



# MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE

№10



GEORGIAN  
YOUNG  
LAWYERS'  
ASSOCIATION

**Georgian Young Lawyers' Association**

**MONITORING REPORT  
OF THE HIGH COUNCIL OF JUSTICE  
№10**

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## **RESEARCH METHODOLOGY**

### **Objectives and subjects of the research**

The High Council of Justice (hereinafter referred to as the Council) is a constitutional body of the common court system.<sup>1</sup> Its function is to ensure the independence and efficiency of the courts, the appointment and dismissal of judges and the fulfilment of other tasks.<sup>2</sup> The Council, in fact, has full control over the common court system. The Georgian Young Lawyers' Association (hereinafter GYLA) has been involved in the preparation of the Council's monitoring reports since 2012, in which it evaluates activities of the Council on the annual basis. We present the report №10, which aims to identify the positive or negative tendencies in the work of the Council, which will help to increase the efficiency of this institution, the transparency and impartiality of the justice system.

### **Research tools and sources**

The reporting period covers the period from January 1, 2021 to December 31, 2021.

The following sources are used in the document:

- Normative framework in Georgia, both legislative and by-laws;
- Data obtained through public information requests and posted on the Council's website;
- Information received by GYLA observers at Council meetings and various public meetings.

GYLA also relies on past reports and studies evaluating the judiciary system. Documents prepared by international organizations - the Venice Commission, the OSCE, the Advisory Council of European Judges (guidelines, reports, assessments, etc.), as well as general and specific views and recommendations to Georgia were analysed.

### **Expressing gratitude**

The authors of the study thank the staff of the Council apparatus for the provided materials. The text in the study of the implementation part of the normative reality profoundly relies on the information obtained from it.

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<sup>1</sup> Constitution of Georgia, Article 64, Paragraph 1.

<sup>2</sup> Ibid.

## FINDINGS

Clan-based governance, supported by the current rules for the selection of Council members, remains a major challenge for the judiciary. Considering that the Council usually consists only of members of an influential group of judges, a hasty change in the law at the end of the year, which lifted the ban on electing the same person to the Council twice in a row, should be deemed unequivocally negative. With international partners talking about the need to reform the judiciary and the Council, as reflected in the so-called Charles Michel's agreement of April 19, the government has encouraged corporatism in the Council instead of fundamentally reforming the system. Parliament has not even announced a competition to select non-judicial members. Consequently, the Council continues to work with a membership of 10 people after June, without 5 non-judicial members

Observations of the process have shown that the Council uses both shortcomings and positive legislative changes to consolidate its power. The introduction of a reasoning mechanism in the Supreme Court selection rule, open voting, increased transparency, and the possibility of appeal, did not prevent the Council from selecting candidates on the basis of loyalty. The main reason for this is the fact that the clan controls 2/3 of votes enough to make a decision in the Council. It is obvious that without reforming the Council, the changes are façade. Moreover, the Council's work is facilitated by procedures that still contain shortcomings:

- After the probationary period, when appointing judges for lifetime or assessing them on the basis of good faith, in case 4 out of 6 evaluators consider that the judge does not meet this criterion, and also, if according to the competency criterion, the sum of the points obtained by him/her does not reach 70%, the Chairperson of the Council will issue a legal act on the refusal to consider the request for permanent appointment. The issue is not put to a vote. This rule contradicts the constitutional regulation, according to which 6 persons are required to refuse to nominate a candidate as a judge;
- Conducting open sessions of interviewing candidates for the vacancies in the courts of first and second instance is in the good will of the candidate, since, in accordance with the rules established by the Council, the interviews are held in closed session, which is problematic in terms of transparency;
- The evaluations of the judges of the first and second instances are made in a way that it is not clear what specific source the member of the Council relied on in the evaluation of the good faith of the judge;
- There is no transparent procedure for transferring judges without a competition. The Council does not publish information on the commence of the process, the number of participants and their identities.

The amended business trip rule (the term of business trips has been increased to 4 years. However, the Council no longer needs a consent of a judge to the business trip, a judge may be referred to another court for reasons of justice; and it is no longer obligatory for the Council to specify the exact circumstances of what may be considered in this term. In addition, it became possible to send an appellate judge to a court of first instance) has finally revealed that the government is even cancelling the positive changes it has made and giving the "clan" legal leverage to put pressure on the individual judge.

Although the competition for admissions is conducted by the School itself instead of the High Council of Justice, the extensive role of the Council of Justice in the process of staffing an Independent School Board and selecting a chairperson remains problematic. The School was instructed to specify the issues related to the conduct of the competition, however the School did not propose a new regulation of the competition.

One of the levers of power of the Council are the chairpersons. All influential members of the “clan” constantly occupy important positions in the judiciary. They rotate these positions, which prevents other judges from participating in the administration of the court. An illustration of this view is the practice of chaotic, vague appointments of court / panel / chamber chairpersons established during the reporting period. The rule of selection of court presidents by judges has failed to gain the support for years. The piece of the legislation that provides for conducting consultations with the appropriate court before the Council appoints a chairperson is used inconsistently by the Council. During the reporting period, the process of appointing chairpersons and acting directors took place in a non-competitive environment. It has become a tendency to change the specialization of judges, and then to appoint the already desired chairperson of the panel/chamber. The non-regulation of the mechanism for appointing the acting chairperson remains as a challenge.

The report addresses another problematic issue - disciplinary proceedings. Inadequate legal regulation in the selection of an Independent Inspector (hereinafter referred to as the Inspector) and the opaque practice of selecting an Independent Inspector by the Council remain a challenge.

- An absolute majority of the Council’s votes is sufficient to appoint an inspector. This allows the judge members of the Council to choose a candidate acceptable to them as an inspector;
- The rule for selecting an independent inspector does not address a number of important issues. There are not established the following: Basic principles (objectivity, publicity, prohibition of discrimination, avoidance of conflict of interest) and procedures of the competition (selection criteria, purpose and procedure of the interview, questions to be clarified at the interview, rules for evaluating the candidate and its justification).
- In disciplinary proceedings, the deadlines for reviewing complaints are still delayed, the rate of their termination is high. The council hold only one disciplinary meeting and has not considered any of the complaints of the year of 2021. Against this background, with the amendments adopted at the end of December, the Parliament halved the deadlines for disciplinary proceedings. It also reduced the quorum required for a decision by the Council as a result of disciplinary proceedings.

Transparency of the Council remains a challenge. Multiple deferred sessions and issues indicate a management problem. The ambiguity of their closure procedures is also problematic. As a result of the monitoring, the following key findings were identified in this section:

- The Council’s rules of procedure do not specify who drafts and approves the agenda. There is no right for a member of the Council to request the removal or addition of this or that issue from the agenda;



- The regulations of the Council do not regulate how much time is allocated to each member of the Council to state his/her position, how many times he/she can speak on the same issue and how many additional minutes are allotted for making a statement;
- During the reporting period, the rule of publishing the meeting date and agenda 3 days in advance was constantly violated. The agenda, as well as the information about the session were announced in the afternoon of the day before the session.
- The Council did not provide live coverage of Council meetings during the reporting period either.

## 1. THE POWER OF AN INFLUENTIAL GROUP OF JUDGES

### 1.1. Composition of the Council and challenges

The purpose of the High Council of Justice is to protect the independence of the judiciary and individual judges. Its composition must be such as to enable to achieve this purpose.<sup>3</sup> Currently, the Council consists of 15 members, of which 8 members are appointed by the Conference of Judges, 5 by the Parliament and 1 by the President, and the Chairperson of the Supreme Court is officially included in it.<sup>4</sup> Improvement of the staffing of the Council as an influential body in such a way as to facilitate sound processes in the judiciary is crucial both, for the independence of the judiciary and for overcoming corporatism. This has failed despite a number of legislative changes over the past few years.

Judge members are elected by the Conference of Judges of Georgia by a 2/3 majority of the members present at the session.<sup>5</sup> Any judge present at the conference has the right to nominate a candidate.<sup>6</sup> According to the GYLA, the current majoritarian system of electing judges must be changed.

One of the key issues in the agreement signed between the government and the opposition on April 19 was the reform of the judiciary, which also included a fundamental reform of the High Council of Justice.<sup>7</sup> Although the agreement did not focus on changing the composition of the Council, the emphasis was placed on the necessity to increase transparency, good faith and accountability in the Council's work.<sup>8</sup>

### 1.2. Selection of judge members of the Council

On June 24, the term of office of the following 4 judge members of the Council expired: Irakli Shengelia, Dimitri Gvritishvili, Vasil Mshvenieradze and Irakli Bondareko. A Special Conference of Judges was scheduled for May 26, at which four judges were to be elected to the Council. Part of the NGOs, in line with the Michel Agreement, called on judges to refrain from electing Council members before the reforms, while urging the authorities to start a substantial reform of the judiciary in a timely manner.<sup>9</sup> The ambassadors involved in EU mediation called on the authorities to immediately suspend the process of appointing judge members of the Council. The diplomats emphasized that the reform of the judiciary was a strict condition for providing macro-financial assistance to Georgia.<sup>10</sup> In response to the ambassadors, Dimitri Gvritishvili

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<sup>3</sup> Council of Justice in the Service of the Community Conclusion #10 (2007), available at: <https://bit.ly/2YCyTQt>, updated: 15.12.2021.

<sup>4</sup> Paragraph 2 of Article 47 of the Organic Law of Georgia on Common Courts.

<sup>5</sup> Paragraph 1 of Article 65 of the Organic Law of Georgia on Common Courts.

<sup>6</sup> Ibid, Paragraph 2 of Article 65.

<sup>7</sup> "President of the European Council Charles Michel publishes new proposal made today to Georgian political parties", website of EU, April 18, 2021, available at: <https://cutt.ly/8TPJOAq>, updated: 20.12.2021.

<sup>8</sup> Ibid.

<sup>9</sup> "Signatory Organizations Demand Suspension of Election of Judge Members of the High Council of Justice," website of Social Justice Centre, May 20, 2021, available at: <https://cutt.ly/1UoABcO>, updated: 20.12.2021.

<sup>10</sup> "Diplomats remind Georgian Dream of its responsibilities and call for the suspension of the appointment of judges", information portal "on.ge", May 22, 2021, available at: <https://cutt.ly/sUpJ6AL>, updated: 20.12.2021.

stated that if the conference had not approved the agenda, it automatically would have meant that the conference would no longer work and Council members would not be elected.<sup>11</sup> However, at the May 26 conference, 291 judges unanimously approved the agenda.<sup>12</sup>

The following were nominated as candidates: Badri Shonia, Temur Gogokhia, Gocha Abuseridze, Levan Mikaberidze. The results of the voting were distributed as follows: Badri Shonia - 281, Temur Gogokhia - 278, Gocha Abuseridze - 274, Levan Mikaberidze - 283.<sup>13</sup>

The judges were not informed in advance about the candidates, the latter did not present to the Conference their views and opinions on the situation in the system or plans about their future work in the Council. Nevertheless, an absolute majority of the judges supported the 4 nominated male candidates in a non-competitive environment. This once again shows the formality and facade nature of the process. GYLA believes that the election of new members of the Council was a rotation among those loyal to the “clan”, where the current judge members of the Council were replaced by other judges under the control of the influential group.<sup>14</sup>

On October 31, the Conference of Judges elected two more new members.<sup>15</sup> From the agenda published on October 27, it became known that the conference, among other issues, provided for the election of new members of the Council,<sup>16</sup> although the term of office of any member of the Council did not expire at that time. Only on the day of the conference did become known that the members of the Council, Tamar Oniani and Tea Leonidze, had made a personal statement to the administrative committee and demanded the early termination of the authority of the member of the Council. The term of the first, Tamar Oniani, = would have expired in March 2022, while that of the second - in October 2024. At the conference, on the open vacancy of the two female judges, male judges were nominated for the positions of judges of the Tbilisi Court of Appeals - Paata Silagadze and Giorgi Goginashvili. There was no competition for this time either, and additionally the candidates did not present their views on the state of the justice system, its achievements and challenges. Nevertheless, out of 263 judges participating in the voting, 257 voted for Paata Silagadze and 253 for Giorgi Goginashvili. It is important that Paata Silagadze was already a member of the Council.<sup>17</sup> He was also on the 10-man list, which was submitted to Parliament by the Secretary of the Council without any procedure, and afterwards he was repeatedly nominated as a judge of the Supreme Court, but in the end, he was not supported by Parliament. According to GYLA’s assessment,

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<sup>11</sup> “Dimitri Gvritishvili - If on May 26 the Conference of Judges does not approve the agenda of the session, it automatically means that the conference will be postponed and the members of the Council of Justice will not be elected”, information portal “Interpressnews”, May 25, 2021, available at: <https://bit.ly/379hpD7>, updated: 20.12.2021.

<sup>12</sup> Information obtained by direct attendance at the Extraordinary Conference of Judges on May 26.

<sup>13</sup> Ibid.

<sup>14</sup> “GYLA assesses the election of members of the High Council of Justice as an internal clan rotation”, website of the Georgian Young Lawyers Association, May 25, 2021, available at: <https://cutt.ly/KUpVPMk>, updated: 20.12.2021.

<sup>15</sup> XXX Conference of Judges, website of the High Council of Justice of Georgia, October 31, 2021, available at: <https://cutt.ly/yRB4178>, updated: 01.11.2021.

<sup>16</sup> XXX Conference of Judges of Georgia, website of the Supreme Court of Georgia, October 27, 2021, available at: <https://cutt.ly/yRB7vnA>, updated: 01.11.2021.

<sup>17</sup> “The Conference of Judges elected 7 members of the High Council of Justice”, website of the High Council of Justice of Georgia, June 10, 2013, available at: <https://cutt.ly/uRNqChC>, updated: 01.11.2021.

scheduling the conference on October 31 is a continuation of the manipulative policy, which is manifested in the appointment close to the day of the municipal elections of 2021, when the public attention is more focused on other issues.

The election of two judge members to the Council has drawn sharp criticism from international partners. According to the EU ambassador, the appointments of two new members of the judiciary were “hasty, opaque and non-competitive”.<sup>18</sup> The response of the US Embassy was also critical. The embassy called the process opaque and hasty.<sup>19</sup>

In response to the criticism, on November 4, the administrative committee of the Conference issued a statement accusing civil society organizations and international partners for interfering in the work of the judiciary.<sup>20</sup> The statement was rejected by several judges, who found criticism of the international partners unacceptable.<sup>21</sup> This fact has once again highlighted the importance of empowering individual judges so that in the future they can speak publicly about the challenges already existing in the judiciary system, which will help the process of improving the system. The rule of staffing of the Council, on the other hand, strengthens the influential group in the court and prevents the equal representation of the interests of different groups of opinions.

“The chairpersons of the court, the panel/chamber have the right to be members of the Council, which helps to further strengthen the already existing informal hierarchy in the judiciary. Therefore, a member of the Council who holds a position other than that of a judge should resign as soon as he or she is elected. As a result of the hasty changes in late December, the ban on electing the same person to the Council twice in a row was lifted. This amendment, especially when the rotation of the same person in managerial positions is constantly criticized, will further strengthen the power in the hands of an influential group.

**GYLA believes that the quota of chairpersons in the Council should be eliminated. In order to reduce the influence on the composition of the Council, changes are also needed, such as: establishment of a gender, regional and instance quotas (the latter is defined by law, but needs to be clarified) when electing judges to the Council.<sup>22</sup>**

Since 2013, the conference has elected 20 male and 5 female members to the Council. For example, in 2017, when there was a vacancy for 4 judges in the Council, 7 judges were nomi-

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<sup>18</sup> “Statement by EU Ambassador Carl Hartzel on the appointment of two members of the High Council of Justice”, website of the EU Delegation to Georgia, November 2, 2021, available at: <https://cutt.ly/JTWkE4x>, updated: 20.12.2021

<sup>19</sup> “The appointment of members to the High Council of Justice is also criticized by the US Embassy, information portal “Radio Liberty”, November 02, 2021, available at: <https://cutt.ly/3Uauhvx>, updated: 22.12.2021.

<sup>20</sup> “Judges - everyone should be well aware that the decision of the Conference of Judges is neither an ‘incomprehensible’ nor a ‘fifth step back’, but - it is an expression of the independence of the judiciary”, information portal “Interpressnews”, November 5, 2021, available at: <https://bit.ly/3vXZFCY>, updated: 21.12.2021.

<sup>21</sup> Ketevan Meskhishvili, Shota Getsadze, Gela Badriashvili, Tea Sokhashvili-Nikoleishvili, Nino Bakakuri, Ekaterine Gasitashvili, Giorgi Ebanoidze, Eka Areshidze, Shorena Guntsadze, Lili Mskhiladze, Tamar Khazhomia, Zaza Martiashvili, Khatuna Jinoria, Manana Meskhishvili, Davit Tsereteli, Tamar Chikhladze. Levan Darbaidze, Nino Gergauli, Madona Maisuradze, Badri Niparishvili, Tsitsino Kikvadze, Mamuka Tsiklauri, Devi Devidze.

<sup>22</sup> Nozadze N., Monitoring Report of the High Council of Justice №8, Georgian Young Lawyers Association, Tbilisi, 2020, p. 42, website of Georgian Young Lawyers Association, available at: <https://bit.ly/3qTcutK>, updated: 19.12.2021.

nated, only one of whom was a woman. Finally, the Conference elected 4 male members. The election of two female judges as members of the Council in 2020 can be positively assessed, however, in 2021 the situation has worsened in this regard as the Conference of Judges has replaced the two female judges with male judges.<sup>23</sup> Currently, the Council continues to work with ten members, among them: 8 judge members elected by the Conference, one Chairperson of the Supreme Court and one non-judge member appointed by the President in an opaque process last year.<sup>24</sup> 3 out of 8 judge members are from the Supreme Court, 3 from the first instance, and 2 from the appellate court. None is represented by the courts of Western Georgia. Currently, there are 2 women judges in the Council (one of them is the chairperson of the Supreme Court, Nino Kadagidze).

It is important that the law establishes gender quotas - which will create guarantees for the appointment of female members to this position.

### 1.3. Election of non-judge members

Non-judge members are elected on the basis of a competition by secret ballot, not less than 3/5 of the total number of members, in accordance with the rules established by the Rules of Procedure of the Parliament.<sup>25</sup> The election of non-judge members by 3/5 should be considered as a significant achievement of the constitutional amendments, as it focuses on the consensus model. **Although GYLA believes that this is not enough, in order to deepen this approach, it is necessary for the parliament to elect non-judge members with the mutual support (of the government and the opposition).**

At the same time, the current rule for the election of non-judge members in the Parliament does not provide a proper transparent procedure, which is why, even in the election of non-judge members in 2017, GYLA submitted a legislative proposal to the Parliament, which provided: a) submission biographies and vision documents of the candidates for the membership of the Council and making them public; b) the introduction of the rule of interviewing the candidates for the members of the Council by the Steering Committee and the right of the interested persons to ask questions.<sup>26</sup> The amendments were not reflected in the Rules of Procedure, it is important that the parliament considers it and turns it into a normative document.

During the reporting period, the term of office of 5 non-judge members of the Council expired.<sup>27</sup> The coalition called on the parliament to select conscientious and competent candi-

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<sup>23</sup> XXX Conference of Judges, website of the High Council of Justice of Georgia, October 31, 2021, available at: <https://cutt.ly/gFaT4ON>, updated: 04.04.2022.

<sup>24</sup> "The President of Georgia has appointed Tamar Gvamichava as a member of the High Council of Justice", the official website of the Presidential Administration, July 23, 2020, available at: <https://bit.ly/39LeiQl>, updated: 02.02.2021.

<sup>25</sup> Paragraph 5 of Article 47 of the Organic Law of Georgia on Common Courts.

<sup>26</sup> "NGOs Call on Parliament to Ensure Transparent Election of New Members of the High Council of Justice", website of the Social Justice Centre, June 5, 2017, available at: <https://bit.ly/2YlhR3c>, updated: 20.12.2021.

<sup>27</sup> Shota Kadagidze from March 23, 2021, and Nazi Janezashvili, Irma Gelashvili, Levan Gzirishvili and Zaza Kharebava from June 23.

dates for this position, against whom there would be public confidence and a broad consensus of parties. Elected with the support of the government and the opposition, the 5 independent members of the Council would express a different opinion and leave the “clan” with a one-vote unsustainable advantage.<sup>28</sup> However, during the reporting period, the Parliament did not announce a competition.

**Gender quotas are also important when electing non-judge members.**

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<sup>28</sup> “A New Perspective on Judicial Reform”, website of Coalition for an Independent and Transparent Judiciary, June 21, 2021, available at: <https://cutt.ly/oUoGLNr>, updated: 20.12.2021.

## 2. SELECTION AND APPOINTMENT OF JUDGES

Judges in district (city) as well as appellate courts are appointed by the High Council of Justice on a competitive basis. Selection and appointment of judges, transfer without competition to the “clan” is one of the levers to gain influence. Despite numerous legislative changes, the competitions held by the Council deserve constant criticism<sup>29</sup>.

The legislation stipulates:

- For a probationary period and after its expiration reassignment for lifetime;
- Reassignment of persons with judicial experience for lifetime;
- Appointment of judges with more than three years of experience for lifetime.<sup>30</sup>

Simplified regulations are in place for the appointment of former and current judges of the Constitutional and Supreme Courts.<sup>31</sup>

There are 315 current judges in the first and second instances at the moment.<sup>32</sup> Of these, 257 judges have been appointed for lifetime, 9 for a 10-year term, and 49 for a three-year term basis.<sup>33</sup>

### 2.1. Appointment for a probationary period through a competition

For the purposes of selection of judges in the Court of First and Second Instances, the Council conducts a competition in which the following have the right to participate: (1) graduates of the High School of Justice (hereinafter - the School), (2) former or current judges. School students are given a three-year probationary period, while current and former judges are appointed for lifetime.

The reform of the “third wave” established that the candidate is evaluated by criteria of competence and good faith, through scores.<sup>34</sup> Information about the professional reputation and activities of the candidates is reflected in the summary protocol,<sup>35</sup> and then they are interviewed.<sup>36</sup> The candidacy of the person in whose case the absolute majority of the Council (8 members) considers that he/she “meets” or “fully meets” the criteria of good faith, and in the

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<sup>29</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers Association and Transparency International - Georgia, Tbilisi, 2019, pp. 16-25, website of Georgian Young Lawyers Association, available at: <https://bit.ly/2zqPX2X>, updated: 12.03.2022;

Nozadze N., Monitoring Report of the High Council of Justice №8, Georgian Young Lawyers Association, Tbilisi, 2020, p. 14-21, website of the Georgian Young Lawyers Association, available at: <https://bit.ly/3qTcutK>, updated: 12.03.2022.

<sup>30</sup> During the reporting period, this rule is no longer used by the Council, as the judges to whom this transitional regulation relates have been appointed for lifetime. In fact, this article has consumed its function.

<sup>31</sup> Ibid, paragraph 9 of Article 35.

<sup>32</sup> Data updated as of December 31, 2021.

<sup>33</sup> Letter №924 / 3501-03-o of the High Council of Justice of Georgia dated December 10, 2021.

<sup>34</sup> Paragraph 1 of Article 35<sup>1</sup> of the Organic Law of Georgia on Common Courts.

<sup>35</sup> Ibid, paragraph 7.

<sup>36</sup> Ibid, paragraph 13.

part of competence, having obtained at least 70% of the total points, is put to the vote.<sup>37</sup> Eventually, the judge becomes the one who receives 2/3 of the votes of the Council members.<sup>38</sup>

**According to the GYLA, it is important to appoint judges of courts of first and second instances, judge and non-judge members of the Council by a doubling of 2/3 of the votes.<sup>39</sup> This provision, in the event that Parliament appoints non-judge members, who are publicly trusted and elected by broad consensus, will change the redistribution of powers in the Council and make it more consensus-oriented.**

The Council announced a competition for judges on February 22 for 85 vacancies. Candidate registration took place from February 23 to March 9.<sup>40</sup> 56 candidates took place in the competition and passed to the voting stage.<sup>41</sup> Of these, 28 were current judges, 7 were former judges, and 21 were school graduates.<sup>42</sup>

On March 2, 2021, the Council announced a competition for three additional vacancies in the Tbilisi City Court<sup>43</sup> in all three chambers<sup>44</sup>. Applications were accepted from March 3 to 17. 17 candidates were registered, 14 went to the voting stage, and three withdrew their candidacies.<sup>45</sup>

Interviews for 85 vacancies began on May 19<sup>46</sup> and May 20, and ran from June 2-4. The Council met with 7-10 candidates a day. The process was conducted in an open format. None of the candidates requested the recusal of the Council members. Interviews with candidates registered for the March 2 on three vacancies were held on June 7.<sup>47</sup> Levan Gzirishvili, a member of the Council, recused himself because his son was participating in the competition. At the session of June 17, the candidates were voted together. 12 members of the Council participated in the voting, Irma Gelashvili did not participate in the evaluation of candidates and voting. Levan Gzirishvili did not attend the session due to self-recusal.<sup>48</sup> All candidates met the criteria of good faith and competence and advanced to the voting stage.<sup>49</sup>

Part of the non-governmental organizations called on the Council to stop staffing the judi-

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<sup>37</sup> Ibid, Paragraph 12 of Article 35.

<sup>38</sup> Paragraph 4<sup>1</sup> of Article 36 of the Organic Law of Georgia on Common Courts.

<sup>39</sup> According to this principle, a decision will require the consent of 2/3 of the members of the judiciary and 2/3 of the non-judges, "A new perspective on judicial reform", website of the Coalition for an Independent and Transparent Judiciary, June 21, 2021, available at: <https://cutt.ly/oUoGLNr>, updated: 04.04.2021.

<sup>40</sup> "The High Council of Justice is announcing a competition for candidates for judges", the website of the High Council of Justice of Georgia, February 22, 2021, available at: <https://cutt.ly/EPGm0qV>, updated: 23.02.2022.

<sup>41</sup> Letter №945 / 3500-03-o of the High Council of Justice of Georgia of December 20, 2021.

<sup>42</sup> Ibid.

<sup>43</sup> "The High Council of Justice is announcing a competition for candidates for judges", the website of the High Council of Justice of Georgia, March 02, 2021, available at: <https://cutt.ly/nPGWt0h>, updated: 23.02.2022.

<sup>44</sup> Board of Administrative Cases - 1 staff member; Civil Cases Board - 1 staff member; Criminal Investigation, Pre-Trial and Substantive Review Board - 1 staff member.

<sup>45</sup> Letter №945 / 3500-03-o of the High Council of Justice of Georgia of December 20, 2021.

<sup>46</sup> Interview, website of the High Council of Justice of Georgia, May 18, 2021, available at: <https://cutt.ly/8Ai069V>, updated: 28.02.2022.

<sup>47</sup> Interview, website of the High Council of Justice of Georgia, June 7, 2021, available at: <https://cutt.ly/gAi9ZAZ>, updated: 28.02.2022.

<sup>48</sup> See: Minutes of the meeting of the Council of Justice of Georgia on June 17, 2021.

<sup>49</sup> Ibid.



ciary in a forced manner,<sup>50</sup> as the so-called Charles Michel Document of April 19 envisaged for fundamental judicial reform, including substantive reform of the Council in order to increase transparency, good faith and accountability.<sup>51</sup> The Council continued the competitions, which clearly showed that the Council was backed up by the government, which also saw no reason to suspend the competitions.<sup>52</sup>

Non-judge member Nazi Janezashvili was protesting against the participation of Levan Gzirishvili's son in the competition. In her opinion, it was a visible case of how a non-judge member of the council was striking a deal with the "clan".<sup>53</sup>

47 judges were appointed in the competition for 88 vacancies. 22 of them were graduates of the School who had been appointed to the position for a period of three years, and 25 with past judicial experience, who had been appointed for lifetime.<sup>54</sup>

With the changes of the fourth wave, the Council was obliged to disclose the justifications of the Council after the voting.<sup>55</sup> The grounding includes a description of the procedure and the characterization of the appointed judge, the scores accumulated by him/her and the conclusion on his/her good faith.<sup>56</sup>

The description of the procedure for selecting judges is transparent in the justifications, however, for example, in the case of a good faith assessment, the justification is drawn up in such a way that the evaluation can be addressed to any judge and is not tailored to a particular person. The conclusions are made in such a way that it is not clear what the Council member relied on when assessing the judge's good faith. At the same time, the member of Council is authorized to write a different opinion.<sup>57</sup> However, this right was not exercised by any member of the Council.

**It is important that the justification reflects the specific circumstances that led to the positive or negative assessment. The conclusion should be read in such a way that the interested person receives comprehensive information about the good faith of the judge.**

On August 5, the Council announced a competition to select candidates for 42 vacancies in district (city) courts. Applications were accepted from August 6 to August 22.<sup>58</sup> According to law, the Council reviews the applications and attached documents of the judges participating

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<sup>50</sup> "The High Council of Justice Continues to Take Harmful Steps for Justice", webpage of the Social Justice Centre, June 18, 2021, available at: <https://cutt.ly/AAfhGeY>, updated: 28.02.2022.

<sup>51</sup> "President of the European Council Charles Michel publishes new proposal made today to Georgian political parties", website of the EU, April 18, 2021, available at: <https://cutt.ly/8TPJOAq>, updated: 04.04.2022.

<sup>52</sup> "Kuchava to Ambassadors: I am responsible for ensuring the appointment of judges and members of the Council", information portal "Formula News", May 23, 2021, available at: <https://cutt.ly/AAoUvir>, updated: 28.02.2022.

<sup>53</sup> "Does the son of a member of the Council of Justice want to be a judge - nepotism?" information portal "Netgazeti", May 19, 2021, available at: <https://cutt.ly/1AoYkqf>, updated: 28.02.2022.

<sup>54</sup> Letter №945 / 3500-03-o of the High Council of Justice of Georgia of December 20, 2021.

<sup>55</sup> Paragraph 4<sup>2</sup> of Article 36 of the Organic Law of Georgia on Common Courts.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> "The High Council of Justice announces a competition for candidates for judges", website of the High Council of Justice of Georgia, August 5, 2021, available at: <https://cutt.ly/KAoIYPY>, updated: 28.02.2022.

in the competition within 5 working days.<sup>59</sup> The Secretary of the Council explained the violation of the 5-day period caused by the pandemic and other objective reasons.<sup>60</sup> At the session of September 7, 13 people registered as candidates. The Council interviewed some of the candidates on December 15,<sup>61</sup> but the competition did not end during the reporting period.

## **2.2. Appointment of persons with judicial experience for lifetime tenure through competition**

The procedures here are almost the same as for the appointment of persons with no judicial experience through a competition, although when assessing the competency criterion, a characteristic of professional qualities, including conduct in the courtroom, is added.<sup>62</sup> In addition, it evaluates (except for the current or former member of the Constitutional or Supreme Court) 5 cases considered by him/her (including, if any, at least 2 cases on which the conclusive/final decision was changed by a higher court).<sup>63</sup> Upon successful completion of the competition stages, they are appointed for life.<sup>64</sup> Based on this principle, in 2021, 25 current judges were appointed for life.<sup>65</sup>

## **2.3. Appointment of judges for lifetime after the probationary period**

A probationary judge is evaluated by three judge and three non-judge members of the Council on a three-year term.<sup>66</sup> Based on the analysis of the results of the first, second and third-year evaluations, the Council discusses and makes a decision on the appointment of a person for lifetime tenure.<sup>67</sup> The decision is made by open voting, the refusal is documented, and the documentation is public.<sup>68</sup> Under the current procedure, in 2021, the Council did not discuss the issue of re-appointment of judges with no judicial experience. Considering that the Council has 10 members since June and only one is a non-judge member, the process of evaluating judges with no judicial experience scheduled for June 17 is in question.

When assessing a judge on the basis of good faith, if 4 out of 6 evaluators believe that the candidate do not meet this criterion, it is a sufficient condition to prevent them from being interviewed.<sup>69</sup> Also, if according to the competency criterion, the sum of the scores obtained by him/her does not reach 70%, the Chairperson of the Council will issue a legal act on the

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<sup>59</sup> Organic Law of Georgia on Common Courts, Paragraph 8 of Article 35.

<sup>60</sup> See: Minutes of the September 07 sitting of the High Council of Justice of Georgia.

<sup>61</sup> Interview, website of the High Council of Justice of Georgia, December 14, 2021, available at: <https://cutt.ly/aGb72Qg>, updated: 28.04.2022.

<sup>62</sup> Organic Law of Georgia on Common Courts, paragraph 2 of Article 36<sup>3</sup>.

<sup>63</sup> Ibid, paragraph 41 of article.

<sup>64</sup> Ibid.

<sup>65</sup> Letter №945 / 3500-03-o of the High Council of Justice of Georgia of December 20, 2021.

<sup>66</sup> Paragraph 44 of Article 36 of the Organic Law of Georgia on Common Courts.

<sup>67</sup> Ibid, paragraph 41 of article.

<sup>68</sup> Ibid, Article 36<sup>4</sup>.

<sup>69</sup> Paragraph 13 of Article 36 of the Organic Law of Georgia on Common Courts.

refusal to consider the request for lifetime appointment.<sup>70</sup> The issue is not put to a vote. This is contrary to the constitutional regulation, according to which a person will not be appointed as a judge if his/her candidacy is not supported by 6 members of the council.<sup>71</sup> According to the existing rule, in fact, 4 members are able to do it. Although the law provides for the possibility of appealing against this decision,<sup>72</sup> this provision cannot change the unconstitutionality of the original rule. **The regulation should be abolished. Instead, in the event of such an assessment by 4 members, a draft reasoned decision on the refusal of appointing a judge for lifetime tenure should be submitted to the Council session. If the proposal receives 6 votes, the judge would not be allowed to interview for a lifetime appointment. However, even in this case, it is important to appoint judges for life by 2/3 of the votes of judge and non-judge members separately.**

#### 2.4. Reassignment and promotion of judges

For years, the subject of criticism has been the regulation of re-appointment without competition and its enforcement.<sup>73</sup> The appointment of a judge under the “Third Wave” amendments requires his or her consent in a court of the same or higher instance.<sup>74</sup> Prior to that, reassignment was also possible in the lower instance. A judge may be promoted only in case if he/she has been a judge in a district (city) court for at least 5 years.<sup>75</sup> The legislature obliged the Council to develop promotion criteria.<sup>76</sup> The Council was limited itself only to the following general rule: “Only a judge corresponding to the high rank of a judge of the Court of Appeal with competence, experience, business and moral reputation can be promoted.”<sup>77</sup> **It is important to write down a procedure/criteria that clearly demonstrates the reasons for giving preference to a particular candidate when transferring a judge to another court.**

According to the procedures, the information is published on the Council’s website. The applicant judge has 7 days to submit an application,<sup>78</sup> after which he or she will be considered by the Council and the person will be interviewed. During the reporting period, the issue was raised for 6 times.<sup>79</sup> In total, 7 judges were reappointed, 6 of them were promoted. The competition was not transparent. No materials were published about the commence of the process, the number of participants and their identities. Information was available only on the day of the interview, at the meeting. The interview (which usually lasted 5-10 minutes and mostly included questions about motivation and workload) and voting took place mostly

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<sup>70</sup> Ibid.

<sup>71</sup> According to Paragraph 6 of Article 63 of the Constitution of Georgia, the decision must be supported by 10 out of 15 members of the Council. If there are 6 against, the person will not be appointed as a judge.

<sup>72</sup> Paragraph 13 of Article 36<sup>4</sup> of the Organic Law of Georgia on Common Courts.

<sup>73</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, p. 30-32.

<sup>74</sup> Article 37 of the Organic Law of Georgia on Common Courts.

<sup>75</sup> Article 41 of the Organic Law of Georgia on Common Courts

<sup>76</sup> Ibid, paragraph 2.

<sup>77</sup> Paragraph 11 of Article 13<sup>1</sup> of the Rules of Procedure of the High Council of Justice of Georgia, website of the High Council of Justice of Georgia, available at: <https://bit.ly/2WmWN0S>, updated: 14.02.2021.

<sup>78</sup> Ibid, paragraph 8.

<sup>79</sup> Letter №948 / 3497-03 of the High Council of Justice of Georgia of December 20, 2021.

on the same day. Nazi Janezashvili and Irma Gelashvili protested against this practice. According to them the procedures were not properly regulated and it was unclear which purpose it served to initiate so many non-competitive transfers, especially since it could not solve the shortage of judges.<sup>80</sup> **It is important that the Council conducts the process of transfer and promotion of judges without competition transparently.**

## 2.5. Business Trip

The “Third Wave” of justice reform defined the rules of a judge’s business trip to another court; The basics of business trips and the procedure for selecting the judge to be assigned were established; The business trip was possible for a period of up to one year and it could have been extended for only one year; The decision should have substantiated the need for the business trip and its impact both at the place of transfer and at the court from which the judge was appointed on business trip; This required the consent of the judge; Which was evaluated positively, especially against the background that the business trip has been used as a mechanism for punishing judges for years.<sup>81</sup> As a result of the hasty changes made on December 30, 2021, these positive guarantees have been completely changed: a) the Council may send a judge on a business trip for 2 years without his/her consent, this term may be extended for another two years.<sup>82</sup> b) It is possible to refer a judge of the Court of Appeals to a court of first instance.<sup>83</sup> In addition, the protocol is annulled, according to which a judge in a particular court had been sent on an involuntary business trip from the court closest to his/her territory. A judge may be sent on a business trip to another court for the sake of the interest of the judiciary, and it is no longer the duty of the Council to indicate the specific circumstances of what may be considered in this term.

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

## 2.6. Admission of students to the School

By law, the School conducts a competition for admission of students.<sup>84</sup> Despite this positive change, which has been demanded by the civil society for years,<sup>85</sup> the role of the High Council of Justice in the process of staffing an Independent School Board remains problematic. In particular:

- 2 out of 7 members of the Independent School Board are appointed by the High Council of Justice from among its members;<sup>86</sup>

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<sup>80</sup> See: Minutes of the meeting of the High Council of Justice of February 22, 2021.

<sup>81</sup> Tsimakuridze E., Mezvrishvili St., Monitoring Report of the High Council of Justice # 4, Georgian Young Lawyers Association and Transparency International - Georgia, Tbilisi, 2016, pp. 44-45; website of GYLA available at: <https://cutt.ly/OP5Lf1m>, updated: 25.02.2022.

<sup>82</sup> Paragraph 2 of Article 37<sup>1</sup> of the Organic Law of Georgia on Common Courts.

<sup>83</sup> Ibid.

<sup>84</sup> Article 66<sup>14</sup> of the Organic Law of Georgia on Common Courts.

<sup>85</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7.

<sup>86</sup> Paragraph 4 of Article 66<sup>3</sup> of the Organic Law of Georgia on Common Courts.

- The High Council of Justice appoints 2 additional members with the academic quota.<sup>87</sup>

The Chairperson of the Independent Board of the School is elected with the quota of the Conference of Judges (3 people in total) by the High Council of Justice.<sup>88</sup>

The term of the member of the High Council of Justice Dimitri Gvritshvili expired in July. On November 4, the Council elected him as a chair of the Independent Board of the High School of Justice,<sup>89</sup> which once again confirms the influence of the High Council of Justice over the High School of Justice and once again demonstrates the rotation of the same individuals in important positions.

**In order to reduce the role of the High Council of Justice, in the process of admitting the students, as well as for the internal freedom of the Independent Board of the School, it is best to leave the right to elect its members and chairperson to the Independent Board of the High Council itself.**

With the changes of the “fourth wave” of justice, the form of the competition for the admission to the school, the registration of candidates and other issues related to the competition, the School should regulate through its own charter.<sup>90</sup> During the reporting period, the latter did not propose any new regulation of the competition in the charter.<sup>91</sup> **The school should take appropriate measures to ensure a transparent student selection process, which secures the training of competitive staff and the introduction of new staff into the judiciary.**

Students were not enrolled in the school during the reporting period.<sup>92</sup>

## 2.7. Nomination of candidates for the Supreme Court

As a result of the constitutional reform, the Council has been granted with the authority to nominate members of the Supreme Court.<sup>93</sup> Very soon this power became the main puzzle of justice. It all started in 2018, when the Council submitted a 10-person list of Supreme Court justice candidates to the legislature without any procedure.<sup>94</sup> Subsequent developments, public outcry, and pressure from international partners forced the government to make legislative changes, after which the Council’s competencies were clarified and procedures improved, but this did not lead to significant improvements. In March, the ruling party made significant changes to the nomination procedure of Supreme Court justices. The process was taking place against the background of a severe political crisis, with the ruling party claiming the changes were intended to reflect the recommendations of the Venice Commission. It is stipulated in

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<sup>87</sup> Ibid.

<sup>88</sup> Paragraph 5 of Article 66<sup>14</sup> of the Organic Law of Georgia on Common Courts.

<sup>89</sup> “On the Election of D. Gvritshvili as the Chairperson of the Independent Council of the High School of Justice”, Decree # 1/183 of the High Council of Justice of Georgia of November 4, 2021, available at: <https://cutt.ly/pA5u58U>, updated: 12.03.2022.

<sup>90</sup> Article 66<sup>14</sup> of the Organic Law of Georgia on Common Courts.

<sup>91</sup> Letter №02 / 2924 of the High School of Justice of December 14, 2021.

<sup>92</sup> Ibid.

<sup>93</sup> Article 61 of the Constitution of Georgia, the constitutional amendments entered into force on December 16, 2018.

<sup>94</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7.

the law that: a) public hearings of candidates should be conducted in accordance with the principle of equality; b) the evaluations of the candidates and their substantiation, including the identities of the members of the Council, was to become public; c) voting has been removed in order to reduce the number of vacancies to the number of candidates. Candidates with the best results in the assessment of competence criteria will proceed to the next stage of selection; d) the candidate who receives the support of 2/3 of the members of the Council will be nominated to the Parliament, and open voting will be held to select each candidate; e) established the possibility of appeal to the Qualification Chamber.

However, procedural refinement, publicity of the substantiation, the ability to appeal, and the high degree of transparency did not prevent the Clan and its allied ruling party from selecting loyal judges. This process has once again proved that any procedural improvements are pointless if the reins of management within the system are monopolized by one group and the government supports it. As time goes on it becomes more and more clear that it is a matter of political power and not of legal procedures.

One of the issues of the agreement of April 19 between the political parties was justice.<sup>95</sup> According to the document, in the path of large-scale, inclusive and all-party reforms, parliament should embark on ambitious judicial reform.<sup>96</sup> However, this did not happen. The ruling party tried to present the fragmentary changes made before the signing of the document as fulfilment of the agreement,<sup>97</sup> thus practically refusing to fulfil its obligations.

Against this background, the Coalition presented to the public a new vision for judicial reform, with the main focus on a consensus-oriented approach.<sup>98</sup> According to the new vision, the decision to appoint judges should be made on the principle of double majority (consent of 2/3 of the judges and 2/3 of the non-judge members). “The logic of consensus should be strengthened at the stage of appointment of judges of the Supreme Court by the Parliament. The principle of bilateral appointment should be introduced. This excludes the staffing of the cassation instance without the consent of the opposition “.<sup>99</sup>

### **2.7.1. Competition announced for 9 vacancies - first selection**

Against the background of the political crisis and the hasty changes in the legislation, three competitions were held for 11 vacancies. They were announced in 2020. These include:

- Competition for nine vacancies of Supreme Court judges, for which 50 candidates were registered;

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<sup>95</sup> President of the European Council Charles Michel publishes new proposal made today to Georgian political parties, website of the EU, April 18, 2021, available at: <https://cutt.ly/8TPJOAq>, updated: 02.12.2021

<sup>96</sup> Ibid.

<sup>97</sup> “Irakli Kobakhidze, Archil Talakvadze and Shalva Papuashvili - It is disturbing that due to the unscrupulous actions of certain officials, the strategic countries are provided with distorted information on the implementation of the agreement”, information portal Interpressnews, July 16, 2021, available at: <https://tinyurl.com/nmmcapjs>, updated: 02.12.2021.

<sup>98</sup> “A New Perspective on Judicial Reform”, Website of Coalition for an Independent and Transparent Judiciary, June 21, 2021, available at: <https://cutt.ly/9YhJXeS>, updated: 02.12.2021.

<sup>99</sup> “A New Perspective on Judicial Reform”, Website of Coalition for an Independent and Transparent Judiciary, June 21, 2021, available at: <https://cutt.ly/9YhJXeS>, updated: 02.12.2021.

- Competition for one vacancy in which 22 candidates were registered.
- Competition for another vacancy where 25 candidates were registered.<sup>100</sup>

Based on the changes of April 1, applicants were given the opportunity to submit additional applications.<sup>101</sup> A total of three persons took advantage of this opportunity. Two more candidates have registered for the current competition for 9 vacancies. Accordingly, a total of 52 candidates participated in the competition: 41 with judicial experience and 11 with no judicial experience. Interviews were held in the Council from 10 December 2020 to 27 April, at which time 11 candidates withdrew their candidacies.<sup>102</sup> 2 contestants were removed by the Council due to non-appearance.<sup>103</sup> At the end of the process, 6 more persons refused to participate in the competition.<sup>104</sup>

Each interview lasted 3-4 hours on average. Irakli Shengelia did not attend the interviews due to a conflict of interest (his wife's brother - Levan Tevzadze participated in the competition). He was still called upon by the civil society to recuse himself <sup>105</sup> during the previous competition, though he did not do so then.

The live stream of the interviews was provided by the Council via YouTube. Finally, the Council announced the evaluation of 32 candidates on May 31st.<sup>106</sup> Nazi Janezashvili did not take part in the evaluation of the candidates, as she supported the suspension of the competition and demanded that the competition for judges of the Supreme Court be held after the selection procedure has been completed.<sup>107</sup> A review of published ratings revealed that the ratings were mostly template-based; the substantiation did not include strengths and weaknesses of a candidate, an in-depth, concretized examination of their personal characteristics; it was unclear what standard the Council was guided by when evaluating the candidates.<sup>108</sup>

By the decree of June 1 of the Council, as a result of the scores and evaluations of the members of the Council, 9 candidates were moved to the next stage of selection.<sup>109</sup> As a result of the voting, in which 12 members of the High Council of Justice had participated, 9 candidates

<sup>100</sup> "Those wishing to become judges of the Supreme Court of Georgia have registered as candidates", December 21, 2020, website of the High Council of Justice of Georgia, available at: <https://cutt.ly/SYKvfl7>, updated: 03.12.2021.

<sup>101</sup> Ibid.

<sup>102</sup> Giorgi Gogichaishvili, Tatia Gogolauri, Nikoloz Dgebuadze, Nino Chakhnashvili, Nino Nishnianidze, Nino Oniani, Gizo Ubilava, Madi Chantladze, Nana Chichileishvili, Leila Foadishvili, Ekaterine Shengelia.

<sup>103</sup> Paata Shavadze and Marine Chkonia.

<sup>104</sup> Ilona Todua, Vepkhia Lomidze, Merab Lomidze, Paata Silagadze, Shorena Tsikaridze, Amiran Dzabunidze.

<sup>105</sup> "Coalition evaluates the process of selecting candidates for judges of the Supreme Court in the High Council of Justice", website of Coalition for Transparent and Independent judiciary, September 12, 2019, available at: <https://bit.ly/3dGCyDE>, updated: 12.03.2022.

<sup>106</sup> Assessments of Supreme Court Justice Candidates, Website of the High Council of Justice of Georgia, May 31, 2021, available at: <https://cutt.ly/wYlz1tS>, updated: 03.12.2021.

<sup>107</sup> "Nazi Janezashvili demands suspension of competition for candidates for Supreme Court Judges", TV channel "First Channel", March 3, 2021, available at: <https://cutt.ly/FA5YKh4>, updated: 14.03.2022.

<sup>108</sup> "The selection of candidates for judges of the Supreme Court is arbitrary and unfair", website of Coalition for Independent and Transparent Justice, June 24, 2021 available at: <https://cutt.ly/TYztRek>, updated: 02.12.2021.

<sup>109</sup> "Selection of Candidates for Judges of the Supreme Court", website of the High Council of Justice of Georgia, June 1, 2021, available at: <https://cutt.ly/2YlbySC>, updated: 03.12.2021.



were presented to the Parliament.<sup>110</sup>

On July 12, 2021, Parliament appointed six judges, despite the fact that the appointment process was to be suspended under the agreement of Charles Michel.<sup>111</sup> The appointments were sharply criticized by the EU<sup>112</sup> and US embassies.<sup>113</sup> According to the OSCE/ODHIR report, candidates for Supreme Court justices were nominated in an environment where public confidence in the independence of the judiciary was low.<sup>114</sup> The ruling party did not take into account the context, neither the calls of the partners and the assessments of experts, thus causing significant damage to the independence of the judiciary, strengthening the positions of an influential group of judges, the “clan” in the Supreme Court. Despite such assessments, the Council and Parliament continued to nominate and appoint judges for vacancies in the Supreme Court.

On November 12, the Council nominated three more judges from the existing list for three vacancies to Parliament. The submission was made in violation of the law. According to which, if the Parliament does not elect a candidate for the position of a judge of the Supreme Court, the candidates for the remaining vacancies must be nominated within two weeks.<sup>115</sup> Parliament appointed 6 judges for 9 vacancies on July 12, so the two-week term should have been calculated from this number, which was not taken into account by the Council and the candidates were submitted to the parliament four months late.

### **2.7.2. Competition announced for one vacancy - second selection**

On June 29, the Council began interviewing candidates registered for the one vacancy. The Council interviewed two candidates a day during the competition, for a total of six candidates. The interviews lasted for 2 hours. On July 15, the Council announced the evaluation of 5 candidates.<sup>116</sup> Dimitri Gvritshvili withdrew his candidacy.<sup>117</sup> Genadi Makaridze moved to the next stage based on the evaluations and grades of the Council members. On July 23, the Council nominated the candidacy of Genadi Makaridze to the Parliament.<sup>118</sup>

Parliament conducted interviews with 4 candidates nominated by the Council on November

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<sup>110</sup> Giorgi Gogjashvili, Gocha Abuseridze, Levan Tevzadze, Ketevan Meskhishvili, Giorgi Shavliashvili, Revaz Nadaraia, Bidzina Sturua, Eka Zarnadze, Lasha Kochiashvili.

<sup>111</sup> “Parliament Appointed Six Judges to the Supreme Court for lifetime tenure”, information portal Radio Liberty, July 12, 2021, available at: <https://cutt.ly/pTPJMCP>, updated: 02.12.2021.

<sup>112</sup> The appointment of judges and the application of the European Commission, TV channel “First Channel”, July 14, 2021, available at: <https://cutt.ly/TTPKyWA>, updated: 03.12.2021

<sup>113</sup> Ibid.

<sup>114</sup> Third Report on the Nomination and Appointment of Judges of the Supreme Court of Georgia, OSCE Office for Democratic Institutions and Human Rights, available at: <https://cutt.ly/5TPLIGc>, updated: 03.12.2021.

<sup>115</sup> Paragraph 15 of Article 34<sup>1</sup> of the Organic Law of Georgia on Common Courts.

<sup>116</sup> “Evaluations of Candidates for Judges of the Supreme Court”, website of the High Council of Justice of Georgia, July 15, 2021, available at: <https://cutt.ly/xYIEbxy>, updated: 03.12.2021.

<sup>117</sup> Ibid.

<sup>118</sup> “Candidate nominated for Parliament”, website of the High Council of Justice of Georgia, July 23, 2021, available at: <https://cutt.ly/IFaW1H>, updated: 02.04.2022



25-26.<sup>119</sup> On December 1, the Committee endorsed the four nominees, and on the same day, in a plenary session, the ruling party appointed four new judges to the Supreme Court for lifetime.<sup>120</sup>

### 2.7.3. Competition announced for one vacancy - third selection

On November 12, the Council began the process of interviewing in order to nominate another candidate for another vacant position of Supreme Court announced a year ago. Interviews were held on November 12, 15, and 16. The Council interviewed a total of 5 candidates. 4 out of 5 candidates also participated in competitions for previous vacancies in the Supreme Court. At the December 20 sitting, Amiran Dzabunidze moved to the next stage as a result of the scores and evaluations of the council members. At the same session, all 10 members of the Council supported his candidacy in Parliament.<sup>121</sup>

The Legal Affairs Committee heard Amiran Dzabunidze on December 28, and on December 29, with 79 votes against 10, supported his election as a judge of the Supreme Court.<sup>122</sup>

Observations of the proceedings show once again that any interference in the current normative framework, which does not contradict the decision-making mechanism, is targeted at the good of the influential group of judges and its patron government, which uses both shortcomings and positive news to strengthen its power.<sup>123</sup> Against this background, a need for significant and decisive reforms in the judiciary has become even more obvious. Consensus-based reforms will eliminate “clan” governance and restore the credibility of the judiciary. **Accordingly, GYLA believes that 2/3 of the votes of judge and non-judge members of the Council should be needed to make important decisions. And the support of a candidate in Parliament should be the result of a consensus between the opposition and the government.**

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<sup>119</sup> “Dimitri Gvritshvili withdrew his candidacy”, information portal “Netgazeti”, July 20, 2021, available at: <https://cutt.ly/6FaETrc>, updated: 02.04.2022.

<sup>120</sup> “Parliament has elected four judges of the Supreme Court”, Website of the Parliament of Georgia, December 01, 2021, available at: <https://cutt.ly/DYzi0qh>, updated: 03.12.2021.

<sup>121</sup> “Candidate Nominated for Parliament”, website of the High Council of Justice of Georgia, December 20, 2021, available at: <https://cutt.ly/JSui21K>, updated: 14.03.2022.

<sup>122</sup> “Parliament has elected a judge of the Supreme Court”, the website of the Parliament of Georgia, December 29, 2021, available at: <https://cutt.ly/pSuozmM>, updated: 14.03.2022.

<sup>123</sup> Nozadze N., Monitoring Report N 8 of the High Council of Justice, p. 7.

### 3. JUDGES ON ADMINISTRATIVE POSITIONS

#### 3.1. The role and influence of chairpersons

The chairpersons of the courts are a privileged group in the system and, together with the Council, they represent the main force to oversee the judges.<sup>124</sup> The influence of the chairpersons of the courts is also determined by the important powers vested in them by law or by the Council. Except the exceptional occasions, cases are no longer distributed by the presiding judge,<sup>125</sup> however, there is still a problematic power remained through which, with the motive of avoiding obstruction of justice, a chairperson can command a judge (1) to hear the case in another chamber or panel of inquiry, or in a specialized panel; (2) to act as a magistrate judge; (3) And a magistrate judge to operate outside his or her area of operation.<sup>126</sup>

The role of chairpersons in appointing judges in narrow specialisations is problematic. This issue is not regulated by law. According to the established practice, the chairperson of the Tbilisi City Court has been allocating judges in narrow specializations since 2006, and in 2018 the chairperson of the Tbilisi Court of Appeal was given this authority by the Council.<sup>127</sup> Such regulation poses real risks of manipulation, all the more so in the Court of Appeals, where the case is heard mostly by a panel of three judges, while the electronic program in the case distribution reveals only the rapporteur judge from the panel. The identities of the other two are chosen by the rapporteur judge. Considering that the panel makes decisions by a majority of votes, chairperson` power of easy transfer of judges in narrow specialisations increases the chances of interference in the process of composing the panel.<sup>128</sup> **GYLA believes that during the collegial hearing of the case, the selection of all three judges should be done through the electronic system, in a random distribution manner, and in a narrow specialization, this must be done by lot.**

#### 3.2. Selection of Chairpersons of the Court

In the first and second instances, the chairpersons of the courts is appointed by the Council.<sup>129</sup> The provision for their selection by judges did not gain support. Although such a stipulation was provided for in the original version of the “Third Wave” amendments and was approved

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<sup>124</sup> “We call on the High Council of Justice to stop appointing chairpersons of the courts on the basis of subjective opinion,” the Georgian Young Lawyers’ Association and the Georgian Democratic Initiative, February 26, 2018, available at: <https://bit.ly/35e1M89>, updated: 05.02.2022.

<sup>125</sup> Decision №1 / 56 of May 1, 2017 of the High Council of Justice of Georgia on the approval of the rule of automatic distribution of cases automatically in the common courts of Georgia, Article 3, website of the High Council of Justice of Georgia, available at: <https://bit.ly/3ggqJVo>, updated: 06.02.2022.

<sup>126</sup> Paragraph 5 of Article 30 of the Organic Law of Georgia on Common Courts.

<sup>127</sup> Decision №1 / 175 of the High Council of Justice of Georgia of April 30, 2018 on Determining the Narrow Specialisation of Judges in the Chambers of Civil, Administrative and Criminal Cases of the Tbilisi Court of Appeal, Article 9, website of the High Council of Justice of Georgia, available at: <https://bit.ly/2TBquug>, updated: 06.02.2022.

<sup>128</sup> “Coalition assesses the increase of powers for Mikheil Chinchaladze as a threat to the principle of random distribution of cases”, website of Coalition for Independent and Transparent Justice, May 20, 2018, available at: <https://bit.ly/3107n0q>, updated: 06.02.2022.

<sup>129</sup> Articles 23 and 32 of the Organic Law of Georgia on Common Courts.

by the Venice Commission,<sup>130</sup> this provision was no longer reflected in the law due to pressure from influential judges. In the end, it was only indicated that the Council makes a reasoned decision to appoint a person to the position, and before that, it conducts consultations with the relevant court,<sup>131</sup> the results of which, obviously, are not binding.

The existing vague practice and rule of appointing chairpersons have not changed for years. Managerial positions in the system are usually held by the same persons. They rotate these positions between each other, which does not allow other judges to be involved in the management of the court.<sup>132</sup> An illustration of this is the practice of appointing of chairpersons of court/panel/ chamber during the reporting period.

During the reporting period, the Council appointed the Chairperson of the Kutaisi Court of Appeal and the Acting Chairperson of the Bolnisi District and Batumi City Courts. Amiran Dzabunidze and Jumber Bejanidze have already held this position in other courts at different times, and this is the first managerial position for the acting chairperson of the Bolnisi District Court - Giorgi Gratiashvili.

The Council has appointed 9 chairpersons or acting chairpersons of the court's panel/chamber. 8 of them have held important managerial positions in the system at various times.

According to the practice established in recent years,<sup>133</sup> when the vacancy for the chairperson appears, the application is published in the court's internal network. Nevertheless, the process took place mainly in a non-competitive environment. An example of this is the competitions announced during the reporting period, when only one application was submitted for each position.

At the sitting of June 1, the Council discussed the appointment of the chairperson of the Kutaisi Court of Appeal. On December 20, 2020, after Vasil Mshvenieradze returned from the chairmanship of the Kutaisi Court of Appeal to the position of the Chairperson of the Tbilisi City Court, Amiran Dzabunidze was appointed to the position of Acting Chairperson of the Kutaisi Court of Appeal. The competition was announced by the Council on March 19th. Only Amiran Dzabunidze expressed his desire to participate in it.<sup>134</sup> At the sitting of June 1, the Council appointed Amiran Dzabunidze as chairperson of the Kutaisi Court of Appeal. Prior to that, the Council held online consultations with the judges of the Kutaisi Court of Appeal, however it was held in a closed format.<sup>135</sup> Closing consultations, especially when it comes to substantiating the decision to appoint a board chairperson, fails to meet the purpose of building trust in the system.

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<sup>130</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), JOINT OPINION OF THE VENICE COMMISSION AND THE DIRECTORATE OF HUMAN RIGHTS (DHR) OF THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (DGI) OF THE COUNCIL OF EUROPE ON THE DRAFT LAW ON AMENDMENTS TO THE ORGANIC LAW ON GENERAL COURTS OF GEORGIA, CDL-AD (2014)031, Strasbourg, 14 October 2014, p. 84. Available at: <https://cutt.ly/1O1EwQw>, updated: 08.02.2022.

<sup>131</sup> Paragraph 6 of Article 23 and Paragraph 1 of Article 32 of the Organic Law of Georgia on Common Courts.

<sup>132</sup> For more information, see: "Distribution of Clan Members to Managerial Positions in Narrow Circuit Courts", website of Georgian Young Lawyers Association, December 11, 2020, available at: <https://cutt.ly/zA9YrTm>, updated: 12.03.2022.

<sup>133</sup> Until 2018, candidates were nominated by the members of Council.

<sup>134</sup> See: Minutes of the sitting of June 1, 2021 of the High Council of Justice of Georgia.

<sup>135</sup> Ibid.

In accordance with the practice established in the previous reporting period, the Council was not conducting an interview if there was only one application for the vacancy and the candidate was put to a direct vote. The Council also acted in this practice during the reporting period.

The council, without any competition or interview, appointed Giorgi Gratiashvili as acting chairperson of the Bolnisi District Court at the sitting of August 6, and Jumber Bezhanidze as acting chairman of the Batumi City Court at the December 1 sitting.

**GYLA believes that the chairpersons should be elected by the judges of the relevant court. This, in addition to removing a significant lever of the Council's influence, will help strengthen individual judges.**

### **3.3. Appointment of the Deputy Chairperson of the Court of Appeal**

According to the law, the Deputy Chairperson of the Court of Appeal is appointed by the Council from among the judges of the same court for a term of 5 years on the basis of a reasoned decision.<sup>136</sup> The Council fired Irakli Shengelia, the deputy chairperson of the Court of Appeals appointed in 2020, based on his own request, and posted information about the vacancy on the intranet. As it becomes clear from the ordinance, none of the judges expressed their desire to hold this position and the Council again assigned the acting deputy to Irakli Shengelia, who has been holding managerial positions in the system for years.<sup>137</sup>

The main function of the deputy is to exercise his/her powers in the absence of the chairperson.<sup>138</sup> **In order to reduce the hierarchical divisions between judges, it is important to abolish the position of deputy and, if necessary, the duty of the chairperson should be performed by one of the judges.**

### **3.4. Appointment of chairpersons of chambers/panels and their acting chairpersons**

According to the legislation, the chairpersons of the chambers/panels are appointed by the Council from the respective chamber and the panel for a term of 5 years.<sup>139</sup> Their powers are not defined by law and there is practically no functional need for them. Nor is it specified in what cases the acting officers are appointed.

During the reporting period, the chairpersons of the Tbilisi City Court and the Chamber of Criminal Cases of the Tbilisi Court of Appeal and the Chamber of Civil Cases of the Kutaisi Court of Appeal were appointed. They have held managerial positions in the judiciary for years. Practice observation has once again revealed how the same judges in managerial positions take turns. GYLA believes that the purpose of the positions is to strengthen the hierarchi-

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<sup>136</sup> Organic Law of Georgia on Common Courts, Paragraph 6 of Article 23.

<sup>137</sup> "On the appointment of I. Shengelia as the Deputy Chief of the Tbilisi Court of Appeals", Decree # 1/135 of the Council of Justice of Georgia of July 15, 2021, available at: <https://cutt.ly/JSuq9Wb>, updated: 14.03.2022.

<sup>138</sup> Organic Law of Georgia on Common Courts, Paragraph 1 of Article 26.

<sup>139</sup> Paragraphs 5 of Article 23 and 4 of Article 30 of the Organic Law of Georgia on Common Courts.

cal ladder among judges and to satisfy the personal ambitions of those loyal to the influential group. **The recommendation of the organization is that the position of the Chairperson of the Panel and the Chamber (Acting chairperson) should be abolished.**

In accordance with the practice established in 2019, even in 2021, the Council was not conducting an interview if there was only one application for the vacancy, and the candidacy was put to a direct vote. Despite repeated references to the need for interviews by non-judicial members of the Council, the same approach persisted during the reporting period.

On September 7, the Council announced a vacancy for the position of Chairperson of the Chamber of Criminal Cases of the Tbilisi Court of Appeal. This position became vacant after Levan Tevzadze was appointed as a judge of the Supreme Court by the Parliament. In this case too, the Council addressed to the old-fashioned way of manipulation: At the sitting of September 7, the specialisation of Paata Silagadze was changed and transferred from the Panel of Investigative Cases to the Chamber of Criminal Cases, and at the sitting of September 14, he was appointed as a Chairperson of the Chamber of Criminal Cases without any competition or interview.<sup>140</sup>

The chairperson of 4 panels of the Tbilisi City Court was also appointed in the same way. On March 24, the Council initiated the competition for the position of the Chairperson of the Administrative and Civil Chamber of the Tbilisi City Court.<sup>141</sup> At the same session, Sergo Metopishvili was transferred from a civil to an administrative panel, and Badri Shonia from an administrative panel to a civil one. Accordingly, at the April 5 sitting, Sergo Metopishvili was appointed as a chairperson of the Administrative Cases Panel, while Badri Shonia was appointed Chairperson of the Civil Cases Panel.<sup>142</sup> They had no competitors. During the discussion of the issue, non-judge member Nazi Janezashvili asked what the reason was for this exchange of panels and positions. The secretary replied that they had the right to do so, but did not have any other information.<sup>143</sup>

At the September 10 hearing, the Criminal Panel of the Tbilisi City Court was divided into two: the Panel for Criminal Cases and the Panel for Investigative and Pre-Trial Sessions.<sup>144</sup> In 2017, when the said panels were merged, the Coalition considered the decision illegal and arbitrary, as the amendment, bypassing the law, served to remove the chairperson of the Criminal Cases Panel.<sup>145</sup>

At the September 10 sitting, Sergo Metopishvili was transferred from the Administrative Cases Panel to the Panel for Investigative and Pre-Trial Sessions and Substantive Review. At the September 14 sitting, the Council announced a vacancy for the position of the Chairperson of the panels<sup>146</sup> of the Tbilisi City Court.

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<sup>140</sup> See: Minutes of the meeting of the High Council of Justice of Georgia, September 14, 2021.

<sup>141</sup> See: Minutes of the meeting of the High Council of Justice of March 24, 2021.

<sup>142</sup> See: Minutes of the meeting of the High Council of Justice of April 5, 2021.

<sup>143</sup> Ibid.

<sup>144</sup> See: Minutes of the meeting of the High Council of Justice of September 10, 2021.

<sup>145</sup> "The Coalition strongly disapproves of the arbitrary dismissal of the Chairperson of the Criminal Cases Panel of the Tbilisi City Court", website of Coalition for Independent and Transparent Justice, July 26, 2017, available at: <https://bit.ly/3F35wew>, updated: 28.04.2022.

<sup>146</sup> Administrative, Criminal Cases, Investigative and Pre-Trial Panels.

At a meeting on September 20, it turned out that one application was submitted for each of the three vacancies discussed above. The Council members did not want to interview the candidate, nor were there any competitors. As a result of the voting, Temur Gogokhia was appointed to the Criminal Cases Panel, Sergo Metopishvili to the Investigation and Pre-Trial Panel, and Vasil Mshvenieradze was appointed as a Chairperson of the Administrative Cases Panel.<sup>147</sup>

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<sup>147</sup> See: Minutes of the meeting of the High Council of Justice of September 19, 2021.

## 4. DISCIPLINARY LIABILITY OF JUDGES

### 4.1. Legislative shortcomings

On December 30, 2021, Parliament, without the involvement of the broader public, hastily passed legislative amendments, which, among other important issues, included addition of disciplinary misconducts and disciplinary penalties, reducing the time limit for disciplinary proceedings and decision-making quorums, as well as new regulations on the withdrawal of judges from hearing cases.<sup>148</sup> Considering the fact that different opinion within the court is not encouraged and the Council reacts negatively to any such manifestation, the expedited changes at the special session made the impression that it was directed against individual judges, in order to suppress a different opinion in the system.

The provision for the election of an independent inspector by an absolute majority remains problematic.<sup>149</sup> In order to be elected, only the support of the judge members of the Council is enough, which leaves the non-judge members behind in the proceedings. It is important to create guarantees of independence so that this institution enjoys high public trust. Possibility of being elected only by the judge members of the Council makes the independence of the inspector vulnerable. **To eliminate this problem, it is necessary to define the number of votes required for the appointment at 2/3.** There are also gaps in the procedure established by the Council for selecting inspectors,, not solving a number of important issues.<sup>150</sup> The basic principles of the competition (objectivity, publicity, prohibition of discrimination) and procedures (selection criteria, purpose and procedure of the interview, questions to be clarified at the interview, evaluation of the candidate and its justification) are not established. **It is necessary for the Council to improve the rule for selecting an inspector.**

### 4.2. Inspector conclusions

Inspector<sup>151</sup> initiates disciplinary proceedings against the judge, ensures the preliminary examination and investigation of the case and submits the conclusions and opinions to the Council.<sup>152</sup> On December 30, 2021, as a result of expedited amendments, the two-month time limits for disciplinary proceedings were halved, with a pre-trial period set at 1 month instead of 2 months, which may be extended by 2 weeks.<sup>153</sup> The explanatory note states that reducing (halving) the time of disciplinary proceedings serves the legitimate aim of increasing the efficiency of the proceedings, while observations of the practice have shown that even in the case of conclusions submitted by the Inspector on time, deadlines for disciplinary proceedings by the Council are completely neglected.<sup>154</sup>

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<sup>148</sup> On Amendments to the Organic Law of Georgia on Common Courts, website of the Parliament of Georgia, available at: <https://bit.ly/3H4es2s>, updated: 19.02.2022.

<sup>149</sup> Organic Law of Georgia on Common Courts, Paragraph 2 of Article 51<sup>1</sup>.

<sup>150</sup> Article 27<sup>2</sup> of the Rules of Procedure of the High Council of Justice of Georgia.

<sup>151</sup> Organic Law of Georgia on Common Courts, Article 75<sup>6</sup>.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*, Paragraph 1 of Article 75<sup>7</sup>.

<sup>154</sup> Violation of the terms of disciplinary proceedings is also noticeable at the inspector level. For example: The decision to terminate disciplinary proceedings №34/20 shows that the Independent Inspector's complaint on the

In 2021, the Inspector's Office received 155 complaints in compliance with the form, and 74 in non-compliance with the form.<sup>155</sup> Out of 179 complaints (28 complaints filed in 2019), the inspector decided to find a defect in 8 cases and were given a deadline to correct the defect.<sup>156</sup> In 2018-2021, 401 reports prepared by the Independent Inspector were submitted to the Council.<sup>157</sup> As indicated in the requested information, the inspector provides information to the Council on the preparation of the conclusions, and forwards the conclusions after the meeting is scheduled. As of December 2021, 247 reports have been prepared by the Inspector, which have not been discussed by the Council.<sup>158</sup> As it can be observed in the decisions on the termination of cases, the Council did not review the complaints received in the reporting period in 2021, which in turn indicates the inefficiency of this process and the neglect of the deadlines set by the "Third Wave".<sup>159</sup> Against this background, the extent to which halving the deadlines will facilitate the timely consideration of disciplinary complaints will be reflected in the 2022 Council monitoring. Prior to that, it is important that the Inspector's Office and the Council ensure that the deadlines set for disciplinary proceedings are met.

### 4.3. Council Decisions

After the inspector submits a conclusion and opinion on the case, the Council makes a reasoned decision (according to the standard of "reasonable belief"<sup>160</sup>) to initiate disciplinary proceedings and request an explanation from the judge.<sup>161</sup> However, in case of refusal to initiate prosecution, the Council is not obliged to substantiate the decision. It is important that **the decision to refuse to prosecute be substantiated.**

During the reporting period, the Council made a decision to initiate disciplinary proceedings and to withhold explanations by 2/3.<sup>162</sup> This requirement leaves many cases out of consideration. In the Council's monitoring reports, **GYLA supported interim decisions in disciplinary proceedings by a simple majority and only final decisions on imposing disciplinary liability or terminating disciplinary proceedings by 2/3.**<sup>163</sup> However, with the changes adopted at the end of the year, the decision-making quorum has changed at all stages of disciplinary proceed-

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March 5, 2020 was prepared on June 4. The Inspector submits a report within three months. # 190/19-2; 74-20; 6/20, 156-19 have the same data in decisions. However, if we look at termination decisions, most of the findings are submitted in exactly two months. E.g.: № 95/20; 107/20; 93/20; 88/20; 84/20; 80/20; 74/20; 59/20; 55/20; 46/20; 45/20; 44/20, while in accordance with the law (valid during the reporting period) in 2 months (possibly lasting for two weeks) the disciplinary proceedings must be completed (if no explanation is taken).

<sup>155</sup> High Council of Justice of Georgia, Office of the Independent Inspector Letter №44 / 106-03 of January 28, 2022.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> "Disciplinary Decisions", the official website of the High Council of Justice of Georgia, available at: <https://bit.ly/3BDfvpv>, updated: 20.02.2022.

<sup>160</sup> Organic Law of Georgia on Common Courts, Paragraph 1 of Article 75<sup>8</sup>.

<sup>161</sup> Ibid, Paragraph 1 of Article 75<sup>8</sup>.

<sup>162</sup> Ibid.

<sup>163</sup> Nozadze N. Monitoring Report №9 of the High Council of Justice, Georgian Young Lawyers Association, Tbilisi, 2021, p. 30, website of Georgian Young Lawyers Association, available at: <https://cutt.ly/QA5FwMf>, updated: 14.03.2022.



ings and the Council will make a decision by an absolute majority of the Council members instead of 2/3.<sup>164</sup> Reducing the quorum will not really increase the credibility of the litigation process, given that the Council continues to work without 5 non-judge members. **It is important that the final decision on disciplinary liability is taken by a two-thirds majority, and that the consent of only the judge members of the Council is not sufficient.**

A member of the Council who disagrees with the decision of the Council to terminate the proceedings may express his/her different opinion in writing. In 2021, as in previous years, none of the members exercised this right.<sup>165</sup>

During the reporting period, the Council held one disciplinary meeting, at which it reviewed 50 reports prepared by an independent inspector, at which it made 56 decisions.<sup>166</sup> By the decision of the Council, the proceedings were terminated on 49 reports prepared by the inspector. The Council considered all the conclusions on termination of the proceedings submitted by the Inspector.<sup>167</sup> During the reporting period, the Council did not make a decision to impose disciplinary measures, suspend the disciplinary complaint nor did it instruct the Inspector to conduct an additional investigation into the case.<sup>168</sup>

In 2021, 5 disciplinary complaints were filed against the judge members of the Council, which have not yet been decided by the Council.<sup>169</sup> 70% of disciplinary complaints filed in 2021 go to the Court of First Instance. By category of cases, 50% of these are on civil cases.<sup>170</sup>

Statistics show that, despite the large number of complaints, disciplinary mechanisms are rarely used. Protraction of cases remains a problem; deadlines have been violated (none of the disciplinary complaints filed in 2021 have been reviewed). In disciplinary proceedings, it is important to hear the complaint within the prescribed time, as it is related to the public expectation on the one hand and the judge's interest on the other to have the case completed on time, as delayed disciplinary proceedings can become an effective lever for pressure on individual judges. **Therefore, the Council should ensure that the deadlines set for the review of the complaint are met.**

#### 4.4. Transparency of disciplinary proceedings

The process of disciplinary proceedings is confidential.<sup>171</sup> With this in mind, the timely publication of statistics (number of complaints, types of misconduct, etc.) by the inspector is even more important. GYLA positively assesses the efficiency of the Inspector's Office in this regard.

The positive legislative amendment that gave the judge the right to request the disclosure of the sessions both of the Council (except for deliberations and decision-making procedures),

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<sup>164</sup> Organic Law of Georgia on Common Courts, Paragraph 1 of Article 75<sup>8</sup>.

<sup>165</sup> High Council of Justice of Georgia, Office of Independent Inspector, letter №50 / 105-03-o of February 1, 2022.

<sup>166</sup> High Council of Justice of Georgia, Office of Independent Inspector, letter №44 / 106-03-o of January 28, 2022.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

<sup>169</sup> High Council of Justice of Georgia, Office of Independent Inspector, letter №44 / 106-03-o of January 28, 2022.

<sup>170</sup> Ibid.

<sup>171</sup> Article 75<sup>4</sup> of the Organic Law of Georgia on Common Court.

and the Disciplinary Panel and the Chamber, at which his/her case was considered, no one exercises, no one has used this opportunity since the change came into force.<sup>172</sup> In light of recent changes, this record could be a significant lever for judges who may be punished by the Council for different views.

According to the legislation, the decisions made during the disciplinary proceedings are sent to the author of the complaint (application) and the relevant judge within 5 days after its receipt. During the reporting period, the Council's decision to suspend disciplinary proceedings was sent to the 49 complainants.<sup>173</sup>

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<sup>172</sup> High Council of Justice of Georgia, Office of the Independent Inspector, letter №50 / 105-03-o of February 1, 2022.

<sup>173</sup> Ibid.

## 5. ORGANIZATION AND TRANSPARENCY OF THE HIGH COUNCIL OF JUSTICE

### 5.1. Pre-publish meeting date and agenda

The “Third Wave” of judicial reform established the Council’s obligation to publish the date and agenda of the meeting at least 7 days before the meeting.<sup>174</sup> This obligation was constantly violated. According to the Council, the deadline could not be met due to the intensity of the meetings.<sup>175</sup> Currently, the law stipulates the publication of information at least 3 working days before the session.<sup>176</sup> A total of 46 sessions were held during 2021. In the main case, the information about the session and the agenda were made public the day before the session, in the afternoon, there were cases when the information about the session was published on the same day.<sup>177</sup> Pre-disclosure of meeting information by the Council is important for the transparency and effective monitoring of the Council’s activities. **The Council must comply with the law and publish information about the meeting 3 days in advance.** The publication of information on issues on the previous day, on which there is an increased public interest, should be assessed especially negatively. For example, the agenda of the December 9 meeting of the Council, which was published the previous evening, addressed the issue, in general terms, “organizational issues related to the Supreme Court of Georgia”,<sup>178</sup> while the Council made an important decision and moved the candidates for the Supreme Court judge to the next stage of the selection.

The website of the Council works in test mode, its design has been updated. Information about the meeting and the agenda is no longer posted on the main page, which makes it difficult to access information about the meeting.

Pre-disclosure of meeting information is supposed to involve formulations of the topics to be discussed in such a way as to provide sufficiently specific information on the issues on the agenda in advance. This issue has been a problem for years. The practice established since 2018 has changed positively, which was reflected in the publication of explanations of the agenda. In the previous year, only the item on the agenda published until June included small comments, then this practice deteriorated, and the issues are now vague and general in nature. (See picture) GYLA believes that the old practice should be restored so that the public has the opportunity to receive comprehensive information on the topics to be discussed at the meeting.

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<sup>174</sup> Paragraph 4 of Article 49 of the Organic Law of Georgia on Common Courts.

<sup>175</sup> Letter №218 / 127-0-o of January 25, 2019 of the High Council of Justice of Georgia.

<sup>176</sup> Paragraph 4 of Article 49 of the Organic Law of Georgia on Common Courts.

<sup>177</sup> Information on the February 22 and March 15 sittings was posted on the website on the day of the sitting.

<sup>178</sup> See: Minutes of the December 9, 2021 sitting of the High Council of Justice of Georgia.



დღის წესრიგი 17:00, 04 ნოემბერი, 2021

1. სსიპ იურიდიული დახმარების სამსახურის დირექტორის რ. კუპრაშვილის და სოფლის მეურნეობის სამინისტროს საქვეუწყებო დაწესებულების გარემოსდაცვითი დეპარტამენტის იურისტის ვ. ბერუჩაშვილის წერილები

მომხსენებელი - საქართველოს იუსტიციის უმაღლესი საბჭოს მდივანი ნიკოლოზ მარსაგიშვილი

2. საქართველოს უზენაეს სასამართლოსთან დაკავშირებული საორგანიზაციო საკითხები

მომხსენებელი - საქართველოს იუსტიციის უმაღლესი საბჭოს მდივანი ნიკოლოზ მარსაგიშვილი

3. იუსტიციის უმაღლეს სკოლასთან დაკავშირებული საორგანიზაციო საკითხები

*The issues are included in the agenda with a general wording.*

## 5.2. Preparation of sessions

According to the regulations, the secretary of the Council prepares the sessions and ensures the timely delivery of materials to the members, although nothing is mentioned about who sets and approves the agenda.<sup>179</sup> According to the regulations, the secretary ensures that the documents of the Council are sent to the relevant destination,<sup>180</sup> however, the deadline for the distribution of materials related to the issues under consideration is not defined and members of the Council are not automatically sent the documents submitted to the Council.

There were cases when members were provided with documents related to the issues to be discussed on the day of the meeting.<sup>181</sup> For example, non-judge member Nazi Janezashvili, while discussing the draft law on rehabilitation of dismissed judges, expressed dissatisfaction with the fact that the bill was uploaded shortly before the session and failed to get acquainted with it, she once again called on the Secretary of the Council to publish the agenda of the meeting within the time limits set by law.<sup>182</sup>

The problem of management in the Council was indicated by the repeated postponement of meetings. For example, information about the sitting of March 15 was published on the same

<sup>179</sup> Rules of Procedure of the High Council of Justice of Georgia, Subparagraph “d” of Paragraph 2 of Article 26.

<sup>180</sup> Ibid, “g” subparagraph.

<sup>181</sup> See: Minutes of the meeting of the High Council of Justice of April 5, 2021.

<sup>182</sup> Ibid.

day, but in the end this session was postponed altogether. Also, the sittings of April 15 and 19 were postponed.

During the reporting period, the decision on the issue was delayed several times, which indicates improper organization. For example, the agenda of the July 16 meeting included a total of three issues, two of which were postponed, as the secretary of the council stated the preparation of the issues were not completed in time.<sup>183</sup> There was a case when the issue was not postponed, however, the information about it was clarified during the meeting, which led to the delay of the meeting and the members of the Council did not have the opportunity to discuss it in depth. This was protested by non-judge member Irma Gelashvili. In her opinion, the issues should have been better prepared for the Council meeting.<sup>184</sup>

Another problem is that the documents are not automatically sent to the Council members. This prevents them from requesting to include this or that issue in the agenda at their own discretion.

**To overcome these challenges, it is essential that the Council's Rules of Procedure includes the following: Deadline for submission of applications and projects by the Secretary of the Council to other members, which are scheduled to be discussed at the next meeting; The procedure for handing over a copy of any document submitted to the Council to members; Procedures for drawing up the agenda and the person responsible for it; The right of a member of the Council to request the removal or addition of this or that issue from the agenda.**

### 5.3. Session management

The Council meeting is chaired by the Chairperson or Secretary.<sup>185</sup> However, to date, a number of procedures related to the conduct of the session have not been regulated. In order to express an opinion, the member of the Council is obliged to give a sign to the chairperson of the meeting, who determines the order of the speakers. The regulations do not state how much time is devoted to all Council members to take a position, how many times he or she can address the same issue, and how many extra minutes a member should be given to make a statement. The disorder of these issues often leads to discussion beyond the scope, hindering the conduct of effective and business-specific reasoning on concrete topics. **It is necessary to regulate in detail the procedure for expressing an opinion on each issue by each member of the Council.**

The regulations also do not properly regulate the possibility of inviting outsiders and attending the sessions, as **no recommendation has been considered to determine the rules of expression of the persons present at the sessions.**<sup>186</sup>

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<sup>183</sup> See: Minutes of the meeting of the High Council of Justice of July 16, 2021.

<sup>184</sup> See: Minutes of the meeting of the High Council of Justice of Georgia of February 22, 2021.

<sup>185</sup> Paragraph 16 of Article 47 of the Organic Law of Georgia on Common Courts.

<sup>186</sup> Nozadze N., Shermadini O., Monitoring Report №7 of the High Council of Justice, p. 68.

#### 5.4. Publication of minutes and decisions of the sessions

Another component of transparency is the publicity of the minutes and decisions of the Council meetings. According to the regulations, the minutes must state who convened the meeting, the date of convening the meeting, the time and duration of the meeting, the names of the participants and the chairperson, the identity of the rapporteur and the participants in the debate, the arguments expressed, the decision made and who voted for what.<sup>187</sup>

A special audio system has been used to produce the protocols since 2018, but the audio protocols are not able to fully reflect the reality in the meeting hall, for example, on November 4, the Council reviewed the third issue, “Organizational Issues Related to the High School of Justice“. A 5-minute break from the discussion of the issue was announced. At this session, Dimitri Gvritshvili was elected as the Chairperson of the Independent Board of the School of Justice, which is not reflected in the minutes of the session.

It is problematic to publish the minutes of the meeting late, for example, the minutes of 23 and 29 July during the reporting period have not been published on the Council’s website yet.

The law provides a list of decisions that must be posted on the website.<sup>188</sup> According to the regulations, the decisions must be uploaded on the official website no later than 5 days after their adoption, and the consolidated versions - no later than 14 days after the change.<sup>189</sup> Decisions are uploaded to the Council website with a delay.

The search engine on the website of the High Council of Justice has shortcomings, which complicates the process of searching for specific decisions or other documents. The launch of a new website of the Council, which is running in test mode, also failed to solve the problem.

**It is important that the Council ensures that the minutes of the meeting are fully recorded, and the decisions are published in a timely manner on the website.**

#### 5.5. Filming and coverage of sessions

GYLA has been pointing out the problem of media coverage to the Council for years, but no effective steps have been taken to address it.<sup>190</sup> Media outlets can only take photos and video recordings of the opening session.<sup>191</sup> By law, upon request, an audio recording of the session must be issued immediately.<sup>192</sup>

In a pandemic, due to the lack of space in the Council hall, most of the sessions were held in the plenary hall of the Supreme Court.

To avoid the risks of COVID-19 spreading, GYLA addressed to the Council last year with a

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<sup>187</sup> Paragraph 3 of Article 20 of the Rules of Procedure of the High Council of Justice of Georgia.

<sup>188</sup> Paragraph 4 of Article 49 of the Organic Law of Georgia on Common Courts.

<sup>189</sup> Article 18 of the Rules of Procedure of the High Council of Justice of Georgia.

<sup>190</sup> Tsimakuridze E., Nozadze N., and others, Monitoring Report №5 of the High Council of Justice, p. 23; Nozadze N., Shermadini O. Monitoring Report №6 of the High Council of Justice, p. 26-27; Nozadze N., Shermadini O., Monitoring Report №7 of the High Council of Justice, p. 72-73.

<sup>191</sup> Paragraph 3 of Article 11<sup>1</sup> of the Rules of Procedure of the High Council of Justice of Georgia.

<sup>192</sup> Paragraph 4 of Article 49 of the Organic Law of Georgia on Common Courts.

request to provide a live stream of Council meetings due to the high public interest.<sup>193</sup> This would have made it possible to monitor issues in real time without having to arrive on the ground, although the Council meetings have not been streamed live. **It is important that Council meetings are aired online, which will allow anyone to follow the meetings, and the media to use this format without any procedural obstacles.**

## 5.6. Closing the sessions

According to the law, the Council is obliged to hold its meetings openly and publicly,<sup>194</sup> and to announce its closure when making a relevant decision.<sup>195</sup> As GYLA has pointed out in previous reports, the grounds and procedure for closing the session have not been defined,<sup>196</sup> **consequently, it is necessary to clarify this issue (rare and respectable reasons for closing should be identified).**

A problem is the provision by which a candidate for a judge has the right to conduct a closed-door interview.<sup>197</sup> According to the established practice in recent years, before the interview, the chair of the session asks the contestant about the format. It should be noted that there is a high public interest towards the candidates, and the transparency of the process is essential to ensure the independence of judges and confidence in the system. It should be considered positively that none of the candidates requested a closed-door interview during the reporting period. The openness and publicity of the process should also unequivocally be assessed progressively, as it is possible for the general public to assess the competence of both the current judges and the members of the Council and their good faith. **It is therefore important that interviews for positions in first and second-instances, like those of the Supreme Court candidates, be conducted in an open session of the Council.**

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<sup>193</sup> Letter G-04 / 51-20 of the Georgian Young Lawyers Association dated April 08, 2020.

<sup>194</sup> Articles 32 and 34 of the General Administrative Code of Georgia.

<sup>195</sup> Ibid.

<sup>196</sup> Tsimakuridze E., Mezvrishvili K., Monitoring Report №4 of the High Council of Justice, p. 33-34; Tsimakuridze E., Nozadze N., Tabatadze G., Shermadini O., Monitoring Report №5 of the High Council of Justice, p. 22-23; Nozadze N., Shermadini O. Monitoring Report №6 of the High Council of Justice, p. 31; Nozadze N., Shermadini O. Monitoring Report №7 of the High Council of Justice, p. 76.

<sup>197</sup> Paragraph 2 of Article 12<sup>7</sup> of the Decision № 308 of the High Council of Justice of Georgia of October 9, 2009 on the Approval of the Rules for the Selection of Judicial Candidates.

## 6. RECOMMENDATIONS

Based on the analysis of the results of the present monitoring, GYLA considers that it is important to take the following recommendations into account in building an independent and transparent judiciary.

The Parliament should ensure through changes in normative acts as follows:

- Abolishment of the quota of chairpersons in the Council;
- Establishment of gender, regional and institutional quotas (the latter is already defined by law, but needs to be clarified) in order to reduce the influence on the staffing the Council;
- Appointment of non-judge members of the Council with mutual support (of the government and the opposition). Establishment of gender quotas;
- Transparent rules for electing non-judge members;
- Conducting interviews with candidates for positions of judges in open session;
- Appointment/re-appointment of judges of first and second instances for lifetime by 2/3 of the votes of judge and non-judge members;
- Reviewing the procedure for appointment of judges for lifetime tenure after the probationary period is ended; (the draft decision on the refusal to consider the issue of appointing a judge for lifetime should be submitted to the session of the Council. In case the proposal fails to get 6 votes, the judge should be allowed to be interviewed);
- Nominating a candidate who wins 2/3 of the votes of the judge and non-judge members of the Council separately for the position of a judge of the Supreme Court;
- Appointing chairpersons (in the courts of first and second instances) by election;
- Abolishment of the administrative positions of the Deputy Chairperson, Chairpersons (and acting chairpersons) of the Panel and the Chamber
- Determining 2/3 of the votes as a requirement for the appointment of an inspector;
- Substantiation of the decisions of the Council on the refusal to initiate disciplinary proceedings against a judge;
- Adoption of decisions of the Council on the initiation and termination of disciplinary proceedings by 2/3 of the votes.

**In order to improve the implementation of the regulation provided by the legislation, the Council should ensure:**

- Indication of specific circumstances in the justification of the appointment of judges of the first and second instances in such a way that the interested person receives comprehensive information about the good faith of the judge;
- Transparent management of the process of the transfer and promotion of judges without a competition;



- Establishment of a transparent procedure and rules for the nomination and appointment of chairpersons;
- During the collegial hearing of the case, the selection of all three judges through the electronic system, according to the rule of random distribution, and the distribution in the narrow specialization - by lot;
- Improving the competition rules for selecting an inspector: defining selection criteria, conducting interviews, candidate evaluation and justification rules;
- Consideration of disciplinary complaints within the timeframe established by law;
- Publishing information about the sessions and the agenda in advance, within the timeframe established by law;
- Developing rules for handing over copies of any document to Council members submitted to the Council, adopting the procedure for stating the position and rules for drawing up the agenda of the meeting, removing and adding the issue, inviting third parties to the meeting and expressing opinions by the attendees;
- Online transmission of Council sessions;
- Establishing a rule for closing Council sessions;

The Independent Board of the High School of Justice should introduce transparent rules and criteria for the selection of students.