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ახალგაზრდა
იურისტთა
ასოციაცია



საერთაშორისო
გამჭვირვალობა
საქართველო

იუსტიციის უმაღლესი საბჭოს მონიტორინგის ანგარიში №7

PRESENTATION OF MONITORING REPORT N7 OF THE HIGH COUNCIL OF JUSTICE

On 16 September 2019, the Georgian Young Lawyers' Association and "Transparency International – Georgia" presented the seventh monitoring report of the High Council

of Justice of Georgia of the year 2018, which assesses the legislation regulating the activities of the Council while selecting/appointing judges, transparency of the Council activities, a rule and practice of appointing the chairperson of the court and disciplinary liability of judges.

The findings of the monitoring:

The Council failed to ensure proper implementation of the “Third Wave” of the Judicial Reform in practice. The 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 judges were appointed to their posts with the same discrepancies which the reform intended to eradicate. The problem of intolerance of pluralism and non-acceptance of dissenting ideas still remains a problem in the composition of the Council, which hinders subject-oriented discussions and decision-making processes at the Council sessions. The accountability system of judges remains ineffective, which threatens the independence of the judiciary. The vicious practice of appointing acting chairpersons of courts / chambers / panels is still maintained. The legislation is characterized by such flaws that provide the Council with a wide range of possibilities to deliver unreasonable and biased decisions. Namely:

The Clan exerts influence over other judges through the appointment/dismissal mechanism and subordinates them to their own goals. Defective legislation utilized while selecting/appointing judges enables the Council to conduct the process in a biased and non-transparent manner: the rule of appointing a judge through a secret ballot allows the Council members to make a decision without considering the results of the individual evaluation of candidates. 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 formal, which provides for broad opportunities for arbitrariness at the interview stage; the stage of interviewing candidates in a closed format determined by the Council is also a problem.

The competition included a conflict of interest. Despite the prohibition envisaged by the law, the Council members participate in the process of interviewing competitor candidates and 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.

Conducting the qualification examinations enables the Council to fully control the process of selection and appointment of judges, since the qualification exam, as well as the admission of trainees to the High School of Justice and, ultimately, the appointment of judges, is entirely in the hands of the Council. It gives the Council excessive power and ability to inappropriately influence over the process of selection-appointment of judges.

The Council appoints chairpersons of courts/panels/chambers without pre-defined criteria and procedures, mostly within a non-competitive environment. The process of interviewing has a formal character and leaves the impression that the appointment of certain candidates had been decided in advance; non-regulated mechanism of appointing the acting chairperson proves to be a problem that makes it possible to impose this authority on a specific person for an indefinite period and on uncertain ground.

The overwhelming majority of the Council votes are sufficient for appointing or removing an 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.

Despite the positive changes introduced, the statistics show that the mechanisms of disciplinary proceedings are ineffective. Adherence to the statutory timeframes and

delaying disciplinary proceedings is still a problem. **The rate of termination of disciplinary proceedings remains high.**

In the reporting period, cases of improper preparation for sessions were reported. Significant problems in this regard are illustrated by the fact that the Council members were often provided with necessary documents on the weekend for a Monday session or during the session, which itself points to serious problems in the session preparation procedure. Like in previous years, there were cases in 2018 as well when hearings were postponed for the above reason.

Since 2018, the Council produces session protocols only in an audio format. This change has resulted in a significant reduction in transparency compared to previous years when the Council produced video-audio protocols. Audio recordings cannot fully reflect the situation in the session hall.

Low transparency of the High Council of Justice is illustrated by the fact that in 2018, 34 judicial candidates had closed interviews. **Competition for admission into the High School of Justice was also completely closed.**

For the seventh year in a row, the authors of the report have highlighted (through the media) the issue of public coverage of Council meetings. Nevertheless, during the reporting period, media outlets were covering mainly the opening of hearings and were not allowed to fully record the course of the session.

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As a result of the monitoring, relevant recommendations have been developed. We hope that the main findings and recommendations revealed by the monitoring will be taken into account by the members of the Council, executive and legislative bodies. The Georgian Young Lawyers' Association (GYLA) and "Transparency International – Georgia" will continue to monitor the Council.

The implementation of the monitoring project was made possible by the generous support of the American people through the United States Agency for International Development (USAID). GYLA and Transparency International Georgia are responsible for the content of the report. It may not necessarily reflect the views of USAID, the US government or the East-West Management Institute (EWMI).