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Monitoring Report of the High Council of Justice №7



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MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE #7

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I. RESEARCH METHODOLOGY

Aims and Subjects of Research

The High Council of Justice (henceforth – the Council) is a constitutional body of the common courts system.¹ Its goal is to ensure the independence and efficiency of courts, to appoint and dismiss judges and perform other tasks.² The Council is essentially in full control of the judiciary system. Since 2012, Georgian Young Lawyers' Association (GYLA) and Transparency International Georgia (TI Georgia) have been publishing the Council monitoring reports with annual evaluation of the Council's work. The aim of the research is to identify positive and negative trends in the Council's work, which will facilitate the increase in the efficiency of the Council's operation and in the transparency and impartiality of the judicial system.

Research Tools and Sources

To understand the aforementioned issues, the research methodology is based on the analysis of the Georgian legislation and its implementation. Correspondingly, the following sources have been mainly used in the research process:

- The normative framework that exists in Georgia, including both legal acts and by-laws;
- Information received as a result of public information requests and found on the Council website;
- Information received as a result of monitoring the sessions of the Council.

Normative Framework

The authors of the research studied the legal acts and by-laws that are in force in Georgia and which define the Council's work. The active normative base.

¹ The Constitution of Georgia, Article 64, Paragraph 1.

² Ibidem.

Implementation

The authors of the research studied the Council's 2018 practices. The following was analysed in this regard: information acquired by representatives of monitoring organizations by attending the Council's sessions and various public meetings conducted during the reporting period; information acquired through public information requests and from the Council website. GYLA and TI Georgia also used reports and studies assessing the judiciary system published in the past.

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The authors of the research are grateful to the Council staff for providing material. The text in the part of the research on the normative reality implementation is based fully on the information provided by them.

II. FINDINGS

Within the framework of this research, the authors observed the process of implementation of the Third Wave legislative amendments. The authors of the report believe that this innovation has been unable to essentially eliminate the problems prevailing in the judiciary system, moreover, in some cases, it even contributed to their exacerbation. The existing normative framework effectively supports and strengthens an influential group of judges. This clan, using the loopholes in the legislation, extends its powers to the entire judiciary. The problems cited in this document demonstrate that this is the reality. The clan, mostly by using the appointment and dismissal mechanisms, exerts its influence over other judges, imposing its goals upon them.

The decisions based on which judges are being appointed are not impartial and transparent. The reasons for this are as follows:

- The rule of lifetime judicial appointment introduced by the Third Wave worsened the existing standard. The relatively transparent pre-reform rule, which envisages the justification of the evaluation of judges and open voting, applies to a small section of candidates;
- The rule of appointing/dismissing judges is still marred by a number of flaws: Candidates that are refused an appointment have no legal recourse against refusal, no substantiation of evaluation of judges is envisaged; the process of interviewing candidates is not formalised – the share of interview in the overall evaluation score of judges is not determined which allows for broad opportunities for arbitrariness at the interview stage; the stage of the candidates' background check is just a formality;
- Despite being prohibited by the law, the Council members participate in the process of interviewing competing candidates, have access to confidential information available to the Council as a result of the candidates' background check. This creates unfair and unequal conditions for Council members participating in the competition compared to other candidates;
- The Council considers general critical remarks about the court made by its non-judge members to be sufficient grounds for the recusal of these members from the process of making a decision concerning a

judicial appointment. This could have a paralysing effect on the work of the Council members;

- Despite some positive steps (The Council developed the qualification exam, the qualification program was renewed and 30 experts selected by the Council of Justice were trained) taken with regard to properly holding qualification examinations, vague regulation of the selection of examination commission members and the Council's active role in this process remain problematic.

There are problems with regard to the High School of Justice, too. The law does not provide for the rule and criteria of admission of students to the High School of Justice. The School's student selection criteria do not satisfy objectivity standards, while interviews are not sufficiently formalised, which allows the Council to accept students to the School based on subjective decisions.

The regulations concerning transferring judges without a competition do not meet the standard of predictability. Also, no clear criteria are defined for making decisions on this issue.

The role of chairpersons in managing the system is exceptionally important. Given the possibility of an easy and unsubstantiated transfer of judges within narrow specialisations by the chairperson, the possibility of interference with the formation of the court collegium is high. This, in turn, entails a high risk of the chairperson exerting influence over individual judges in the process of case distribution. Against this background, the practice of appointment of the chairperson or the acting chairperson makes an impression that the Council is arbitrarily appointing these top-level officials in the judiciary system. It is possible that this **practice** is used to maintain the Council's influence over individual judges and the judiciary system. From this viewpoint, this document evaluates their appointment procedure and analyses the following problems:

- The criteria and procedure of appointing the chairperson are not established. This contradicts the standard of selecting chairpersons through a transparent procedure and objective criteria;
- A vacancy for a chairperson's position is announced through the internal court network. However, as a rule, only one candidate participates in the competition of a single position. Interviewing candidates

is a formality and the appointment of a concrete candidate is decided beforehand;

- The regulatory mechanism of appointment of acting chairpersons is still problematic, which allows authorizing a concrete person with chairs authority for an indefinite term and without a clear basis.

A properly working mechanism of disciplinary responsibility of judges is important for ensuring both the elimination of flaws in the system and independence of judges. The Independent Inspector's office is crucial in the process. The creation of this mechanism was an important innovation. The statistics of disciplinary proceedings is now made available to the public in a timely and efficient manner. However, the time frames of considering disciplinary complaints are still being protracted. The indicator of dismissing disciplinary cases is high.

Given the significance of the Inspector, the following flaws that characterise this institute in Georgia are even more thought-provoking:

- The absolute majority of votes in the Council is sufficient for appointing and dismissing the Inspector. This allows the judicial members to appoint a desirable member and to dismiss him or her the minute they lose control over this person. Especially in the conditions when only general grounds susceptible to manipulation are established for his or her dismissal;
- The procedure of the Independent Inspector's appointment does not define a whole range of important issues. Specifically, the basic principles of holding a competition (such as impartiality, openness, prohibition of discrimination, prevention of the conflict of interests and others) and the issues related to the rules and conditions for conducting the competition (criteria for selecting the Independent Inspector, evaluation procedure, goals and procedure of interviews, issues to be clarified during interview, candidates' evaluation procedure and substantiation of evaluation) are not defined.

In late 2018, the public witnessed the Council's decision which became a subject of universal criticism. At issue is the form and essence of the nomination of the Supreme Court judges by the Council to Parliament of Georgia. The Council failed to wait for Parliament to pass the law regulating this process and made the decision on nominating the judicial candidates

based on a procedure that lacked transparency, without a discussion or civic engagement.

Several positive changes were made during the reporting period in terms of transparency and efficiency of management of the High Council of Justice. However, problems persist in the legislative base as well as practice, which, overall, significantly damage the transparency and efficiency of the Council. The following key findings were identified as a result of monitoring:

- The Council introduced a positive practice of publishing session agendas with short explanations to each item. This allows interested parties to know in advance the issues the Council plans to discuss. However, the Council consistently violated the legal obligation to proactively (7 days prior to each session) publish information about its sessions. Particularly problematic were cases when the High Council of Justice published information of high public interest on an extremely short notice (such as approval of the list of judicial nominations to the Supreme Court);
- The Council made positive amendments to its Rules of Procedure to define specific deadlines for publishing decisions. These amendments also introduced the obligation to publish consolidated versions of decisions that was not done in previous years;
- We assess positively the decision of the Council to change its practice in the second half of 2018 and allow NGOs into the working groups created for the implementation of the 2-year Action Plan of the 2017-2021 Judicial Strategy. Unfortunately, practice inside the working groups remains inconsistent, with some working groups allowing non-member attendees to express their opinion, while others do not;
- Several positive instances were identified during the reporting period when outside persons were invited to Council sessions to present their research / reports, however, Council members often made aggressive and unethical statements towards these guests. Statements made by local NGOs and international organizations regarding the situation in the judiciary are usually ignored by the Council and perceived as an “attack”;
- On several occasions during the reporting period, sessions of the High

Council of Justice proceeded in extremely tense environment, with raised voices and unethical statements. The situation has somewhat improved with Giorgi Mikautadze leading the sessions;

- Low transparency of the High Council of Justice is illustrated by the fact that in 2018, 34 judicial candidates requested closed interviews. Competition for admission into the High School of Justice was also completely closed. The 2018 initiative of Sergo Metopishvili, a judge member of the Council to close all sessions altogether was especially alarming;
- The monitoring group has been raising the problem of hindered media coverage (recording) of Council sessions for the past seven years. During the reporting period, media organizations were still not allowed to record the full duration of sessions and could do so only during their opening;
- Since 2018, the Council produces session protocols only in audio format. This change constitutes a significant reduction in transparency compared to previous years when the Council produced video-audio protocols. Audio recordings are not able to fully reflect the situation in the session hall;
- The Council has yet to define specific rules for allowing non-member attendees to voice their opinion during sessions. As a rule, the Council rejects the requests to speak made by such attendees;
- The fact that Council members were often provided with necessary documents on weekends for a Monday session or during the session itself points to serious problems in session preparation. As in previous years, there were cases in 2018 as well when discussions were postponed for this reason.

1. SELECTION/APPOINTMENT OF JUDGES

1.1. Judicial Appointment Procedure

The Third Wave legislative amendments mainly changed the judicial appointment procedures.³ The selection and appointment criteria and the candidate evaluation procedure were established, the rule of gathering information about [their] professional reputation and activities was defined.⁴ At the moment different procedures of appointment / lifetime placement of judges are as follows:

After the Third Wave, four rules⁵ of judicial appointment were established:

1. Appointment of candidates through competition for a trial period⁶ (the total of 87 judges were appointed according to this rule)⁷;
2. Procedures for termless re-appointment of judges serving a three-year trial period⁸ (the total of 48 judges were appointed according to this rule);
3. Termless appointment for judges with experience exceeding three years⁹ (the total of 75 judges were appointed according to this rule)¹⁰;
4. Termless appointment of former and incumbent judges of the Constitutional and Supreme Courts¹¹ (the total of 23 judges were appointed according to this rule)¹².

³ The 13 February 2017 amendments to the Organic Law of Georgia on the Amendments to the Organic Law of Georgia on Common Courts.

⁴ Organic Law of Georgia on Common Courts, Article 35².

⁵ In addition to the categories listed below, there is one other group of judges who are serving a 10-year term, whose total number is currently 56. GYLA's letter No g-04/75-19, dated 28 March 2019, the Council's letter No 556/717-03-o, dated 5 April 2019.

⁶ Ibid., Article 36, Paragraph 4¹; appointment for a trial period applies to: students of the School of Justice, persons with judicial experience that exceeds 18 months but is less than three years.

⁷ GYLA's letter No g-04/07-19 dated 10 January 2019, the Council's letter No 58/43-03-o dated 18 January 2019.

⁸ Ibid., Article 36, Paragraph 4¹

⁹ Ibid., Article 79⁴.

¹⁰ GYLA's letter No g-04/07-19 dated 10 January 2019, the Council's letter No 58/43-03-o dated 18 January 2019.

¹¹ Ibid., Article 35, Paragraph 9.

¹² GYLA's letter No g-04/07-19 dated 10 January 2019, the Council's letter No 58/43-03-o dated 18 January 2019

According to the Third Wave amendments, when making lifetime judicial appointments, the Council members evaluate candidates based on competence and integrity criteria, using a system of points. Candidates who fail to overcome minimum limits set by the law will not be allowed to the voting stage.¹³ **The law does not provide for a possibility to appeal the candidates' evaluation [results]. The final decision is made through secret ballot whose results may not coincide with the results based on the points scored by the candidates and, in addition, the law does not provide for substantiation of the decision.** The majority of judges who might raise the largest number of questions among the public are appointed precisely in this manner.

Unfortunately, the Third Wave amendments have worsened the standard of openness, which was used for lifetime re-appointment of judges serving a three-year trial period:¹⁴

- Substantiation of candidates' evaluation and rejection;
- Open ballot when making the decision;
- Public nature of documents related to the candidates' evaluation.

The research authors believe that the **procedures of judicial selection and appointment must be revised, the evaluation of candidates of different backgrounds must be approximated to each other as much as possible. Differentiation is acceptable only when it directly stems from the differences between the contestants.**

1.2. Evaluation of Competition for Judicial Appointment

In order to select and appoint judges, the Council holds a competition. The graduates of the High School of Justice, former and incumbent judges are eligible to participate in the competition. The School graduates are initially appointed to the judicial positions for a three-year trial period¹⁵, while incumbent and former judges with more than three years' experience, re-

¹³ Organic Law of Georgia on Common Courts, Article 35, Paragraph 12.

¹⁴ Ibid., Article 36⁴.

¹⁵ Ibid., Article 36, Paragraph 4¹.

ceive a lifetime appointment¹⁶. The School graduates who were appointed for a trial period and who receive a lifetime appointment based on the results of the three-year evaluation, are not eligible for appointment without a competition.¹⁷

During the reporting period, the Council, with its 30 July, 2018 decision¹⁸, announced a competition for selection and appointment of judges to fill 43 vacancies.¹⁹ Eighty-two candidates passed the first round and were admitted to the interview stage, although two candidates²⁰ withdrew before the interview. Out of 80 candidates who passed to the next stage, 10 were the School students, 48 were incumbent judges while 22 were former judges.²¹

Out of 48 incumbent judges, 13 judges with lifetime appointments are participating in the competition, their motivation being a change of court or promotion.²² Judges, who have two or three years left until the end of their term, substantiated their participation in the competition by the wish to receive a lifetime appointment.²³

¹⁶ Ibid.

¹⁷ Ibid., Article 36, Paragraph 4¹.

¹⁸ Decision No 1/238 of the High Council of Justice of Georgia, dated 30 July 2018, on the announcement of competition to fill vacant judicial positions in the Courts of Appeals and District (City) Courts. Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/238.pdf>, updated on 28.02.2019.

¹⁹ During the competition, GYLA addressed the Council with recommendations. The aim of the recommendations was the improvement of the procedures of judicial selection/appointment, [based on the problems identified] over the years of monitoring the work of the Council and its competitions. The High Council of Justice took some of the presented recommendations into account, which is important and deserves a positive assessment. A specific list of sources for mandatory request of information about candidates was created; also, the terms were established for gathering information about candidates and for the Council members examining this information. Available at: <https://gyla.ge/ge/post/saias-rekomendaciebi-mosamartleta-sherchevadanishvnis-procedurastan-dakavshirebitnatsilobriv-gatvalistsinebulia#sthash.okA6UiJp.dpbs>, accessed on 5 March 2019.

²⁰ Judges Ketevan Dugladze and Jemal Kopaliani withdrew their candidacies before interviews.

²¹ GYLA's letter No g-04/07-19 dated 14 December 2018, the Council's letter No 2206/3237-03-0 dated 9 November 2018.

²² The Council members ask candidates about their motivation for participating in the competition.

²³ Interviews with candidates participating in the competition conducted on 26, 30, 31 October and 2, 9, 15 November.

During the reporting period, interviews with candidates were held on 26, 30, 31 October, 2, 9, 15 November. During the reporting period, no interviews were held after 15 November although interviews with 11 candidates were still to be conducted.

Non-judiciary Council members Nazi Janezashvili and Ana Dolidze linked the protraction of the competition to the process of nominating candidates for the Supreme Court. According to them, it is inconvenient for the judicial members of the High Council of Justice to decide on the judicial appointments to District (City) Courts and the Courts of Appeals before electing the Supreme Court judges.²⁴

Judges with lifetime appointments participated in the competition, including court chairpersons, Council members and other judges with close ties to the influential group of judges.²⁵ They would like to change court and/or even a court instance.²⁶ This, especially after learning the identity of candidates nominated for the Supreme Court, created a feeling that the Council, by internally reallocating its judicial members and court chairpersons, was trying to retain/strengthen its influence on the Supreme Court as well as the courts of lower instances.

Filling the vacancies by the judges who have lifetime appointments or who have two or three years left until the end of their term contradicts the idea of the competition to fill the vacant positions in the judiciary system; this hampers the inflow of new people into the judiciary system. In addition, one of the main challenges facing the judiciary system is the problem of overcrowding of courts, and the Council considers precisely the increase

²⁴ “Nazi Janezashvili and Ana Dolidze say the High Council of Justice artificially protracted competition”; available at: <https://1tv.ge/news/nazi-janezashvili-da-ana-dolidze-ackhadebenrom-iusticiis-umaghlesma-sabchom-mosamartleta-konkursi-khelovnurad-sheayovna/>, accessed on 15 March 2019.

²⁵ GYLA’s letter No g-04/07-19 dated 14 December 2018, the Council’s letter No 2206/3237-o dated 9 November 2018.

²⁶ E.g.: Irakli Bondarenko, who is an incumbent member of the Council and a judge with a lifetime appointment to the Tbilisi Court of Appeals, wants to change the court and move from Tbilisi to Kutaisi Court of Appeals. Revaz Nadaraia, also an incumbent member of the Council and a judge with a lifetime appointment, wants to return to the court of the first instance from Tbilisi Court of Appeals. Tbilisi City Court chairperson wants to receive a promotion to Tbilisi or Kutaisi Court of Appeals, while Batumi City Court chairperson wants to be transferred to Tbilisi Court of Appeals.

in the number of judges as one of the ways of solving it. Filling the vacancies announced within the framework of the judicial selection competition with incumbent judges or those with lifetime appointments prevents this problem from being solved. In the event of this kind of mobility, if a vacancy in one court is filled, another vacancy appears in another court.

For the incumbent judges who want to be transferred to the same or higher court instance, the law envisages a possibility to address the Council without participating in a competition.²⁷ Correspondingly, since the compliance with the criteria of the judges with lifetime appointments participating in the competition is already established, it is expedient to apply the legal provisions²⁸ envisaging transfer and promotion without competition in practice.²⁹

The fact that, in the course of the competition, two candidates who were, at the same time, members of the High Council of Justice (Vasil Mshvenieradze and Revaz Nadaraia), demanded to be interviewed behind closed doors and to have Ana Dolidze, non-judicial member of the Council, recuse herself over her public statement³⁰, warrants an unequivocally negative assessment. The judges' demand to have a non-judicial member recuse oneself was satisfied by the Council in all cases.³¹ It is noteworthy that there were possible risks of nepotism and strong public interest were present with regard to these candidates given their status.³²

There was conflict of interests present during the competition as Council members participated in interviewing candidates who applied to their positions.³³ It is noteworthy that, according to the amendments made within the framework of the Third Wave judicial reform³⁴, the issue of the conflict of interests in the process of judicial competition was regulated at

²⁷ Organic Law of Georgia on Common Courts, Article 37.

²⁸ Ibid., Articles 37-41.

²⁹ See Section 3.8 for detailed information about transferring.

³⁰ See Section 3.3 for detailed information about this kind of recusals.

³¹ "Court: Ana Dolidze's statements raised suspicions about her impartiality"; available at: <http://liberali.ge/news/view/37510/sasamartlo-ana-dolidzis-gantskhadebebi-misi-miukerdzoeblobis-echvs-badebda>; accessed on 19 April 2019.

³² Ana Dolidze vs. Parliament of Georgia, Lawsuit No 1362, 31 October 2018.

³³ Irakli Bondarenko, Vasil Mshvenieradze, Giorgi Mikautadze, Revaz Nadaraia.

³⁴ Came into force on 14 March 2017.

the level of the organic law. Specifically, a Council member will no longer be able to participate in the procedures related to a competition to fill in a vacancy if he or she participates in this competition.³⁵ However, this legal requirement is not being observed, **Council members participate in the process of interviewing competitor candidates, have access to the confidential information available to the Council as a result of candidates' background check. This creates unfair and unequal conditions for Council members participating in the competition compared to other candidates.**

1.3. Lifetime Judicial Appointment after Trial Period

The Council, based on the conclusions made by the evaluator of judicial activities and on the interview procedure, granted lifetime appointments to 22 judges.³⁶

As noted earlier, the law establishes the most complex evaluation procedures for judges serving a three-year trial period. The evaluators selected by the Council by casting of lots are obliged to substantiate the compliance of judges with specific criteria not only with points but also with a substantiated reasoning in their evaluation reports.³⁷ It is important that, in order to grant a lifetime appointment to a judge serving a trial period, an open vote is envisaged, while in the event of their rejection – a substantiation and an appeal mechanism.³⁸

As noted above, as of 1 January 2019, there are 48 judges in the judiciary system appointed in accordance with this rule.³⁹ Since 2013, the Council has been evaluating judges serving a trial period without a detailed procedure created for this purpose.⁴⁰ **The rule of evaluating the decisions made and sessions held by judges serving a trial period is unclear and**

³⁵ Organic Law of Georgia on Common Courts, Article 35³.

³⁶ GYLA's letter No g-04/75-19 dated 28 March 2019, the Council's letter No 556/717-03-o dated 5 April 2019.

³⁷ Organic Law of Georgia on Common Courts, Article 36⁴, Paragraphs 2 and 10.

³⁸ Ibid., Article 36⁴, Paragraphs 20.

³⁹ GYLA's letter No g-04/07-19 dated 10 January 2019, the Council's letter No 58/43-03-o dated 18 January 2019.

⁴⁰ Organic Law of Georgia on Common Courts, Article 36⁴.

requires detailed regulation; there is no established rule of conducting a background check of a judge to be evaluated; it is not determined what sources and evidence should serve as a basis for judges' evaluation; it is not established how the principle of random selection is ensured in the process of evaluation (selection of decisions made and sessions held by a judge to be evaluated) and other.

The examination of evaluation reports demonstrated that, in some cases, the evaluation of judges based on specific criteria is general; there is no indication based on what concrete circumstances the evaluator arrived at the given conclusion; in some cases, the score-based and written evaluation of the same candidate differ.⁴¹ When making a concrete conclusion, the evaluator must indicate the information based on which a positive or negative evaluation was made. By familiarising him or herself with the document, the reader should receive comprehensive information about a judge's integrity and competence. **The inadequate regulations of the judicial evaluation procedure allow for arbitrary actions and for making a biased decision.**

The legislation provides for a possibility of evaluator's recusal during the evaluation process.⁴² During the reporting period, Shoren Kavelashvili, judge of Tbilisi Court of Appeals, requested the recusal of Ana Dolidze, non-judicial member of the Council, from her evaluation on account of Dolidze's publicly made critical remarks.⁴³ Ana Dolidze disagreed with the judge's arguments with regard to her recusal and said that the demand to recuse herself was unsubstantiated as the competitor was not mentioned in the critical remarks made about the judiciary system.⁴⁴ Eleven members of the Council supported Ana Dolidze's recusal⁴⁵; according to the

⁴¹ The Council's letter No 256/213-03-o dated 22 December 2019, copies of evaluation reports of eight judges who received lifetime appointments at the 3 December 2018 session requested by GYLA's letter No g-04/39-19 dated 1 February 2019.

⁴² Organic Law of Georgia on Common Courts, Article 36, Paragraph 4⁵.

⁴³ "Ana Dolidze's recusal requested during interviews with judges aspiring for lifetime appointment"; available at: <https://1tv.ge/news/uvadod-gamwesebis-msurvel-mosartleebtan-ga-saubrebaze-ana-dolidzis-acileba-moitkhoves/>; accessed on 19 April 2019.

⁴⁴ See 4 June 2018 session protocol.

⁴⁵ Non-judicial members Nazi Janezashvili, Irma Gelashvili and Council Chairwoman Nino Gvenetadze did not consider the judge's arguments for the Council member's recusal sufficient and, correspondingly, did not uphold the decision on her recusal.

explanation provided by Tamar Oniani, judicial member of the Council, a judge's feeling that one of the Council members is not impartial is sufficient grounds for her to grant the request.⁴⁶

According to the law, the recusal is possible if there are circumstances which provide serious grounds to suspect that an evaluator is not objective, independent and/or impartial.⁴⁷ **The authors of this research believe that a general assessment of the problems in the process of lifetime judicial appointments and of the situation prevailing in the judiciary system made by a Council member cannot be considered an appropriate basis for recusal.** Presenting the issue in such a manner hampers the work of Council members, preventing them from fulfilling their constitutional duties. **Therefore, in the future, the Council must use high standards for evaluators' recusal.**⁴⁸

1.4. Lifetime re-appointment of judges with experience exceeding three years

Since November 2013, all judges in the District (City) Courts and Courts of Appeal were being appointed for a trial period.⁴⁹ Within the three-year trial period, they were being evaluated by the Council members and, based on these evaluation reports, they received lifetime appointments.⁵⁰

This legal provision was amended by the decision of the Constitutional Court.⁵¹ The amendments passed on 16 June 2017 established a different rule for lifetime judicial appointments for the persons who have at least

⁴⁶ See 4 June 2018 session protocol.

⁴⁷ Organic Law of Georgia on Common Courts, Article 36, Paragraph 4⁵.

⁴⁸ GYLA appealed the existing recusal model in the Constitutional Court.

⁴⁹ The 13 February 2017 amendments to the Organic Law of Georgia on the Amendments to the Organic Law of Georgia on Common Courts, Paragraph 7.

⁵⁰ Organic Law of Georgia on Common Courts, Article 36, Paragraph 4¹.

⁵¹ The amendment of the regulatory norms of selection and appointment of judges was caused by the decision made by the Constitutional Court on the case "Citizen Omar Jorbenadze versus Parliament of Georgia". This decision, starting from 1 July 2017, invalidated the normative content of Paragraph 41 of Article 36 of the Organic Law of Georgia on Common Courts according to which a person who is an incumbent or former judge and has at least three years of judicial experience shall be appointed as a judge in the Courts of Appeals or District (City) Courts.

three years of experience working as judges as well as those who were already appointed for a trial period prior to the enactment of this law and had been working as a judge for at least three years.⁵²

According to the amendments, the persons who are serving a trial period and have more than three years of experience, were given a possibility to address the Council with a request for a lifetime appointment before the end of their term.⁵³ In February 2018, the Council reviewed applications submitted by 50 judges serving trial periods who requested for termination of the evaluation procedure and for a re-appointment for a lifetime term.⁵⁴ On 6, 7, 8 February 2018, interviews were conducted with these judges, while on 22 February, the vote was held. The Council granted a lifetime appointment to 44 out of 50 judges, six were refused a lifetime appointment. Thirty-four judges requested to close the session while 14 requested the recusal of the Council's non-judicial member, Ana Dolidze.⁵⁵ The grounds for requesting the recusal in this case were the same as the ones discussed above. As of 1 January 2019, there are 75 judges appointed through the aforementioned procedures in the judiciary system.⁵⁶

Non-judicial member Ana Dolidze considered the procedure through which these judges were appointed to be flawed and talked about the improvement of regulations by the Council and about the need to prepare legislative proposals.⁵⁷

Council Chairwoman Nino Gvenetadze responded to the critical situation that had taken shape and expressed hope that the working group created in Parliament would in the nearest future discuss the elaboration of objective criteria, compliant with international standards, for granting life-

⁵² Organic Law of Georgia on Common Courts, Article 79⁴.

⁵³ Ibid.

⁵⁴ "Lifetime appointment received by 44 judges"; available at: <http://hcoj.gov.ge/ge/44-mosamartle-tanamdebobaze-uvadod-gamtsesda/3181>; accessed on 18 April 2019.

⁵⁵ "Ana Dolidze – I will defend the mandate of the member of the High Council of Justice in court"; available at: <https://1tv.ge/news/ana-dolidze-uvadod-gamwesebis-msurvel-mosamartleebtan-gasaubrebaze-chemi-acilebis-motkhovna-iusticiis-umaghlesi-sabchos-revan-shia/>; accessed on 18 April 2019.

⁵⁶ GYLA's letter No g-04-07-19 dated 10 January 2019, the Council's letter No 58/43-03-o dated 18 January 2019.

⁵⁷ See 4 June 2018 session protocol.

time appointment to the judges serving their trial period before the end of their term.⁵⁸ However, no effective step was taken in this direction.

Then prime minister criticised this process of lifetime re-appointment of judges. He noted that questions arise with regard to the lifetime appointment of several judges considering their past activities.⁵⁹

Apart from the 50 judges mentioned above, 54 judges addressed the Council with the request to terminate the evaluation procedures and to re-appoint them for a lifetime term; during the reporting period, the Council did not discuss lifetime appointments for judges serving a trial period with experience exceeding three years.

In addition, with regard to the refusal of a lifetime appointment after the three-year term, **it was unclear which regulations would apply to the judges whom the Council would refuse a lifetime appointment.** The problematic nature of this issue manifested itself during the previous reporting period.⁶⁰ However, no steps were taken to revise these flawed regulations either. According to the law, one of the important roles of the Council is the development of proposals concerning the implementation of the judicial reform.⁶¹ **The Council must step up its efforts in eliminating the flaws in the legislation.**

Judicial member Irakli Shengelia tried to address this issue through the Council's decision and presented at the 3 December session a draft which envisaged a repeat consideration of the issue of the lifetime judicial re-appointment on the Council's initiative.⁶² The majority of non-judicial members opposed the initiative as the law did not provide for a possibility of a repeat consideration in the event of refusing a lifetime appointment to

⁵⁸ "Gvenetadze: legislative proposal on lifetime judicial appointment will be elaborated"; available at <https://imednews.ge/ge/dzalovnebi/50009/gvenetadze-mosamartleta-uvadod-gamt-sesebaze-sakanonmdablo-tsinadadeba-shemushavdeba>; accessed on 18 April 2019.

⁵⁹ "Kvirikashvili: our team, too, has questions to some judges with lifetime terms"; available at: <http://netgazeti.ge/news/254943/>; accessed on 18 April 2019.

⁶⁰ Monitoring Report of the High Council of Justice No 6 prepared by GYLA and Transparency International Georgia; available on the official website of the Georgian Young Lawyers' Association: <http://bit.do/eRBtQ>; accessed on 18 April 2019.

⁶¹ Organic Law of Georgia on Common Courts, Article 47, Paragraph 1.

⁶² See 3 December 2018 session protocol.

a judge.⁶³ They supported regulating this issue by law. The discussion was also attended by the judges who would be affected by this decision. They said that the procedure established by the transitional provision was not in line with the spirit of the Constitutional Court and expressed concern that they were being “punished” because of an inappropriate regulation and deprived of the right to appeal the Council’s rejection.⁶⁴

Nomination of Judicial Candidates for the Supreme Court

According to the new wording of the Constitution, the Council was granted an important power of nominating the candidates for the positions of members and chairperson of the Supreme Court.⁶⁵ The civic sector opposed this amendment since this would further concentrate the already broad and unchecked powers in the hands of the Council.⁶⁶

No clear procedures and criteria for nominating judicial candidates for the Supreme Court by the Council were reflected in the organic law by the time the supreme law came into force. At the 17 December session, Nazi Janezashvili presented to the Council a draft aimed at regulating this process. Non-governmental organisations addressed the Council in an open statement, calling upon it to refrain from exercising its constitutional prerogative before the corresponding legislative amendments are passed.⁶⁷ However, the Council did not wait for the adoption of the legislative amendments and, at the 24 December session, held a vote and presented 10 candidates to Parliament. The Council’s session agenda with the general wording concerning the nomination of the Supreme Court members was unexpectedly published the night before the session. Thus, **the Council secretary presented the list of candidates in violation of the**

⁶³ Organic Law of Georgia on Common Courts, Article 79⁴.

⁶⁴ Speech by Judges Ekaterina Gabrichidze and Mikheil Bebiashvili, see 3 December session protocol.

⁶⁵ The amendments to the Constitution came into force on 16 December 2018.

⁶⁶ The Coalition’s views on the new draft of the Constitution of Georgia; available at: http://coalition.ge/files/coalition_opinion_on_const.provisions_re_judiciary.ge.pdf; accessed on 18 April 2019.

⁶⁷ The Coalition considers legislative regulation of the selection process of the Supreme Court judges and chairperson necessary; available at http://coalition.ge/index.php?article_id=195&-clang=0; accessed on 18 April 2019.

legal requirement to publish the information about the issue seven days in advance.⁶⁸ It is noteworthy that at least three non-judicial members of the Council did not have information about the nominated candidates. They were not given an opportunity to nominate or evaluate the presented candidates. The Council secretary linked the nomination of candidates in such a manner to the reduced number of the Supreme Court judges, which hampered the administration of justice.⁶⁹ He said that, after consultations with the judges, he made the decision and initially nominated the judges who enjoyed trust within the judicial system, were competent and qualified; at the same time, former judges of the Supreme Court were given priority.⁷⁰ **The Council presented a list of 10 Supreme Court judicial candidates to Parliament without any kind of public review or discussion.**⁷¹ The list contained several most influential persons of the influential group (clan)⁷² ruling the judiciary, former and incumbent members of the Council (Tamar Alania, Merab Gabinashvili, Dimitri Gvritishvili, Giorgi Mikautadze) as well as the “clan” leader, Mikheil Chinchaladze. This composition clearly demonstrated that they were trying to strengthen their influence on the Supreme Court. They wish to establish total control over the judiciary branch.

It is important that Parliament of Georgia ensures the elaboration of the procedure for nomination of candidates for the Supreme Court which will not allow one group to control the processes based on its own interests and which will be based on a consensus. This will allow selecting candidates who correspond to the high-level status of a Supreme Court judge.

⁶⁸ Organic Law of Georgia on Common Courts, Article 49, Paragraph 4: “Information about the date and the agenda of the scheduled session of the High Council of Justice shall be published on the Council’s website no less than seven days prior to conducting the session”.

⁶⁹ See 24 December 2018 session protocol.

⁷⁰ The nominated judges: Mikheil Chinchaladze, Dimitri Gvritishvili, Giorgi Mikautadze, Paata Silagadze, Mariam Tsiskadze, Nino Kadagidze, Nino Sandodze, Giorgi Tkavadze, Merab Gabinashvili, Tamar Alania.

⁷¹ Three non-judicial members of the Council did not participate in the vote on the nominated candidates: Nazi Janezashvili, Ana Dolidze and Irma Gelashvili.

⁷² An influential group of judges, which factually manages the judicial system is referred to as “Clan” in this report. The Clan controls the decision making majority at the High Council of Justice and, therefore, the judiciary. They use their influence over the judiciary to strengthen their positions

1.5. Lifetime Appointment of Levan Murusidze

On 26 December, it became known that Parliament would not be making the decision on the judicial appointments to the Supreme Court during the ongoing session⁷³. In response, at the 27 December session, the Council scheduled interviews with six judges serving a trial period, including Levan Murusidze. Because of his decisions on high-profile cases, Levan Murusidze is a symbol of unfair court in the country. When making an evaluation based on the integrity criterion, 11 Council members decided that he fully satisfied the integrity criterion; he received 94.85 percent for his competence.⁷⁴ According to the 27 December 2018 decision, as a result of a secret vote, Levan Murusidze received a lifetime appointment to Tbilisi Court of Appeals.

Since January 2016, Levan Murusidze was serving a three-year trial period. According to the amendments to the law,⁷⁵ he received an opportunity to address the Council with a request for a lifetime appointment before the end of his term, but he did not use this mechanism. The evaluation system did not apply to him as a former judge of the Supreme Court.⁷⁶ The law does not clearly specify the regulatory framework applicable to such cases, thus it is vague what procedures has Council applied when appointing him. After completing the interview, the Council members filled out the evaluation forms in an extraordinary mode, right there at the session. Thus, Levan Murusidze's lifetime appointment took place hastily, based on unclear, unpredictable procedures.⁷⁷

This appointment has once again clearly demonstrated the interests of the influential group operating within the Council and methods of its work. Once the prospects of the approval of the 10-strong list of judicial candidates for the Supreme Court became questionable, this decision by

⁷³ "Eka Beselia resigns from the post of the Legal Issues Committee chairperson", available at: <https://imedineews.ge/ge/saqartvelo/91118/eka-beselia-iuridiuli-komitetis-tavmjdomaris-tan-amdebobas-tovebs>; accessed on 18 April 2019.

⁷⁴ GYLA's letter No g-04/21-19 dated 16 January 2019, the Council's letter No 237/79-03-o dated 6 February 2019.

⁷⁵ Organic Law of Georgia on Common Courts, Article 79⁴.

⁷⁶ Ibid., Article 35, Paragraph 9.

⁷⁷ One of the Council members gave Levan Murusidze 20 points out of the highest possible 15 for oral communication skills.

the Council was the “clan’s” demonstration of its power. The process has once again revealed the formal attitude towards the established criteria and the fact that the Council is abusing the process of selection and appointment and is not making its decisions based on the interests of justice.

1.6. Interview Practice

The judicial appointment procedure envisages an interview stage.⁷⁸ The law does not define the share of interviews in the overall evaluation of a candidate. This, however, is necessary to ensure that the Council has a uniform approach to candidates and for conducting the interview process in an impartial manner. This situation provides the Council with broad opportunities to make arbitrary decisions.

In addition, it remains problematic⁷⁹ that the Council maintains its rule of conducting interviews behind closed doors.⁸⁰ It is important for conducting the judicial selection and appointment process in a transparent manner that the stages of interviews and background checks to be formalised and that interviews are held at the open sessions of the Council.

During the reporting period, observation of the interviews with candidates which were held at open sessions demonstrated that, **compared to other competitions, the quality of questions was significantly better.** The candidates mostly had to answer questions of similar level of difficulty. The majority of the questions served to evaluate professional knowledge while the candidates also had an opportunity to demonstrate their experience and values. The questions posed to the candidates aimed to check their knowledge and analytical skills. The questions also concerned the high-profile cases they had considered, discussion of the problematic issues with the Judiciary Strategy⁸¹ and others.

⁷⁸ Organic Law of Georgia on Common Courts, Article 36⁴, Paragraphs 17 and 19.

⁷⁹ See details in Chapter 1 of the report.

⁸⁰ The Council’s decision No 308, Article 12⁷, Paragraph 2 – on the approval of the rule of selecting judicial candidates, dated 9 October 2009.

⁸¹ The Judiciary Strategy 2017-2021; available at: <http://hcoj.gov.ge/ge/reforms/ongoing-projects>; accessed on 18 April 2019.

In spite of these positive trends, the selection /appointment of judges does not increase the trust towards the process, since the candidates with the highest interest from the public are usually closing their interviews. Also, it is unclear what are the standards used to evaluate candidates' answers and how these evaluations affect the final score.

1.7. Judicial Postings, Appointments Without Competition

The rule and practice of transfers and postings to other courts without competition has been subject of criticism for years. The rule and practice of posting/promotion established by the Council raised many questions, the reason for this being the Council's decisions made without any substantiation, as a result of nothing but formal procedures.

During the reporting period, the High Council of Justice discussed and approved a judicial transfer and posting without holding a competition in one case and extension of the term of posting in four cases.⁸²

Posting. Within the framework of the Third Wave of the judicial reform, the rule of posting judges to other courts was defined.⁸³ The grounds for posting and the procedure for selecting the judges for posting were established.⁸⁴ The substantiation of decisions on postings deserves a positive assessment. The need for the posting and its effect both on the place of posting as well as on the court from which a judge is being posted are substantiated in the decisions. The decisions provide for the judges' consent.⁸⁵ However, **when discussing the issue according to the established practice, the Council does not invite the judge to be posted to the session, which contradicts the Council's rules of procedure.⁸⁶** The judge to be

⁸² GYLA's letter No g-04/346-18 dated 26 December 2018, the Council's letter No 14/3716-03-o dated 1 January 2019.

⁸³ Organic Law of Georgia on Common Courts, Article 37¹.

⁸⁴ Ibid.

⁸⁵ The High Council of Justice of Georgia decision No 1/148 dated 12 March 2018 on posting Zugdidi District Court Judge Shota Bichia to Gali-Gulripshi and Ochamchire-Tkvarcheli District Court; available at: <http://hcoj.gov.ge/files/pdf%20gadacvvetilebebi/gadawyvetilebebi%202018/148.pdf>; accessed on 18 April 2019.

⁸⁶ Rules of Procedure adopted by the High Council of Justice of Georgia decision No 1/208-2007 dated 25 September 2007 On the approval of the Rules of Procedure of the High Council of Justice of Georgia, Article 13, Paragraph 3; available at: <http://hcoj.gov.ge/files/pdf%20ga->

posted is authorised to present his or her opinions to the Council.⁸⁷ At the session, the issue is presented by the Council members.⁸⁸

Appointment without competition. Despite the Third Wave amendments, defining the procedures and criteria for transferring judges without a competition has remained within the area of competence of the Council.⁸⁹ **When the Council initiates the issue of appointment without a competition as envisaged by the Council's Rules of Procedure, there are no transparent criteria in place which would clearly show the grounds for giving preference to a particular candidate when transferring him or her to another court.**

According to the recommendation of the Consultative Council of European Judges (CCJE), the bodies responsible for judicial appointments, promotions and making recommendations with regard to these issues, are obliged to elaborate, publish and enact objective criteria to ensure that the selection and career advancement of judges is based on their merit, qualification, integrity, abilities/knowledge and effectiveness.⁹⁰

During the reporting period, the Council applied the rule of judicial transfer once. At the 25 June session, the Council secretary presented the issue. Rustavi City Court chairperson requested the posting or appointment without a competition of a judge to the vacant position in the civil panel due to heavy caseload. The consideration of the issue was followed by a discussion. Some members of the Council believed that, in the conditions when the issue of overcrowding is topical for many other courts as well, solving this problem only in Rustavi would mean having an unequal approach. Non-judicial member Irma Gelashvili suggested to her colleagues to announce a competition to fill the existing vacancy considering the lack of regulation with regard to the criteria of transfers without a competition.⁹¹

dacyvetilebebi/konsolidirebuli%20gadackvetilebebi/208-2007%20%282007%29.pdf; accessed on 18 April 2019.

⁸⁷ Ibid.

⁸⁸ See 12 March 2018 session protocol.

⁸⁹ Organic Law of Georgia on Common Courts, Article 41.

⁹⁰ CCJE Conclusion No 1(2001), Paragraph 25.

⁹¹ See 25 June Council session protocol.

Eventually, the majority decided to initiate the procedure of appointment without competition to the vacant position at Rustavi City Court.⁹² Other judges at Rustavi City Court were also given opportunity to address the Council with the request to accept their appointment from June 25th until July 1st.⁹³ Five persons applied for the vacancy. After the interviews, the Council chose Maia Shoshiashvili, judge of the criminal investigative, pre-trial and hearing on the merit panel at Tbilisi City Court.⁹⁴ **The observation of the process of transfer without a competition once again demonstrated the problems caused by the absence of clear and transparent criteria of judicial transfers.** In this case, too, it remained unclear why the vacancy that appeared in Rustavi City Court was filled by a judge from one of the busiest courts.

It is therefore important to have the criteria of appointment without a competition defined by the rules of procedure, **to establish predictable grounds and procedure for judicial transfers. The regulation at the level of legislation of the main principles and procedure for appointing a judge to a different court without a competition will considerably contribute to the transparency of the process.**

1.8. Qualification Examinations

The form and date of conducting qualification examinations and the time frames of related organisational events are defined by the Council.⁹⁵ The qualification examination is the prerequisite for enrolment to the High School of Justice. Consequently, it would be logical the School to have an authority to conduct the qualification examination. Being in charge of conducting qualification examination gives the Council an additional ability to fully control the selection process of judges. Currently the

⁹² Ibid.

⁹³ The Council's 25 June 2018 statement on initiating the issue of transfer without competition; available at: <http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabchos-gantskhadeba/3258>; accessed on 13 March 2019.

⁹⁴ See 9 July 2018 session protocol.

⁹⁵ The rule of conducting judicial qualification examination approved by the High Council of Justice of Georgia decision No 1/129 dated 19 March 2018 On the approval of the rule of conducting judicial qualification and approval of qualification examination programme, Article 4; available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/152-20018.pdf>; accessed on 18 April 2019.

Council conducts qualification examination, as well as admits students to the School, and ultimately it fully controls the selection/appointment of judges. This authority allows the Council to exert inappropriate influence over the process of admission of students to the High School of Justice.

During the previous reporting period, when discussing the issue of qualification examinations at the Council session, the existing electronic system of examination and the process of test creation (there was no mechanism for checking the composed tests) were identified as problematic.⁹⁶ During the reporting period, **certain positive changes were implemented with regard to the qualification examinations.** The Council developed a rule of conducting qualification examinations, the examination programme was updated.⁹⁷ The National Examinations Centre created an intensive certification programme in the methodology of preparing for the qualification examination questions and trained 30 experts selected by the Council of Justice.⁹⁸ The Qualification Examination Commission composed new tests for the examination.⁹⁹ However, despite certain positive steps taken in the direction of properly conducting the qualification examinations, **the vague regulation of the selection of the examination commission members and an active role of the Council in the process remain problematic.**

During the reporting period, the judicial qualification examinations were held twice. In the summer and autumn of 2018. Both general and specialised qualification examination were held. **The instruction of registration for qualification examinations, time frames and other important information concerning the examinations was made available to those wishing to sit these examinations in accordance with the rules, by means of the Council's website.**

In July, 52 persons successfully passed the announced qualification examinations¹⁰⁰ while in December, 25 people successfully passed the an-

⁹⁶ Monitoring Report of the High Council of Justice No 6.

⁹⁷ Progress Report of the Action Plan 2017-2018 of the Judicial Strategy 2017-2021, p. 54; available at: http://hcoj.gov.ge/files/progresis%20angarishi_14.11.pdf; accessed on 18 April 2019.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ One in general specialisation, 16 in civil and administrative specialisation and 35 in criminal

nounced qualification examinations.¹⁰¹

It is important that the authority to hold judicial qualification examinations is removed from the High Council of Justice. This way, it will no longer have a possibility to exert undue influence over the way the judicial qualification examinations are conducted.

1.9. Admission of Students to High School of Justice

As a rule, the School's admission competition takes place twice a year – in May and October.¹⁰² The Council, by the decision dated 17 September 2018, established the period between 20 September and 4 October as the time for registration and set the total number of students to be admitted to the School at 20.¹⁰³ The Council did not substantiate its decision. Most importantly, **nothing indicates that the Council considers the need to fill vacant positions in courts when admitting the students. This happens despite the fact that, according to the School charter, the Council must make its decision considering the number of judges in the system.**¹⁰⁴ This issue is particularly notable given the fact there is a problem of overcrowding and case protraction in course, while the number of vacancies remaining empty as a result of competitions is high.¹⁰⁵

Passing the qualification examinations is a mandatory precondition for the

specialisation; available at: <http://hcoj.gov.ge/ge/mosamartleobis-sakvalifikatsio-gamotsdis-meore-etapi-dasrulebulia/3285>, accessed on 18 April 2019.

¹⁰¹ 14 in civil and administrative specialisation and 11 in criminal specialisation, available at: <http://hcoj.gov.ge/ge/mosamartleobis-sakvalifikatsio-gamotsdis-shedegebi/3395>; accessed on 18 April 2019.

¹⁰² Ibid., Article 11, Paragraph 2.

¹⁰³ The High Council of Justice of Georgia decision No 1/248 dated 17 September 2018 On announcement of the competition for admission of students to the High School of Justice; available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/248-2018.pdf>; accessed on 18 April 2019.

¹⁰⁴ Law of Georgia on High School of Justice, Article 11, Paragraph 3.

¹⁰⁵ Monitoring Report of the High Council of Justice No 6 prepared by Georgian Young Lawyers' Association and Transparency International Georgia. "As a result of the competition announced in May 2017, 20 vacancies were left unfilled, while as a result the competition announced in October – 18 vacancies were left unfilled. Due to the lack of candidates, the competition could not be held in seven courts"; available at: <https://bit.ly/2XA5reX>; accessed on 18 April 2019.

students of the School of Justice. Thirty-eight persons who passed the judicial qualification examination participated in the admission competition on 28 July 2018.¹⁰⁶ There were 122 candidates registered for the admission competition announced by the Council, 121 passed to the next stage¹⁰⁷, 115 of them were interviewed¹⁰⁸. Among the competition participants, 52 were incumbent employees of the judiciary system.¹⁰⁹ The interviews with the prospective students were held on 11, 12, 15, 16, 17, 18 and 19 October.¹¹⁰ **The Council changed its practice and, while in the past this procedure took place at open sessions, during the reporting period, it was held behind closed doors, which was motivated by the protection of personal information.**¹¹¹ Despite the fact that the Council finished interviews with the prospective students on 19 October, it did not hold a vote to decide on their admission to the School of Justice during the reporting period.¹¹²

The High School of Justice is the body which must ensure professional training, deepening of theoretical knowledge and developing the skills necessary for practical work. Consequently this should ensure inflow of new employees and the renewal of the judiciary.¹¹³ However, today, the School is not authorised to make independent decisions on the admission of its students. The School cannot make decisions on the announcement of an admissions competition, on the number of students, does not select the prospective students itself and so on. The criteria for the selection of students and other issues related to conducting the competition are

¹⁰⁶ GYLA's letter No g-04/47-19 dated 12 February 2019, the Council's letter No N14/325-03-o, dated 21 February 2019.

¹⁰⁷ The High Council of Justice of Georgia decision No 1/267 dated 8 October 2018 on the admission of candidates to the second stage of the admission competition to the High School of Justice; available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/267-2018.pdf>; accessed on 18 April 2019

¹⁰⁸ Interviews with prospective students of High School of Justice completed – information is available on the website of the High Council of Justice: <http://hcoj.gov.ge/ge/iustitsiis-umaghles-sabchoshi-iustitsiis-umaghlesi-skolis-msmenelobis-kandidatebtan-gasaubrebis-protseisi-dasrulda/3321>; accessed on 15 March 2019.

¹⁰⁹ GYLA's letter No g-04/47-19 dated 12 February 2019, the Council's letter No 14/325-03-o dated 21 February 2019.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Law of Georgia on High School of Justice, Article 1.

defined by the School Charter¹¹⁴ although the students are selected by the Council.¹¹⁵

The law does not regulate the rules and criteria of admission of students to the High School of Justice. The practice established by the Council and the current legal framework, however, are unable to ensure that the process of student admission to the School is objective and transparent. The following issue are problematic:

- Preconditions set for the candidates;¹¹⁶
- Criteria and indicators for student selection;¹¹⁷
- The evaluation procedure and time frames are not defined;
- Interviews are not sufficiently formalised;
- Substantiation of the Council's decision and appeal mechanism are not envisaged.

All of the above allows for arbitrary actions on the part of the Council. To ensure a fair process of judicial selection and appointment, it is important to rule out the participation of the High Council of Justice at the stage of judicial students' admission and to strengthen the role of the High School of Justice, since leaving the multifaceted role of preparing and teaching the judicial candidates to the Council causes excessive concentration of power in its hands, which poses a danger to the independence of the judiciary.

It is important for the legislature to conduct a legislative reform of the High School of Justice, which would ensure the School's proper independence from the High Council of Justice as well as the selection of students based on objective and transparent criteria.

¹¹⁴ Charter of Legal Entity of Public Law – High School of Justice, High School of Justice Independent Council decision No 1/1 dated 18 April 2008; available at: <http://hcoj.gov.ge/files/pdf%20files/skolis%20cesdeba.pdf>; accessed on 19 April 2019.

¹¹⁵ Law of Georgia on High School of Justice, Article 13.

¹¹⁶ According to the law, the purpose of the School of Justice is to prepare persons for judicial appointment in the system of common courts, although prospective students are not required to have work experience; however, according to the Organic Law of Georgia on Common Courts, a judicial candidate must have at least five years of professional experience. At the same time, there is no age limit to the admission to the School while a person can be appointed a judge from the age of 30.

¹¹⁷ The evaluation criteria – considerably overqualified, does not meet requirements – are very vague and unpredictable.

2. APPOINTMENT OF COURT CHAIRPERSONS, ROLE OF CHAIRPERSONS IN THE JUDICIARY

2.1. Appointment of Chairpersons – Legal Framework

During the reporting period, it remained problematic that the appointment of chairpersons or acting chairpersons of courts, panels, chambers took place without criteria and procedures, in a non-competitive environment¹¹⁸, which allows the Council to use the mechanism of appointment of chairpersons of courts, panels and chambers to appoint the persons it considers acceptable/trustworthy to important positions and, through them, to maintain its influence over the judiciary and the judges.

The law does not determine specific criteria and procedures for selection, appointment and dismissal of court chairpersons. There is only a general norm, according to which the court chairpersons are appointed from among the judges of the corresponding court for the term of five years and are dismissed by the High Council of Justice.¹¹⁹ Contrary to this, the Consultative Council of European Judges (CCJE) believes that the procedure of appointing a court chairperson should be identical to that of the appointment of judges. This implies evaluation in accordance with standards and criteria.¹²⁰

Despite the fact that the Judicial Strategy¹²¹, too, envisaged analysing the existing legislation and practice concerning the procedure, time frames and competence [requirements] for the appointment of court chairpersons and developing corresponding recommendations, the Council and the working group formed for the implementation of the action plan have not taken any effective steps to carry out these activities.¹²²

¹¹⁸ Monitoring Report of the High Council of Justice No 5, Georgian Young Lawyers' Association, Transparency International Georgia, 2017; available at: <http://bit.do/eRBT7>; accessed on 18 April 2019.

¹¹⁹ Organic Law of Georgia on Common Courts, Article 32, Paragraph 1.

¹²⁰ Consultative Council of European Judges (CCJE) 2016 conclusion No 19 – The Role of Court Chairpersons, Paragraph 38; available at: <https://rm.coe.int/-n-19-2016-/16807ba8d7>.

¹²¹ Judicial Strategy 2017-2021, available at: <http://hcoj.gov.ge/ge/reforms/ongoing-projects>.

¹²² Progress Report of the Action Plan 2017-2018 of the Judicial Strategy 2017-2021; available at http://hcoj.gov.ge/files/progresis%20angarishi_14.11.pdf; accessed on 18 April 2019.

According to the initial version of the Third Wave reform draft laws, the chairpersons were to be elected by the judges of a corresponding court themselves.¹²³ Despite the fact that the Venice Commission approved of the presented amendments and said that the introduction of the rule of court chairperson election would strengthen the role of an individual judge in judicial self-governance,¹²⁴ eventually, because of the opposition on the part of the judges, this provision was removed from the draft.¹²⁵ The appointment of chairpersons remained within the area of competence of the Council.

The law must stipulate the rule, criteria and procedure for selecting chairpersons of courts/chambers/panels, which will ensure independence of judges and reduce the risks of concentration of powers in the hands of the High Council of Justice. The rule must, among other things, must envisage a competitive and open process of nominating candidates for the positions of court chairpersons.

2.2. Appointment of Chairpersons – the Council’s Practice

When appointing chairpersons, the Council has not been meeting even the minimal standard of transparency for years now.¹²⁶ As a rule, the Council considers only one candidacy for one chair position. The lack of judges wishing to be appointed chairpersons raises questions. During the reporting period, when discussing the issue of appointment of the court, panel or chambers chairpersons/acting chairpersons, the positions of the Council’s judicial members were uniform. They believed that

¹²³ Considerations of the Coalition on the “Third Wave” of the Judicial Reform; available at: http://coalition.ge/index.php?article_id=69&clang=0; accessed on 18 April 2019.

¹²⁴ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), JOINT OPINION OF THE VENICE COMMISSION AND THE DIRECTORATE OF HUMAN RIGHTS (DHR) OF THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (DGI) OF THE COUNCIL OF EUROPE ON THE DRAFT LAW ON AMENDMENTS TO THE ORGANIC LAW ON GENERAL COURTS OF GEORGIA, CDL-AD(2014)031, Strasbourg, 14 October 2014, p. 84; available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e); accessed on 15 March 2019.

¹²⁵ “Judicial Reform – Judges Oppose Upcoming Amendments”; available at: <http://www.tabula.ge/ge/story/96310-martlmsajulebis-reforma-mosamartleebi-dagegmil-cvlibebes-etsinaaghmdgebian>; accessed on 15 March 2019.

¹²⁶ Ibid.

in the absence of the legislative regulations on appointment of chairpersons, the Council expressed good will when scheduling interviews with candidates.¹²⁷ Contrary to that, the non-judge members¹²⁸ of the Council believed that the rules and criteria as well as transparent procedures for electing chairpersons had to be defined, this would prevent the Council from making arbitrary decisions.¹²⁹

During the reporting period, the practice of nominating candidates by the Council members changed to a certain extent. While in previous years the candidates were nominated by the Council members, during the reporting period, according to the secretary's explanation, an announcement about the discussion of the selection of a chairperson was published on the internal court network prior to the consideration of this issue, and all interested persons had an opportunity to address the Council;¹³⁰ despite this, the process of chair selection mostly unfolded in a non-competitive environment.

During the reporting period, the Council appointed one court chairperson and one chambers chairperson.

The questions mainly posed to the candidates during interviews concerned their managerial skills, statistics of cases to be reviewed, problems they identified and their ways of solving them. The candidates in some cases did not have information about the challenges facing the judiciary and could not identify problematic issues.¹³¹ **However, since the criteria are not defined, the motives of the Council's decision are unclear. Given all of the above, a feeling remains that the process of interviews was a formality and the Council members had decided on the appointment of concrete candidates in advance.**

The Council was inconsistent when selecting chairpersons. After the Council appointed Bidzina Sturua to the position of Ozurgeti District Court chairperson, and granted Levan Tevzadze a five-year appointment to the position of the criminal panel, the Council secretary, in the process of de-

¹²⁷ Protocol of the 26 February 2018 session.

¹²⁸ Nazi Janezashvili, Ana Dolidze, Irma Gelashvili

¹²⁹ Ibid.

¹³⁰ See Council session protocols for 26 February and 2 April.

¹³¹ Ibid.

ciding on the issue of Gurjaani and Akhaltsikhe District Courts, said that it would be better to appoint the nominated candidates as acting chairpersons. The Council secretary explained this choice by the lack of the rule and criteria of chair selection. He said that, currently, it would be expedient to select actual chairpersons after the criteria are developed and to do it based on these criteria.¹³² Despite this initiative, the Council did not hold any sessions dedicated to the discussion of specific proposals concerning this issue during the reporting period.

According to the law, a person is appointed to the position of a chairperson of a panel/chambers from among the members of this panel/chambers for the term of five years by the Council.¹³³ The authority and the role of these persons in the judiciary are not properly defined.

The Council appointed Council of Justice member Levan Tevzadze to the position of the chairman of the criminal chambers of Tbilisi Court of Appeals for a five-year term. During the discussion of this issue, 11 judges of the chambers wrote to the Council that they did not wish to be appointed chairs. Non-judicial member Nazi Janezashvili inquired into what caused the judges make their written statements of refusal; Irakli Shengelia responded that he, as the deputy chairman of the Court of Appeals, met with the judges, talked to them about the need for the chambers to have a chairperson without fail, and asked to submit their application and, at the same time, send letters of refusal in order to prevent the issue from being protracted.¹³⁴ This once again confirms the necessity of procedures for selection of the chairpersons of the court so as not to allow individual members to manipulate with their excessive powers.

During the interviews, non-judicial member Nazi Janezashvili raised the issue of the conflict of interests, since Irakli Shengelia was the candidate's brother-in-law and, at the same time, deputy chairman of the Court of Appeals. The candidate responded that their careers developed independently from one another and he did not think that being closely related would be an obstacle and would hamper them from working independently.

¹³² See 2 July 2018 session protocol.

¹³³ Organic Law of Georgia on Common Courts, Article 23, Paragraph 5.

¹³⁴ See 26 February 2018 session protocol.

2.3. Appointment of Acting Chairpersons

During the reporting period, the Council appointed two acting chairpersons.

It remains problematic that there is a lack of regulation with regard to the mechanism of authorising chairpersons, as it creates a possibility of authorising for an unlimited period and based on unclear grounds. Neither the law, nor the Council's decisions regulate the cases of appointing acting chairpersons. When appointing a judge as an acting chairperson, the Council does not define the time frame, and, in practice, there are cases when a judge serves as an acting chairperson for years. During the reporting period, when appointing judges as acting chairpersons, despite an appeal by non-judicial member Nazi Janezashvili, the Council did not uphold the definition of a specific term when authorising them.¹³⁵

Observations of the practice has once again demonstrated that the lack of criteria and procedures for appointing chairpersons raises additional questions with regard to their appointment, as this provides the Council members with unlimited opportunities to appoint chairpersons based on their subjective views.

The criteria and the rule of appointing acting chairperson, the maximum term of their authority must be determined; it is also important that the Council substantiates the need for appointing an acting chairperson.

2.4. Role of Court Chairperson

According to the rule adopted by the Council on 1 May 2017, the cases, apart from certain exceptions, are distributed among the corresponding panels/judges of narrow specialisation by means of an electronic system.¹³⁶

According to the legislative amendments, apart from certain exceptions,

¹³⁵ Ibid.

¹³⁶ The High Council of Justice of Georgia decision No 1/56 dated 1 May 2017 "On the approval of the rule of the distribution of cases in the common courts of Georgia through an automated, electronic system", Article 2.

chairpersons no longer distribute cases.¹³⁷ However, their broad discretion in this process remains problematic. To avoid hampering of the administration of justice, a chairperson has the right to task a judge to participate in the consideration of a case in a different chamber or investigative panel of the same court, in a different specialised collective, to exercise the authority of a magistrate judge, while a magistrate judge could be tasked by a chairperson to consider a case in the court outside of his or her territory of jurisdiction.¹³⁸

At the session on 30 April, the Council secretary presented an issue concerning the definition of narrow specialisation of judges in the chambers of Tbilisi Court of Appeals. According to the proposed version, the court chairperson had the right to allocate judges in accordance with narrow specialisation. During the discussion, the non-judicial members inquired about the criteria which the chairperson would use to allocate the judges in accordance with narrow specialisation. At the same time, they believed that the law did not envisage such authority for the chairperson.¹³⁹ Nino Gvenetadze agreed with the need to define the criteria in the rule.¹⁴⁰ According to Council member Sergo Metopishvili, “We allocate [judges] based on who is comfortable in which specialisation, such is the practice.”¹⁴¹ Eventually, with 10 votes against four¹⁴², the Council made the decision to support the proposal in its initial form.¹⁴³

The law does not give court chairpersons this authority. However, according to the flawed practice that has been established since 2006, the court chairperson in Tbilisi City Court assigns judges by narrow specialisation, which, in turn, creates real risks of cases being manipulated by the court

¹³⁷ Ibid., Article 3.

¹³⁸ Organic Law of Georgia on Common Courts, Article 30, Paragraph 5.

¹³⁹ See 30 April 2018 session protocol.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Non-judicial members Nazi Janezashvili, Ana Dolidze, Levan Gzirishvili and Council Chairwoman Nino Gvenetadze did not support the decision.

¹⁴³ The High Council of Justice of Georgia decision No 1/175 dated 30 April 2018 “On the definition of narrow specialisation of judges in the civil, administrative and criminal chambers of Tbilisi Court of Appeals”; available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/175-2018.pdf>; accessed on 18 April 2019.

chairperson.¹⁴⁴ The determination of the narrow-specialisation judges' composition is also problematic with regard to the consideration of cases by the Court of Appeals where, as a rule, the cases are considered by panels consisting of three judges while the electronic programme, when allocating cases, **only selects a reporting judge from the panel composition. Correspondingly, given the possibility of simple, unsubstantiated mobility of judges in narrow specialisation, there is a high risk of interference in the process of formation of a panel. This, in turn, involves a high risk of a court chairman exerting influence over an individual judge in the process of case allocation.**

Considering the fact that the chairpersons of courts/chambers/panels have been for years perceived a kind of a lever of the High Council of Justice which uses them to control corresponding courts and individual judges and to influence the decisions to be made by judges¹⁴⁵, the influential group in the judiciary consists precisely of the chairpersons of courts. The members of the influential group are judges who are members of the High Council of Justice who are elected to this position either by virtue of being chairpersons of courts, or the Council appoints them as chairs after they become members of the Council.¹⁴⁶

The opinion about the influence of the chairpersons is reaffirmed by the statement made by Batumi City Court Judge Irakli Shavadze which he made on the air of Achara TV and in which he talked in detail about the influence of Batumi City Court Chairman Davit Mamiseishvili on the court and the concrete judge.¹⁴⁷ This case demonstrated the influence of chairpersons in courts and confirmed that the judiciary system is ruled through them.

¹⁴⁴ "Considerations of the Coalition on the "Third Wave" of the Judicial Reform"; available at: http://coalition.ge/index.php?article_id=69&clang=0; accessed on 19 April 2019.

¹⁴⁵ „We call upon the High Council of Justice to stop appointing chairpersons of courts on the basis of subjective opinions". Statement by Georgian Young Lawyers' Association and Georgian Democracy Initiative, 26 February 2018; available at: <https://gyla.ge/ge/post/movut-sodebt-iusticiis-umaghles-sabtchos-shetsyvitos-sasamartloebshi-tavmjdomareebis-danishvna-subieqturi-shekhedulebis-safudzvelze#sthash.DRvBkRET.dpbs>; accessed on 18 April 2019.

¹⁴⁶ "We call upon the High Council of Justice to stop appointing chairpersons of courts on the basis of subjective opinions"; available at: www.gyla.ge; accessed on 19 April 2019.

¹⁴⁷ "Irakli Shavade: Davit Mamiseishvili told me that the votes of judicial members of the Council of Justice were his and I would have problems"; available at: <https://1tv.ge/news/irakli-shavadze-davit-mamiseishvilma-mitkhra-rom-iusticiis-sabchos-mosamartle-wewrebi-skhmebi-misi-iyo-da-problemebi-shemeqmneboda/>; accessed on 18 April 2019.

The authors of this research believe that the chairpersons' discretionary powers must be restricted by law. This way, the prevention of concentration of power in the judiciary branch will be ensured.

The amendments passed within the framework of the Third Wave contributed to the excessive strengthening of court chairpersons and manipulating the positions of chairpersons. Precisely this reform abolished the restriction which prohibited chairpersons of courts to become members of the High Council of Justice. As a result, four out of eight incumbent judicial members of the Council are chairpersons of the busiest courts, panels or chambers.¹⁴⁸ The judges who are chairpersons and are, at the same time, members of the Council, are essentially removed from the judicial activities. In accordance with the electronic rule of case distribution,¹⁴⁹ cases may be assigned to the aforementioned persons in special circumstances, usually, not more than 5 percent.¹⁵⁰ Dimitri Gvritshvili, chairman of Kutaisi Court of Appeals, confirmed, speaking on one of the TV programmes, that, in the course of two years since becoming a member of the Council, he did not consider a single case on merit.¹⁵¹ The authors of this research believe that the chairpersons' right to become members of the High Council of Justice should be restricted.

2.5. Nino Gvenetadze's Resignation

On 2 August 2018, the Supreme Court disseminated information about Nino Gvenetadze's resignation, stating Nino Gvenetadze's health conditions as the reason for her resignation. In 2015, after assuming the post of the Supreme Court chairwoman, Nino Gvenetadze initially spoke openly and boldly about the problems prevailing in the judiciary.

¹⁴⁸ [Council] Members Vasil Mshvenieradze and Dimitri Gvritshvili are the chairmen of the busiest Tbilisi City Court and Kutaisi Court of Appeals. Irakli Shengelia is the chairman of the administrative chambers of Tbilisi Court of Appeals and, at the same time, deputy chairman of the Court of Appeals, while Sergo Metopishvili is the chairman of one of the busiest panels – the civil cases panel of Tbilisi City Court.

¹⁴⁹ The High Council of Justice of Georgia decision No 1/56 dated 1 May 2017 "On the approval of the rule of the distribution of cases in the common courts of Georgia through an automated, electronic system", Article 5, Paragraph 7.

¹⁵⁰ Ibid.

¹⁵¹ "I admit, I have not considered a single case since 2017 – Dimitri Gvritshvili"; available at: <https://on.ge/story/>; accessed on 19 April 2019.

It was clear from the monitoring of the Council sessions that the relations between the Council's judicial members and its chairperson were tense, which often manifested in unethical treatment and non-collegial attitudes. The different positions of Nino Gvenetadze and the judicial members and a confrontation between them was always noticeable. During the previous reporting period, the 6 November session turned out to be particularly tense. Nino Gvenetadze accused the Council secretary and members of violence and blackmail.¹⁵² The session continued for several hours, [its participants] speaking loudly and making insulting statements. It was soon after this that the information about Nino Gvenetadze's resignation was disseminated, although this information was not confirmed at the time.

President Margvelashvili responded to Gvenetadze's resignation, saying that, when the country's number one judge says that she is a victim of violence, it was important for her resignation not to be covered up in the same way as many political events.¹⁵³

After Nino Gvenetadze's resignation, the non-governmental sector called on the president and Parliament to make a proper assessment of the serious situation that took shape within the system and to nominate without delay such a candidate to the post of the Supreme Court chairperson who would objectively assess the situation within the judiciary branch and take principled steps to rectify it.¹⁵⁴ The president, however, did not nominate the candidate to Parliament within his term in office.

After the constitutional amendments were put into force, the nomination of the candidate for the position of the Supreme Court chairperson fell within the area of competency of the High Council of Justice. The chairperson of the Supreme Court nominated and elected according to the new rule will no longer be simultaneously the chairperson of the Supreme Council of Justice. This significantly increases the authority of the High Council of Justice. The authors of this report think that it would be better if the Supreme Court chairperson was chosen by judges of the Supreme Court itself.

¹⁵² See 6 November 2017 session protocol.

¹⁵³ "Gvenetadze resigned from Supreme Court"; available at: <https://www.amerikiskhma.com/a/supreme-court-chairperson-resigns/4510780.html>; accessed on 19 April 2019.

¹⁵⁴ "Resignation of Supreme Court chairwoman raises questions"; available at: www.gyla.ge; accessed on 19 April 2019.

3. DISCIPLINARY RESPONSIBILITY OF JUDGES

3.1. Disciplinary Proceedings and Legislation Regulating Independent Inspector

Within the framework of the Third Wave of the judicial reform, positive amendments were made to the legislation regulating the disciplinary proceedings, specifically:

- A judge subjected to disciplinary proceedings has been given the right to request making public the session of the Council (except for the deliberation and decision-making procedures) or the sessions of the disciplinary panel and chambers where the hearing of his or her case is being held¹⁵⁵;
- The general time frame for instituting disciplinary proceedings or terminating the administration of justice against a judge has been specified. It must not exceed two months, and could be extended for not more than two weeks in special cases¹⁵⁶;
- The Council's obligation to make substantiated decisions on the termination of disciplinary proceedings has been defined¹⁵⁷;
- An obligation to make the decisions on the termination of disciplinary proceedings public has been imposed on the Council¹⁵⁸;
- The institution of Independent Inspector has been created. The Inspector's duties are the investigation and preliminary examination of alleged disciplinary irregularities committed by judges¹⁵⁹.

Unfortunately, the law did not envisage proper guarantees of independence necessary for the Inspector's work: Inspector is appointed and dismissed by the majority of the list composition of the High Council of Justice.¹⁶⁰ Also, one-third of the judicial conference has the right to address the High Council of Justice with the motion to dismiss the Inspector.¹⁶¹ The

¹⁵⁵ According to the information requested from the Council, no judge made a request to open the disciplinary sessions in the course of 2018.

¹⁵⁶ Organic Law of Georgia on Common Courts, Article 75¹⁰, Paragraph 1.

¹⁵⁷ Ibid., Article 75¹³, Paragraph 1.

¹⁵⁸ Ibid., Article 75¹², Paragraph 2.

¹⁵⁹ Ibid., Article 51¹, Paragraph 1.

¹⁶⁰ Ibid., Article 51¹, Paragraph 2.

¹⁶¹ Ibid.

votes of the Council's judicial members alone are enough for appointing or dismissing the Inspector. In the conditions when the Independent Inspector is also tasked with the consideration of complaints lodged against the Council members, the possibility of electing and dismissing him or her by the judicial members alone makes the Independent Inspector vulnerable before the Council, especially given the fact that only general grounds for dismissal are defined: e.g. performing duties inadequately; crude or systematic violation of the rights of judges.¹⁶² **The existence of such broad grounds for dismissal does not correspond to the principle of predictability of the law and threatens the Inspector's independence.**

Furthermore, **neither the law nor the rule of selecting the Independent Inspector established by the High Council of Justice define a whole range of important issues.**¹⁶³ **Specifically: the key principles of conducting the competition** (impartiality, openness, prohibition of discrimination, prevention of the conflict of interest and others) **and procedures and rules of the competition** (criteria for the selection of Independent Inspector, evaluation procedure, goal and rules of conducting interviews, issues to be clarified during interview, rules of evaluation of a candidate and substantiation of evaluation) **are not determined.**

For the institution of the Independent Inspector to function properly, it is important for Parliament to ensure that guarantees of independence of the Inspector are in place. In addition, the High Council of Justice must ensure that the rule of the competition to select the Independent Inspector is improved. The selection criteria, rules of conducting interviews, rules and substantiation of the candidates' evaluation, the principles of objectivity and openness of conducting the competition must be determined.

3.2. Statistical Data Related to Disciplinary Proceedings

The process related to the disciplinary proceedings against a judge is confidential¹⁶⁴ which has always been a problem with regard to the transparency of the process of disciplinary proceedings although it **deserves a**

¹⁶² Ibid., Paragraph 6, Sections "h", "i".

¹⁶³ Rules of Procedure adopted by the High Council of Justice of Georgia decision No 1/208-2007 dated 25 September 2007 "On the approval of the Rules of Procedure of the High Council of Justice of Georgia", Article 27²; available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/208-2007%20%282007%29.pdf>; accessed on 19 April 2019.

¹⁶⁴ Organic Law of Georgia on Common Courts, Article 75¹.

positive assessment that, as a result of the creation of the Independent Inspector service, **the statistics of disciplinary proceedings is offered to the public in a timely and effective manner.**

In accordance with the amendments, 155 plaintiffs were sent the Council's decisions on the dismissal of disciplinary proceedings.¹⁶⁵

For years, the indicator of termination of disciplinary cases has been particularly high. The issue of time frames was vague, which allowed for protraction of cases. For example, in 2016, the Council had proceedings initiated on 488 disciplinary cases but only reviewed 231 complaints that year, with the proceedings on the remaining 257 complaints continued in 2017.¹⁶⁶

In 2017, the Judicial Ethics Department had the total of 391 cases, 257 of these continued from 2016. In 2017, it reviewed 365 cases with proceedings terminated on 345 cases.¹⁶⁷

The situation did not essentially change after the Third Wave reforms; in 2018, the Independent Inspector was handling 449 complaints (including 131 complaints from 2017), the Council in 2018 reviewed conclusions prepared by the Inspector on 188 cases, made 219 decisions, of which 186 decisions were on the termination of proceedings.¹⁶⁸

The statistical data for 2018 published by the Council demonstrates that, of the disciplinary complaints lodged with the Council¹⁶⁹:

- 35 percent concerned a failure to perform or inadequate performance of duties by a judge;
- 22 percent – groundless protraction of consideration of a case;
- 18 percent – violation of judicial ethics rules;

¹⁶⁵ GYLA's letter No g-04/333-18 dated 14 December 2018, the Council's letter No 103/3501-03-o dated 22 December 2018.

¹⁶⁶ Monitoring Report of the High Council of Justice No 5, prepared by GYLA and Transparency International Georgia, 2017; available at: [https://gyla.ge/files/news/2006/MONITORING%20REPORT%20OF%20THE%20HIGH%20COUNCIL%20OF%20JUSTICE%20%20N%205%20GEO%20\(3\).pdf](https://gyla.ge/files/news/2006/MONITORING%20REPORT%20OF%20THE%20HIGH%20COUNCIL%20OF%20JUSTICE%20%20N%205%20GEO%20(3).pdf); accessed on 19 April 2019.

¹⁶⁷ Monitoring Report of the High Council of Justice No 6.

¹⁶⁸ GYLA's letter No g-04/06-19 dated 10 January 2019, the Council's letter No 14/44-03-o dated 18 January 2019.

¹⁶⁹ Statistical data for 2018 published by the Independent Inspector; available at: <http://independent-inspector.ge/Legislation/Decision/17>; accessed on 18 April 2019.

- 24 percent – lawfulness of an act issued by court;
- 1 percent – other irregularities.

In 2018, there were 173 conclusions prepared by the Independent Inspector on 188 cases.¹⁷⁰ During the reporting period, the Council held eight disciplinary sessions and made 219 decisions – 186 to terminate disciplinary proceedings and 33 on starting the prosecution and requesting explanatory statements.¹⁷¹

The Independent Inspector addressed the Council with a recommendation to start the prosecution and request explanatory statements from judges on 46 occasions; the Council agreed with the Inspector's opinion in 33 cases and disagreed in 13.¹⁷²

In 2018, the Council reviewed 12 disciplinary cases out of 33. Eight out of 12 disciplinary cases concerned unsubstantiated protraction of case consideration, two cases – inadequate performance of duties by a judge and two – violation of the rules of ethics.¹⁷³ According to the information received from the Council, there was the Independent Inspector's conclusion about possible disciplinary transgression in all 12 cases.¹⁷⁴ On four out of 12 cases, the Council made the decision on instituting disciplinary proceedings against judges (two cases of unsubstantiated protraction of cases, one on inadequate performance of duties by a judge and one on the violation of rules of ethics). The proceedings were terminated for the remaining eight cases.

The available statistic shows that, despite a large number of complaints, the mechanism of disciplinary proceedings is used rarely.

During the reporting period, disciplinary proceedings were terminated in 186 cases. The Council's decisions in this regard include the cases¹⁷⁵:

- In which the statute of limitations for instituting proceedings against a judge expired (five cases); judicial authority of a judge was terminated (four cases);

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Statistical data for 2018; available at: <http://independent-inspector.ge/Legislation/Decision/17>; accessed on 18 April 2019.

¹⁷³ Ibid.

¹⁷⁴ GYLA's letter No g-04/06-19 dated 10 January 2019, the Council's letter No 14/44-03-o dated 18 January 2019.

¹⁷⁵ Ibid.

- Which concerned persons who are not subject to disciplinary proceedings (two cases);
- In which disciplinary violation by a judge was not confirmed (175 cases).

In 2018, eight disciplinary complaints were lodged against the judicial members of the High Council of Justice. The Independent Inspector's Service did not provide information about the nature of violations in the complaints.¹⁷⁶

3.3. Third Wave Amendments in Practice, Flaws Uncovered When Examining Decisions on Termination

The disciplinary proceedings against judges are instituted and preliminary checks and investigation on cases are conducted by the Independent Inspector.¹⁷⁷ The Inspector presents conclusions and opinions to the Council.¹⁷⁸ There is a two-months period envisaged for preliminary check of the grounds for complaint which could be extended by two weeks.¹⁷⁹ Within the same period, the Council has to evaluate the grounds for initiating prosecution and decide whether or not to initiate the prosecution and ask for an explanatory statement by a judge.¹⁸⁰ The investigation of a case must end within two months after the decision to ask for explanatory statement, if need be, this term could be extended by two weeks.¹⁸¹ If the Council decides to request explanatory statement from a judge, the proceedings must be completed no later than within five months while if the Council decides to initiate or terminate the proceedings without asking for an explanatory statement, the proceedings must be completed within two months and two weeks.¹⁸² The issue of reviewing a complaint within the set time frames is important since, on the one hand, it is linked to the public expectations and interest towards disciplinary proceedings and their results and, on the other, to the interest of a judge to have disciplinary prosecution against him end within defined time.

¹⁷⁶ Ibid.

¹⁷⁷ Organic Law of Georgia on Common Courts, Article 75⁶.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid., Article 75⁷, Paragraph 1.

¹⁸⁰ Ibid., Article 75⁸, Paragraph 1.

¹⁸¹ Ibid., Article 75⁷, Paragraph 1.

¹⁸² Ibid., Article 75¹⁰, Paragraph 1.

The law imposed an obligation on the Council to make the decisions on the termination of disciplinary proceedings public.¹⁸³ The review of the conclusions made it clear that the deadlines set for disciplinary proceedings were not observed.¹⁸⁴ **Correspondingly, observing the time frames defined by the law and protraction of disciplinary proceedings remain problematic.** It is therefore important that the High Council of Justice ensures the prevention of protraction of the review of disciplinary complaints and their consideration within the time frames envisaged by the law. **The Council's decisions on termination of disciplinary proceedings do not contain the arguments from the conclusions prepared by the Inspector concerning the existence of indications of irregularities, which eliminates a possibility to evaluate this aspect of work conducted by the Inspector. For greater transparency, it is important for the decision to contain the arguments provided by the Independent Inspector.**

According to the law, two-thirds majority of the list composition [of the Council] is needed to institute disciplinary proceedings against a judge and to request an explanatory statement from a judge. The examination of the decisions on termination of disciplinary proceedings revealed instances when votes divided.¹⁸⁵ **A Council member who disagrees with the decisions can present his or her different opinion in writing, although according to the information received from the Council, in the course of 2018, no member used the right to present a different opinion.**¹⁸⁶

¹⁸³ Ibid., Article 75¹², Paragraph 2.

¹⁸⁴ Disciplinary case No 49/18 on the lawsuit filed on 16 February 2018, the Inspector prepared conclusion on 18 July 2018, five months later, while the Council discussed the conclusion another five months later, on the 17 December session.

¹⁸⁵ Disciplinary case No 07/18: nine members of the Council believed that there were grounds for instituting disciplinary proceedings against the judge while four members of the Council decided that there was no disciplinary irregularity committed by the judge. Disciplinary case No 49/18: six members of the Council believed that there were grounds for instituting disciplinary proceedings against the judge while eight members of the Council thought that there was no disciplinary irregularity committed by the judge.

¹⁸⁶ GYLAs letter No g-04/333-18 dated 14 December 2018, the Council's letter No 103/3501-03-o dated 22 December 2018.


4. MANAGEMENT AND TRANSPARENCY OF THE HIGH COUNCIL OF JUSTICE


4.1. Proactive Publication of Session Related Information


Proactive publication of information about the sessions of the High Council of Justice is important for transparency and efficient monitoring of its activities. According to legislative amendments of the Third Wave of Judicial Reform that entered into force in March 2017, the Council is obligated to publish its session dates and agendas 7 days before each session. The Council consistently violated this requirement during the reporting period. In 2018, as a rule, the Council announced the dates of its sessions 3 to 5 days prior, and published agendas only 1 to 3 days before the sessions. According to the Council, it was unable to comply with the legal requirement due to the high number of sessions.¹⁸⁷ However, with proper management, there is no reason why any frequency of sessions should impede the compliance with legal requirements.

¹⁸⁷ Letter N 218/127-03-o of the High Council of Justice, January 25, 2019

← → hccj.gov.ge 2018-ის 11-12 მარტის გაიმართება - საბჭოს შემადგენლობის შეცვლა

English |  ქართული

 **საბჭომართლის იუსტიციის უმაღლესი საბჭო**
HIGH COUNCIL OF JUSTICE OF GEORGIA



მთავარი | ჩვენ შესახებ | საბჭოს შემადგენლობა | ჩვენს შესახებ | ჩვენს შესახებ | ჩვენს შესახებ | ჩვენს შესახებ | ჩვენს შესახებ

საბჭოს შემადგენლობის შეცვლის შედეგად სსიპ-ის შემადგენლობა

2018 წლის 12 თვის განმავლობაში იუსტიციის უმაღლესი საბჭოს შემადგენლობის შეცვლის შედეგად სსიპ-ის შემადგენლობა

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5	6	7	8	9	10	11
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19	20	21	22	23	24	25
26	27	28	29	30	31	

Figure 1: In 2018, as a rule, the High Council of Justice announced the dates of its sessions 3 to 5 days prior, and published agendas only 1 to 3 days before the sessions.

Particularly problematic were cases when the High Council of Justice published information of high public interest on an extremely short notice. For example, the agenda of the session during which the Council approved the list of candidates to the Supreme Court without any prior consultations was published the evening before.¹⁸⁸ In another instance, during the judge selection process, the Council updated the agenda of a session during which it transferred 2 Court of Appeals judges (including one Council member) to another Panel and increased the maximum number of judges on it only a few hours prior.¹⁸⁹ Monitoring of the Council's activities over the past several years shows that the Council fails to comply with its obligation to publish session information beforehand in cases when it has to make especially important decisions that may cause strong public reaction, demonstrating a low level of transparency of this body.

In 2018, session agendas were amended a few hours prior on several occasions.¹⁹⁰ As was the case during the previous reporting period, in 2018 the Council issued a decision with a date that had not been publicly announced beforehand,¹⁹¹ suggesting that a session was held without any information ever being published about it.

The goal of proactively publishing session related information is for interested parties to be able to know in advance specifically what issues the Council plans to discuss and make decisions on. For years, vague wordings used in session agendas were a problem, however, a positive practice was introduced by the Council since January 29, 2018, whereby agendas include short explanations, making them more informative as a result. This positive practice was closely followed during the reporting period, with several exceptions, when explanations were not present and vague language was used.¹⁹²

¹⁸⁸ December 24 session of the High Council of Justice

¹⁸⁹ October 1 session of the High Council of Justice

¹⁹⁰ E.g., such amendments were made to the session agendas of January 15, February 19, October 1 and October 29

¹⁹¹ E.g., August 3 decision of the High Council of Justice on the Nomination of Candidates for Local Council Members

¹⁹² E.g., the agenda for the December 24 session of the High Council of Justice included a point on amending the rules for electronic case assignment without any details on what amendment was being considered.

საქართველოს იუსტიციის უმაღლესი საბჭოს ს ხ დ ო მ ა

2018 წლის 29 იანვარი, 11:00 საათი

დღის წესრიგი

<p>1. გადაწყვეტილების პროექტი - ქუთაისის სააპელაციო სასამართლოს პალატებისა და საგამომიებო კოლეგიის შემადგენლობის განსაზღვრის შესახებ" საქართველოს იუსტიციის უმაღლესი საბჭოს 2016 წლის 1 აგვისტოს №1/224 გადაწყვეტილებაში ცვლილების შეტანის თაობაზე"</p> <p>- პროექტი ითვალისწინებს ქუთაისის სააპელაციო სასამართლოს 2 მოსამართლის სხვა პალატაში გაწევრებას.</p>	
მომხსენებელი	<ul style="list-style-type: none">საქართველოს იუსტიციის უმაღლესი საბჭოს წევრი დიმიტრი გვრიტიშვილი
<p>2. გადაწყვეტილების პროექტი - „საქართველოს საერთო სასამართლოებში საქმეთა ავტომატურად, ელექტრონული სისტემის მეშვეობით განაწილების წესის დამტკიცების შესახებ" საქართველოს იუსტიციის უმაღლესი საბჭოს 2017 წლის 1 მაისის №1/56 გადაწყვეტილებაში ცვლილების შეტანის თაობაზე"</p> <p>- I პროექტი შეეხება სისხლის სამართლის არსებითად განსაზღვრულ საქმეთა განაწილებისას მოსამართლეთა შორის თანაბრობის პრინციპის დაცვას. - II პროექტი შეეხება ქალი მოსამართლეებისათვის, ვისაც I წლამდე მუშეუ ქყავთ, დატერორების შეწყვიტებას.</p>	
მომხსენებელი	<ul style="list-style-type: none">საქართველოს იუსტიციის უმაღლესი საბჭოს მდივანი ვიორჯი შიჭვატაძესაქართველოს იუსტიციის უმაღლესი საბჭოს წევრი ნაზი ჯანუშავილი

Figure 2: The session agenda of January 29, 2018, as published on the website. Since this date, the High Council of Justice publishes agendas with small explanations for each issue, allowing the public to know what specifically will be discussed.

Publishing long-term use draft decisions or those concerning issues of high public interest is no less important for the transparency of the High Council of Justice. During the reporting period, a draft decision was published on a single occasion.¹⁹³ At the session of January 29, a non-judge Council

¹⁹³ The draft decision on the Approval of the Procedure for Holding Judicial Qualification Exams and the Qualification Examination Program was published on the Council website on March 12.

member Nazi Janezashvili submitted an initiative to amend the Council Rules of Procedure and start publishing draft decisions, but the proposal was voted down by the Council. At the same session, one of the judge members stated that publishing draft decisions would be the same as ‘displaying the processes that take place behind the scenes’. Later, at the May 21 session, the Council approved an initiative, also by Nazi Janezashvili, to inform judges about issues that are important for the judicial system being discussed by the Council (and send them the relevant documents) and give them the opportunity to provide feedback. While this decision is a positive step in terms of involving judges in the work of the Council, its practical implementation remains problematic. First, for each issue it is the initiator Council member who decides whether a decision is important for the judicial system and whether judges should be informed. Second, considering the fact that the session agendas and relevant documents are often provided to the Council members only 1-2 days or mere hours before the session, this leaves an unreasonably short amount of time for judges to provide their feedback.

4.2. Preparation and Management of Sessions

Proper preparation of Council sessions and management of its activities remained a problem during the reporting period. In 2018, the Council had repeatedly postponed decisions on items on the agenda based on the argument that the issue required more study and preparation.¹⁹⁴

The fact that Council members were often provided with necessary documents on weekends for a Monday session or during the session itself points to serious problems in session preparation. As in previous years, there were cases in 2018 as well when discussions were postponed due to the fact that not all members were provided with relevant documents in time.¹⁹⁵ Non-judge members of the Council Ana Dolidze and Nazi Janezashvili stated on several occasions that agendas for Monday sessions were uploaded in the internal system on Friday or the weekend, which

¹⁹⁴ E.g., sessions were postponed for this reason on February 12, 19, and May 7.

¹⁹⁵ E.g., at the January 8 session, the judge member of the Council Revaz Nadaria stated that he did not have access to certain decisions mentioned during the session, after which the session was postponed; similar statements were made at the April 2 session.

gave them unreasonably short time to prepare.¹⁹⁶ On several occasions during the reporting period, the Council made its decision despite the fact that not all of its members had sufficient information on the issue and were ready to make a decision.¹⁹⁷ There were also cases when some non-judge members had no information about the candidates to be nominated or appointed by the Council.¹⁹⁸ Council members also expressed concern that items on the agenda were often not accompanied with relevant substantiation (explanatory notes), which made it hard for them to make informed decisions.¹⁹⁹

The Statute²⁰⁰ of the Administration of the High Council of Justice states only that the Council Secretary is responsible for preparing sessions and timely supply of Council members with session materials. The Statute also states that the Human Resources Department of the Council is responsible for organizing sessions. Regulations must be introduced in relation to the session preparation and timeframes. More specifically, a specific timeframe must be determined for when the Council Secretary must provide Council members with draft documents to be discussed at the nearest session. In addition, Council members must be provided with copies of all other documents submitted to and within the competence of the Council, so that they are able to request a discussion of this or that issue at the nearest session. Legislation regulating the activities of the Council must determine the procedures for compiling session agendas as well as

¹⁹⁶ E.g., such statements were made on the sessions of January 15, April 2 and May 14.

¹⁹⁷ At the session of January 15, a non-judge member expressed a concern that the agenda was uploaded in the system the evening before the session, which did not leave enough time to make an informed decision. It was not possible to postpone this session, because the decision under question had to be made within a legally defined deadline. At the May 14 session, Nazi Janezashvili also stated that the draft decision had been uploaded in the internal system only several minutes before the session.

¹⁹⁸ E.g., at the session of December 24, the Council made a decision to nominate 10 candidates for the Supreme Court, with several non-judge members learning about the existence of such a list only at that very session.

¹⁹⁹ E.g., on January 22, several non-judge members demanded that agenda issues be accompanied with relevant substantiation, which irritated the judge members. Judge member Sergo Metopishvili responded that they could refer with questions to their own staff before a session. The Council Secretary stated that it would be impossible to comply with the demand, since the staff often had to work over the weekend after the agenda had been agreed upon. A remark regarding the explanatory note was made at March 12 session as well.

²⁰⁰ Approved by the September 25, 2007 Decision N1 / 206-2007 of the High Council of Justice.

the person responsible for it. Current regulation does not specify who is responsible for compiling session agendas, nor does it determine the right of a Council member to request amendments to the agenda (through a specific procedure, timeframe, or directly at the Council session).

The Third Wave of Judicial Reform introduced the Judicial Management Department to the High Council of Justice for the purpose of monitoring the administration and management of the Common Courts of Georgia. The law grants the following important functions to the Department: study of how the flow and volume of cases is managed in the Common Courts; improvement of managerial skills of Court Chairpersons; submitting conclusions and recommendations on important issues of court administration to the High Council of Justice; and so forth. Therefore, research done and information processed by the Management Department should be of significant help to the Council in planning reforms and making informed decisions. Even though the Third Wave amendments went into force in early 2017, the position of the head of the Judicial Management Department was still vacant during the reporting period.²⁰¹

Following the proper session procedure and abiding by the minimum standard of ethics was often a problem during the reporting period. Prior to the August 1, 2018 resignation of the Chairperson of the Supreme Court Nino Gvenetadze several sessions of the High Council of Justice proceeded in extremely tense environment, which hindered substantive discussions.²⁰² Unethical statements were a common occurrence during the reporting period.²⁰³ The situation has somewhat improved with Giorgi Mikautadze leading the sessions, who, for the most part, allows everyone to fully express their opinions. However, he is unable to display transparency and impartiality when it comes to decisions of special importance to judge

²⁰¹ The High Council of Justice elected the Director of the Judicial Management Department on January 21, 2019.

²⁰² E.g., the situation became especially tense during the April 2 session, when the Council Secretary raised his voice when addressing the chairperson. Giorgi Mikautadze stated that by reprimanding only the judge members for interrupting others the chairperson was biased in favor of a non-judge member of the Council. At the same session, non-judge member Ana Dolidze stated that the non-judge member was a victim of “group bullying”. Unethical and unconstructive statements were also made at the May 7 and June 4 sessions.

²⁰³ During the session of January 29, non-judge member Ana Dolidze stated that judge members had interrupted Nazi Janezashvili’s 10 minute report 23 times.

members of the Council.²⁰⁴

The fact that the procedures for preparing sessions have not been brought into order greatly impedes the work and transparency of the High Council of Justice. For example, during the session of February 26, the vague rules with which the Court and Chamber / College Chairpersons are selected caused an argument. During the session, non-judge member Nazi Janeshvili stated that she had learned through the intranet that a call for applications had been announced for the position of Chairperson of one of the Chambers, and that this had not been agreed with the Council. At that time, then Chairperson Nino Gvenetadze stated that the concern was valid and the Statute of the Council needed to be improved in this regard, however, no relevant amendments were made during the reporting period.

Lack of proper regulations for inviting outside persons to Council sessions and allowing them to speak is also a problem. For example, during the session of April 16, Council Chairperson expressed the desire to invite a representative of the Public Defender's Office for the discussion of its 2017 report, but the Council staff representative replied that this would have to be decided by the Council. According to Gvenetadze, it was unclear what procedure was to be used for this. As a result of this problem, the discussion on this issue was postponed for a week.

4.3. Involvement of Outside Persons in Council Sessions

Several positive instances were identified during the reporting period when outside persons were invited to Council sessions to present their research / reports, however, Council members often made aggressive and unethical statements towards these guests.²⁰⁵ Statements made by local NGOs and international organizations regarding the situation in the judiciary are usually ignored by the Council and perceived as an "attack". We negatively assess the March 5 decision of the Council to exclude civil society from the process of electing Irma Gelashvili as the member of the

²⁰⁴ E.g., during the session of December 24, it was Giorgi Mikautadze who presented the list of candidates for the Supreme Court, which was created in violation of procedures and behind the backs of several non-judge members.

²⁰⁵ E.g., May 7 session of the Council hosted a representative of the Public Defender, who was addressed unethically by judge member Sergo Metopishvili several times.

Independent Board of the High School of Justice. More specifically, the Georgian Young Lawyers' Association addressed the Council prior to the March 5 session and requested permission to pose questions to the candidate. Even though Irma Gelashvili was in favor of holding an expanded session,²⁰⁶ together with two non-judge members as well as the Council Chairperson, the initiative was eventually rejected. The majority of Council members offered a very narrow interpretation of the Rules of Procedure when deciding that the involvement of outside persons was not allowed when discussing appointments.²⁰⁷ In reality though, statements made by judge members of the Council revealed that they did not wish to allow a precedent of civil sector engagement prior to decision-making. One judge member stated that such attendees could request the right to pose questions to judicial candidate down the line, which was inadmissible.

The Council has yet to define specific rules for allowing non-member attendees to express their opinion during sessions. As a rule, the Council rejects the requests to speak made by such attendees. For example, at the session of July 9, during the course of a several hour long discussion over a new report by Transparency International Georgia, Council members made many unethical, aggressive and inappropriate statements towards TI Georgia and the authors of the report. Even though the authors of the report were present at the session and requested the right to respond, judge members were against it. Eventually, the authors of the report were given a few minutes to respond by the Council Chairperson.

We assess positively the decision of the Council to change its practice in the second half of 2018 and allow NGOs into the working groups created

²⁰⁶ According to Article 14², Paragraph 2 of the Rules of Procedure of the High Council of Justice: "Expanded sessions may be held in accordance with the procedure established by the Rules of Procedure. Any invited guest has the right to express their opinion on the matter being discussed, submit their written opinion or other document (report, project, speech, statistical material, research, official position of a public institution, etc.) and request their attachment to the session protocol!"

²⁰⁷ According to Article 14¹ of the Rules of Procedure of the High Council of Justice: "The High Council of Justice is authorized upon necessity to hold an expanded session in relation to issues falling within its competence. Holding an expanded session is allowed on any issue that has to do with the elaboration of core approaches, principles and methodology for judicial reform, unhindered performance of the judiciary, raising independence and effectiveness, strategic development plan of the judiciary, judicial ethics and discipline, and other important areas, as well as specific measures to be implemented in these areas."

for the implementation of the 2-year Action Plan of the 2017-2021 Judicial Strategy. Unfortunately, practice inside the working groups remains inconsistent, with some working groups allowing non-member attendees to express their opinion, while others do not.

4.4. Publication of Session Protocols and Decisions

Availability of session protocols and decisions is another component of the transparency of the High Council of Justice, allowing stakeholders to study and evaluate the Council's work. Since 2018, the Council is using a special audio system to document session protocols and is no longer producing any other types of protocols.²⁰⁸ This change constitutes a significant reduction in transparency compared to previous years when the Council produced video-audio protocols. Audio recordings of sessions often do not capture the statements made by Council members with disabled microphones. More generally, the new protocols are not able to fully reflect the situation in the session hall.

Another deterioration compared to the previous reporting period is the fact that the Council no longer ensures that session protocols are published on its website. Audio protocols are being published on the website since November 2018, however, only those between January and June of 2018 have been uploaded.²⁰⁹ The Council must be obligated by law to publish session protocols and decisions on its website, since it has failed to solve this problem for years. In addition, Council sessions should ideally be live-streamed on the website. This would increase transparency using relatively few resources.

²⁰⁸ January 25, 2019 Letter N 218/127-03-o of the High Council of Justice

²⁰⁹ Protocols are published under the section titled Press Service.



Figure 3: Audio protocols of the sessions of the High Council of Justice are being published on its website since November 2018, however, only those between January and June of 2018 have been uploaded.

As for the publication of decisions, the Council used to publish its decisions 10-14 days after they were made during the previous reporting period. In addition, decisions were not being published in their final consolidated edition. This problem was solved with the July 2 amendments to the Statute of the Council.²¹⁰ Following the amendments, decisions are published on the official website within 5 days and the consolidated versions within 14 days after a relevant change.

The search function of the Council website remains faulty, since it is difficult to find specific decisions or other documents using the search field. The Council should take care to eliminate this problem in a timely manner.

4.5. Recording and Media Coverage of Sessions

The monitoring group has been raising the problem of hindering media coverage (recording) of Council sessions for the past seven years. The Council has yet to take any effective steps to resolve this. The law guarantees the publicity of sessions of collegial institutions and does not set any limitations on media coverage.²¹¹ Media representatives, as well as any other stakeholder, have the right to attend sessions and make audio/video recordings. Despite this, the Council issued a decision on February 17, 2014 that allowed photo, video and audio recording of only the opening of its sessions. During the reporting period, media organizations were not allowed to record the full duration of the sessions and could do so only during their opening.²¹²

The reception of the High Council of Justice is equipped with a monitor broadcasting ongoing sessions. Such video transmission cannot be equivalent to the right of the media to make recordings of Council sessions. Furthermore, the recording made by the camera inside the session hall does

²¹⁰ The Council decision N 1/226 of July 2, 2018

²¹¹ Articles 32 and 34 of the General Administrative Code

²¹² The exception was the interview with Judge Levan Murusidze, who requested media be allowed to attend and film his interview.

not guarantee high enough audio and video quality to be used successfully for journalistic purposes and for persons outside the hall to fully grasp the processes happening inside the hall. Members of the Council have stated on several occasions that the above restriction was necessary due to the limited size of the session hall and possible obstruction of the Council's work. However, these concerns can be overcome by developing a regulation allowing a single camera to record the sessions, with the obligation that the recording will be distributed to all media organizations. This regulation is in place for court hearings, where it ensures that the recording does not obstruct the process.

4.6. Publicly Inaccessible Information

The High Council of Justice has been long criticized for failing to meet adequate standards of transparency. Especially alarming in this regard during the reporting period was the initiative of the judge member of the Council Sergo Metopishvili to close Council sessions. Metopishvili voiced the initiative at the session of March 26, explaining that "the working process had turned into a reality show". The High Council of Justice is a collegial body and falls under the regulations of Chapter 3 of the General Administrative Code. Specifically, according to the law, the Council is obligated to conduct its sessions in an open and public manner.²¹³ The judge member's initiative on conducting sessions behind closed doors contradicts the legislation, the nature of collegial bodies, and the principle of openness. The initiative to close sessions can only serve the interest of hiding information regarding the fundamental problems and challenges in the work of the Council and suppressing critical opinions. Additionally, a judge member's declared disrespect for the principle of openness and the wish for holding the sessions behind closed doors is damaging for the reputation of the judiciary.²¹⁴

Even though the initiative to completely close the Council sessions was not implemented, some important information remained unavailable during the reporting period:

²¹³ Articles 32 and 34 of the General Administrative Code

²¹⁴ The Coalition Responds to the Initiative on Closing the High Council of Justice Sessions to Public, Coalition for an Independent and Transparent Judiciary, available at: <https://bit.ly/2XdZjtu>

- **In 2018, 34 judicial candidates requested closed interviews**

The right of a judicial candidate to request a closed interview is determined by the 2014 amendment to the October 9, 2009 Decision N308 of the High Council of Justice. Despite this rule, in previous years, the Council had been conducting open interviews with candidates. Over time, the Council established a practice, whereby, prior to their interview, each candidate is asked whether they agree to an open format. As in 2017, many judges requested closed interviews in 2018 as well. Namely, 34 judges who had been appointed for the 3-year probationary period requested closed interviews in 2018, which made the process of selection / appointment of judges non-transparent.

The openness of interviews remains the only opportunity for stakeholders to observe (albeit partially) the selection/ appointment process, identify and disclose its positive and negative aspects and contribute to improving the system from the outside. By closing this process, it becomes completely impossible for outside stakeholders to assess the selection of judges.

The Council refused to provide the authors of this report with video recordings and session protocols of any of the interviews (including those with candidates who were ultimately appointed for life tenure) by referring to the regulation, whereby the interviews are closed for the public.²¹⁵ The refusal to disclose recordings of interviews with candidates, who were ultimately granted life appointment, is especially groundless since those are considered to be successful interviews.

- **Closed Competition for the High School of Justice**

In 2018, the competition for admitting applicants to the High School of Justice was held in a fully closed manner, which is a significant deterioration compared to previous years. This change was not accompanied with any amendments to relevant legislative acts in 2018. In previous years, applicant interviews were usually open. According to the Council, the interview process involves disclosure of personal data that falls under the General Administrative Code and the Law on Personal Data Protection,

²¹⁵ May 23, 2018 Letter N1106 / 1284-03-o of the High Council of Justice; February 8, 2018 Letter N234 / 292-03-o of the High Council of Justice.

making the interviews not open to third parties.²¹⁶

In addition to the interview stage, other information related to the competition is completely closed to the public as well. The Council refuses to publish short bios of applicants on its website, nor does it disclose this information upon request.²¹⁷

- **The Practice of Closing Council Sessions**

Legislation regulating the Council has not been updated to define specific procedures for closing sessions, which continues to be a source of constant problems in practice. This issue is directly tied with the regulations on preparation of sessions and their agendas. Therefore, these issues should be regulated by relevant legislative or subordinate normative acts in a way that ensures a high standard of publicity and transparency that protects the interests of those who wish to attend the session.

According to information provided by the High Council of Justice, a total of 56 sessions were held in 2018, with 8 sessions being dedicated to disciplinary proceedings against judges of the Common Courts. These sessions were closed due to confidentiality of proceedings. Apart from these, 8 more sessions were closed, of which 5 sessions were partially closed during the discussion of a report prepared by the Judicial Qualification Exam Commission, while the remaining 3 sessions included interviews with judges requesting a transfer to another court without competition, and interviews with candidates for acting Chairs of several District Courts.²¹⁸

²¹⁶ January 18, 2018 Letter N57 / 36-03-o of the High Council of Justice

²¹⁷ January 18, 2018 Letter N57 / 36-03-o of the High Council of Justice

²¹⁸ January 25, 2019 Letter N218 / 127-03-o of the High Council of Justice

RECOMMENDATIONS

As a result of analysing indicators produced by this monitoring, GYLA and TI Georgia believe that, on the path of creation an independent and transparent judiciary system, it is important to consider the recommendations provided below.

The selection/appointment of judges must be based on merit, in a way that the Council would have a consensus with regard to the merits of each candidates. To achieve this, the following is required:

- Proper substantiation of decisions on appointments; stages of interviews and background checks must be formalised and interviews must be conducted at open sessions of the Council; abolition of the practice of judicial appointments by secret vote; adoption of appropriate mechanism of appealing appointment rejections;
- To ensure credibility of decisions and avoid the conflict of interests, the Council must ensure that its members participating in the competition are removed from all stages of [managing the competition] process. On the other hand, the general critical remarks made about the judiciary must not be used as the grounds for the Council members' recusal;
- The authority to conduct judicial qualification examinations must be removed from the High Council of Justice. As a result, the Council will not be able to exert undue influence over the process.

The legislative body must reform the High School of Justice to ensure that the School is properly independent from the High Council of Justice and the selection of students based on objective and transparent criteria.

The main principles and procedure of judicial transfers must be defined by the law.

The rule of electing chairpersons must be defined by the law, must ensure that judges are independent and reduce the risk of the concentration of power in the hands of the High Council of Justice. The rule, among other things, must envisage the following:

- Competitive and open process of candidate nomination;
- Criteria and rules for appointing acting chairpersons, maximum term

of authority, substantiation of the need for appointing acting chairpersons;

- Members of the High Council of Justice must not have the right to assume positions of chairpersons;
- Powers of chairpersons must be restricted.

Parliament must ensure that guarantees of independence of the Inspector are in place. This implies the following:

- Establishing high quorum for appointment/dismissal of the Inspector;
- Specifying grounds for dismissal of the Inspector;
- Improvement of the rules of competition for selecting the Independent Inspector: definition of the selection criteria, rules of conducting interviews, candidates' evaluation and provision of substantiation.

The Council must also ensure that the review of disciplinary complaints is not protracted.

The procedure for nominating candidates for the Supreme Court should be elaborated in such a manner as to ensure that no single group is able to manage the processes in accordance with its own interests; the procedure must be based on a consensus. This will create a possibility to select candidates corresponding to the high-level status of a Supreme Court judge.

In order to improve the transparency and efficiency of the Council:

- The Parliament shall adopt legislative amendments that guarantees openness of interviews with judicial candidates and interviews with and biographies of applicants to the High School of Justice. Legislative regulations must also be introduced for the procedure of closing sessions;
- The Council must allow media organizations to record sessions in full. To this end, the Council can develop a regulation akin to those used for court hearings, and allow a single camera to record the full session;
- The High Council of Justice must comply with the legal obligation to publish information about its sessions 7 days prior. Items on session agendas must be formulated clearly and unambiguously. The Council must also proactively publish drafts of long-term use decisions and those concerning issues of high public interest;

- The Council must prepare its sessions more efficiently. Council members must receive agenda relevant documents 7 days before each session. Council members must also be provided with copies of all other documents submitted to and within the competence of the Council;
- The Council must introduce detailed procedure for agenda preparation, removal of items from the agenda, invitation of guest speakers and rules for allowing non-member attendees to express their opinion during sessions;
- Council members must refrain from unethically addressing their colleagues and civil society representatives. The Council Chairperson must halt off-topic discussions and ensure that each member is able to express their opinion about the items on the agenda without hindrance;
- The Council must produce video records of its sessions and disclose them upon request in a manner that fully reflects the situation in the session hall. Sessions must be live-streamed through the Council website and session protocols must be published the same day.