



MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE

№11



GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION

Georgian Young Lawyers' Association

**MONITORING REPORT
OF THE HIGH COUNCIL OF JUSTICE
№11**

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RESEARCH METHODOLOGY

Research Subject and Objectives

The Supreme Council of Justice (hereinafter - the Council) is a constitutional body of the system of common courts.¹ Its function is to ensure independence and efficiency of the courts, to appoint and dismiss judges and perform other tasks.² The Council, in fact, fully administers the system of common courts. The Georgian Young Lawyers' Association (hereinafter - GYLA) has been preparing monitoring reports of the Council since 2012 and annually evaluates its activities. We present report No. 11, the purpose of which is to reveal the positive or negative trends of the Council's work, which will contribute to increasing the efficiency of this agency, the transparency and impartiality of the justice system.

Research tools and sources

The reporting period is from January 1st to December 31st, 2022.

The following sources are used in the document:

- The existing normative framework in Georgia, both legislative and sub-normative acts;
- Data obtained through public information requests and posted on the website of the Council;
- Information obtained by GYLA monitors at the board sessions and various public meetings.

GYLA also relies on past reports and studies that evaluate the judiciary. Documents (guidelines, reports, evaluations, etc.) prepared by international organizations - the Venice Commission, OSCE, Advisory Council of European Judges were analysed, as well as general and specific opinions and recommendations expressed in relation to Georgia.

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

² Ibid.

FINDINGS

In June 2022, the European Commission published individual reports about Georgia, Moldova and Ukraine, which gave Georgia a European prospect. According to the conclusions adopted by the European Commission, Georgia must fulfil 12 conditions. Among the conditions set for Georgia, the main place is occupied by the reform of the court.³ Against this background, clan rule remains a challenge to the court system while also being hampered by the current rule for electing council members. In the setting when international partners speak of the necessity of reforming the judicial system and the Council, the authorities have encouraged corporatism in the Council instead of carrying out fundamental reform of the system. An amendment to the law adopted at the end of 2021 abolished the ban on electing the same person as a member of the Council twice in a row. Taking into account that the Council usually includes only the members of the influential group of judges, this change was deemed as negative. The Venice Commission, to a large extent, shared critical assessments of civil society and emphasized the seriousness of the criticism in evaluating the context surrounding judicial system reform.⁴

During the reporting period, the abovementioned procedural change found its way into the practice. Dimitri Gvritshvili was elected to the Council for a second term, after Gocha Abuseridze, a judge member of the Council of Justice, terminated his mandate early.

Taking into account the request of the European Commission, at the end of the year, a year and a half late, the Parliament announced a competition to fill the seats of 5 non-judge members of the Council, although voting was postponed to the spring session, due to consensus not being reached between political forces. During the reporting period, the Council continued to work with a composition of 10 people. This created practical problems and three judges, who were appointed on a three-year probationary period, could not be evaluated due to the absence of a sufficient number of non-judicial members. The Council was unable to discuss their life term appointment.

On November 4th, the ruling party initiated legislative changes but failed to address the main challenges of the system. Observation has shown that the Council uses both loopholes and positive legislative changes to strengthen its own power. The main reason for this is that the “clan” controls 2/3 of the votes in the Council, enough to make decisions. It is clear that without systematic change, the reforms are a facade. At the same time, it is facilitated by procedures that still contain errors:

- No transparent procedure has been defined for the transfer of judges without competition. The Council does not publish information about the start of the process, the number and identity of participants;
- The revised rules on secondments (The term of the secondments has been increased to 4 years. In addition, the Council no longer needs a judge’s consent when sending him/her on secondment. It also became possible for appellate judges to be moved to courts of first instance) have finally shown that the government is cancelling even the positive

³ The European Commission recommends to Council confirming Ukraine, Moldova and Georgia’s prospects to become members of the EU and provides its opinion on granting them candidate status, European Commission, 17 June 2022, available at: <https://bit.ly/3n8hviB>, updated: 12.01.2023.

⁴ Opinion on the December 2021 amendments to the organic Law on Common Courts, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), CDL-AD (2022)010-e Georgia, available at: <https://bit.ly/3tSfb3a>, updated: 12.01.2023.

changes it has made and giving the “Clan” legal leverage to be used against individual judges.

- The Council of Justice’s wider role in recruiting and selecting of the independent school board chairman is still problematic. It is also problematic that the Council has not announced the admission of new trainees at the Higher School of Justice for two years, which prevents the flow of new staff into the system.

One of the levers for the Council’s power is represented by chairpersons. All influential members of the “Clan” constantly hold important positions in the judicial system. They exchange positions with each other in order to not give other judges an opportunity to be involved in the management of the court. An illustration of this opinion is the practice of chaotic, unclear appointment of chairpersons of the established court/collegium/chamber during the reporting period. For years, the rule of selecting presiding judges of the court by the judges themselves did not gain support. The legal provision that the Council consults with the relevant judges before appointing a chairperson is inconsistently applied by the Council. During the reporting period, the process of appointing chairmen and acting chairmen was conducted in a non-competitive environment.

Inadequate legal regulation and the non-transparent selection practice of an independent inspector by the Council remain a challenge in the selection of an independent inspector (inspector).

- A simple majority of the votes of the Council is sufficient for the appointment of the inspector. This gives an opportunity to the judge members to select an acceptable candidate for the inspector;
- In disciplinary proceedings, the deadlines for consideration of complaints are still delayed and the rate of their termination is high. Against this background, with the amendments adopted at the end of December, the Parliament halved the terms of disciplinary proceedings. As the Independent Inspector pointed out, these changes were not agreed upon with the Independent Inspector’s office and the halving of deadlines, in the face of excessive complaints, made their situation worse.
- In 2022, the organization of the sessions deteriorated alarmingly. The law provides for the obligation to publish the date and agenda of the session 3 days before. During the reporting period, the date and agenda of the Council sessions were not published three days before. The agenda and information about the meeting were published on the website of the Council in the afternoon of the day before the meeting was scheduled. The date and time of the sessions were constantly changing, and the many postponed meetings and other issues indicate a management malfunction. The Council also did not ensure live broadcasting of the Council meetings.

1. THE POWER OF THE INFLUENTIAL GROUP OF JUDGES

1.1. Recruitment of the Council of Justice - Challenges

The High Council of Justice is established to ensure the independence and efficiency of the common courts.⁵ The activities of the Council should serve to ensure the independence of the judicial system and individual judges, the effectiveness of justice and increase public trust in the judicial system.⁶ All of the above requires the widest possible representation of courts in terms of gender and region.⁷

According to law, the High Council of Justice consists of 15 members.⁸ 8 members are elected by the self-governing body of judges of common courts - the Conference of Judges, 5 - by the Parliament, and 1 is appointed by the President, and the Chairman of the Supreme Court is an ex officio member.⁹ The rule for staffing the Council of Justice does not consider gender and regional quotas. With the change of the fourth wave of amendments, it was only written into law that at least one member should represent the court of each instance.¹⁰

Currently, the instance quotas in the Council are distributed as follows: of the 8 members elected by the conference, 2 are elected from the Supreme Court, 3 - from the first instance, and 3 - from the appellate court. Apart from Tbilisi, other regional courts are not represented in the Council, while the majority of the judicial system is made up of courts located in the regions.¹¹

The situation is also unfavourable in terms of gender. A majority of judges in the system are female judges, although only two of the judicial members of the Council are women.¹²

The legislation also stipulates that no more than half of the members elected by the Conference of Judges may be the President of the Court, his/her First Deputy or Deputy, or the President of the Judicial Panel or Chamber.¹³ An influential group of judges use this to their advantage every time the chairman's quota is used. On October 23, 2022, the quota of the so-called chairman was completely filled with the election of Dimitri Gvritshvili at the XXXI conference of judges of Georgia. Out of the 8 members elected by the conference, 4 judge members simultaneously hold the position of chairman of the collegium/chamber.¹⁴

GYLA believes that the quota of chairpersons in the Council should be abolished. In order to reduce the influence in the direction of staffing of the Council, such changes as the establishment of gender, regional and instance quotas in the selection of judicial members of the Council are also necessary.¹⁵

⁵ The Constitution of Georgia, Article 64, Paragraph 1.

⁶ CCJE Opinion No. 24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, November 5, 2021, Strasbourg, available at: <https://cutt.ly/ENhmHTG>, updated: 01.11.2022.

⁷ Ibid, Para. 30.

⁸ Article 49, paragraph 2 of the Organic Law of Georgia on Common courts.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Nozadze N. "High Council of Justice - representative of the system?", October 11, 2022, available at: <https://tinyurl.com/>, updated: 09.12.2022.

¹² One of the two is Nino Kadagidze, the Chairman of the Supreme Court.

¹³ Paragraph 4 of Article 47 of the Organic Law of Georgia on Common Courts.

¹⁴ Paata Silagadze, Dimitri Gvritshvili, Badri Shonia, Temur Gogokhia.

¹⁵ The latter is defined by legislation, but it needs to be clarified.

Although many changes have been made in the law regarding the composition of the Council over the years,¹⁶ it still fails to ensure a broad representation of the system and the promotion of healthy processes. Moreover, with the December 2021 amendments, the abolition of a ban on electing the same person to the position of a board member twice in a row encouraged corporatism on the board. One of the main issues mentioned in the agreement signed between the government and the opposition on April 19, the so-called “Charles Michel Document”, was the reform of the justice system,¹⁷ where the need to increase transparency, honesty and accountability in the activity of the Council was emphasized.¹⁸ Carrying out a thorough reform of the High Council of Justice and appointing the remaining members is one of the important prerequisites for joining the European Union.¹⁹

1.2. Election of Judge Members of the High Council of Justice

On October 23rd of this year, the XXXI Conference of Georgian Judges was held.²⁰ One of the issues on the agenda was the election of a judicial member(s) of the High Council of Justice. The vacancy in the Council appeared after the Supreme Court Plenum elected Gocha Abuseridze as a member of the disciplinary chamber, which is incompatible with membership of the Council.²¹ The information about the second vacant position at the Council became known during the conference. Even today, the reason why the former member of the Council, Giorgi Goginashvili, left his post early, is not public knowledge. His term of office was due to expire in 2025.

At the conference, several judges unanimously named Dimitri Gvritishvili’s candidacy. At the conference, Levan Murusidze nominated himself as a candidate for member of the Council. According to his explanation, some authorities associated the challenges in the system with his name. In response, he decided to personally answer accusations and fight for the independence of the judiciary. He could do this legitimately as a member of the Council.²² A large number of judges presented at the conference applauded his decision.

In accordance with international standards, the members of the Council (whether they are judges or not) should be chosen according to their professional background and the depth of their understanding as it relates to the independence of judges and the principles of justice.²³ Observing the judges’ conference offers a completely different reality. The public was not informed in advance about candidates for council membership. As was the case during previous conferences, candidates have yet to present their vision and opinions on the current situation in the system. Despite this, an absolute majority of the judges supported the

¹⁶ Verdzuli S. Reform of the justice system in Georgia, Georgian Young Lawyers’ Association, Tbilisi, 2021, available at: <https://cutt.ly/1MIWQ3d>, updated: 13.11.2022.

¹⁷ “President of the European Council Charles Michel publishes new proposal made today to Georgian political Parties”, official website of the EU, April 18, 2021, available at: <https://cutt.ly/8TPJOAq>, updated: 20.12.2021.

¹⁸ Ibid.

¹⁹ Opinion on Georgia’s application for membership of the European Union, European Commission, 16 June 2022, available at: <https://bit.ly/3ybjLvN>, updated: 27.10.2022.

²⁰ “XXXI Conference of Judges”, High Council of Justice official website, 23 October 2022, available at: <https://cutt.ly/EMmgEe7>, updated: 11.11.2022.

²¹ Paragraph 4 of Article 47 of the Organic Law of Georgia on Common Courts.

²² “Murusidze and Gvritishvili were elected as members of the High Council of Justice”, Netgazeti, 23 October 2022, available at: <https://tinyurl.com/245yw9z5>, updated: 09.01.2023.

²³ CCJE Opinion No. 24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, November 5, 2021, Strasbourg, available at: <https://tinyurl.com/msx6wb4m>, updated: 01.11.2022.

2 candidates nominated in a non-competitive environment. Out of 279 judges registered at the conference, 268 votes were received by Levan Murusidze and 267 by Dimitri Gvritshvili.

It is important to note that a number of processes preceded the convening of the conference and the sudden, early termination of powers in the case of two members - namely: a former judge of the Supreme Court said that if the judges did not make decisions favourable to the so-called clan and the government, they would be pressured.²⁴ This information was confirmed by Soso Gogashvili, a former senior official of SSG, currently on trial.²⁵ In order to refute this information, Levan Murusidze informed the Council that Gogashvili had sent messages that if he was not released and if his property was seized, he would discredit the court to the maximum.²⁶ According to him, after being refused, he even carried out this threat, Murusidze urged judges to be careful and united.²⁷ It should be emphasized that these events took place with the background of the competition for non-judicial members.

Against this background, the return of Levan Murusidze and Dimitri Gvritshvili to the Council once again showed that decisions are made behind closed doors, and they are formally confirmed at the conference. The council meets with non-judge members in a strengthened composition. The judges under the control of the influential group were replaced directly by the “clan” leaders.

1.3. Other Decisions Adopted by the Conference

Other important decisions taken at the October 23 conference indicate the formality of the conference. It should be emphasized that the Conference of Judges, as a self-governing body of judges, cannot fulfil its role. Despite the creation of legislative guarantees for the independence of the conference over the years, manifested in the secrecy of the judges’ votes, an increased quota for making important decisions and other positive changes,²⁸ the conference has discouraged healthy debate about the judiciary. In a non-competitive environment, the conference elects the members of the body important for the system’s activities.

The agenda of the conference of judges also provided for the election of judge members of the Independent Council of the School of Justice, judge members of the Disciplinary Board and the members of the chairman of the Administrative Committee.

Disciplinary board member Tea Dzimistarashvili’s authority was terminated, and Giorgi Goginashvili was nominated, who had previously refused to be a member of the board. He was elected with 266 votes in a secret ballot.

The term of office of Ilona Todua, Tamar Okropiridze and Nana Daraselia, members of the administrative committee, expired. However, the conference named the same composition as the candidates. Nana Daraselia refused to be a member of the committee and Irakli

²⁴ “Levan Murusidze - I am not going to liquidate Beso Alavidze and his family”, Interpressnews, 7 November 2022 available at: <https://www.interpressnews.ge/ka/article/73>, updated: 09.12.2022.

²⁵ “Soso Gogashvili - I confirm the fact of the pressure mentioned by Judge Besarion Alavidze in the interview, we, SSG, implemented this after the request of Mikheil Chinchaladze”, Interpressnews, 20 September 2022, available at: <https://tinyurl.com/22fsbjhj>, updated: 09.01.2023.

²⁶ See Minutes of the meeting of the High Council of Justice of September 21, 2022.

²⁷ Ibid.

²⁸ Verdzuli S. Reform of the justice system in Georgia, Georgian Young Lawyers’ Association, Tbilisi, 2021, p. 25, available at: <https://cutt.ly/1MIWQ3d>, updated: 23.01.2023.

Shengelia nominated Gocha Jeiranashvili. Finally, the conference elected Ilona Todua with 267 votes, Tamar Okropiridze with 268 votes, and Gocha Jeiranashvili with 262 votes. Only Ilona Todua was nominated as the chairman of the administrative committee, and the conference elected her as the chairman for the second time in a row. All the above-mentioned judges have been holding important managerial positions for years, and the support of the same judges by the majority of judges, without any questions, once again underlines the formal nature of the conference and confirms the presence of influential persons in the system.

1.4. Election of non-judicial Members of the Council of Justice

One of the prioritized recommendations of the European Commission is the appointment of non-judicial members of the High Council of Justice.²⁹

After June 2021, the Council continues to work with ten members. In October 2022, the Parliament of Georgia announced the selection competition for non-judicial members.³⁰

Non-judicial members will be elected on the basis of voting, by secret ballot, by not less than 3/5 of the full composition.³¹ The election of non-judicial members by 3/5 is an important achievement of the constitutional amendments since it is based on consensus. However, the ruling party explained the non-announcement of the contest for more than a year to the lack of consensus.

The deadline for submitting candidates for non-judge members is from September 30th to October 20th.³² Finally, 32 candidates participated in the competition.³³ Among them were 5 candidates supported by the coalition, which were presented by non-governmental organizations and higher educational institutions included in the coalition.³⁴

The procedures for the selection of non-judicial members established by the rules of procedure of the Parliament are not transparent, which is why GYLA addressed the Parliament with a legislative proposal in 2017, which provided for: a) submission and public publication of biographies and vision documents of candidates for membership of the Council; b) to introduce the procedure of interviews with the candidates for the members of the Council by the leading committee and to grant the right to ask questions to the interested persons.³⁵ With the legislative changes initiated on November 4, 2022, the ruling party took into account the obligation of public hearing of the candidates.

²⁹ European Commission, Commission Opinion on Georgia's application for membership of the European Union, Brussels, 17.06.2022, available at: <https://tinyurl.com/4zf3b4vc>, updated: 09.01.2023.

³⁰ A competition for the election of 5 non-judge members in the High Council of Justice was announced, Radio Tavisupleba, 29 September 2022, available at: <https://tinyurl.com/49k2v5xh>, updated: 09.01.2023.

³¹ Paragraph 5 of Article 47 of the Organic Law of Georgia on Common Courts.

³² Candidates for non-judge membership of the High Council of Justice of Georgia, Parliament of Georgia official website, 20 October 2022, available at: <https://tinyurl.com/2p8tyuem>, updated: 09.01.2023.

³³ Lika Sajaia, Ana Abashidze, Dimitri Khachidze, Sulkhan Saladze, Giorgi Burjanadze. "The Coalition for "Independent and Transparent Justice" nominated five coalition-supported non-judge membership candidates to the High Council of Justice", Interpressnews, 10 November 2022, available at: <https://tinyurl.com/4dp9ec7d>, updated: 10.02.2023.

³⁴ "The Coalition for "Independent and Transparent Justice" nominated five coalition-supported non-judge membership candidates to the High Council of Justice", Interpressnews.

³⁵ "NGOs call on the Parliament to ensure a transparent and professional assessment-based process for the selection of new members of the High Council of Justice", Social Justice Center, June 2017, available at: <https://bit.ly/3WetVVF>, updated: 09.12.2022.

The hearing of the candidates at the committee started on December 8 and ended on December 19.³⁶ Voting of non-judge members did not take place during the extraordinary session of the Parliament. “Lelo” and “Reforms Group” used the right granted by regulations to meet and interview the nominated candidates. In their opinion, among the nominated candidates, there are 10-12 worthy and experienced candidates on which consensus is possible.³⁷

Selecting conscientious and competent candidates for non-judicial membership, in whom there is public confidence and broad partisan consensus, will create dissent on the board and leave the “Clan” with an unsustainable unanimous advantage.³⁸ The non-judicial members selected on the basis of consensus would ensure a broad representation of society in the Council, especially in light of the fact that influential judges are being replaced as judge members, the selection of conscientious non-judge members would facilitate the debate on the challenges in the system. Observing the practice shows that it was the non-judge members who voiced different opinions in the Council.

³⁶ “The process of interviewing candidates for membership of the High Council of Justice has ended”, Parliament of Georgia official website, 19 December 2022, available at: <https://tinyurl.com/wj8ujmfw>, updated: 09.01.2023.

³⁷ “The vote on the election of non-judicial members of the High Council of Justice has been postponed until the spring session”, Interpressnews, 22 December 2022, available at: <https://tinyurl.com/4z32ycst>, updated: 09.01.2023.

³⁸ “A New Perspective on Judicial Reform”, website of the Coalition for an Independent and Transparent Justice, 21 June 2021, available at: <https://cutt.ly/oUoGLNR>, updated: 02.11.2022.

2. JUDICIAL STRATEGY AND ACTION PLAN - HOW RESPONSIVE IT IS TO THE CHALLENGES IN THE SYSTEM

Among the 12 recommendations of the European Commission, one of the most decisive is the in-depth reform of the court system. In order to fulfil this recommendation, a working group of justice was created in the Parliament, where the quota of civil society representatives was set at two. GYLA, in the working group created in the parliament, presented a list of issues, without a solution for which, any change would be only procedural, and the creation of an independent court would not be achieved. Finally, we have concluded that the strategy and action plan of the judiciary adopted by the ruling party does not identify the main problems in the judiciary system.³⁹ Long-term observation of the processes has shown that only procedural refinement and neglecting the main challenges of the system are facades and do not actually serve to make the system healthier.

According to the Judicial working group's draft reforms strategy and action plan for the judiciary, public hearings for High Council of Justice non-judicial member candidates were proposed, in order to enhance the selection process.⁴⁰ Also, a provision for allowing a candidate for a non-judicial seat was allowed to voice his/her views in front of the conference of judges. While the civil sector was asking for single-term limits on the Council membership; abolishing chairmanship quotas, and setting up gender, regional and court instance quotas which would allow for wider representation and influential judges would no longer be able to stay in the Council;⁴¹ It is regrettable that the ruling party, instead of choosing real change, went for procedural enhancements instead.

³⁹ GYLA presented an assessment to the Parliament on the document prepared by the management team - "Strategy and Action Plan of the Judicial System", 01.10.2022. available at: <https://tinyurl.com/39m4a75e>, updated: 23.01.2023.

⁴⁰ "Anri Okhanashvili on the Judicial Reform Strategy and Action Plan", Parliament of Georgia official website, 3 October 2022, available at: <https://parliament.ge>, updated: 09.01.2023.

⁴¹ "GYLA presented Parliament with an evaluation of - "Court System strategy and action plan"", GYLA official website, 1 November 2022, available at: <https://www.gyla.ge/>, updated: 23.01.2023.

3. SELECTION AND APPOINTMENT OF JUDGES

Judges in district (city) and appellate courts are appointed by the High Council of Justice based on competition.⁴² Selecting and appointing judges and transferring them without competition is one of the levers for the “Clan” to gain and strengthen its influence. Despite a number of legislative changes, the competitions conducted by the Council are constantly criticized.⁴³

The following is envisaged by the legislation:

- To be appointed for life with a probationary period and after its completion;
- Appointment of persons with judicial experience for life;
- To appoint judges with more than three years of experience for life.⁴⁴

Simplified regulations have been established for the appointment of former and current judges of the Constitutional Court and the Supreme Court.⁴⁵

In the first and second instance courts, there are 310 active judges.⁴⁶ Among them, 249 are appointed for life, 5 judges for a term of 10 years and 56 judges for a term of 3 years.⁴⁷

3.1. Appointment for a Probationary Period by Competition

In order to select judges in the court of first and second instance, the Council holds a competition in which the following are eligible to participate: (1) Graduates of the High School of Justice (hereinafter - School), (2) former or current judges. Students of the school are appointed for a three-year probationary period, while current and former judges are appointed for life.

3.2. Appointment for a Probationary Period by Competition

In order to select judges for vacancies in the first and second instance, the Council holds a competition in which the following are eligible to participate: (1) Graduates of the High School of Justice, (2) former or current judges.

In case of successful completion of the competition and receiving 2/3 of the votes of the members of the Council, judges with judicial experience are appointed for life, and judges without experience - for a three-year probationary period.

On August 5, 2021, the Council announced a selection competition for candidates for the position of judge in 22 courts for 42 vacancies of district (city) courts.⁴⁸ Applications were

⁴² Paragraph 1 of Article 35 of the Organic Law of Georgia on Common Courts.

⁴³ Nozadze N. Shermadini O. “Monitoring Report of the High Council of Justice No. 7”, p. 16-25, Georgian Young Lawyers’ Association and International Transparency - Georgia, Tbilisi, 2019, website of the Georgian Young Lawyers’ Association, available at: <https://bit.ly/2zqPX2X>, updated: 12.03.2022; Nozadze N. Monitoring Report of the High Council of Justice No. 8, Georgian Young Lawyers’ Association, Tbilisi, 2020, p. 14-21, website of the Georgian Young Lawyers’ Association, available at: <https://bit.ly/3qTcutK>, updated: 12.03.2022.

⁴⁴ During the reporting period, the Council was no longer headed by this rule, since the judges, who were affected by this transitional regulation, were appointed for life. In fact, this article has exhausted its function.

⁴⁵ Ibid, Paragraph 9 of Article 35.

⁴⁶ According to data from 31 December, 2022.

⁴⁷ High Council of Justice Letter №57/4174-03-O, 30 January, 2023.

⁴⁸ “The High Council of Justice announces the selection competition for judicial candidates”, High Council of Justice of Georgia official website, 5 August 2021, available at: <https://cutt.ly/KAolYPY>, updated: 12.04.2022.

accepted from August 6th to August 22nd. According to the law, the Council considers the applications and attached documents of the candidates for the position of judge participating in the competition within 5 working days.⁴⁹ The secretary of the Council explained the violation of the 5-day deadline by the pandemic and other objective reasons.⁵⁰ In fact, the Council violated the law. At the session on September 7th, 13 people registered as candidates.⁵¹ 1 of them is current, 5 are former and 7 are students at the school.

The Council held interviews with candidates on December 15 and February 15. The interviews were conducted in an open format. 11 passed the interview stage. Ketevan Dugladze and Zurab Dznelashvili withdrew their candidacies and none of the members of the Council submitted their self-removal.⁵²

All 11 candidates passed the voting stage held on March 7.⁵³ During the reporting period, seven candidates were appointed as judges. Six for three years,⁵⁴ one for life.⁵⁵

The high number of vacancies in the system and the lack of people participating in the competition indicate that qualified personnel refrain from participating in the competitions, which may be due to distrust of the Council, since the Council does not select judges based on criteria of qualification and integrity, but rather on the basis of corporatism and nepotism.

According to the law, the candidate is evaluated through points based on the criteria of competence and integrity.⁵⁶ Interviews are conducted with the candidates.⁵⁷ The candidacy of the person, in the case of which the absolute majority of the Council (8 members) considers that he/she “meets” or “fully meets” the “good faith” criterion, and in the competence part, in total, he/she has obtained at least 70% of the points, is put to the vote.⁵⁸ Finally, the one who receives 2/3 of the votes of the members of the Council becomes the judge.⁵⁹ There were 102 vacancies in the system during the reporting period.⁶⁰

On November 25, the High Council of Justice announced the selection competition for judicial candidates for 76 vacant positions of district (city) and appellate court judges. Applications were accepted from November 28 to December 14.⁶¹ Only 21 candidates were registered for 76 vacancies.

⁴⁹ Organic Law of Georgia on Common Courts, Article 35, Paragraph 8.

⁵⁰ See Minutes of the meeting of the High Council of Justice of Georgia on September 7.

⁵¹ Ibid.

⁵² Ibid.

⁵³ See Minutes of the meeting of the High Council of Justice of March 7, 2022.

⁵⁴ Guliko Kazhashvili – Batumi City Court Chamber of Civil Cases, Nino Sakhelashvili – Batumi City Court Chamber of Civil Cases, Nino Jojua – Bolnisi Regional Court, Giorgi Mtiulashvili – Gurjaani Regional Court, Lika Bokeria – Sighnaghi Regional Court Magistrate Judge, Ekaterine Maghradze – Poti City Court Magistrate Judge for Khobi Municipality.

⁵⁵ Darejan Kvaratskhelia – Senaki Regional Court Magistrate Judge for Abasha Municipality; Voting for the selection competition for judges in the High Council of Justice was held on March 7, 2022, available at: <https://cutt.ly/OS3l9Rj>, updated: 25.03.2022.

⁵⁶ Paragraph 1 of Article 35¹ of the Organic Law of Georgia on Common Courts.

⁵⁷ Ibid, paragraph 13.

⁵⁸ Ibid, Article 35, paragraph 12.

⁵⁹ Paragraph 4¹ of Article 36 of the Organic Law of Georgia on Common Courts.

⁶⁰ Georgia High Council of Justice letters №57/4174-03-O and №55/4103-03-O, January 30, 2023.

⁶¹ The High Council of Justice announced the selection competition for judicial candidates, High Council of Justice official website, 25 November 2022, available at: <https://tinyurl.com/4uvp5kda>, updated: 12.12.2022.

According to GYLA, it is important to appoint judges of the first and second instance courts, judges and non-judges of the Council by double, 2/3 votes.⁶² This regulation will change the distribution of powers in the Council and make it consensus-oriented if the Parliament appoints non-judge members who are trusted by the public and selected by broad consensus.

As per the fourth wave of an amendment, the Council was required to publish justification after voting. It would include an overview of the election procedure, a description of the appointed judge, an indication of the points the judge garnered and a report on the Judge's conscientiousness.

In the justifications of the published reports, descriptions of the procedure for selecting judges are transparent, however, in the assessment of good faith, the rationale is designed in such a way that the assessment can be applied to any judge and is not tailored to a specific person. The conclusions are made in such a way that it is not clear what the member of the Council relied on when assessing the good faith of the judge. It should be noted that the Council has not published justifications regarding 7 judges appointed during the 7th March session.

It is important that the justification shows specific circumstances that became the basis for a positive or negative assessment. The conclusion should provide the interested person with comprehensive information about the integrity of the judge.

3.3. Appointment of Persons with Judicial Experience for Life Based on Competition

Here, the procedures are almost the same as in the competitive appointment of persons with no judicial experience, however, professional qualities, including courtroom behaviour, are added to the competence criterion in the evaluation.⁶³ In addition, 5 cases reviewed by him (including, if any, at least 2 cases on which the summary/final decision was changed by the superior court) are evaluated (except for the current or former member of the Constitutional or Supreme Court).⁶⁴ After successfully passing the stages of the competition, these candidates are appointed for life.⁶⁵ During the reporting period, only one judge was appointed for life.⁶⁶

3.4. Appointment of Judges for Life After the Probationary Period

Three judges and three non-judge members of the Council evaluate a judge on probation for 3 years.⁶⁷ Based on the analysis of the evaluation results of the first, second and third year, the Council deliberates and makes a decision on the appointment of a person for life.⁶⁸ During the reporting period, due to the fact that the Council worked with 10 members and

⁶² According to this principle, the consent of 2/3 of the judicial members and 2/3 of the non-judicial members will be required to make a decision, a new perspective of judicial reform, website of Coalition for an Independent and Transparent Justice, 21 June 2021, available at: <https://cutt.ly/oUoGLNr>, updated: 04.04.2021.

⁶³ Article 36³ Paragraph 2 of the Organic Law of Georgia on Common Courts.

⁶⁴ Ibid, Article 36, paragraph 41.

⁶⁵ Ibid.

⁶⁶ Darejan Kvaratskhelia – Senaki Regional Court Magistrate Judge for Abasha Municipality; High Council of Justice Letter №57/4174-03-O, 30 January 2023.

⁶⁷ Paragraph 44 of Article 36 of the Organic Law of Georgia on Common Courts.

⁶⁸ Ibid, paragraph 41 of Article 36.

only one non-judge member, it was not possible to evaluate the judges on the three-year probationary period and discuss their permanent appointment.⁶⁹ Because they had to be evaluated by three judges and three non-judges. According to the law, 6 different evaluators should have done the assessment.⁷⁰ At the meeting of June 2, three judges appointed for a three-year term: Aleksandre Lomidze, Fati Furtsvanidze, and Lela Chincharauli, had their term of office extended, although it is important that the corresponding decisions of the Council were not published on the website during the reporting period. GYLA additionally requested information and copies of decisions, but the Council did not respond. In fact, the three judges are exercising their powers in violation of the requirements of the law. This violates both their rights and the right of court users to have the case heard by a competent and qualified judge, which may call into question the legality of the decisions they make.

3.5. Appointment and Promotion of Judges

The no-contest regulation and its enforcement have been the subject of criticism over the years.⁷¹ With the “third wave” changes, the appointment of a judge to the same or higher instance court requires his/her own consent.⁷² Before that, it was possible in the lower instance as well. The promotion of a judge is allowed only if he/she exercised the powers of a judge in the district (city) court for at least 5 years.⁷³ The legislator instructed the Council to develop the promotion criteria.⁷⁴ The latter was limited to a general note: “only the judge who, by competence, experience, business and moral reputation, corresponds to the high rank of the judge of the Court of Appeals can be promoted”.⁷⁵ **It is important to regulate such procedures/criteria so that when a judge is transferred to another court, it will clearly show the validity of giving preference to a particular candidate.**

According to the procedures, the information is published on the Council’s website. The aspiring judge has 7 days⁷⁶ to submit the application, after which the Council will consider it and invite the person for an interview.

The issue was discussed 4 times during the reporting period, which subsequently resulted in 10 judges being reassigned. 7 of the 10 were promoted. The procedure for reassignment without competition lacks transparency. No information is published online regarding vacancies, number of contenders or their identities. This information only becomes available the day interviews take place. These interviews in turn only last 5-10 minutes and are mostly taken up by questions regarding motivation.

Non-transparent Reassignment/promotion procedures and hazy criteria, multiple deliberations on the same topic, somewhat chaotic reassignments add additional leverage in the hands of the Council.

It is important for the Council to transparently conduct the process of transfer and promotion of judges without competition.

⁶⁹ High Council of Justice Meetings Notes, June 2, 2022.

⁷⁰ Paragraph 4⁴ of Article 36 of the Organic Law of Georgia on General Courts.

⁷¹ Nozadze N. Shermadin O. Monitoring report of the High Council of Justice No. 7, p. 30-32.

⁷² Article 37 of the Organic Law of Georgia on Common Courts.

⁷³ Ibid, Article 41.

⁷⁴ Ibid, paragraph 2.

⁷⁵ Paragraph 11 of Article 13¹ of the Regulations of the High Council of Justice of Georgia, High Council of Justice of Georgia official website, available at: <https://bit.ly/2WmWN0S>, updated: 10.12.2022.

⁷⁶ Ibid, paragraph 8.

3.6. Secondment

As a result of the hastily adopted amendments on 30 December 2021, this legislation governing the business trips of judges and their guarantees has been completely changed: a) The council, without the judge's approval, can send him/her on secondment for 2 years. This term may be extended for another two years;⁷⁷ b) It becomes possible for a judge of the Court of Appeal to be sent to the Court of First Instance.⁷⁸ In addition, the record, according to which the involuntary business trip of a judge to a particular court was made from the territorially closest court, is cancelled. A judge can be sent to another court on secondment for reasons of the interest of justice, and the Council is no longer required to indicate the specific circumstances of what may be understood by this term.

The December changes further increase the power of the Council and make the individual judge more vulnerable.

⁷⁷ Paragraph 2 of Article 37¹ of the Organic Law of Georgia on Common Courts.

⁷⁸ Ibid.

4. THE HIGH SCHOOL OF JUSTICE - INFLUENCES OF THE COUNCIL OF JUSTICE AND CHALLENGES IN PRACTICE

The competition for students' admission to the High School of Justice is held by the school itself instead of the High Council of Justice.⁷⁹ However, the wide role of the High Council of Justice in the process of recruiting and selecting the chairman of the independent school council still remains a problem. 2 out of 7 members of the Independent Council of the school are appointed by the High Council of Justice from its own composition;⁸⁰ The High Council of Justice appoints 2 additional members from the academic quota.⁸¹ Three members are elected by the Conference of Judges, and the Chairman of the Independent Board of the School is elected from the quota of the Conference of Judges (3 in total) by the High Council of Justice.⁸² The session of the independent board is authorized if the majority of the members of the independent board are present. The decision is made by the majority of votes. In case of an even split of votes, the vote of the chairperson of the session of the independent board is decisive.⁸³

During the reporting period, Dimitri Gvritshvili, a judge member of the Independent Council of the High School of Justice and at the same time the chairman, left the Independent Council based on a personal statement, and the terms of office of Sergo Metofishvili and Khatia Ardazishvili expired. The conference elected Giorgi Mikoutadze with 220 votes, Irakli Shengelia with 227 votes and Vasil Mshvenieradze with 230 votes in the 3 vacant seats. They had no competitors. Later, the Council elected Vasil Mshvenieradze as the Chairman of the Independent Council.

Observing the proceedings once again makes clear the formality of the law record, the extensive influence of the Council on the School of Justice, and the practice of rotating the same persons in important positions.

In addition, the Council makes a decision on holding the school admission competition.⁸⁴ At the session on March 23, the Council made a decision about the need for 121 students in the school, taking into account the 95 vacancies in the system, and presented it to the school, which has the right to approve less than the number presented by the Council, if the school's budget and/or material-technical base does not allow for more students.⁸⁵ If we look at the practice of previous years, the school was able to train a maximum of 40 students per year. It should also be noted that there hasn't been a contest announced for the intake of new students for two years.

The law did not regulate the rules and criteria for the selection of students. The issues related to the registration of candidates for auditions and the conduct of the competition should be regulated by the school's charter,⁸⁶ although the school has not outlined the relevant procedures in the charter so far.

In order to ensure an internal organizational freedom of the Independent Council of School, the Council's role in the process of electing the members of the Independent Council should be reduced and the chairman should be elected by the Independent Council itself.

⁷⁹ Paragraph 1 of Article 66¹⁴ of the Organic Law of Georgia on Common Courts.

⁸⁰ Paragraph 4 of Article 66³ of the Organic Law of Georgia on Common Courts.

⁸¹ Ibid.

⁸² Paragraph 5 of Article 66³ of the Organic Law of Georgia on Common Courts.

⁸³ Paragraph 4 of Article 66⁵ of the Organic Law of Georgia on Common Courts.

⁸⁴ Ibid, paragraph 3 of Article 66¹².

⁸⁵ Ibid, Article 66¹⁵.

⁸⁶ Ibid, Paragraph 2 of Article 66¹⁴.

5. JUDGES HOLDING ADMINISTRATIVE POSITIONS

5.1. The Role and Influence of Chairpersons

Court chairpersons belong to a privileged group in the system and, together with the Council form the main force to control the judges.⁸⁷ Their influence is determined by the important powers that have been granted by law or by the Council. Again problematic is the power by which, on grounds of avoiding obstruction of justice, it can order a judge the following: (1) consideration of the case in another chamber or investigative panel, or in a specialized composition; (2) Magistrate judge; (3) and for the magistrate judge - activities outside his/her area of operation.⁸⁸

According to the established practice, since 2006, the Chairman of the Tbilisi City Court allocates narrow specializations, and in 2018, the Council granted this authority to the Chairman of the Tbilisi Court of Appeal.⁸⁹ This kind of regulation creates real risks of manipulation, especially in the appellate court, where the case is mostly considered by a collegial composition consisting of three judges, and when distributing the case, the electronic program shows only the reporting judge from the collegial composition. The identity of the remaining two is chosen by the reporting judge. Given that the collegium makes decisions by majority vote, giving the chairman the right to easily move judges in a narrow specialization increases the likelihood of interference in the process of forming the composition of a collegium.⁹⁰ **GYLA believes that in the collegial consideration of the case, the selection of all three judges should be done through the electronic system, by random distribution, and in the case of narrow specialization - by casting lots.**

5.2. Selection of Court Chairpersons

The chairperson of the court in the first and second instances is appointed by the Council.⁹¹ The provision for their selection by the judges did not gain support. Although such a record was included in the original version of the “Third Wave” amendments and was even approved by the Venice Commission,⁹² as a result of pressure from influential judges, it was no longer reflected in law. Finally, it was only recorded that the Council makes a reasoned decision when appointing a person to the position, and before that, it consults with the composition of the relevant court.⁹³ For years, the vague practice and rules of appointing chairpersons have not changed. Managerial positions in the system are generally occupied

⁸⁷ “We call on the High Council of Justice to stop appointing presiding judges in courts based on subjective opinion”, statement of the Georgian Young Lawyers’ Association and Democratic Initiative, Georgian Young Lawyers’ Association official website, 26 February 2018, available at: <https://bit.ly/35e1M89>, updated: 05.02.2022.

⁸⁸ Paragraph 5 of Article 30 of the Organic Law of Georgia on General Courts.

⁸⁹ Decision No. 1/175 of the High Council of Justice of April 30, 2018, Article 9, on determining the narrow specialization of judges in the civil, administrative, and criminal chambers of the Tbilisi Court of Appeal, High Council of Justice official website, available at: <https://bit.ly/2TBquug>, updated: 06.02.2022.

⁹⁰ “Coalition considers extension of powers to Mikheil Chinchaladze as a threat to the principle of random distribution of cases”, Coalition for Independent and Transparent Justice website, 20 May 2018, available at: <https://bit.ly/3107n0q>, updated: 06.02.2022.

⁹¹ Articles 23 and 32 of the Organic Law of Georgia on common courts.

⁹² 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: <https://cutt.ly/1O1EwQw>, updated: 08.02.2022.

⁹³ Paragraph 6 of Article 23 and Paragraph 1 of Article 32 of the Organic Law of Georgia on Common Courts.

by the same individuals. They exchange these positions, which does not give other judges the opportunity to be involved in the management of the court.⁹⁴ An illustration of this opinion is the established practice regarding the appointment of the chairmen of the court/panel/chamber.

The Council appointed 7 chairs of the courts, all of which were the heads of different courts for many years.

According to the established practice in recent years,⁹⁵ when there is a vacancy for the chairman, the announcement is published on the internal network of the court. Nevertheless, the process took place mainly in a non-competitive environment. An example of this is the competitions announced in the reporting period. Only one application was submitted for each position.

At the March 16 session, the Council transferred Irakli Bondarenko from the Tbilisi Court of Appeal to the Kutaisi Court of Appeal.⁹⁶ At the session on March 23, the issue of his appointment as the chairman of the same court was discussed.⁹⁷ While presenting the issue, the secretary stated that since Irakli Bondarenko was newly appointed to the Kutaisi Court of Appeal and before his colleagues get to know each other better, it would be better if he was appointed as an acting judge.⁹⁸ No one has expressed a different opinion. Irakli Bondarenko was appointed acting chairman of the Court of Appeal of Kutaisi without competition or interview.⁹⁹

Even in 2022, the Council continues to rotate judges loyal to it and appoint them to managerial positions.

Mikheil Chinchaladze's 5-year term of office as the chairman of the Tbilisi Court of Appeal expired on May 29. At the session of June 10, the Council assigned him and several court chairpersons to fulfil their duties and announced the vacancy information at the session. On June 27, after several adjourned meetings, the Council returned to the issue of appointing chairmen. At the session, a consultation was held online with the members of the Court of Appeal, which was attended by 53 judges. The chairman of the session explained that the judges had the opportunity to express their opinion regarding the candidacy of Mikheil Chinchaladze. The Council inconsistently utilizes the law, which notes that before appointing the chairman, the Council consults with the composition of the relevant court. In some cases, consultations are held in closed sessions, and sometimes they are public. Taking into account that part of the civil society appealed to the Council not to re-appoint Chinchaladze, the inclusion of 53 judges of the Court of Appeal for the consultation was a sign of a demonstration of strength, especially if we consider the pathos of the judges who spoke in support of Mikheil Chinchaladze's candidacy. "I am excited, there is no other alternative",¹⁰⁰ "he is a worthy candidate",¹⁰¹ etc.¹⁰² Mikheil Chinchaladze did not have a competitor, and the members of the Council did not even interview him. Nevertheless, the Council members

⁹⁴ "Narrow circle - distribution of clan members to managerial positions in the court", available at: website of the Georgian Young Lawyers' Association official website, available at: <https://cutt.ly/zA9YrTm>, updated: 12.03.2022.

⁹⁵ Until 2018, candidates were nominated by members of the Council.

⁹⁶ See Minutes of the meeting of the High Council of Justice of March 16, 2022.

⁹⁷ See Minutes of the meeting of the High Council of Justice of March 23, 2022.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Davit Mamiseishvili, judge of the Criminal Chamber of the Tbilisi Court of Appeal.

¹⁰¹ Dimitri Gvritishvili, Chairman of the Administrative Affairs Chamber of the Tbilisi Court of Appeal.

¹⁰² See: Minutes of the session of the High Council of Justice, June 27, 2022.

unanimously supported his re-appointment as the chairman of the Tbilisi Court of Appeal.¹⁰³ At the same session, without interview or competition, the chairpersons of the Akhalkalaki, Senaki, Khashuri district courts were also reappointed.¹⁰⁴ Chinchaladze's re-appointment showed once again that the influential group in the system is not going to back down. The aforementioned contradicts one of the key prerequisites of the European Union, the creation of a "fully and truly independent, accountable and impartial" court.¹⁰⁵ In conditions where an influential group controls the system and the chairpersons are one of the sources of their power, it was difficult to imagine that introducing consultations in the selection of court chairpersons would add anything positive to the process. As a result, we got another facade instead of a change.

In accordance with the established practice, if there was only one application for a vacancy, the Council did not conduct an interview and the candidature was put to a direct vote. This kind of approach continued in the reporting period as well.

On the 18th July session, the Council, without competition or interview, appointed Irakli Bondarenko for a 5 year term to the Kutaisi Appeals Court chairmanship.¹⁰⁶ During the same session, the Council supported Maia Pkhakadze for the post of Rustavi City Court Chairman yet again. Both judges have held managerial positions in the courts for years.¹⁰⁷

If we look at the bios of judges appointed to managerial positions, the evidence of rotational appointments is evident.

An exception in the reporting period was the competition for the appointment of the chairman of the Tetrtskaro district court, where both the current chairman and the judge of the same court - Badri Niparishvili – applied,¹⁰⁸ who also stated that Vladimir Khuchua had no moral right to resume the position of chairman since he had avoided dealing with judges and court challenges for years. The very fact that Vladimir Khuchua put up his candidacy again for chairmanship may lead to conclusions that he would not state anything even in the future.¹⁰⁹ Vladimir Khuchua, on his end, talked about how Badri Niparishvili only showed up at the court only 5 times in 5 months and that the latter was declining to adjudicate on civil-administrative cases.

On the 27th of October session, the Council continued deliberations. After voting, the Council unanimously decided to again support Vladimir Khuchua to be appointed as Tetrtskaro District Court chairman.¹¹⁰ As explained by Dimitry Gvritishvili, the Council supported Vladimir Khuchua because the charges against the latter were not proven and additionally, he had ample managerial experience.¹¹¹ Council members did not disclose during the session, if they had actively investigated the matter. *Prima Facie* it seems that the Council believed the

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Opinion on Georgia's application for membership of the European Union, official website of the EU, 17 June 2022, available at: <https://bit.ly/3ybjLvN>, updated: 02.10.2022

¹⁰⁶ See: meeting notes from the 18 July, 2022, session of the High Council of Justice.

¹⁰⁷ "closed circle – Appointment of Clan Members to Managerial Positions", Georgian Young Lawyers' Association Official Website, available at: <https://cutt.ly/zA9YrTm>, updated: 08.02.2023.

¹⁰⁸ See: Minutes of the session of the High Council of Justice of October 25, 2022.

¹⁰⁹ "Judge Badri Neparishvili – Vladimi Khuchua has no moral right to stay in position of district court chairman", Interpressnews, 25 October 2022, available at: <https://tinyurl.com/2x6u63a5>, updated: 23.01.2023.

¹¹⁰ See: Meeting Notes of the High Council of Justice, October 27, 2022.

¹¹¹ "The High Council of Justice chose chairs of the Tetrtskaro and Zugdidi Courts", 27 October 2022, available at: <https://tinyurl.com/2893ywu6>, updated: 23.01.2023.

word of an experienced judge more than the other judge, who had coincidentally expressed negative views about systemic issues stemming from the influential group of judges. The system indeed does not approve of differing opinions.¹¹²

During the reporting period, the Council chair delegated the chairman's authority and rights to 5 court chairs.¹¹³ Delegating such authority is blanketly explained in a Council act. It is noted that the court's normal functioning is hindered due to the chairmen's absence.

GYLA believes that the judges of the respective courts should choose the chairmen themselves. This, in addition to depriving the Council of significant leverage, will also help strengthen individual judges.

5.3. Appointment of Chairpersons of Chambers/Collegiums and their Deputies

According to the legislation, the chairmen of chambers/collegium are appointed by the Council for a period of 5 years from the composition of the respective chamber and collegium.¹¹⁴ Their powers are not defined by the law and, practically, there is no functional need for them. It is also not specified in what cases the acting officials are appointed.

On the 5th July session, the Council chairman put forth the issue of appointing a chairman for the Tbilisi City Court Administrative and Civil Collegium.¹¹⁵ In this case, the Council used common manipulative and effective means: After switching collegiums for Badri Shonia and Vasil Mshvenieradze on the 10th of June, it was apparent that they were switching chairmanships as well. It is important to note that Badri Shonia was appointed as chair of the Civil Collegium, while Vasil Mshvenieradze was similarly appointed to the Administrative Collegium. There were no questions asked during the 18th July session as to the subject of why collegiums were switched. The support was given without question. The switching of collegiums and subsequently of chairmanships was carried out smoothly.

The Council also gave chairmanship privileges to Malkhaz Okropirashvili during the 5th of July session, who already held the position since 2017.

The appointments were carried out without questions of competition.

GYLA believes that the existence of chairmanships is the establishment of visible hierarchies among judges as well as providing benefits to loyal members of the influential group of judges. It is recommended to abolish the positions of Collegium and Bench chairman.

¹¹² "The Coalition Reacts to the Protest of Several Judges", Coalition for an Independent and Transparent Judiciary, 10 November 2021, available at: <http://coalition.ge/>, updated: 12.02.2023.

¹¹³ District Courts of Ambrolauri, Gori, Gurjaani, Samtredia and Sachkhere.

¹¹⁴ Ibid, Clause 5 of Article 23 and Clause 4 of Article 30.

¹¹⁵ See: minutes of the session of the High Council of Justice, 5 July, 2022.

6. DISCIPLINARY RESPONSIBILITY OF JUDGES

6.1. Legislative gaps

A problem remains the provision of an absolute majority election of the independent inspector by the Council,¹¹⁶ according to which only the support of judicial members is sufficient, leaving non-judicial members out of the process. It is important to create guarantees of independence so that this institution enjoys high trust in society. The ability to be elected only by the judicial members makes the independence of the inspector vulnerable. **In order to eliminate this problem, it is necessary to define 2/3 as the number of votes required for the appointment.** Also, the rule established by the Council regarding the selection of the inspector is flawed, as it does not define many important issues.¹¹⁷ The basic principles of conducting the competition (objectivity, publicity, prohibition of discrimination) and procedures (selection criteria, purpose and regulation of the interview, issues to be clarified at the interview, evaluation of the candidate and its justification) are not established. **It is necessary for the Council to improve the selection procedure of the inspector.**

6.2. Inspector's findings

Disciplinary proceedings against the judge are initiated and preliminary inspection and examination of the case is ensured by the inspector,¹¹⁸ who presents the conclusions and opinions to the Council.¹¹⁹ The two-month time limit for disciplinary proceedings was cut in half by the changes adopted in haste on December 30, 2021, instead of 2 months, the preliminary investigation period was set to 1 month, which may last for 2 weeks.¹²⁰ In the explanatory card, it was indicated that the reduction (halving) of the disciplinary proceedings served a legitimate purpose of increasing the efficiency of the proceedings. According to the information received from the independent inspector office, in many cases, the search of the case materials by the judge was late, which led to the extension of the one-month term established by the law for the preliminary examination.¹²¹ During the reporting period, the one-month deadline established by law was violated in 2 cases, the one-month deadline was extended in 11 cases, and the decision to suspend the deadline was made in 1 complaint.¹²² The rationale for shortening the deadlines was not responsive to the existing practice. Even before the halving of the duration of proceedings, the Council was constantly violating and ignoring the requirements of the law. During the reporting period, as in the previous year, the Council did not consider any of the complaints received in 2022.

6.3. Council Decisions

After the inspector submits a conclusion and opinion on the case, the Council makes a reasoned decision (according to the “reasonable suspicion” standard¹²³) on the initiation of

¹¹⁶ Article 51¹ Paragraph 2 of the Organic Law of Georgia on Common Courts.

¹¹⁷ Article 27² of the Regulations of the High Council of Justice of Georgia.

¹¹⁸ Article 75⁶ of the Organic Law of Georgia on Common Courts.

¹¹⁹ Ibid.

¹²⁰ Ibid., paragraph 1 of Article 75⁷.

¹²¹ High Council of Justice of Georgia, Independent Inspector Service, letter No. 16/4170-03-o of January 17, 2023.

¹²² Ibid.

¹²³ Article 75⁸ Paragraph 1 of the Organic Law of Georgia on Common Courts.

disciplinary proceedings and the confiscation of an explanation to the judge.¹²⁴ However, in case of refusal to initiate the prosecution, he/she is not required to justify the decision. It is important **to justify the decision to refuse to start the prosecution.**

A council member who does not agree with the Council's decision to terminate proceedings may express his dissent in writing. In 2022, as well as in previous years, no member has taken advantage of this right.¹²⁵ In the monitoring reports of the Council, SAIA supported the adoption of interim decisions in disciplinary proceedings by a simple majority and only the adoption of final decisions on imposition of disciplinary responsibility or termination of proceedings - by 2/3.¹²⁶ Currently, at all stages of disciplinary proceedings, this quorum has been changed, and the Council makes its decision by an absolute majority of members instead of 2/3.¹²⁷

Disciplinary Proceedings against judges is one of the key issues which must be deliberated by a body consisting both of judge and non-judge members.¹²⁸ The importance of judge members contributing to such a process is highlighted by international organizations.¹²⁹ Decreasing quorum requirements in the Council, for disciplinary proceedings against judges furthers the leverage of judge members of the Council and leads to loss in public trust of the disciplinary proceedings altogether. This is exacerbated additionally by the fact that the Council has been operating without non-judge members for over 5 years.¹³⁰

It is important that the final decision on disciplinary responsibility is taken by 2/3 and only the consent of the judicial members is not enough.

In the reporting period, 205 complaints were submitted to the inspector's office, however, 66 complaints from 2020 and 69 complaints from 2021 are also under review by the inspector's office.¹³¹

Out of 205 complaints, disciplinary proceedings were terminated in 31 cases, as the complaint concerned the legality of the act issued by the judge.

Most of the complaints submitted to the Office of the Independent Inspector were related to the substantial violation of the deadline established by the procedural law by the judge for an unfair reason. 84.4% of the complaints concerned judges of the first instance. 50.25% of the complaints are civil cases.

As it is clear from the letter, 289 cases prepared in 2020-2022, which need to be discussed at the Council meeting, have been sent from the office of the Inspector of the Council of Justice.

¹²⁴ Ibid.

¹²⁵ High Council of Justice of Georgia, Independent Inspector Service, letter No. 16/4170-03-o of January 17, 2023.

¹²⁶ Nozadze N. Monitoring Report of the High Council of Justice No. 9, Georgian Young Lawyers' Association, Tbilisi, 2021, p. 30, website of the Georgian Young Lawyers' Association, available at: <https://cutt.ly/QA5FWMf>, updated: 23.01.2023.

¹²⁷ Article 758, Paragraph 1 of the Organic Law of Georgia on Common Courts.

¹²⁸ "Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers", UN Human Rights Council, 16 July 2020, available at: <https://documents-dds-ny.un.org/>, updated: 26.01.2023.

¹²⁹ "Kyiv Recommendation on Judicial Independence in Eastern Europe, South Caucasus and Central Asia", OSCE official website, 23 June 2010, para. 1.9, available at: <https://www.osce.org/>, updated: 26.01.2023.

¹³⁰ Khukhia Tamar, Myers Seth, 2021 Changes to the Organic law "On Common Courts" – In the prism of International law and best practice, Georgian Young Lawyers' Association, 16 January 2023, available at: <https://tinyurl.com/bdh522e8>, updated: 25.01.2023.

¹³¹ High Council of Justice of Georgia, Independent Inspector Service, letter No. 16/4170-03-o of January 17, 2023.

During the reporting period, the Council of Justice held 2 disciplinary sessions. At these meetings, the inspector's office handed over 128 disciplinary conclusions for consideration. The Council made 115 decisions on the termination of disciplinary proceedings. The Board shared all the recommendations made by the Inspector regarding the termination of the disciplinary proceedings. And out of 23 conclusions, which were related to the initiation of disciplinary proceedings against the judge and the confiscation of explanations, in 8 cases the Council of Justice agreed with the inspector's conclusion and disciplinary proceedings were initiated against the judge. In 15 cases, due to the absence of the appropriate quorum (majority of the full composition), the disciplinary proceedings were terminated.

In one case, the Council of Justice made a decision to disciplinary action against a judge for obstructing the implementation of disciplinary proceedings.¹³²

During the reporting period, the Council did not make a decision to suspend the review of the complaint, nor did it instruct the inspector to conduct an additional investigation.

Statistics show that despite the high number of complaints, the disciplinary mechanism is not an effective mechanism. In disciplinary proceedings, it is important to consider the complaint within the established period. Since, on the one hand, it is related to the expectation of the society, and on the other hand, to the interest of the judge himself/herself, to finish the case on time, since the protracted disciplinary proceedings may turn into an effective lever of pressure on the individual judges. Therefore, the Council must ensure compliance with the time limits set for the review of the complaint.

6.4. Transparency of Ddisciplinary Proceedings

The process of disciplinary proceedings is confidential.¹³³ Taking this into account, the timely publication of statistics (number of complaints, types of misconduct, etc.) by the inspectorate is of even greater importance. In this regard, GYLA positively evaluates the efficiency of the inspector's service.

No one is using the positive legislative change that gave the judge the right to require the Council (in addition to deliberations and decision-making procedures) to disclose the sessions of the Disciplinary Board and Chamber at which his case was heard. Since the implementation of the change, no one has taken advantage of this opportunity. During the reporting period, the judge was not asked to make the hearing public. Nevertheless, the existence of this entry in the law should be evaluated positively, since it may be an important lever against those judges who, due to different views, maybe the objects of punishment by the Council.

According to the legislation, the decisions made during the disciplinary proceedings are sent to the author of the complaint (statement) and the relevant judge within 5 days.

¹³² Ibid.

¹³³ Article 75⁴ of the Organic Law of Georgia on Common Courts.

7. ORGANIZATION AND TRANSPARENCY OF THE COUNCIL

7.1. Publishing the Session Date and Agenda in Advance

The Council held 33 sessions during the reporting period.¹³⁴ Information about the session is published on the website the day before, mostly during non-working hours. The Council regularly violated the requirements of the legislation regarding the publication of the meeting date and agenda 3 working days in advance.¹³⁵ The postponement of the Council meetings was also problematic in previous years, however, during the reporting period, it took on an intense character. The postponement of the sessions and the beginning of the session hours has become systematic.¹³⁶ Only two sessions were held from June 2 to June 27. During this period, the date of the session was changed 9 times. From October through January, the session was scheduled 31 times, 11 times if it was actually held and it was postponed 20 times.

It should be emphasized that information about the postponement is not posted on the website of the Council, and it is automatically replaced by a new date.

GYLA and other monitoring organizations are trying to obtain information about the postponement of the Council meeting by communicating with the staff of the Council, but they often do not have information until the last minute. Consequently, the monitors have to wait for a long time while waiting for the session to be held.¹³⁷

The Council changed the positive approach it had established, which meant publishing agenda items with small explanatory texts (see the photo (in Georgian)). As a result, today it is still problematic to formulate issues in the agenda of the session in a general form, for example, “organizational issues”, or “current issues”.¹³⁸ In many cases, it is impossible to guess the content of the issue under discussion. A vague record of initiated issues and multiple adjourned meetings raise reasonable suspicions that the Board prefers to discuss important issues behind closed doors. Such practice significantly complicates the work of monitoring organizations and has a negative impact on the level of accountability and transparency of the Council’s activities. **GYLA believes that the old practice should be restored so that the public has the opportunity to receive information in advance about the topics discussed at the meeting.**

GYLA has repeatedly appealed to the Council to ensure that Council meetings are telecasted in the public interest.¹³⁹ This would have made it possible to monitor the issues under discussion in real-time without going to the site, but the Council did not do this. **It is important that the meetings of the Council are broadcasted in live mode, which will give any person the opportunity to follow the proceedings of the meetings.**

¹³⁴ High Council of Justice Letter №57/4171-03-O, 30 January 2023.

¹³⁵ Paragraph 4 of Article 49 of the Organic Law of Georgia on Common Courts.

¹³⁶ A session scheduled for May 17th was postponed to May 18th, but it did not take place and was subsequently postponed again. The hour for the May 19th session was changed from 2pm to 5pm. In the end, the session was not held. Similarly, a May 30th session was postponed, first to May 31st and then to June 1st.

¹³⁷ For example the meeting on November 30, which was scheduled for 14:30, began 5 hours later at 19:30.

¹³⁸ See Minutes of the meeting of the Council of November 30, 2022.

¹³⁹ Letter of the Georgian Young Lawyers’ Association dated April 8, 2020 No. G-04/51-20.

1. მიმდინარე საკითხები

მომხსენებელი: საქართველოს იუსტიციის უმაღლესი საბჭოს მდივანი ნიკოლოზ მარსაგიშვილი

2. „ბავშვის სასარგებლოდ ალიმენტის საერთაშორისო გადახდევინებისა და ოჯახის რჩენის სხვა ფორმების შესახებ“ ჰააგის 2007 წლის 23 ნოემბრის კონვენცია, „რჩენის ვალდებულების საკითხებზე გამოსაყენებელი სამართლის თაობაზე“ 2007 წლის 23 ნოემბრის ოქმი და გამომდინარე კანონპროექტები

მომხსენებელი: საქართველოს იუსტიციის უმაღლესი საბჭოს მდივანი ნიკოლოზ მარსაგიშვილი

3. იუსტიციის უმაღლეს სკოლასთან დაკავშირებული საორგანიზაციო საკითხები

მომხსენებელი: საქართველოს იუსტიციის უმაღლესი საბჭოს მდივანი ნიკოლოზ მარსაგიშვილი

The Image above shows an example of a day's agenda on the High Council of Justice Website. The information provided is not adequate as only vague description is provided.

Text Translated from Top to bottom:

Georgia High Council of Justice

Agenda – 18:00, 18 October, 2022

1. Ongoing Topics

Speaker: Georgia High Council of Justice Secretary Nikoloz Marsagishvili

2. “Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance” and subsequent bills of legislation

Speaker: Georgia High Council of Justice Secretary Nikoloz Marsagishvili

3. Organizational issues related to the High School of Justice

Speaker: Georgia High Council of Justice Secretary Nikoloz Marsagishvili

7.2. Preparation of Sessions

According to regulations, the board secretary prepares the meetings and ensures the timely delivery of materials to the members, although there is no mention of who sets and approves the agenda.¹⁴⁰ Also, the secretary sends documents to the Council as intended,¹⁴¹ but the deadline for distributing the materials related to the discussed issues is not defined. Documents submitted to the Council are not automatically sent to members.

¹⁴⁰ Regulation of the High Council of Justice of Georgia, Article 26, Paragraph 2, Sub-paragraph “d”.

¹⁴¹ Ibid, subparagraph “g”.

Another problem is that the documents submitted to the Council are not automatically sent to members. This prevents them from demanding to include this or that issue in the agenda at their own discretion. **With 5 non-judicial member seats vacant in the Council, there is hardly any debate in the session. The speaker presents the issue, and the Council members unanimously support it.**

To overcome these challenges, it is necessary for the Council's regulations to take into account: the deadline for the Secretary of the Council to transfer to other members those statements and projects that are planned to be discussed at the next meeting; The procedure for transferring a copy of any document submitted to the Council to members; Procedures for drawing up the agenda and the person responsible for it; The right of a member of the Council to request the removal or addition of this or that issue from the agenda.

7.3. Management of the Session

The session of the Council is chaired by the chairman or the secretary,¹⁴² although a number of procedures related to the conduct of the meeting are still not in order. In order to express his/her opinion, the member of the Council is obliged to designate the chairman of the session, who determines the order of the speakers. The regulations do not specify how much time each member of the Council is given to express their position, how many times they can speak on the same issue, and how many minutes a member should be given to make a statement. Disorganization of these issues often leads to a discussion of topics beyond the substantive discussion, which prevents effective and business-like discussion on specific topics. **It is necessary to organize in detail the procedure of each member of the Council expressing an opinion on the issue.**

The regulation also does not adequately regulate the possibility of inviting outsiders and the audience to speak at the session, **as the recommendation on defining the manner of expressing opinions by the audience at the session was not implemented.**¹⁴³

7.4. Publication of the Minutes and Decisions of the Sessions

Another component of transparency is the publication of the minutes and decisions of the Council sessions. According to the regulations, the minutes must reflect: who convened the session, the date of the session, the time and duration of the session, the names of the participants and the chairman, the content of the speeches of the speaker and participants in the debate, the arguments expressed, the decision made and also who voted for what.¹⁴⁴

Since 2018, a special audio system has been used to produce minutes, however, audio minutes cannot fully reflect the reality in the meeting hall. Session notes are published in low quality and in certain cases, it is not clear what topics were discussed. Occasionally, only a part of the topics is noted.

The list of decisions, which must be posted on the website, is provided by the law.¹⁴⁵ In accordance with the regulations, they must be uploaded to the official website no later than

¹⁴² Paragraph 16 of Article 47 of the Organic Law of Georgia on Common Courts.

¹⁴³ Nozadze N. Shermadin O. Monitoring Report of the High Council of Justice No. 7, p. 68.

¹⁴⁴ Paragraph 3 of Article 20 of the Regulation of the High Council of Justice of Georgia.

¹⁴⁵ Paragraph 4 of Article 49 of the Organic Law of Georgia on Common Courts.

5 days after receiving them, and consolidated versions - no later than 14 days after the change.¹⁴⁶ The issue of non-publishing of Council decisions online still remains. As per the rules of procedures of the Council, its decisions must be published on its official website no later than 5 days after being decided. These dates are almost always disregarded. For example, a decision taken on a 27th June session was not uploaded even 1 month after. During the reporting period, acts related to the prolongation of duties for 3 judges, as well as review notes on the appointed judges from 7th March have yet to be uploaded.

It is important that the Council ensures high-quality recording of meeting notes and subsequent publishing, along with any acts it may have enacted in due time. During the reporting period, meeting notes from sessions held on May 10, November 30, 12 and December 29 are still not accessible.

The search system of the website of the Supreme Council of Justice works with errors, which complicates the process of searching for specific decisions or other documents. The problem could not be solved even by launching the new website of the Council, which is working in test mode.

¹⁴⁶ Article 18 of the Regulations of the High Council of Justice of Georgia.

RECOMMENDATIONS

As a result of analysing the results of the monitoring, GYLA believes that it is important to take into account the following recommendations in the way of creating an independent and transparent judicial system.

The Parliament should ensure by means of changes in normative acts:

- Abolition of Chairmanship quotas in the Council;
- In order to lessen leverage of the Council regarding appointments, establishment of gender, regional and court instance quotas (the latter is defined by legislation, although it needs to be clarified);
- Appointment of non-judicial members of the Council with mutual (government and opposition) support. Establishment of gender quotas;
- Appointment/lifetime reappointment of judges of first and second instance courts by 2/3 votes of judicial and non-judicial members;
- Reduction of the role of the Council in the process of selecting members of the Independent Council of School, giving the right to elect the chairman to the Independent Council itself;
- Electability of chairpersons (in courts of first and second instance);
- Abolition of the administrative positions of chairpersons of the court panel and the chamber (acting in their duties);
- Determination of 2/3 as the number of votes required for the appointment of the inspector;
- Justification of Council decisions on refusal to initiate disciplinary proceedings;
- Adopting 2/3 of the Council's decisions on initiation and termination of disciplinary proceedings.

The Council of Justice shall ensure:

- Specifying the justification for the appointment of judges of the first and second instances in such a way that the interested person receives comprehensive information about good faith of the judge;
- Conducting the process of transfer and promotion of judges competitively in a transparent manner;
- Establishing transparent procedures and rules for the appointment and nomination of chairpersons;
- During collegial consideration of the case, selection of all three judges through an electronic system, in accordance with the rule of random distribution, and in narrow specialization - distribution by casting lots;
- Perfecting rules for the selection of the inspector: determination of the selection criteria, interviewing, candidate evaluation and justification rules;
- Consideration of disciplinary complaints within the time limits established by law;

- Publication of information about the sessions and the agenda in advance, within the term established by law;
- Development of rules for transferring a copy of any document submitted to the Council to the members of the Council, the procedure for their taking a position, drawing up the agenda of the meeting, removing and adding an issue from there, inviting third parties to the meeting and expressing opinions by the attendees;
- Broadcasting of Council sessions online.