are not established by the legislation. Therefore, in the monitoring period decisions on several applications were delayed.

The legislation states that secretary of the Council prepares the sessions, however nothing is said about **procedure and preparatory work of the sessions**, for instance terms for sending documents listed in an agenda of the sessions to the members of the Council are not defined. In the reporting period the Council postponed decisions listed in the agenda of the sessions several times due to the fact that the issue required better preparation of the Council members or because the documents related to the issue under consideration were not provided to the members in a timely manner. It is desirable that the documents under consideration of the Council were available for the members electronically. Also, it is important to provide members of the Council with not only documents listed in the agenda of nearest session but also all documents submitted to the Council so that the members can individually request to include in the agenda particular issue and request its consideration by the Council.

**Absence of the regulations against the conflict of interests** also constitutes a problem. The legislation does not regulate the issue of conflict of interests of the council members. Unfortunately, nor this issue was regulated by the practice. In the monitoring period there were several cases where the conflict of interests of particular council members was obvious, however, the members did not try to identify the conflict of interest and did not refuse to vote on this ground.

#### 4. DISCIPLINARY PROCEEDINGS

The GYLA was monitoring disciplinary proceedings against judges at the first stage of the monitoring period. The object of the monitoring was periods before and after legislative amendments of March 2012 made in the legislation regulating disciplinary proceedings of judges based only on statistical data published by the Council. The objects of the study were periods before and after the amendments to the law on

disciplinary proceedings made in March 2012. Although, at the third stage of the monitoring the Council held several sessions to discuss the claims of disciplinary violations of judges, since the law establishes the confidentiality of disciplinary proceedings of judges, and the Council did not publish the decisions made on the disciplinary proceedings, it was not possible to make detailed assessment of the work of the Council concerning disciplinary proceedings.

Until March 2012 disciplinary proceedings against judges were confidential which did not allow for study of the practice of disciplinary proceedings. Due to the reason mentioned above the study was conducted based only on statistical data. As for the period after the legislative amendments, despite very important amendments aiming at more transparency of disciplinary proceedings<sup>8</sup> **the Council did not observe the law and did not publicize decisions of the Disciplinary Panel through its web-page** which hindered a content assessment of the disciplinary proceedings. Nor did it disclose decisions made on disciplinary proceedings on our request. When refusing to disclose information the Council followed the article 5 of the Law on Disciplinary Responsibility and Disciplinary Proceedings. According to this article the disciplinary proceedings are confidential except where the law provides otherwise. The Council should not have followed the general rule but the special regulation established by the article 81.1 of the law on “Disciplinary Responsibility and Disciplinary Proceedings of Judges of General Courts” which states that the disciplinary panel and disciplinary chamber are obliged to publicize their decisions.

The number of disciplinary cases considered and the number of disciplinary decisions made in 2010 and 2011 dramatically differ (In 2010 the Council received 1113 complaints, and in 2011 – 940 complaints. In 2010 – 30 judges were held responsible for disciplinary violation and in 2011 – only 2 judges were held responsible for disciplinary violation). As for the statistical data of 2012 the Council received 844 new complaints and 61 complaints continued to be pending from 2011. Out of these cases the Council terminated disciplinary proceedings in

---

<sup>8</sup> The 2012 March-December edition of article 81.1 of the law on “Disciplinary Responsibility and Disciplinary Proceedings of Judges of General Courts”

The civil society organizations in the framework of the Coalition for Independent and Transparent Judiciary” demanded to ensure transparency of disciplinary proceedings of judges: <http://goo.gl/GB4sDQ>, <http://goo.gl/Xhjj54>

201 cases, in four cases a judge was held responsible for disciplinary violation and remaining cases were still pending. Despite significant differences in statistical data, **since the Council did not fulfill the requirement of the law to disclose the outcome of disciplinary proceedings, the decisions made, it was impossible to assess their reasonableness and substantiation.**

## 5. NEW PROCEDURE OF STAFFING THE COUNCIL

In the monitoring period particularly relevant was the issue of staffing the Council according to new amendments made to the Law on General Courts. The amendments significantly altered previous procedure for staffing the Council in respect of the Conference of Judges as well as in terms of elections of members by the Parliament of Georgia. Considering these changes the object of the monitoring also became to assess the process of electing new Council members which took place in May-July of 2013.

Pursuant to the legislative amendments there was particularly great public interest towards the work of the Conference of Judges. Accordingly, considering the large number of people willing to attend the Conference meeting, the topical issue was to choose the venue for the Conference meeting. The Administrative Committee of the Conference decided to convene the Conference in one of the court rooms of Tbilisi City Court but considering the remarks from civil society the administrative Committee changed the venue of the meeting. As a result all interested parties and media were able to attend the Conference meeting.

The Conference lasted for two days. The monitoring team overall positively assessed the Conference meeting. There were no procedural irregularities observed and the process was transparent. However, the majority of participants of the Conference narrowly interpreted the power of the Conference as a supreme self-government authority and did not support the amendment which would authorize the Conference to approve the agenda of a special meeting of the Conference. Further, by the decision of the attending majority, the Conference refused to use the power of asking questions to the nominees for membership of the Council. The Conference was authorized to make such decision from a formal-legal standpoint. However, in general, the right of the voter to receive information on a candidate's visions or plans is in-

ferred from the essence of election. Therefore, it would be reasonable for the Conference to make a different decision and give each judge an opportunity to ask questions to candidates.

As for the competition announced by the Parliament of Georgia for the election of non-judge members of the Council, this process was not transparent. The interested organizations requested the Parliament to conduct public interviews with the candidates and introduce their visions to the society. Despite the request the interviews with the candidates were held behind closed doors and the society was not able to track the process.

The changes in the composition of the Council made in the first and second stages of the monitoring allowed the GYLA to observe the impact of those changes on the work of the Council. The monitoring revealed that the important changes made in the composition of the Council in 2013 had positive impact on the quality of the work of the Council. Several discussions on important issues were initiated and the Council became more diverse. However, it was also revealed that frequently the council's views were divided between member and non-member judges.

## **6. OTHER ISSUES RELATED TO THE WORK OF THE COUNCIL**

During the all three stages of the monitoring the work of the Council was less inclusive. The participation of interested parties and expert groups in the work of the Council was limited to an outside observation. There is no any regulation or good practice of institutional cooperation between the Council and important actors in the field of justice such as judges, the Ministry of Justice, etc.

The cases of inconsistent approach of judge members of the Council to number of issues were observed. In the third monitoring 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<sup>9</sup>.

---

<sup>9</sup> Georgian Young Lawyers Association and Transparency International – Georgia: High Council of Justice Monitoring Report #3, 2015. pp. 11, 12.

## CONCLUSION

The summary of findings of the three-year monitoring of legislation and the work of the Council revealed the following trends: the legislative amendments made the regulations of the work of the Council more precise, the procedures of appointment and transfer of judges was specified. However, this legislation still needs more improvements in order to establish the effective mechanisms for monitoring the transparency of the work of the Council and legality of its decisions. During the all three stages of the monitoring the Council could not establish uniform interpretation of and a good practice with regard to ambiguous legislation regulating appointment and transfer of judges, granting judicial authority to reserve judges, substantiation of the Council's decisions. The Council was not able to implement positive legislative changes introduced into the law on disciplinary proceedings of judges and publicity of disciplinary decisions. Significant improvements were observed in the transparency of the work of the Council, in terms of publication of information about scheduled sessions of the Council, access to the Council's decisions and media coverage of sessions. However, significant problems were revealed in terms of publishing audio-video recordings of council sessions on its official web-site, absence of legislative regulation for closing council sessions and of conflict of interests, problems with drawing up an agenda of session and problems related to preparation phase of the Council's sessions. It should be mentioned that the legislative amendments made in 2013 had a positive impact on the work of the Council. Several important discussions were initiated in the Council and pluralistic views appeared in the Council's work. However, it was also revealed that frequently the council's views were divided between judge and non-judge members of the Council.

## RECOMMENDATION

- In the wake of increased interest towards the work of the Council, and the ongoing third stage of reforms in the judiciary, in our view it is extremely important that the work of the Council is as open as possible and meets high standards of transparency. The transparency and accountability of the Council shall be guaranteed by the legislation as well as proper practice;
- Every decision made by the Council must be substantiated. The obligation to substantiate the decisions must be required by law and authorities granted to the Council must be balanced with relevant standards of transparency and accountability;
- The legislation regulating appointment/transfer/reserve of judges must be further developed so that the possibility of making decisions by subjective or other improper motives is minimized;
- In order to increase the transparency of the work of the Council, the legislative obligation of the Council to publish its decisions and minutes on its web-page in 5 days after their adoption should be established. The draft decisions on especially important issues must be published in advance so that the interested parties can submit their comments to the Council. The interested groups should have access to agenda and documents to be discussed at the Council meeting. Any interested party should have an access to the audio-video recording of the Council minutes through its official web-page. Full access of the media to the Council sessions must be established by law. The procedure for drawing up an agenda of the Council meeting and closure of the meeting must be established by law;
- Through the legislative amendments the procedure for decision making, procedure for appeal, scope and terms of appeal of decisions of the Council among others should be established. The similar procedure envisaged by the General Administrative Code of Georgia should apply to the work of the Council;
- The work of the Council should become more inclusive and the Council should ensure involvement of interested groups, lawyers, etc. in its work. To achieve this the Council should make



effective use of the existing mechanism of holding conference sessions;

- The legislation should establish procedure for systematic, open and transparent communication between the Council and judges.