



How judges are appointed in Georgia?

The last week of May started with an important event - the High Council of Justice of Georgia (HCoJ) held a judicial selection process for 34 vacant positions throughout the country. This fact, however, went nearly unreported by Georgian media.

Consequently, citizens hardly know that on May 27 the HCoJ selected those who will soon be in charge of taking decisions to affect their own destiny and the destiny of a wider public.

I guess, it is quite telling about our society that Georgian media only takes interest in the election of politicians and never in the issue of when, by who and, most importantly, how those persons are selected who have both - the right and the obligation to do justice in this country.

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In the morning of May 27, expecting to find detailed information about the planned selection process, I visited the official web-site of the HCoJ. The website was not very informative, however:

The Session of the High Council of Justice will be held on May 27, 2014. The High Council of Justice will select new judges.

No information about the exact time (hour) and place of the session was available. Although the law makes the HCoJ sessions open to the public, information placed on the web-page often creates unfavorable conditions for its publicity. I phoned the HCoJ, though nobody responded. Probably, they were busy preparing the session. I had no other option, but to get in touch with one of the HCoJ members and ask for her/his help in finding out the exact time and place of the session. I was lucky that the HCoJ member did not mind sharing her/his phone number with me earlier and choose to answer a stranger's phone call that day.

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The session lasted the whole day. (During this time, only one media outlet paid a short visit to the HCoJ, made some video footage and left). The selection process

turned out to be something quite boring. Members of the HCoJ voted for (or against) a candidate by simply circling a candidate's name on the special paper. Afterwards, the HCoJ staff counted the votes and identified the winner, i.e. the future judge. If none of the candidates received sufficient amount of votes in the first round of voting, the second round followed.

In the absolute majority of the first rounds, the votes were divided by 9 to 5. This did not come as a surprise to anyone observing the process. Those who regularly attend the HCoJ sessions are well aware of the fact that 9 judge and 5 non-judge members of the HCoJ are almost always radically divided on each and every important issue discussed in the Council. It is interesting, that in such cases NGOs more often criticize the judge members of the HCoJ - [sometimes for their action/position taken](#), and [sometimes for the lack of it](#).

In order to become a judge, a candidate needs to get at least 10 votes, which means that the support of judge members of the HCoJ alone does not suffice.

Out of 10 cases when the candidates managed to get sufficient amount of votes, it was only once when the winner became known already after the first round of voting; in the rest of the cases the successful candidates were identified only after the second rounds and the so called consultation processes held among the judge or non-judge members.

Although the second rounds and the consultations made the whole process a bit more interesting, in the end the whole selection process turned out to be a sort of deal-making. What consultations really meant in practice is the following: if a successful candidate could not be identified in the first round of voting, either the judge members or the non-judge members of the HCoJ would leave the meeting room in group, discuss among each other to change or not their initial position regarding the candidate at stake and then, after coming back to the room, would take part in the second round of voting. Sometimes the initial position was changed, sometimes not. The motivation for changing the position, however, remained unclear to the public, as it was not preceded by an open and objective discussion about the candidate's qualifications and compliance with the appointment criteria - an exercise which could have created an objective ground for altering one's initial position regarding the candidate.

In the end, the consultations turned out to be as vague, nontransparent and unclear as the entire selection process itself.

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When the HCoJ session ended that day it was already a late evening. As I walked home, the phone kept ringing, some called to learn about the results of the selection process and others – about the process itself. I was walking and thinking: the shape of the judiciary will significantly influence the shape our state and society will take in the near future; as for the shape of the judiciary itself, this, to some extent, was decided today, in that small room, based on vague and unclear procedures and unreasoned decisions.

Regardless of its huge importance to the public, the law does not provide for the latter – right to know why a particular candidate was appointed a judge - because s/he has a strong professional background and high moral qualities, or because of other, improper and/or dubious reasons. The law does not oblige the HCoJ members to explain why s/he supports or rejects a particular candidate and why s/he gives preference to one candidate over the other.

Moreover, the law does not regulate the issue of conflict of interest between the evaluators (HCoJ members) and the candidate for the judge – position. Thus, even if the relationship between the candidate and the evaluator is such that it casts doubt on the impartiality of the latter, the evaluator is not obliged by law to abstain from taking part in the voting process, and the candidate is not entitled to request the evaluator's recusal either.

This is probably yet another paradox in the country of paradoxes. Those, who are obliged by law to make well-reasoned and fair decisions, and to serve as guarantors against the government – abuse of power, are selected based on unreasoned decisions and nontransparent procedures.

Indeed, the fact that judges are selected through non-transparent procedures does not necessarily mean that the HCoJ members do abuse the practically unlimited discretion they have in the evaluation and selection of candidates, or that those who are selected are, by all means, incompetent or dishonest. Though, it is principally incorrect that the impartiality and objectivity of the decisions which affect not only the destiny of particular individuals (i.e. the candidates), but also the faith of each of us

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and the destiny of our rights, are left solely up to the personal integrity and honesty of particular individuals (the HCoJ members).

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The second day, on May 28, NGOs organized a roundtable discussion where we presented a new draft law on judicial selection process. The draft law aims to decrease the possibility of a subjective and biased decision-making in the process of evaluation and selection of judges.

However, those officials who are entitled by law to initiate and adopt such amendment were not present at the meeting. It was particularly noticeable that none of the HCoJ judge members, who should be more interested in improving the selection process than anyone else, attended.

P.S.

On May 30, in the morning, I re-visited HCoJ web-site.

Recently appointed judges took an oath today- informed the website.

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