



Monitoring Report of the High Council of Justice

№8



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

Georgian Young Lawyers' Association

MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE №8

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I. RESEARCH METHODOLOGY

Research Objectives and Subjects

The High Council of Justice of Georgia (hereinafter – the “Council”, HCoJ) is a constitutional body of the common courts system.¹ Its goal is to ensure the independence and efficiency of the common courts, to appoint and dismiss judges, and to perform other tasks.² Practically, the Council fully administrates the judiciary system. Following report analyzes the work of the Council. The Georgian Young Lawyers’ Association (hereinafter GYLA) has been involved in the preparation of monitoring reports on the Council since 2012, through which the organization annually assesses its activities and identifies positive and negative trends in its work. Through this framework, GYLA tries to promote enhancemet of the efficiency of the institute, raise the standards of transparency and impartiality of the justice system.

Research Tools and Sources

The report covers the period from January 1, 2019 to January 1,s 2020.

The following sources have been used in the report:

- Existing normative framework of Georgia, including legislative acts and by-laws;
- Information obtained as a result of public information requests and through the website of the Council;
- Information obtained as a result of monitoring the Council sessions.

Normative Framework

The authors of the research studied existing legislative acts and by-laws of Georgia determining activities of the Council.

¹ Constitution of Georgia, Article 64, Paragraph 1.

² Ibid.

Implementation of the Normative Framework

Within the framework of the project, following data was analyzed: materials obtained by GYLA's monitors during the sessions of the Council and various public meetings; data received through public information requests and the Council's website. GYLA also referred to previous reports and studies assessing the judiciary system.

Best International Standards and Practice

The study is based on general documents (guidelines, reports, assessments, etc.) developed by international organizations - the Venice Commission, the OSCE, the Consultative Council of European Judges, as well as opinions and recommendations directed at Georgian legislation. Furthermore, the visions provided in the above-mentioned documents are not mechanically integrated into this report but rather adapted to the existing context.

Acknowledgements

The authors of the report would like to thank the project "Promoting the Rule of Law in Georgia" (PROLoG), funded by the United States Agency for International Development (USAID) and implemented with the support of the East-West Management Institute (EWMi), which provided the financial support to publish the report.

The authors of the report express their gratitude towards the High Council of Justice for the materials provided as important part of the implementation of normative reality fully relies on them.

II. KEY FINDINGS

Within the framework of the project, GYLA observed the process of implementation of legislative amendments, inter alia. Despite some positive changes, the shortcomings that prevailed in the judiciary system have not been substantially eliminated. Eventually, any interference with the current normative framework, which does not oppose the mechanism of decision-making, ultimately supports an influential group of judges (the “clan”)³ that uses both shortcomings in the legislation as well as progress to increase its powers.

In 2019, major amendments to the legislation, fully changed the appointment procedure of Supreme Court Justices. The process became transparent and selection criteria were imposed. In spite of the enhanced procedures, the candidates for the Supreme Court justices were selected based on their loyalty and not on the criteria set. Newly enacted regulations could not stand on the way of the “clan” to send such candidates to the Parliament that were acceptable to them. This is yet another example supporting the thesis above. The given paper reviewed the key activities of the Council and identified the challenges the judiciary system is exposed to on its way to being established as an independent institution. In this respect, concerns have been expressed in the report of the US Department of State as well, according to which, though the Constitution and law ensure the independence of the judiciary, there are indications of interference with the independence and impartiality of the system.⁴ Another example for this argument is the statistics of the previous year, when judges were mainly appointed based on prejudiced decisions in the first and second instance courts as well. The key reason for this is that the clan controls two-thirds, the sufficient number of votes to make decisions in the Council, which is further facilitated by the procedures that yet contain discrepancies:

³ GYLA calls the “clan” a group of influential judges who are gathered around Mikheil Chinchaladze, the chairperson of the Tbilisi Court of Appeals, and are running the court according to their own personal interests. They hold the majority of two thirds in the Council, control the court chairpersons, and have created a system built on personal obedience. The clan’s influence extends to the critical majority of judges.

⁴ Georgia 2019 Human Rights Report, US Department of State, Bureau of Democracy, Human Rights, and Labor, p. : 12, available, <https://bit.ly/36hzytp> , updated: 12.05.2020.

- Those candidates who participate in the judicial selection competition but are not admitted to the voting stage, have no mechanism to appeal the decision;
- There is a relatively transparent rule of lifetime judicial appointment after the expiration of the probationary period, yet it is applied only to a small number of candidates (justice students). However, shortcomings can be found here as well. For example, if four out of six assessors assume that a judge does not meet the criterion of integrity during the evaluation process, and if the total score obtained by the candidate in the overall competence does not reach 70%, the chairperson of the Council shall issue an act rejecting to consider the issue of lifetime appointment of the judge. The issue cannot be brought forward for voting. This rule contradicts to the constitution, according to which six members shall reject the appointment of a person as a judge;
- When appointing judges with more than three years of experience for life, the date of entry of judges' applications and information on the stages of the consideration of the matter are not made public. Nor are the deadlines set for rendering the final decision. This factor may be used by the Council as a lever of exerting pressure on a judge;
- Competitions for vacant places in the first and second instance courts are held at the closed sessions, which creates a problem in terms of transparency;
- Despite the restrictions envisaged by law, members of the Council participate in the process of interviewing candidates with whom they are competing. This places the latter in unfair and unequal conditions compared to other candidates;
- The procedure for posting judges without competition does not comply with the standards of transparency. The Council did not publish information about the commencement of the process, as well as the number and identity of participants.

Following the "Fourth Wave" of judicial reforms, some innovations have been introduced to the direction of the High School of Justice (hereinafter - the School, HSoJ), which should be evaluated as positive. Henceforth, the competition for the admission of students to the school shall be held

by this institution, and not by the Council.⁵ The need for the changes has been multiple times mentioned in various reports, but excessive powers of the High Council of Justice in the process of staffing the School's Independent Board and selecting the chairperson is still problematic. Besides, the law did not provide for the rules and criteria for admission of justice students to the High School of Justice. The rules do not meet the standard of impartiality.

Despite some positive steps taken in terms of conducting qualification examinations (the High Council of Justice has developed the rules for conducting qualification exams, updated the qualification program, and trained 30 experts), excessive powers of the institution in the process are still problematic.

The next issue concerns the court leaderships. Chairpersons of the courts, who at the same time hold the position of a member of the Council, are, in fact, unable to perform judicial activities. The procedure of appointing a chairperson is not provided (because of which, for example, interviews are no longer conducted if there is only one candidate); information about a judicial vacancy is posted on the court's internal network, and the process is conducted mainly in a non-competitive environment; it is still a problem that the mechanism for the appointment of acting chairpersons is not regulated, which allows this authority to be imposed on a specific person for an indefinite period of time and without clear reasons. Against this background, the practice of appointment of chairpersons and acting chairpersons leaves the impression that the Council is arbitrarily appointing top-level officials in the judiciary system. The chairperson has the possibility to transfer judges in a narrow specialization simply and without substantiation, which entails the real risks of manipulation.

Another issue that the report touches upon is disciplinary prosecution. The amendments within the Fourth Wave of judicial reforms were largely aimed at regulating the matter at the legislative level. Positive steps have been taken to specify the types of misconduct and improve litigation procedures.

However, the following significant shortcomings related to the Independent Inspector (hereinafter the Inspector) still remain problematic:

⁵ The Organic Law of Georgia On Common Courts, Article 66¹⁴.

- The absolute majority of votes of the Council is sufficient to appoint and dismiss the Inspector, which allows the judicial members to nominate and appoint their desirable candidates for the position;
- The procedure for the appointment of the Independent Inspector does not envisage a range of important matters. Specifically, the major principles of holding the competition (such as impartiality, openness, the prohibition of discrimination) and procedures of conducting the competition (selection criteria, purpose and rule of conducting interviews, issues to be clarified during an interview, the assessment procedure of candidates and substantiation of such assessments) are not defined;

The scrutiny of decisions rendered by the Council upon the termination of disciplinary proceedings made it clear that the timeframes for reviewing disciplinary complaints are delayed. The decisions of the Council on the termination of disciplinary proceedings do not include arguments provided by the Inspector on the presence or absence of elements of misconduct. The rate of termination of disciplinary proceedings is quite high.

The transparency of the Council is another issue worth considering. The amendments introduced within the Fourth Wave of judicial reforms should be positively assessed, under which two powers of the Council have been defined: the right to issue individual (ordinance) or normative (decree) acts. The ordinance shall contain a written substantiation. A person whose legal interest is directly and immediately affected by an ordinance has the right to submit a written opinion before it is issued. The practice established by the Council in 2018 (which continued in 2019) of publishing agendas of Council sessions accompanied with explanatory notes has also earned a positive assessment.

Nevertheless, there are still problems in the normative base as well as practice established by the Council, which, in general, significantly impairs the quality of transparency and efficiency of the Council. Delaying sessions for several hours was the indication of inadequate management of the Council. The obscurity of the procedure of closing the Council sessions is problematic as well.

The following key findings were identified in this respect as a result of the monitoring:

- The regulations approved by the Council do not specify who may draw up and approve session agendas. Nor is provided the right of a member of the Council to request the removal or addition of items to the agenda;
- The regulations of the Council do not provide for the timeframe allotted to each member of the Council to voice his or her opinion on a specific issue, how many times a Council member can make a statement concerning the same issue and how much time additionally should be given to a member of the Council to make a statement;
- The regulations furthermore do not properly foresee the possibility of inviting outside interested parties as well as allowing non-member participants of sessions to present their opinions. In general, the Council negatively responded to such initiatives and rejected them.

During the reporting period, the Council constantly violated the rules of the publication of the session date and agenda seven days before the event. The information was published only 1-3 days prior, and in more than half of the cases, the information was published a day earlier.

No effective steps have been taken to address the problem of media coverage of the Council sessions.

All the above information shows that despite the steps taken, the Council still has the challenges to tackle. The problems originate due to the concentration of the power in the hands of the clan that helps the Council control the judiciary based on the principle of obedience.

1. SELECTION/APPOINTMENT AND NOMINATION OF JUDGES

The law regulating the appointment of judges in the first and second instance courts envisages as follows:

- Re-appointment of candidates through a competition for a probationary period, after the termination of which, for a lifetime;⁶
- Appointment of judges with judicial experience for a lifetime, through a competition;⁷
- Appointment of judges with more than three years of judicial experience for a lifetime.⁸

Different regulations are in place for the lifetime appointment of former and acting judges of the Constitutional and Supreme Courts.⁹

There are 282 acting judges in the judiciary system.¹⁰

⁶ The Organic Law of Georgia On Common Courts, Article 36, Paragraph 4¹. Students of the HSoJ, candidates with more than 18 months and less than three years of judicial experience are appointed to the position for a trial period.

⁷ Ibid. Article 36, Paragraph 4¹.

⁸ Ibid. Article 79⁴.

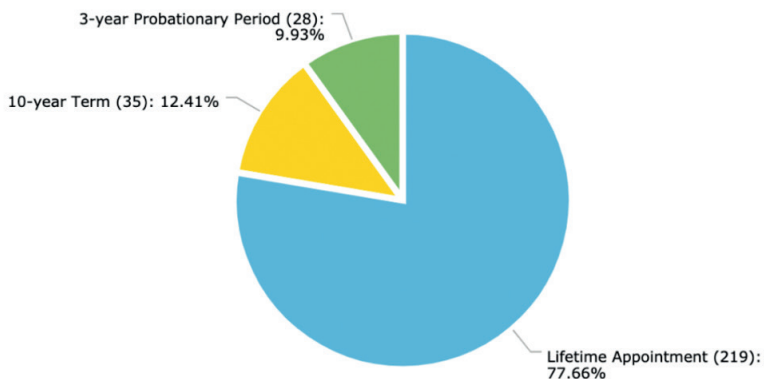
⁹ Ibid. Article 35, Paragraph 9.

¹⁰ The data was updated as of 31 December 2019.

Diagram №1¹¹ shows the status of judges within their term of office.

Judges appointed in the City/District, Magistrate and Appellate Courts

(Data as of 31 December 2019)



1.1. Appointment for a Probationary Period

For selecting and appointing judges to the first and second instance courts, the Council holds a competition, which is open for (1) graduates of the High School of Justice, and (2) former and acting judges. The present chapter reviews the first group of candidates who can be appointed for a three-year trial period¹² provided that they pass through the competition and obtain two-thirds of the votes of the Council.¹³

After the “Third Wave” of judicial reforms, which largely introduced amendments to the rules of selection and appointment of the judiciary, it was found that the Council assesses candidates based on competence and integrity criteria using a system of points.¹⁴ Information about the professional reputation and activities of a candidate shall be provided in

¹¹ Letter №35/4742-03-m of the High Council of Justice of Georgia dated 22 January 2020.

¹² The Organic Law of Georgia On Common Courts, Article 36, Paragraph 4¹.

¹³ Ibid.

¹⁴ Ibid. Article 35¹, Paragraph 1.

a summary protocol,¹⁵ and then interviews with the candidate shall be scheduled.¹⁶ Candidates in whose case the vast majority of the Council (eight members) consider that they “meet” or “fully meet” the criteria of integrity, and have obtained a total of at least 70% of the points, are submitted to a vote.¹⁷ At the session of May 24, all ten HSoJ graduate candidates were admitted to the voting stage. In this instance, the Council did not formally substantiate its decision (as required by law), so none of the candidates were able to learn about the reason why they did not receive support, nor did they have the opportunity to appeal against the decision. GYLA believes it important that candidates have the opportunity to appeal the rejection of not being admitted to the voting stage.

Candidates who meet the minimum judicial requirements are voted by the Council members. Two-thirds of the votes are required to make a final decision.¹⁸

The voting process for the 43 vacancies announced on October 26, 2018 was held on May 24, 2019, eight months later.¹⁹ Non-judge members of the Council Ana Dolidze and Nazi Janezashvili did not participate in the process.²⁰ 32 judges were appointed,²¹ and 11 vacancies remained unfilled.²² Prior to that, there had already been 44 vacancies in the judiciary system, yet the Council did not announce a competition during the reporting period. As a result of the final voting round, only three graduates out of ten students participating in the competition were appointed for a

¹⁵ Ibid. Paragraph 7.

¹⁶ Ibid. Paragraph 13.

¹⁷ Ibid. Article 35, Paragraph 12.

¹⁸ Ibid. Article 36, Paragraph 4¹.

¹⁹ The protocol of the sitting of the High Council of Justice of Georgia dated 24 May 2019; also see “Voting within the competition for the selection of judicial candidates for the High Council of Justice will be held on 24 May.” The website of the High Council of Justice of Georgia, available at: <https://bit.ly/2WeaE9u> , updated: 26.02.2020.

²⁰ The protocol of the sitting of the High Council of Justice of Georgia dated 24 May 2019;

²¹ “Voting within the competition for the selection of judicial candidates for the High Council of Justice will be held on 24 May.” The website of the High Council of Justice of Georgia, available at: <https://bit.ly/3c23M4Q>, updated: 04.03.2020.

²² “Competition for the selection of judicial candidates for the High Council of Justice is over,” the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3ejJw0q> , updated: 04.03.2020.

probation period.²³ It should be noted that all three of them had the experience of working as secretaries/assistants in the judiciary system. This shows that there has been no inflow of new personnel from outside into the judiciary system.

1.2. Lifetime Appointment of Judges after the Probationary Period

Three judicial and three non-judicial members of the Council assess a judge appointed for a trial period for three years.²⁴ The Council, based on the analysis of the assessment results, discusses and makes a decision on the lifetime appointment of the judge.²⁵ The decision shall be made by open ballot, the refusal shall be substantiated, and relevant documents shall be published.²⁶

There are several discrepancies to the above rule: if four out of six assessors consider that the judge does not meet the criterion of integrity while making an assessment, this can serve as a sufficient prerequisite for not allowing him or her to the interview stage.²⁷ Moreover, if the number of points obtained by a judge does not attain 70% in the criteria of competence, the Chairperson of the Council shall issue a legal act on rejection to consider the issue of his or her lifetime appointment,²⁸ and the matter shall not be put up for voting. This rule contradicts to a provision of the when assessing the criterion of integrity, Constitution of Georgia, according to which a person may not be appointed as a judge if six members of the Council do not support his or her candidacy.²⁹ According to the current rule, in fact, four members of the Council can do that. Despite the fact that the legislation allows appealing the decision, such clause does not change the fact that the primary rule is unconstitutional.

²³ Ibid.

²⁴ Ibid., Article 36, paragraph 4¹.

²⁵ The Organic Law of Georgia on Common Courts, Article 36, Paragraph 4¹.

²⁶ Ibid., Article 36⁴.

²⁷ Ibid., Paragraph 13.

²⁸ Ibid.

²⁹ According to Article 63, Paragraph 6 of the Constitution of Georgia, 10 out of 15 members of the Council shall support a decision. If six members of the Council are against, the candidate cannot be appointed as a judge.

This regulation must be revoked. Instead, if four members of the Council provide such an assessment, a draft of a reasoned decision on the rejection to consider the permanent appointment of the judge should be submitted to a session of the Council. Provided that the decision receives six votes, a candidate in question shall not be allowed to the interview round for the lifetime judicial appointment.

In 2019, the Council reviewed nine judges based on the above procedure and appointed all of them to the position for a lifetime.³⁰ All fourteen members of the Council supported each of them.³¹

1.3. Lifetime Appointment of Candidates with Judicial Experience, through a Competition

As mentioned above, in addition to school graduates, acting and former judges are eligible to participate in the competition. They may be appointed for a lifetime if they successfully pass the competition stage.³² In this case, the procedure is almost the same as in the one reviewed above, however in addition to the professional qualities of a candidate, his or her conduct in the courtroom is also assessed and furthermore, (except for current or former members of the Constitutional or Supreme Court) five cases reviewed by that specific candidate (these should include two cases, if any, where the final judgment/decision rendered by the judge has been overturned/partially overturned by the superior court) are evaluated.³³ As a result of the competition, 27 acting and 2 former judges were appointed.³⁴

³⁰ Letter №1278/4745-03-m of the High Council of Justice of Georgia dated 31 January 2020.

³¹ "Nine judges appointed for a three-year term of office have been re-appointed for a lifetime." The website of the High Council of Justice of Georgia, available at: <https://bit.ly/2WWQu5o>, updated: 04.03.2020.

³² The Organic Law of Georgia On Common Courts, Article 36, Paragraph 4¹.

³³ Ibid. Paragraph 2.

³⁴ On May 24, High Council of Justice will hold the voting within the competition of the candidates to justices, Website of the High Council of Justice, May 22, 2019, available at: <https://bit.ly/3c23M4Q>, updated on: 04.03.2020.

1.4. Lifetime Appointment of Judges whose Experience exceeds Three Years

As per the decision of the Constitutional Court, the amendments introduced on June 16, 2017 established a different rule for lifetime appointments of those who are serving a trial period and have at least three years of experience working as a judge.³⁵ Such person is entitled to request a lifetime appointment before the expiration of their term.³⁶ The Council has the right to prioritize between such applications, taking into account the date of commencement of the evaluation of a specific judge's activities.³⁷

For lifetime appointments, the rules of procedure envisage a system of retrieval of information, examination of cases and an assessment system with points.³⁸ However, the Council's website does not provide information on the progress of the process. Therefore, the date of entry of judges' applications, the information about the stages of the discussion of the issue remains unknown to interested third parties. It is also not specified the timeframes within which the Council shall make a final decision, which creates a lever of pressure on judges. Because of this, the procedure was the subject of constant criticism.³⁹ Ana Dolidze, a non-judge member of the Council, reiterated during the reporting period about the need for the Council to improve the relevant regulations and prepare legislative proposals.⁴⁰ All of the 45 judges re-appointed for a lifetime in 2019 had sub-

³⁵ The amendments to the provisions governing the selection and appointment of judges were conditioned by the decision №3/1/659 of 15 February 2017 rendered by the Constitutional Court into the case of "Citizen Omar Jorbenadze v. Parliament of Georgia". Pursuant to the decision, from 1 July 2017, the normative content of Article 36, Paragraph 4¹ of the Organic Law of Georgia On Common Courts, according to which a candidate who is an acting or former judge and has at least three years of judicial experience can be appointed as a judge of appellate and district (city) courts for a term of three years has been declared invalid.

³⁶ The Organic Law of Georgia on Common Courts, Article 79⁴.

³⁷ The Rules of Procedure of the High Council of Justice of Georgia, Article 13², Paragraph 2. The website of the High Council of Justice of Georgia, available at: <https://bit.ly/2WmWN0S>, updated: 04.05.2020.

³⁸ Ibid. Article 13², Paragraph 6.

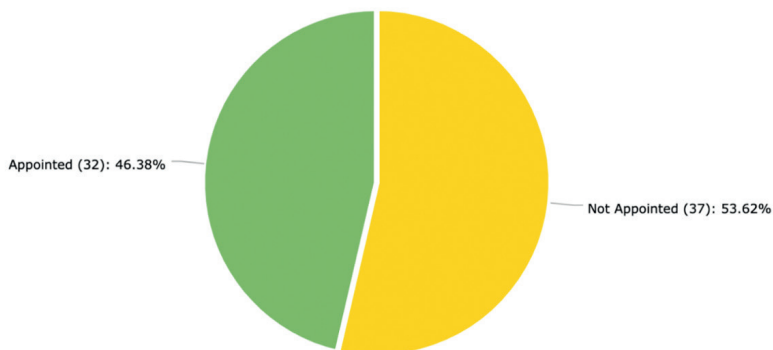
³⁹ Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, pp: 23-24, the website of the Georgian Young Lawyers' Association, available at: <https://bit.ly/2zqPX2X>, updated: 18.03.2020.

⁴⁰ The protocol of the session of the Council dated 11 October 2019.

mitted their applications in 2018.⁴¹ The Council agreed to re-appoint each of them.

There are a lot of questions around the activities of the judges appointed, and unfortunately, their lifetime re-appointment process was flawed. Currently, there are 119 judges in the judicial system appointed within the same procedure, and only three are left who have not requested a re-appointment.⁴²

Diagrams №2 and №3⁴³ demonstrate the results of the voting procedures of May 24 - the statistics and status of the candidates participating in the competition and appointed to the position by the Council (for a lifetime, probationary period).

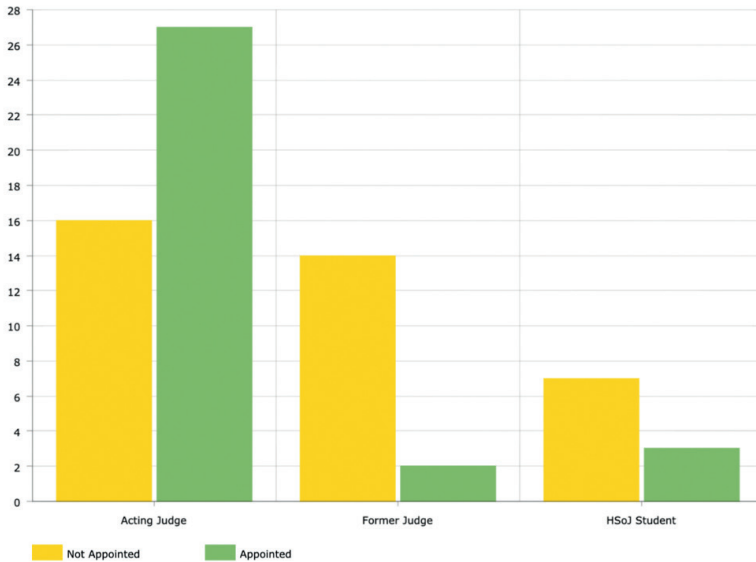


⁴¹ The Council's letter №1278/4745-03-m dated 31 January 2019.

⁴² These are Diana Gogatishvili, Judge of Rustavi City Court, Levan Nutsubidze, Judge of Senaki District Court and Mamuka Tsiklauri, Judge of Telavi District Court.

⁴³ "The competition for the selection of judicial candidates in the High Council of Justice is over," the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3gjJPKj>, updated: 26.02.2020.

Statistics of Judicial Qualification Examination Results in 2019



1.5. Competition within the Conflict of Interest

Thanks to the amendments of the “Third Wave” of judicial reforms, the issue related to the conflict of interests has been regulated. In particular, a member of the Council cannot take part in discussions about a candidate if he or she participates in a competition.⁴⁴ However, this requirement of the law is not fulfilled by the members.

The Council members participated in the interviews of the candidates who had applied for the same vacant positions as themselves creating unfair and unequal conditions. It is true that Vasil Mshvenieradze, Revaz Nadaraia and Irakli Bondarenko withdrew their candidacies prior to the commencement of the voting procedure,⁴⁵ and the Secretary of the Council refused to participate in the competition for the vacancy in the Court of

⁴⁴ The Organic Law of Georgia On Common Courts, Article 35³.

⁴⁵ The protocol of the sitting of the Council dated 24 May 2019.

Appeals and did not participate in the voting procedure for the competition in Tbilisi City Court, yet they had been violating the law before that.⁴⁶

1.6. Re-Appointment and Promotion of Judges

Over the years, the rule and practice of re-appointment of judges without a competition had been a subject of harsh criticism.⁴⁷ The amendments implemented through the Third Wave of judicial reforms provided the possibility of reappointing a judge of the same instance court without competition upon his or her consent.⁴⁸ Prior to the amendment, re-appointment to the lower instance court had been allowed (was later abolished). According to the changes, the process shall be carried out in accordance with the criteria established for the promotion of judges, the development of which was entrusted with the Council.⁴⁹

According to the procedure, the relevant information shall be published on the website of the Council. An applicant judge is given seven days to submit an application,⁵⁰ after which the Council shall review the application and invite the candidate for an interview.

During the reporting period, the matter was put on the agenda seven times. In total, 46 judges were re-appointed for 101 vacant positions. Nineteen of them were promoted. Sadly enough, the process was conducted in a non-transparent manner. The Council did not publish the information about the commencement of the process, as well as the number and identity of the candidates. The information was only made available on the day of the interview, at the session. The interview (which lasted mainly 5-10 minutes and mostly included questions about the motivation

⁴⁶ Ibid.

⁴⁷ Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, pp: 23-24, the website of the Georgian Young Lawyers' Association, available at: <https://bit.ly/2zqPX2X>, updated: 04.03.2020.

⁴⁸ The Organic Law of Georgia On Common Courts, Article 37.

⁴⁹ Ibid. Article 41.

⁵⁰ Article 13¹ of the Rules of Procedure of the High Council of Justice of Georgia, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2WmWNOS>, updated: 04.03.2020.

and workload) and voting rounds were mostly held on the same day. It is important that the Council ensures transparency in the process of re-appointment and promotion of judges without a competition. It is of an utmost important that the Council conducts the posting and promotion process without competition transparently.

First, the issue was initiated for ten vacancies, and each subsequent time, the number increased,⁵¹ finally reaching 74.⁵² Ana Dolidze, Irma Gelashvili and Nazi Janezashvili, the non-judge members of the Council, did not support the process.⁵³ Nazi Janezashvili inquired to what purpose this amount of re-appointments without a competition served in the light of the lack of judges in the judiciary system and added that the rotation would not change anything.⁵⁴ Irma Gelashvili who said that the rules and selection criteria prescribed by the regulations were not properly regulated also protested the practice.⁵⁵

⁵¹ On May 31, 10 vacancies were announced and on June 20, five judges were appointed based on the procedure. The issue was initiated for 15 vacancies on June 25. Eleven judges were re-appointed, six of whom were promoted to the Appellate courts. On July 9, the re-appointment to 26 vacancies without a competition was again initiated. As a result of the September 4 vote, eleven judges were re-appointed, six of whom were promoted to the Appellate court. At the same meeting, the Council again initiated the issue of the re-appointment of judges without competition on 51 vacancies. The deadline for submitting applications to the issue initiated on September 4 was changed four times, while the regulations of the Council envisage a seven-day deadline for submitting applications. The voting took place on November 22, with 14 judges re-appointed, six of whom promoted. At the same session, the issue was initiated again for 74 vacancies, six judges were re-appointed at the December 10 sitting, and one was promoted. The issue was re-initiated on December 26.

⁵² See the protocol of the High Council of Justice of Georgia sitting dated November, 22 2019.

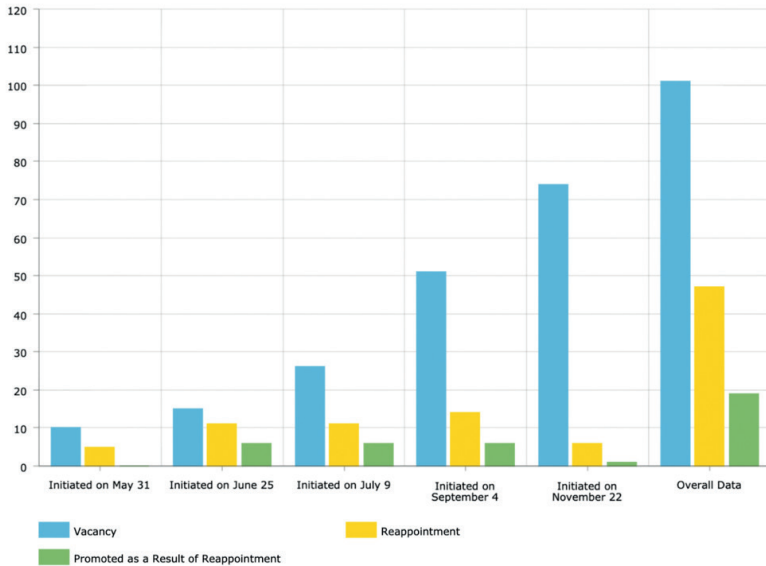
⁵³ See the protocol of the High Council of Justice of Georgia sitting dated September 23, 2019.

⁵⁴ See the protocols of the High Council of Justice of Georgia sittings dated July 9, 2019 and November 22, 2019.

⁵⁵ See the protocol of the High Council of Justice of Georgia sitting dated July 16, 2019.

Diagram №4 shows the dynamics of the re-appointment of judges without competition.

Statistics of the re-appointment of judges without competition in 2019



1.7. Business Trips of Judges

The “Third Wave” of judicial reforms also improved the matter relating to business trips of judges.⁵⁶ The grounds of trips and procedure for selecting judges were determined.⁵⁷ The Council made a decision six times as per the updated rule in 2019.⁵⁸ The decisions provide the substantiation concerning the need for business trips and its impact on both the relocation and places from which a judge is dispatched, as well as the judge’s consent, which should be assessed positively.⁵⁹ However, unfortunately,

⁵⁶ The Organic Law of Georgia on Common Courts, Article 37¹.

⁵⁷ Ibid.

⁵⁸ Letter №112/186-03-m of the High Council of Justice of Georgia dated 31 January 2020.

⁵⁹ The decision №1/324 of the High Council of Justice of Georgia dated 10 December 2019

the Council violates its own regulations⁶⁰ and does not invite a judge to be dispatched on a trip to the hearing. This practice needs to be changed.

1.8. Admission of Students to the School (the Rule in force during the Reporting Period)

The Council enrolled 20-20 students to the school on 4 March⁶¹ and 25 November,⁶² respectively. The figure has become a tradition. According to the Council, the reason of such tradition is the limited resources of the school.

It should be noted that in accordance with the practice established in 2018, the Council conducted enrollment interviews at closed meetings with the view to protecting personal data.⁶³ Until then, the sessions had been usually open. The Council neither publishes the biographies of candidates on the website nor discloses them as public information.⁶⁴

The admission process based on the former procedure once again showed that the practice established by the High Council of Justice failed to ensure that the process of student admission to the school is impartial and transparent. The following remains problematic:

- ✓ Selection criteria;
- ✓ The assessment procedure and timeframes;
- ✓ Insufficiently formalized interviews;
- ✓ Absence of appeal mechanism.

The elimination of the above problems was defined as the responsibility of the School pursuant to the amendments of the “Fourth Wave” of judi-

concerning a business trip of D. Kekenadze, Judge of the Poti City Court, to the Gali-Gulripshi and Ochamchire-Tkvarcheli District Courts, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2ZwQ5s2>, updated: 28.02.2020.

⁶⁰ Article 13, Paragraph 3 of the Rules of Procedure of the High Council of Justice of Georgia.

⁶¹ “Voting held to select students of the High School of Justice,” the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2ZzI5rm> , updated: 04.03.2020.

⁶² The Decision №1/295 of the Council of Georgia of 25 November 2019 on the enrollment of students to the High School of Justice, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2ZKQXK3>, updated: 04.03.2020.

⁶³ Ibid.

⁶⁴ Letter №14/325-03-m of the High Council of Justice of Georgia dated 21 February 2019.

cial reforms.⁶⁵ GYLA hopes that the School will take appropriate measures to address the above gaps and ensure a transparent process of selecting students.

1.9. Admission of Students to the School (Assessment of the Changes of the “Fourth Wave”)

For enhancing the efficiency and independence of the School, significant amendments that were needed for years have been introduced.⁶⁶ In particular, the School, rather than the Council, shall hold the admission competition for students.⁶⁷ Furthermore, the requirements for those wishing to participate in the competition have been changed,⁶⁸ the amount of the scholarship and⁶⁹ the length of instruction period have increased,⁷⁰ etc.

Despite the steps taken forward, the role of the High Council of Justice in the process of staffing the school’s Independent Board is still problematic. In particular:

- Two out of seven members of the Independent School Board are appointed by the High Council of Justice from its own members;⁷¹
- Two more members from the Academy quota are also appointed by the High Council of Justice;⁷²
- The High Council of Justice elects the Chairperson of the Independent Board of the School within the quota of the Conference of Judges (three in total).⁷³

⁶⁵ Article 2, Paragraph 3 of the Amendments to the Organic Law of Georgia on Common Courts. According to this provision, the High Council of Justice of Georgia shall hold a competition for admission of students to the High School of Justice until 01 September 2020.

⁶⁶ Abashidze A., Arganashvili A., Beraia G., Verdzeuli S., Kukava K., Shermadini O., Tsimakuridze E., *The Judicial System: Past Reforms and Future Perspectives*, the Coalition for Independent and Transparent Judiciary, Tbilisi, 2017, pp. 43, available at: <https://bit.ly/2A3wsxa>, updated: 26.02.2020.

⁶⁷ The Organic Law of Georgia On Common Courts, Article 66¹⁴.

⁶⁸ Ibid.

⁶⁹ Ibid., paragraph 66¹⁷.

⁷⁰ Ibid., paragraph 66²¹.

⁷¹ The Organic Law of Georgia on Common Courts, Article 66³, paragraph 4.

⁷² Ibid.

⁷³ The Organic Law of Georgia on Common Courts, Article 66³, paragraph 5.

To ensure the internal organizational independence of the school's Independent Board, it is best to reduce the role of the High Council of Justice in selecting members of the school's Independent Board. Moreover, the Independent Board should be granted the right to elect the chairperson of the Board. This will lessen the influence of members of the High Council of Justice on the process of inflow of students into the school.

1.10. Qualification Examinations

The qualification exam administered by the High Council of Justice is a prerequisite for enrollment to the High School of Justice, while pursuant to the "Fourth Wave" amendments, the competition for students shall be held by the School,⁷⁴ which shall be responsible that students deepen their theoretical knowledge and develop the skills necessary for practical work. Thus, it would be logical if the qualification examinations also fall under the School's jurisdiction. This will ensure that the process of enrollment of students to the School is held in a uniform manner.

In 2018, the High Council of Justice developed a rule for conducting the qualification examinations and updated the examination program.⁷⁵ The National Assessment and Examinations Center (NAEC) developed an intensive certification program in the qualification exam preparation methodology, and trained 30 specially selected experts.⁷⁶ The qualification examination commission elaborated on the new tests.⁷⁷ These steps should be evaluated positively, yet some of the issues discussed below remain a problem.

The High Council of Justice determines the form, dates and organizational deadlines for conducting the qualification examinations.⁷⁸ During the re-

⁷⁴ The Organic Law of Georgia on Common Courts, Article 66¹⁴, paragraph 1.

⁷⁵ The Progress Report on Implementation of the Judicial Strategy 2017-2021 and Action Plan 2017-2018, p. 54, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2XswKpf>, updated: 18.04.2019.

⁷⁶ Ibid.

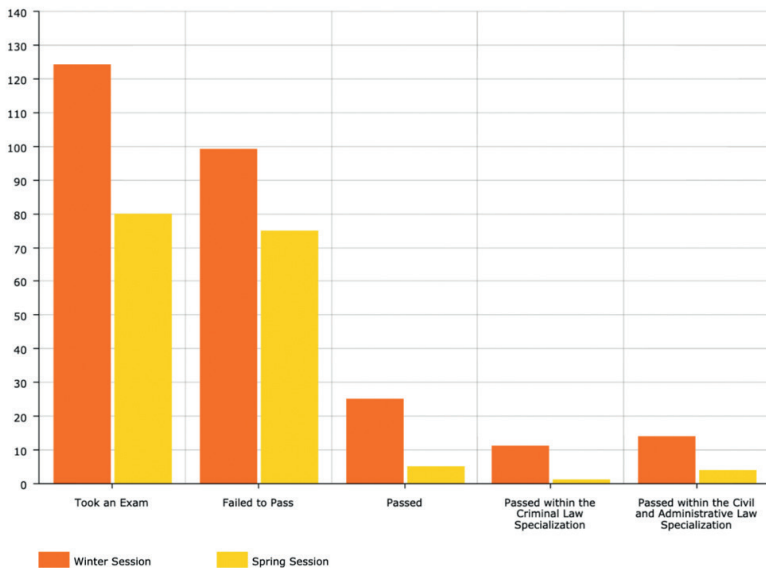
⁷⁷ Ibid.

⁷⁸ Article 4 of the rules for conducting the qualification examinations for judges and examination program approved by the decision №1/129 of the High Council of Justice of Georgia of 19 March 2018, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3c792EF>, updated: 04.03.2020.

porting period, the Council announced general and specialty qualification examinations for the judiciary twice - in the winter⁷⁹ and in the spring.⁸⁰ The registration instructions, deadlines and other important information relating to the examinations were published according to relevant rules.

The results of the qualification examinations show that the number of candidates wishing to take the qualification exam is quite high, whereas the number of those who have passed the exam is rather low.

Diagram №5⁸¹ describes the statistics of the 2019 judicial qualification examination results.



⁷⁹ “The date of the judiciary qualification examination is known,” the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3ghmMjb>, updated, 21.04.2020.

⁸⁰ Ibid.

⁸¹ “Judicial qualification examination is over,” the website of the High Council of Justice of Georgia, available at: <https://bit.ly/36tpNZt>, updated: 26.02.2020.

1.11. Nomination of Judicial Candidates for the Supreme Court

After the constitutional reforms, the Council was granted the authority to nominate candidates for the position of members and chairperson of the Supreme Court.⁸² The Coalition opposed the amendment.⁸³ GYLA believes that the former model, according to which the president had this power, better ensured the political balance between the government branches.

At the end of 2018, the Council submitted a list of ten judicial candidates for the Supreme Court to the legislative body, without the observance of any procedural rules.⁸⁴ The Coalition urged the Parliament to refrain from reviewing the list and immediately elaborate amendments that would establish both the qualification requirements and define the rules for nominating judicial candidates.⁸⁵ Besides, nomination and selection of candidates should have taken place only after the renewal of the composition of the Council and the legislative reforms.⁸⁶ The Parliament suspended the process of reviewing the nominated candidates, and ultimately the candidates themselves refused to participate in the process.⁸⁷

On 12 January, a meeting was held between the Chairperson of Parliament and the Secretary of the Council, after which the Speaker declared that the procedure as well as the criteria would be defined in the law and discussed within the working group format of the judicial reforms.⁸⁸

⁸² Article 61 of the Constitution of Georgia; the Constitutional Amendments entered into force on 16 December 2018.

⁸³ Opinions of the Coalition for Independent and Transparent Judiciary on the New Draft Constitution of Georgia, p.2, The website of the Coalition for Independent and Transparent Judiciary, available at: <https://bit.ly/2A96GHH>, updated: 18.04.2019

⁸⁴ Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p: 26, The website of the Georgian Young Lawyers' Association, available at: <https://bit.ly/2zqPX2X>, updated: 18.03.2020.

⁸⁵ "The Coalition is calling on the Parliament to immediately elaborate the rules for the selection of the Supreme Court judges." The website of the Coalition for Independent and Transparent Judiciary, available at: <https://bit.ly/2A56tFK>, updated: 16.01.2020.

⁸⁶ Ibid.

⁸⁷ "The questionable candidates for the Supreme Court refused to be elected as judges," the website of the Coalition for Independent and Transparent Judiciary, available at: <https://bit.ly/3efGDNT>, updated: 26.12.2019.

⁸⁸ "Kobakhidze met with Mikautadze, the working group will develop criteria for the selection of judges," tabula, available at: <https://bit.ly/2ZvkeYZ>, updated: 29.01.2020.

The Coalition also presented recommendations within the working group format.⁸⁹ However, the Coalition abandoned the format in the end,⁹⁰ as the majority did not accept a number of fair, substantiated criticisms/suggestions. It is true that after the harsh and critical conclusions provided by the international organizations, some positive amendments were introduced,⁹¹ yet the final version of the law allowed the “clan” to make decisions that they wanted.

1.12. Announcement of the Competition

On 10 May, the process of selecting judicial candidates began according to the renewed legislation.⁹² Applications for 20 vacant positions were submitted in accordance with the law⁹³ electronically until 31 May.⁹⁴ The information about the competition was published on the Legislative Herald and the Council’s website,⁹⁵ as well as sent to the public and all national broadcasters.⁹⁶

1.13. Qualification Requirements

Citizens of Georgia from the age of 30, with relevant higher legal education and at least five years of experience working in the specialty were

⁸⁹ “Recommendations regarding the criteria and procedures for the selection of the Supreme Court judges,” the website of the Coalition for Independent and Transparent Judiciary, available at: <https://bit.ly/3gob5rg>, updated: 29.01.2020.

⁹⁰ “The Coalition left the working format offered by the Speaker of the Parliament of Georgia,” the website of the Coalition for Independent and Transparent Judiciary, available at: <https://bit.ly/3esBOKH>, updated: 29.01.2020.

⁹¹ “The Coalition is assessing new rules for nomination and selection of Supreme Court judges,” the website of the Coalition for Independent and Transparent Judiciary, available at: <https://bit.ly/2A2xnhw>, updated: 29.01.2020.

⁹² “The procedure for selecting candidates to be submitted to the Parliament of Georgia for the selection of Supreme Court judges begins.” The website of the High Council of Justice of Georgia, available at: <https://bit.ly/2z1R886>, updated: 29.01.2020.

⁹³ The Organic Law of Georgia on Common Courts, Article 34¹, paragraph 3.

⁹⁴ “The procedure for selecting candidates to be submitted to the Parliament of Georgia for the selection of the Supreme Court judges begins.” The website of the High Council of Justice of Georgia, available at: <https://bit.ly/2VWfbi6>, updated: 29.01.2020

⁹⁵ The Organic Law of Georgia on Common Courts, Article 34¹, paragraph 1.

⁹⁶ “The procedure for selecting candidates to be submitted to the Parliament of Georgia for the selection of the Supreme Court judges begins.” The website of the High Council of Justice of Georgia, 10 May 2019, available at: <https://bit.ly/2yzEddM>, updated: 20.05.2020.

eligible to participate in the competition.⁹⁷ As per the reports released by the Venice Commission and the OSCE, the minimum age of 30 and five years of professional experience were not the best way to identify the most qualified professionals suitable for the country's highest judicial position.⁹⁸ These recommendations called for amendments to the constitution but were left unconsidered by the Parliament.

1.14. Registration of Candidates

The Council shall review the applications within five working days after the expiration of the application deadlines and make a final decision on the registration of the candidate, after which the Council shall publish the list of applicants and autobiographies on its website.⁹⁹

Diagram №6¹⁰⁰ shows the results of the first stage of the competition.



⁹⁷ The Constitution of Georgia, Article 63, Paragraph 6.

⁹⁸ Opinion on draft amendments relating to the appointment of Supreme Court judges of Georgia, Opinion-Nr.: JUD-GEO/346/2019 [AIC], OSCE/ODIHR, Warsaw, 17 April 2019, available at: <https://bit.ly/2ZvNOgV>, updated: 29.01.2020.

⁹⁹ The Organic Law of Georgia on Common Courts, Article 34¹, Paragraph 4.

¹⁰⁰ The list of applicants registered to participate in the procedure for selecting candidates for the Supreme Court judges to be presented to the Parliament of Georgia, The website of the High Council of Justice of Georgia, available at: <https://bit.ly/2LXe9S>, updated: 20.03.2020. Also, the decision №1/108 of 07 June 2019 of the High Council of Justice of Georgia, available at: <https://bit.ly/2TBnUV6>, updated: 29.01.2020.

Nazi Janezashvili did not support the registration of Giorgi Mikautadze as the candidate for the secretary of the Council, since he had indicated two instead of three referees in his application, which violated the requirements determined by the Council.¹⁰¹ However, the majority of the Council did not share the above argument.

At the session of 7 June dedicated to the registration of candidates, it was revealed that candidates had been contacted from the Council's office and given the possibility to submit additional documents to complete their application forms.¹⁰² Nazi Janezashvili protested against this and noted that if an additional timeframe was needed to fill the gap, law should have regulated it.¹⁰³ It is therefore important that the timeframe for rectifying discrepancies and the role of the Council's office should be specified in a normative act, to avoid unequal approaches.

The Council did not show proper interest and failed to investigate the compatibility of education certificates of several candidates, including acting Prosecutor General Shalva Tadumadze (who eventually became a judge), as well as Zaza Tavadze, Chairperson of the Constitutional Court, with the requirements of the law. Zaza Tavadze ultimately addressed to the Speaker of the Parliament and refused to participate in the competition.¹⁰⁴

Pursuant to the law, if a candidate receives refusal due to the non-compliance with the formal requirements, he or she can appeal to the Chamber of Board Expert.¹⁰⁵ The two candidates did so. None of the complaints were upheld.¹⁰⁶

¹⁰¹ "The High Council of Justice started elaborating on the grounds of the amendments to the Law on Common Courts," the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2KSCoLw>, updated: 29.01.2020.

¹⁰² See the protocol of the sitting of the High Council of Justice of Georgia dated 07 June 2019.

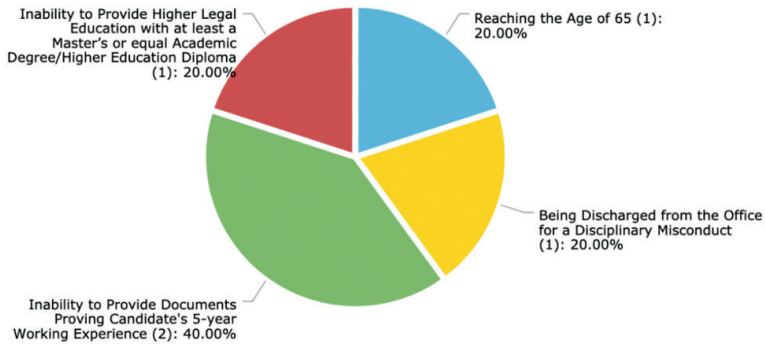
¹⁰³ *Ibid.*

¹⁰⁴ "Zaza Tavadze refused to participate in the Supreme Court Judicial Competition," GHN News Agency, available at: <https://bit.ly/2WjORw>, updated: 27.04.2020.

¹⁰⁵ The Organic Law of Georgia on Common Courts, Article 34³, Paragraph 5.

¹⁰⁶ The decision of the Chamber of Board Expert of the Supreme Court of Georgia of 12 June 2019 into the case №66301-19, the website of the Supreme Court of Georgia, available at: <https://bit.ly/3gknqfX>, updated: 29.01.2020. The decision of the Chamber of Board Expert of the Supreme Court of Georgia of 13 June 2019 into the case №663-02-19, the website of the Supreme Court of Georgia, available at: <https://bit.ly/2A1byid>, updated: 29.01.2020.

Diagram №7 describes the reasons for the refusal to register candidates.



1.15. Conflict of Interests and Legitimacy

The legislation obliges members of the Council to declare in advance if they are in conflict of interests and refrain from participating in the decision-making process.¹⁰⁷ The reports prepared by international organizations emphasize that if a member of the Council is a close relative of or supervises a candidate, then the member should refuse to participate in the nomination procedure.¹⁰⁸ Tamar Oniani and Irakli Shengelia, the Council members, had a conflict of interest with the following candidates participating in the competition - Zurab Aznaurashvili (a brother-in-law of Tamar Oniani) and Levan Tevzadze (Irakli Shengelia's in-law). None of them did report thereof, nor did the Council discuss their recusal. Despite numerous statements and appeals,¹⁰⁹ including by non-judicial members of the Council,¹¹⁰ the above persons were not removed from the process.

¹⁰⁷ The Organic Law of Georgia on Common Courts, Article 34¹, Paragraph 16.

¹⁰⁸ Georgia - Urgent Opinion on the Selection and Appointment of the Supreme Court judges, available at: <https://bit.ly/2xqdQGF>, OSCE/ODIHR report on the Draft of Amendments to the Appointment of Judges of the Supreme Court of Georgia, available at: <https://bit.ly/2y6CxIJ>, updated: 29.04.2020.

¹⁰⁹ "The Coalition calls for the recusal of two members of the High Council of Justice from the further stages of selection of Supreme Court judges. The website of the Coalition for Transparent and Independent Judiciary, available at: <https://bit.ly/2zhjkVj>, updated: 21.04,2020.

¹¹⁰ Nazi Janezashvili and Ana Dolidze.

Another non-judicial member of the Council, Zaza Kharebava, did not leave the process either. The Coalition appealed to the Parliament to terminate his authority as he had been nominated by an unauthorized person at the time of his election,¹¹¹ which is a substantial violation of the law and serves as a precondition for the resignation. The Parliament did not review the matter.

Resolving the issue relating to the participation of the above three members in the composition of the Council was particularly important as each vote was crucial. Eleven candidates received the required minimum number of votes (ten votes). The removal of the above members would have greatly reduced the power of the “clan”, leading to the necessity for a consensus in order to make a decision, which would ultimately increase credibility towards the process. However, the process continued in the above manner that precluded the possibility of conducting an unbiased and impartial selection procedure.

1.16. Voting

For the nomination of judges to the Supreme Court, the law provides for secret ballot in three stages:

The first ballot

Candidates during the first ballot are selected from the so-called “long list” based on the applications submitted and documents attached. Each member of the Council shall secretly circle on the ballot paper a maximum of as many candidates as the number of vacancies announced. If the commencement of the selection procedure is announced for one or two vacancies, then three times more candidates shall be transferred to the next selection stage,¹¹² and if the selection procedure is announced for at least three vacancies, two and a half times more candidates shall go to the next stage.¹¹³ Decision-making during this procedure depends entirely on the

¹¹¹ “The Coalition’s Open Letter to the Speaker of the Parliament on Termination of Authority of Zaza Kharebava, a member of the High Council of Justice,” the website of the Coalition for Transparent and Independent Judiciary, available at: <https://bit.ly/3d3LCkO>, updated: 29.01.2020.

¹¹² The Organic Law of Georgia on Common Courts, Article 34¹, Paragraph 7.

¹¹³ Ibid.

wishes and subjective interests of individual members of the Council.¹¹⁴ As a result, it remains unknown based on what grounds specific candidates succeeded or failed to reach the subsequent stages.

The first secret voting was held on 20 June. Two candidates, Mariam Tsiskadze and Manana Chokheli, withdrew their candidacies before the launch of the procedure.¹¹⁵ Each member of the Council was supposed to vote for or against no more than 20 candidates out of 137. Eventually, fifty candidates with the best results were admitted to the interview stage. According to the Public Defender, a certain number of ballot papers were circled in an identical manner, suggesting that some members of the Council acted in a pre-agreed manner.¹¹⁶

1.16.1. The second ballot

The interviews in the Council continued from 17 July 2019 to 15 August 2019. A total of 49 candidates were heard (Judge Amiran Dzabunidze refused to participate in the competition at the interview stage¹¹⁷). The transparency and publicity of the process must be assessed positively.

Initially, the members of the Council were planning to interview five candidates per day, allocating 45 minutes to 1 hour for each.¹¹⁸ However, the first day revealed that it would be possible to conduct a comprehensive interview during the working hours with a maximum of two candidates a day. From 17 to 26 July, the process lasted almost continuously for 10-11 hours. The non-judicial members protested against the schedule.¹¹⁹ Ana Dolidze and Nazi Janezashvili left the sitting several times as a sign of pro-

¹¹⁴ “The Coalition’s letter to the Venice Commission and the OSCE/ODHIR on the draft law on the selection of Supreme Court judges,” the website of the Coalition for Transparent and Independent Judiciary, available at: <https://bit.ly/3d12ZTf>, updated: 29.01.20.

¹¹⁵ The protocol of the High Council of Justice of Georgia sitting dated 20 July 2019.

¹¹⁶ Monitoring Report on the Selection of Supreme Court Judicial Candidates by the High Council of Justice of Georgia, Public Defender of Georgia, p.:11, the website of the Georgian Public Defender, available at: <https://bit.ly/2XaDoSt>, updated: 20.03.2020

¹¹⁷ “Interviews with candidates for Supreme Court judges will continue at the High Council of Justice,” available at: <https://bit.ly/36ufcxh>, updated: 18.03.2020.

¹¹⁸ The protocol of the High Council of Justice sitting of Georgia dated 12 July 2019.

¹¹⁹ Nazi Janezashvili, Ana Dolidze, Irma Gelashvili. See the minutes of the meeting of the High Council of Justice of Georgia dated 22 July and 23 July 2019.

test.¹²⁰ According to the Coalition, providing the women with the working conditions that eliminate the possibility to care about their children and implement maternal duties is, in its essence, indirect discrimination.¹²¹ Besides, such workload affects the quality of the process: the full, adequate evaluation of the candidates is practically ruled out, as well as the interests of candidates, and the members of the Council and the staff are neglected.

The initiative of the non-judicial members to reduce the number of candidates for the interview to two per day was initially met negatively by the judicial members of the Council. However, on 29 July, the request was granted.

On the day preceding the interview stage, the Council members agreed not to ask candidates questions that would check their ability to memorize specific articles rather than their analytical skills. The agreement was violated multiple times, especially against non-judicial candidates and those with critical views.¹²² There were cases where the majority of the Council members (especially the judiciary members) asked suggestive questions. They were helping candidates answer the questions with hints or prompts.

The interview process was often non-constructive. Inaccurate, unethical appeals to colleagues were repeatedly voiced.¹²³

Once the interview stage was over, the Council members evaluated the candidates based on the obtained points. Following that, on 4 September, the Council held the second secret voting to reduce the number of applicants to be submitted to the parliament to the number of vacancies

¹²⁰ The protocol of the sitting of the High Council of Justice of Georgia dated 23 July 2019.

¹²¹ “Statement on Cases of Gender Inequality and Indirect Discrimination by the High Council of Justice,” the website of the Coalition for Transparent and Independent Judiciary,” available at: <https://bit.ly/2xtXjBI>, updated: 21.04.2020.

¹²² “The Coalition assesses the process of selection of candidates for Supreme Court judiciary at the High Council of Justice,” The website of the Coalition for Transparent and Independent Judiciary, available at: <https://bit.ly/2TD8q2S>, updated: 29.01.2020.

¹²³ During the interview with Nikoloz Marsagishvili on 30 July, Irakli Shengelia referred to Nazi Janezashvili, “What a shame to ask such incompetent questions - how long do we have to tolerate your outrageous actions?,” while Sergo Metopishvili, a judicial member of the Council, added that Nazi Janezashvili was asking questions taken from petty crosswords. Also, at the sitting of 14 August, during the interview with Judge Tea Dzimistarashvili, Sergo Metopishvili, a member of the Council, called Ana Dolidze, a non-judicial member, impudent and ignorant.

announced, and identified twenty candidates with the best results.¹²⁴ According to the law, the number of candidates with the best results shall be transferred to the next stage, no matter how many vacancies are announced.¹²⁵ The list of twenty candidates with the best points did not fully match the voting results.

1.16.2. The third ballot

After decreasing the number of candidates to the number of the announced vacancies to be presented to the parliament, the Council voted on each candidate one by one. All of them received the required number of votes (two thirds). Unequivocally negative assessment should be given to the fact that the list of the nominated candidates included the judges who had been on the list of ten candidates presented to the Parliament in December 2018.¹²⁶

1.16.3. Presenting Vasil Roinishvili to the Parliament

The term of office of Vasil Roinishvili, the Supreme Court Judge, was due to expire in December. Therefore, on 18 September, the Council re-announced the competition for another vacancy and set 9 October as the deadline for submitting applications.¹²⁷ Sixteen individuals took part in the competition.¹²⁸ At the session of 17 October, the Council registered 15 candidates¹²⁹ (one of whom did not submit a master's degree or a docu-

¹²⁴ The protocol of the High Council of Justice of Georgia sitting dated 04 September 2019.

¹²⁵ The Organic Law of Georgia on Common Courts, Article 34¹, Paragraph 12.

¹²⁶ The candidates are Giorgi Mikautadze, Merab Gabinashvili, Nino Kadagidze, Paata Silagadze, and Tamar Alania.

¹²⁷ "The procedure for selecting candidates for the judiciary of the Supreme Court of Georgia to be presented to Parliament of Georgia has started." The website of the High Council of Justice of Georgia, available at: <https://bit.ly/3ffJO9V>, updated: 21.04.2020.

¹²⁸ The Decision №1/263 of the High Council of Justice of Georgia of 17 October 2019 on the registration of candidates for the judiciary of the Supreme Court of Georgia," the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2Sreb35>, updated: 21.04.2020.

¹²⁹ Ibid.

ment equivalent to higher legal education¹³⁰). The refusal due to the non-compliance with the formal requirements was appealed to the Chamber of Expert Board but was not granted.¹³¹

1.16.3.1. *The first ballot*

The first relatively secret voting was held on 31 October. Three candidates were allowed to the next stage.¹³²

1.16.3.2. *Interview*

On 27-28 November, the Council interviewed Levan Tevzadze, Tamar Okropiridze and Vasil Roinishvili.¹³³ The interviews with each candidate lasted for 3-4 hours. The points obtained by the candidates in integrity and competence criteria were published on the Council's website on 5 December.¹³⁴

1.16.3.3. *The second ballot and nomination of the candidate*

On 6 December, the Council held the second secret voting. Vasil Roinishvili obtained a sufficient number of votes. Thirteen members of the Council participated in the procedure.¹³⁵ Irakli Shengelia did not request the recusal of Levan Tevzadze, as he simply did not attend the Council sessions. Eventually, the Council presented Vasil Roinishvili to the Parliament of Georgia.

¹³⁰ Ibid.

¹³¹ The decision of the Chamber of Board Expert of the Supreme Court of Georgia of 24 October 2019 into the case №16308-19, the website of the Supreme Court of Georgia, available at: <https://bit.ly/2WYI0dX>, updated: 21.04.2020.

¹³² Tevzadze Levan, Okropiridze Tamar, Roinishvili Vasil, voting results, available at: <https://bit.ly/2XpDhB7>, updated: 21.04.2020.

¹³³ "The Interview with candidates for the Supreme Court Judge begins," the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2XuPAwb>, updated: 21.04.2020.

¹³⁴ "Candidate points," website of the High Council of Justice of Georgia, available: <https://bit.ly/2AWpzOB>, updated: 21.04.2020.

¹³⁵ "Voting results," the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2WXYeUM>, updated: 21.04.2020.

GYLA believes that the rule of the nomination of Supreme Court judges to the Parliament should be revised. Based on the documents presented and interviews conducted at the first stage, the compliance with the minimum judiciary standards should be assessed with the points obtained by candidates. The Council should issue a reasoned decision thereupon through an open ballot. Candidates who win the votes of two-thirds of the judicial and non-judicial members of the Council respectively should be admitted on to the second stage and nominated to the Supreme Court.

2. JUDGES HOLDING ADMINISTRATIVE POSITIONS

2.1. Membership of the High Council of Justice by Court Chairpersons

For years, chairpersons of courts/chambers/panels have been perceived as the instrument utilized by the Council to control judges.¹³⁶ Besides, the “clan” consists mostly of court chairpersons. The influential group of judges has been also mentioned in the report of the US State Department, which emphasizes that they suppress critical opinions and prevent initiatives aiming at strengthening the judiciary.¹³⁷

Presidents of the courts, who at the same time are members of the Council, do not actually perform judicial activities. GYLA believes that the quota of chairpersons in the Council should be abolished. A member of the Council who at the same time holds a position other than a judge must leave the position upon his or her appointment. In order to reduce the influence on the process of composing the Council, it is necessary to introduce amendments such as regional and gender quotas, the selection system of judicial members shall be also revised.

2.2. Role of Court Chairpersons

Apart from exceptional cases, court chairpersons no longer distribute cases,¹³⁸ yet there is another aspect to the problem - the chairperson, in order to avoid delays in the administration of justice, has the right to assign a judge to participate in the hearing in another chamber or investigative panel, as well as to act as a magistrate judge and assign a magistrate

¹³⁶ “We call on the High Council of Justice to stop appointing chairpersons of courts on the basis of subjective opinions.” The statement of the Georgian Young Lawyers’ Association and the Georgian Democracy Initiative of 26 February 2018, available at: <https://bit.ly/35e1M89>, updated: 18.04.2020.

¹³⁷ GEORGIA 2019 HUMAN RIGHTS REPORT, p.16, available at: <https://bit.ly/2VRV6cD>, updated: 29.04.2020.

¹³⁸ Article 3 of the decision of the High Council of Justice of Georgia №1/56 of 01 May 2017, “On approval of the rules of automatic distribution of cases in the common courts of Georgia through the electronic system,” the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3ggqjVo>, updated: 13.05.2020.

judge to hear a case outside his or her jurisdiction.¹³⁹ GYLA believes that the chairperson should use this power in exceptional cases only to rule out any questions about manipulations.

Although the law does not stipulate it, according to the practice established in 2006, the chairperson of the Tbilisi City Court assigns judges according to a narrow specialization. This right has been granted to the chairperson of the Tbilisi Court of Appeals as well since 2018.¹⁴⁰ This rule poses real risks of manipulation.¹⁴¹ GYLA believes that the distribution of judges in a narrow specialization should be done by voting.

2.3. Selection of Court Chairpersons

In the first and second instance courts, the chairperson shall be appointed by the Council.¹⁴² Being manipulated by the “clan”, the Council uses this instrument to appoint loyal candidates to the position, thus maintaining the leverage.¹⁴³ The same persons usually hold administrative positions.¹⁴⁴ During the reporting period, the Council assigned six presidents of the

¹³⁹ The Organic Law of Georgia on Common Courts, Article 30, Paragraph 5.

¹⁴⁰ Article 9 of the Decision №1/175 of the High Council of Justice of Georgia dated 30 April 2018, “On defining the narrow specialization of judges in the Chambers of Civil, Administrative and Criminal Cases of the Tbilisi Court of Appeals,” the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2TBquug>, updated: 27.04.2020.

¹⁴¹ “The Opinions of the Coalition Regarding the “Third Wave” of the Judicial Reform,” the website of the Coalition for Transparent and Independent Judiciary, available at: <https://bit.ly/3ehl0gm>, updated: 19.04.2019.

¹⁴² The Organic Law of Georgia on Common Courts, Article 32, paragraph 1 and Article 23, paragraph 6.

¹⁴³ “We call upon the High Council of Justice to stop appointing chairpersons of courts on the basis of subjective opinions.” The statement of the Georgian Young Lawyers’ Association and the Georgian Democracy Initiative of 26 February 2018, the website of the Georgian Young Lawyers’ Association, available at: <https://bit.ly/2xoEHTu>, updated: 18.04.2019.

¹⁴⁴ Nikoloz Marsagishvili, appointed as the chairperson of the Tbilisi City Court, had been a judge of the Gori District Court in 2008-2019. Bidzina Sturua, the chairperson of the Mtskheta District Court, had chaired the Ozurgeti District Court in 2013-2019. Giorgi Bukhrashvili, the chairperson of the Signaghi District Court, had been the chairperson of the Sagarejo District Court since 2012. Davit Gelashvili, who was appointed as the chairperson of the Poti City Court, had been the chairperson of the Tsalka, Mestia and Tsalenjikha District Courts for years. Shalva Kakauridze, the chairperson of the Gori District Court, had served as the chairperson of the Senaki and Sachkhere District Courts in different years.

courts.¹⁴⁵ Five of the appointees had already held the position in other courts.

The original version of the Third Wave draft bill provided for the election of chairpersons by judges.¹⁴⁶ Although the Venice Commission approved the proposed amendment noting that it would increase the role of individual judges,¹⁴⁷ eventually the provision was removed from the draft due to the resistance of judges.¹⁴⁸

The Fourth Wave of judicial reforms determined that before the appointment of a chairperson, the Council shall consult with the members of a relevant court and then render a reasoned decision upon the appointment of a specific candidate to the position.¹⁴⁹ This may not substantially change the problem, as the results of such consultations, given their nature, cannot be binding.

According to the practice changed in 2018,¹⁵⁰ in the existence of a vacancy for the chairperson's position, a relevant announcement has to be published in the internal network of the court. Therefore, all judges had the opportunity to apply to the Council.¹⁵¹ Nevertheless, the process was held mainly in a non-competitive environment.

During the reporting period, the Council changed the practice of conducting interviews established by the Council itself. If there was only one application for the vacancy, the interview was not held with the candidate

¹⁴⁵ Letter №111 / 4744-03-m of the High Council of Justice of Georgia dated 31 January 2020.

¹⁴⁶ "The Opinions on the "Third Wave" of Judicial Reforms," the website of the Coalition, available at: <https://bit.ly/2XtEOpQ>, updated: 18.04.2019.

¹⁴⁷ 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, EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), CDL-AD(2014)031, Strasbourg, 14 October 2014, p. 84. Available at: <https://bit.ly/2WYINLX>, updated: 15.03.2019.

¹⁴⁸ "Judicial Reform - Judges oppose planned changes," Tabula magazine, available at: <https://bit.ly/2zOy51l>, updated: 10.02.2020.

¹⁴⁹ The Organic Law of Georgia on Common Courts, Article 23 (6) and Article 32 (1).

¹⁵⁰ In previous years, candidates were nominated by the Council members.

¹⁵¹ See the protocols of the sitting of the High Council of Justice of Georgia dated 26 February and 02 April.

and the latter was directly allowed for the voting. Under such conditions, the Council appointed the chairpersons of Kutaisi,¹⁵² Mtskheta,¹⁵³ Gori,¹⁵⁴ and Signaghi¹⁵⁵ District Courts. Despite the non-judicial members of the Council¹⁵⁶ repeatedly making allegations of the need for the interviews,¹⁵⁷ the above-mentioned flawed practice was maintained in the reporting period. During the discussions, the judicial members emphasized that the practice of interviewing candidates was based just on the goodwill of the Council.

GYLA believes that discussions about the matter should be resumed and court presidents should be elected by the judges of relevant courts.

2.4. Appointment of Deputy Chairperson of the Court of Appeals

Pursuant to the law, the Council based on a substantiated decision shall appoint the deputy chairperson of the Court of Appeals from among judges of the Court of Appeals for a five-year term.¹⁵⁸ Irakli Shengelia, who had held managerial positions in the judiciary system for years, was appointed as the deputy chairperson of the Tbilisi Court of Appeals during the reporting period.¹⁵⁹

The main duties of the deputy chairperson are to exercise the powers of the court president in his or her absence.¹⁶⁰ It is necessary to abolish the position of the deputy chairperson in order to reduce the hierarchy among judges. If necessary, one of the judges may act as the chairperson.

¹⁵² See the protocol of the sitting of the High Council of Justice of Georgia dated 09 July 2019.

¹⁵³ See the protocols of the sitting of the High Council of Justice of Georgia dated 09 July 2019 and 26 December 2019.

¹⁵⁴ See the protocol of the sitting of the High Council of Justice of Georgia dated 19 December 2019.

¹⁵⁵ See the protocols of the sitting of the High Council of Justice of Georgia dated 26 December 2019 and 15 August 2019.

¹⁵⁶ The members of the Council are meant: Nazi Janezashvili, Irma Gelashvili and Ana Dolidze.

¹⁵⁷ See the protocol of the sitting of the High Council of Justice of Georgia dated 26 December 2019.

¹⁵⁸ The Organic Law of Georgia on Common Courts, Article 23 (6).

¹⁵⁹ Irakli Shengelia's autobiography, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3cYyvwg>, updated: 14.02.2020.

¹⁶⁰ The Organic Law of Georgia on Common Courts, Article 26 (1).

2.5. Appointment of Chairpersons (Acting) of Chambers/Panels

Law does not govern the powers of the chairpersons of chambers/panels. GYLA believes that, as in the above case, the position is designed deliberately to enhance the hierarchical levels among judges and to reward those who are loyal to the influential group. The necessity for their role does not exist and therefore the position of the chairperson and acting chairperson of chambers and panels should be abolished.

During the reporting period, the chairpersons of the Civil, Administrative and Investigative Cases Panel of the Tbilisi Court of Appeals were appointed.¹⁶¹ These individuals had held managerial positions in the judiciary system for years.

As in previous years,¹⁶² the Council resorted to manipulations and appointed the chairperson of the Chamber (the acting chairperson) not from the composition of the Chamber but, first, transferred the desirable person to the Chamber and then appointed him or her as the chairperson. In particular, due to the promotion of Vasil Mshvenieradze in the Court of Appeals, the positions of the chairperson of Tbilisi City Court and the Administrative Cases Panel became vacant. At the session, the Secretary of the Council nominated the candidacies of Sergo Metopishvili and Bidzina Sturua. Prior to that, on 29 November, the Council changed the specialisation of Sergo Metopishvili, chairperson of the Civil Cases Panel of the Tbilisi City Court, transferred him to the Administrative Cases Panel and then appointed him for the position of the deputy chairperson, while entrusting the chairmanship of the Administrative Cases Panel with Bidzina Sturua, the former chairperson of the Ozurgeti District Court, who was shortly appointed as the chairperson of the Mtskheta District Court.

At the sitting of 17 May, the Council changed the specialization of Merab Gabinashvili, chairperson of the Civil Cases Panel of the Tbilisi Court of Appeals and at the sitting of 24 May, appointed him as the chairperson of the Investigative Panel, and reappointed Irakli Shengelia, the chairperson of the Administrative Cases Panel, as the chairperson of the Civil Cases Panel.

¹⁶¹ Letter №111/4744-03-m of the High Council of Justice of Georgia dated 31 January 2020.

¹⁶² Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №6, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p: 57, the website of the Georgian Young Lawyers' Association, available at: <https://bit.ly/2B1cQKw>, updated: 21.04.2020.

At the meeting of 15 August, the Council appointed Mikheil Chinchaladze as the chairperson of the Administrative Cases Panel without interviewing him. Although non-judicial members of the Council, Ana Dolidze and Nazi Janezashvili, demanded to interview him as per the practice established by the Council, the Secretary of the Council declared that the established practice was not firm and he could not see the need to interview the candidate since there was no competitor to the candidacy of Mikheil Chinchaladze.

Neither the law nor decisions of the Council envisage in what circumstances acting chairpersons should be appointed. The Council does not either specify the term of their office when appointing a judge to this position. There have been cases where the judge had been acting as the chairperson for years.¹⁶³

2.6. Role of the Council in Appointing the Chairperson of the Supreme Court

The Council has the power to nominate a chairperson from among the judges of the Supreme Court.¹⁶⁴ Candidates are nominated by at least one-fifth of the Council members¹⁶⁵ and two-thirds of votes are required for the nomination.¹⁶⁶ If none of the candidates receives a sufficient number of votes, an absolute majority shall render the decision.¹⁶⁷ This provision confronts the model of consensus which is the basis of the work of the Council - in order to make important decisions, merely the votes of the judiciary member of the Council should not be enough, and the majority shall not have the leverage to influence the final decision. Therefore, the number of votes required to nominate a candidate for the position of the chairperson should not be reduced, and if two-thirds of votes cannot be collected, the Council should hold the procedure again.

¹⁶³ Ibid. pp.58-59.

¹⁶⁴ The Constitution of Georgia, Article 63.

¹⁶⁵ The Organic Law of Georgia on Common Courts, Article 36, Paragraph 1.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

3. DISCIPLINARY LIABILITY OF JUDGES

3.1. Appointment and Removal of the Independent Inspector

The Independent Inspector shall be elected on the basis of a competition for a term of five years by the absolute majority of the full composition of the Council.¹⁶⁸ When electing the Independent Inspector, only the support of the judiciary members is theoretically sufficient, leaving the non-judicial members of the Council beyond the process, as disciplinary proceedings are initiated, and cases examined and investigated against a judge by the Inspector.¹⁶⁹ Furthermore, in the circumstances where the Inspector is entitled to review complaints against members of the Council, it is necessary to create guarantees of independence to further increase public confidence in this institution. Merely the fact that the judicial members of the Council may elect the Independent Inspector renders the independence of the Inspector vulnerable. For the elimination of the gap, it is necessary to determine two-thirds of the votes as the requirement for the appointment of the Independent Inspector.

Besides, the rule of appointment of the Inspector¹⁷⁰ does not envisage a number of important aspects. In particular, the key principles of conducting the competition (impartiality, openness, the prohibition of discrimination) and procedures of conducting the competition (selection criteria, purpose and rules for conducting interviews, issues to be clarified during interviews, rules for evaluation of a candidate and substantiation of such an evaluation) are not provided. The Council should improve the rules related to the selection of the Inspector.

A positive assessment should be given to the amendments introduced within the “Fourth Wave” of the judicial reforms, according to which the general grounds for the termination of the Inspector’s authority, such as a gross or systematic violation of the rights of judges, improper performance of his or her duties, etc., were abolished, and the decision on the Inspector’s removal shall be made not by the absolute majority but by the two-thirds of the full composition of the Council.¹⁷¹

¹⁶⁸ The Organic Law of Georgia on Common Courts, Article 51¹, Paragraph 2.

¹⁶⁹ The Organic Law of Georgia on Common Courts, Article 75⁶.

¹⁷⁰ The Rules of Procedure of the High Council of Justice of Georgia, Article 27².

¹⁷¹ The Organic Law of Georgia on Common Courts, Article 51¹, Paragraph 2¹.

3.2. Disciplinary Proceedings

Within the framework of the “Fourth Wave” of judicial reforms, important amendments were introduced to the legislation regarding disciplinary proceedings, which the civil sector had been demanding for years.¹⁷² In particular:

- It was established that a judge shall be imposed disciplinary liability only for committing disciplinary misconduct.¹⁷³

However, the norm still remains unclear. According to the provision, an act that did not cause any damage or the threats of such damage due to its minor impact, which would have necessitated the imposition of liability, shall not constitute a violation.¹⁷⁴ The wording of the provision leaves open the question of how to determine which damage requires liability and which does not, so it needs to be clarified.

- Based on the principles of Bangalore,¹⁷⁵ the law¹⁷⁶ provided the categories of actions that violate the principles of (1) independence, (2) impartiality, (3) good faith, (4) decency, (5) equality, (6) competence, and impartiality, and (7) are not compatible for the status of a judge. The types of disciplinary misconduct were defined according to each of the above principles. The law no longer contains vague provisions such as “failure to perform the judicial duties” or “improper performance”, and the reference to ethical norms was removed as well.
- It was also determined in which cases a complaint will be considered non-compliant with the sample form, will not be reviewed or returned to the applicant.¹⁷⁷

¹⁷² “The Coalition’s Legislative Proposal on the System of Disciplinary Liability of Judges,” 02 April 2018, the website of the Coalition for Transparent and Independent Judiciary, available at: <https://bit.ly/3esFEdB>, updated: 26.03.2020.

¹⁷³ The Organic Law of Georgia on Common Courts, Article 75¹, Paragraph 2.

¹⁷⁴ Ibid. Paragraph 3.

¹⁷⁵ The Bangalore Principles of Judicial Conduct, the website of the Supreme Court of Georgia, available at: <https://bit.ly/2ZwVoYu>, updated: 21.04.2020

¹⁷⁶ The Organic Law of Georgia on Common Courts, Article 75¹, Paragraph 8.

¹⁷⁷ The Organic Law of Georgia on Common Courts, Article 75⁵, Paragraph 3. If a complaint does not contain the name of a judge, the case and/or the fact of alleged misconduct, a defect is established and a term of not more than ten days is determined for the elimination.

3.3. Inspector's Conclusions

The disciplinary proceedings against a judge shall be initiated and preliminary examination and investigation into the case shall be provided by the Independent Inspector,¹⁷⁸ who shall submit the conclusions and opinions thereof to the Council.¹⁷⁹ There is a two-month timeframe determined for this, which may be extended for further two weeks.¹⁸⁰ With the amendments within the Fourth Wave of judicial reforms, the Inspector was granted the right to submit a substantiated decision to the Council on forwarding case materials to the Prosecutor's Office if the elements of a violation are identified during the preliminary investigation.¹⁸¹ The Inspector was also granted access to electronic databases.¹⁸² It was furthermore specified that the Inspector shall rely on the standard of "reasonable assumption" when making decisions.¹⁸³

In 2019, the Inspector General's Office received 215 complaints in compliance with the sample form, and 125 applications without adhering to the form.

The Inspector submitted 41 conclusions prepared on 43 complaints to the Council for consideration.¹⁸⁴ It should be noted that the conclusions concerned the 2018 disciplinary complaints.

3.4. Decisions Rendered by the Council

After the Inspector submits his or her conclusions and opinions concerning a case, the Council shall make a decision (based on the standard of "reasonable assumption"¹⁸⁵) whether to initiate disciplinary persecution or to obtain the explanation from a judge.¹⁸⁶ However, the Council does

¹⁷⁸ The Organic Law of Georgia on Common Courts, Article 75⁶.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid. Article 75⁷, Paragraph 1.

¹⁸¹ Ibid. Article 75⁷, Paragraph 1².

¹⁸² The Organic Law of Georgia on Common Courts, Article 75⁶.

¹⁸³ The Organic Law of Georgia on Common Courts, Article 75⁷, Paragraph 1.

¹⁸⁴ Letter №8/4741-03-მ of the High Council of Justice of Georgia dated 06 January 2020.

¹⁸⁵ The Organic Law of Georgia on Common Courts, Article 75⁸, Paragraph 1.

¹⁸⁶ Ibid. Article 75⁸, Paragraph 1.

not have to substantiate its decision if it is decided not to start a disciplinary proceeding. During the reporting period, the Coalition called on the Council to substantiate its decisions based on the principle of accountability, and decision-makers to regulate the issue under a law.¹⁸⁷

The Council shall make a decision on the initiation of a disciplinary proceeding and obtain an explanation from a judge by the two-thirds of the total composition of its members.¹⁸⁸ This requirement leaves many cases beyond consideration; therefore, it is advisable to have a simple majority for interim decisions and two-thirds for the final decisions only.

A member of the Council who disagrees with the Council's decision to terminate the proceedings has the possibility to express his or her dissenting opinion in writing. None of the members of the Council exercised this right in 2019.¹⁸⁹

The Council did not accept the conclusion of the Independent Inspector on the initiation of a prosecution and obtaining the explanation from the judges in four cases, and on the termination of the disciplinary proceeding in one case.¹⁹⁰

The decisions of the Council concerning the termination of disciplinary proceedings do not include the arguments of the Inspector on the presence or absence of signs of misconduct. For more transparency, the Council should provide in its decisions an assessment of opinions presented by the Independent Inspector.

During the reporting period, the Council held only two disciplinary hearings, during which 41 conclusions drawn up on 43 complaints were reviewed and 55 decisions made.¹⁹¹

¹⁸⁷ The Coalition's Opinion on the Proposed Amendments to the Organic Law on Common Courts," 11 November 2019, the website of the Coalition for Transparent and Independent Judiciary, available at: <https://bit.ly/2yyNliY>, updated: 21.04.2020.

¹⁸⁸ The Organic Law of Georgia on Common Courts, Article 75⁸, Paragraph 1.

¹⁸⁹ Letter №8/4741-03-m of the High Council of Justice of Georgia dated 06 January 2020.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

Diagram №8 shows the decisions issued by the Council regarding disciplinary proceedings.

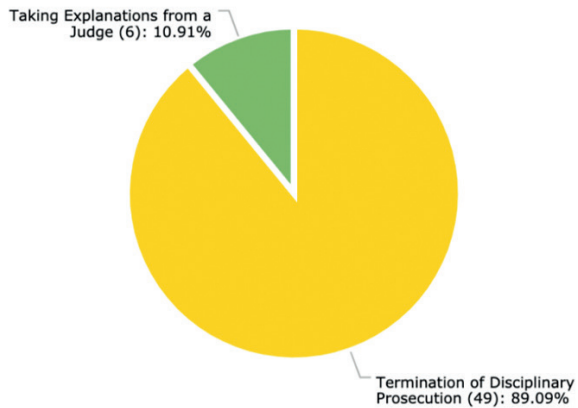
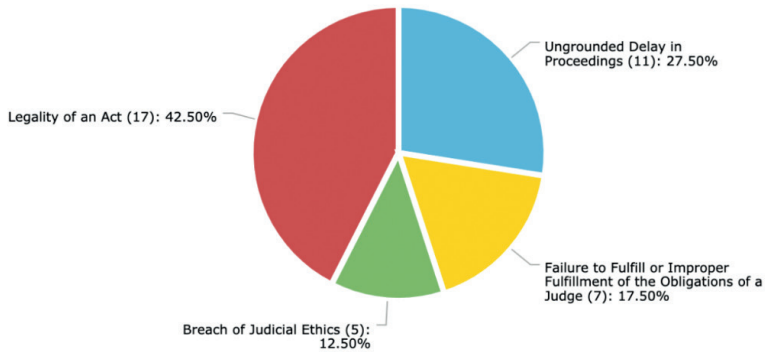
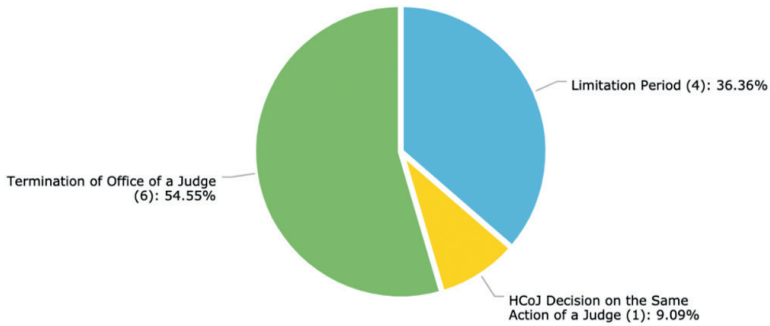


Diagram №9¹⁹² describes the rate of different types of misconduct in discontinued disciplinary proceedings.



¹⁹² Ibid.

Diagram №10¹⁹³ shows the statistics 2019 on the grounds for the termination of disciplinary proceedings.



The existing statistics show that despite a large number of complaints, the mechanism of disciplinary proceedings are rarely used (there were only four such cases in 2019), and delays in the hearing of cases remain a problem, as well as timeframes for disciplinary proceedings are breached (none of the disciplinary complaints filed in 2019 have been considered so far).

It is important to review complaints within the set timeframes in a disciplinary proceeding, as it is related to the public's expectations on the one hand, and to the judge's own interests on the other, to have the case completed on time. It is therefore important that the High Council of Justice should ensure reviewing complaints within the prescribed timeframes.

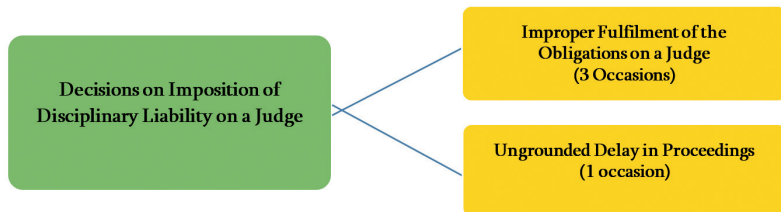
The investigation of a case should be finalized within two months after the decision on obtaining the explanation from a judge is made, and if necessary, the term may be extended for two weeks.¹⁹⁴ If the Council decides to obtain an explanation from a judge, the administrative proceedings must be completed in no more than five months, and if the Council decides to terminate the prosecution or initiate the proceedings without obtaining an explanation, the proceedings must be completed within two months and two weeks. The Council relies on a high degree of probability when bringing a judge to disciplinary action.¹⁹⁵

¹⁹³ Letter №8/4741-03-m of the High Council of Justice of Georgia dated 06 January 2020.

¹⁹⁴ The Organic Law of Georgia on Common Courts, Article 75¹⁰, Paragraph 1.

¹⁹⁵ Ibid. Article 75¹⁴, Paragraph 1.

Diagram №11¹⁹⁶ shows the grounds indicated by the Council for disciplinary liability of judges.



3.5. Transparency of Disciplinary Proceedings

The process relating to a disciplinary proceeding against a judge is confidential.¹⁹⁷ Bearing this in mind, a timely publication of statistics (number of complaints, types of misconduct, etc.) by the Independent Inspector becomes even more important. Therefore, the GYLA positively assesses the fact that the Inspector fulfills its duties adequately and publishes the statistics in a timely manner.

A judge against whom the disciplinary proceedings are being held has the right to request that the session of the Council (except the deliberations and decision-making procedures), as well as of the Disciplinary Panel and Chamber at which his or her case is heard to be made public, which should be assessed positively. However, this right was not exercised during the reporting period.¹⁹⁸

According to the legislation, decisions made during the disciplinary proceedings are forwarded to the author of the complaint (appeal) and a relevant judge within five days after they are made.¹⁹⁹ Throughout 2019, the initiators of 61 complaints were sent the decision of the Council on the termination of disciplinary proceedings.²⁰⁰

¹⁹⁶ Letter №8/4741-03-მ of the High Council of Justice of Georgia dated 06 January 2020.

¹⁹⁷ The Organic Law of Georgia on Common Courts, Article 75⁴.

¹⁹⁸ Letter №8/4741-03-მ of the High Council of Justice of Georgia dated 06 January 2020.

¹⁹⁹ The Organic Law of Georgia on Common Courts, Article 75⁴, Paragraph 2.

²⁰⁰ Letter №8/4741-03-მ of the High Council of Justice of Georgia dated 06 January 2020.

4. TRANSPARENCY OF THE HIGH COUNCIL OF JUSTICE

The Council established the practice of reviewing reports on its own activities and publishing its opinions (responses) on these reports on the Council's website, which must be highly appreciated, yet it should be noted that the acceptance of the monitoring results is rather low.

The amendments introduced within the "Fourth Wave" of judicial reforms deserve a positive assessment, as they defined the Council's two types of powers: to issue individual (ordinance) or normative (decree) acts.²⁰¹ The ordinance must contain a written substantiation.²⁰² A person whose legal interest is immediately and directly affected by such an act has the right to submit a written opinion before the act is issued.²⁰³

4.1. Preparation of Council Sessions

(1) In accordance with the rules of procedure of the Council, the Secretary of the Council shall prepare sessions and ensure that all necessary materials are delivered to the Council members in a timely manner.²⁰⁴ However, the regulations do not specify who shall draw up and approve an agenda of the Council sessions. Nor is the right of a member of the Council provided to request the removal or addition of an item to the agenda.

(2) Documents related to matters to be considered at a session by the members of the Council are provided on the day²⁰⁵ of the sitting or at the sitting itself.²⁰⁶ For example, Nazi Janezashvili, the non-judicial member of the Council, expressed her dissatisfaction during the discussion of the budget of the General Courts Department, as the draft was uploaded on

²⁰¹ The Organic Law of Georgia on Common Courts, Article 47, Paragraph 16¹.

²⁰² Ibid. Paragraph 16².

²⁰³ Ibid.

²⁰⁴ Article 26, Paragraph 2 of the Rules of Procedure of the High Council of Justice of Georgia, the website of the High Council of Justice of Georgia, available at, <https://bit.ly/3bVzXUw>, updated: 18.02.2020.

²⁰⁵ See the protocol of the sitting of the High Council of Justice of Georgia dated 06 May 2019.

²⁰⁶ See the protocol of the sitting of the High Council of Justice of Georgia dated 29 November 2019.

the website five minutes prior to the commencement of the session.²⁰⁷ The problem is rooted in the absence of timeframes that would require the dissemination of the session materials in a timely manner.

(3) Another problem is that the members of the Council are not automatically provided with documents submitted to the Council. This prevents them from placing this or that matter on the agenda at their own discretion.

(4) It should be noted that the decision-making process on certain issues was postponed several times, which is the indication of improper management of the Council sessions. There were two reasons for the above: the matter under consideration required further preparation and examination,²⁰⁸ or the agenda contained unreasonably many issues, making it impossible to discuss all of them.²⁰⁹

(5) Delayed commencement of the Council sessions was also a sign of poor management.

In order to tackle the above obstacles, the rules of procedure of the Council should envisage the following: the responsibility of the Secretary of the Council to inform the members of the Council about the deadlines for the consideration of applications and drafts to be discussed during any subsequent sessions; the procedure of forwarding to the members of the Council a copy of any document submitted to the Council; the procedures for drafting agendas of the Council and the person responsible for that; the right of a member of the Council to request the removal or addition of this or that item to the agenda (final decisions should be made by the majority of the members of the Council).

²⁰⁷ See the protocol of the sitting of the High Council of Justice of Georgia dated 29 November 2019.

²⁰⁸ For this reason, the discussion of the issues was postponed. See the protocol of the sitting of the High Council of Justice of Georgia dated 06 December, 19 February and 07 May 2019.

²⁰⁹ For this reason, the discussion of the issues was postponed at the session of 09 July, 06 December, and 25 October 2019. See relevant session protocols.

4.2. Publication of the Dates and Agendas of Council Sessions in Advance

Within the framework of the Third Wave of judicial reforms, it was determined that the Council shall publish the date and agenda of the Council's sessions at least seven days prior to holding the session.²¹⁰ In the reporting period, this requirement of the law was constantly breached, and the relevant information was published only 1-3 days earlier,²¹¹ and in more than half of the cases, the information was published a day before the sitting. There was even a case when the information concerning the session was published on the day of the meeting²¹² and the agenda of the session one day earlier.²¹³ In several cases, the changes to the agenda were made a few hours before the start of the session.²¹⁴ The seven-day timeframes were not adhered to due to the intensity of sessions,²¹⁵ so the deadline was reduced to three days.²¹⁶ In such cases, the Council should act in accordance with the law, at least within the renewed timeframes.

4.3. Format of Session Agendas

The goal of publishing information about Council sittings in advance is to formulate the items to be discussed at the Council session in such a way that any interested person could learn preliminarily what decisions the Council may render, which had been a problem for years. Therefore, the practice established in 2018 (which continued in 2019) requiring the publication of session agendas with explanatory notes deserves a positive assessment.

²¹⁰ The date of Amendments to the Organic Law of Georgia on Common Courts: 08.02.2017.

²¹¹ See the date of publication of the sittings of the High Council of Justice of Georgia of 14, 18, 25 February, 19 December 2019, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3esZ8hR>, updated: 18.02.2020.

²¹² See the date of publication of the sessions of 23 September 2019, available on the website of the High Council of Justice of Georgia: <https://bit.ly/3gvcjRc>, updated: 21.04.2020.

²¹³ See the date of publication of the sessions of 06, 09, 17 May, 07, 20, 25 June, 16 and 19, July, 15 August 2019, the website of the High Council of Justice of Georgia, available at: <https://bit.ly/3gvcjRc>, updated: 21.04.2020.

²¹⁴ For example, an issue was added to the protocol of the 17 May sitting of the High Council of Justice of Georgia.

²¹⁵ Letter №218/127-03-m of the High Council of Justice of Georgia dated 25 January 2019.

²¹⁶ The Organic Law of Georgia on Common Courts, Article 49, Paragraph 4.

4.4. Publication of Draft Decisions

Until recently, publishing normative acts in advance was always a problem. During the hearing of 6 May that was reviewing the issue relating to the application forms to be submitted for the participation in the process of selection of judicial candidates for the Supreme Court, Ana Dolidze, the non-judicial member, declared that it was an issue generating great interest recently, therefore it would be important to publish the draft on the website, hold a discussion thereof and then make a decision at any subsequent session, especially that the draft became available to the Council members on the day of the session. Revaz Nadaraia, a judicial member of the Council, responded that merely technical details were being clarified and it was not necessary to “over-dramatize” the matter. Eventually, the Council placed the issue on the vote on the same day and rendered a decision. Against this background, the amendments introduced within the “Fourth Wave” of the reforms that eliminated the above problem should be assessed positively. Henceforth, a draft normative act shall be published on the Council’s website at least seven days before it is reviewed.²¹⁷

4.5. Management of Council Sessions

In the event that a member of the Council wishes to express his or her opinion at a session of the Council, he or she shall gesture to the Chairperson of the Council who determines the order of speakers. The rules of procedure of the Council do not determine what amount of time should be allotted to each member of the Council to present their opinion on a particular issue, how many times a member can address the session on the same issue and how many additional minutes should be given to him or her to make a statement. Therefore, in order to manage the above issues effectively and in a business-like manner, it is necessary to provide a rule detailing the procedure of expressing opinions by each member of the Council relating to any matter on the agenda.

The rules of procedure do not either adequately provide specific rules for inviting outside persons or allowing non-member attendees present at the meeting to voice their opinion. The Council usually reacted negatively to and did not welcome such initiatives. During the reporting period, the rec-

²¹⁷ Ibid.

ommendation on developing the rules allowing persons attending Council sittings to express their opinion was not fulfilled.²¹⁸

4.6. Publication of Protocols and Decisions Adopted at Council Sessions

Another component of transparency is the publicity of session protocols and decisions rendered at Council meetings.

The session protocols are not provided in writing. Since 2018, the Council has produced session protocols in a special audio format. This is an acceptable practice.

The Council published decisions within 10-14 days after their adoption. The issue of coding the decisions was particularly problematic. Eventually, the problem was solved, which should be evaluated positively. According to the amendments, decisions are published on the official website no later than five days after their adoption, and the consolidated versions - no later than 14 days after the amendments are made therein.²¹⁹ The fact that the law has additionally defined the list of decisions that must be posted on the website should also be considered a step forward.²²⁰

Nevertheless, it must be remarked that the website of the High Council of Justice is operating with shortcomings, which makes it difficult to locate specific decisions or documents. The Council should take care of this problem in a timely manner.

4.7. Video-Audio Recording and Media Coverage of Council Sessions

GYLA has been indicating the problem of media coverage of Council sessions for years.²²¹ Media outlets are only allowed to take photos of the

²¹⁸ Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p: 68, the website of the Georgian Young Lawyers' Association, available at: <https://bit.ly/2zqPX2X>, updated: 21.04.2020.

²¹⁹ The Rules of Procedure of the High Council of Justice of Georgia, Article 18.

²²⁰ The Organic Law of Georgia on Common Courts, Article 49, Paragraph 4.

²²¹ "Monitoring Report of the High Council of Justice №5" prepared by the GYLA and

opening of the session and make video-audio recordings.²²² According to the amendments introduced under the “Fourth Wave” of judicial reforms, an audio recording of a session shall be released immediately upon a request.²²³

The Council sessions are broadcast through the screen installed in the hall room of the Council. For ensuring more transparency, it is important that the Council sessions be transmitted via online streaming to allow anyone to follow the progress of the sessions and the media to utilize the resource without any procedural hurdles.

4.8. Closure of Council Sessions

According to the law, the Council is obliged to conduct its sessions openly and publicly,²²⁴ and when making a relevant decision, to announce upon its closure.²²⁵ As GYLA had indicated in the previous reports, the grounds and procedure for closing sessions are not defined.²²⁶ Therefore, it is necessary to specify this matter (rare and good reasons, as a basis for the closure should be defined).

Throughout 2019, 44 sessions of the Council were held, at which 369 decisions were made. Two issues relating to the selection of members of the Judicial Qualification Examination Commission were discussed in a closed session.²²⁷

In addition, in January 2019, the Council in such a way that the information about the interviews with the candidates and their identities was not published on the website appointed the Chairperson of the Judicial Man-

Transparency International – Georgia, p. 23, №6 Report, p. 26-27, №7 Report, pp.72-73, the official website of the Georgian Young Lawyers’ Association, available at: www.gyla.ge, updated: 21.04.2020.

²²² The Rules of Procedure of the High Council of Justice of Georgia, Article 11¹, paragraph 3.

²²³ The Organic Law of Georgia on Common Courts, Article 49, Paragraph 4.

²²⁴ The General Administrative Code, Articles 32 and 34.

²²⁵ Ibid.

²²⁶ GYLA and Transparency International – Georgia; Monitoring Report of the High Council of Justice № 4, 5, 6, 7, the official website of the Georgian Young Lawyers’ Association, available at: www.gyla.ge, updated: 01.04.2020.

²²⁷ Letters №115/185-03-m of the High Council of Justice of Georgia dated 03 February 2020.

agement Department.²²⁸ The fact become known after the interviews had been already conducted.²²⁹ It is advisable to enquire about the opinion of a candidate prior to the start of the interview and close the session if he or she refuses to disclose his or her identity.

4.9. Transparency of Interviews

The procedure of appointing a judge envisages the stage of an interview.²³⁰ According to the decision of the Council, a candidate has to be interviewed in a closed format.²³¹ The Council asks a candidate about a desirable format prior to starting the interview and conducts it in an open session upon his/her consent. Generally, there is a high public interest in candidates, and the transparency of the process is essential to ensure the independence of the judiciary and public confidence in the system, so it is important to hold the interviews in open sessions.

4.10. Issuing Information on Judicial Candidates for the Supreme Court

During the competition for selecting the candidates for the Supreme Court judge, who then would be presented to the Parliament, the Council refused to disclose applications submitted by candidates and other attached documents under the pretext of personal data protection.²³² The refusal was based on a narrow interpretation of the law, according to which a person consented to the transmission of his or her personal information

²²⁸ See the protocols of the sitting of the High Council of Justice of Georgia of 21 January 2019 where ten members of the Council voted for his appointment, and he was appointed as the Chairperson of the Management Department.

²²⁹ "Interview with the candidates for the position of the Chairperson of the Judicial Management Department of the High Council of Justice," the website of the High Council of Justice of Georgia, available at: <https://bit.ly/2XRCwTr>, updated: 18.02.2020.

²³⁰ The Organic Law of Georgia on Common Courts, Article 36⁴, Paragraphs 17 and 19.

²³¹ "On approval of the rules for the selection of judicial candidates," Article 12⁷, Paragraph 2 of the Decision№ 308 of the High Council of Justice of Georgia dated 09 October 2009.

²³² The Open Society Georgia Foundation calls on the Candidates of the Supreme Court Judges for Cooperation," available at: <https://bit.ly/3aUcRMz>, updated: 20.03.2020.

to the Parliament and not to the public in general.²³³ The Public Defender argued that the refusal unreasonably restricted access to the information that was essential for monitoring the process and building trust towards it.²³⁴ The Council made a decision to disclose the documents only after hearing the positions of the Public Defender and the officials of the State Inspector.²³⁵ The applications and copies of the attached documents submitted by 137 candidates registered as the candidates were made public five days prior to the interview, which was an unreasonably short period to process the data.

²³³ Ibid.

²³⁴ The monitoring report on the selection of candidates for the Supreme Court of Georgia by the High Council of Justice, the official website of the Public Defender of Georgia, available at: <https://bit.ly/3gjHqiC>, updated: 21.04.2020.

²³⁵ See the protocol of the sitting of the High Council of Justice of Georgia dated 12 July 2019.

III. RECOMMENDATIONS

Based on the analysis of the results of the monitoring, GYLA considers the following recommendations important with the view to ensuring independent and transparent judiciary.

By introducing amendments to normative acts, relevant bodies should ensure as follows:

- The possibility for candidates participating in the competition to appeal against the refusal to be admitted from the interview to the voting stage;
- The procedure providing lifetime re-appointment of judges after the completion of the trial period should be revised (a draft substantiated decision refusing to consider the lifetime appointment of a judge should be brought to a session of the Council; if the decision fails to obtain two-thirds of the total votes, a judge should be allowed to an interview for the permanent position);
- Interviews with judicial candidates should be conducted at open sessions;
- The authority of the Council to hold qualification examinations for judiciary should be granted to the High School of Justice;
- The rule of the nomination of judges for the Supreme Court should be substantially amended. At the first stage, the compliance of a candidate with the minimum judicial standards should be assessed based on the documents presented and interviews conducted. The Council through the open voting should make a reasoned decision thereupon. Only those from the candidates passing on to the second stage who obtain two-thirds of the total number of judicial and non-judicial members of the Council respectively should be nominated for the Supreme Court;
- Electivity of chairpersons (in the first and second instance courts);
- The administrative positions of deputy chairpersons of the courts, as well as the chairpersons of the Panels and Chambers (including acting chairpersons), should be revoked;
- Assigning judges in a narrow specialization should be done by voting;

- The procedure for nominating a candidate for the position of the chairperson of the Supreme Court should be improved: the number of required votes should not be reduced after the first unsuccessful voting, and if two-thirds of the votes are not collected, the Council should start the procedures from all over again;
- The quota of chairpersons in the Council should be abolished. A member of the Council who at the same time holds a position other than a judge must resign from the position immediately upon his or her appointment. The composition of the Council should be also changed, specifically, regional and gender quotas should be introduced, the system of election of judges must be changed as well;
- The required number of votes for the appointment of the Independent Inspector must be two-thirds;
- The competition rules for selecting the Independent Inspector should be improved: the selection criteria, the rules for conducting an interview, the rules for evaluating and substantiating the evaluation of the candidate must be determined;
- The rules for closing council sessions should be further elaborated;
- The rules for forwarding a copy of any document submitted to the Council to the members of the Council, the procedure for expressing an opinion by a member of the Council, as well as the rules for drafting agendas of the Council, removing and adding issues to agendas, inviting third parties to the sessions and allowing non-member attendees to voice their opinion should be developed;

For the improvement of the implementation of the regulations provided for in the legislation, the High Council of Justice of Georgia should:

- Respond adequately and avoid conflicts of interest;
- Provide a proper assessment of arguments presented by the Independent Inspector in the Council's decisions on termination of disciplinary proceedings;
- Review disciplinary complaints within the timeframes established by law;
- Publish information about the Council sessions in advance, within the statutory time periods;

- Ensure live streaming of sessions of the Council;
- Take into consideration opinions expressed by candidates for the position of the Independent Inspector, chairperson of the Management Department prior to an interview and therefore, hold the hearing in an open or closed format.

The Independent Board of the High School of Justice of Georgia should ensure a transparent process of selecting students.

**OPINIONS REGARDING THE MONITORING REPORT OF
THE HIGH COUNCIL OF JUSTICE OF GEORGIA**

1. The report claims that the current rule of lifetime appointment of judges after the expiration of the trial period is defective. Specifically, if four out of six assessors consider that a judge fails to meet the criterion of integrity, and if the candidate's points in the competence criterion do not amount to 70%, the chairperson of the Council shall issue a legal act refusing to review the lifetime appointment. The issue shall not be brought up for voting. The rule contradicts the constitutional provision, according to which the refusal of six members shall be required to refuse to appoint a candidate as a justice.

It should be noted that Article 36⁴ (13) of the Organic Law of Georgia on Common Courts provides for the possibility of appealing against the decision of the Chairperson of the Council. Pursuant to paragraph 14 of the same Article, after the consideration of the complaint referred to in paragraph 13 of this Article, the High Council of Justice of Georgia shall, by an open ballot and the two-thirds majority of the full composition, decide to revoke the legal act issued by the Chairperson of the High Council of Justice of Georgia and interview the judge. Based on the above, the appeal mechanism established by the organic law ensures the observance of the decision-making by a majority of votes.

2. The report notes that when appointing judges with more than three

²³⁶ On July 16, 2020 Democratic Institutions Support Program Director of Georgian Young Lawyers' Association (GYLA) has submitted the draft report to the Members of the High Council of Justice and the Independent Inspector for their comments and remarks. In the above-mentioned letter, GYLA has expressed its readiness to discuss the arguments received with their authors and in case of sharing the same opinion, reflect the remarks in the final document. As for the comments not taken into account, they were to be attached to the report as an annex. On July 4, 2020 GYLA has received the response from the Council, precisely, from the Head of the Department of Legal and Material Support, Division of Legal Issues. The document consisted of 20 issues, 8 out of which GYLA reflected in the report. Taking into consideration two issues out of remaining 12, the document has been amended. GYLA would like to acknowledge the authors of the remarks for contributing to the report. Hereby, upon agreement, publishes the list of the points that were not considered by the organization as an annex, unaltered.

years of experience for a lifetime, the date of entry of their applications and information on the stages of consideration of the issue is not made public, nor are determined the deadlines for reviewing the decision.

This estimation is not true. Article 13² of the Rules of Procedure of the High Council of Justice of Georgia provides for the rule for the indefinite appointment of a judge appointed for a term of three years, who has at least three years of judicial experience. The above article exhaustively clarifies the issues related to reviewing applications and the deadlines for making decisions at each stage of the review. Besides, the applications of judges requesting a permanent appointment were published at the open sessions of the High Council of Justice, and only then were the procedures provided for in the regulations launched.

4. The report notes that members of the Council whose office was announced vacant participated in the interviews with the candidates seeking that particular position.

According to the current practice, the members of the Council may not attend the interviews of the candidates, for which vacancies they themselves are taking part in the competition. In case of being present during such interviews, these members shall not have the right to ask questions and must be excluded from the interview.

7. The report maintains that the Council did not show interest and failed to investigate in the process of selecting the judiciary for the Supreme Court whether the documents proving the higher education of several candidates, including the current Prosecutor General, Shalva Tadumadze (who eventually became a judge), as well as Zaza Tavadze, the Chairperson of the Constitutional Court, were in line with the requirements of the law.

It should be noted that the Council, within the scope of its competence, examined the documents submitted by all candidates and deemed that they complied with the requirements established by law.

8. Concerning the selection of judicial candidates for the Supreme Court the report argues that during the second ballot, the list of the twenty candidates with the best points did not fully coincide with the results of the voting.

Pursuant to Article 34¹ (11) of the Organic Law of Georgia on Common

Courts, each member of the High Council of Justice shall fill in the assessment form of each judicial candidate, and in accordance with paragraph 13 of this Article, a candidate shall be considered nominated if at least two-thirds of the full composition of the Council votes for him/her by secret ballot at an open session of the Council. This provision ensures that the decision is made by a qualified majority of the members of the Council. Otherwise, it is theoretically possible that the number of points obtained by a candidate supported by the two-thirds of the members of the Council may not exceed the points received by a candidate with the best scores. It is not because that the Council members are not bound when making a final decision by the points they gave, but because that the points granted by members who did not support a candidate during the voting can be very low and drastically affect the final result. Besides, it is noteworthy that only the competence is assessed with points, and the final decision by a member of the Council is made based on both competence and integrity criteria.

10. According to the report, the High Council of Justice admitted 20-20 students to the High School of Justice on 4 March and 25 November, respectively. This figure has become a tradition. The decisions are made in a formal manner.

When announcing a competition for the admission of students, the High School of Justice shall provide the High Council of Justice with information on the number of students who can be enrolled in the school within the available resources. In the two cases mentioned, these were twenty applicants, which is the maximum possible number of students who can be enrolled in one group, taking into account the school's resources and infrastructure.

11. The report argues that the Council neither publishes on the website nor issues the biography data of applicants for the Justice School.

As noted in the report, this is due to the protection of personal data of candidates as required by law.

12. The report notes that the distribution of judges in a narrow specialization should be decided by voting, because, as noted, the distribution of judges in a narrow specialization by the chairperson poses the risks of manipulation.

It is noteworthy that within the current practice, the distribution of judges

in a narrow specialization is based on the will and specialization of judges of a relevant court, which rules out the conclusion offered in the report.

14. The report notes that the amendments within the Fourth Wave of judicial reforms ensured that before the appointment of a chairperson, the Council shall consult with the composition of a relevant court and then make a reasoned decision to appoint a person to the office. The report further adds that the provision does not substantially change the situation, as the results of the consultation, given its very nature, cannot be binding.

We cannot agree with the above view. Consultations with the judiciary shall be mandatorily considered when making decisions for the High Council of Justice. Another guarantee is the obligation to substantiate such decisions, with the indication of the results of the consultations and the prerequisites for making the decision.

15. The report argues that with the view to reducing the hierarchy among judges, it is necessary to abolish the position of the Deputy Chairperson of the Court of Appeals and, if required, to allow one of the judges to perform the duties of the Chairperson.

The position of the deputy chairperson and in case of absence of the chairperson, the performance of the duties of the chairperson by the deputy chairperson is a proven practice. Besides, the role of the deputy chairperson is not only to perform the duties of the chairperson. Article 26 of the Organic Law of Georgia on Common Courts provides for other powers of the deputy. The proposal to abolish the position of deputy chairperson and assign one of the judges to perform the duties of the chairperson requires the development of relevant legislative regulations, which will complicate the management of the court.

16. The report argues that the legislation does not govern the powers of the chairperson of panels/ chambers, that these positions are designed to strengthen the hierarchical levels among judges and to reward those who are loyal to the influential group, and that there is no functional necessity for the position, which is why the office of the chairperson of panels or chambers (acting chairperson) should be abolished.

We cannot agree with the above. In the absence of the deputy chairperson of the Court of Appeals, as well as the chairperson of the District (City) Court, the chairperson of one of the chambers or panels acts as the

deputy chairperson (chairperson). In addition, the organic law defines the broad powers of the presidents of courts, in the implementation of which the court chairperson shall be assisted by chairpersons of relevant panels in respective specializations.

20. The report argues that effective steps have not been taken to eliminate problems relating to media coverage of Council sessions.

Firstly, it should be noted that none of the media outlets has any problems covering the sessions of the High Council of Justice. On the contrary, during the reporting period and even now, the working conditions for the media have been much improved, namely, a comfortable environment has been created and the risks of interfering with journalistic activities are prevented to the maximum extent possible. This includes timely notification of the media, the possibility to obtain necessary interviews, etc. We are sure this has been noticed by the GYLA's monitor who attends the sessions and observes the attitude of the Council to the media. Consequently, we have a reasonable doubt that the reference made in the report to a problem of the coverage of the sessions is a subjective assessment and the author does not know, or does not understand well the media priorities, especially in terms of news coverage. Otherwise, the assessment of the media coverage of Council sessions offered by the monitoring report would have been more competent.

As for the TV screen installed in the lobby of the Council, we think that the assessment in this regard, unfortunately, is biased. As you know, the conference hall of the High Council of Justice is rather small in size, and in addition to the members of the Council, the sessions are attended by monitors, journalists, etc. Cameramen after obtaining the session footage can observe the progress of the sittings through the TV screen placed in the hall. This ensures that the working environment for the Council as well as for observers is guaranteed and the interests of the media are taken into consideration.

The audio recording of sessions is published on the website of the High Council of Justice as soon as possible. Consequently, there is no problem to issue such recordings. Therefore, it is unclear and groundless what is meant under procedural violations with respect to the media, and taking effective steps.

Moreover, those sessions of the Council regarding which there was high public interest were broadcast live.