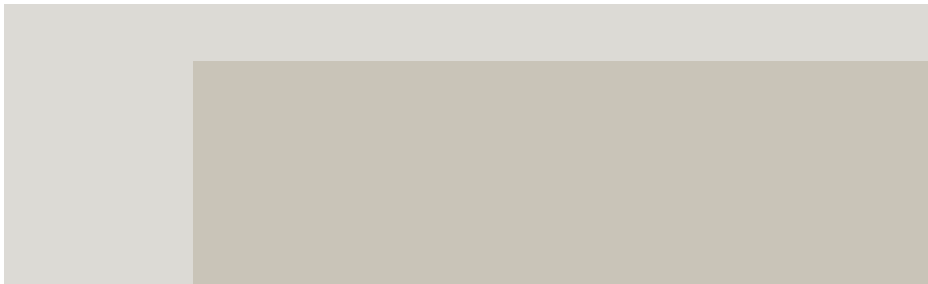




**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**



SUPREME COURT PLENUM MONITORING REPORT



**SUPREME COURT PLENUM
MONITORING REPORT
(2021-2022)**

**Tbilisi
2023**

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1. RESEARCH SUBJECT AND OBJECTIVES

The Plenum of the Supreme Court is a permanent structural unit of the cassation instance. Although according to the Constitution, the independence and impartiality of the common courts should be ensured by the Supreme Council of Justice (Council),¹ the Plenum of the Supreme Court also has powers related not only to the third instance but to the Judiciary as a whole.

GYLA has been monitoring the Plenum since 2020. In the previous report, the norms governing the activity of the Plenum have been discussed in a legal-comparative context. As part of the research, shortcomings were identified, and appropriate recommendations were prepared. This document covers the period from January 2021 to December 2022. In terms of legislation, nothing has changed during the reporting period, although the context has changed, so Plenum monitoring has not lost its relevance. In this period of time, the Supreme Court became filled fully staffed. As of today, the court works with 28 judges.²

The criticism that followed the 2019 appointments did not yield results. The July 2021 appointments were deemed as biased by international organizations.³ The process was preceded by the so-called “Charles Michel Agreement”, which obliged signatories to suspend “all current appointment procedures” in the Supreme Court until the implementation of “ambitious court reform”.⁴ However, the ruling party did not take this into account and on July 12 appointed 6 new judges.⁵ The European Union called this a “lost opportunity” of the Georgian authorities.⁶ A statement from the US Embassy, which was preceded by calls not to appoint the judges,⁷ said the decision of parliament was extremely disappointing.⁸

On December 1, 2021, the Parliament of Georgia appointed a further 4 judges to their positions.⁹ This process has not remained beyond criticism either. The EU again re-

¹ Constitution of Georgia, Article 64.

² July 12, 2021: Levan Tevzadze, Revaz Nadaraia, Lasha Kochiashvili, Giorgi Gogiashvili, Bidzina Sturua, Gocha Abuseridze; December 01, 2021: Tamar Okropiridze, Tea Dzimistarashvili, Nino Sandodze, Genadi Makaridze; December 19, 2021: Amiran Dzabunidze.

³ Tamar Khukhia, Georgian Justice Reform - A Missed Opportunity, Blog of the Georgian Young Lawyers' Association, 16 December 2021, available at: <https://gyla.ge/ge/post/qartuli-martlmsajulebis>, accessed: 23.01.2023.

⁴ President of the European Council Charles Michel publishes new proposal made today to Georgian political parties, website of EU, April 18, 2021, available at: <https://www.eeas.europa.eu/delegations/georgia/president>, accessed: 17.01.2023.

⁵ Parliament appointed 6 judges to the Supreme Court for life, Radio Tavisupleba, July 12, 2021, available at: <https://www.radiotavisupleba.ge/a/31354537.html>, accessed: 17.01.2023.

⁶ Appointment of judges and statement from the European Commission, First Channel, 14 July 2021, available at: <https://1tv.ge/video/mosamartleebis-danishvna-da-evrokomiis-ganckhadeba/>, accessed: 17.01.2023.

⁷ US ambassador urges “Georgian Dream” to abide by terms of April 19 agreement, Voice of America, June 19, 2021, available at: <https://www.amerikishma.com/a/usa-and-eu-slam-high>, accessed: 17.01.2023.

⁸ US Embassy: It was necessary to suspend the process of appointing Supreme Court judges, Radio Tavisupleba, 15 July 2021, available at: <https://www.radiotavisupleba.ge/a/31360100.html>, accessed: 17.01.2023.

⁹ The parliament has elected four judges of the Supreme Court, the Parliament of Georgia, December 1, 2021, available: <https://parliament.ge/media/news/parlamentma>, accessed: 17.01.2023.

minded the Government of Georgia that assistance to Georgia will depend on progress related to key reforms, including judicial.¹⁰ According to the US ambassador, it is not clear why speed is needed, especially in conditions when there is an agreement on a significant and comprehensive judicial reform.¹¹ It was against this background that the plenary session of the Supreme Court was filled step by step. The high public interest, together with the powers of the Plenum, makes monitoring of the collegial body extremely important.

2. RESEARCH METHODOLOGY, TOOLS AND SOURCES

The research paper is based on doctrinal and non-doctrinal methods of research. According to the doctrinal method, the normative framework, legislative by-laws and secondary sources related to these acts are studied. As for the non-doctrinal method, the report highlights the problems related to the activity of the Plenum (problem research) and proposes ways to eliminate these shortcomings (reform research).

GYLA used the following tools and sources for research:

- Legislative acts;
- Information received through official correspondence, as well as information posted on official websites;
- Information obtained as a result of monitoring plenary sessions.

Regarding specific issues, best practices and conclusions of international organizations have been studied.

3. KEY FINDINGS

Based on research, the following findings are identified:

- The presence of a court of appeals chairpersons in the Plenum is not based on rational arguments;
- It is not pre-determined how long after the request of the judges, the Plenum session should be scheduled;
- Plenary sessions are usually open, although the plenary has wide discretion to close the session;
- The Plenum has no obligation to post information about its sessions in a reasonable period of time. In each individual case, the chairman determines this. Furthermore, the agenda is usually very general;

¹⁰ EU on judges: EU aid to Georgia depends on progress on reforms, December 2, 2021, Tabula, available at: <https://tabula.ge/ge/news/677086-eu>, accessed: 17.01.2023.

¹¹ Degan: Now 4 more judges appointed for life in non-transparent process, December 2, 2021, tabula, available at: <https://tabula.ge/ge/news/677087>, accessed: 05.12.2022.

- The minutes of the Plenum session are not published on the website. In some cases, information is provided only in the form of a press release, which does not create a complete picture;
- There is no obligation to make an audio recording of the sessions and it depends only on the goodwill of the Plenum to do so;
- The law does not specify how long in advance the members of the Plenum should be informed about the session and when they should be provided with the necessary documentation for making a decision. Established practice is inconsistent;
- All decisions are made with the same quorum. Differences between the values of powers do not affect the majority required for decision-making;
- The Supreme Court does not have separate rules of procedures, which is why important procedural issues of the work done by the plenary session remain unregulated;
- Only the chairman of the Supreme Court has the right to present a candidate for membership of the Constitutional Court, as well as to the Plenum of judges in the Grand Chamber;
- Although the Plenum does not have procedural powers, it has the possibility to refer to the Constitutional Court;
- The Plenum's authority to make recommendations to the President and the Government regarding international agreements goes beyond its institutional role;
- The Plenum determines the possibility of granting allowances to judges, which is against international standards and threatens the independence of judges.

4. COMPOSITION OF THE PLENUM

The Plenum consists of the chairman of the Supreme Court, deputy chairman, judges of the Supreme Court and chairmen of the Court of Appeal.¹²

Despite criticism of the presence of appellate judges on the Supreme Court, the legislative record remains intact.¹³ It should be noted that, as in the previous reporting period, the chairman of the Tbilisi Court of Appeal did not attend the plenary sessions this time either.

The Plenum of the Supreme Court does not have powers that can in any way apply only to the Court of Appeal. Therefore, it is still unclear the arguments why they could be included in the Plenum.¹⁴ In addition, the chairpersons of the Court of Appeals, in

¹² Law on Common Courts, Article 18, Paragraph 1.

¹³ Tamar Khukhia, Monitoring Report of the Plenum of the Supreme Court, Tbilisi: Young Lawyers' Association, 2021, 8-10.

¹⁴ Ibid.

accordance with the law, participate in all decisions of the plenary session, including those that concern exclusively the Supreme Court, and not the entire system of common courts, which is not allowed. The procedure for appointing a judge of the Supreme Court is different, and accordingly, only the judges of the Court of Third Instance have the legitimacy to decide on matters related to the cassation instance.¹⁵

In accordance with the recommendation of GYLA, the Law on Common Courts should be amended, which will determine the presence of only Supreme Court judges in the Plenum.

5. SUMMONING A PLENARY SESSION

We have to distinguish between the subjects with the authority to schedule the plenary session and to convene it. Only the Chairman of the Supreme Court can single-handedly schedule a session of the Plenum, while the Chairman of the Supreme Court and at least 1/5 of the members of the Plenum have the right to convene it.¹⁶

The legislation leaves open the question of what measures the members of the Plenum should take if the chairman does not call the session despite their request. Also, the procedures are not specified, in what time frame the meeting should be scheduled. **It is important that there is a procedure at the legislative level that would allow members to hold a plenary session.**

In accordance with the Organic Law on Common Courts in Georgia, the Plenum must meet at least once a year.¹⁷ Although in other countries there are legal records that oblige the collegial body to meet more often, in the context of Georgia this need did not arise.¹⁸ During the reporting period, the Plenum of the Supreme Court met 11 times.

6. DECISION-MAKING PROCESS

The Plenum is entitled to discuss the issue if at least two-thirds of Plenum members attend the session.¹⁹ The decision is considered adopted if it is supported by at least two-thirds of the session participants.²⁰

According to the previous report, it was recommended to raise the quorum regarding the appointment of a member to the Constitutional Court. Due to the importance of the proper functioning of the Constitutional Court, as well as the need for trust from the public, it is critical to appoint **persons as judges on whom broad consensus can be reached. Therefore, in this case, GYLA still considers it important that the quorum should be increased to 2/3 of the full composition.**

It is significant that during the reporting period, the Plenum of the Supreme Court made all decisions unanimously.

¹⁵ Tamar Khukhia, named research paper, 8-10.

¹⁶ Law on Common Courts, Article 18, Paragraph 5.

¹⁷ Ibid.

¹⁸ Tamar Khukhia, named research paper, 10.

¹⁹ Organic Law of Georgia on Common Courts, Article 18, Paragraph 4.

²⁰ Ibid.

7. INFORMING THE JUDGES ABOUT THE SESSION AND THE ISSUES TO BE DISCUSSED

According to the legislation of Georgia, it is not established when the member of the Plenum should be informed about the session. In addition, the law does not offer a reservation as to when the relevant materials must be provided to them. The previous report made it clear that there may be cases when the Plenum makes a very important decision, and the members of the Plenum are not informed about it.²¹

The ability to make informed decisions, especially for judges, is very important. According to GYLA, **10 days is the optimal period, the time that should be determined for the preliminary publication of information about the session. This shall be reflected in law. As many days in advance, the agenda should be made public and the members of the Plenum should be provided with relevant documents/information that they may need to make a decision.**

8. PUBLICITY OF THE WORK OF THE PLENUM

8.1. Publicity of the plenary session

A measure of the development of democracy in European states is citizens' awareness of how the judiciary functions in their country and what mediums they have in order to obtain the necessary information about the activities of the courts.²²

The work of the Plenum of the Supreme Court is "general public".²³ Not a single session was closed during the reporting period. However, the wording in the norm "as a rule" allows the Plenum to close the session. Such a precedent took place in the previous reporting period.²⁴ In countries where trust in the judiciary is critically low, there is frequent talk of corporatism, publicity becomes especially important. That is why it is important to define by legislation a specific list of when the Plenum session can be closed.

GYLA believes that the Plenum session can be closed, although a clear list of such cases should be defined.

8.2. Proactive publication of decisions, posting of information, audio recording

On the official website of the Supreme Court, information about the session is usually posted on time.²⁵ This fact should be evaluated positively. As in the previous reporting period, information about the plenary session was always known at least the day be-

²¹ Tamar Khukhia, named research paper, 11.

²² Consultative Council of European Judges (CCJE), Opinion no 7 (2005) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on "justice and society", Strasbourg, 25 November 2005, available at: <https://www.csm.it/documents/46647/0>, accessed: 18.01.2023.

²³ Organic Law on Common Courts, Article 18, Paragraph 7.

²⁴ Tamar Khukhia, named research paper, 12.

²⁵ Information about the sessions was usually published two or more days in advance, although there were some exceptions: the session of January 13, 2022 was announced on January 12, the session of December 10, 2021 was announced on December 9.

fore. Nevertheless, it is necessary that **this issue be regulated by the directive and the term should be extended.**

The agenda is also attached to the information about the session, although it includes only a general entry - "Discussion of organizational issues provided for in Article 18 of the Organic Law of Georgia on Common Courts." This entry is found in the document even when it comes to the salary supplements and when the Plenum meets to determine the composition of the Collegium. **It is important that the agenda is concrete and that the interested person has the opportunity to understand in advance what topics the session will cover.**

In addition to the agenda, it is important to proactively publish the decisions of the plenary session. During the reporting period, the decisions of the Plenum were not published. Although in 2020, in some cases information about the decision was published, the format of this information was problematic. As a rule, the decision was published in the form of a press release, which does not give the party the opportunity to receive comprehensive information.

Most of the sessions were audio-recorded, but it was not possible in the case of two sessions.²⁶ Making an audio recording is not mandatory, this matter depends only on the Supreme Court, and there are no legal guarantees, which is a problem. **It is important that the obligation for an audio recording of sessions is mandated at the legislative level.**

8.3. Information about persons to be appointed by the Plenum

The Plenum makes certain personnel decisions within its powers.²⁷ The most important is the appointment of a member of the Constitutional Court. This year there was no need to debate this issue.²⁸ Full transparency is needed in the process of candidate selection²⁹ so that every citizen has confidence that his/her case will be considered by competent judges.³⁰

In accordance with the recommendation of GYLA, it is necessary to publish information about the candidate 10 days before the session, and a separate stipulation should be made in the legislation.

In addition to the members of the Constitutional Court, the Plenum also appoints other officials as well.³¹ Although the Plenum did not discuss this type of personnel decision during the reporting period, in general, it is necessary to establish the same standard of publicity that exists in relation to the members of the Constitutional Court.³²

²⁶ Sessions of April 15 and 19, 2022.

²⁷ The authority to determine the composition of the chambers and elect the chairmen is not considered.

²⁸ Constitution of Georgia, paragraph 1 of Article 60.

²⁹ Consultative Council of European Judges, on the role of the Council of Justice in the service of society, para. 50, Conclusion #10, Strasbourg, November 21-23, 2007.

³⁰ Ibid.

³¹ Law of Georgia on General Courts, Article 18, Part 2, Subparagraph "h".

³² Ibid, Subparagraph "i".

9. REGULATIONS OF THE SUPREME COURT

For the activity of a collegial body, it is very important that the procedures are clearly laid out. The European Commission for Democracy through Law (the “Venice Commission”), in one of its conclusions regarding the Constitutional Court (although the same opinion can be extended to the Supreme Court) clarifies that documents such as the Regulations complement the practical details of judicial activity and should be developed by the Court itself.³³ Courts should enjoy a degree of autonomy regarding their procedures. They should be able to change them without the intervention of the legislature within the framework of the Constitution and the Law on the Constitutional Court.³⁴ In accordance with the recommendation of the Venice Commission, it is desirable to avoid extensive involvement of the executive branch when adopting judicial regulations of internal activities and procedures.³⁵

As noted in the previous report, the Supreme Court has long spoken about the need for by-laws, but the issue remains open.³⁶ Since the Plenum does not have rules of procedure, many procedural issues remain outside of regulation. For example, it is not regulated what standard of openness the court will operate along and it is up to the discretion of the judges of the Supreme Court. In this direction, good practice was introduced in the Constitutional Court, where the rules of organization and constitutional proceedings, which are not regulated at the level of the organic law and/or the constitution, are determined by the regulations.³⁷

It is necessary for the Supreme Court to adopt regulations and provide more procedural clarity.

10. POWERS AND RESPONSIBILITIES OF THE PLENUM

10.1. Authority to determine the composition/chairmen of structural units

The Supreme Court consists of several structural units: the Plenum, the Grand Chamber, the Chamber of Civil Cases, the Chamber of Administrative Cases, the Chamber of Criminal Cases, the Chamber of Disciplinary Cases, and the Qualification Chamber.³⁸ In accordance with the law, the Plenum elects the composition of the Grand Chamber, as well as elects the chairmen of the chambers and appoints them.³⁹

The composition of the Grand Chamber is determined by at least 12 judges.⁴⁰ The up-

³³ European Commission for Democracy Through Law (Venice Commission), Azerbaijan - Opinion on the Rules of Procedure of the Constitutional Court of Azerbaijan, para. 5-6, Opinion 275/2004, Strasbourg 23 June 2004, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2004\)023-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)023-e), accessed: 18.01.2023.

³⁴ *Ibid*, 9.

³⁵ European Commission for Democracy Through Law (Venice Commission), Opinion on the draft law on the courts of Bosnia and Herzegovina, para. 70, available at: <https://www.venice.coe.int/webforms>, accessed: 18.02.2023.

³⁶ Tamar Khukhia, named research paper, 15.

³⁷ Organic Law of Georgia on the Constitutional Court, Article 3, Paragraph 1.

³⁸ Organic Law on Common Courts, Article 15, Paragraph 2.

³⁹ Paragraph 2 of Article 18 of the Organic Law on Common Courts.

⁴⁰ The Law of Georgia on General Courts, Article 17, Paragraph 2.

per limit is not established.⁴¹ The members of the Grand Chamber can be presented to the Plenum for approval only by the Chairman of the Supreme Court.⁴² Since the upper limit of the number of judges is not established, this gives the chairman the opportunity to fill the chamber only with his/her associates, and not to present candidates he/she does not like to the Plenum at all.⁴³

At this stage, all the judges of the Supreme Court are part of the Grand Chamber and the cases are distributed among them electronically. However, it should not only depend on the goodwill of the chairman. **In order to increase the quality of self-government, all members of the Plenum should have the right to nominate a candidate at the legislative level.**

The Plenum elects the members and chairmen of the chambers of the Supreme Court based on the nominations of the members.⁴⁴

During the reporting period, Levan Mikaberidze was elected as a member of the Supreme Council of Justice, and since he held the position of judge of the qualification chamber in the Supreme Court, due to legislative incompatibility, it became necessary to transfer him to another chamber.⁴⁵ Giorgi Mikautadze presented the candidacy of Vladimir Kakabadze to the Plenum to fill the vacant position of the Qualification Chamber. The Chairman of the Supreme Court noted at the session that it would be good for the balance to appoint a judge from the Administrative Chamber, however, the judges of the Administrative Chamber did not express this desire.⁴⁶ Vladimir Kakabadze was unanimously appointed to the position.⁴⁷

At the session of July 15, 2021, the judges appointed by Parliament were distributed among the chambers.⁴⁸ In accordance with the practice established in the Supreme Court, at the first stage, the judges themselves are asked in which chamber they wish to continue working. At the session, Gocha Abuseridze, Giorgi Gogiashvili and Bidzina Sturua were appointed to the Chamber of Administrative Affairs.⁴⁹ Levan Tevzadze in the Criminal Chamber, Revaz Nadaraya and Lasha Kochiashvili in the Civil Chamber.⁵⁰ At the same session, on his initiative and with the support of the Plenum, Aleksandre Tsuladze moved from the Administrative Chamber to the Civil Chamber.⁵¹

On December 10, 2021, the Plenum was filled with four more new judges, Tea Dzimistashvili was appointed to the Civil Chamber, Tamar Okropiridze and Gennadi Makaridze were appointed to the Administrative Chamber, and Nino Sandodze to the Criminal Chamber.⁵²

⁴¹ Ibid.

⁴² Law on General Courts, Article 18, Section 2, subparagraph a.

⁴³ Khukhia Tamar, named research paper, 17.

⁴⁴ Law on General Courts, Article 18, Section 2, subparagraph b.

⁴⁵ Letter of the Supreme Court of May 11, 2022, Np-456-22.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

On January 13, 2022, Amiran Phabunidze joined the Supreme Court and was appointed to the Civil Chamber by the decision of the Plenum.⁵³

On April 15, 2022, the Plenum discussed the composition of the Disciplinary Chamber. The three-year term of the Chairman of the Disciplinary Board, Zurab Zabambashvili, has expired.⁵⁴ Levan Mikaberidze nominated Revaz Nadaraya as a candidate for membership in the Disciplinary Chamber. The latter agreed to consider candidacy.⁵⁵ No other candidate was nominated and Revaz Nadaraya was unanimously elected.⁵⁶

At the same session, the issue of electing the chairman of the Chamber was on the agenda. This time Giorgi Mikautadze named Revaz Nadaraya as the chairman (on the grounds that other members of the collegium had expired half of their term of office). The decision was made unanimously.⁵⁷

At the session of October 13, 2022, Miranda Eremadze resigned from the position of a member of the Disciplinary Chamber, which she held on December 17, 2019.⁵⁸ Accordingly, her term was due to expire in December 2022. Levan Tevzadze presented Gocha Abuseridze's candidacy to the Plenum.⁵⁹ The chairman of the Supreme Court asked his colleagues if they would like someone else to take the position. He received a negative answer, subsequently, Gocha Abuseridze remained the only candidate. He was elected unanimously by the Plenum.⁶⁰

Along with the election of Gocha Abuseridze, Revaz Nadaraya, the chairman of the disciplinary board, stated that it would be fair if the chairman was re-elected.⁶¹ Gocha Abuseridze had previously refused to be the Chairman, and the Plenum elected Aleksandre Tsuladze as the Chairman of the Disciplinary Board.⁶²

It is interesting that it was due to the decision of Gocha Abuseridze that the conference of judges was held, which elected two new members of the High Council of Justice. Along with Gocha Abuseridze, Giorgi Goginashvili also left the council ahead of schedule.⁶³

At the meeting of December 16, 2022, the issue of the expiration of the term of office of Mamuka Vasadze was discussed in the Qualification Chamber.⁶⁴ Merab Gabinashvili

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Miranda Eremadze Judge of the Chamber of Civil Affairs, Supreme Court, available at: <https://www.supremecourt.ge/ka/judge/miranda-eremadze>, accessed: 18.01.2023.

⁵⁹ Supreme Court letter of October 27, 2022 Np -1271-22.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Coalition Responds to the XXXI Conference of Judges, Coalition for an Independent and Transparent Justice, October 25, 2022, Available at: http://coalition.ge/index.php?article_id=275&clang=0, accessed: 18.01.2023.

⁶⁴ Supreme Court letter of December 19, 2022, Np-1455-22.

nominated Mamuka Vasadze again.⁶⁵ As a result of voting, the Supreme Court Plenum unanimously elected Mamuka Vasadze to the position.⁶⁶

10.2. Policy-oriented Powers

In addition to legal powers, the Supreme Court also possesses political competencies to a certain extent. Political competencies in this case are powers that are not directly related to the administration of justice but influence the functioning of the judiciary and its policy formation.⁶⁷

Among these competencies, we may consider the right of the Plenum to appoint three members of the Constitutional Court,⁶⁸ to file a submission on a specific issue in the same court,⁶⁹ as well as to address the president or the government with a recommendation regarding the conclusion of international agreements.⁷⁰

Appointment of judges of the Constitutional Court

In the previous reporting period, the Supreme Court Plenum appointed two members to the Constitutional Court.⁷¹ There was no need for this in 2021-22.

There are issues in the procedures for appointing a judge of the Constitutional Court, the reflection of which in the legislation would change the legal reality for the better.

As of today, the candidate is nominated by the Chairman of the Supreme Court.⁷² However, there is no need to exclusively grant him/her this authority.⁷³ Every judge should be able to nominate a candidate. Also, in order to support a consensus-oriented approach, the quorum should be increased.

In order to make a decision based on high legitimacy and consensus, it should be necessary not to agree with 2/3 of the participants, but with 2/3 of the members of the committee.

Authority to File a Submission to the Constitutional Court

The Plenum of the Supreme Court has the right to refer to the Constitutional Court.⁷⁴ The collegial body did not use this authority after 2014.⁷⁵

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Tamar Khukhia, named research paper, 18.

⁶⁸ Organic Law on Common Courts, Article 18, Paragraph 2, Subparagraph c.

⁶⁹ Ibid, Subparagraph d.

⁷⁰ Ibid, Subparagraph f.

⁷¹ Tamar Khukhua, named research paper, 15.

⁷² Organic Law on the Constitutional Court of Georgia, paragraph 2 of Article 7.

⁷³ Ketevan Kukava and others, Analysis of the Institutional and Legal Framework of the Supreme Court of Georgia, Tbilisi: Young Lawyers' Association and Institute for the Development of Freedom of Information, 2020, 48.

⁷⁴ Organic Law on Common Courts, Article 18, Paragraph 2, Subparagraph d.

⁷⁵ Ketevan Kukava and others, named research paper, 62.

In accordance with the Constitution of Georgia, the Constitutional Court will consider the issue of the constitutionality of a normative act, which should be used by the court when considering a specific case.⁷⁶ According to this record, **only the court hearing a particular case has the right to submit. And the Plenum does not have the authority to administer justice. It does not hear cases, therefore this competence of it is unconstitutional and should be abolished.**

In addition to being unconstitutional, it is technically impossible to exercise this authority at this stage. The record of the Law on General Courts refers to Article 89 of the Constitution of Georgia, which does not exist at all after the amendments made to the Constitution.⁷⁷

Authority to address by recommendation

The Plenum has the right to address the government or the president on matters within the competence of the Supreme Court in connection with the conclusion of international agreements.⁷⁸ It has not used this right since 2012.⁷⁹ However, information about its use is not available before that.⁸⁰

Acknowledging the need for this authority, within the framework of the previous report, when conducting interviews with experts in the judicial field, two groups were distinguished, one of them thinks that it is not necessary, and the other group believes that the Plenum can have this function on some issues.⁸¹

According to GYLA, since the Supreme Council of Justice exists in the country, it should exercise similar powers. According to the constitution, it is the Supreme Council of Justice that ensures the effectiveness of the justice system.⁸²

10.3. The Supreme Court as a doctrinal instance - the role of the plenary

One of the main purposes of the cassation instance is the definition of legal norms and the formation of uniform judicial practice. Based on this function, the Supreme Court should take care not only to solve specific problems of justice but also to develop legal thinking.⁸³ From this point of view, the authority of the Plenum acquires special importance:

- To create an official printing body of the Supreme Court. to appoint its editor and editorial board on the recommendation of the chairman of the Supreme Court;

⁷⁶ Constitution of Georgia, article 60, paragraph 4, sub-paragraph “c”.

⁷⁷ Giorgi Davituri and Giorgi Davitashvili, Practical Guide to Using the Common Court’s Constitutional Submission Tool, Tbilisi: Universal, 2021, 45.

⁷⁸ Law of Georgia on Common Courts, Article 18, paragraph 4, sub-paragraph “f”.

⁷⁹ Tamar Khukhia, named research paper, 19.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Article 64 of the Constitution of Georgia.

⁸³ Tamar Khukhia, named research paper, 20.

- To establish the Scientific Advisory Council of the Supreme Court, to approve its constitution, composition and learned secretary;
- Implement such structural arrangements which will strengthen the analytical team.

In 2020, the judges drew attention to the existing problems in one of the sessions of the Plenum.⁸⁴ They talked about cases of duplication of powers and the quality of analytical documents. In addition, the issues of reorganization⁸⁵ were discussed and its plan was presented, against which there were many questions and criticisms. The Plenum did not renew the discussion on this even in this reporting period, and it has not returned to this issue until today. **It will be welcome if the Plenum activates the work in this direction and the involvement of judges is not limited to one session.**⁸⁶

10.4. Administrative Power

Determining the amount of the monthly allowance of the member of the Supreme Court

The Plenum of the Supreme Court determines the amount of the monthly allowance of the official salary of the member of the court.⁸⁷

Obviously, the remuneration of judges should be decent. According to the basic principles of the United Nations, each country is obliged to allocate sufficient resources to enable the judge to perform his/her functions.⁸⁸

According to the conclusions of the Venice Commission, bonuses and other non-financial benefits that contain discretionary elements should be phased out.⁸⁹ In accordance with the same conclusion, the amount of remuneration should be determined by taking into account the existing social conditions in the country along with other criteria.⁹⁰ According to the OSCE/ODIHR assessment, in the long term, bonuses and privileges should be abolished, and salaries should be increased to a level that meets the needs of judges in terms of an adequate standard of living and adequately reflects the importance of their profession.⁹¹ If a system of bonuses and privileges is in force, they should

⁸⁴ Ibid.

⁸⁵ The order of the Chairman of the Supreme Court of Georgia of July 20, 2020 “On determining the plan of measures to be implemented due to the reorganization of the Supreme Court of Georgia”.

⁸⁶ Tamar Khukhia, named research paper, 20.

⁸⁷ Organic Law of Georgia on Common Courts, Article 18, Paragraph 2, Sub-paragraph “j”.

⁸⁸ United Nations, UN Basic Principles on the Independence of the Judiciary, Principle 7, 06 September 1985, available at: <https://www.ohchr.org/en/instruments>, accessed: 18.01.2023.

⁸⁹ European Commission For Democracy Through Law (Venice Commission), Report On The Independence Of The Judicial System Part I: The Independence Of Judges, para. 51, Study No. 494 / 2008, Strasbourg, 16 March 2010, available at: [https://www.Venice.Coe.Int/Webforms/Documents/?Pdf=Cdl-Ad\(2010\)004-E](https://www.Venice.Coe.Int/Webforms/Documents/?Pdf=Cdl-Ad(2010)004-E), accessed: 18.01.2023.

⁹⁰ Ibid, 46.

⁹¹ OSCE Office for Democratic Institutions and Human Rights, Max Planck Minerva Research Groupon Judicial Independence, Kyiv Recommendations On Judicial Independence In Eastern Europe, South Caucasus And Central Asia, Kyiv, 23-25 June 2010, available at: <https://www.osce.org/files/f/documents/7/4/75508.pdf>, accessed: 18.01.2023.

be granted based on pre-defined criteria and transparent procedures. The presiding judge of the court shall not have the right to participate in the decision-making process regarding the bonuses or privileges.⁹²

As identified in the findings of the previous report, the record is problematic in several areas:

1. There are no established objective criteria, on the basis of which the appropriateness and quantity of the allowances are determined. And the lack of a control mechanism increases the risk of unfair distribution of state resources;
2. In view of the wide discretion of the plenum, the presence of allowances may threaten the independence of judges.

At the meeting of December 16, 2022, the Plenum discussed the issue of 2022 bonuses, but this time it did not lead to a discussion. No questions were asked and no remarks were made during the session.

GYLA believes that granting this authority to the Plenum is inappropriate and this should be regulated by legislation.

11. RECOMMENDATIONS

- The chairmen of the Court of Appeal should be excluded from the composition of the Plenum and it should be staffed only by Supreme Court judges;
- In the case of convening a session by the members of the Plenum, the reasonable term of the appointment of sessions should be determined by the chairman;
- Plenum members and the public should be informed about the date and agenda of the session 10 days in advance;
- To determine a narrow list of cases when it will be permissible to close the plenary session;
- To determine the obligation to publicly place the minutes of the plenary session, make an audio recording and publish them;
- The number of votes needed to elect a judge of the Constitutional Court should be increased from 2/3 of those present to 2/3 of the list. All members of the Plenum shall have the right to nominate a candidate; It is necessary to publish information about the candidate 10 days before the session, and a separate reservation should be made in the legislation.
- Plenum regulations should be developed to regulate procedural issues;
- All members of the Plenum must have the right to nominate a judge to the Grand Chamber;

⁹² Ibid.

- The Plenum should no longer have the authority to refer to the Constitutional Court;
- The right of the Plenum to refer to the government or the president regarding the conclusion of international agreements on issues falling under the competence of the Supreme Court should be transferred to the Council;
- The Plenum should no longer have the authority to determine the allowances, and any remuneration should be received by the judge in accordance with the procedures and criteria prescribed by law.